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INDEPENDENT REGULATORY REVIEW COMMISSION

Three Mile Island Alert's Comments on Pennsylvania's State Specific Mercury Reduction Rule Before the Environmental Quality Board DEP's Headquarters - Rachel Carson State Office Building

Eric J. Epstein, Chairman

July 26, 2006

The Environmental Quality Board (EQB) empowered the Department of Environmental Protection's (DEP) to develop state-specific regulations to control mercury emissions, on August 16, 2005 by a 16-3 vote. The rule-making process focused on the reduction of mercury emissions, but also sought to encourage clean coal technologies, discourage the use of dirty fuel-switching, and factor the impact of the rule on capacity and reliability standards.

The Environmental Protection Agency (EPA) proposed a federal rule that would make mercury emission controls optional and national in scope. The current federal proposal would aim to cut mercury emissions by 30% by 2010 and 70% by 2018. This is a significant departure from former-EPA Director Christine Todd Whitman's more aggressive proposal in December 2001, which sought mercury emission reductions of 90% by 2008 using currently available technologies.

Three Mile Island Alert is a safe-energy organization based in Harrisburg, Pennsylvania and founded in 1977. TMIA monitors Peach Bottom, Susquehanna, and Three Mile Island nuclear generating stations.

tmia.com

TMIA is also concerned about "masking" that occurs when fossil fuel plants emit radioactive particulates and gases in close proximity to nuclear power plants. Brunner Island is across the Susquehanna River from Three Mile Island, the Bruce Mansfield plant and Beaver Valley Nuclear Generation Station are both in Shippingport, and Monitor is within 25 miles of the Susquehanna nuclear power plant.

Governor Rendell declared, "The federal rule is bad for the environment and bad for business. Unless we change course, Pennsylvanians face continued exposure to dangerous levels of mercury and our coal industry faces significant economic harm because of the unfair market barriers included in the federal mercury rule." The Governor and Secretary of the DEP have rallied the support of numerous environmental, public interest, religious and health organizations.

According to the EPA, the revised Clean Skies mercury control plan would eliminate across-the-board controls on utilities in favor of a cap-and-trade system. This would allow utilities to reduce mercury emissions from some plants but not others. Industry supports this proposal rather than a system wide retrofitting all of a company's plants with emissions' controls. The power industry fears that it will be forced to retrofit old coal plants which may be shut down if new carbon dioxide limits are imposed.

The Government Accountability Office (GAO) recently found problems with the EPA's voluntary emissions reduction known as the "Climate Leaders Program." The program was designed to reduce greenhouse gases, but it failed to ensure that participants set firm reduction targets to meet their stated goals (*Environmental Synopsis*, July 2006.) (1)

DEP has asserted a "compelling interest" to reduce Pennsylvania mercury emissions. The Department determined that electric steam generating units accounted "for 77% of the 5.7 tons of mercury emitted from air contamination in the state." (*SNL Energy*, Generation Markets Week, August 23, 2005, p. 15.) More recently, the DEP found that 78 electric generating units in Pennsylvania account for just under 75%s of the state's' mercury inventory.

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1 Seventy four corporations representing 8% of total US greenhouse gas emissions enrolled in the program. Only 38 set goals, and the EPA is still evaluating the data. The GAO also found that EPA had no method for determining that data supplied by participants was not being double counted in other voluntary programs (*Climate Change: EPA and the DOE should Do More to Encourage Progress Under Two Voluntary Programs*, 2006.) (gao.gov/new.items/d0697/.pdf)

The General Assembly is considering legislation that would supplant the state-specific plan with the federal rule. The measures (Senate Bill 1201 and House Bill 2610) are supported by business, industry, and labor unions. Gene Barr, vice president of political and regulatory affairs for Pennsylvania Chamber of Business & Industry stated, "The debate is not about a choice between the control of mercury emissions or no control." (*Patriot News*, July 17, 2006)

DEP Secretary Kathleen A. McGinty said, "Public involvement is critical to the decision-making process, and especially so in this matter. We need a plan that protects Pennsylvanians from continued exposure to dangerous levels of toxic mercury, keeps our environment clean and enables our economy to grow."

This issue has evolved into a verbal tug-of-war. The debate has been toxic, personalities have supplanted issues, and both sides have retreated into their respective rhetorical trenches. Pennsylvania has a wealth of intellectual and technological capital that we should be harvesting to defeat a common societal ill. Instead, we're engaging in a linguistic wrestling match.

Pennsylvania's has unique problems embedded in mercury emissions that can not be resolved through a one-size-fits-all approach. The facts on the ground and in the air make Pennsylvania ground zero for mercury remediation. Several of our communities are "hot spots" based on their location and mercury transport pathways. We are home to some of the nation's oldest and dirtiest and least efficient power plants.

