Committee on Energy and Commerce

Opening Statement as Prepared for Delivery
of
Ranking Member Greg Walden

Undermining Mercury Protections: EPA Endangers Human Health and the Environment

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Thank you, Chair DeGette, for holding this important hearing.

Mercury poisoning poses a serious risk to all children and adults—especially pregnant women and infants. The mercury levels in certain areas depend on how much mercury is not only released locally, but also how much is released across the globe. The amount of mercury that travels across the globe is not insignificant—some research suggests that about one-fifth of the mercury entering the Willamette River in Oregon comes from abroad—oftentimes from China.

Let's be clear though—in their recent proposal, the EPA is not changing the emission standards and other requirements of the MATS rule for coal- and oil-fired power plants. Indeed, the EPA explicitly says that their proposal is to keep power plants on the Clean Air Act section 112(c) source list and not to change the existing emissions standards promulgated in 2012.

The decision to keep the existing emission standards in place for power plants makes sense, especially given that industry has already complied with the MATS rule. The initial compliance date was over four years ago. Power plants have reduced mercury emissions by about 86 percent and reduced emissions of total Hazardous Air Pollutants (HAPs) by 96 percent since 2010. These reductions have come at a large cost to industry, however. In their comments to the proposed rule, the U.S. Chamber of Commerce said the power sector has spent about $18 billion on compliance controls thus far.

Not only is it logical for the EPA to keep the existing emission standards in place for power plants, but also, under a 2008 D.C. Circuit case, the EPA cannot change the existing emission standards unless they go through the extremely rigorous delisting process under section 112(c)(9) of the Clean Air Act. Given this precedent and how difficult it is to delist a source category from the section 112(c)(1) list of the Clean Air Act, I have questions for the witnesses today about the likelihood of this risk, especially since industry is already in compliance with the standards.

When the Obama administration first promulgated the MATS rule, they did not consider the cost of the regulation. The Supreme Court, in Michigan v. EPA, clearly said that was wrong, stating that the EPA must consider cost when determining whether it was appropriate and necessary to regulate power plants for HAPs. In response, the Obama administration issued a 2016 Supplemental Finding putting forth two cost approaches—a cost reasonableness test and a

cost-benefit analysis—to determine it was appropriate and necessary to move forward. The EPA heavily relied on the co-benefit of reductions in particulate matter 2.5 in its cost benefit analysis, with more than 99 percent of the benefits being co-benefits.

The Obama administration's interpretation of how to consider costs is open to argument. Immediately after the 2016 Supplemental Finding was issued, it was challenged in court. This litigation is ongoing, and the D.C. Circuit is currently holding the case in abeyance.

The Trump administration's proposed rule revises the EPA's approach to the decision in Michigan v. EPA, and in the EPA's own words "corrects flaws in the EPA's prior 2016 response to Michigan." The EPA calls into question the previous administration's heavy reliance on co-benefits to justify its "appropriate and necessary" finding. As Chief Justice John Roberts highlighted through his questioning during oral argument in Michigan, it is questionable whether a pollutant that already has its own regulatory framework under the CAA—such as PM 2.5—should be so heavily relied on as a co-benefit to justify a regulation for another type of pollutant. The EPA proposes instead to directly compare the cost of compliance with MATS with the benefits specifically associated with reducing emissions of HAP.

The Clean Air Act is silent on whether, or how, the EPA should consider co-benefits in the rulemaking process. I remind my colleagues that this body has the ability to change the law and statutorily determine whether and how co-benefits should be considered. I've seen no bills introduced to date on this point. If Congress remains silent—as we have since 1990—then I strongly suspect that this issue will ultimately be determined by the Supreme Court.

I want to thank the witnesses for being here today. It is my understanding that the majority invited the EPA to testify today and the EPA declined the invitation, explaining that they had a conflict and offering to come at a later date. I'm disappointed that the EPA is not here today to explain the proposal and the reasons they have issued this proposed rule. I hope the Chair schedules a second hearing with the EPA soon.