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UNDERMINING MERCURY PROTECTIONS:
EPA ENDANGERS HUMAN HEALTH AND THE ENVIRONMENT

TUESDAY, MAY 21, 2019

House of Representatives,

Subcommittee on Oversight

and Investigations,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 10:02 a.m., in Room 2322, Rayburn House Office Building, Hon. Diana DeGette [chairman of the subcommittee] presiding.

Present: Representatives DeGette, Kennedy, Ruiz, Kuster, Sarbanes, Tonko, Clarke, Peters, Guthrie, Burgess, McKinley, Griffith, Brooks, Mullin, Duncan, and Walden (ex officio).

Also Present: Representative Soto.

Staff Present: Kevin Barstow, Chief Oversight Counsel; Jeff Carroll, Staff Director; Waverly Gordon, Deputy Chief Counsel; Judy Harvey, Counsel; Chris Knauer, Oversight

Staff Director; Brendan Larkin, Policy Coordinator; Jourdan Lewis, Policy Analyst; Jon Monger, Counsel; Alivia Roberts, Press Assistant; Tim Robinson, Chief Counsel; Nikki Roy, Policy Coordinator; Jennifer Barblan, Minority Chief Counsel, O&I; Mike Bloomquist, Minority Staff Director; S.K. Bowen, Minority Press Assistant; Jordan Davis, Minority Senior Advisor; Brittany Havens, Minority Professional Staff, O&I; Peter Kielty, Minority General Counsel; Ryan Long, Minority Deputy Staff Director; Brannon Rains, Minority Legislative Clerk; and Natalie Sohn, Minority Counsel, O&I.

Ms. DeGette. The Subcommittee on Oversight and Investigations will now come to order.

Today, the Subcommittee on Oversight and Investigations is holding a hearing entitled "Undermining Mercury Protections: EPA Endangers Human Health and the Environment."

The purpose of today's hearing is to examine the Environmental Protection Agency's recent proposal that says limiting mercury and other toxics from coal and oil-fired power plants is not, quote, appropriate and necessary under the Clean Air Act.

The chair will now recognize herself for purposes of an opening statement.

Today, we take a look at the Trump administration's ill-conceived and, to me, frankly, mind boggling effort to undermine the U.S. Environmental Protection Agency's rule that limits mercury emissions from our Nation's coal power plants.

Mercury is one of the most toxic substances on the planet, and it's one that causes real harm to the brain, heart, and other essential body systems. Despite the dangers that toxic metals can cause, for years, there were no Federal regulations limiting how much mercury that our coal-fired power plants could emit into the atmosphere each year.

Let me be clear about something. When the EPA fails to enact clean air protections, it's our communities, it's our families and our environment that all pay the price. And when an administration like today's administration tries to unravel the protections that we have gotten, it puts all of us at risk.

In 2012, to address this issue and better protect the public from the threat posed by mercury emissions, the Obama administration determined that it was, quote, appropriate and necessary under the Clean Air Act to limit how much mercury coal power plants could emit each year. The Obama administration finalized these new standards

in a new rule enacted that year known as the Mercury and Air Toxic Standards, or MATS. In justifying its decision to enact these new limits, the Obama administration estimated, while it would cost industry more than $9 billion to comply with the new rule, the new standards would generate $4 million to $6 million direct health benefits and as much as $90 billion in additional health benefits each year by reducing people's exposure to the toxic metal.

Now, the industry chose to challenge the standards in court, but they were left in place during the court challenge. The industry eventually moved forward and invested billions of dollars in new technology and pollution controls to comply with these standards. And the investments the companies made led to a significant drop in the amount of mercury and other harmful pollutants being emitted from the coal power plants across the country today. And that is why the Obama administration's so-called mercury rule has been hailed by advocates as such a success. But now, as I said earlier, the rule is under attack as the Trump administration is trying to not only undo this new mercury rule but also to undermine the theory that it is appropriate and necessary for the Agency to enact such rules in the first place.

If the EPA was here today, I am sure that they would tell this panel that we have nothing to worry about, that mercury standards will remain in effect regardless of their actions, and the only reason they are taking a look at this rule now is because they are required to do so by the Supreme Court. But, of course, the EPA didn't come today, and so I'll just say what my perspective is. I don't think that would be true.

The Supreme Court never told the Trump administration to revisit this rule. And the Supreme Court never told the EPA to enact a new policy that would ignore billions of dollars in health benefits going forward. The Trump administration is acting purely on its own initiative. Why? I don't know. What's clear is the Trump administration is

doing more than simply revising the mercury rule. It's trying to set the EPA on an entirely new course going forward, one that requires the Agency to ignore the real health benefits that our Nation's environmental policies often provide to the public.

I want to thank our witnesses for coming today. We have experts who will explain how the administration's new mercury proposal contradicts the, quote, relevant guidance and decades of practice by administrations of both political parties. They'll explain how it ignores the very real benefit that comes from regulating the hazardous pollutants coming from our Nation's power plants and how the Trump administration is conveniently ignoring some key realities and important new information when arguing that the cost of these proposals greatly outweighs the benefits.

For example, according to recent studies, the annual direct benefit of regulating mercury could be in the billions, not the millions as originally estimated. And the total implementation cost for countries to come into compliance was actually much lower than was predicted.

But what's the most puzzling is the timing, because in arguing the cost versus benefit of the mercury rule, the EPA seems to have forgotten the rule has been in place for years already. The industry has already complied. And if you undo the rule now, it would put the public's health at risk and also the company's ability to recover the money they invested to comply. That's why some of the people who want to keep this rule in place is the power industry itself. So, if undoing the rule would be bad for public health, bad for the environment, and bad for industry itself, who does it help? And why is the EPA pushing this? That's what I'm trying to understand.

Now, I just want to close briefly by saying that I'm continually frustrated and surprised by the administration's refusal to send witnesses to Congress. And the EPA's refusal to show up today is just another example of the efforts to block Congress from

performing its oversight functions. And so we are going to have to move forward, but it would be really helpful if we had the agencies here to help us.

And, with that, I'm pleased to yield 5 minutes to the ranking member, Mr. Guthrie.

[The prepared statement of Ms. DeGette follows:]

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Mr. Guthrie. Thank you, Chair DeGette. And thank you for holding this important hearing.

The Mercury Air Toxic Standards, MATS, was created to regulate mercury levels, and I think it's important to today's conversation to discuss where mercury comes from and how we in the United States are primarily exposed to it.

Mercury can be released through human activity, such as burning materials which contain mercury. It is also released into the atmosphere naturally through events, such as volcanic eruptions, forest fires, and normal breakdown of minerals and rock and soil. Mercury levels in certain areas can vary depending not only on how much mercury is released locally, but what can also come from regional, national, even international sources due to wind and weather patterns.

Once released into the atmosphere, mercury will eventually deposit into bodies of water or onto land, where it will also ultimately be transported into water. In the water, microorganisms can change the mercury into methyl mercury, and the methyl mercury will accumulate up the food chain into fish and shellfish.

While exposure to mercury takes several forms, nearly all human exposure to methyl mercury in the United States occurs through fish and shellfish consumption. The regulation we are discussing today, MATS, was intended to help reduce the amount of mercury created from human activity, specifically mercury emitted from coal and oil-fired electric utility steam plants generating units, or EGUs.

The creation of MATS dates back to 1990 Clean Air Act amendments where the Environmental Protection Agency was required to conduct studies on coal and oil-fired EGUs to form the EPA's decision where it was appropriate and necessary to regulate EGUs under section 112 of the Clean Air Act. After conducting multiple studies in 2000, the

Clinton administration found that it was appropriate and necessary to regulate coal and oil-fired EGUs under the Clean Air Act section 112 and added EGUs to the Act's 112(c) list of source categories that must be regulated.

MATS has had a lengthy and complex history across multiple administrations involving studies, proposed rules, final rules, cases before the D.C. circuit, and a case before the Supreme Court in 2015 where the Supreme Court told EPA they had to consider costs when determining whether this regulation was appropriate and necessary, which EPA had not previously done.

Most recently, in December, the EPA issued a proposed rulemaking to the National Emissions Standards for Hazardous Air Pollution, or NESHAP, for EGUs. In the rule, EPA makes four proposals: to determine that it is not appropriate and necessary to regulate hazardous air pollutant emissions from coal and oil-fired EGUs planned under section 112 of the Clean Air Act; to keep coal and oil-fired EGUs as a source category on the Clean Air Act section 112(c) list of sources that must be regulated under 112(d) of the Act, thereby keeping the emission standards and other requirements of the MATS rule in place for coal and oil-fired power plants; three, to solicit on whether the Agency has the authority and/or obligation to delist EGUs from section 112(c) of the Act and rescind the NESHAP for coal and oil-fired EGUs; and, four, to propose the results of the residual risk and technology review of NESHAP for coal and oil-fired EGUs.

This proposed rule does not remove the standard. It only proposes to remove the appropriate necessary finding that almost entirely justified the cost of MATS regulation by the co-benefits of regulating particulate matter on which, by Congress' design, is regulated under a different section of the Act. Today's conversation examines a lot of very complex questions and I believe have potential significance beyond MATS. For example, was the appropriate and necessary finding that justified MATS sound?

Was the regulation made under the right section of the Act? And how should a regulatory body weigh coal benefits in crafting future regulations, et cetera? All of these questions are important, and I hope we can have a thorough and honest discussion to inform future rulemaking.

I thank our witnesses for being here today. While it is unfortunate the EPA cannot be here today to testify as well, I hope the chair schedules a second hearing soon so the Agency's perspective can be heard on these important issues.

Thank you, and I yield back.

[The prepared statement of Mr. Guthrie follows:]

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Ms. DeGette. I thank the ranking member.

I'm now pleased to recognize the vice chair of the Oversight Subcommittee, Mr. Kennedy, for 5 minutes for purposes of an opening statement.

Mr. Kennedy. Thank you, Madam Chair.

Over the past 2 and a half years, the Trump administration has upheld its promise time and again to roll back critical environmental protections. Nearly every day, families and communities are at greater risk of losing access to clean air and clean water at the expense of political convenience.

Since 2012, the EPA has written a success story for public health and the environment through its implementation of mercury and toxic air standards, MATS.

One analysis by the EPA calculated the reduction level from 86 percent of mercury emissions from 2010 to 2017. Yet despite that success, EPA is now proposing to reverse its own findings and perhaps the entire MATS regulatory structure.

Mercury can be highly toxic to infants, children, and adults including severe consequences to the heart, kidney, and immune system functions. Prenatal exposure can cause severe neurological damage that lasts a lifetime.

Over the years, the EPA has taken steps to limit emissions of mercury from industrial sources like waste incinerators and cement and brick production. In 2012, after extensive consultation with the power sector and other stakeholders, EPA finalized standards under the Clean Air Act to reduce emissions of mercury and other toxic air pollutants from coal-fired power plants.

The final rule was quickly challenged in Federal court by the coal industry, which argued that the EPA made a flawed determination that was, quote, appropriate and necessary to limit mercury emissions from power plants. The case made its way all the

way to the Supreme Court, which held that the EPA should have considered costs when making its determination.

In response to the Supreme Court's ruling in 2016, the EPA issued a supplemental finding which determined that the consideration of costs confirmed its prior determination that the regulation of mercury emissions was still, quote, appropriate and necessary.

Throughout these legal challenges, the electric generating industry pursued regulatory compliance, spending billions of dollars on technologies to limit mercury and other toxic emissions, contributing to a nearly 90 percent decrease in mercury emissions in the past decade. According to a July 2018 letter from the electric industry to EPA, all covered power plants had implemented the regulation and were operating pollution controls. Unfortunately, this past December, despite all the success in reductions of mercury emissions, Trump EPA issued its stunning reversal by proposing it is no longer, quote, appropriate and necessary, unquote, to limit mercury emissions from power plants under the Clean Air Act. The EPA reached this conclusion by redoing the Agency's cost-benefit analysis. In this new calculation, the Agency disregarded the health and other benefits of reducing pollutants not directly targeted to MATS, also known as co-benefits.

With those benefits out of the picture, EPA determined the cost of the rule greatly outweighed its benefits. The Trump EPA and its supporters claim that this new approach is reasonable and perhaps even legally required. But the former head of the EPA's Air and Radiation Office, who helped finalize this rule during the Obama administration, is here today and will say just the opposite. By doing what they are doing, the EPA is, quote -- the Trump EPA is, quote, choosing to paint itself into this corner, end quote.

The Trump EPA argues that its policy approach is rational because the pollutant reductions it ignores for purposes of the MATS rule are regulated under different a provision in the Clean Air Act. But as you will hear today from one expert on cost-benefit analysis, the Trump EPA approach is, quote, irrational, end quote, and further will result in a, quote, biased and misleading estimate of costs and benefits.

Beyond its wrong-headed the unjustified approach to the cost-benefit analysis, the Trump EPA's proposed determination relies on an out-of-date record from 2011. We now know that the cost of the MATS rule are lower and the direct benefits of mercury and air toxic -- toxic air reductions are much higher than indicated in the 2011 record. The Trump EPA conveniently disregards this information.

Administrator Wheeler is now working to justify this decision by claiming that the EPA is required to act by the Supreme Court. However, in truth, the EPA, in a prior administration, already responded to the Supreme Court's concerns.

