

# Let the EPA Know It Is “Appropriate and Necessary” to Regulate Mercury and Other Toxic Air Pollutants

## *A Public Comment Guide for the EPA’s Proposal to Undermine the Mercury and Air Toxics Standards for Coal-Fired Power Plants and Diminish the Value of Public Health Benefits*

Under Administrator Andrew Wheeler, the Environmental Protection Agency (EPA) is [proposing](#) to reverse an existing finding that it is “appropriate and necessary” to regulate the emissions of mercury and other toxic air pollutants from coal-fired power plants.<sup>1</sup> That finding is the basis for a critically important regulation—the 2012 Mercury and Air Toxics Standards (MATS)—which requires coal plants to reduce this toxic pollution. **The EPA claims it only intends to reverse this finding, not MATS itself, but by attacking the foundation for the regulation, this action threatens MATS as well.**

The EPA is proposing to reverse its prior finding despite its own documentation and a vast body of science showing that air toxics from coal plants—including mercury, hydrogen chloride, arsenic, chromium, cadmium, nickel, and others—can cause or contribute to neurological damage in developing fetuses, chronic respiratory diseases, various cancers, and other severe damage to human health and ecosystems.<sup>2</sup> The EPA is also undertaking this action despite the fact that since the now-threatened MATS went into effect, the power sector has significantly reduced air toxics emissions,<sup>3</sup> providing major public health benefits at costs far lower than expected and without adverse effects on electric system reliability or the economy.

Underpinning the EPA’s proposed action is a drastic narrowing in how the agency evaluates the [costs and benefits of public health protections](#), which would greatly diminish the types of public benefits that the agency is willing to consider—here, disregarding health benefits of nearly \$37 billion to \$90 billion annually. Critically, although this proposal concerns the “appropriate and necessary” finding underlying MATS, it would also set a dangerous precedent for this new analytic approach with far-reaching consequences.

**It is critical that we stop this dangerous change in how the agency evaluates health protections.** If the EPA finalizes this proposed rule, not only do we risk losing critical public health protections against air pollution from coal plants, but we could also see this change appear in other agency rulemakings, undermining a much broader range of public health protections.

**The last day to give the EPA feedback on this harmful proposal is April 17, 2019.** The Union of Concerned Scientists calls on other civil society organizations, scientists, economists, public health professionals, community experts, and concerned individuals nationwide to lend their voices and submit public comments drawing on their expertise and personal experience, detailing how this proposal would harm public health, the environment, and the EPA’s long-term ability to issue protective standards.

This comment guide is intended to support the submission of substantive comments that force the EPA to correct its departure from science, economics, and long-standing regulatory guidance—or risk courts deeming its actions “arbitrary” in subsequent legal cases. This guide is focused on the agency’s attack on cost-benefit analysis given its relevance across rulemakings, and it identifies four key areas where expert comments would be valuable, pushing back against the EPA:

- refusing to consider *all* benefits when evaluating the “worth” of a rule;
- ignoring unquantified direct benefits of reducing air toxics;
- relying on outdated information and disregarding new information; and
- undermining the public health gains from MATS and potentially other public health protections.

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<sup>1</sup> U.S. EPA, *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*, 84 Fed. Reg. 2670 (Feb. 7, 2019) (<https://www.govinfo.gov/content/pkg/FR-2019-02-07/pdf/2019-00936.pdf>). The rule addresses coal- and oil-fired combustion units of more than 25 megawatts that serve a generator that produces electricity for sale, but for simplicity, this guide will refer to covered sources as coal-fired power plants, which are the majority of sources affected by the rule.

<sup>2</sup> 84 FR 2677.

<sup>3</sup> Hardin, S. and A. Lujan. 2018. *Trump’s EPA poised to undo progress on mercury pollution reduction*. Washington, DC: Center for American Progress. Online at [www.americanprogress.org/issues/green/reports/2018/12/18/464269/trumps-epa-poised-undo-progress-mercury-pollution-reduction/](http://www.americanprogress.org/issues/green/reports/2018/12/18/464269/trumps-epa-poised-undo-progress-mercury-pollution-reduction/).

