



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Mercury and Toxic Standards for Power Plants: U.S. Environmental Protection Agency Final Rule Reaffirming Appropriate and Necessary Supplemental Finding

02/21/2023

The United States Environmental Protection Agency (“EPA”) published on February 15th a final rule reaffirming its decision that it remains appropriate and necessary to regulate hazardous air pollutants (“HAP”) from power plants after considering costs.

The HAPs that would be regulated include mercury.

The EPA action revokes a 2020 finding issued during the Trump Administration that it was not appropriate and necessary to regulate coal- and oil-fired power plants under Section 112 of the Clean Air Act. See 85 Fed. Reg. 31286 (May 22, 2020).

The Obama Administration had determined that it was appropriate and necessary to regulate HAP emissions from power plants in 2016. See 81 Fed. Reg. 24420 (April 25, 2016). The referenced 2016 finding was in response to a 2015 United States Supreme Court decision in which it was held that EPA had erred by not considering costs when taking the referenced action. See *Michigan v. EPA*.

In reversing course on the Trump Administration’s decision, EPA states that based on a reevaluation of the administrative record and statute, along with public comments, it concluded that the framework applied during the 2020 finding:

... was ill-suited to assessing and comparing the full range of advantages and disadvantages, and after applying a more suitable framework, the 2020 determination is revoked.

Further, EPA states it is reaffirming that it is appropriate and necessary to regulate HAP emissions from coal- and oil-fired power plants after:

... weighing the volume of pollution that would be reduced through regulation, the public health risks and harms posed by these emissions, the impacts of this pollution on particularly exposed and sensitive populations, the availability of effective controls, and the costs of reducing this harmful pollution, including the effects of control costs on the electricity generation industry and its ability to provide reliable and affordable electricity.

A link to the final rule can be found [here](#).