The new proposal is opposed by parents, by doctors, by nurses, by Tribes, by faith leaders, and even by the regulated industry itself. Unfortunately, the EPA declined an invitation to attend this hearing to offer a much-needed explanation of its decision.

For an agency under this administration that has demonstrated time and again that it is not serious about its mission, this dangerous and misleading proposal to undermine mercury and air -- and toxic air protections is a new low and unnecessarily creates risks to both public health and the environment.

Thank you, Madam Chair, for holding this important hearing, and I yield back.

[The prepared statement of Mr. Kennedy follows:]

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Ms. DeGette. I thank the gentleman.

The chair now recognizes the ranking member of the full committee, Mr. Walden, for 5 minutes for the purposes of an opening statement.

Mr. Walden. Good morning, Madam Chair. And thanks for holding this important hearing.

Mercury poisoning poses a serious risk to all children and to all 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 the enters the Willamette River in Oregon comes from abroad and oftentimes from China.

So let's be clear, though. In the 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 emission standards promulgated in 2012. The decision to keep the existing emission standards in place for power plants makes sense, especially given that the industry has already complied with the MATS rule. The initial compliance date was over 4 years ago.

Power plants reduced mercury emissions by about 86 percent and reduced emissions of total hazardous air pollutants by 96 percent since 2010. These reductions have come at a large cost to the industry and to consumers.

In their comments to the proposed rule, the U.S. Chamber of Commerce said the power sector spent about $18 billion on compliance controls thus far.

So 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 court case, the EPA cannot change the existing emission standards unless they go through the extremely rigorous delisting process under section 112(c)(9) of 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.

Now, when the Obama administration first promulgated the MATS rule, they did not consider the cost to regulation, as you've already heard. 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 cost 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 versus EPA. And in the EPA's own words, and I quote, corrects flaws in the EPA's prior 2016 response to Michigan, close quote.

The EPA calls question into question the previous administration's heavily 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 Clean Air Act, such as PM2.5, should be so heavily relied on as a co-benefit to justify a regulation of 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 not the EPA should consider co-benefits in the rulemaking process. I remind my colleague, this body has the ability to change the law and statutorily determine whether and how co-benefits should be considered. But I've seen no bills introduced to do that to date.

If Congress remains silent, as we have since 1990, then I strongly suspect that this issue ultimately will be determined by the Supreme Court.

I want to thank our witnesses for being here today. It's my understanding that the majority did invite the EPA to testify today. And, unfortunately, the EPA declined that invitation explaining they had a conflict and offered to come at a later date. I'm disappointed the EPA is not here today. They should be to explain the proposal and the reasons they have issued this proposed rule. So I hope we have a second hearing where they can attend.

I would point out there have been other hearings where the majority has not invited the administration to present testimony, made a decision to do that when we've asked them to. So it kind of goes both ways. But in this case, the EPA ought to be here. I'm with you, Madam Chair, and we'll work with you to make sure they show up next time.

And, with that, I yield back.

[The prepared statement of Mr. Walden follows:]

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Ms. DeGette. The gentleman yields back.

I now ask unanimous consent that the members' written opening statements be made part of the record.

Without objection, so ordered.

I now want to introduce the panel of witnesses for today's hearing: Ms. Janet McCabe, who is the former Acting Administrator, the Office of Air and Radiation, U.S. EPA; Ms. Heather McTeer Toney, who is the national field director for Moms Clean Air Force; Mr. Michael Livermore, associate professor of law at the University of Virginia; Dr. Noelle Eckley Selin, Ph.D., associate professor at MIT, director of the MIT Technology and Policy Program; Dr. Philip Landrigan, M.D., M.Sc., director of Global Public Health Program and Global Pollution Observatory at the Schiller Institute for Integrated Science and Society, Boston College; and Mr. Adam R.F. Gustafson, partner of Boyden Gray & Associates PLLC.

Thank you all for appearing before the subcommittee today. And I know you're aware that the committee is holding an investigative hearing. And when we do so, we take testimony under oath.

Does anyone have an objection to testifying today under oath?

Seeing no objections, let the record reflect the witnesses have responded no.

The chair then advises you, under the rules of the House and the rules of the committee, you're entitled to be accompanied by counsel.

Do any of you wish to be accompanied by counsel today?

Let the record reflect the witnesses responded no.

So, please, if you would, please, rise and raise your right hand so you may be sworn in.

[Witnesses sworn.]

Ms. DeGette. Let the record reflect the witnesses have responded affirmatively, and they've been seated.

You are now under oath and subject to the penalties set forth in title 18, section 1001, of the United States Code.

Now the chair will recognize witnesses for 5-minute opening statements. In front of you, you've got a microphone and a series of lights. The light turns yellow when you have a minute left and red to indicate your time has come to an end.

And so, Ms. McCabe, you're first. And I'm pleased to recognize you now for 5 minutes.

STATEMENTS OF JANET MCCABE, FORMER ACTING ASSISTANT ADMINISTRATOR, OFFICE OF AIR AND RADIATION, U.S. ENVIRONMENTAL PROTECTION AGENCY; HEATHER MCTEER TONEY, NATIONAL FIELD DIRECTOR, MOMS CLEAN AIR FORCE; MICHAEL LIVERMORE, ASSOCIATE PROFESSOR OF LAW, UNIVERSITY OF VIRGINIA; NOELLE ECKLEY SELIN, PH.D., ASSOCIATE PROFESSOR, MASSACHUSETTS INSTITUTE OF TECHNOLOGY; DIRECTOR, MIT TECHNOLOGY AND POLICY PROGRAM; PHILIP LANDRIGAN, M.D., M.SC., DIRECTOR, GLOBAL PUBLIC HEALTH PROGRAM AND GLOBAL POLLUTION OBSERVATORY, SCHILLER INSTITUTE FOR INTEGRATED SCIENCE AND SOCIETY, BOSTON COLLEGE; AND ADAM R.F. GUSTAFSON, PARTNER, BOYDEN GRAY & ASSOCIATES PLLC.

STATEMENT OF JANET MCCABE

Ms. McCabe. Thank you, Chair DeGette, and members of the subcommittee. I appreciate being here today and note that I'm here in my personal capacity, not representing Indiana University.

EPA's proposal to withdraw the appropriate and necessary finding that underpins the MATS rule is of grave concern for three reasons. First, it provides the legal predicate for the eventual withdrawal of a rule that protects the most vulnerable among us from exposure to mercury and other harmful pollutants. It takes a radical new approach to consideration of health benefits that has implications far beyond this rule. And it injects regulatory uncertainty into a program the industry has already complied with and does not want to be reopened.

Mercury is extremely --

Ms. DeGette. Excuse me, Ms. McCabe. Is your mike on?

Ms. McCabe. The light is on.

Ms. DeGette. Okay. Just move it a little closer.

Perfect. Thank you.

Ms. McCabe. Mercury is extremely -- better?

Okay. Mercury is extremely harmful to human health, especially babies and pregnant women and their unborn children. Prior to MATS, fossil-fired power plants were the single largest industrial emitter of mercury.

In 1990, Congress adopted a technology-based approach to addressing emissions of air toxic from stationary sources. Because coal-fired power plants were already regulated through other programs, such as the acid rain program, Congress required EPA to evaluate whether it was appropriate and necessary to develop a rule for them.

The EPA made that finding in 2000 but, in 2005, reversed it, instead issuing a national mercury cap-and-trade program. The D.C. circuit overturned that rule leaving the Obama administration to address this ongoing regulatory obligation.

EPA issued MATS and a new finding in 2011. EPA used the best information available and followed longstanding OMB guidance to project the cost and benefits of the rule. That meant considering the full range of health benefits including reductions of all harmful air pollutants, monetized or not.

As is often the case, the technologies EPA expected utilities would use to control mercury would also reduce other harmful air pollutants, such as fine particles. The health effects of these pollutants are significant, and these reductions were not already required by other programs.

The D.C. circuit fully upheld MATS. The Supreme Court agreed, except that it held that EPA should have considered cost as part of the appropriate and necessary finding itself. So the EPA issued a supplemental finding in 2016 looking at cost and

benefits in several ways and again concluding that MATS was appropriate and necessary.

In the meantime, the industry implemented the rule and is now in compliance. Although EEI and others urged EPA not to change the appropriate and necessary finding or the provisions of MATS, EPA issued its proposed withdrawal earlier this year.

EPA now proposes to conclude that the costs outweigh the benefits, looking at the very same information it considered in 2011 and 2015 but using a radically different approach to how it considers benefits. And while EPA presents this almost as if it has no choice, the Agency is choosing to paint itself into this corner.

First, despite saying that it is not proposing to rescind MATS, a rescission of the finding would create the legal predicate for the Agency to do so or for outside parties to petition EPA to do so and sue them if they don't. EPA indeed seeks comment on this very question, and we're seeing public statements that indicate people believe that this is the first step to repeal of MATS.

Second, EPA proposes to reverse itself on the strength of a single highly significant policy change, that it's inappropriate to consider fully the health and benefits associated with any pollution reductions other than the air toxic specifically targeted by the rule. This approach ignores decades-old OMB guidance and years of agency practice that value both direct and indirect benefits. It also ignores cause-and-effect realties and favors industry costs over public health benefits.

The EPA's approach distorts cost-benefit analysis in ways that reasonable businesses would not do. Savvy businesses try to achieve multiple benefits when installing new equipment. One pollution control technology often accomplishes multiple purposes and helps with compliance beyond the specific rule that drives the initial investment.

EPA is basing this revised analysis on a record that is demonstrably out of date.

There's now information showing both that costs have been lower and benefits will be higher. If EPA is going to proactively reopen this rule and dramatically change its methodology, to willfully ignore the facts on the ground turns this into an academic exercise. Rulemaking under the Clean Air Act is not academic. These programs affect health and quality of life for millions of people.

The proposal also unnecessarily creates uncertainty for utilities who have already complied. If EPA reverses the finding, it will kick the legal legs out from under the standards themselves. And if the requirements go away, it may complicate rate recovery or utilities may decide to operate their controls less, which would mean a return to higher mercury and other toxics in our communities.

If EPA finalizes this rule, we can reasonably expect to see this approach to devaluing health benefits in every EPA proposal.

This program has been a success. Mercury emissions from coal plants have gone down, and mercury levels in water and fish have decreased. This program is in the rearview mirror for utilities, and contrary to EPA's mission to protect public health and the environment, it should not be finalized.

And I apologize for going over.

Thank you.

[The prepared statement of Ms. McCabe follows:]

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Ms. DeGette. Thank you so much.

The chair now recognizes Ms. McTeer Toney for 5 minutes.

STATEMENT OF HEATHER MCTEER TONEY

Ms. McTeer Toney. Chairwoman DeGette, Ranking Member Guthrie, and members of the subcommittee, thank you for the opportunity to testify about the U.S. Environmental Protection Agency's mercury and air toxic standards.

My name is Heather McTeer Toney. I serve as the national field director of Moms Clean Air Force. We're a community of over 1 million moms and dads united against air pollution and climate change for the sake of our children's health.

I'm here today to explain why the EPA's proposed rule is completely unacceptable and should be withdrawn. In March of this year, one of our member moms, Nikki Katrice White, traveled with us to D.C. to participate in an EPA hearing on the MATS proposal. Nikki is a healthcare worker, a native of Camden, South Carolina, where she lives and raises her two children. And as a Black mother living in the shadow of the local coal-fired power plant, Nikki is acutely aware of the need for strong air pollution controls. She sat before the EPA hearing panel and shared how her family was grateful for the sustainable income yet, at the same time, blissfully unsuspecting of the dangers that come with living alongside coal-fired power plants. She shared how they didn't think twice when her mother gave birth to her only son, and he was stillborn. They didn't give it a second thought when her mother and sister developed fibroids because everybody believes that they're common among African American women. And it didn't even dawn on her when her own children started to have respiratory issues when there was no family history or significant risk factors. In her words: We didn't link any of that to the fact that my mother's job was powered by May Plant, a coal-fired power plant just off the

Wateree River. We lived by it, and we were exposed to these chemicals. But what we do know is that MATS is one of the several pollution standards that have helped clean up the environment in my community.

Ms. White's words were not just spoken on behalf of her and her two children but on behalf of the millions of kids across this country that live under a cloud of air pollution and dangerous brain-damaging toxins that inhibit their lives and limit their potential.

When the Agency proposed in February of 2019 to change key elements of the mercury and air toxic standards, claiming that, as a result of the extremely limiting accounting of the cost and benefits rules, the rule is not appropriate and necessary, our mothers found that disingenuous and dangerous. The criteria of appropriate and necessary is a legal yardstick under the Clean Air Act, and removing this status undermines the legal foundation of the rule, leaving it vulnerable to legal challenge.

Furthermore, while EPA has continuously claimed that it's leaving the current standard for mercury emission in place, they are taking steps consistent with changing and/or altering the rule altogether. Not only does the proposal directly attack the underlying justification of MATS, but EPA specifically solicits comments on whether, if it were to finalize its proposed conclusion, it then had the authority or the obligation to rescind the MATS rule altogether. This is an insult to the intelligence of mothers everywhere.

I previously served as Regional Administrator for the EPA Southeast Region under President Obama and EPA Administrator Gina McCarthy. My region covered eight States, six Tribes, and over a quarter of the Nation's population. My job was to not only assist communities and industry to implement MATS but also to explain the importance of these protective measures, especially in vulnerable communities and communities of color.