## How You Can Be Involved

Below we have included information to help you write an effective, original comment. We have identified key issues and concerns with the EPA’s proposal that you may want to address, and we have provided some tips for how to write and submit a comment. [Click here to let us know that you will submit a comment.](#)

Submitting a public comment can be an effective way to participate in federal agency decisions that affect our lives and our work, and to contribute our expertise to the rulemaking process. Agencies are required to gather information—from local impacts to technical knowledge—relevant to proposed policies that would have the force of law (“rules”). Specifically, an agency must ask for feedback (“comments”) from any interested person or entity on a proposed rule, and the agency must respond in its final rule to substantive information, questions, and concerns about the basis of the rule or its impacts. If later challenged in court, an agency must show that its decision is not “arbitrary,” meaning it must lay out a rational basis for the rule given the information available to the agency, *including information submitted by public comments*. More on the commenting process can be found [here](#).

### HOW TO SUBMIT A COMMENT

- Click on this link [EPA-HQ-OAR-2018-0794](#), which will take you to the listing for the EPA’s proposal on *Regulations.gov*.
- Click on the “Comment Now” button.
- Include your name and contact information on all documents.
- Type a comment directly into the website OR upload a document, which may be easier to edit, save, and submit.
- Submit your comment by **April 17, 2019, 11:59 PM ET**, and check your email for confirmation. Anything submitted, including name and contact information, is in the public record.

### GENERAL TIPS FOR WRITING AN EFFECTIVE COMMENT

- Read through this comment guide and the rule summary available in the rulemaking docket [here](#) to understand why the agency is proposing the rule and what the rule would do. The docket also includes supporting documents.
- Do not simply disagree with the agency’s policy judgments; explain *why* you disagree and support your position with relevant information.
- Lay out and support facts, information, questions, and concerns about the basis for the rule or its impacts, particularly those that the agency has minimized or ignored. When available, attach key studies and research or list citations for them.
- Describe the personal impact of a proposed rule. This could include how it will impact public health, local environments, vulnerable communities, your family, or any other factor.
- Write concisely but provide all details you think may be relevant.

*Remember that the most effective comments are thorough, unique, and specific.* The public comment process allows scientists, other professionals, and the general public to help agencies understand the full impacts of a proposed rule. Information provided and points made in comments are also often used as evidence in future court challenges.

### WHO SHOULD WRITE

Scientists who conduct research or have expertise in the fields of public health, toxicology, ecosystem sciences, and related areas; economists who understand the details of cost-benefit analysis; public health professionals who treat patients at risk of harm from air pollution; industry experts who recognize the benefits of keeping the MATS rule in place; parents whose children may be exposed to toxic chemicals in the womb or after birth; people who eat fish; people who birdwatch or engage in recreational activities in aquatic ecosystems; and anyone who wants the EPA to take strong action to protect human health and the environment from industrial pollution.

## Understanding the EPA’s Proposal

Almost 30 years ago, in [Section 112](#) of the Clean Air Act, Congress directed the EPA to study the public health threat of toxic air pollution<sup>4</sup> from coal-fired power plants, and to limit this pollution under the Clean Air Act’s air toxics provisions if the EPA found regulation “appropriate and necessary.”

The EPA first found regulation “appropriate and necessary” in 2000, and reaffirmed that finding in 2012, because:

- extensive peer-reviewed science shows substantial public health risks from toxic air pollution;
- coal-fired plants were one of the largest sources of these pollutants before the EPA regulated them; and
- cost-effective technology was widely available,<sup>5</sup> and already being used by some plants, to reduce this pollution.<sup>6</sup>

With this finding, in 2012 the EPA also finally regulated mercury and other toxic pollution from coal-fired power plants by establishing pollution control requirements in the Mercury and Air Toxics Standards (MATS). By 2016, nearly all coal-fired power plants were in compliance with the standards.<sup>7</sup>

In 2016, the EPA found *yet again*<sup>8</sup> that regulation of air toxics from power plants is “appropriate and necessary” after carefully taking the projected costs of such regulation into account in response to a court directive. The EPA found:

- the costs of complying with the rule were reasonable compared to power sector revenues, expenditures, and prices;
- the costs of compliance would not jeopardize the power sector’s ability to provide reliable electricity at reasonable cost to consumers;<sup>9</sup> and
- the monetized and unquantified health and ecosystem benefits of the rule identified in the EPA’s 2011 economic analysis of the rule far outweighed its projected compliance costs.<sup>10</sup>

**The EPA is now proposing to reverse its repeated finding that regulation is “appropriate and necessary”—though it is not proposing to rescind MATS itself—by changing how benefits and costs are considered when determining whether regulation is “appropriate.”** The EPA now argues that:

- the agency must make “a direct comparison of costs and benefits” to assess whether the rule’s benefits are “worth” the costs, rather than finding that the costs are reasonable in and of themselves;<sup>11</sup> and
- costs should continue to be defined expansively, but benefits should now only include those that are directly attributable to reductions of the specific pollutants “targeted” by the regulation; benefits from other pollutant reductions that are *also* caused by the regulation (so-called “co-benefits” or ancillary benefits) should not be considered.

