

SUMMARY OF EPN COMMENTS ON EPA'S PROPOSAL TO WITHDRAW THE SUPPLEMENTAL "APPROPRIATE AND NECESSARY FINDING" FOR THE MERCURY AND AIR TOXICS STANDARDS (MATS)

April 17, 2019

On December 27, 2018, EPA issued a [proposal](#) to revoke the agency's prior determination that it was "appropriate and necessary" to curb releases of mercury, arsenic and other hazardous air pollutants from coal- and oil-fired power plants under the [Mercury and Air Toxics Standards \(MATS\)](#). EPA issued the MATS rule in 2012 to protect the public from toxic pollutants, which the Clean Air Act requires EPA to regulate. The agency's own analysis determined it would save taxpayers as much as [\\$90 billion](#) in healthcare costs annually through reduced premature deaths, sick days and hospital visits. The latest government figures show a 96% reduction in mercury emissions from these power plants since the rule was adopted in 2012. In a dangerous reversal, the Trump Administration now proposes that it is not "appropriate and necessary" to regulate hazardous air pollutant emissions from these power plants and has concluded that the residual risk to the public is "acceptable."

The reason EPA gives for ending regulation of these emissions is that most of the benefits of the current rule come from reductions to pollutants, other than mercury, that are harmful but not "hazardous" under the Clean Air Act. On that basis, it claims that MATS is "irrational" because it is under the part of the Clean Air Act that deals with hazardous pollutants, and that the so-called "co-benefits" from other pollutants should not count. But it does not deny that those co-benefits are real, are massive, and result directly from the same technology that controls mercury.

EPN opposes reversing the "appropriate and necessary" finding, and calls on EPA to withdraw its proposal, for four reasons:

- EPA bases all of its cost and value estimates on 8-year-old information (developed for a different purpose) that was incomplete to begin with and has now become stale and incorrect. Failing to do a thorough analysis using current information is such a fundamental procedural mistake that EPN believes EPA must withdraw the proposal and start over.
- The number that EPA cites as the value of controlling mercury is seriously misleading; it was the result of one study of a very small subset of mercury impacts. At the same time, the actual costs of MATS have been much lower than the number EPA cites. A new cost-benefit analysis using current data would show a much different result.
- EPA's theory that co-benefits should not count cannot be defended either under the logic of the Supreme Court's decision in *Michigan v. EPA* or under the language and structure of the Clean Air Act. It is also at odds with federal and EPA policy, with decades of past practice, with standard economic principles, and with common sense.
- EPA claims that it can leave the rule in place even while nullifying the legal finding needed to support it. EPN would like to see the rule remain in effect, but claiming this can happen even after declaring it "inappropriate" is arbitrary and disingenuous. The better approach is simply to keep the original finding in place.

We have seen EPA grapple with difficult choices many times over the years, to ensure that the benefits of its regulations exceed their costs. This is the first time in EPA's history that it has proposed to repeal a rule whose benefits are far *greater* than its costs. We call on EPA to withdraw this deeply flawed proposal.