



## **Office of the General Counsel**

3211 FOURTH STREET NE • WASHINGTON DC 20017-1194 • 202-541-3300 • FAX 202-541-3337

March 18, 2019

### **Submitted Electronically**

Environmental Protection Agency  
EPA Docket Center (EPA/DC)  
Docket ID No. EPA-HQ-OAR-2018-0794  
Mail Code 28221T  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

### **Re: Rulemaking to Revise Supplemental Finding and Residual Risk and Technology Review of the National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-Fired Electric Utility Steam Generating Units - Docket ID No. EPA-HQ-OAR2018-0794**

Dear Sir or Madam:

On behalf of the U.S. Conference of Catholic Bishops (USCCB), we submit the following comments on the proposed revision of the Supplemental Finding and Residual Risk and Technology Review of the National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-Fired Electric Utility Steam Generating Units (EGUs). 84 Fed. Reg. 2670 (Feb. 7, 2019).

The proposed rule concerns the Mercury and Air Toxics Standards (MATS), which currently provide important protections for human and environmental health. These standards align strongly with key principles of Catholic social teaching, “which calls us to care for God’s creation and protect the common good and the life and dignity of human persons, especially the poor and vulnerable, from conception until natural death.”<sup>1</sup> It was on this basis that the USCCB supported the standards when they were first proposed in 2011, for “even in small amounts these harmful air pollutants in the environment are linked to health problems, particularly in children before and after birth, the poor and the elderly.”<sup>2</sup>

In a similar way, the USCCB is concerned about the proposed rule, which determines: “After considering the cost of compliance relative to the [hazardous air pollutant (HAP)] benefits of regulation, the EPA proposes to find that it is not ‘appropriate and necessary’ to regulate HAP emissions from coal- and oil-fired EGUs.” 84 Fed. Reg. at 2670. While the rule does not propose

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<sup>1</sup> See <http://www.usccb.org/about/general-counsel/rulemaking/upload/comments-to-epa-on-mercury-2011-06.pdf>.

<sup>2</sup> *Ibid.*

to immediately remove EGUs from the list of regulated sources under Clean Air Act (CAA) section 112(d), the above determination greatly weakens the legal justification for the rule and could ultimately cause great harm to human health and the environment. Therefore, we believe it is, in fact, appropriate and necessary to regulate HAP emissions from these sources.

The Agency also seeks comment “on whether the EPA has the authority or obligation to delist EGUs from CAA section 112(c) and rescind (or to rescind without delisting) the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Coal- and Oil-Fired EGUs, commonly known as the Mercury and Air Toxics Standards (MATS).” 84 Fed. Reg. at 2670. Given the clear health benefits of MATS and the strong evidence to support the consideration of “co-benefits” as explained further below, we believe the EPA should uphold this regulation and continue regulating EGUs.

At a more fundamental level, the proposal is indicative of a larger failure to properly value human and environmental health, a critical moral consideration. Catholic social doctrine affirms that “environmental protection cannot be assured solely on the basis of financial calculations of costs and benefits.”<sup>3</sup> A human life—at any stage of development—has inestimable value because all persons are created in the image of God. Given the threat that these particular pollutants pose to unborn children, some of the most vulnerable among us, these principles must be upheld with a special importance.

The environment “cannot be regarded as something separate from ourselves.”<sup>4</sup> A true accounting of costs and benefits can only be achieved when “the economic and social costs of using up shared environmental resources are recognized with transparency and fully borne by those who incur them, not by other peoples or future generations.”<sup>5</sup> These costs and benefits must be considered comprehensively. As Pope Francis has explained, “the fragmentation of knowledge and the isolation of bits of information can actually become a form of ignorance, unless they are integrated into a broader vision of reality.”<sup>6</sup>

In short, by failing to take into account the full range of costs, especially those imposed on the most vulnerable, the proposed rule fails to respect the life and dignity of the human person.

### **Health Benefits of Mercury and Air Toxics Standards**

To establish the importance of the MATS, and to explain our concern about any proposal that could weaken these standards, it is useful first to outline the health benefits of these important protections.

Mercury (Hg) is a toxic metal emitted from power plants that can adversely affect human health when inhaled or ingested. It is “a persistent, bioaccumulative pollutant that causes serious neurotoxic effects.” 76 Fed. Reg. at 24994. After it is emitted from power plants, it is

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<sup>3</sup> *Compendium of the Social Doctrine of the Church*, no. 470.

<sup>4</sup> *Laudato Si'*, no. 139.