This approach is a stark departure from countless previous rulemakings by the EPA and other agencies, and long-standing regulatory analysis guidance issued by the government’s Office of Management and Budget (OMB)<sup>12</sup> and the agency itself.<sup>13</sup>

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<sup>4</sup> Section 112(b) of the Clean Air Act lists “hazardous air pollutants” (commonly called air toxics), which comprise many pollutants known or believed to be carcinogenic, mutagenic, neurotoxic, acutely or chronically toxic, which cause reproductive dysfunction, or cause adverse environmental effects, e.g., through bioaccumulation.

<sup>5</sup> U.S. EPA, *Mercury and Air Toxics Standards: Controls to meet limits are widely available*. Online at [www.epa.gov/mats/cleaner-power-plants#controls](http://www.epa.gov/mats/cleaner-power-plants#controls).  
<sup>6</sup> 81 FR 24422-24423.

<sup>7</sup> Because companies have already invested in achieving compliance with MATS, many have argued against its reversal. See, e.g., industry letter to Assistant Administrator Wehrum, dated 10 July 2018, online at <http://src.bna.com/Ajk>.

<sup>8</sup> U.S. EPA, *Supplemental Finding That it is Appropriated and Necessary to Regulate Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units—Final supplemental finding*, 81 Fed. Reg. 24420 (Apr. 25, 2016) (<https://www.govinfo.gov/content/pkg/FR-2016-04-25/pdf/2016-09429.pdf>)

<sup>9</sup> 81 FR 24423-24425.

<sup>10</sup> *Id.*

<sup>11</sup> 84 FR 2675.

<sup>12</sup> U.S. Office of Management and Budget (OMB). 2003. *Circular A-4, Regulatory Analysis*. Online at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf>.

<sup>13</sup> See, e.g., pp. 11–2 of the EPA’s [Guidelines for Preparing Economic Analyses](#), explaining that all identifiable benefits should include directly intended effects as well as ancillary benefits. These guidelines “represent the current consensus of the economics discipline,” and are routinely peer-reviewed, e.g., by the EPA’s Scientific Advisory Board (2009), online at [https://yosemite.epa.gov/sab/sabproduct.nsf/559B838F18C36F078525763C0058B32F/\\$File/EPA-SAB-09-018-unsigned.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/559B838F18C36F078525763C0058B32F/$File/EPA-SAB-09-018-unsigned.pdf).

In practice, this proposed change means that the EPA no longer finds it relevant to consider an annual reduction of 11,000 premature deaths, 130,000 asthma attacks, and 4,700 heart attacks—benefits estimated at on the order of \$37 billion to \$90 billion each year—in its determination of whether a regulation is “worth” the costs. Most of these quantifiable benefits come from reductions of fine particulate matter, which would occur as a direct and simultaneous result of pollution controls installed to limit air toxics. Yet the EPA believes these direct effects of the rule should not be relevant in determining whether costs, estimated in 2011 to be on the order of \$7.4 to \$9.6 billion annually, are “worth” it. The EPA instead proposes to consider only the limited subset of quantifiable benefits from reducing air toxics, which, since most of these benefits were not quantifiable, the agency estimated at \$4 to \$6 million annually.

Critically, the EPA’s proposed approach effectively ignores unquantifiable or nonmonetizable benefits—even when evidence suggests they are orders of magnitude higher than its 2011 estimate—and also fails to consider extensive new studies and information now available to the agency since MATS was issued.

On this basis, the EPA now proposes to conclude that it is not “appropriate” to regulate air toxics from coal-fired power plants. Although the agency did not directly propose to rescind MATS—which has already gone into effect and been complied with by industry—its proposal to remove a legal prerequisite for MATS risks losing the rule altogether. Had the agency employed its proposed approach back in 2011, the EPA would not have found the regulation of mercury “appropriate” and would not have issued MATS, which is now known to be a resounding public health success, dramatically reducing toxic air pollution from coal plants. If the EPA finalizes its proposed reversal of the “appropriate” finding, litigants will challenge MATS on the basis that it was not issued legally, and the courts will decide if the rule will stand. Further, a dangerous analytical precedent will have been set in significantly devaluing public health protections.