I also am a former mayor, having served my hometown of Greenville, Mississippi, for two terms. And I'm the mother of three, one of whom has joined me today. Mothers know that coal-burning power plants are the largest source of human-caused mercury emissions in the U.S., and mercury is harmful to the developing brain.

In 2005, researchers estimated that between 316,000 and 637,000 newborns were born each year in the U.S. with elevated mercury levels in their blood, levels associated with the loss of IQ. The resulting loss of intelligence and lost productivity was calculated to cost $8.7 billion in 2000 dollars.

Everything we know about these pollutants show that controlling them is not just appropriate but vital. It's deeply problematic and a direct threat to our children's health that EPA now proposes to decide otherwise. Moms Clean Air Force, together with a diverse set of allies and partners, collected more than 350,000 comments in opposition to this proposal that were submitted to the docket.

So what should be done to the current rule? Nothing. If they choose to do anything at all, EPA must strengthen our Nation's limits on mercury and toxic pollution from coal-fired power plants.

I shared earlier that I have three children, and my greatest role is being a mother. My youngest son is 2 and a half. And when he plays with blocks, he likes to stack them into tall towers. He has sense enough to know that, if you pull the bottom block out, the rest of the tower will fall. If at 2 and a half, he has the good common sense to understand that foundations matter, why does this administration and agency not understand that pulling the base from a protective rule can make the rest of it crumble. Why they would ever consider weakening a rule that protects babies' brains is senseless, and this must be called out for what it is. It is a direct threat to our children's health, and we will not take these threats kindly.

Thank you.

[The prepared statement of Ms. McTeer Toney follows:]

******** INSERT 1-2 ********

Ms. DeGette. Thank you very much.

The chair now recognizes Mr. Livermore for 5 minutes for an opening statement.

STATEMENT OF MICHAEL LIVERMORE

Mr. Livermore. Madam Chair, Ranking Member Guthrie, members the committee, thank you for the opportunity to testify today. My testimony will focus on the treatment of cost and benefits in EPA's current proposal.

The use of cost-benefit analysis to evaluate environmental regulation has a long history in the United States and has been embraced by administrations of both political parties. Cost-benefit analysis creates a formal process for a simple idea: Agencies ought to do their best to anticipate and evaluate the consequences of their decisions and seek out rules that provide large benefits at low cost. Over time, approaches for counting cost and benefits have become standardized. Guidance documents, such as OMB's Circular A4, which was published during the George W. Bush administration described best practices for how agencies should do this.

A value of these best practices is maintaining consistency between agency decisions. One major critique leveled against the practice of cost-benefit analysis is that it's vulnerable to manipulation by agencies that want to provide ad hoc rationalization for policy choices that are based on political expediency.

Well-established best practices reduce this threat because they create a clear standard that can be used to hold agencies accountable. If an agency departs from established methods, that raises a red flag, alerting the public and oversight officials to the possibility of manipulation. The larger the departure from established practices, the

stronger the reason that the agency has to give for its departure.

In EPA's current proposal, the Agency does, in fact, depart from established methods of conducting cost-benefit analysis, raising that red flag that the Agency is more interested in providing cover for a decision than in truly understanding the consequences of its actions.

EPA's earlier analysis of the MATS rule, which was undertaken under the Obama administration, projected $9.6 billion per year in compliance costs and between $37 billion and $90 billion per year in quantified benefits in addition to substantial unquantified health and environmental benefits.

Contradicting the relevant guidance and decades of practice by administrations of both political parties, the current proposal functionally ignores the largest class of benefits associated with the MATS rule. And this is life savings -- let's just be clear about what these benefits are -- they're life savings for many thousand Americans. The result is a biased and misleading estimate that creates the false impression that the MATS rule were not justified in cost benefit terms.

The grounds that the EPA provides for functionally ignoring these benefits is that they are indirect co-benefits that result from exposure to particulate matter -- or a reduction in exposure to particulate matter. These particulate matter benefits occur as a result of the pollution-control technologies that are used by firms to comply with the MATS rule. The A4 Circular, which again was adopted during Bush administration, and EPA's own peer-reviewed guidance on conducting cost-benefit analysis direct the Agency to analyze both direct and indirect cost and benefits. Since President Reagan, EPA has counted co-benefits in many regulatory contexts, including many other Clean Air rules. The Agency fails to provide any adequate reason for this extraordinary and abnormal treatment of co-benefits. Nothing in either the relevant case law or the statute require

the Agency to functionally ignore tens of billions of dollars of regulatory benefits.

If finalized and adopted, the proposal would not only undermine a socially desirable environmental policy; it would create a dangerous precedent of agencies departing from established methods when it is politically convenient to do so, which would open the door in the future to flagrant manipulation of cost-benefit analysis. Such a trend would result in inefficient regulation because we're no longer adequately doing the analysis and would further erode public confidence in government.

I am happy to answer any followup questions that you may have.

[The prepared statement of Mr. Livermore follows:]

******** INSERT 1-3 ********

Ms. DeGette. Thank you so much.

Dr. Selin, you are now recognized for 5 minutes.

STATEMENT OF NOELLE ECKLEY SELIN, PH.D.

Ms. Selin. Thank you, Chair DeGette, Ranking Member Guthrie for this opportunity to speak.

I would like to share some of the latest developments and scientific understanding of where mercury comes from, how it travels in the environment, and how it ultimately affects human health.

Mercury is emitted to the air by human activities, such as burning coal, a major source of mercury pollution. Once it's in the air, mercury undergoes chemical changes and can deposit both nearby and far away from sources, depending on its chemical form. After depositing to water bodies, mercury can be converted to methyl mercury, which is a potent neurotoxin. This form of mercury accumulates up food chains, and people in the United States are exposed to methyl mercury primarily by eating by fish and shellfish.

Scientific knowledge about mercury has advanced significantly since the mercury and air toxic standards were developed. My own research has focused on understanding and quantifying the effects of reductions in mercury emissions. That requires understanding where mercury is emitted, where it travels, where it's deposited and in what quantities, and how that mercury could affect human health.

One such analysis we did is particularly relevant to the MATS standard. In a paper published in early 2016 in the peer-reviewed journal Proceedings the National Academy of Sciences, we quantified the direct mercury-related benefits to the U.S. of

domestic and international mercury reductions. We calculated the expected changes in exposure to methyl mercury and quantified the expected impacts from the MATS standard compared to the impacts that would occur without the standard.

Our best estimate is that the monetized mercury-related benefits of MATS will amount to $3.7 billion per year. The original regulatory impact analysis EPA performed for the MATS rule in 2011 quantified only a subset of those benefits and valued that subset at approximately $4 million to $6 million, a thousand times less.

Our estimates are larger for two key reasons. First, we looked at the entire U.S. population while EPA considered only people who consumed fish they catch for themselves in fresh water. Recent work has shown that more 80 percent of methyl mercury exposure to the U.S. population comes from saltwater fish, most of which is from the commercial market.

Second, we included both the impacts of mercury on reduced IQ in newborns as well as cardiovascular impacts for all adults while EPA looked solely at the reduction of IQ. An EPA-convened expert panel concluded in 2011 that scientific evidence from mercury's cardiovascular effects was strong enough to include those effects in estimating benefits of regulations.

Because of these two factors, our 2016 estimates are a more comprehensive assessment of the benefits of MATS than EPA's in 2011. Yet the latest science indicates that even our work may be an underestimate for several reasons. First, we now know that mercury can have other health impacts in addition to those we assessed. Methyl mercury can have neurobehavioral effects beyond IQ declines as well as impacts on the immune system and reproductive system. These effects are harder to quantify in dollar terms, but scientific evidence that they're occurring continues to grow. Including these impacts would obviously increase the cost of mercury emissions and the benefits of

reducing them.

Second, our main estimates also do not take into account how long mercury lasts in the environment. Mercury is an element. So it doesn't go away. Mercury that we emit today circulates in the environment for decades and even centuries. This mercury can accumulate in the soil and below the surface in the ocean and return to the atmosphere. It then deposits again, converts to methyl mercury, and affects the health of future fish consumers as well. We estimated that taking into account these impacts would make our estimates about 30 percent larger.

Third, our aggregate numbers for the entire U.S. population obscure the fact that the burdens of mercury pollution can fall disproportionately on some sensitive populations. These include those living near large emission sources such as coal-fired power plants and those for whom eating freshwater fish is important for subsistence, recreational, or cultural reasons, including Native Americans.

Finally, our estimates only address the direct benefits of mercury reductions. The benefits of the role for reducing air pollution from particulate matter are substantial as well. And these were also quantified by EPA. For regulatory analysis to be accurate, it's important to take into account all potential consequences of regulations, intended or not, both positive and negative.

In summary, the number of studies on mercury has been increasing during the nearly two decades I have been working on mercury science. And the best available science now indicates that the impacts of mercury are far larger than previously estimated. EPA needs to take into account the latest science on mercury as it makes its decisions.

Thank you.

[The prepared statement of Ms. Selin follows:]

******** INSERT 1-4 ********

Ms. DeGette. Thank you very much, Doctor.

The chair is now pleased to recognize Dr. Landrigan for 5 minutes.

STATEMENT OF PHILIP LANDRIGAN, M.D., M.SC.

Dr. Landrigan. Thank you, Madam Chair, Ranking Member Guthrie, for having invited me to testify before you.

I come before you today as a pediatrician to talk about the impacts that mercury and particulate air pollution have on children. And when I say "children," I mean unborn children in the womb, infants, and children as they're growing up across the span of childhood.

And in my mind, the strongest reason for having a strong MATS rule is to protect the health of children and then to protect the health of future generations.

So why the focus on children? Children are exquisitely vulnerable to hazards in the environment. I chaired a committee at the National Academy of Sciences that looked at this issue for 5 years from 1988 to 1993. And we identified a series of reasons why children are more vulnerable than adults to toxic chemicals in the environment.

First, the children are more heavily exposed. They breathe for times as much air per day per pound of body weight as an adult, and, therefore, they will take much more proportionately of any foreign material into their body that's in the air.

Secondly, they're biologically more vulnerable. A child's brain throughout the 9 months of pregnancy and on across childhood is rapidly -- the cells in their brain are dividing, multiplying, and migrating according to precisely defined sequences. By the time a child is born, there are approximately a billion cells in the brain, 3 billion precisely

engineered connections between and among those cells. If any toxic chemical gets into the body of a child during those complex, tightly choreographed processes of early development, things can go badly wrong, especially any chemical that directly damages the nervous system.

And this is the case for methyl mercury. We heard about methyl mercury. A major source are emissions from coal-fired power plants that go through the atmosphere and get into fish, and then people consumer the fish.

And if a pregnant mom consumes high levels of methyl mercury during pregnancy, we know from tragic experience 50 years ago in Japan that the impacts can be devastating. In a place called Minamata, Japan, there was an epidemic of terrible neurological disease in newborn infants in which babies were born with small heads, blind, deaf, profoundly retarded, and spastic.

Just as research on lead has shown us that gross obvious clinically detectable poisoning is only the tip of the iceberg, so too for mercury. We now know that even down to the lowest levels of mercury that are measurable, that mercury can damage the developing brain of an unborn child and infant and a child to produce a whole range of abnormal effects. We've heard about reduced IQ, also a shortened attention span, also behavioral problems.

There's two points I really want to emphasize in regard to the neurological damage that mercury causes to children. Number one, this damage occurs down to the lowest measurable levels. There is no safe threshold. Standards that regulate the level of mercury in air are important, but they're no guarantee of safety. Damage occurs at levels of exposure below those artificial standards.

And the second important point is that in this damage is permanent. It's irreversible. It's not treatable by any known medical treatment. And, therefore, the

only rational approach to dealing with it is to prevent it.

With that as background, I urge you to take the steps that are necessary to protect the underpinnings, the legal underpinnings, of the MATS rule to protect our children today and future generations.

The MATS rule has been a tremendous success. It's reduced levels of mercury in the environment by more than 85 percent, which means that a generation of children born in the past 10 or 15 years is being exposed to much lower levels of mercury than their predecessors. The situation here is very analogous to what happened back in the 1970s when EPA took lead out of gasoline. At that time, we were putting 100,000 tons of lead into gasoline each year in this country. The average blood lead level in our children was close to 20 micrograms. Starting in 1975, EPA directed that lead be taken out of gasoline in a phased process. Over the next decade, blood levels in American children declined by more than 90 percent. Acute lead poisoning virtually has gone away in this country. Every child born since 1980 has five more IQ points than children born before that time because of the reduction in lead.

I recall that, back in 1982, then-EPA Administrator Anne Gorsuch tried to put lead back into gasoline. Congress rebuffed her, and the lives of American children were saved. Their health and their brains were preserved into the future.

I urge you to do the same today. Thank you.

[The prepared statement of Dr. Landrigan follows:]

******** INSERT 1-5 ********

Ms. DeGette. Thank you very much.

The chair is now pleased to recognize Mr. Gustafson for 5 minutes.

STATEMENT OF ADAM R.F. GUSTAFSON

Mr. Gustafson. Thank you, Chair DeGette, for inviting me to speak about EPA's proposed reconsideration of the mercury rule supplemental findings.

Ms. DeGette. Please move your microphone closer as well. Thank you.

