

## The Testimony of The Rev. Mitchell C. Hescox

March 18, 2019

### Proposed Revised Supplemental Finding for the Mercury and Air Toxics Standards and Results of the Residual Risk and Technology Review

Agency/Docket Numbers: EPA-HQ-OAR-2018-0794 FRL-9988-93-OAR

RIN: 2060-AT99 Document Number: 2019-00936

Good Morning. I am the Rev. Mitchell C. Hescox, President/C.E.O. of The Evangelical Environmental Network, New Freedom, PA. As of this morning, we have gathered over 140,000 comments from pro-life Christians across America who oppose any altering of the Mercury and Air Toxics Standard.

As pro-life Christians, we know that every human life is sacred; that each person conceived is of equal and innate value and dignity, and that all human life is worthy of protection. We will, without halting, do all we can to ensure all God's children, both born and unborn, are protected from mercury poisoning.

Before the Mercury Rule became law, 1-in-6 children in the U.S. were born with levels of mercury in their blood high enough to cause irreversible brain damage, as mercury is a highly damaging neurotoxin that is transferable if ingested by a pregnant woman.<sup>1</sup> The success of the current MATS standard has contributed significantly to that number being cut in half.<sup>2</sup> The IQ-related benefits of mercury reduction alone exceed \$4.8 billion annually<sup>3</sup> and compliance with MATS has been achieved for a fraction the original estimated cost.<sup>4</sup>

*Whoever walks in integrity walks securely, but whoever takes crooked paths will be found out. --*

Proverbs 10:9 (NIV)

Unfortunately, we live in a new world of alternative facts. These alternatives in view of the attempt to revise MATS make this hearing and the revised MATS rulemaking process invalid, if not illegal. As point of order, the EPA Inspector General should review the below comments that depict at best misstatements or direct attempts at deception by current EPA leadership.

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<sup>1</sup> See Kathryn R. Mahaffey et al., "Blood Organic Mercury and Dietary Mercury Intake: National Health and Nutrition Examination Survey, 1999 and 2000," *Environmental Health Perspectives*, 112, #5 (April 2004): <http://ehp.niehs.nih.gov/members/2003/6587/6587.html>

<sup>2</sup> U.S. Environmental Protection Agency. 2013. EPA-823-R-13-002.

<sup>3</sup> Grandjean, P. and Bellanger, M. 2017. [Calculation of the disease burden associated with environmental chemical exposures: application of toxicological in health economic estimation](#). 16:123. DOI: 10.1186/s12940-017-0340-3.

<sup>4</sup> Declaration of James E. Staudt, Ph.D. CFA, September 24, 2015, White Stallion Energy Center, et al., v. United States Environmental Protection Agency. Case No. 12-1100 and Summary plus cases. Exhibit 1 Declaration of James E. Staudt. Ph.D.. CFA. U.S. Court of Appeals for the District of

On September 26, 2018, at the Clean Air Act Advisory Committee Meeting, Mr. William Wehrum, Assistant Administrator of EPA's Office of Air and Radiation, stated the entire MATS review was being undertaken to satisfy the Supreme Court. Mr. Andrew Wheeler, on December 4, 2018, then Acting EPA Administrator, during a meeting of faith leaders at EPA Headquarters, stated much the same thing as I presented him with a letter from over 100 evangelical leaders protesting the assumed MATS revision (letter attached). (This same respond was reported in the New Times and elsewhere.)<sup>5</sup>

The U.S. Court of Appeals for the D.C. Circuit upheld MATS in its entirety, including the “appropriate and necessary” finding.<sup>6</sup> In *Michigan v. EPA*, 135 S. Ct. 2699 (2015), the Supreme Court ruled that EPA had erred in not considering costs in making the “appropriate and necessary” finding.” Writing for the majority, Justice Scalia stated that the Court was not requiring a formal cost-benefit analysis. Instead, the majority expressly left it to the EPA to determine how to take account of costs and make the comparison to benefits. Then the DC Circuit court, without staying MATS, remanded the “approximate and necessary” finding to the EPA for reconsideration of the costs. The EPA new cost accounting was issued in a supplemental finding in April 2016.<sup>7</sup> In keeping with the Clean Act Air as revised, EPA in promulgating the MATS rule followed the law as written by Congress and interpreted by the Courts – no further action was required.

It was this EPA under the leadership of now Administrator Wheeler and Assistant Administrator for Air, William Wehrum who withdrew the April 2016 Supplemental Finding on February 9, 2019<sup>8</sup>. This MATS revision is categorically not to fulfill a request from the Court, which had been fulfilled three years earlier.

This revised proposal seeks to accomplish a major goal of current EPA leadership, to codify a flawed legal interpretation that forces EPA to be blind to what are called “co-benefits.” Why else would they not be fully included in this new proposal. Instead, it is offering a legal interpretation of the Clean Air Act that runs contrary to design and intent of the Act in order to avoid justifying the costs of air pollution standards under the method the EPA has been using for decades - even if those costs have already been accrued and will be paid off by you and me for years to come. The Office of Information and Regulatory Affairs (OIRA) guidance to federal agencies issued by the Bush administration in 2003 specifically stated: “Your analysis should look beyond the direct benefits and direct costs of your rule-making and consider any important ancillary benefits and countervailing risks,”<sup>9</sup> which is exactly what EPA did when it considered the full health benefits of MATS control equipment in 2011.

MATS has worked, is saving lives, and is cost effective. The Mercury and Air Toxics Standard needs to be left as is. Every parent & grandparent wants a quality life for their children & grandchildren. Allowing MATS to be changed or rolled back is simply morally wrong.

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<sup>5</sup> <https://www.nytimes.com/2018/12/28/climate/mercury-coal-pollution-regulations.html>

<sup>6</sup> *White Stallion Energy Ctr., LLC v. EPA*, 748 F.3d 1222 (D.C. Cir. 2014), *rev'd sub nom. Michigan v. EPA*, 135 S. Ct. 2699 (2015).

<sup>7</sup> Supplemental Finding That It Is Appropriate and Necessary To Regulate Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units, 81 Fed. Reg. 24420 (April 25, 2016).

<sup>8</sup> 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).

<sup>9</sup> OMB Circular A-4, Section E, subsection headed “Ancillary Benefits and Countervailing Risks,” September 17, 2003

*The thief comes only to steal and kill and destroy. I came that they may have life, and have it abundantly.* -John 10:10 (NRSV)

It's past time for EPA to once again walk in integrity and live up to its mission, "**To protect human health and the environment**" and put our children's health before special interests and alternative facts.