#2547

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November 13, 2006

The Honorable Alvin C. Bush, Chairman
Independent Regulatory Review Commission
Harristown 2, 14th Floor
333 Market Street
Harrisburg, PA 17101

Re: Environmental Quality Board Regulation #7-405 (#2547)
Notice of Final Rulemaking Chapter 123 –
Standards for Contaminants: Mercury Emissions

Dear Chairman Bush:

These Comments are submitted on behalf of PPL Generation, LLC ("PPL"). PPL requests that the Independent Regulatory Review Commission ("Commission") disapprove the above-referenced Regulation. Although we request disapproval of the Regulation in the form presented to the Commission, we believe there is a relatively simple and straight forward alternate approach, which if added to the Regulation would protect the environment, protect the reliability of electric supply in Pennsylvania and protect the jobs of Pennsylvania coal miners. That alternate approach was proposed to the members of the Environmental Quality Board ("EQB") in a letter dated October 16, 2006 from the Electric Power Generation Association. A copy of that letter is attached for your review and information. The DEP and EQB have flatly rejected that alternative but have not provided any environmental rationale to justify their rule over the alternate. See letter dated October 13, 2006 from Secretary McGinty to Representative Reed, attached to this letter.

In short, that alternative proposes to retain the emission standards provision of DEP's rule (requiring coal burning electric generating units ("EGUs") to achieve an 80% reduction in mercury emissions by the year 2010 and 90% reduction in mercury emissions by the year 2015) but adds to that a provision that EGUs be allowed to trade under the federal mercury rule for any additional emission allowances required *after* the 90% reduction has been made in order to meet the total mercury emission cap EPA has placed on Pennsylvania. Since DEP rejected this proposal, if a facility does not have enough allowances even after making 90% reductions, for example, then it will need to install technologically unproven mercury-specific controls to try to capture the small remaining amount of mercury and achieve even more reductions. Based on the mercury content of the coals that PPL burns, we have calculated that reductions greater than 95% could be required to remain within the allowances granted to PPL starting in 2015. This may not

be technologically feasible, and if it is it could cost the company hundreds of millions more than it would cost PPL to achieve the 90% reductions.

As the industry's request to include interstate trading in the rule relates *only* to trading for mercury emission allowances necessary *after* the 80% and 90% reductions in emissions in 2010 and 2015 respectively have been achieved, why did DEP reject the industry proposal? DEP certainly could not allege any hot-spot concerns when 90% reductions are already being made. Rather, DEP has taken the position that interstate trading cannot be allowed because interstate trading is unacceptable for mercury which is a neurotoxin. However, the reason that DEP says that interstate trading is unacceptable for a neurotoxin is because of a concern about hot-spots, which concern does not exist anymore under the industry proposal.

PPL filed extensive comments with the EQB regarding the proposed regulations. Those comments remain applicable to the final regulation and we urge the Commission to view those comments in detail. We have also attached hereto a more detailed explanation of why we believe the Regulation should be disapproved. Our opposition is based on these primary concerns:

1. The Regulation as proposed fails to implement the Legislative intent found in section 2 of the Air Pollution Control Act (35 P.S. 4002). In that section the Legislature clearly indicated that regulations protecting air resources should protect the public health and protect the development and expansion of industry and commerce. In other words a balance was required. The Regulation fails to provide balance and will require extraordinary reductions beyond those needed to protect the public health and will threaten electric generation in Pennsylvania.

2. The Regulation fails to provide a necessary safety valve for industry to meet the EPA-mandated emission cap imposed on Pennsylvania. Even if an EGU satisfies the 80% and 80% reduction requirements of the rule, it may need to make even greater reductions to meet the EPA-mandated cap. It is doubtful that these further reductions are either technologically or economically feasible.