Mr. Gustafson. Pardon me.

The EPA's proposal represents an important course correction in the Agency's accounting of the costs and benefits of environmental regulation. EPA is correct that it should not give equal weight to incidental reductions of pollutants like particulate matter that could not legally be regulated under the same statutory regime as mercury. The 2012 mercury rule is one in a series of expensive rules that EPA cost-justified on the basis of co-benefits from incidental reductions of PM, even though PM is not the object of those regulations and is already regulated under different provisions of the Clean Air Act that govern criteria pollutants.

Out of $37 billion to $90 billion in projected annual benefits, more than 99 percent came from the mercury rule's projected PM effects. PM reductions are the gift that regulators keep re-gifting. In the last administration, most of the benefits of Federal regulation came from PM-related co-benefits. In Michigan V. EPA, the Supreme Court agreed with the rule's challengers that EPA had to consider costs in determining whether the rule was appropriate. The Supreme Court did not decide whether EPA could rely on co-benefits. But that question was lurking in the background.

At oral argument, Chief Justice Roberts noted, quote: It's a good thing if your regulation also benefits in other ways. But when it's such a disproportion, you begin to wonder whether it's an illegitimate way of avoiding the quite different limitations on EPA that apply in the criteria program, end quote.

EPA is now in litigation over the Obama administration's supplemental finding, which relies on PM co-benefits to justify the mercury rule. When the Trump administration took office, EPA had to decide whether to defend that finding or redo it.

Today, I want to explain why EPA's proposed revision is required by statute and also why it is necessary to rationalize EPA's cost-benefit analysis.

First, the Obama EPA's use of PM co-benefits to justify of the mercury rule violates an express prohibition on regulating PM and other criteria pollutants under section 112, the statute that governs mercury and other hazardous air pollutants, or HAPS.

If you want to know what pollutants really motivated the mercury rule, consider that 95 percent of its PM co-benefits but none of the direct benefits came from controls on acid gas emissions. By justifying a HAP rule on the basis of PM co-benefits, the Agency sidestepped the prohibition on regulating PM under section 112.

This is not just a technicality. Congress intended criteria pollutants to be regulated under an entirely different framework that put States, not EPA, in the driver's seat. After EPA sets a National Ambient Air Quality Standard, it's the States that get to decide how to implement it. By using PM co-benefits to justify the rule, the Obama EPA substituted its judgment for the State's judgment about the best way to regulate PM.

Even if the Clean Air Act had nothing to say about it, EPA's new proposal would be necessary to correct its arbitrary accounting of PM co-benefits. The EPA's air quality standard already requires States to reduce PM concentrations to the level that EPA deems, quote, requisite to protect the public health with an adequate margin of safety.

Yet the Obama EPA counted PM co-benefits both above and below the levels of the PM standard. The benefits of attaining the PM standard were accounted for when EPA set that standard in the first place. Treating those reductions as co-benefits of the MATS rule amounts to double counting.

Belts and suspenders each keep one's pants up. But wearing both at the same time does not yield twice the benefit. As for incidental PM reductions in areas that have already attained the PM standard, the Obama EPA unreasonably treated them as equally beneficial to reductions above the standard. That makes no sense.

Less than a year after the mercury rule, EPA set a PM standard of 12 micrograms because that level was somewhat below the concentration shown by certain key studies to cause adverse health effects. Reducing PM below that level cannot possibly yield the same degree of health benefits as reductions in noncompliant areas.

In conclusion, EPA's proposed reconsideration of the mercury rule's cost-benefit analysis is necessary to give effect to the Supreme Court's instruction in Michigan V. EPA and to the cooperative Federalism framework that Congress established in the Clean Air Act. Following this approach in future rulemakings would avoid reporting an illusory or duplicative benefits and would help to rationalize EPA's air quality regulation.

I welcome your questions.

[The prepared statement of Mr. Gustafson follows:]

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Ms. DeGette. Thank you so much, Mr. Gustafson.

The chair now recognizes herself for 5 minutes for questioning.

Ms. McCabe, the MATS rule is the first time the EPA has successfully protected the public from mercury release from power plants. And at Congress' direction, the EPA studied this issue in the 1990s, and then it took steps to develop the mercury standards for power plants as far back as 2000. Is that correct?

Ms. McCabe. Yes.

Ms. DeGette. And, Ms. McTeer Toney, I understand that the EPA's current mercury and air toxic standards, which were finalized in 2012, now provide critical public health protections for fence-line communities near power plants, which are often low-wealth communities. Is that right?

Ms. McTeer Toney. Yes, ma'am.

Ms. DeGette. And I will say, I was just telling Mr. Guthrie, we have one of these communities right in my congressional district, Swansea/Elyria and Globeville, where we actually had to go in and remove mercury from the yards of the homes there.

Dr. Landrigan, I want to ask you: We know that mercury emissions can carry enormous public health consequences, as you talked about children and pregnant women. And I think that what you said is that these babies that are born after being exposed can suffer IQ and motor skills impairments that will really last had a lifetime. They don't go away. Is that right?

Dr. Landrigan. Is that correct, ma'am.

Ms. DeGette. And back to you, Ms. McCabe.

As of today, the industry has actually spent billions of dollars to come into compliance with these rules and, in fact, that the power industry, what we heard is that

they support keeping the rule in place. Is that also correct?

Ms. McCabe. Yeah. That's my understanding.

Ms. DeGette. Okay. Dr. Selin, recent study -- thank you for your excellent analysis. I thought it was terrific. And recent studies have suggested the direct benefits of protecting against mercury may be actually much higher than the ones quantified by the EPA. And, in fact, you found that the direct monetized benefits of mercury protection might be 3.7 billion more per year. And I think you said that's many more times than the EPA found in 2011. Is that right?

Ms. Selin. That's correct.

Ms. DeGette. And that's the direct benefits.

Ms. Selin. Yes.

Ms. DeGette. Okay. Now, Mr. Livermore, you said in your testimony that the Obama EPA's finding was extremely well justified in cost-benefit terms. Is that right?

Mr. Livermore. Absolutely.

Ms. DeGette. And you also said, regarding the Trump EPA's proposal and methodology, it's, quote, contradicting the relevant guidance and decades of practice by both political parties and results in, quote, a biased and misleading estimate of cost and benefit.

Could you please elaborate on that?

Mr. Livermore. Well, you know, the purpose of cost-benefit analysis is to understand the consequences of an agency decision. And by excluding a large category of consequences, it's just functionally inconsistent with that goal. It's just kind of turning a blind eye to an enormous category of consequences. Here we're talking about thousands of lives being saved. They have quantified benefits of, you know, many billions of dollars. Tens of billions of dollars.

So, if the goal of cost-benefit analysis is to get a clear picture of what the consequences of a decision are, blocking off a big chunk of the picture is just not how you do that.

Ms. DeGette. Okay. Now, Ms. McTeer Toney, can you -- you really talked about the EPA and how they're the ones to blame for this.

Can you elaborate on that a little bit more?

Ms. McTeer Toney. So the fact that the EPA is reconsidering -- or weakening this proposal is unnecessary. They use the term "appropriate and unnecessary" in terms of challenging the Michigan decision when the realty is there's no need for them to do so. The decision was currently in the hands of the Court. And the Obama administration did respond.

But it was the Trump administration's EPA that decided to put that into abeyance and not defend it. And so, as a result, there's a decision that's being made that's completely and totally unnecessary.

The second part of that is that they are taking actions right now that would weaken the rule. They say they're not trying to do it, but at the same time, they're holding hearings, they're requesting comments, and doing things that, in the scope of practice at EPA, one would do if you're going to actually reconsider or move and change it.

Ms. DeGette. So, if their intent was actually strengthen the rule, what would they do instead of what they're doing now?

Ms. McTeer Toney. They would have allowed it to proceed to the court system. I believe the Obama-era supplemental decision would have been upheld. We don't know that because the Court hasn't made that decision. And then they would have looked into the communities and looked at working in States to determine what things

they need to do to make the rule stronger.

RPTR PANGBURN

EDTR SECKMAN

[11:05 a.m.]

Ms. DeGette. Thank you very much. I thank all of the witnesses, and I'd now like to recognize the ranking member for 5 minutes for purposes of questioning.

Mr. Guthrie. Thank you very much, and I thank all of the witnesses for being here, and Mr. Gustafson, I want to ask you a couple questions, focus on the way that Congress constructed the Clean Air Act, and obviously, Congress has the ability to change it if need be. And so it's my understanding that the Clean Air Act is designed to regulate hazardous air pollutants, such as mercury, and criteria pollutants, such as particulate matter, under different sections of the Clean Air Act.

In your testimony, you state the Obama administration's 2016 Supplemental Fact Finding, which EPA is now reconsidering, violates section 112's prohibition or regulating criteria pollutants and it violates the statute's instruction to determine appropriateness of HAP regulation for coal-fired plants only after imposition of the requirements of this chapter.

Can you explain what you mean by this and -- so explain what you mean by this, and, based on your understanding of the Clean Air Act, what section of the act would be more appropriate section to regulate criteria pollutants?

Mr. Gustafson. Thank you, Ranking Member Guthrie. Yes, that's exactly right, the Clean Air Act does address all of the pollutants that have been discussed today, but the act does so under different provisions.

Particulate matter is one of the criteria pollutants that is regulated under sections 108, 109, and 110 of the Clean Air Act. The EPA sets identifies the criteria pollutants under 108; they set a standard under 109; and the State's implement that standard with

State implementation plans under section 110. That is why, under section 112, which governs mercury and other hazardous air pollutants, EPA is not permitted to regulate criteria pollutants like particulate matter.

In addition, as you mentioned, section 112 also requires EPA, before regulating hazardous air pollutants from coal-fired power plants, to first determine whether, in light of all of the other Clean Air Act regulation governing those sources, further regulation is appropriate and necessary.

So the EPA is already required to accept as a baseline the existence of other regulation, including -- the other regulation of PM -- including the National Ambient Air Quality Standard. And the problem with the mercury rule adopted under the past administration was that it treated co-benefits, that is, reductions of particulate matter, as equivalent to reductions on pollutants that the Agency is allowed to regulate under section 112.

Mr. Guthrie. So the question isn't that these don't need to be regulated; of course, it's how they're regulated in accordance with the way Congress instructed the EPA. So Congress could change that instruction if we so --

Mr. Gustafson. That's exactly right, and indeed, if the standard is not stringent enough, then EPA could set a new particulate matter standard. They did that last in 2013, not a year after the mercury rule was promulgated.

Mr. Guthrie. Okay. Thanks. And your testimony further states that because the States are principally responsible for implementing the EPA's treatment of PM reductions as co-benefits of its HAP regulation violates the cooperative Federalism framework. You talked about the Federalism framework.

Can you elaborate on how this violates the cooperative Federalism framework that was intended by Congress?

Mr. Gustafson. Certainly. So, under section 110 of the Clean Air Act, States get to implement the standards for criteria pollutants like particulate matter. That means that they develop -- the States' develop an implementation plan. They get to decide what they think is the best way of addressing those pollutants given the circumstances on the ground within those States.

And, by the way, criteria pollutants, like particulate matter, come from a variety of sources. It's not only power plants that produce these pollutants. So States have a menu of options for reducing particulate matter. They can do that by imposing limits on power plants, but they can also do that by regulating other sources, including motor vehicles that produce PM.

So, basically, by treating co-benefits as the justification for this rule, the Obama administration usurped the State's prerogative to decide the best way to regulate criteria.

Mr. Guthrie. Similar question. So co-benefits are the major reason for this -- cost-benefit analysis, like 99 percent. So does this mean that utilities that are located in an area that is already in attainment, again, that there is -- that is to mean the EPA deems safe standard -- is being forced to achieve levels that -- are the utilities in safe attained areas being forced to achieve levels below the standard?

Mr. Gustafson. Yes, that's correct. The 2016 supplemental finding makes clear that the Agency's defending claimed PM co-benefits both above and below the National Ambient Air Quality Standard.

Mr. Guthrie. Thank you. My time's expired. I do have some -- for the record, offers -- I submitted a list. I could read the list or can I --

Ms. DeGette. You don't need to read it.

Mr. Guthrie. So the seven items that I submitted the list to the chair would be accepted in the record?

Ms. DeGette. Yes. I just would point out, four of the five articles on your list -- on the ranking member's list were written by the same person, Anne Smith, and I understand that she's a consultant for industry, but I will admit the all of the items on the list without objection.

[The information follows:]

******** COMMITTEE INSERT ********

Mr. Guthrie. Okay. Thank you.

Ms. DeGette. The chair's now pleased to recognize the vice chair of the Oversight Subcommittee, Mr. Kennedy, for 5 minutes.

Mr. Kennedy. Thank you, Madam Chair. And apologies for being a little late at coming back.

According to the EPA's website, quote, the mission of the EPA is to protect human health and the environment, end quote. That seems pretty straightforward, and yet here we are.

EPA's enforcement is declining, as we saw a few months ago in the subcommittee, and the EPA is failing to protect human health and the environment. Yet here we see EPA wasting enormous resources and energy in their effort to question whether it is appropriate and necessary to regulate mercury.

Ms. McTeer Toney, you said in your testimony that you -- as you take EPA to task for division -- for diversion of resources and you write, quote: Rather than revisiting these life-saving standards, EPA should be strengthening them to reduce hazardous air pollutants further from these sources to better protect the health of children, families, and communities living near the facilities and downwind from them.

