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Environmental Quality Board
Department of Environmental Protection
Commonwealth of Pennsylvania
P.O. Box 8477
Harrisburg, PA 17105-8477

July 14, 2006

Re: Proposed Amendments to 25 Pa. Code Ch. 123 (36 Pa. B. 3185)
Limiting Mercury Emissions from Electric Generating Facilities

Dear Board Members:

I am a resident of Montgomery County, Pennsylvania, a career environmental lawyer, and a frequent recreational user of the Commonwealth's parks and natural areas. I strongly support the Department's proposed rule to limit mercury emissions from electric generating facilities.

This rule is long overdue. The U.S. Environmental Protection Agency should have promulgated years ago a mercury emission rule for coal-fired generating facilities pursuant to Section 112 of the Clean Air Act. It was perfectly clear to all of us practicing environmental law in Washington when Congress first enacted Section 112 in 1977 (I was representing EPA), and later in 1990 when Congress strengthened this provision, that the legislative intent was to require major sources like power plants to install *maximum achievable control technology (MACT) at the source*, not to allow hazardous air pollutants to be treated as conventional pollutants subject to long-distance emission trading and offset schemes that severely weakened and protracted the clean-up. There were, and are, good scientific and public health reasons for listing mercury compounds as hazardous air pollutants under the Act, and these reasons are well-documented in both the Department's record and EPA's own administrative record. For *more than fifteen years* we have relied on EPA to perform its regulatory duty under Section 112 for mercury (and other chemicals), and the result has been a pitiful betrayal of the public trust and a circumvention of the law.

Under these circumstances, the Department of Environmental Protection's decision to adopt its own mercury rule under the Air Pollution Control Act is highly appropriate and necessary, especially because there are major emitting facilities located here in the Commonwealth and because our waterways—and their aquatic species--are primary environmental receptors of this pollution.

I have examined the environmental monitoring data for wet mercury deposition at the sampling stations in Pennsylvania, and they provide strong support for the rule. The mercury monitoring station closest to where I live and where I enjoy the out-of-doors is PA 60 located in the Valley Forge area. The Pennsylvania State University Report (Lynch et al., Dec. 2005), entitled "Mercury Deposition in PA: 2005 Status Report", Table 3, displays the maximum and minimum weekly sample results for wet deposition of mercury from the atmosphere. In 2004, PA 60 recorded *both the second highest maximum and the second highest minimum values for mercury out of all eight sample stations in the Commonwealth.* Moreover, the data show *no*

improvement in the level of mercury deposition during the five years of monitoring from 1999 to 2004 when the industry was engaged in installing and upgrading pollution control equipment for conventional pollutants. In fact, at PA 60 the maximum weekly mercury deposition in 2004 is the *highest maximum reported since the monitoring began in 1999.*

The fact that mercury is still being washed out of the air at the same or worse rate at stations in Pennsylvania in 2004 as in 1999 underscores the need for source control for this pollutant. The mercury emission and wet deposition data are more than ample justification for issuing the proposed rule, regardless of mercury levels in fish and other aquatic organisms.

Sincerely,

Bradford F. Whitman

Cc: The Sierra Club, Local Chapter