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New E.P.A. Plan Could Free Coal Plants to Release More Mercury Into the Air

By Lisa Friedman

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WASHINGTON — The Trump administration proposed on Friday major changes to the way the federal government calculates the benefits, in human health and safety, of restricting mercury emissions from coal-burning power plants.

In the proposal, the Environmental Protection Agency issued a finding declaring that federal rules imposed on mercury by the Obama administration are too costly to justify.

It drastically changed the formula the government uses in its required cost-benefit analysis of the regulation by taking into account only certain effects that can be measured in dollars, while ignoring or playing down other health benefits.

The result could set a precedent reaching far beyond mercury rules. “It will make it much more difficult for the government to justify environmental regulations in many cases,” said Robert N. Stavins, a professor of environmental economics at Harvard University.

While the proposal technically leaves the mercury restrictions in place, by revising the underlying justifications for them the administration has opened the door for coal mining companies, which have long opposed the rules, to challenge them in court. The rules, issued in 2011, were the first to restrict some of the most hazardous pollutants emitted by coal plants and are considered one of former President Barack Obama’s signature environmental achievements.

In announcing the proposed rule, the E.P.A. said that the costs to industry in installing pollution controls ranged from $7.4 billion to $9.6 billion annually, while the health benefits of cutting mercury ranged from $4 million to $6 million annually. In other words, it said that the costs of the rule outweigh the benefits.

By contrast, the Obama administration in its calculations had cited an additional $80 billion in health benefits a year.

Among other things, the Obama administration calculations estimated that the rules would prevent 11,000 premature deaths not from curbing mercury itself, but from what is known as a co-benefit, the reduction in particulate matter linked to heart and lung disease that also occur when a plant reduces its mercury emissions. The Trump administration's revised procedures would essentially ignore co-benefits and count only the direct potential benefits of cutting mercury.

In a statement, the E.P.A. said the cost of cutting mercury from power plants "dwarfs" the monetary benefits and argued that the current limits can no longer be justified as "appropriate and necessary" under the law.

The proposal, which the acting E.P.A. administrator, Andrew Wheeler, signed on Thursday, is expected to appear in the federal register in the coming weeks. The public will have 60 days to comment on it before a final rule is issued.

During his first year in office, President Trump signed executive orders declaring his intention to dismantle environmental rules. As his second year comes to a close, agencies have set the wheels in motion to weaken or repeal nearly a dozen restrictions on air and water pollution or planet-warming emissions of carbon dioxide, including a plan to reduce the number of waterways that are protected from pollutants and another making it easier for utilities to build new coal plants.

Reworking the mercury rule, which the E.P.A. considers the priciest clean-air regulation ever put forth in terms of annual cost to industry, would represent a victory for the coal industry and in particular for Robert E. Murray, an important former client of Mr. Wheeler's from his days as a lobbyist. Mr. Murray, the chief executive of Murray Energy Corporation, personally requested the rollback of the mercury rule soon after Mr. Trump took office.

In a statement on Friday, Hal Quinn, president of the National Mining Association, praised the new rule, calling the mercury limits "perhaps the largest regulatory accounting fraud perpetrated on American consumers."

Yet the E.P.A. move also had its detractors within the industry. The vast majority of utility companies have said the proposed changes are now of little benefit to them, because they have already spent the billions of dollars needed to come into compliance, and have urged the Trump administration to leave the mercury measure in place.

Robert E. Murray, the chief executive of Murray Energy.
Joshua Roberts/Reuters

The original rule required power plants to reduce emissions of mercury and other toxic pollutants by more than 90 percent over five years. Mercury is a neurotoxin that can damage the brain and nervous system in young children, leading to lower I.Q. and impaired motor skills. The Obama administration estimated that the measure would prevent 4,700 heart attacks and 130,000 asthma attacks as well as 11,000 premature deaths by also eliminating fine particulate matter linked to those ailments.

Estimates like that, however, are at the heart of the current dispute. Business groups like the Chamber of Commerce and others argue the earlier numbers inflated the benefits of the rule, underestimated costs and improperly justified cutting mercury by relying largely on the benefits of reduced particulate matter.

“For a lot of folks, this was just another example of Obama regulatory overreach,” said Jeffrey R. Holmstead, a partner at the law firm Bracewell who served as E.P.A. air chief under the second President George Bush.

The Obama administration itself had broadly accepted that it is difficult to put a specific dollar-figure on some health benefits, for instance, avoiding lost I.Q. points in infants or other fetal harm that has been linked to pregnant women eating mercury-contaminated fish. For that reason, the original rule argued against using a strict cost-benefit analysis to decide whether the regulation should be imposed, said Joseph Goffman, the executive director of Harvard Law School’s Environmental and Energy Law Program.

The new proposal fundamentally changes that approach. It recognizes that difficult-to-quantify benefits exist, but said the administrator “has concluded that the identification of these benefits is not sufficient, in light of the gross imbalance of monetized costs.”

Ann Weeks, senior counsel for the Clean Air Task Force, an environmental group, criticized the rule as “bean counting,” and said, “This is not tax law. This is public health benefits. It’s a very different calculus.”

Environmental activists said they intend to challenge the new finding in court. If it survives those challenges, observers say it would set a precedent that could make it tougher for the government to justify any number of future regulations.

“There is a likelihood that this rule-making will be the administration’s flagship effort to permanently change the way the federal government considers health benefits,” said Janet McCabe, who ran the E.P.A.’s air office under Mr. Obama.

Mr. Wheeler, in a recent interview, dismissed the idea that utilities, having spent billions of dollars on pollution controls, would stop using them. “It’s not like people are going to start taking off their equipment and start putting mercury into the atmosphere,” he said.

He described the E.P.A.’s action as simply a response to a Supreme Court’s 2015 decision that said the Obama administration had failed to properly consider economic costs when they imposed the mercury rule and ordered a new cost-benefit analysis. The Obama administration complied and the rule was reinstated, but the coal industry again challenged the rule.

Mr. Wheeler described the E.P.A.’s plan to reopen the mercury rule as an answer to the court and said he was not concerned by either the utility industry’s disinterest in seeing the rule reworked or the views of his former client, Mr. Murray.

“We don’t answer to the utility industry,” Mr. Wheeler said. “We don’t answer to the coal industry. We answer to Congress and the courts, and the Supreme Court told us we didn’t get it right. We have to redo it. I’m going to follow the law, and I’m going to follow the Supreme Court.”

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