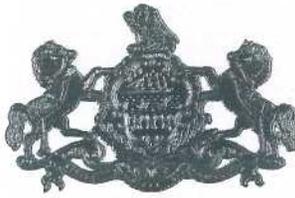


2547

ROBERT W. ZECH, JR.  
DIRECTOR



JAMES L. WALSH  
ASSISTANT DIRECTOR

**LEGISLATIVE REFERENCE BUREAU**

ROOM 641 MAIN CAPITOL BUILDING  
HARRISBURG, PENNSYLVANIA 17120-0033  
PHONE: 717-787-4223 • FAX: 717-783-2396

January 10, 2007

Barbara Adams  
General Counsel  
225 Main Capitol Building  
Harrisburg, Pennsylvania 17120

Dear Ms. Adams:

**Re: Final Environmental Quality Board Rulemaking Mercury  
Emission Reduction Requirements for Electric Generating  
Units (#7-405)**

This will respond to your letter of January 4, 2007.

The Legislative Reference Bureau (Bureau) has the authority, pursuant to 45 Pa.C.S. § 722 (a) and prior legal precedent, to refuse to publish a document that is submitted without meeting all legal requirements. The Bureau routinely requires compliance with all relevant statutes prior to publication of a document. The Commonwealth Document Law, sections 102, 201-208 and 602 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1101, 1201-1208 and 1602); 45 Pa.C.S. §§ 501-907; and sections 3 and 4 of the act of July 9, 1976 (45 Pa. Sp. Pamph. 35); the Commonwealth Attorneys Act (71 P.S. §§ 732-101-732-506); section 612 of The Administrative Code of 1929 (71 P.S. § 232) and the Regulatory Review Act (71 P.S. §§ 745.1-745.15) are among the relevant statutes.

The subject regulation was not submitted in the proper format under 45 Pa.C.S. § 722 (a) because the referenced two originals provided were not duplicates. There are major discrepancies on page 50 (enclosed) between the two deposited originals with respect to the Regulatory Review Section. Since the interpretation of the Regulatory Review Act is the subject of this dispute, the inconsistencies between the two deposited versions become fundamental.

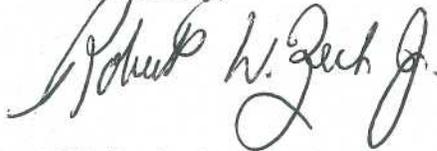
Please refer to our enclosed letter of January 2, 2007 to Secretary McGinty. In addition please refer to the enclosed letter of November 27, 2006 from Senator Mary Jo White, Chairman of the Senate Environmental Resources and Energy Committee

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REVIEW COMMISSION

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and the enclosed letter of November 28, 2006 from Senator Robert C. Jubelirer, President Pro Tempore. Also enclosed is a copy of the Concurrent Sine Die Resolution dated and adopted November 21, 2006 by both the Senate and House of Representatives. The Bureau does not have the authority for the reasons articulated in these letters and resolution to publish the subject regulation.

Sincerely,



Robert W. Zech, Jr., Director  
**Legislative Reference Bureau**

RWZ:cab

Enclosures (5)

cc: Executive Directors Senate and House Environmental Resources and Energy  
Committees  
Arthur Coccodrilli, Chairman, Independent Regulatory Review Commission  
Kathleen McGinty, Chairperson, Environmental Quality Board

## **H. Pollution Prevention**

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101--13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This final rulemaking will reduce mercury emissions from EGUs. Coal-fired power plants that burn sub-bituminous coal emit Hg<sup>0</sup>, which can be transported over transcontinental distances. Coal-fired power plants that burn bituminous coal emit oxidized forms of mercury, which are deposited near their source. In this Commonwealth, 85 percent of the coal burned by coal-fired power plants is bituminous, with the remainder as waste coal. Reducing mercury emissions will reduce mercury deposition and will therefore reduce mercury related water pollution.

## **I. Sunset Review**

This final-form rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine if the regulations effectively fulfill the goals for which they were intended.