However, we must acknowledge that industry and labor built these plants as demanded by society. These facilities produced decades of energy and fueled the Pennsylvania economy. Times have changed but the coal we mine and burn remains the same. Pennsylvania's bituminous assets contain more mercury than the sub-bituminous coal burnt by our midwestern neighbors. The presence of chlorine in bituminous coal enables the more efficient removal of mercury through technology.

I believe we should invest in Pennsylvania. I believe we should partner with Pennsylvania business and labor. I believe we should reward utilities, but hold them accountable for decreasing their total share of pollution. I also believe enforcement works best with a carrot and a hammer.

I don't believe a national cap and trade mercury emissions' plan serves Pennsylvania's economic or environmental interests. It fails to address our society's desire for a balanced risk-reward formula. "A simple cap and trade program treats all emissions equally, but it is important to recognize that there are significant regional differences in the effects of pollution. Emissions from California and states in the mid-Atlantic area cause the greatest economic damages because they lead to changes in exposure for a large population...These large differences suggest there would be advantages to differentiating the programs by origin of emissions " (Palmer, Banzhaf & Burtraw, "Capping Emissions: How Low - Investigating Where Environmental Efficiency and Good Public Policy Intersect," *Public Utilities Fortnightly*, December 2002, pp. 28-36.)

Let's look at what we agree on and rally around a commonality of interests. We all want to reduce mercury emissions, create sustainable jobs, and grow the Pennsylvania economy.

There are three ways to reduce emissions: install post-combustion controls, switch fuels, or reduce generation. But there are also three main issues in dispute including site-specific vs. national approaches to remediation, incentives vs. mandates, and creating a matrix that quantifies and qualifies economic and social impacts.

Convene A Task Force or Work Group Immediately

I believe there is third way to approach this problem. The only way to eliminate personal animus and bridge philosophical chasms is to establish a Working Group. The tools of negotiation have been successfully implemented by those of us involved in multibillion dollar restructuring settlements.

Recently, PPL, DEP and several groups successfully negotiated an agreement on Brunner Island relating to effluent emissions. (2)

We need to get to a number we can agree on through a partnership plan. I believe it's possible to achieve significant and lasting mercury reductions in a expedited period without mandating or implementing a national mercury cap and trade program. We must utilize a combination of marketed based incentives, tax tools, and measured enforcement.

Negacompliance

The rule-making process focused on the reduction of mercury emissions, but also sought to encourage clean coal technologies, discourage the use of dirty fuel-switching, and factor the impact of the rule on capacity and reliability standards.

The Alternative Energy Portfolio Standards Act will require greater percentages of retail electricity from alternative energy sources and energy efficiency technologies over a 15 year period. Compliance is required on an annual basis. Demand side management (DSM) and distributed generation are located in Tier II.

Demand side management could play a role in reducing mercury pollution, and increase available market energy supplies without increasing generating capacity. DSM could include a credit that allows for companies to achieve "super" mercury reductions, or reach agreed upon reduction levels ahead of prescribed deadlines.

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2 Three years of negotiation between the state and Allentown-based PPL Brunner Island LLC have ended as the company has agreed to install cooling towers, estimated to cost $120 million, to address high-temperature discharges into the Susquehanna River from its electric generation facility in East Manchester Township, York County...The successful resolution addresses the efforts of high temperature cooling water discharge on aquatic life in the river. Additionally, PPL will pay $183,386 for river improvements (DEP, Press Release, March 27, 2006.)

Create and Extend the Science and Technology Tax Credit

We are attempting to reduce corporate tax expenditures for building new cleaner energy generating plants in Pennsylvania. We should not be in the business of incenting companies to extend the lives of older facilities. Nor should we encourage power companies to "write-off" a salvageable asset. Older fossil plants will necessarily serve as a bridge to the green energy economy.

The science and technology tax credit, in tandem with accelerated geometric deprecation (3), could be used to provide tax relief and asset preservation. This instrument could facilitate investments in cleaner technologies, and could be possibly help convert older generating stations into newer KOZ energy parks or KIZ technology campuses.

A geometric depreciation option allows for asset value preservation should more aggressive multi-pollutant legislation be mandated.

Societal Benefits Tax Abatement vs. A Societal Tax Fee

Tax abatements could be created for certain mechanical and chemical systems that monitor and manage mercury emissions as well as additional equipment used to assess plant ventilation and leak-detection and other industrial activities.

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3 The Bureau of Economic Analysis has introduced an improved methodology for calculating depreciation in the late 1990s.