<sup>5</sup> *Caritas in Veritate*, no. 50.

<sup>6</sup> *Laudato Si'*, no. 138.

“transformed into a more toxic form, methylmercury (MeHg).” 76 Fed. Reg. at 24977. It is well-documented that children are the most vulnerable population to suffer from mercury pollution. In fact, “[t]he prenatal period of development has been established to be the most sensitive lifestage to the neurodevelopmental effects of MeHg,” which means that unborn children experience the greatest risk of suffering. 76 Fed. Reg. at 25018. The EPA estimated that in 2016 there were over 240,000 prenatally exposed children affected by mercury exposure.<sup>7</sup>

People exposed to mercury are “at increased risk of poor performance on neurobehavioral tests, such as those measuring attention, fine motor function, language skills, visual-spatial abilities, and verbal memory.” 76 Fed. Reg. at 25019. Exposures to mercury at a young age can “affect the individual into adulthood, by affecting learning and potential future earnings, and contributing to behavioral problems.” 76 Fed. Reg. at 25018. These health risks are also “amplified for children in minority and low income communities who subsist on locally-caught fish.” *Id.* Thus, the regulation of mercury plays an important role in promoting environmental justice.

Beyond mercury, there are numerous other hazardous air pollutants (HAPs) emitted from power plants that affect human health and are regulated by the MATS. These include “arsenic (As), nickel (Ni), cadmium (Cd), and chromium (Cr), which can cause cancer.” 76 Fed. Reg. at 24978. Additionally, power plants are known to emit other toxic air pollutants such as lead, selenium, hydrogen chloride, and hydrogen fluoride which that have other serious health effects, including “chronic health disorders (e.g., irritation of the lung, skin, and mucus membranes, effects on the central nervous system, and damage to the kidneys), and acute health disorders (e.g., lung irritation and congestion, alimentary effects such as nausea and vomiting, and effects on the kidney and central nervous system).” *Id.*

In addition to benefits associated directly with reductions in emissions of mercury and other HAPs, the MATS also provide ancillary co-benefits from reductions in particulate matter (PM), sulfur dioxide (SO<sub>2</sub>), carbon dioxide (CO<sub>2</sub>), and other pollutants. These co-benefits result from the fact that the technologies employed to reduce mercury and other HAP emissions “are also often effective at reducing significantly the emissions of other conventional pollutants such as SO<sub>2</sub> and PM, thereby conferring even greater health co-benefits.” 76 Fed. Reg. at 24978.

There are significant negative health effects associated with PM emissions, including “premature mortality for adults, chronic and acute bronchitis, childhood asthma attacks, and hospitalizations for other respiratory and cardiovascular diseases.”<sup>8</sup> The EPA has estimated that the MATS rule in particular has averted up to 11,000 premature deaths, 4,700 nonfatal heart attacks, 2,600 hospitalizations for respiratory and cardiovascular diseases, and 540,000 lost work days.<sup>9</sup>

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<sup>7</sup> Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards, Environmental Protection Agency (2011), 4-49 [hereinafter “RIA”].

<sup>8</sup> RIA, 7-33.

<sup>9</sup> *Ibid.*, ES-3.

Finally, it is important to note that EPA has not fully quantified additional health benefits from the MATS:

“EPA recognizes that there are additional health and environmental effects for which we have insufficient information to quantify risks, or which have a higher degree of uncertainty regarding the weight of evidence for causality. While not quantified in our analysis, the potential for additional hazards to public health and the environment beyond what we have analyzed provides additional support for regulation under section 112 that will assure reductions of all HAP and the risks, quantified or unquantified, that they pose.”

76 Fed. Reg. at 24999. As the EPA states, the presence of additional unquantifiable health risks provides additional support for the importance of this regulation for human and environmental health.

### **Support for Inclusion of Co-Benefits in Cost-Benefit Analysis**

While the above picture of the health benefits of the MATS rule provides substantial support on its own to find the regulation of mercury and other HAPs emitted from EGUs to be appropriate and necessary, the rulemaking analysis should also include “co-benefits.” The proposed rule questions the appropriateness of including co-benefits in the cost-benefit analysis during the rulemaking process. Inclusion of these co-benefits is not merely appropriate, but necessary for several reasons.