3. The costs estimates relied upon by the EQB are not reliable. These cost estimates assume that only a small percentage of units will require mercury specific controls. In fact the EQB assumes that only 18 units out of 78 will need mercury specific controls (See, Notice of Final Rulemaking "Preamble" at page 20) to achieve the 90% reduction requirement in the regulation. The industry believes that many more than 18 units will require mercury specific controls to achieve this requirement and thus the costs, even using DEP's figures, will be much higher. More importantly, DEP's estimate is based on the cost of technology that achieves a 90% reduction (See, Preamble at page 20) not the cost of technology necessary to go beyond 90% to meet the EPA cap.

4. The firm cap limits the amount of future generation in PA. PA DEP has stated that they will hold back 3% of the allocation for new sources. That hold back amounts to about 42 pounds – that amount will be emitted by *one* new 800 MW unit at the allowed emission rate of 0.011 lbs Hg/GWH with a 55% capacity factor.

5. No discernible environmental benefit will accrue to Pennsylvania from these additional reductions since the 90% reductions will have already virtually eliminated the form of mercury that can deposit in Pennsylvania and the DEP has not provided any credible rationale to justify their rule over the alternative.

Unfortunately, the EQB rejected an opportunity to adopt a rule that would meet the intent of the Legislature as expressed in the APCA. The result is a flawed Regulation that unnecessarily burdens industry without any additional environmental benefit to Pennsylvania. For that reason the Commission should disapprove the Regulation. However, it is not too late to change the regulation. DEP *can* submit its control plan to EPA by November 17, 2006 even without finalized regulations. In fact they have no choice no matter what the Commission does because the regulations will not be published in final in light of the Senate's extended review period. And in any event, even if the regulations are not finalized by November 17th, this would only result in EPA's making a finding that Pennsylvania has failed to make the submission and will give Pennsylvania up to two years to do so.

We appreciate your consideration of PPL's comments and our request to disapprove the mercury regulations before you.

Sincerely,

CPH 379034v1

PPL GENERATION, LLC COMMENTS REGARDING

EQB MERCURY REGULATIONS #7-405 (#2547)

The Mercury Regulation is contrary to Legislative intent.

- IRRC reviews a regulation to determine whether the regulation is within the statutory authority of the Agency and whether the regulation conforms to the intention of the General Assembly in enacting the statute upon which the regulation is based.

- The Mercury Regulation is based on authority granted under the Air Pollution Control Act ("APCA"). The APCA contains a declaration of legislative intent in Section 2 (35 P.S. § 4002).

- Section 2 declares the policy of the Commonwealth to be to protect the air sources of the Commonwealth **to *the degree necessary*** for the protection of public health, safety and well being of the citizens ***and*** for the development, attraction and expansion of industry, commerce and agriculture.

- The Legislature also granted the Environmental Quality Board the authority to adopt regulations to implement provisions of the Clean Air Act. In doing so, the Legislature directed that the rules and regulations adopted to implement the provisions of the Clean Air Act shall be consistent with the requirements of the Clean Air Act and *the regulations adopted thereunder* (35 P.S. § 4005(a)(8)).

- The currently existing requirement for mercury emissions from EGUs under EPA's regulations is CAMR. The legislature did not authorize the EQB to adopt regulations consistent with its view of what EPA *should* have done, but rather directed that its regulations be consistent with regulations adopted by EPA.

- Pursuant to EPA's rule, DEP/EQB is free to be more stringent than EPA. However, that does not mean DEP or the EQB can ignore the intent of the Legislature. The EQB must adopt a rule that is consistent with CAMR. Consistency requires, at a minimum, an effort to make the two programs as compatible as possible. DEP has instead elected to make the two programs as incompatible as possible.

- The Legislature has directed the EQB to be consistent with Clean Air Act regulations and has indicated its intent that the APCA and its implementing regulations give equal consideration to protection of the public health and development, attraction and expansion of industry, commerce and agriculture. Accordingly, the burden is on the EQB to adopt a regulatory system that implements this policy.

