

Senate Democratic Policy Committee Hearing

“An Oversight Hearing on the Administration’s Mercury Pollution Rule”

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Good afternoon members of the Committee, I appreciate the opportunity to appear before you today to provide testimony on the U.S. Environmental Protection Agency’s recently finalized rule to regulate mercury pollution from new and existing coal-fired power plants.

Pennsylvania appears before you today with two messages: The Bush Administration’s mercury proposal is both insufficiently protective of public health and a potentially severe blow to our economy. On the second point, discussed in the latter half of this testimony, the Administration penalizes the bituminous coal of Pennsylvania, Kentucky, Indiana, Illinois, Ohio, Virginia and West Virginia and favors coal from Wyoming and other western states. There is no legal or scientific justification for this prejudicial treatment. The Administration’s action could cost thousands of jobs in our Commonwealth alone and stifle our effort to build and deploy a new generation of clean coal technologies.

EPA was right in 2000 in recognizing mercury as a hazardous air pollutant that needs to be regulated strictly. They are wrong now in changing course. The federal agency’s final mercury rule backs away from minimum requirements in the federal Clean Air Act and slows the timetable to achieve significant reductions of this highly toxic pollutant. There is no new science supporting the notion that mercury, recognized by Congress in 1990 and EPA in 2000 to be hazardous, has now been transformed to a relatively less toxic chemical.

Mercury is a persistent, bio-accumulative neurotoxin that can remain active in the environment for more than 10,000 years. It endangers pregnant women, children, subsistence fishermen and recreational anglers who are most at risk for health effects that include brain and nervous system damage in children and heart and immune system damage for adults.

Recent studies indicate the problem is worse than previously thought, both from a public health standpoint and in terms of the amount of mercury already present in the environment. Mercury deposition to and accumulation in the aquatic ecosystem has resulted in 45 states, including Pennsylvania, issuing fish consumption advisories. According to EPA’s own scientists, more than one child in six born in the United States could be at risk of having developmental disorders as a result of mercury exposure in the mother’s womb.

President Bush speaks of a “culture of life.” The actions of this Administration here, however, do not match its words. EPA’s rule to regulate mercury pollution fails to protect vulnerable young lives.

On March 31, the Rendell Administration filed a Petition for Review with the U.S. Court of Appeals for the District of Columbia Circuit challenging EPA’s decision to rescind the December 2000 regulatory finding that it is “appropriate and necessary” to regulate mercury emissions from coal- and oil-fired power plants as a hazardous air pollutant.

That 2000 regulatory finding required EPA to set emissions limits under Section 112 of the federal Clean Air Act based on maximum achievable control technology (MACT), defined by the Clean Air Act as the average of the best-performing 12 percent of sources. The limits were to go into effect in 2008.

EPA's revised March 2005 finding, however, clears the way for the agency to reject those technology requirements. De-listing coal-fired power plants as a source of mercury emissions means MACT standards won't be set and instead enables the agency to put in place a market-based program that will produce "hot spots" of contamination in certain areas.

Pennsylvania is a strong proponent of trading and other market mechanisms in the appropriate context. We have chaired multi-state processes to encourage the adoption of trading instruments to reduce regionally transported pollutants. Pennsylvania was among the first states to adopt a "budget" and trading program for nitrogen oxides. We are pioneering the use of trading to reduce nutrients in rivers and streams. But this does not mean trading is appropriate for every pollutant. Indeed, it is a fundamental tenant of trading that it is not to be used where toxic hot spots can be created.

That is why the Pennsylvania Department of Environmental Protection has advocated for mercury to be regulated through MACT requirements. Without these standards, increased emissions are projected in certain states, meaning more pollution will blow into our Commonwealth. Upwind plants could continue to pollute by purchasing credits from competitors that reduce pollution. As a result, some parts of the country, including Pennsylvania, could end up on the receiving end of more toxic pollution than others.

The fact is that EPA's plan to regulate mercury using a "cap and trade" program is a potentially dangerous abuse of this innovative tool to improve air and water quality. Allowing such a program for this highly toxic pollutant compromises the integrity of trading and jeopardizes its legitimate use as an effective tool to achieve cost-effective reductions when used in appropriate situations.

As you are aware, a recent report issued by EPA's Inspector General Nikki L. Tinsley indicated that the mercury emission limits in the final mercury rule were pre-selected by EPA management to conform to the Clean Air Interstate Rule and did not represent a valid analysis of all the possible mercury control options. The EPA Inspector General also stated that the development of a standard to reduce mercury emissions from coal-fired power plants was "compromised and, therefore, may not represent the lowest emissions level that could be achieved."

Because of the toxicological effects of methylmercury on humans, wildlife and the environment, mercury must be regulated as a hazardous air pollutant. The final mercury rule only estimates a drop in mercury emissions to 38 tons in 2010, or a 21 percent reduction, based on 1999 levels of 48 tons. This "slow go" is unnecessary when current and cost-effective technology already exists that should achieve at least a 90 percent reduction in mercury emissions from these operations.