## **J. Regulatory Review**

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 17, 2006, the Department submitted a copy of this final rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, and the Committees were provided copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department considered the comments received by IRRC, the Committees, and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P.S. §745.a(d)), on November 15, 2006, this final-form rulemaking was deemed approved by the House Committee. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 16, 2006 and approved the final-form rulemaking. Under section 5.1 (j.2) of the Regulatory Review Act, on October 18, 2006 the Senate Committee notified IRRC of their intent to review the regulation under section 5.1(j.2) of the Regulatory Review Act. The Senate Committee's 14 calendar day period for review began on the date that IRRC delivered notice of its approval, November 16, 2006, and continued until November 30, 2006, the constitutionally established expiration of the Term.

environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This final rulemaking will reduce mercury emissions from EGUs. Coal-fired power plants that burn sub-bituminous coal emit Hg<sup>0</sup>, which can be transported over transcontinental distances. Coal-fired power plants that burn bituminous coal emit oxidized forms of mercury, which are deposited near their source. In this Commonwealth, 85 percent of the coal burned by coal-fired power plants is bituminous, with the remainder as waste coal. Reducing mercury emissions will reduce mercury deposition and will therefore reduce mercury related water pollution.

#### **I. Sunset Review**

This final-form rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine if the regulations effectively fulfill the goals for which they were intended.

#### **J. Regulatory Review**

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 16, 2006, the Department submitted a copy of this final rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, and the Committees were provided copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department considered the comments received by IRRC, the Committees, and the public.

Under section 5.1(d) of the regulatory review Act (71 P.S. §745.a(d)), on xxxx,xx, 2006, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the regulatory review act, IRRC met on xxxx,xx, 2006 and approved the final-form rulemaking.

#### **K. Findings of the Board**

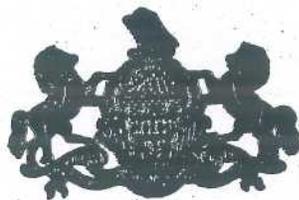
The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§1201 and 1202) and regulations promulgated thereunder at *1 Pennsylvania Code* §§7.1 and 7.2.

ROBERT W. ZECH, JR.  
DIRECTOR

JAMES L. WALSH  
ASSISTANT DIRECTOR

MARY JANE PHELPS  
DIRECTOR  
PENNSYLVANIA BULLETIN  
PENNSYLVANIA CODE



## LEGISLATIVE REFERENCE BUREAU

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PHONE: 717-783-1530 • FAX: 717-787-6362

January 2, 2007

The Honorable Kathleen A. McGinty, Chairperson  
Environmental Quality Board  
16<sup>th</sup> Floor Rachel Carson Building  
P.O. Box 2063  
Harrisburg, PA 17105-2063

**RE: Final Environmental  
Quality Board Rulemaking  
Mercury Emission Reduction  
Requirements for Electric  
Generating Units (#7-405)**

Dear Honorable Kathleen A. McGinty:

This is to advise you that our office is not authorized to publish the above referenced final rulemaking as deposited on December 29, 2006.

On November 27, 2006, our office was informed by the Chairman of the Senate Environmental Resources and Energy Committee that the Committee had voted on October 18, 2006 to extend its review of this final rulemaking by 14 days, as prescribed by the Regulatory Review Act.

The General Assembly adjourned *sine die* on November 28, 2006, leaving the Senate Environmental Resources and Energy Committee unable to assert its full 14-day review of the above referenced regulation.

The Department of Environmental Protection is required to resubmit this regulation to the Committee, to the appropriate standing committee in the House of Representatives, and to the Independent Regulatory Review Commission no earlier than January 22, 2007, pursuant to section 5.1 (j.3) of the Regulatory Review Act, as amended December 6, 2002 (P.L. 1227, 1236-37, No. 148), 71 P.S. 745.5a (2006 P.P.). The Committee will have at least 10 days from then to finally consider this final-form regulation.

In light of the additional time for committee review, the Legislative Reference Bureau is not authorized to publish the above referenced final-form regulations until full compliance with the requirements of section 5.1 (j.3) of the Regulatory Review Act are attained.

In addition, versions of page 50 of the official rulemaking documents are inconsistent with respect to the Regulatory Review information.