- The currently proposed regulations fail to implement that Legislative intent. The Mercury Regulation would require extraordinary emission reductions at great cost to

EGUs with no additional environmental benefit for Pennsylvania.

- DEP has proposed regulations that are consistent with its litigation position, not consistent with existing federal regulations. Would DEP accept the argument from a regulated company that the company was only going to perform in a manner consistent with its litigation position with respect to a regulation that it disagreed with?

The Mercury Regulation will require reduction far greater than 90%.

- The Mercury regulation has two separate requirements for mercury emission reductions. First, EGUs must reduce mercury emissions by 80% by 2010 and 90% by 2015 (*see*, § 123.205). **In addition** to those percentage reductions, each EGU must meet an annual emission limit established through an allowance program so that mercury emission may not exceed "X" pounds per year no matter what the 90% reduction accomplishes (*see*, § 123.207).

- DEP will allocate the mercury emission allowances based on the total emission allowance which EPA has granted to each state. In Pennsylvania, that EPA allocation will operate as a "firm cap.". The state, as a whole, will not be allowed to exceed the EPA cap and each EGU will not be allowed to exceed its share of the cap.

- DEP acknowledges that the 90% mercury emission reductions in the EQB's regulation will not meet the EPA-mandated mercury emission cap for Pennsylvania and that reductions in excess of 90% will be required. Accordingly, cost estimates and feasibility projections regarding 90% emission reductions are irrelevant to the debate at this point.

- If the only issue were a 90% mercury emission reduction, there would be very little controversy.

- DEP has strongly criticized EPA's allowance for Pennsylvania as being overly stringent and discriminating against bituminous coal that is both mined and burned in Pennsylvania. EPA assumed that Pennsylvania would be able to meet this stringent cap by trading with sources located in states to the west.

- While DEP has criticized the allowance system as being unfair to Pennsylvania, the EQB has proposed a regulation that actually makes matters worse by adopting the EPA emissions allocation as a firm cap and prohibiting any trading for mercury emission allowances to meet that cap.

- PPL projects that mercury emission reductions on the order of 95% or more will be necessary to meet this firm cap. Those reductions will exceed known and proven technological capabilities and, even if feasible, will cost hundreds of millions of dollars above the cost of those controls DEP asserts will need to be installed to meet the 90% limit. (See, "An Evaluation of Mercury Emissions Reductions in Pennsylvania" prepared by URS and submitted with PPL's comments to the EQB).

- DEP disputes that emission reductions of this magnitude will be necessary. If DEP is correct, then the trading will be of a very small magnitude and should be of no concern. If DEP is incorrect, the industry will be faced with expenditures exceeding one billion dollars or curtailment of generation. Allowing trading above the 90% threshold provides a cost-effective way to meet the EPA-mandated cap without harming the environment.

The industry Alternative Protects the Environment .

- The electric generating industry has proposed an alternative program that would mandate a 90% reduction in mercury emissions and would allow for trading for emission allowances only after the 90% limit has been met, if necessary to meet the EPA-mandated cap. DEP has rejected that proposal as being inconsistent with its litigation position and its challenge to the EPA regulation. DEP's position fails to implement the intent of the General Assembly to protect both the environment and the economy.

- Air dispersion and deposition modeling performed by PPL and others illustrates that a 90% reduction in mercury emissions will eliminate virtually all of the mercury emissions of the species of mercury that would be expected to deposit in Pennsylvania. Thus, the industry approach addresses the alleged "hot spots" which DEP originally indicated was the driver for a state-specific program. (See, "An Evaluation of Deposition in Pennsylvania for Potential mercury Emission Reduction Strategies" prepared by ENVIRON International Corporation and submitted with PPL's comments to the EQB).

- No discernible environmental benefit will accrue to Pennsylvania from these additional reductions since the 90% reductions will have already eliminated the mercury that can deposit in Pennsylvania.

