

Dear Ms. Benish:

I appreciate this opportunity to submit comments on the proposed Mercury and Air Toxics Standards (MATS) for power plants. Attached please find a slightly revised version of my oral comments that I made to the EPA at the May 9, 2023 public hearing.

Sincerely,

Daren Bakst
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Oral Statement at the “Public Hearing on EPA's Proposal to Strengthen the Mercury and Air Toxics Standards (MATS) Rule”

May 9, 2023

My name is Daren Bakst and I’m Deputy Director of the Center for Energy and Environment at the Competitive Enterprise Institute.

I appreciate this opportunity to provide oral comments today on the proposed MATS rule. It’s useful to take a look at the 2012 MATS rule that was struck down by the Supreme Court in

*Michigan v. EPA.*¹

For that rule, the EPA didn’t think it was necessary to consider benefits in comparison to costs. The direct benefits were by the agency’s own estimates only \$4-\$6 million dollars a year. That’s in contrast to the costs of \$9.6 billion a year. As the Supreme Court said, the costs were as much as 1,600-2,400 times greater than the benefits.

And as the court succinctly explained, “[n]o regulation is ‘appropriate’ if it does significantly more harm than good.”²

Now with this new proposed rule, the EPA doesn’t even attempt to quantify direct benefits.

The agency has proposed a rule pointing to Section 112 of the Clean Air Act,³ which deals with hazardous air pollutants (HAPs), for its statutory authority and then can’t provide a HAPs-related justification for the rule.

So what are the benefits? As the agency has done before, it's solely using alleged ancillary benefits, such as PM_{2.5} ancillary benefits, to justify a rule.

Why is this a problem?

This is an end-run around the law. Congress passed Section 112 to deal with HAPs. The EPA is using Section 112 to deal with non-HAP issues.

For the current proposed rule, the agency hasn't even identified a single dollar of benefits from reducing mercury emissions.

Congress is often blamed for delegating too much power to agencies. But in this instance, Congress developed a specific statutory scheme to deal with HAPs, yet the agency is using that scheme to deal with unrelated issues, such as criteria pollutants. And on top of that, Congress

developed a specific statutory scheme to deal with criteria pollutants and the EPA is ignoring that as well.

The EPA should be expected to justify why it is issuing a rule based on the statutory purpose of the rule. The EPA has failed to do so with this proposed rule, and it hasn't even tried to do so.

The proposed rule is many things. But it isn't a HAP rule. It isn't reasonable. And it isn't appropriate and necessary.

If it is anything, it is arbitrary and capricious. For this reason, I urge the agency to withdraw the rule.