So, ma'am, do you consider EPA's current mercury proposal consistent with the mission statement, again, to protect human health and the environment?

Ms. McTeer Toney. Yes, I do, but may I elaborate just about --

Mr. Kennedy. Please.

Ms. McTeer Toney. I think it's important also to note that how this works together is something that additionally helps communities to realize these benefits. It was mentioned before that the States have the opportunity to regulate through their own

SIP, but they work together interchangeably. So the way that the States realize these benefits that help these communities is they are dependent upon the standards that are set by the Federal Government; that's how they make their decisions.

When we weaken and change those standards, it then weakens the States' abilities to make those decisions through their SIP programs, which in turn cost the State money, which in turn costs the people their health benefits.

So it all works together, and that's why it's so important for us to realize and why moms are so concerned is because we know this will hit us in our communities quicker than anywhere else.

Mr. Kennedy. And so, Ms. McCabe, if you really wanted to protect human health and the environment in particular with regard to mercury and air toxics, what would actions should the Agency be taking now?

Ms. McCabe. Well, they wouldn't go forward with this proposal; that's for sure. They would look at other rules that -- and other sources that are emitting pollution, whether it's toxic pollution or other pollution, in our communities and work to strengthen those rules.

It would help the States rather than -- what they're doing now is pushing the responsibility on to the States and yet taking away the very programs that will help States meet their standards, like MATS, like the Clean Car Program.

States cannot regulate motor vehicles. The Clean Air Act requires that EPA do that. So they're saying that they're helping the States, but they're really not.

Mr. Kennedy. And so bad enough that EPA seems to want to have it both ways, just as you indicated, so it wants to tell the public that they're trying to keep the mercury rule in its place but at the same time taking actions that would seem to undermine the very rules' foundation. True?

Ms. McCabe. True.

Mr. Kennedy. So, EPA's attempt to undermine important toxic pollutant protections, unfortunately, as I think you had indicated is not new. Back in the 1980s, there was an attempt by the EPA that was thankfully unsuccessful to rollback standards relating to keeping lead out of gasoline.

Dr. Landrigan, can you tell us more about the previous effort and what that teaches us about how we need to respond today with regards to the mercury protections?

Dr. Landrigan. Well, the effort to take lead out of gasoline began in the early 1970s when pediatricians and various studies recognized that lead could cause damage to the brains of children at levels that were well below -- standards that were well below the levels that were then considered to be safe.

And, in fact, the cycle has repeated itself several times since. As more and more sophisticated research has come along, we found harm at levels of exposure lower and lower and lower until, today, the official statement of the Centers for Disease Control on lead and mercury is that no level of exposure is safe.

So, acting on that information, EPA mandated that lead be taken out of gasoline beginning in 1975. And as I mentioned in my testimony, that led to a 90-percent reduction in blood lead levels in American children, a five-point gain in the IQ of every child born since 1980, and an estimated economic benefit to this country of $200 billion in each annual class of children born since 1980, which is an aggregate benefit of close to 8 trillion if my math is correct.

In 1982, in the Reagan administration, then-EPA Administrator Anne Gorsuch made a brief ultimately unsuccessful attempt to put lead back into gasoline reportedly acting at the request of a single refinery in New Mexico, but that was beaten back. And

American children today enjoy blood levels less than 2 micrograms as opposed to the levels of close to 20 micrograms, which were the case 30 years ago.

Mr. Kennedy. Thank you, sir.

I yield back.

Ms. DeGette. The chair now recognizes Mr. Walden for 5 minutes.

Mr. Walden. Thank you, Madam Chair, and, again, thanks to the witnesses. As you can tell, we've got a couple hearings going on simultaneously, so we have to bounce back and forth.

Mr. Gustafson, in your testimony, you discuss concerns that both Chief Justice John Roberts and now Justice Kavanaugh raise regarding the heavy reliance on co-benefits to justify the MATS rule. Now, if a court is asked to decide whether such heavy reliance can be given to co-benefits to justify the mercury rule, what do you think is the likely outcome?

Mr. Gustafson. Thank you for the question. I think there's a high likelihood that other Justices on the Supreme Court would share the skepticism that Chief Justice Roberts expressed in oral argument in the Michigan case about EPA's undue reliance on really disproportionate PM co-benefits to justify the mercury rule. So I think courts should be skepticism of -- skeptical of that methodology.

Mr. Walden. So, in your testimony, you laid out how the reliance in the 2016 supplemental finding on co-benefits involves three distinct statutory defects. As one of the defects, you note that section 112 of the Clean Air Act expressly prohibits the EPA from adding an air pollutant which is listed under section 108, such as particulate matter to the section 112 list. Now, if the EPA tried to directly regulate particulate matter under section 112, what do you think would be the likely outcome?

Mr. Gustafson. That action would be clearly unlawful and would be rejected by a

court.

Mr. Walden. All right. Thank you.

Ms. McCabe, in Michigan v. EPA, the Supreme Court ruled that the Agency must consider costs when determining whether or not it's appropriate and necessary to regulate power plants for hazardous air pollutants. The day after this ruling, June 30, 2015, the EPA issued a broad post saying, and I quote: From the moment we learned of this decision, we were committed to ensuring that standards remain in place to protect the public from toxic emissions from coal and oil-fired electric utilities, close quote.

Now, given the statement, what did the EPA believe was the purpose of the Supreme Court's decision in ruling that the EPA must consider cost when making the appropriate and necessary termination?

Ms. McCabe. Yeah. So, to clarify, the EPA did consider cost in the rulemaking. We did it in conjunction with the rule itself, not with the appropriate and necessary finding, and we had reasonable belief to think that that was not required. The Supreme -- the D.C. circuit agreed. The Supreme Court disagreed, told us to use appropriate methods, left it to the EPA's discretion on how to do that cost analysis.

So we were confident, because of the cost and benefit analysis had already been done, that the rule was well justified and ought to remain in place, and we're committed to moving forward to respond to the Court's direction to do that analysis in the context of the appropriate and necessary findings.

Mr. Walden. So, in your written statement today, you state that, and I quote: Another significant flaw in the EPA's approach is the fact that it is basing its revised analysis on a record that's demonstrably out of date, close quote.

Yet, in the 2016 supplemental finding, EPA responded to the commenters asking for updated cost estimates by stating that it was not, and I quote, consistent with the

statute, close quote, for the EPA to try to estimate the actual costs incurred through compliance with the final CAA section 112(d) standards, close quote.

If it was not consistent with the statute to use an updated cost estimate in 2016, why do you criticize the AP -- EPA's use of the original numbers today?

Ms. McCabe. Well, these are very different circumstances. EPA was responding to a direct direction from the Supreme Court in that particular rulemaking. What the EPA is doing now is initiating sua sponte, on its own initiative, an inquiry and a change of approach. And in the meantime, a lot has happened in the world.

It can be determined how much the rule actually cost and it is expected to cost. And, as we've heard today, there's a lot more information and study about the benefits of mercury reduction.

Mr. Walden. So -- thank you. If the blog post I referenced earlier in my questioning, the one that was issued the day after the Supreme Court ruled in Michigan v. EPA, the EPA stated the majority of the power plants are already in compliance or well on their way to compliance.

Given that this statement was made a year before the 2016 supplemental finding, didn't the Agency have updated cost information at that time too?

Ms. McCabe. Well, no, we didn't.

Mr. Walden. You did not?

Ms. McCabe. We did not. We did take comment on a proposed supplemental finding and looked at that information and actually made some adjustments in the final supplemental finding in response to that information.

Mr. Walden. All right. My time's expired. Thank you, ma'am.

Ms. DeGette. Thank you so much. The chair now recognizes the gentleman from New York, Mr. Tonko, for 5 minutes.

Mr. Tonko. Thank you, Chairwoman DeGette and Ranking Member Guthrie for holding this hearing. I thank you for the partnership that you've had with the Environment Subcommittee, and together I believe we've been able to conduct oversight of EPA's efforts to undermine MATS and rollback of other Clean Air Act protections, which I think is a very important mission for us to pursue.

Mr. Livermore, the Trump EPA's current proposal is that it is no longer appropriate and necessary to regulate mercury while at the same time EPA is trying to convince the public that it is keeping the mercury rule in place. So was the Obama EPA using cost-benefit methodology correctly by counting the roughly $90 billion in co-benefits that came along with regulating mercury?

Mr. Livermore. Yes, absolutely, it was correct in the matter of economics and policy and also of all guidance that's relevant to the question.

Mr. Tonko. And now it seems that the Trump administration, by finding that it is no longer appropriate and necessary to regulate mercury, considers only the roughly $6 million figure in benefits from mercury reductions, not the roughly 90 million -- billion, excuse me, in co-benefits that came from reducing particulate matter.

Mr. Livermore, you disagree with this approach and say that it results in an, I quote, a biased and misleading estimate of cost and benefits; however, it seems that -- however, it seems that EPA is suggesting that they are legally required to take their current approach. So do you believe the Trump EPA is legally required to exclude co-benefits in looking at the mercury rule?

Mr. Livermore. Absolutely not. There are, again, decades of practice under various statutory provisions, some of which look very familiar to the one in question, the Agency's accounting for indirect benefits, including administration's -- the Reagan and Bush -- rulemakings under Reagan and Bush administrations. Again, there's decades of

practice.

If Congress had wanted to make a change to make it clear that indirect benefits shouldn't be counted, plenty of time to do that. At no point was that done. Michigan v. EPA, if anything, stands for the proposition of agencies should be looking more expansively at cost and benefits and not less so.

Mr. Tonko. And, in fact, the -- you state in your testimony that in light of years of Agency practice, agencies should consider indirect costs and benefits when making regulatory decisions and that, again, quote, departing from this well-established norm requires a very good reason.

So did the Trump EPA provide, quote, a very good reason for functionally dismissing co-benefits here from the calculation?

Mr. Livermore. No, there -- there isn't -- it was a make wait reason at best. It doesn't distinguish other contexts where it counted indirect benefits. It doesn't limit the decision to this particular context. It's not clear when it's going to be applied in other contexts, and so the decisionmaking -- the reason provided by the Agency was very weak.

Mr. Tonko. And you say that, if the current EPA mercury proposal is finalized and adopted, it would be, and I quote, opening the door to the flagrant manipulation of cost-benefit analysis.

Mr. Livermore, can you elaborate on the risks of the Trump administration's new approach to future rulemaking?

Mr. Livermore. Yes. So indirect benefits can be an important class of benefits, and so, if the decision in this case were applied across the board, it would just lead to gross inefficiencies in our environmental protection system. Almost more dangerously is that the Agency could kind of pick and choose or any agency for that matter when it

wanted to look at indirect benefits or not or which indirect benefits it wanted to look at or indirect costs for that matter. And if that's the case, then the entire purpose of cost-benefit analysis goes out the window because agencies can just provide post-hoc rationalizations for decisions that are arrived on political grounds.

Mr. Tonko. Well, I thank you for your answers. The Trump EPA's misguided approach ignores billions of dollars in benefits that come from avoided premature deaths, heart attacks, asthma attacks, and more.

Revising the cost-benefit calculation is not simply an academic exercise. What we have here are peoples' lives and -- and health being at stake, and is it double counting to consider outside benefits?

Mr. Livermore. No. There's various claims about double counting that none of them -- none of them stand up. A question that's come up is counting benefits below the NAAQS, so the National Ambient Air Quality Standards set -- are set across the country, they're set according to a cost-blind standard. They're not set, and the EPA's never said that they are set, at a zero-risk standard, and so the idea that there are no benefits below the NAAQS is just non-scientific, and it's not -- the Agency has never said it, and so it's entirely appropriate for the Agency to count those benefits.

So the short answer is no; there's no double counting this rule. And actually the Agency is very fastidious about avoiding double counting, and it hasn't done so in this case.

Mr. Tonko. I very much appreciate your answers, and, again, this is about protecting the peoples' health and our environment.

So, with that, Madam Chair, I yield back.

Ms. DeGette. Thank the gentleman.

The chair now recognizes the gentleman from West Virginia, Mr. McKinley, for 5

minutes.

Mr. McKinley. Thank you, Ms. Chairman.

To make sure that we understand, I don't think there's a person on this panel that I hear or in Congress that wants to see the mercury levels increase or cause problems. I think what we're trying to do is, what's the best way to reduce our exposure? And from what I can understand, using some of the information from the EPA, primarily we're getting our exposure to mercury by eating fish and shellfish.

Water is not necessarily a source of that because we can capture that through the testing, and our municipal water systems will test for that. So I'm interested if it's the fish, if it's the ingestion of fish that we're getting. I did some study on this.

We saw on the Atlantic Coast, the Atlantic tuna, actually, the content or the exposure there to mercury has dropped precipitously, but yet on the West Coast, the mercury levels in the Pacific fish are increasing dramatically.