- The 90% reduction is all that is needed to address DEP's public health concerns. All of the arguments made by DEP/EQB in the Preamble to the Regulation, extolling the public health benefits of the Pennsylvania rule over the federal rule, are premised on the Pennsylvania rule achieving 80% and 90% reductions. In other words, the DEP and EQB believe that the public health benefits they seek to achieve will be achieved through these mandated percentage reductions. Accordingly, there is no public health reason for not allowing trading for emission allowances that may be needed after the 90% reduction has been made.

- DEP has not identified any environmental benefit of its Mercury Regulation over the industry proposal. Rather DEP merely repeats its argument regarding the Federal rule to justify rejecting any compromise. See, October 13, 2006 letter from Secretary McGinty to Representative Reed.

The Cost Figures Relied upon by the EQB are Unreliable.

- DEP's cost numbers are not accurate. The cost figures that DEP has cited repeatedly and that appear in the Preamble, are based on their assumption that only 18 units (out of 78)

generating about 2500 megawatts (out of 20,000MW), or about 12% of the total megawatts generated from EGUs would be required to install mercury specific controls. While this might be true if 90% reduction were the only goal, it is not true with regard to emission reductions necessary to meet the EPA cap. To meet the EPA cap most units will need to install mercury-specific controls. Thus even using DEP's per unit cost estimates the total cost to the industry will rise markedly.

- DEP's cost estimates for mercury specific controls range from $56 to $125 per kilowatt. Industry estimates fall generally within the same range. Since DEP assumes that only 18 units will install mercury specific controls, it estimates capital costs ranging from $141.6 to $313.3 million. If DEP's cost figures for mercury specific controls per kilowatt are applied to the entire 20,000 megawatts generated by coal-fired EGUs in Pennsylvania, the actual cost of implementing Phase 2 range from $1,000,000,000 to $2,500,000,000. Industry has cited a figure of $1,700,000,000 as the estimated capital cost of DEP's unnecessary program.

- DEP is not adhering to the intention of the Legislature. It has lost focus on the purpose for these regulations and has focused, instead, on its fight with EPA.

There is Still an Opportunity to Modify the Mercury Regulation to Meet the Legislative Intent.

- It is not too late to change the regulations. DEP *can* still submit its control plan to EPA by November 17, 2006 even without finalized regulations. In fact they will have no choice no matter what the Commission does because the regulations will not be published as final in light of the Senate's extended review period. Changing the regulations to include limited trading is not such a substantial change that would require a new public comment period. DEP has made far greater changes to its proposed regulations without additional public comment.

- In any event, even if the regulations are not submitted to EPA on November 17th, the only consequence will be that EPA will make a finding that Pennsylvania has failed to make the submission and will give Pennsylvania up to two years to do so.

- A regulatory program which has state-specific controls at 90% and trading to the extent necessary above 90% to meet the EPA-mandated cap would implement the Legislature's statement of intent. It would protect the air resources of the Commonwealth to the degree necessary to protect the public health and also to the degree necessary for the development, attraction and expansion of industry and commerce.

Electric Power Generation Association

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October 16, 2006

Dear EQB Member:

On October 17 you will be asked to vote on a final rule reducing mercury emissions from power plants. This rule will have a major impact on electric reliability, jobs and the cost of electricity in Pennsylvania.

In making your decision, we respectfully encourage you to consider the full record of comments on this rulemaking and the alternatives presented to the Department of Environmental Protection so that Pennsylvania can adopt a mercury reduction plan that balances environmental and economic interests.

The Electric Power Generation Association, as well as our labor and business coalition partners, have provided a number of suggestions and alternatives to this proposal that go beyond the federal Clean Air Mercury Rule to resolve the differences with DEP over this regulation so we can achieve significant reductions in mercury emissions in a way that will not harm Pennsylvania's economy.

