

NESCAUM TESTIMONY

U. S. Environmental Protection Agency Hearing

Proposed National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review

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Good morning. My name is Paul Miller, and I am the Executive Director of the Northeast States for Coordinated Air Use Management or “NESCAUM.” NESCAUM is the regional association of air pollution control agencies representing Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

I am here today to comment on the U.S. Environmental Protection Agency’s (EPA’s) proposed rule to reconsider and reverse the “appropriate and necessary” finding underlying the Utility Mercury and Air Toxics Standards (MATS) rule, which I will refer to here as the “*Reconsideration Proposal*.”

I will make two main points in my testimony today. First, the EPA’s Reconsideration Proposal is seriously flawed because within the context of the targeted pollutants, it uses an inappropriate methodology that is unable to assess the proposal’s full benefits. Second, EPA compounds this error by excluding consideration of co-benefits from MATS, at clear odds with the controls needed to reduce air toxics, the federal government’s own guidelines for performing informed cost-benefit analysis, and contrary to good practice in economic analysis.

For these reasons alone, EPA should withdraw its Reconsideration Proposal and keep in

place its previous “appropriate and necessary” finding for the MATS rule.¹ The prior finding was established with a fuller set of considerations and hewed more closely to long-accepted guidelines and best-practices in environmental rulemakings.

With regard to my first point, in the Reconsideration Proposal, EPA has employed a cost-benefit methodology that is incapable of fully considering the benefits of controlling air toxics from coal- and oil-fired power plants. In applying this methodology, EPA does what it says it cannot do – it monetizes most of the benefits of reducing air toxics that it states are difficult to monetize. While EPA does not present it so directly, it implicitly and without foundation assigns a value of zero to virtually all the public health and environmental benefits of the MATS rule.

EPA considers only the monetized impacts of one health impact resulting from a narrow exposure pathway from coal- and oil-fired power plants – that associated with “avoided loss of IQ points in children who were exposed prenatally to methylmercury via maternal ingestion of self-caught freshwater fish.”² In proposing to reverse its prior finding, EPA now treats all other health and environmental benefits as having no value.

The danger in this type of monetized cost/benefit analysis is that hard-to-monetize benefits accruing over long time periods or that are widely disbursed and difficult to directly link to a unique causal factor at a specific point in time may be overly discounted or completely ignored. This is exactly what EPA does in the Reconsideration Proposal.

It is well known in the health and environmental research community that there are significant additional and real health and ecosystem benefits from reduced exposure to mercury and other air toxics emitted by coal- and oil-fired power plants. EPA itself identified three human exposure routes to mercury in the 2011 MATS Regulatory Impact Analysis (RIA) that

were not monetized by the Agency. These were 1) post-natal ingestion of fish by children; 2) consumption of commercially purchased fish; and 3) consumption of self-caught saltwater fish. In the Reconsideration Proposal, EPA does not put any weight on these and other exposure pathways, and by extension ignores their associated public health and environmental impacts.

Furthermore, EPA did not revisit in its Reconsideration Proposal the state-of-science outlined in its 2011 final MATS RIA. More recent analyses yield benefit estimates that are considerably higher than those presented in 2011.³ EPA also simply restates the projected MATS compliance costs from the 2011 RIA despite the now existing historical record of full industry compliance with MATS at a cost of less than one-quarter of EPA's original projection.⁴ In sum, the cost/benefit analysis used in EPA's Reconsideration Proposal is inappropriate, uninformed, and outdated.

With regard to my second point on co-benefits, I note that the metal air toxics covered by the MATS rule, with the exception of mercury, are controlled using particulate (PM_{2.5}) control equipment. Because many of the metal air toxics are physically incorporated into particulates emitted by fossil fuel power plants, the controls needed to reduce those air toxics by necessity reduce particulates. Reflecting their fundamentally intertwined nature, EPA in the past has treated particulate matter as a surrogate for metal toxics. Particulate reductions, therefore, are a direct result of the need to control for metal air toxics, and it is entirely logical and appropriate to include the benefits of these reductions in the "appropriate and necessary" finding.

Furthermore, failure to fully consider co-benefits in cost-benefit analyses disregards important and fundamental factors that are standard in regulatory rulemaking assessments. EPA's stance in the Reconsideration Proposal contradicts the Office of Management and

Budget's (OMB's) Circular A-4 guidelines on conducting cost benefit analyses, which clearly calls for consideration of co-benefits. This position was reiterated in draft guidance issued by OMB in 2017, which stated that "The consideration of co-benefits, including the co-benefits associated with reduction of particulate matter, is consistent with standard accounting practices and has long been required under OMB Circular A-4."⁵

In conclusion, due to the inadequate consideration of non-monetized benefits and failure to look at actual MATS control costs, EPA grossly skews the cost and benefits associated with the air toxics reductions in the MATS rule. EPA further tips the scales by disregarding OMB guidelines and accepted accounting principles when ignoring what it considers to be co-benefits not attributable to the "target pollutants." Lacking a valid basis, the Reconsideration Proposal should be withdrawn. Thank you.

¹ 81 Fed. Reg. 24420-24452 (April 25, 2016).

² U.S. EPA, *Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards*, EPA-452/R-11-011 (December 2011). See Table ES-4, p. ES-6.

³ Grandjean and Bellanger, Calculation of the Disease Burden Associated with Environmental Chemical Exposures: Application of Toxicological Information in Health Economic Estimation. 16 *Environ. Health*, 123 (2017), DOI: 10.1186/s12940-017-0340-3; Rice *et al.*, A Probabilistic Characterization of the Health Benefits of reducing Methyl Mercury Intake in the United States. 44 *Environ. Sci. Technol.* 5216-5224 (2010).

⁴ *White Stallion Energy Center, LLC v. EPA*, D.C. Circuit Case No. 12-1100, Motion of Industry Respondent Intervenor to Govern Future Proceedings, filed September 24, 2015 (see Declaration of James E. Staudt and accompanying exhibits).

⁵ Office of Management and Budget (OMB), *2017 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act* (2017), p. 13.