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EPA Fails on Mercury Reductions

Final Rule Even Weaker Than Proposal and Won't Protect Texas' Children

Austin, TX The U.S. Environmental Protection Agency is finalizing a rule today that allows power plants to continue emitting dangerous levels of mercury long past the deadline set by current law. Compliance with the Clean Air Act would require power plants to reduce their emissions of mercury, a neurotoxin, by about 90% by 2008. In contrast, EPA's final rule establishes a "cap-and-trade" program for mercury under which power plants will be able to avoid meaningful reductions until after 2025.

"EPA is failing to protect children from mercury poisoning. Their lax rules will not assure clean up in Texas, the worst state in the nation for toxic power plant mercury. Our children are already at risk for permanent brain damage and learning disabilities, and instead of requiring the clean up we need, EPA's rules will allow polluters to buy their way out of clean-up through a "trading" scheme. This has never before been allowed due to the risk of toxic hotspots. Texas is already the nation's mercury hotspot, and we need clean up to protect our children, not giveaways to utilities." stated Karen Hadden, Executive Director of the Sustainable Energy and Economic Development Coalition. She noted that "specific mercury controls for power plants are affordable, and for Texas could run as little as \$.43 - \$1.29 a month for an average household, less than the cost of a cup of coffee a month, not bad in order prevent brain damage in children and the resulting special education costs."

In Texas, there has been outcry against the weak EPA policy, including a rally outside the EPA Headquarters in Dallas in March, 2004, and a citizen organized public hearing held because requests that EPA to hold a hearing in the worst mercury polluted state in the nation were denied. In January, over 30 individuals representing businesses, fishermen and fishing guides requested a meeting in writing with Congressman Ralph Hall, who chairs the Subcommittee on Energy and Air Quality, but his office did not respond.

The New York Times reported today that the cap for Texas under the EPA rules would be 4.7 tons, or 9400 pounds. "For two of the three years in which utilities have now been reporting mercury, Texas emissions from coal-burning power plants came in under 9400 pounds, so how can anyone claim this is a reduction of toxic mercury pollution in Texas?" asked Hadden. The Toxic Release Inventory (TRI) numbers in pounds for mercury air emissions from Texas utilities are 9815 for 2002, 8992 for 2001, and 9302 in 2000.

"Fortunately, Texas legislators have stepped to the plate with bills that would provide protection for Texas children, to do what the EPA previously said can be done, but now refuses to do in cleaning up the mercury from coal-burning power plants. Senator Judith

Zaffirini of San Antonio and Representative Eddie Rodriguez of Austin have filed bills calling for cleaner air and a mercury reduction that matches the original requirements of the Clean Air Act. The bills would reduce mercury from Texas' coal-burning power plants to 10% of 2002 levels by 2008, the original requirement of the Clean Air Act MACT provision " stated Hadden.

The Texas Medical Association Committee on Maternal and Perinatal Health produced a Consensus Statement on Methylmercury and Public Health, calling for treating mercury as hazardous and for reducing mercury in order to protect health. The statement is online at http://www.seedcoalition.org/tx_med_assoc_maternal_health.html

"Given the choice between protecting the health of America's children and protecting big polluters, the Bush administration has chosen the polluters," said Karen Hadden.

EPA's final rule comes in the wake of strong criticism of the proposal from the Government Accountability Office, the EPA Inspector General, and EPA's own Children's Health Protection Advisory Committee, which said the proposed rule "does not sufficiently protect our nation's children." The final rule is weaker than the proposal.

Power plants—the last unregulated industrial source of mercury pollution—are currently the largest source of U.S. mercury emissions, releasing 48 tons of mercury, or 41% of the national total, per year. Under the Clean Air Act, such plants must use the "maximum achievable control technology or MACT" to reduce toxic emissions. This means reducing mercury emissions by about 90%, getting down to a total of 5 tons per year, as EPA indicated in a 2001 presentation to the Edison Electric Institute, the electric utilities' trade association. Cost-effective technology already exists to control mercury emissions—a conclusion EPA reached in 2000.

Today EPA rescinded its 2000 determination that power plants must reduce mercury to the maximum extent achievable by 2008. Instead, EPA's final rule caps mercury emissions from power plants at 38 tons per year in 2010 (up from 34 tons in the proposal) and 15 tons per year in 2018 and permits emissions trading among power plants.

"The administration's own analysis shows that these are paper targets at best. The fine print will allow power plants to avoid compliance until some unspecified time after 2025—which is as far as the analysis went," explained Stephanie Carter, of TexPIRG. "Trading the right to pollute is very risky and can create mercury hot spots."

Karen Hadden noted that "the EPA's decision to proceed with a "cap-and-trade" mercury rule does almost nothing to clean up Texas, the worst state in the nation for toxic mercury pollution from coal-burning power plants. The rule is particularly troubling in light of how it was developed." Entire sections of EPA's rule, as proposed in January 2004, were lifted verbatim from memos written by Latham & Watkins, a law firm representing large electric utilities, and West Associates, a group representing 20 power and transmission companies.

A record number of Americans—more than 600,000—wrote the EPA last summer opposing the proposal and calling for stronger action.

“The EPA has turned a deaf ear to the public’s strong opposition to this rule but has been all ears when it comes to the polluters,” observed Stephanie Carter.

Mercury pollution is both pervasive and dangerous. Forty-five states, including Texas currently have mercury-related fish consumption advisories. In Texas, 12 water bodies are under fish consumption advisories, including the Gulf Coast for king mackerel and major fishing lakes and reservoirs for several species of bass and drum. In 2004 the FDA and the EPA jointly issued a national advisory warning women of childbearing age, pregnant women, nursing mothers, and children to avoid or limit their consumption of certain fish and shellfish, including shark, swordfish, and tuna. In 2004, EPA scientists found that one in six women of childbearing age has elevated levels of mercury in her blood, putting 630,000 of the four million babies born each year at risk of learning disabilities, developmental delays, and problems with fine motor coordination.

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