So we see something that's kind of -- maybe it's relative to the fact that we've reduced by 86 percent the amount of mercury that we're admitting from our coal-fired power plants because we understand the wind patterns, how that works, and I think from your -- Dr. Selin, your -- some of your testimony talked about it. Once it gets in the atmosphere, it can stay for thousands of miles, and it may be coming -- we have coming from the Pacific rim, we have a chart that, unfortunately, I can't -- it's not -- I can't blow it up any more, but it simply shows that the big culprits in providing the mercury emissions into the atmosphere and primarily emitting into the water are coming from China and India, and we have a marked decrease. As a matter of fact, in one of the other reports we have here that was in 2016 says, from the EPA, that 83 percent, 83 percent of the mercury that's contaminating in the United States is coming from foreign sources: 83 percent.

So, if we're really focusing here, not politics as we see some people chatting here, if we're really talking about how we're going to reduce our mercury levels in this country, I think we need to take into a global perspective of what we're going to do about this because these other nations are continuing to emit mercury levels at very high levels.

So I want to go back to this cost-benefit ratio. If that premise is correct -- and I'm not going to get caught up in whether or not the -- whether it's appropriate and necessary and whether co-benefits. I think one of the things we should do, and maybe Gustafson, for you to respond would be, should, in cost benefits, assuming even with the co-benefits, should we be considering the costs that would be incurred in foreign nations to reduce their mercury emissions?

And, right now, it's my understanding the costs are only to the American power plants that would be imposed, but the benefits would be derived by all. Since 83 percent is coming from someplace else, are we taking into consideration the costs that would be incurred in foreign nations to reduce so that we have a true cost-benefit ratio? Mr. Gustafson?

Mr. Gustafson. You're exactly right that much of the mercury deposited in the United States comes from other countries, including China, and there's nothing that the Environmental Protection Agency can do to control pollution from China. That limits the effectiveness of any mercury control within the United States.

I would point out, though, that the premise of much of my fellow panelists' comments is that this mercury standard would go away if EPA were to finalize this proposed reconsideration of the fact finding. That's not true.

Under binding precedent in the D.C. circuit, a case called New Jersey v. EPA, the EPA would have to go through a delisting process in order to withdraw these sources from the mercury control. That's not likely to happen. So I don't think the risks that

have been talked about here today are really relevant.

Mr. McKinley. Okay. Just in closing, just a second, do you think that we should include the costs incurred by other nations? It would be fair to include in the cost-benefit ratio, or should it just be the cost here in America but the benefits from all sources including PMs?

Mr. Gustafson. That's a complicated question, and I'm not sure I'm prepared to give you an adequate response to it right now. I could follow up in written comments, but I think the EPA's primary responsibility is to address the Nation's air quality. That's what the Clean Air Act gives us jurisdiction for, and it's limited in its ability to do that by pollution from --

Ms. DeGette. The gentleman's time has expired.

The chair now recognizes the gentlelady from New Hampshire, Ms. Kuster.

Ms. Kuster. Thank you very much, Madam Chair.

And thank you to all of you for being with us. I apologize that many of us have a hearing going on at the exact same time on prescription drug pricing.

So I just want to focus in with Ms. McCabe about the current rules' cost-benefit assessment. Does it account for all of the known human health effects of mercury? And, in particular, it's my understanding that, since the rule was signed, there had been a whole series of papers published about health effects since the risk assessment upon which the rule was based was done back in 2010 and much of these health effects were not known at that time. So could you bring us up to date on that?

Ms. McCabe. Sure, yeah. When EPA does a cost-benefit analysis, as it does for any major rule, it uses the best information that it has available, and we have a notice and comment process that allows everybody to bring to the Agency all the information that they have. And then the Agency makes the best decision looking at the full range of

health benefits and recognizing that some of them we can monetize. We have studies that have helped us put a dollar figure on different health effects, but we also know there are many health effects that we cannot monetize. The work has not been done, or it's just extremely difficult to do that.

Ms. Kuster. Are you aware of any new papers in the last decade that might shed light on this?

Ms. McCabe. For sure and we've heard about some of them today. So every minute people are doing work on this and there is more information coming forward. So, right now, today we have better information about the costs of reducing mercury, the cost safety to human health, than we did in 2010, absolutely.

Ms. Kuster. And is some of that information included? My understanding is that there are close to 500,000 comments recently. Is some of that included in that that we could review?

Ms. McCabe. I believe so, that people who have been commenting on this proposal have brought forward all of this information.

Ms. Kuster. This new data? And did the current rules' cost-benefit assessment account for the full extent of the U.S. population exposed to mercury through fish consumption? Specifically, it's my understanding it was a relatively narrow assessment of fresh water fish, but not any assessment of saltwater fish consumption?

Ms. McCabe. Yes. That's a good question. We felt at the time that the information we had where we could attach a dollar figure was limited to certain kinds of people who consume fish caught nearby in their communities, and that's what we monetized.

And since then, there has been research to assign, you know, explain the benefits on a much wider prospective, in fact, the population across the country.

Ms. Kuster. Madam Chair, I'd like to ask the committee staff if we could follow up and get that into the record on additional information.

[The information follows:]

******** COMMITTEE INSERT ********

Ms. Kuster. In continuing this line of questioning, I'll go to -- Mr. Livermore? Yes, thank you very much.

It's my understanding that OMB has instructed agencies to consider co-benefits in rulemaking and that co-benefits have been used in the development of regulations for decades.

Do you believe it was appropriate and legally justified for the Obama EPA to consider co-benefits in deciding to regulate mercury and other air toxics emissions? And if you could comment, did the EPA engage in double counting by counting reductions in particulate matter, which is regulated under a different provision of the Clean Air Act?

Mr. Livermore. So it was absolutely appropriate for the Agency to consider co-benefits. It was consistent with the relevant guidance, with EPA's own peer-reviewed guidance, with OMB guidance which was published during the George W. Bush administration, and decades of practice of administrations of both political parties. So it was very consistent with all of that and normal practice to consider co-benefits.

Just to note, it's not like the Agency -- co-benefits just mean that when the Agency regulates something that is targeted at, there's a kind of necessary and automatic other benefit that occurs. It's not the Agency's, you know -- it has no choice, essentially, but to generate these benefits.

And then your second question was whether the Agency engaged in double counting, and the answer is just no. What double counting means is like when you get a benefit of some -- out of some rulemaking and then you also count it for some other rulemaking, something like that. There's actually lots of different ways that double counting could emerge. The Agency has guidance documents about how to avoid double counting actually.

And in the mass rulemaking, every decision the Agency made was entirely consistent with its guidance to avoid double counting.

Ms. Kuster. Thank you very much.

I yield back.

Ms. DeGette. Thank you.

The chair now recognizes the gentlelady from New York, Ms. Clarke, for 5 minutes.

Ms. Clarke. I thank you very much, Madam Chair.

And I thank our panel of experts for appearing before us today.

I wanted to clear something up in response to Mr. McKinley's line of questioning.

Dr. Selin, can you please explain the distribution of mercury for us? Isn't it true that mercury emissions are distributed both regionally and globally?

Ms. Selin. Yes, that's absolutely correct. Mercury in the United States comes from both domestic and international sources, and the deposition of mercury to the United States is impacted by both of those sources. We've actually done some research that is directly relevant to the previous question looking at the benefits of domestic versus international controls on mercury, and we found that, per every ton of mercury emissions, the benefits to the U.S. are in order of magnitude higher from the MAT standard than from international emissions. That really underlines the importance of mercury reductions, not only for domestic benefits in the U.S. but also for regions in the U.S. that are particularly affected.

Ms. Clarke. Very well. I thank you for that clarification. EPA is claiming that its proposal response to a 2015 Supreme Court decision, Michigan v. EPA, that requires the Agency to consider costs before deciding whether to regulate mercury and air toxins from power plants, but EPA already responded to the Supreme Court ruling in 2016 when it issued its supplemental finding, and now the mercury standards that took so long to put

in place have been fully implemented. Mercury and toxic air emissions are down substantially, and the American people are reaping the benefits.

So I want to put all of this in perspective and ask, Ms. McCabe, is there any court ruling that requires EPA to reopen the appropriate and necessary finding at this time?

Ms. McCabe. There is not. They're doing this totally on their own.

Ms. Clarke. EPA asserts that its action to reopen the finding and compare only the so-called direct benefits of the rule to cost is, quote, reasonable and may be the only permissible approach, end quote, here.

Mr. Livermore, as someone who understands cost-benefit analysis and its interaction with the Clean Air Act, do you agree that the EPA's hands are tied here as it claims?

Mr. Livermore. Absolutely not. In fact, in Michigan v. EPA, the Court explicitly said that it was not ruling on the question of co-benefits. If you've noted a couple of folks have mentioned Justice Roberts' discussion at oral argument, if you're grasping for comments during oral argument, that's not the law; the law's what's in the case. The case explicitly does not address this question.

Ms. Clarke. And in your testimony, you state that the EPA's proposal provides no adequate explanation for its extraordinary and abnormal treatment of co-benefits. Can you explain why you believe EPA's new approach is such a departure from the norm?

Mr. Livermore. Absolutely. So, again, in OBM guidance that had been around for decades that were adopted by the George W. Bush administration, the -- not just EPA but every agency is instructed to account for both direct and direct -- indirect costs and benefits.

The Agency has its own peer-reviewed guidance on this question where it states that indirect benefits should be counted and direct costs and benefits, and decades of

practice from administrations of both political parties.

Ms. Clarke. Very well.

And, Ms. McCabe, I'm worried that it is the administration that is making standards legally vulnerable. EPA seems to acknowledge this by taking comments on whether to move the MAT standards all together.

Ms. McCabe, does this suggest to you that the EPA understands that it is leaving the standard legally vulnerable if it goes forward with this proposal?

Ms. McCabe. I think they do understand that, and there's been a lot of discussion today about why on Earth are they doing this if they really mean it that they don't mean to undo the standards. If they want to change a policy about cost-benefit analysis, they could do it in any rule or a separate policy, but they're specifically doing it in the MATS rule. And so I think if people think that EPA is not going to be asked now to move forward to vacate the rule if they rescind the appropriate and necessary finding, they are mistaken. The request will come immediately.

Ms. Clarke. Ms. McTeer Toney, turning to you, what message does it send that EPA is voluntarily taking action to undermine these critically important public health protections?

Ms. McTeer Toney. It makes the statement that the health of our children is not as important to them as the cost to industry.

Ms. Clarke. Yes, the EPA is voluntarily reopening this finding and its action could risk all the progress that's been made in getting dangerous toxins from power plants out of the air.

Why the EPA is spending time to fix something that doesn't need to be fixed is beyond comprehension.

I yield back, Madam Chair.

Ms. DeGette. Thank you, gentlelady.

The chair now recognizes the gentleman from Virginia, Mr. Griffith, for 5 minutes.

Mr. Griffith. Thank you very much, Madam Chair. I appreciate it.

Mr. Gustafson, my understanding is that the rules that are being looked at by the EPA currently were actually in the D.C. circuit being reviewed when the administrations changed. Is that accurate?

Mr. Gustafson. That's correct. The case is still pending right now, Murray coal v. EPA.

Mr. Griffith. So am I correct that the EPA would either have to defend the Obama administration position on the costs or take a look at it. Is that correct?

Mr. Gustafson. That's exactly right.

Mr. Griffith. So is it some shock that the Trump administration might want to look at some regulations or the impacts of regulations brought about in a prior administration?

Mr. Gustafson. I don't think it's a shock at all. It's perfectly normal for an incoming administration to request that challenges to pending rules be held in abeyance while the Agency can reexamine those rules. That's exactly what happened here, and when an agency determines that its prior action is not defensible, it is perfectly within the rights of the Agency and it's only responsible for the Agency to stop defending it and instead to improve what they see as unjustifiable action. That's what happened here.

Mr. Griffith. It's interesting because the Court did say that the costs had not been reviewed. It's interesting when you take a look at costs it would appear to me, at least, that the costs and the benefits that are looked at -- we're looking at the co-benefits and the particulate matter and all of that, but many areas, including my district, we had four facilities shut down; two were reopened as natural gas. But four coal facilities were

shut down, two of those never to be reopened.

The cost to the community was huge as well. Loss of jobs, loss of big incomes, loss of taxes, et cetera, et cetera. Wouldn't it only be reasonable if you're going to consider co-benefits when you're doing the benefit analysis to consider the co-costs or the co-losses in a community as well?

Mr. Gustafson. That's exactly right, and I think regulatory economists would agree that it's only a good practice when you're considering co-benefits to also consider corresponding co-costs. That was not done in this case. The past administration looked at co-benefits, but it only looked at direct costs. It didn't consider what higher electricity prices and plant closures could do economy-wide, and I think there are a lot of important costs that were neglected there. I would point out, though, that the cost-benefit methodologies that have been discussed today pertain to what agencies do in the regulatory impact analysis. That's not changing here.

EPA has said it's not proposing to alter the way it reports benefits to OIRA. It's only changing -- deciding what it will do for the appropriate and necessary determination in the context of this statute.

Mr. Griffith. Okay. And so it's not like the whole rule is going away. It's just an interpretation on how you do the analysis. Is that correct?

Mr. Gustafson. That's right. This rule is not going away. The Agency isn't able to take it away under binding circuit case law, New Jersey v. EPA, and I'm not aware of anyone who intends to petition EPA for de-listing. That's what would be required.

Mr. Griffith. Now, my team over here has got a map, and it's a little dated I will admit. It's from 2006, but I've always thought it was interesting when we talk about mercury -- we care about families, and we care about families across all matters. Does anybody know if this number -- if this has changed? So what you're seeing is all the red

area is where foreign mercury is predominantly the cause of mercury in the United States? You do see issues in the east, particularly in my region of central Appalachian, some of the other areas, where that shifts, but does anybody know if that has changed, or are we still getting a tremendous amount of our mercury from overseas sources? Yes, ma'am?