## Issues to Address in Your Comments

There are numerous concerns with the EPA’s approach, factual basis, and conclusions in the proposed rule. Below we have highlighted four specific issues of focus related to cost-benefit analysis, including the agency’s proposal to:

- refuse to consider *all* benefits when evaluating the “worth” of a rule;
- ignore unquantified direct benefits of reducing air toxics;
- rely on outdated information and disregard new information; and
- undermine the public health gains from MATS and potentially other public health protections.

You do not need to address all, or even most, of these issues. It is most effective to provide detailed comments on the specific area(s) where you have personal expertise, information, experience, or strong concerns. To the extent you can, explain *why* the EPA’s specific approach and conclusions are unreasonable and harmful while providing as much factual support as possible.

### ISSUE 1. REFUSING TO CONSIDER CO-BENEFITS

Power plants are responsible for an array of pollutants that are simultaneously produced during the combustion of fossil fuels. This means that any given regulatory action aimed at a particular pollutant produced by power plants may also reduce other pollutants. The EPA has long accounted for vast “co-benefits” across a range of pollution standards. In this case, the same control technologies that reduce toxic emissions from power plants *also* reduce large quantities of fine particulate matter and pollutants that contribute to ground-level ozone, thus providing significant co-benefits. Fine particulate matter is especially harmful to human health, causing or contributing to a host of cardiovascular illnesses, respiratory problems, and even premature death.

However, the EPA is now proposing that to evaluate the “worth” of an action, the agency must only consider a narrow definition of benefits, focused just on the specific pollutants targeted by the regulation and ignoring the rest. This approach is counter to established practice, going against long-standing guidance for economic analysis, including the OMB’s Circular A-4,<sup>14</sup> which states that:

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<sup>14</sup> OMB 2003.

- agencies “should look beyond the direct benefits and direct costs of your rulemaking and consider any important ancillary benefits and countervailing risks;”
- “analytic priority should be given to those ancillary benefits and countervailing risks that are important enough to potentially change the rank ordering of the main (regulatory) alternatives in the analysis;”<sup>15</sup> and
- “the same standards of information and analysis quality that apply to direct benefits and costs should be applied to ancillary benefits and countervailing risks.”

This proposed approach is also economically inefficient, devaluing rules that could achieve significant simultaneous reductions in pollutants, and depriving the public of increased health benefits from a single rule. It would substantially tip the scales in favor of the interests of polluters over the interests of the public.

The EPA’s proposed determination now entirely hinges on a narrowly constrained cost-benefit analysis, as the agency claims that:

- the EPA must make “a direct comparison of costs and benefits” to assess whether the rule’s benefits are “worth” the costs;<sup>16</sup> and
- costs should be defined expansively, but benefits should only include those that are directly attributable to target pollutant reductions—ancillary benefits *also* caused by the regulation cannot be considered.

The result is a heavily skewed evaluation that eliminates significant benefits directly caused by the regulation. In 2011, when the EPA last calculated these co-benefits, it estimated that the resulting reductions in fine particulate matter alone could total nearly \$37 billion to \$90 billion each year in improved public health, including from averting up to 11,000 premature deaths, 4,700 heart attacks, and 130,000 asthma attacks each year.<sup>17</sup> Now, the agency intends to fully exclude these real benefits from its narrow “appropriateness” calculation.

## POTENTIAL AREAS FOR COMMENT

- Highlight the critical need to appropriately account for all benefits in rulemakings, including co-benefits, in keeping with economic and legal requirements on cost-benefit analysis.
- Explain how the EPA’s proposed approach is illogical and unreasonable because the agency is comparing the cost of compliance—including the costs of particulate matter reductions—to the benefits of only the toxic air pollution reductions, meaning benefits are substantially discounted compared to the treatment of costs.
- Point out that the revisions to cost-benefit analysis that the EPA is proposing here have implications well beyond the boundaries of the MATS rule.
- Explain the real-world health effects of the EPA’s proposed approach to ignore the benefits of reducing fine particulate matter pollution. Include citations to studies or your own experience, if possible. For example, you may live in an area with air pollution from coal-fired power plants, either nearby or in an upwind state. Your family or people in your community may suffer from asthma, respiratory diseases, or cardiovascular diseases.

## ISSUE 2. IGNORING UNQUANTIFIED DIRECT BENEFITS OF REDUCING AIR TOXICS

Although there are many harmful health effects of mercury and other air toxics, not all of these effects are quantifiable or monetizable. In fact, at the time of its 2011 analysis, the EPA was only able to quantify a *single* effect for a *single* exposure pathway for a *single* toxic pollutant.<sup>18</sup> In its new proposal, the EPA notes some of the benefits of reducing air toxics that it was not able to quantify in 2011:

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<sup>15</sup>In other words, agencies should pay particular attention to ancillary benefits that are sufficiently significant to potentially change which regulatory option maximizes net benefits.