But, the final rule you have before you would mandate mercury reductions in a way that:

1. Imposes more than $1.7 billion in extra costs on electric generators and ratepayers;
2. Reduces the use of Pennsylvania coal by 14 percent or more;
3. Threatens electric reliability by putting smaller power plants at risk of retirement;
4. Provides no incentives for early and over control of mercury emissions;
5. Requires the State to choose between granting technological feasibility waivers and meeting its federally mandated mercury budget; and
6. Most importantly, provides no additional health benefits over those resulting from the federal Clean Air Mercury Rule.

This last point is especially critical. Neither the Record of Decision nor the Comment/Response documents you were provided by DEP answer the fundamental question we have asked since the beginning of this debate two years ago - What are the additional health and environmental benefits of adopting DEP's proposal when compared to the federal Clean Air Mercury Rule?

In fact, the answer can be found in the testimony presented during five public hearings by both the Senate and House Environmental Resources and Energy Committees and in presentations to the DEP Mercury Rule Work Group— There are no added environmental or health benefits from adopting DEP's proposal, only negative consequences to electric reliability, jobs and to Pennsylvania's electric consumers.

The discussion of this final rule in DEP's Air Quality Technical Advisory Committee (AQTAC) also failed to identify any additional benefits, which was discussed specifically during their consideration. In fact, there was significant disagreement over key provisions, such as aggregating the annual emission limits among companies and allowing certain "presumptive technologies," which were decided by one vote and an abstention, not the clear weight of the full panel.

We believe the DEP proposal can be changed in a way that meets both key public policy objectives in this debate-- to significantly reduce mercury emissions from every plant within Pennsylvania, but in a way that does not threaten electric reliability, jobs or cause dramatic increases in electricity costs.

Although there was no demonstration by any party of a need to go beyond CAMR, we recognized DEP's desire to ensure that substantial mercury reductions are made within Pennsylvania and not purchased from out of state. We recognized DEP wanted substantial reductions to be made within Pennsylvania because of a concern about hot spots[1] and a concern that trading would allow reductions to be made at a later date. Therefore, we proposed an alternative that requires 80% mercury reductions to be made at each facility in Pennsylvania starting in 2010 and 90% starting in 2015 – the same levels in DEP's proposed rule. However, our proposal is superior to DEP's in that it allows the state's CAMR budget to be met through interstate trading. We believe this component is critical for Pennsylvania's program to be legally defensible. Without it Pennsylvania remains at risk of either requiring technologically infeasible reductions or exceeding the state's mercury budget under the federal rule.

Pennsylvania is faced with this dilemma because of the inequitably small number of allowances granted to Pennsylvania by EPA based on the unfair treatment given to bituminous coal. EPA's own calculations show that Pennsylvania will not be able to remain within its budget allocation without purchasing allowances from other states. The DEP has assumed that EPA's small budget allocation to Pennsylvania will not be a problem and provides no safety valve if it turns out that EPA's calculations are right instead.

On the other hand, if mercury control is as effective and inexpensive as has been represented by the DEP on numerous occasions, then our proposal will likely result in even greater mercury reductions in Pennsylvania than would otherwise occur as it provides an incentive to over-control and sell the allowances.

Finally, by requiring the same percentage reductions in the same time frame as in the DEP's rule, our proposal would unquestionably be as protective of human health and the environment as the DEP's rule. The DEP has stated that this proposal will result in reductions being made at a later date simply because it allows for trading to meet the state budget. The DEP apparently fails to understand that the percentage reductions must be made irrespective of trading.

The DEP has also taken the position that this proposal is unacceptable because it allows for trading under EPA's program developed under Section 111 of the Clean Air Act, which, DEP argues, EPA could not legally do for a hazardous air pollutant. DEP's position, however, has a fundamental flaw: Unless EPA's program is successfully challenged, it is legal and binding and is the only reason why Pennsylvania needs to be concerned with meeting its mercury budget in the first place.

There is, therefore, no rational reason to continue to insist that Pennsylvania be denied the opportunity to be able to comply with the federal mercury budget through interstate trading – especially when EPA developed the state budgets based on the core assumption that states would be meeting those budgets through interstate trading.

