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Opening statement
DPC Committee Hearing on the Mercury Rule
Tuesday, April 19, 2005

Thank you, Mr. Chairman, for calling this hearing. This is a hearing that we should be holding in the Environment and Public Works Committee, but unfortunately our request for attention to this issue has fallen on deaf ears.

Last March 15, the EPA released its mercury rule, which has quickly become one of the most suspect regulations ever produced by the Agency. In particular, since March 15, the rule has been questioned by both the GAO and the Inspector General of EPA. First, the GAO's report, requested by many of us on the panel, demonstrated that the EPA's approach did not evaluate the health benefits of the rule before finalizing it.

Now if it did not look at the health benefits, how did the EPA determine the proper reduction level, you might ask? Well, the EPA Inspector General issued its report that laid bare the intent behind the rule. The IG found that the political leadership of EPA did not permit the evaluation of what level of emissions reductions were technologically achievable -- as required by law -- but rather picked a target level of emissions and then developed the findings to support it. Not surprisingly, the Agency then picked a target level equal to the mercury reductions required by the President's inappropriately-named Clear Skies proposal. Clearly, the EPA was on message, even if it did not comport with the science.

But there was science, Mr. Chairman. Just in the last month, it was revealed that the EPA ignored a study submitted by the Harvard Center for Risk Analysis that demonstrated that the Agency had grossly underestimated the health benefits of mercury control. EPA claimed the study was submitted too late, but the record does not support it. And this is not a study from some left-leaning group; the Harvard Group for Risk Analysis was formerly led by John Graham, the man who oversees the regulations in the White House.

Mercury is a neurotoxin. It undermines the development of our children. And the EPA has estimated that 8% of the women of child-bearing age in this country have mercury levels that would put a fetus at risk for developmental delays. This is not a situation our nation should be forced to accept.

The argument for delaying the standard is that technologies do not presently exist for all coal types, but this argument also rings false. Vendors tell my staff that they are now bidding on contracts to meet the State of Massachusetts' mandate of 85% control now – for bituminous and sub-bituminous coals. Vendors commented that at least 50% control is achievable now for all plants, and that 70% is achievable system-wide. Those levels of reductions are far in excess of the Administration proposal. The rule cannot pass muster, and it will fall in court.

Mr. Chairman, the Clean Air Act was put in place to prevent risks from toxic pollutants such as mercury, and its provisions should have triggered strict controls against this neurotoxin. It appears that politics got in the way. But this rule is not defensible, Mr.

Chairman, and I hope that the sunlight we begin to shine on it today will convince the Administration to reverse course on this rule in the near future.