

March 14, 2005

Clean Air Task Force  
Summary of EPA's Mercury Rule

- EPA, as expected, has today issued a cap and trade rule for mercury emissions from power plants, which in its details essentially mirrors the Bush Administration's Clear Skies legislation. Indeed, the EPA's Inspector General recently found that the emission limits in the rule were pre-selected by EPA management to conform to Clear Skies and did not represent a valid analysis of rule options.
- The rule treats power plant air emissions of toxic mercury in the same manner as conventional pollution is regulated, rather than taking the maximum achievable controls approach enacted by Congress in 1990 to be applied to industrial emissions of all toxic air pollution.
- In a separate, accompanying rule, EPA tries to achieve this end run around Congressional intent by illegally removing the power plant industry from the list of sources requiring the maximum controls approach. This attempt to avoid the statutory requirement is based only on "revising" the Agency's decision from December 2000 that the great weight of the scientific evidence demonstrates that it "is appropriate and necessary" to regulate toxic air pollution from power plants under the maximum achievable controls approach. EPA makes none of the factual findings it must make by law before removing an industry from the list.
- In addition to the illegal construction of the rule as a cap and trade rule rather than a maximum achievable controls approach, there are significant inadequacies in the details of the caps, and deadlines for achieving them.
- The first phase cap in 2010 is 38 tons of mercury emissions. This is even weaker than the proposed rule which was a first phase cap of 34 tons. It represents no more than a "do-nothing" approach to mercury emissions, as this level of reductions will result from the CAIR rule alone.
- Even industry comments on the proposed rule offered a more stringent hard cap of 24 tons in 2015.
- The second phase cap of 15 tons (70% reduction) in 2018 is a myth. EPA's own modeling shows that mercury emissions in 2025 are still nearly 25 tons.
- EPA's final caps do not reflect evidence the Agency has from air pollution control vendors that emissions of mercury can be reduced by much more than 70%, and by far sooner than 2018.

- In its benefits analysis, EPA has ignored the cardiovascular impacts of mercury exposure despite evidence that these effects at exposure levels even lower than those known to cause neurodevelopment effects. Inclusion of cardiovascular effects would increase the benefits of the rule by billions of dollars – far outweighing the cost of the rule – begging the question why the rule is not more stringent.
- EPA has completely ignored the findings of the EPA Inspector General who found that EPA’s process for developing the rule was compromised and recommended that EPA conduct a valid MACT analysis.
- EPA has ignored the findings of the Government Accountability Office, which identified major shortcomings in the way EPA analyzed the economic benefits of the rule. In the final rule EPA again fails to provide meaningful analyses that would validate their selection of the cap and trade approach over a MACT approach.