Ms. Selin. I can answer that. We definitely do see these two patterns of domestic mercury deposition and international, mercury deposition happening in the U.S., and you're quite correct that a lot of the deposition that we see to the United States from U.S. sources happens in the east. That's where many of the major sources are, and that's where many of the populations are impacted from those sources.

We have seen mercury emissions go down quite a bit as a result of this rule, so we have seen declines in depositions.

Mr. Griffith. I think we're all glad about that, but we want to make sure that the cost measures are accurate. One last thing, where should I be looking to get my fish from? Because I eat a lot of fish, and I understand there's a lot of mercury in it? Are you the -- who can answer the fish question?

Ms. McTeer Toney. Well, I can help you out with part of that because that's one of the things that we do at Moms Clean Air force is we make sure that we provide our mothers with this information, and so I think you -- you ask a very interesting question because certainly mothers that are in the United States of America, we rely on the U.S. Environmental Protection Agency to ensure the regulation here in the U.S. is correct, and we've been doing so. And we try to make it really clear so that our moms know, when you get pregnant and you go to the doctor and they tell you, "Don't eat the tuna or you're not supposed to eat as much fish," why that happens.

And so for our Native American moms and moms of color and people who live

close to these water bodies, they need to understand that, when they're living right next to that facility where the fish comes from and how it impacts the child's brain. So that was a really good depiction of what's happening in the east where it's very localized to people, and I really hope that that type of information can be shared so that our Nation can understand why it's so important for us to be a part of global conversations. Unfortunately, we've pulled out of those at this time, but I hope --

Ms. DeGette. The gentleman's time has expired.

Mr. Griffith. I yield back.

Ms. DeGette. Ms. Toney, we'd love to have a copy of that for our committee so we can look at it. Thank you.

[The information follows:]

******** COMMITTEE INSERT ********

Ms. DeGette. The chair now recognizes the gentleman from California, Mr. Peters, for 5 minutes.

Mr. Peters. Thank you, Madam Chair.

Thank you to the witnesses. I'd like to spend a few minutes talking about the effectiveness of the mercury and air toxic standards. It just seems to me from what we've heard that, by any measure, that the Obama era rule has worked. The Trump era's -- the Trump's EPA 2018 proposal shows that -- the proposal itself shows that mercury emissions from power plants has decreased by 86 percent from 2010 to 2017 and that total air toxics emissions have been cut by 96 percent during that same period.

Dr. Selin, how has this decline in mercury emissions affected human health and the environment, and what would you think about putting these standards at risk?

Ms. Selin. Well, yes, as you say, there have been a lot of declines in mercury -- mercury emissions -- as a result of this rule. We've also seen declines, for example, in fish in the Atlantic that are occurring at the same time, and we would expect that this has substantial benefits to human health and the environment in the United States, and any effort to roll back this rule would then increase mercury emissions which would threaten those declines.

Mr. Peters. With respect to my colleague's chart, Mr. Griffith's chart, it showed the percent of mercury that came from other places but didn't show the amount of mercury that was being deposited. Would you acknowledge that that's the case?

Ms. Selin. That's true.

Mr. Peters. Okay, and so the fact that a large percentage of mercury in the west may come from foreign sources, doesn't reflect the fact that a large -- that maybe a lot less is being deposited. In fact, that we can do a lot for our country, particularly in the

east, by reining in the sources, as the Obama rule did.

Dr. Landrigan, you say in your testimony that the mercury and air toxic standards, quote, prevent brain injuries, protect children's lungs, and saves lives. If we're to lose the protections we have in place now, can you give us -- I mean, you've touched on this a little bit before, but can you give us a general sense of what would happen to children in that instance?

Dr. Landrigan. Well, yes, sir, thank you for that question. Mercury damages the human brain, and the human brain is most vulnerable to mercury in the earlier stages of development, during the 9 months of pregnancy, in infancy, and childhood. So, if mercury emissions were to increase because of the cascade of actions that's being initiated through the removal of -- the proposed removal of this provision, the result would be more brain damage in children, lowered IQ, behavioral problems, problems that last a lifetime that cannot be treated medically.

Mr. Peters. Thank you. I want to just observe that in the testimony of Ms. McTeer Toney, a former EPA official, now national field director for the Moms Clean Air Force, who are represented here in the audience, she cites, quote, broad opposition to this proposal from -- not only from parents, children, and grandparents, but also from doctors, nurses, faith leaders, anglers, conservationists and more, even the regulatory industry itself, opposes this proposal.

I wanted to ask, Ms. McCabe, if public health officials don't want this rule to go away, environmental groups don't want this rule to go away, many States say they don't want the rule to go away, even the regulatory industry does not want the rule to go, who is EPA trying to help with this proposal?

Ms. McCabe. Yeah, it's a good question, and I don't -- I can't speak for EPA. I don't know, but I can think of two reasons why they would do this. One is that this

administration has made very clear that they will do anything they can to help the coal industry, and this rule is sort of top of the list, even though, as you acknowledge, it's been implemented, and the utilities are ready to move on.

The other reason for doing this is to use it as sort of a flagship to inaugurate this new way of looking at benefits, at devaluing the full range of benefits. And I would offer the analogy of quitting smoking. If you quit smoking to reduce your chances of getting lung cancer, you are also having all kinds of other health benefits to you and the people around you --

Mr. Peters. And it doesn't affect -- it doesn't affect your jurisdictional power to quit smoking --

Ms. McCabe. They come along for the ride, but they're real.

Mr. Peters. Can I just say to conclude that we talk a lot about a number of pollutants in here, but we talk about heavy metals like lead and mercury. Those are the absolute worst things for children. They cause lasting permanent damage, and we ought not to mess around with those here, and I oppose this awful action by the EPA.

And I yield back.

Ms. DeGette. The gentleman yields back.

The chair now recognizes the gentleman from Maryland, Mr. Sarbanes, for 5 minutes.

Mr. Sarbanes. Thank you, Madam Chair.

Thank you all for being here.

Mr. Livermore, a moment ago something was said that I wanted to follow up on regarding the cost considerations. Did the EPA consider co-costs when it was finalizing these standards in 2012? Because the suggestion was made that it did not?

Mr. Livermore. It did.

Mr. Sarbanes. It did, and is it considering them now?

Mr. Livermore. It's not revisiting it, so it's a cost estimate, so, essentially, yes.

Mr. Sarbanes. Okay. Let me get more into the benefits and cost discussion because that's obviously central here to the differing views we have on this matter, and we got to get those numbers right.

Dr. Selin, in your testimony, you state that the assertion by EPA that the MAT standard result in $4 million to $6 million in mercury-related benefits the U.S. is out of date and incorrect. And the best available scientific information suggests that the mercury-related benefits that can be quantified are orders of magnitude more than that, in fact, in the billions of dollars. Your study estimates $3.7 billion in annual benefits just from the mercury reductions alone.

Why is that number so different from the $4 million to $6 million that's relied on by the EPA?

Ms. Selin. Yes, the EPA's estimate is really only a partial analysis of the benefits of the MAT standard and our estimates are larger for two basic reasons, one of which is the EPA's estimate only looked at people who consume fish they catch for themselves in fresh water, and we looked at the whole U.S. population. And the second is we included both impacts on reduced IQ as well as cardiovascular impacts of reduced heart attacks. EPA only looked at the reduction of IQ in newborns.

Mr. Sarbanes. So you're taking a very broad perspective which, I think, is the prudent one to do. I also know that now that the MATS has been implemented for several years, we have some sense of how much it costs industry to comply. And so, Dr. Livermore -- Mr. Livermore, I'm going to come to you on this, according to 2015 analysis, costs of compliance with the mercury standards were about $7 billion less than the EPA estimate in 2011 because we've had a lot of technological improvements. We see this

across many industries, and, actually, in many regulatory environments where initially people resist it, they anticipate the costs will be overwhelming and too burdensome, and then technology kind of keeps the model changing over time.

So that's the technologies kicking in, reduced prices of natural gas and so forth, and in your testimony, you say that the EPA's treatment of cost is irrational because it fails to acknowledge the overestimation regulatory cost associated with 2012 MATS rule. So, in your view, how should the Agency consider costs now that the rule has been complied with?

Mr. Livermore. If the Agency actually wanted to look at what the costs and benefits of the rule going forward were, then -- exactly. It would take into account both the fact that costs were lower than they were anticipated and the reality that most of the costs have already been incurred, and it does neither of those.

Mr. Sarbanes. I mean, I think what we see going on here by the administration is they're really just kind of picking and choosing. They're not concerned about apples to apples or oranges to oranges either by category or temporally or anything else. They find the number that works for the argument that they're making or the policy change over here. Then they'll grab that, and then they'll grab something else to advance their position, even if those things don't rationally -- are not rationally compatible.

So they're clinging to these numbers that are hand-picked out of 2011 analysis. Without too much elaboration, their proposal states that even if it considered new information, quote, the outcome of the agencies proposed finding here would likely stay the same.

Ms. McCabe, it seems implausible that the Agency can reach this conclusion without even considering this new information. Can the Agency in your view put at risk up to 11,000 lives a year based only on its guess here that the new information, quote,

likely wouldn't make a difference?

Ms. McCabe. Well, that caught my eye too when I read the proposal. It doesn't seem like the way you should do rulemaking, to anticipate what people will tell you and then decide. So better would be to see what people bring forward and thoughtfully consider that. And as we've seen, there is significant new information that should factor in to that decision and seems like it would lead to a different outcome than what they presumed in the proposal.

Mr. Sarbanes. Thank you for that.

And when the health of the American people is at stake, we ought to pay attention to science. We ought to come up with standards that make sense. We ought to rationally align those. I don't see that happening here with the Trump administration's proposal.

With that, I yield back. Thank you.

Ms. DeGette. The chair now recognizes the gentlelady from Indiana, Mrs. Brooks, for 5 minutes.

Mrs. Brooks. Thank you, Madam Chairwoman, and I apologize because I've been going -- coming back and forth from the Health hearing.

And so I want to welcome you, Ms. McCabe. Glad to have a Hoosier on the panel.

And, with that, I'm going to yield my time to our ranking member, Mr. Guthrie.

Mr. Guthrie. Thank you. I thank my friend for yielding.

I know that there is a drug pricing hearing going on just downstairs from us, a couple of levels down. So I want to finish with some testimony from Mr. Gustafson. In your testimony, you note that EPA's 2016 supplemental finding adopted a cost reasonable -- reasonableness methodology as its preferred approach to making an

appropriate and necessary finding.

Under this approach, the EPA concluded that the cost of MATS is reasonable because compliance costs are well within the range of historical variability and that the power sector is able to comply with the rules requirements while maintaining its ability to perform its primary and unique function, which is the generation, transmission, and distribution of reliable electricity at reasonable costs to consumers.

So my questions, having said that, do you believe that the costs reasonableness test was an appropriate response at the Supreme Court's decision in Michigan v. EPA? Why or why not?

Mr. Gustafson. Absolutely not. The Court in Michigan v. EPA made very clear that a rule is not reasonable much less appropriate if its costs outweigh the benefits by a substantial degree, and so, in order to do that analysis, you would need to know what are the costs and the benefits.

The cost reasonableness approach does not look at whether the costs are justified by the benefits. It only asks whether this will be destructive to the industry.

Mr. Guthrie. Okay. Why do you think the former administration chose this as their preferred approach?

Mr. Gustafson. I think they chose it because they realize the vulnerability of their cost-benefit estimate, and they wanted to buttress their finding with an argument that doesn't require a court to look behind and see what are the relative costs and benefits.

Mr. Guthrie. Okay, and so why, in your opinion, did the former administration include both a preferred approach and an alternative approach in their 2016 supplemental finding?

Mr. Gustafson. Well, I think it was a belt-and-suspenders approach to the

litigation. I think they realized that if the Court were only looking at their cost-benefit analysis under the secondary approach, that cost-benefit analysis was vulnerable to the judicial determination that it's unreasonable to look at particulate matter co-benefits as equal to the direct benefits of mercury reduction. And so I think they needed both to try to make it as strong as they could. I think neither of them is an adequate approach.

Mr. Guthrie. So this next question kind of gets into where you -- in what you said for some of your answers this morning, but in your written testimony, you note that by ceasing to rely on particulate matter co-benefits suggests hazardous air pollution regulation, EPA's new proposal takes an important step towards rationalizing future air quality regulation without actually altering the mercury standard itself.

So can you explain what you mean that this proposal takes an important step toward rationalizing future air quality regulation? And, likewise, do you think the changes to the appropriate necessary finding will have an impact on future regulation?

Mr. Gustafson. I hope so in answer to the last question. I think that if EPA -- first of all, I would agree with the panelists who have pointed out that Agency should be consistent in its cost-benefit approach. I think if the Agency is consistent about what it's proposing here, that it would not include criteria pollutants, like particulate matter and ozone, in cost-benefit analyses, at least, under the appropriate and necessary determination of section 112 in the future. That would be an improvement on the status quo.

