

New Mercury Trading Program Faces Uphill Battle

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On March 15, 2005, acting EPA Administrator Steve Johnson signed the Clean Air Mercury Rule. Once implemented the mercury rule will significantly reduce mercury emissions from coal-fired power plants, according to the EPA. The recently issued Clean Air Interstate Rule and the new Clean Air Mercury Rule will reduce electric utility mercury, nitrogen oxides and sulfur dioxide emissions by an average of 70 percent from 1999 levels once the rules are fully phased in.

Mercury is a persistent, toxic pollutant that accumulates in the food chain. While concentrations of mercury in the air are usually low, mercury emissions can reach lakes, rivers, and estuaries and eventually build up in fish tissue. Mercury is a suspected neurotoxin and can be especially dangerous to infants and women of childbearing age. Consuming mercury-contaminated fish and shellfish can increase the risk of mercury poisoning.

“This rule marks the first time the United States has regulated mercury emissions from power plants,” Acting Administrator Steve Johnson said. The rule limits mercury emissions from new and existing coal-fired power plants through a market-based cap-and-trade program that will permanently cap utility mercury emissions in two phases. The first phase cap is 38 tons, beginning in 2010, with a final cap set at 15 tons beginning in 2018. Current utility mercury emissions are about 48 tons annually. The mandatory caps, coupled with significant penalties for non-compliance, will ensure that mercury reduction requirements are achieved and sustained, according to the EPA. The cap-and-trade system establishes new incentives for continued development and testing of efficient and effective mercury control technologies. In addition, by making mercury emissions a tradable commodity, advocates of the new trading system say that the new regulation provides a strong motivation for some utilities to make early emissions reductions and continuous improvements in control technologies.

The new regulation is facing resistance on several fronts due largely to mercury’s poisonous nature and the threat of “hot spots” under a cap-and-trade-system. Senate Environment and Public Works Committee ranking member Jim Jeffords (I-Vt.) and other critics of the cap-and-trade plan to reduce power plant mercury emission are considering a range of options to stop it from going forward. Jeffords, joined by Sens. Patrick Leahy (D-Vt.) and Barbara Boxer (D-Calif.), spoke out against the new rule several hours before it was signed by acting EPA administrator Stephan Johnson. “We will fight it here in Congress, and we will fight it in state houses across the nation,” Jeffords said. “I condemn this rule in the strongest possible terms,” he continued. Several state attorneys general and environmental groups have indicated that they intend to sue the EPA over the mercury rule. The EPA issued the rule in the first place largely due to a consent decree from a previous lawsuit.

Congressional opposition to the EPA mercury rule has been consistent since the Bush administration in December 2003 first indicated it wanted to pursue a trading program for the toxic pollutant while simultaneously dropping a Clinton-era decision requiring pollution controls on nearly all of the nation’s 1,300 coal and oil fired power plants.

U.S. Conference of Mayors' adopted policy encourages the EPA to enforce existing regulations and Congress to pass new legislation requiring older power plants to reduce all air emissions, focusing on results-based outcomes. The Conference of Mayors supports a comprehensive and synchronized multi-pollutant market-based program to reduce regulatory costs, maintain reliable energy for consumers, and provide certainty to the electric power sector in ways that do not compromise public health and encourages Congress to set national air emission caps under a multi-pollutant plan at levels strong enough to substantively assist cities in their efforts to attain the National Ambient Air Quality Standards by statutory deadlines. The U.S. Conference of Mayors encourages EPA and Congress to keep those programs in place, with multi-pollutant legislation as an addition to current clean air law.