<sup>16</sup> 84 FR 2675.

<sup>17</sup> U.S. EPA, *Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards*, ES-10 - ES-13 (2011) (<https://www.epa.gov/sites/production/files/2015-11/documents/matsriafinal.pdf>).

<sup>18</sup> RIA, *ES-10 to ES-13*.

“These effects include impacts of [mercury] on human health (including neurologic, cardiovascular, genotoxic, and immunotoxic effects), a variety of adverse health effects associated with exposure to certain non-[mercury air toxics] (including cancer, and chronic and acute health disorders that implicate multiple organ systems such as the lungs and kidneys), and effects on wildlife and ecosystems.”<sup>19</sup>

These additional impacts are expected to be significant. In the past, the agency acknowledged these unquantified effects, and emphasized that they would further contribute to its finding that benefits outweighed costs. Now, the agency is suggesting *the opposite*. Specifically, although the EPA still claims that it “acknowledges the importance of these benefits” and “agrees that such benefits are relevant to any comparison of the benefits and costs of a regulation,”<sup>20</sup> the agency, without any supporting evidence, next “proposes to conclude that substantial and important unquantified benefits of MATS are not sufficient to overcome the significant difference between the monetized benefits and costs of this rule.”<sup>21</sup> This is flagrantly insufficient engagement with the scientific facts; the agency acknowledges its severe blind spot but then fails to reckon with it in any meaningful way.

### POTENTIAL AREAS FOR COMMENT

- Call attention to the scientific evidence showing that the health effects of air toxics pollution are real and significant, whether reducing those effects can be quantified or not.
- Explain that the EPA’s conclusion that “the unquantified benefits ... are not sufficient to overcome the significant difference between the monetized benefits and costs...”<sup>22</sup> is an arbitrary and inappropriate conclusion. There is evidence of major public health benefits.
- Explain the potential harms to health from methylmercury exposure, such as from consuming contaminated fish, and the particular risks that vulnerable populations, such as developing fetuses and those with high fish intake, face.

### ISSUE 3. RELYING ON OUTDATED INFORMATION AND DISREGARDING NEW INFORMATION

In the EPA’s proposed reversal, the agency insists on using data from the 2011 regulatory impact analysis (RIA) supporting MATS as opposed to updating data to reflect significant new findings since that time. The EPA defends this action by suggesting that the agency should issue a new finding based on what it knew then, and not what it knows now. It further justifies this decision by stating that even with new data, the outcome of its proposed finding “would likely stay the same.”<sup>23</sup>

This position is irrational—agencies have an obligation to use the best available information in rulemaking—and especially so here, given new health impact findings, which include:

- new toxicological and exposure studies on mercury and air toxics, as well as new published peer-reviewed economic estimates of the monetized benefits of mercury controls, showing that the EPA underestimated benefits by assuming a threshold for the neurological effects of mercury, calculating no effects from exposures below a reference dose, and failing to account for background mercury exposures;<sup>24</sup>
- new studies that now support quantification of mercury effects on cardiovascular health;<sup>25</sup> and

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<sup>19</sup> 84 FR 2677.

<sup>20</sup> 84 FR 2677-2678.

<sup>21</sup> 84 FR 2678.

<sup>22</sup> 84 FR 2678.

<sup>23</sup> 84 FR 2678.

<sup>24</sup> Declaration of James E. Staudt, PH.D. CFA, Sept. 24, 2015, *White Stallion Energy Center, et. al., v. United States Environmental Protection Agency*, Case No. 12-1100 and consolidated cases (D.C. Cir.).

<sup>25</sup> See, e.g., Roman HA, Walsh TL, Coull BA, Dewailly É, Guallar E, Hattis D, Mariën K, Schwartz J, Stern AH, Virtanen JK, Rice G. [Evaluation of the cardiovascular effects of methylmercury exposures: current evidence supports development of a dose-response function for regulatory benefits analysis.](#) *Environmental Health Perspectives* 2011 May;119(5):607-14. doi: 10.1289/ehp.1003012. Epub 2011 Jan 10. Review.

