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August 25, 2006

By E-mail

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

Re: Proposed Rulemaking: Standards for Contaminants; Mercury
36 Pa. Bull. 3185 (June 24, 2006)

Dear Members of the Environmental Quality Board:

On behalf of Citizens for Pennsylvania's Future (PennFuture), I am writing to provide comments on the proposed rulemaking regarding mercury pollution published at 36 Pa. Bull. 3185 (June 24, 2006). PennFuture is a statewide membership organization dedicated, among other things, to improving air quality and public health in Pennsylvania. On August 9, 2004, joined by nine other organizations, PennFuture filed the petition for rulemaking that led to the current proposed rule.

By these comments, we support action by the Department of Environmental Protection (DEP) to address the serious public health threat from mercury. We also highlight several areas where DEP can and should make its current proposal stronger.

Reasons for Action

In our petition for rulemaking, PennFuture documented the reasons why Pennsylvania must act to reduce mercury emissions from its coal-fired power plants. Our petition is posted on both on DEP's mercury page[1] and the PennFuture website,[2] and the "reasons for action" section from the petition is incorporated into these comments by reference. In summary:

- Mercury poses serious public health threats, especially risks of neurological problems to developing fetuses and infants.
- Pennsylvania has a statewide fish consumption advisory based, in part, on mercury contamination.
- According to DEP, coal-fired power plants account for 77 percent of the mercury emitted into the air from all contamination sources.

[1] http://www.dep.state.pa.us/dep/deputate/AIRWASTE/AQ/regs/mercury_rule.htm
[2] http://www.pennfuture.org/

- EPA action to reduce mercury emissions will not reduce mercury contamination quickly or decisively enough to protect the public health.

- Many other states have taken or are now taking action to reduce mercury pollution.

- Mercury controls are affordable for Pennsylvania plants.

- Reducing mercury will create jobs in installing, operating, and maintaining pollution controls.

Some of these bases for action also appear in the preamble to DEP's proposed rule. 36 Pa. Bull. 3185.

DEP's Rule Should Provide Faster, Deeper Mercury Reductions

In preparing the proposed rule, DEP has had the benefit of several examples: the proposed language submitted with the petition for rulemaking, based on the New Jersey mercury rule; the rules considered or adopted in several other states; the model rule prepared by state and local air officials (STAPPA/ALAPCO); and the federal Clean Air Mercury Rule.

The New Jersey rule discussed in our petition for rulemaking is expeditious and effective. This rule requires plants to reduce emissions by 90 percent or to meet a related standard based on output, and applies three years from promulgation to all covered sources. The New Jersey rule provides flexibility for plants that agree to close by 2012.

At the other end of the spectrum, the Clean Air Mercury Rule (CAMR) issued by EPA is slow and weak. Under CAMR, emission reductions will not be fully implemented until at least 2018. Although mercury reductions of 90% are technologically achievable today, CAMR promises only a 70% reduction in emissions at full implementation. Secretary McGinty has sharply and rightly criticized CAMR.

The question for DEP is how to achieve fast, effective pollution reductions while allowing flexibility that does not jeopardize the core benefits of the program. With mercury, as in other matters, we agree that some flexibility is fair to industry and lowers costs of compliance. We support extended compliance periods for plants that make an enforceable promise to shut down. § 123.204. We support the option to meet either an output-based or percent reduction emission limit. § 123.205. We support facility-wide averaging. See, e.g., § 123.206(b)(2).

However, DEP's proposal places in question the timing and extent of the rule's emission benefits:

- DEP's rule phases in compliance through 2015, ensuring that full emission benefits will not be realized for nine years from this writing.

- Rather than eliminating mercury reductions from the annual inventory, DEP's rule creates a "supplement pool", through which DEP will redistribute emission allowances to petitioning plants that fail to meet annual limits. §§ 123.208, 123.209. Putting extra reductions into this pool instead of retiring them could represent a lost opportunity for emission reductions.

- DEP's rule offers an opportunity for avoiding mercury reduction requirements by an alternate emission standard or schedule where a source shows that compliance is "economically infeasible." 123.206(c). The proposed rule does not appear to set any definition or standards for DEP to apply regarding the term "economically infeasible." PennFuture recommends that this provision be eliminated or, at least, that "economically infeasible" be defined.[3]

DEP Must Quantify Emission Reduction Benefits from its Rule

We support DEP's mercury rule because we believe it will lead to mercury reductions that will benefit public health. However, we also believe that DEP must rigorously quantify emission reductions, for several reasons:

- to increase already substantial public support for a rule that faces opposition from some legislators;

- to respond to attacks from industry that belittle the positive public health impacts of DEP's rule; and

- to provide valuable information that the Independent Regulatory Review Commission (IRRC) can consider in approving the rule.

We know that the Department has prepared its rule carefully, including, we believe, a plant-by-plant analysis of likely responses to the requirements of the new DEP mercury rule and other federal and state regulations. In February, DEP told PennFuture that it expected annual emission reductions of 800 to 1,000 pounds of mercury per year beyond the level required by CAMR. This is a substantial and credible amount, roughly equivalent to eliminating completely the emissions from three of Pennsylvania's ten highest mercury-emitting plants.

However, the rule has changed since February. PennFuture has made informal requests for information about emission benefits under the new versions of the rule, but DEP has provided no further information.

We ask that DEP, in its response to this comment:

- identify the expected statewide annual emissions of mercury in pounds from facilities subject to the rule from 2006 through 2018.

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[3] "Technologically infeasible", § 123.206(c), also needs to be defined or this provision eliminated.

- provide DEP's estimates for annual projected emissions for each subject plant in pounds based on expected control technology at each plant (we understand these projections may change).

- describe the expected effect of the compliance presumption under § 123.206(b) and the supplement pool (see above) on emission levels, in additional pounds of mercury emissions each year.

- identify the expected total annual emissions of mercury in pounds under CAMR requirements from 2006 to 2018 if there were no DEP rule requiring additional benefits, and

- show the incremental annual total benefit from 2006 to 2018 in pounds under the Pennsylvania rule.

Providing this detailed information to demonstrate emission benefits is important to the future success of the rule with the public, the Legislature, and IRRC.

Conclusion

We support DEP's efforts to respond to the public health threat posed by mercury emissions. We urge DEP to strengthen its rule and to quantify the benefits the rule will offer. Please contact me with any questions.

Sincerely,

s/ Charles McPhedran

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