As an example, DEP recently approved an air plan for the Cambria Coke Plant in Cambria County in southwestern Pennsylvania. Although federal law requires no controls for mercury on coke plants, we used our state authority to require a 93 percent reduction of mercury emissions. These results were achieved by injecting activated carbon into the gas stream before the particulate control device. This system required a \$1.5 million capital investment and costs \$2 million per year to operate. The Cambria Coke project is state of the art, setting an example for investments in emission controls that can and should be deployed across the nation.

The same approach used by Cambria Coke has proven effective for the various coal types, including: bituminous, sub-bituminous, lignite and coal blends. It also has been incorporated with numerous types of controls, such as cold-side electrostatic precipitators, hot-side precipitators, spray dryers and fabric filters.

In weakening its standards, EPA makes the case that over-regulating mercury unfairly burdens American businesses to solve what really is a global problem. But a recent study of the Florida Everglades indicates that mercury concentrations found in fish and wading birds there dropped by 60 to 70 percent due to local mercury emission reduction efforts. Reinforcing these findings is an EPA Office of Water study, which produced results in 2003 that show local sources within a state commonly contribute more than 50 percent to 80 percent of the mercury deposition. These studies illustrate the point that despite the fact that there are global mercury transportation issues, local emission reduction efforts are very significant to the local air quality and environmental impacts. Therefore, we have an obligation to challenge the final mercury rule upon publication in the Federal Register.

As noted at the beginning of this testimony, EPA's policy fails adequately to protect public health, but it is also bad for Pennsylvania's economy, too. The rule singles out coal mined in Pennsylvania and other eastern states by putting up unfair market barriers and promotes the use of coal mined in the West. The result will be a very real and significant economic dislocation for the Pennsylvania coal industry.

EPA's final mercury rule establishes new source performance standards and emission guidelines based on the type of coal instead of the class, type or size of the source of emissions. The final rule mercury rule is inequitable because it requires little or no reductions from units using western sub-bituminous coal. The most stringent standards have been proposed for sources burning bituminous coal produced in Pennsylvania, Kentucky, Indiana, Illinois, Ohio, Virginia and West Virginia.

It is undisputed that differences in the chlorine content of different coal types will affect the control technology decisions of each electric generating unit owner/operator. Bituminous coal generally contains more mercury than sub-bituminous coal. But it also generally contains more chlorine, and chlorine enhances the removal efficiency of mercury control technology. So, controlled bituminous coal is "cleaner" with respect to mercury than uncontrolled sub-bituminous coal (or even controlled sub-bituminous coal, depending on technology type). Therefore, the environment suffers as well as the economy of Pennsylvania and other already affected states as a result of the prejudicial treatment of bituminous coal in EPA's final rule.

Because of the disparities in the final emission standards, owners of coal-fired units that generally burn bituminous coal could comply with the final mercury emissions standards simply by switching fuels or burning sub-bituminous coal. The rule essentially establishes sub-bituminous coal as a compliance coal. That encourages fuel switching and a shift away from the Pennsylvania coal industry in favor of western states.

EPA's projected emission reductions do not take into consideration the potential for a greater market share of plants using uncontrolled sub-bituminous coal. With fuel switching, mercury emissions could well be much higher than EPA projects. And because EPA's soft cap of 38 tons is only a projection, there is nothing to forestall these increases.

Governor Rendell met personally last year with then-EPA Administrator Michael O. Leavitt and wrote him as well to express his strong concern about this matter. Verbal assurances were given that this inexplicable hit on Pennsylvania's economy would be removed.

The Pennsylvania Coal Association (PCA) and United Mine Workers of America (UMAWA) also joined the Department in June 2004 to ask EPA to drop plans that would disadvantage Pennsylvania coal. Although DEP, PCA and UMWA disagreed on key aspects of EPA's rule, the groups were in total agreement on the overriding fact that the federal agency's prejudicial treatment of Pennsylvania coal was harmful to the state's economy and actually contrary to achieving maximum mercury reduction.

DEP, PCA and UMWA sent a letter to Administrator Leavitt requesting a meeting to discuss these market disadvantages. The meeting never took place and economic hurdles for Pennsylvania's coal industry remain a part of EPA's final rule.

In sum, there is no scientific justification for EPA to reverse its December 2000 finding that mercury emissions should be regulated as hazardous air pollutants and subject to the mandated maximum achievable control technology requirements. Further, there is no way to explain the prejudicial treatment of bituminous coal.

EPA needs to put in place a plan that is more protective of citizens. Moreover, EPA needs to act fairly and step back from its apparent effort to promote the economic interests of western states at the expense of those of us in the east.