- a new study finding that the monetized benefits of reducing mercury under MATS are \$1.1 billion per year economy-wide (as opposed to the EPA’s limited estimate of \$4-\$6 million per year).<sup>26</sup>

In addition, we now know that the EPA’s 2011 projections of costs were significantly overestimated. In the 2016 supplemental finding, the EPA referenced a study that found that the control technologies *actually deployed* by industry to comply with MATS were substantially less expensive and more effective than the EPA had projected, and that the actual annual compliance costs were approximately \$2 billion per year, less than one-quarter of the EPA’s 2011 projections.<sup>27</sup>

#### **POTENTIAL AREAS FOR COMMENT**

- Discuss the importance of basing decisions on credible, recent scientific studies and data, and explain why the EPA’s reliance on outdated information and refusal to supplement that information with new available credible peer-reviewed studies is not scientifically defensible.
- Explain why the incorporation of newly available information on public health impacts of air toxics and mercury, as well as the benefits of reducing these pollutants, will ensure the agency’s analysis is as accurate as possible and is likely to make a material difference in the EPA’s actions.
- Examine the appropriateness of the agency continuing to use outdated and inflated costs of compliance. Much of the implementation costs for MATS are now known and are much lower than the estimates the agency is still using.

#### **ISSUE 4. BROADER THREATS TO MATS AND OTHER PUBLIC HEALTH PROTECTIONS**

The EPA admits that it does not know what will happen to MATS if the agency now finds that regulation was not appropriate. The EPA proposes to find that reversing the appropriateness finding would not, by itself, affect MATS, given the Clean Air Act’s criteria for delisting under Section 112.<sup>28</sup> But the EPA also requests comments on whether, if the EPA finds that regulation was not appropriate, the EPA then either *could or must* revoke MATS, and the EPA offers several legal interpretations that would support such positions.<sup>29</sup> Regardless of where the EPA comes down on this question, the courts will ultimately determine what happens to MATS. If the EPA reverses the appropriateness finding without rescinding MATS, the EPA is virtually certain to be sued by parties demanding that the EPA remove the rule as well, having already reversed the prerequisite for it.

MATS has dramatically reduced toxic and fine particulate matter air pollution. The actual annual air toxics emissions from coal- and oil-fired power plants were 96 percent lower in 2017, compared to emissions before MATS was implemented.<sup>30</sup> The EPA has provided no information in its proposal of how losing MATS could affect emissions. While it is reasonable to expect that at least some existing emissions control equipment might be left in place, running the equipment incurs operating costs, so it is also reasonable to expect that some power plants could stop running their pollution controls, and their emissions will increase, perhaps substantially.

The public health implications of losing MATS reinforce the magnitude of the potential harm that could come from the EPA’s new proposed approach, and clearly illustrate the danger of this approach becoming a widely used practice in devaluing public health protections more broadly.

#### **POTENTIAL AREAS FOR COMMENT**

- Point out that this egregious proposal puts MATS in legal jeopardy and could lead to the EPA rescinding or a court overturning MATS, as well as possibly removing power plants from the list of sources to be regulated under Section

<sup>26</sup> 81 Fed. Reg. at 24441 (citing Giang, Amanda, and Noelle E. Selin, 2016. “Benefits of Mercury Controls for the United States.” *Proceedings of the National Academy of Sciences* 113 (2): 286-291 (<https://www.pnas.org/content/113/2/286>)).

<sup>27</sup> 81 FR 24432.

<sup>28</sup> 84 FR 2678-2679.

<sup>29</sup> 84 FR 2679.

<sup>30</sup> 84 FR 2689.

112 of the Clean Air Act. The agency itself acknowledges these risks by seeking comment on these specific issues in the proposal.

- Reinforce the dangers to public health that will result if, as a result of the reversal of the appropriateness finding, challenges to the MATS rule are successful, and companies cease using or remove their control equipment, causing an increase in emissions of mercury, other toxic pollutants, fine particulate matter, and ozone precursors.
- The EPA is required to make available to the public all of the available information that the public would need to comment on a proposed rule. Explain why the EPA's failure to analyze the pollution and public health effects of potentially losing the MATS rule prevents you from being able to meaningfully comment on all aspects of the EPA's proposal and its potential effects.
- Given this proposal's implications for the legal future of MATS, consider other areas of public health protections where the use of this narrowly constrained form of cost-benefit analysis could have significant consequences.

## **About This Guide**

This public comment guide was produced by the Union of Concerned Scientists in consultation with Alexandra Teitz. Released March 14, 2019. Available online at [www.ucsusa.org/MercuryCommentGuide](http://www.ucsusa.org/MercuryCommentGuide).