

As Certified by  
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Executive Director

## REGARDING A MERCURY EMISSIONS RULE

WHEREAS, mercury is a known potent neurotoxin, which is particularly damaging to the development of a human fetus, infant and young child. Children of women exposed to relatively high levels of methylmercury during pregnancy have exhibited a variety of abnormalities, including delayed onset of walking and talking, cerebral palsy and reduced neurological test scores. Children exposed to far lower levels of methylmercury in the womb have exhibited delays and deficits in learning ability. In addition, children exposed after birth potentially are more sensitive to the toxic effects of methylmercury than adults, because their nervous systems are still developing; and

WHEREAS, mercury entering water can be transformed into methylmercury, a highly toxic form of mercury that *bioaccumulates* in fish and other animals that eat fish. When a substance bioaccumulates, its concentration increases as it moves through the food chain. Mercury is known to bioaccumulate in the environment thereby creating a continuing and unacceptable public health risk; and

WHEREAS, releases of mercury to the environment have contaminated fresh and saltwater fisheries to such an extent that forty-five states and one U.S. territory have issued health advisories warning of the dangers of consuming fish containing elevated concentrations of mercury; and

WHEREAS, coal-burning power plants represent the largest uncontrolled source of anthropogenic mercury emissions in the United States; and

WHEREAS, the EPA issued a notice of regulatory finding on December 20, 2000 (65 FR 79825) in which EPA stated conclusively:

- Electric utility steam generating units are the largest anthropogenic source of mercury in the United States,
- Mercury emissions are transported through the atmosphere and eventually deposit onto land or water bodies both locally near the source or at long distances (e.g., hundreds or thousands of miles away),
- Data indicate that mercury can be effectively removed from the exhaust gas stream by using oxidizing agents or sorbents injected into the gas stream and that multi-pollutant controls may greatly reduce mercury control costs, therefore
- Regulation of coal-and-oil fired electric utility steam generating units for hazardous air pollutants, including mercury, is necessary and appropriate; and

WHEREAS, under the Federal Advisory Committee Act EPA convened the Electric Steam Generating Units Maximum Achievable Control Technology (MACT) Rulemaking Working Group in August 2001. This working group was comprised of stakeholders representing state governments, industry and environmental organizations, who ultimately offered EPA a range of options for the development of a MACT standard for electric steam generating units as set forth in the "Recommendations for the Utility Air Toxics MACT Final Working Group Report" of October 2002; including:

- Strategies that would regulate mercury using MACT standards developed under section 112 of the federal Clean Air Act (Act),
- Yield mercury emission reductions ranging from 40 to 96% by 2007, and

- Depending on the sub-categorization of affected units, would reduce mercury emissions by 20 to 46 tons per year; and

WHEREAS, EPA, using limited input from the stakeholder process, published a proposed rule on January 30, 2004 and a supplemental notice of proposed rulemaking on March 16, 2004 which proposed two alternative regulatory approaches:

- The adoption of a MACT standard under section 112 of the Act that would require a 29% reduction mercury emissions by 2007, or
- The adoption of new source performance standards (NSPS) under section 111 of the Act to limit only mercury emissions from new and existing electric utility steam generating units. This approach would establish a two-phased market based approach that would provide for the use of emissions trading to meet targeted reductions with the goal of limiting mercury emissions by 69% by 2018, or later; and

WHEREAS, the Environmental Council of States (ECOS) supports decisive national action to substantially reduce, and where possible eliminate, mercury sources and has further articulated its policy positions on mercury on the following five occasions through:

- ECOS Resolution No. 96-2, United States Mercury Stockpile Sales,
- ECOS Resolution No. 01-1, Need for Articulation of a National Vision for Mercury,
- ECOS Resolution No. 01-2, On Multi-Pollutant Strategies for the Control of Air Pollution,
- ECOS Resolution No. 01-3, Mercury Retirement and Stockpiling, and
- ECOS Resolution No. 01-14, Need for Better approach than TMDLs for Addressing Fish Consumption Advisories due to Atmospheric Deposition of Mercury; and

NOW, THEREFORE, BE IT RESOLVED THAT:

ECOS expresses its disappointment that EPA has not represented the views of its working group stakeholders in the rule consultation process.

ECOS is concerned that neither of EPA's proposed approaches is adequate to protect the public health of sensitive populations from the dangers posed by mercury in the environment, nor are they consistent with requirements of the Act nor do they fully take into account the current status of available technology to control mercury emissions from power plants.

ECOS urges EPA to modify its existing proposal to require the most aggressive mercury reductions achievable, in as early a timeframe possible in concert with the earliest of other air pollutant emission reduction schedules, and in such a way that would preclude the creation of localized, adverse health or environmental impacts.