The consideration of co-benefits in rulemaking is a long-standing and widely-accepted practice among federal agencies. In guidance addressed to the heads of executive agencies, the White House Office of Management and Budget explicitly instructed in 2003 that rulemaking *should* consider co-benefits: “Your analysis should look beyond the direct benefits and direct costs of your rulemaking and consider any important ancillary benefits and countervailing risks. An ancillary benefit is a favorable impact of the rule that is typically unrelated or secondary to the statutory purpose of the rulemaking”<sup>10</sup>

This guidance is re-affirmed in the legislative history of the 1990 Clean Air Act Amendments, which made significant changes regarding the regulation of HAPs and provides the statutory basis for the current MATS. As the EPA has previously noted, “the Senate report for the 1990 CAA amendments states: ‘When establishing technology-based [MACT] standards . . . the Administrator may consider the benefits which result from control of air pollutants that are not listed but the emissions of which are, nevertheless, reduced by control technologies or practices necessary to meet the prescribed limitation.’”<sup>11</sup> Thus, the consideration of co-benefits when establishing standards for mercury and other HAPs aligns with Congress’ legislative intent.

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<sup>10</sup> Office of Management and Budget. 2003. Circular A-4: Regulatory Analysis, pg. 26. Washington, DC. <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf>.

<sup>11</sup> Legal Memorandum Accompanying the Proposed Supplemental Finding that it is Appropriate and Necessary to Regulate Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units (EGUs), Environmental Protection Agency (2015). Online: <https://www.regulations.gov/document?D=EPA-HQ-OAR-2009-0234-20519> , Footnote 28 [hereinafter “Legal Memorandum”].

Even if it were determined that the EPA should not consider co-benefits in this process, the fact that it is costly to regulate does not alter the conclusion that it is appropriate and necessary to do so. This conclusion derives from the language of the statute as interpreted by the relevant agency. As the EPA has previously stated: “The statute on its face is designed to protect the most exposed and most sensitive populations from HAP emissions . . . The most exposed and most sensitive members of a population are almost by definition a small portion of the total population and for that reason quantifiable HAP specific benefits are difficult to estimate and potentially small in dollar terms compared to total cost.”<sup>12</sup>

Since the co-benefits of MATS concern pollutants such as fine particulate matter that are already regulated under the National Ambient Air Quality Standards (NAAQS), some have argued that considering these co-benefits amount to “double counting.” This, however, reflects a misunderstanding of how these benefits are calculated. The EPA calculates the benefits of emissions reductions after a “baseline” scenario which assumes compliance with existing regulations. In this sense, any co-benefits resulting from particulate matter reductions can be attributed to the MATS rule in particular. This practice is further explained by the EPA in a recent analysis of the NAAQS for particulate matter:

“It is important to emphasize that the EPA does not ‘double count’ the costs or the benefits of our rules. Emission reductions achieved under rules that require specific actions from sources—such as MATS—are in the baseline of this NAAQS analysis, as are emission reductions needed to meet the current NAAQS. For this reason, the cost and benefits estimates provided in this RIA and all other NAAQS RIAs should not be added to the estimates for implementation rules.”<sup>13</sup>

Along the same lines, “[a] large fraction of the PM<sub>2.5</sub>-related benefits associated with this rule occur below the level of the National Ambient Air Quality Standard (NAAQS) for annual PM<sub>2.5</sub>.”<sup>14</sup> In other words, the benefits related to PM reductions from the MATS rule occur at levels beyond NAAQS compliance.

Because co-benefits are not already counted, the agency should consider them in the MATS rulemaking, and in rulemaking for environmental regulations more broadly, because they reflect a broader perspective on the far-reaching impacts of a particular regulatory action.

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<sup>12</sup> Legal Memorandum, 23.

<sup>13</sup> Regulatory Impact Analysis for the Final Revisions to the National Ambient Air Quality Standards for Particulate Matter, Environmental Protection Agency (2012), Online: <https://www3.epa.gov/ttnecas1/regdata/RIAs/finalria.pdf> ES-18.

<sup>14</sup> RIA, ES-4.

## Conclusion

For the reasons stated here, we ask that the Agency give due consideration to co-benefits when evaluating whether it is appropriate and necessary to regulate mercury and other air toxic pollutants. We urge the Agency to reverse its determination that it is not appropriate and necessary to regulate these emissions from coal- and oil-fired power plants, because that determination fails to consider all benefits of regulation to human and environmental health and justice, and so fails sufficiently to respect the dignity of the human person.

Respectfully submitted,

A handwritten signature in blue ink that reads "Anthony R. Picarello, Jr." in a cursive script.

Anthony R. Picarello, Jr.  
Associate General Secretary and General Counsel  
United States Conference of Catholic Bishops