"For example, with straight-line depreciation, depreciation in the first year is equal to depreciation in the second year, which is equal to depreciation in the third year, and so on. A geometric pattern is a specific type of accelerated pattern. An accelerated pattern assumes higher dollar depreciation in the early years of an asset's service life than in the later years. For example, with accelerated depreciation, depreciation in the first year is greater than that in the second year, which is in turn greater than that in the third year..." (Barbara M. Fraumeni, "The Measurement of Depreciation in the U.S. National Income and Product Accounts", *Survey of Current Business*, July 1997, pp. 7-23.)

An earned annual abatement could be a powerful tool in achieving rigorous mercury reductions. DEP has already innovated a successful pollution prevention program with small businesses. (4)

The Department of Environmental Protection would inspect, verify, and certify if a generating station is complying with established tax technology. If deemed compliant, the business would be granted a tax exemption which could be renewed on an annual basis. Conversely, failure to meet DEP's certification standards through noncompliance (which would be appealable to the Environmental Hearing Board) would result in an assessment and temporary loss of the tax abatement designation.

Community Benefits Agreement

There are site-specific tools and remedies that should be considered for each community deemed a sensitive area or "hot spot" (5) based on the LAX model (See enclosure). Among the available community tools: provide technical training funds for related jobs, create a local hiring program to give priority to local residents, study the health impacts of plant operations on surrounding communities, create a health registry, and maintain atmospheric monitoring.

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4 "The Small Business Pollution Prevention Assistance Account loan program is available to any small business owner whose pollution prevention and energy efficiency project is located within Pennsylvania...The loan must be used to purchase or upgrade equipment, or to implement a process change, that reduces or reuses raw materials on-site, reduces the production of waste at the source or significantly reduces energy consumption. Equipment and processes that focus on recycling or pollution control (scrubbers, filters, dust collectors, etc.) are **ineligible** for the loan." (DEP, July 26, 2006)

5 Communities that live near higher emitting stations would be eligible for independent community needs assessment e.g. Keystone, Bruce Mansfield Hatfield's Ferry, Shawville, and Conemaugh.

ENCLOSURE

December 2004

Landmark $500 Million Community Benefits Agreement To Help Communities Near LAX

The city of Los Angeles has approved an historic Community Benefits Agreement (CBA) that will bring a far-reaching package of environmental, economic benefits to residents affected by the proposed airport modernization.

The legally binding agreement - the result of months of discussions between the City, LAWA, and more than 20 community groups, environmental organizations, school districts and labor unions - will establish a national precedent. At half a billion dollars, it represents the largest and most comprehensive community benefits agreement ever negotiated, covering a broad range of impacts including environmental, labor, noise, health and accountability issues.

The key improvements that will result from the Landmark Community Benefits Agreement include:

* Sound proofing all affected schools.
* Increasing funding for the sound proofing of homes.
* Retrofitting diesel construction vehicles and diesel vehicles operating on the tarmac to curb dangerous air pollutants by up to 90%.
* Electrifying airplane gates to eliminate pollution from jet engine idling.
* Studying the health impacts of airport operations on surrounding communities and making those studies public on the LAWA web site.
* Providing $15 million in job training funds for airport and aviation-related jobs.
* Creating a local hiring program to give priority to local residents, low-income and special needs individuals for new LAX jobs.
* Enhance opportunities for local, minority and women-owned businesses in the modernization of LAX.
* Monitoring LAX, enforcing the agreement's provisions and holding LAX accountable to the community.

"This agreement is a milestone for the growing community benefits movement," said Rev. William Smart, senior community organizer with the Los Angeles Alliance for a New Economy, which pioneered the concept of community benefits agreements and played a lead role in the negotiations. "We have demonstrated that when communities have a place at the table, economic development works better for everyone." _

City of L.A. Approves Landmark $500 Million Community Benefits Agreement for Residents Near LAX: *The Wall Street Journal* writes that in the latest sign of the growing coordination among community groups and the sway they are having on development projects, the city of Los Angeles has agreed to pay nearly $500 million to provide environmental mitigation and jobs-related benefits programs to the neighborhoods affected by plans to upgrade and expand LAX. The airport accord is the latest in a growing number of community-benefits agreements. The concept was pioneered in Los Angeles by LAANE and allows local residents a say in shaping major development projects. _

Los Angeles Groups Agree to Airport Growth, for a Price: The $11 billion LAX modernization plan includes $500 million in measures to ease the expansion's effects on surrounding communities. The *New York Times* reports on the LAX community benefits agreement, the largest of its kind in the nation, and discusses LAANE's winning strategy of combining the tools of community organizing with the hard-nosed tactics of political and economic pressure. "These agreements completely redirect the priority of economic development toward raising the quality of life in communities," says Madeline Janis-Aparicio, LAANE executive director.