Sincerely,



Mary Jane Phelps  
Director PA Code and Bulletin

MJP/db

CC: Alvin C. Bush, Chairman  
Independent Regulatory Review Commission

Mary Jo White, Chairman  
Senate Environmental Resources and Energy Committee

Robert Zech, Director  
Legislative Reference Bureau



# Senate Environmental Resources and Energy Committee

Senator Mary Jo White  
Chairman

*Patrick Henderson, Executive Director*

Room 168 • State Capitol Building  
Mailing address: Senate Box 203021 • Harrisburg, PA 17120-3021  
Phone: 717-787-9684 • FAX: 717-787-6088

November 27, 2006

Mary Jane Phelps, Director  
PA Code & PA Bulletin  
647 Main Capitol Building  
Harrisburg, PA 17120

**Re: Final Environmental Quality Board  
Rulemaking: Mercury Emission Reduction  
Requirements for Electric Generating Units (#7-  
405)**

Dear Ms. Phelps:

This is to advise your office that the Senate Environmental Resources and Energy Committee (Committee) intends to resume its review of the above referenced final rulemaking in the next legislative session. Therefore, it is my understanding that the rule may not be published as final until all required reviews under the Regulatory Review Act (Act) are complete.

On October 18, 2006 the Committee voted to extend its review of this final rulemaking by 14 days, as prescribed under the Act. The 14 day extended review period commenced on November 17, 2006, the first full day after the Independent Regulatory Review Commission approved the final rulemaking. Since the General Assembly has adopted a resolution adjourning sine die prior to the conclusion of the Committee's review period, the Committee is entitled to an additional ten day review period next session to consider whether to approve or disapprove the regulation.

Please bear this information in mind should the Environmental Quality Board seek to publish this final rulemaking prior to the dates prescribed in the Act. If you have any questions, please do not hesitate to contact me.

Sincerely,

Mary Jo White, Chairman  
Senate Environmental Resources  
& Energy Committee

cc: Robert W. Zech, Jr., Director  
Legislative Reference Bureau  
Alvin C. Bush, Chairman  
Independent Regulatory Review Commission  
Kathleen A. McGinty, Chair  
Environmental Quality Board

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ROBERT C. JUBELIRER  
SENATE BOX 203030  
THE STATE CAPITOL  
HARRISBURG, PA 17120-3030  
(717) 787-8490  
(717) 787-9091 (FAX)

Office of the President Pro Tempore



Senate of Pennsylvania

November 28, 2006

30TH DISTRICT  
PARK VIEW CENTER  
TWELVE SHERATON DRIVE  
P.O. BOX 2023  
ALTOONA, PA 16803  
814-943-8498  
814-946-7268 (FAX)

Mary Jane Phelps, Director  
Pennsylvania Code and Bulletin  
Legislative Reference Bureau  
Room 647 Main Capitol Building  
Harrisburg Pennsylvania 17120

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Dear Ms. Phelps:

Because of the adjournment *sine die* of the General Assembly on November 28, 2006, the Environmental Resources and Energy Committee of the Senate is constrained from its full 14-day review of the final-form regulation of the Environmental Quality Board on "Standards for Contaminants; Mercury," proposed at 36 Pa.B. 3185 (June 24, 2006).

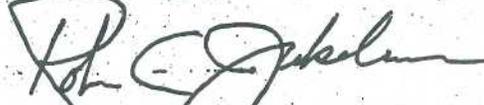
Under section 5.1(j.3) of the Regulatory Review Act, as amended December 6, 2002 (P.L.1227, 1236-37, No.148), 71 P.S. § 745.5a (2006 P.P.): the Department of Environmental Protection is, therefore, required to resubmit this final-form regulation to the Committee, to the appropriate standing committee in the House of Representatives, and to the Independent Regulatory Review Commission no earlier than January 22, 2006; and the Committee will have at least ten days from then to finally consider this final-form regulation.

In light of the additional time for committee review, it is our understanding that the Legislative Reference Bureau is not authorized to publish the final-form regulation of the Environmental Quality Board on "Standards for Contaminants; Mercury," proposed at 36 Pa.B. 3185 (June 24, 2006), until full compliance with the requirements of section 5.1(j.3) of the Regulatory Review Act are attained.

Page 2

Should there be questions or developments regarding publication of the final form regulation and the related processes, please contact Drew Crompton, Counsel to the President Pro Tempore or Steve MacNett, General Counsel.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert C. Jubelirer", written over a faint, large watermark of the same name.

ROBERT C. JUBELIRER  
PRESIDENT PRO TEMPORE

RCJ/bbk

cc: Senator Mary Jo White  
Senator Raphael J. Musto  
J. Andrew Crompton, Esquire

11/21/06

By Senator Brightbill

In the Senate,  
November 21, 2006

**RESOLVED, (the House of Representatives concurring),**

**That the 190th Regular Session of the General Assembly be  
adjourned sine die at 6:00 o'clock p.m. on Tuesday, November 28,  
2006.**