I think, more broadly, it would be appropriate for the Agency to consider how it does cost-benefit analysis even for regulatory impact analyses. Although, I would point out that that is different from what the Agency is proposing here. So circular A4 applies to that. It doesn't not apply to what the Agency is doing here.

Mr. Guthrie. So you made the point several times this morning that dropping

the appropriate and necessary standard, making changes to the appropriate and necessary standing, won't have impact on the standard; the standard will still stand and have to go through a delisting process. And so, in your opinion, that dropping the appropriate and necessary -- obviously, the standard could be challenged in court as well. So you're saying it has -- you could be delisted or challenged in court. So you're saying that it won't have any impact on the standard in your opinion?

Mr. Gustafson. I don't think it'll have any impact on the mercury standard to the court -- the D.C. circuit, which is the court that hears all the Clean Air Act rules of nationwide application and which would be the court reviewing this decision, has made clear that, in order to get rid of the standard, you would have to delist the source.

It's not sufficient just to say that it's no longer necessary and appropriate. That de-listing process is set out in statute, and it's a very high bar that I would be surprised if it could be met --

Mr. Guthrie. -- being an attorney, if it's necessary to be appropriate and necessary for the standard and that goes away, it seems like that would still be a requirement it needed to be, but I understand your --

Mr. Gustafson. I share your instincts on that point, but the D.C. circuit in this New Jersey v. EPA case basically said that because the statute includes a de-listing provision, it sets out clear standards by which a source can be de-listed, therefore, the Agency does not have jurisdiction to withdraw the rule for other reasons.

RPTR ALLDRIDGE

EDTR HUMKE

[12:01 p.m.]

Ms. DeGette. The gentlelady's time is expired.

The chair now recognizes the gentleman from California, Mr. Ruiz, for 5 minutes.

Mr. Ruiz. Thank you, Chairwoman.

Mercury is clearly a dangerous toxin, and exposure to it can have permanent neurological effects for particularly small children. In EPA's own regulatory impact on analysis for MATS, EPA noted that exposure to mercury can cause a host of public health harms.

Dr. Landrigan, your work has highlighted the importance of controlling toxic pollutants like lead and mercury in our environment and the impacts that these pollutants can have especially on children.

So what should the public know about the harmful effects of mercury, particularly on children. And then why this rule is so important in protecting them?

Dr. Landrigan. Thank you, Mr. Ruiz.

So what the public should understand about mercury is that different segments of the population have different sensitivity, and the two groups in the population who are most sensitive are, first, the pregnant women, not for the health of the woman herself but for the health of her unborn child and, secondly, small children, toddlers, and kids in general. And the reason that those segments of the population are so vulnerable is that it is during those periods of life, the 9 months of pregnancy and first years after birth, that the human brain is going through this extraordinarily complex development that is necessary to produce --

Mr. Ruiz. And so what can happen to their development if they are exposed?

Dr. Landrigan. So, yes, if a toxin like mercury gets into the developing brain through the mother or into the child, it can damage the brain. The consequences are reduced IQ, shortened attention span, behavioral problems. These problems last lifelong, and there is no medical treatment for them.

Mr. Ruiz. Thank you.

Dr. Landrigan. The international approach is prevention.

Mr. Ruiz. Thank you.

EPA's 2018 proposal claims that benefits of mercury reduction would be between $4 and $6 million per year based on results of 2011 analysis. However, Dr. Selin, your 2016 paper in the Proceedings of the National Academies of Scientists show that the projected lifetime benefits of mercury reductions would be $147 billion through 2050, or an annualized benefit of $3.7 billion per year. That is a much larger number than what EPA has said. Can you briefly describe how you were able to determine these impacts?

Ms. Selin. Sure.

What we were able to do was actually take into account a larger population of people affected. So we had an analysis that took into account not only people who were eating fresh water fish but also marine fish which is the majority of exposure to the U.S. population.

Mr. Ruiz. So you had more subjects to have more accurate statistical analysis, and you also compared a group exposed and a group not exposed?

Ms. Selin. So what we did was we projected the impacts of the standards, and we can compare that to what would happen without the standards. So in addition to just looking at a broader population, we also considered all adults and cardiovascular impacts, so heart attacks, which is also an impact of mercury.

Mr. Ruiz. Well, $3.7 billion per year, that is much larger than the 4 and 6 million per year.

Dr. Selin's study does not appear to be an outlier. In fact, for example, a study from 2017 in the Journal of Environmental Health calculated the economic cost of methyl mercury exposure in the U.S. to be $4.8 billion per year. And yet EPA continues to rely on the outdated 2011 estimates to justify their proposal.

Dr. Landrigan, while the MATS standards control for mercury and air toxic emissions, they also have important additional benefits of controlling particulate matter emissions. EPA estimates that the MATS rule would prevent up to 11,000 premature deaths, 4,700 heart attacks, and 130,000 asthma attacks annually beginning in 2016, and yet EPA seems to be ignoring these benefits in their new proposal.

Dr. Landrigan, do you agree that the reductions in particular matter, pollution, that directly result from compliance with MATS is important for a public health perspective?

Dr. Landrigan. Yes, I do. Air pollution causes disease across the life span. Air pollution exposure in a pregnant mother results in increased risk of small prenates babies. In children, it produces asthma or pneumonia. In adults, heart disease, stroke, lung cancer, chronic obstructive lung disease.

Mr. Ruiz. Thank you.

Ms. McCabe, was it appropriate for the Obama EPA to consider these benefits in its cost analysis even though particulate matter is regulated under a different provision of the Clean Air Act than the one that addresses mercury and other air toxins?

Ms. McCabe. It was absolutely correct. It followed decades of standard peer reviewed agency practice to consider cobenefits.

And I will just note that, in the MATS rule, EPA was not regulating particulate

matter. It was regulating toxics. And the technologies that utilities were expected to use to control mercury necessarily also control other air pollutants.

Mr. Ruiz. Thank you.

Given what we have heard here today about the harm mercury can cause, it still boggles my mind why anyone would go out of their way to undermine these standards.

I yield back my time.

Ms. DeGette. I thank the gentleman.

The chair now recognizes the ever patient Mr. Soto for 5 minutes. And welcome to the subcommittee, as always.

Mr. Soto. Thank you, Madam Chair.

I want to take a few minutes to talk about industry compliance with the mercury and air toxic standards. And just as a first listing to everybody here in the committee meeting, it is dumbfounding why we would be rolling back standards to protect children and the general public from mercury and air toxic poisoning when industry isn't even asking for it. I mean, it is absolutely an absurd kowtowing to an industry that isn't even requesting to be kowtowed to. I don't even know where to begin.

But I will begin by talking about Administrator Wheeler testified before this committee and acknowledged last month that the industry is largely in compliance with these standards because the power industry has made significant investments in the rule and has urged EPA not to undermine it. So at least we have reasonable actors in the private sector.

On March 26 of this year, a collection of associations that represent the power industry wrote in an EPA letter, quote, Given this investment and industry's full implementation of MATS, regulatory and business certainty regarding regulations under the Clean Air Act section 112 is critical. We urge the EPA leaving the underlying MATS

rule in place and effective. This was by both our rural electric co-ops, by LIUNA, IBEW, and other unions.

Ms. McCabe, are you familiar with this letter? And what is your reaction?

Ms. McCabe. Yes, I am. And I totally get it. I have spent my whole life in State and Federal environmental agencies. And the thing that industry wants most is certainty. They want to know what the rules are and that they will stay in place.

And what this is doing is injecting uncertainty, potentially years. Because if they finalize this proposal, it will be litigated. People will come forward and try to start the process to roll the rule back, which will create more uncertainty. And they have made these investments. They are either already getting ready rate recovery on it or they're seeking rate recovery on it. And this just complicates everything for them.

Mr. Soto. So the administration's proposal, is in fact, injecting more uncertainty at a time when we had standards working that were better protection for the public. Thank you.

Mr. Livermore, do you agree?

Mr. Livermore. Yes. Absolutely. All this rule does is create uncertainty. It is possible that the rule will be upheld. That is -- if the agency moves forward with the appropriate and necessary determination, that is the opinion of some folks. Frankly, I hope that that's correct. But we don't know that in advance, and we are putting the lives of thousands of Americans and neurological development of our children on the line on that supposition.

Mr. Soto. And this includes the proposal by EPA to revoke the precursor findings from MATS?

Mr. Livermore. Yes. That is a direct consequence of that.

Mr. Soto. And, Mr. Livermore, how can we be certain that EPA's proposal will

not undermine the existing mercury rule?

Mr. Livermore. We can't be certain.

Mr. Soto. Is EPA voluntarily exposing itself to some legal risk here?

Mr. Livermore. Absolutely.

Mr. Soto. Is the Federal government at risk of rolling these back?

Mr. Livermore. No question that there is going to be risk involved. It is very likely to get litigated. Anyone who thinks they have a crystal ball and can make perfect predictions about what the D.C. circuit is going to do is diluting themselves.

Mr. Soto. And in your testimony, you bring up the Peabody Coal issue. And what does that mean for industry and public health?

Mr. Livermore. I am sorry?

Mr. Soto. Ms. McCabe.

Ms. McCabe. Yeah, I think that is me.

So that is just an example of how industry is presuming that the rule is going to go away. This was in a proceeding at the Indiana Utility Regulatory Commission. And a Peabody entity commented that the industry was overestimating its future costs of MATS compliance because it said this proposal is likely to lead to the withdrawal or the rolling back of MATS. So that is how they are thinking about this.

Mr. Soto. Well, I can tell you these standards and the overall lax of enforcement of coal ash, one of the biggest producers, is affecting my district and my family's native island of Puerto Rico. We recently sent letters over the last term about the Penuelas Valley landfill in Puerto Rico. And while we are trying to transition away from coal, more and more of that toxic coal ash is remaining in Puerto Rico. And just recently, my district -- unfortunately, we had an attempt to import some of that coal ash into Osceola County, Florida.

And so I would like to hear -- first, I would like to introduce letters to the EPA that I sent regarding these two issues and would also want to hear from you, Ms. McCabe. Does this put my community and the communities in Puerto Rico at risk if we continue to burn coal and have these ashes accumulate?

Ms. McCabe. Well, we know, certainly, from years of experience and study that coal-fired power plants pollute the environment in many ways through air pollution of many different kinds of pollutants, through water pollution, and through the creation of waste like coal ash. So the continuation of these facilities creates those risks in those communities.

Mr. Soto. Ms. McTeer Toney, I represent a community that has a large community of color, and we also have, in Puerto Rico, an island of predominantly Hispanics.

Is this often the case, that communities of color of bear the brunt of coal ash?

Ms. McTeer Toney. Unfortunately, yes. Front line and fence line communities are oftentimes communities of color. These are communities that are located directly adjacent to, right next to coal-fired power plants and are the communities that hit the impact the most and the earliest.

Mr. Soto. I have the letters for potential submission.

Ms. DeGette. I thank the gentleman.

The chair now recognizes the ranking member for a few final comments.

Mr. Guthrie. Just a closing statement.

When I did my opening statement, I said I hope we can have an intelligent discussion on what the issues are and how we regulate and how Congress designed the Clean Air Act, the 1990 amendments. And, you know, we have the cobenefits being 99 percent of the cost. So maybe we need to fix that. That is something Congress

needs to look at. I think we have had that.

The one group missing today is EPA. And EPA -- it is Congress' -- it's our responsibility, both sides of the aisle, to have investigation oversight. And it would have been helpful had the EPA been here today. And they have said they were going to make themselves available. And we hope that happens, because I think it is important for the members to have the opportunity to talk to the EPA and the decisionmaking around this.

And so it is my commitment to work with -- if we have another date that we can make this work, as the ranking member, to work to get the EPA here to testify before this committee, because that is our responsibility under the Constitution for oversight, and we need to exercise that.

So thank you.

Ms. DeGette. I thank the ranking member for those comments. And, unfortunately, today's hearing is not the first hearing that we have had -- in this subcommittee that we have had trouble getting the administration to appear. So anything that your side could do to help us, because it really does help complete the record of these hearings.

Having said that, I want to thank all of the witnesses for appearing today. This was an excellent panel, an excellent discussion.

I would like to insert the following documents with unanimous consent into the record. They have all been cleared by the minority. The slides that Ms. McTeer Toney gave us about how mercury poisoning works; a letter to Administrator Wheeler dated May 10, 2019, by a bunch of members of this subcommittee and the full committee; a letter dated April 17, 2019, from the Environmental Law and Policy Center to the EPA; a letter by a coalition of groups dated March 26, 2019, that Mr. Soto asked for submission to the record; and a letter dated September 5, 2017, from Mr. Soto to Administrator

Pruitt.

I would asked unanimous consent those all be entered into the record. So ordered.

[The information follows:]

******** COMMITTEE INSERT ********

Mr. Soto. Madam Chair, there's actually a third letter, which is the response.

Ms. DeGette. Okay. I ask unanimous consent for the third letter, which is the response from the EPA. And that is inserted too.

[The information follows:]

******** COMMITTEE INSERT ********

Ms. DeGette. I want to remind members that pursuant to committee rules, that everyone has 10 business days to submit additional questions for the record to be answered by witnesses that have appeared before the subcommittee. And I would like to ask all the witnesses, if you do get those questions, please respond promptly.

And with that, the subcommittee is adjourned.

[Whereupon, at 12:15 p.m., the subcommittee was adjourned.]