For your review, we have attached a one-page summary of our alternative proposal.

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[1] We note that DEP's concern about hot spots was never substantiated with any deposition modeling conducted by DEP in Pennsylvania and was, in fact, repudiated by deposition modeling conducted by ENVIRON and included in comments filed by PPL Generation, LLC.

We believe there is no need to impair the competitiveness of businesses and industries in this Commonwealth, or produce an adverse impact on employment, coal production or family income, or put the state at risk of not being able to comply with its federally mandated mercury budget, in order to achieve our shared objective of significant reductions in mercury emissions from power plants within Pennsylvania.

Again, we encourage you to consider the full record on this rulemaking and our alternative as you balance the environmental and economic consequences of this action before the Board.

We would be happy to answer any questions you may have about our position or our alternative suggestions. Contact me at 717-909-3742. Thank you for your consideration.

Sincerely,

Douglas L. Biden

Douglas L. Biden
President

Attachment

Draft Alternative to the Proposed DEP Mercury Regulation:

This alternative proposes that the Department of Environmental Protection (DEP) utilize a mercury control strategy that mimics the highly effective nitrogen oxides control strategy. Under this strategy, Pennsylvania would implement a Pennsylvania specific rule that requires all major source coal-fired units/facilities to meet an 80 percent reduction in 2010 and a 90 percent reduction in 2015. This proposal also allows for the implementation of presumptive mercury control technologies and alternative measures or technology that control mercury emissions by Jan. 1, 2010 for those sources which cannot technically or economically install control equipment to meet the specified standards. Simultaneously, DEP would issue a separate regulation that implements the "cap and trade" provisions of the CAMR. This multi-regulation approach has been extremely effective in controlling nitrogen oxides emissions as they relate to not only local concerns, but also relative to transport issues.

The Pennsylvania specific regulation:

- Applies on a unit specific basis.
- Results in unit specific emission limitations that could not be exceeded through emission allowance trading or use of emission reduction credits
- Is required regardless of the type of coal burned
- Allows alternative technologies to define the appropriate control technologies and strategies of smaller units
- Satisfies the EQB approval to develop a PA specific mercury rule

In addition to the Pennsylvania specific mercury rule, generators would still be required to comply with Pennsylvania CAMR emissions budgets ("cap"), which would include participation in the nationwide "cap-and-trade" program.

Benefits:

- Eliminates concerns about "hotspots" by requiring mercury emissions reductions at every PA coal-fired generating facility
- Does not drastically impair competitiveness of Pennsylvania wholesale electric generators, coal suppliers and support services and industries relative to out-of-state competitors even though it is more stringent than the CAMR requirements alone
- Helps to control electricity costs which helps to minimize drag on economic growth in Pennsylvania
- Provides for the most cost-effective "co-benefits" control strategies to be implemented through the implementation of CAIR
- Provides for certainty of compliance which is a critical need relative to obtaining financing and satisfying investors
- Accelerates installation of control equipment at many PA generating facilities by "front loading" the control measures at some facilities that would otherwise not be implemented until 2018, which then achieves the full mercury reductions by 2015 rather than 2018 through the implementation of Phase II of CAIR.
- Preserves the Environmental Quality Board's approval of the PaDEP recommendation to develop a Pennsylvania specific Hg rule
- Does not disadvantage Pennsylvania wholesale electric generation in the event the CAMR is over-turned
- Guarantees that Pennsylvania will be able to comply with its federally mandated mercury budget.

Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building
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October 12, 2006

Secretary

717-787-2814

OCT 13 2006

The Honorable David Reed
Pennsylvania House of Representatives
House Post Office Box 202020
Harrisburg, PA 17120-2020

Re: House Amendment to Reduce Mercury Emissions From Coal-Fired Power Plants

Dear Representative Reed:

This letter is in response to your proposed amendment to reduce mercury emissions at coal-fired power plants in the Commonwealth. While the Pennsylvania Department of Environmental Protection (Department) welcomes your effort to address the economic, public health and environmental challenges posed by your original bill, the Department opposes your amended legislation for a number of reasons. First, it is the Department's understanding that while your amendment would require reductions of mercury emissions at each facility by 2010 and 2015, respectively, your amendment would nonetheless allow interstate trading to reach the U.S. Environmental Protection Agency (EPA) emission limitation or cap that has been established under the Clean Air Mercury Rule (CAMR). 70 *Fed. Reg.* 28606 (May 18, 2005). This provision poses serious legal and substantive problems as outlined below. Second there is a timeliness problem to your proposed legislation.

The Department strongly opposes a cap-and-trade approach under the CAMR for the regulation of mercury emissions from the utility sector for a number of reasons. The Department believes that the EPA does not have the legal authority to regulate a Hazardous Air Pollutant like mercury under the less stringent provisions of section 111 of the CAA, as opposed to the more stringent provisions under section 112 of the CAA. Indeed, Congress specifically discusses mercury in relation to section 112(d) of the CAA. That section does not allow trading; instead it requires that new and existing coal-fired electric generating units would be required to comply with technology-based performance standards that would achieve the "maximum degree of reduction" of hazardous air pollutants including mercury.

The Department also believes that EPA's trading approach will significantly delay the control of mercury emissions from the utility sector and will create "hot spots" of mercury exposure that could be very detrimental to humans and wildlife. EPA recognizes this fact as well. EPA and other federal authorities have made clear that trading (and the associated "banking" provisions) mean that promised mercury reductions will not be realized in 2018 as expected, but as late as 2030. In addition, EPA's "Steubenville Study" shows that some 70 percent of the mercury emissions from bituminous coal-fired

power plants deposit locally. Eighty-five (85) percent of the coal burned in Pennsylvania power plants is bituminous. Pennsylvania now ranks second only to Texas in the total burden of toxic mercury pollution Pennsylvanians suffer, and nearly all of our waterways are under mercury fish consumption advisories. Only power plant specific mercury controls, not mercury trading, can effectively combat mercury hot spots.

Moreover, because your amendment would allow the trading of mercury emissions, it constitutes a substantial change to the current regulation and would, therefore, require an additional public comment period before such changes could be finalized. As you know, Pennsylvania must submit to EPA its State Plan to reduce mercury emissions from coal-fired power plants by November 17, 2006. 40 CFR §62.24 (h)(2). If a state fails to submit a State Plan, EPA will prescribe a federal plan (i.e., CAMR) for that state. 70 *Fed. Reg.* at 28632. There has been some suggestion that the State legislative process could effect a "tolling" of the federal clock such that, even if the Department had to start over again as a consequence of the legislation, and therefore not have a plan ready on November 17, 2006, that we nonetheless would not be found to have missed the federal requirement on account of the new state legislation. The Department has researched this question and has found no support for the proposition that state legislation can essentially countermand federal dictate. The Department has strong concerns that a federal plan will be imposed on the Commonwealth if we miss the November 17, 2006 deadline, and that it would be exceedingly difficult to substitute a state plan for the federal plan once the federal plan is in full force and effect.

The Department appreciates your willingness to work with us. As you signal with your amendment, the interests of the Commonwealth are best served by a state specific plan, rather than the flawed EPA regulation. We applaud your recognition that the health of Pennsylvanians, as well as our environment and our economy, demand a rejection of EPA's regulation that hurts our coal economy even as it creates toxic "hot spots" of mercury contamination. The Department's proposed final regulation protects Pennsylvanians while helping our economy, and we look forward to working with you to finalize the rule in the coming weeks.

If you have any questions, you may reach me at 717-787-2814.

Sincerely,

Kathleen A. McGinty
Secretary

cc: Roy Klenitz
Steve Crawford
Hon. Todd Eachus
Hon. William Adolph