

Testimony of Senator Russell D. Feingold  
Democratic Policy Committee Hearing on Mercury Emissions Policy  
April 19, 2005

Mr. Chairman, mercury contamination is a critical environmental health issue. I commend you for hosting this important hearing. I have serious reservations about the Environmental Protection Agency's Utility Mercury Reductions Rule, which was finalized last month. As currently drafted, the rule is inadequate to protect citizens from the hazards of mercury emissions. On April 1, 2004, I joined nearly half of the Senate in requesting that the Administration propose a new mercury rule for public comment so that a legally defensible final rule to reduce utility air toxics emissions at each electric generating unit could be promulgated by March 15, 2005. Unfortunately, the current rule falls far short of this goal.

Last year, over 700,000 Americans commented on the proposed mercury rulemaking. The need for stringent mercury controls has never been more urgent, as EPA's own scientists have discovered that twice as many American children are born at risk from mercury exposure as previously thought. The EPA released a report stating that 1 out of every 6 women of child-bearing age has so much mercury in her blood it would pose a risk to a developing fetus. Mercury is a neurotoxin and mercury exposure can cause a wide range of neurological problems and developmental delays.

Mercury emissions have contaminated ten million acres of lakes and 400,000 miles of streams across the country. Every one of the 15,057 lakes in my home state of Wisconsin is under a mercury-related warning. Anglers are warned against eating the fish they catch because of widespread mercury contamination. Furthermore, mounting evidence indicates that mercury causes reproductive problems in wildfowl populations, such as loons and mallard ducks. On April 8, 2005, the state of Wisconsin joined nine other states in a lawsuit to force the Administration to scrap the mercury emissions rule.

Clean air and water are critical to our health. Pollution control technology exists to limit mercury emissions and to help us get rid of mercury from our rivers, lakes, streams, and wildlife – and ultimately, our bodies.

The rulemaking on mercury emissions fall far short of what the law requires, and fails to protect the health of our children and our environment. The current cap and trade emissions proposals are not sufficient to protect Americans from the hazards of mercury pollution. Such a trading program would result in "hot spots" by not requiring companies to control emissions at the source. Instead, companies would be able to buy their way out of compliance. Although such trading programs have worked with other contaminants, in the case of mercury, hot spots of this neurotoxin will result near plants that have purchased mercury credits from cleaner burning plants. We will see highly toxic areas

peppered throughout each state instead of across-the-board emissions reduction at each site.

In addition to my concerns about the mercury emissions trading policy, I am troubled by how this rule was drafted. On June 3, 2004, I, along with 24 other Senators, asked President Bush to give Congress assurances that mercury science would not be politicized. I wrote this letter after the *New York Times* reported that the White House officials improperly altered mercury regulations to downplay the health risks of mercury exposure. I was also concerned about accounts indicating that excerpts from utility lobbyists' memoranda to EPA officials were used verbatim in the proposed rule.

I still have not received a response from the Administration to my letter, but a recent report issued by EPA's Inspector General confirmed my concerns about the development of this rule. The report confirmed that the rule did not adequately address all the possible mercury control options. Top EPA officials instructed EPA staff to first set modest limits on mercury pollution, and then work backward from that predetermined goal to justify the rule. The EPA Inspector General stated that the development of the rule was "compromised and, therefore, may not represent the lowest emissions level that could be achieved."

I am also troubled by recent accounts that EPA ignored a Harvard study that showed substantial public health benefits to a more stringent mercury rule. I am particularly concerned that EPA ignored this study, because EPA commissioned the study and it was conducted by an EPA employee. When top EPA officials announced the mercury rule in March, they argued that EPA could not further seek mercury reductions because the cost to industry far outweighed the costs of the public health benefit. These EPA officials said the health benefits to the rule were worth no more than \$50 million a year while the cost to industry would be \$750 million a year. But, the Harvard report that was funded by EPA concluded that mercury controls similar to those the EPA proposed could save nearly \$5 billion a year through reduced neurological impacts and fewer heart attacks. Even more troubling is that, according to recent press accounts, top agency officials ordered the finding from the Harvard/EPA study stripped from public documents.

I think there should be widespread agreement that mercury science should not be politicized. We need to make sure that the process of drafting a rule on mercury emissions is conducted in the open and that peoples' health, not political considerations, is the driving force behind this regulation.

Thank you for holding this important hearing. I look forward to hearing more from the experts on this issue, including those state environmental enforcement officials who experience this problem firsthand.