

CLEAN AIR – April 7, 2005

Senators unveil bipartisan mercury legislation

Darren Samuelsohn, *Greenwire* senior reporter

Two New England senators introduced legislation yesterday requiring the U.S. EPA to force power plants and other industrial sources to make deeper reductions of mercury emissions than would be required under the agency's current regulations.

The "Omnibus Mercury Emissions Reduction Act" takes aim at a series of controversial EPA rules, including the standard released by EPA last month that would allow the electric utility industry to buy and sell credits to reduce their mercury pollution down to 15 tons by the mid-2020s. Mercury is a potent neurotoxin that affects the brains and nervous systems of young children and fetuses.

The bill sponsored by Sens. Olympia Snowe (R-Maine) and Patrick Leahy (D-Vt.) would trump the Bush administration's mercury trading program and instead mandate strict pollution controls for nearly all the country's 1,300 coal- and oil-fired power plants. While EPA's rule calls for a 22-percent cut in mercury emissions by 2010 from today's 48-ton level, the Snowe-Leahy bill would require a 90-percent cut during the same time period.

In a prepared statement, Snowe said the bill is needed to protect public health and the environment. "Because mercury pollution knows no borders, we must institute a sensible national approach to better control its use," she said. "Our bill takes action where EPA's new mercury rule does not."

Snowe and Leahy, both vocal opponents of the administration's mercury policies, offered a nearly identical bill to amend the Clean Air Act during the last session of Congress. Like the preceding legislation, this year's bill will also be referred to the Senate Environment and Public Works Committee, where it faces an uncertain future.

Top EPA officials have in recent weeks defended the administration as doing the best it can to control mercury pollution without disrupting the country's main energy source, coal. EPA's power plant mercury rule establishes a 38-ton emission limit on nationwide pollution in 2010, with a second-tier requirement to lower mercury to 15 tons by 2018. EPA notes that recent estimates of annual total global mercury emissions from all sources are roughly 5,000 tons a year.

The Snowe-Leahy bill, unlike other legislation debated in recent years on power plant pollution, goes beyond electric utilities to address a host of other U.S. mercury sources. Those include solid waste incinerators, commercial and industrial boilers, chlor-alkali plants and cement plants. The bill also would require labeling of mercury-containing products to limit mercury emissions in the waste stream.

The measure takes aim at the 5 tons of mercury emissions that come from Portland cement plants. EPA issued rules in 1999 for the cement plants, but Snowe and Leahy criticized the standard for not addressing mercury. The lawmakers' bill would reduce the industry's emissions by 95 percent.

The lawmakers also include a provision requiring the Defense Department to report on its use of mercury and the steps it is taking to stabilize and recycle old mercury and another directing EPA to work with Canada and Mexico to analyze mercury emissions in North America.

Enviros petition EPA to halt mercury rule

April 1, 2005

Darren Samuelsohn, *Greenwire* senior reporter

Environmentalists are petitioning U.S. EPA to stop a key piece of its final mercury rule, arguing the agency failed to follow key administrative and procedural steps that would make the standards vulnerable to legal challenges.

Four advocacy groups -- the Chesapeake Bay Foundation, the Clean Air Task Force, National Wildlife Federation and Natural Resources Defense Council -- urged acting EPA Administrator Stephen Johnson yesterday to stay the agency's formal delisting from the Clean Air Act of electric utility mercury emissions as an air toxic.

EPA published in the *Federal Register* Wednesday its final decision to drop a Clinton administration determination that the power plant industry must install stringent mercury pollution controls on nearly all of the nation's 1,300 coal- and oil-fired power plants. But environmentalists say EPA justified its decisions with information that it did not formally advance last year through the rulemaking process.

Environmentalists privately said yesterday that they were doubtful EPA would accept their request. As such, the groups asked for a response by April 11, otherwise they will consider the petition denied.

Top EPA officials have argued in recent weeks that they believe they are on solid legal ground for defending their plan to allow electric utilities to trade mercury credits, as opposed to the more stringent source-by-source requirements. "We are quite confident we are in a good position to defend them," said EPA air chief Jeff Holmstead last month upon the rule's unveiling.

In a prepared statement, EPA spokesman John Millet today would only say, "The agency will review the petition and respond appropriately."

Petition offers glimpse of future legal arguments

The environmental groups' petition offers an early indication of some of the legal arguments that will be advanced in objection to the Bush administration's mercury plan.

Aside from this week's request, opponents to the mercury trading plan will have multiple venues to try to overturn the regulations. On the legal front, Pennsylvania's Department of Environmental Protection yesterday signed on as a plaintiff in a lawsuit against EPA's mercury delisting filed Wednesday in federal appeals court by nine state attorneys general, including California, New Jersey and New York ([Greenwire](#), March 30). The states also say they plan to sue EPA as soon as it publishes the trading plan, with both lawsuits likely to be consolidated by the court into one case.

Opponents also are planning to file a petition for reconsideration, due within 60 days of Wednesday's rule publication, that will give EPA an opportunity to address some of the same administrative and procedural questions raised in this week's petition from environmentalists.

In this week's petition, the environmentalists argue EPA in the final rule offered data, modeling results and legal theories that were omitted from the December 2003 mercury proposal. A federal appeals court is likely to overturn the mercury rule on such grounds, they said, therefore it makes sense for EPA to stop the mercury plan from going forward now in order to protect public health and the environment.

"The rescission rule cannot be allowed to remain in effect even for the brief period pending submission and the agency's review of a petition for reconsideration because the power industry is likely to rely on the rule's deregulatory approach in making business decisions in the near term, decisions that will have drastic and irreversible consequences for public health," the environmentalists wrote.

The EPA mercury rule includes a [229-page rule preamble](#), a [291-page rule](#) and a [210-page document](#) that formally rescinds the 2000 Clinton administration finding that would have required nearly all power plants across the country to install "maximum achievable control technology."

EPA is calling on states to establish a cap-and-trade program to limit mercury emission allowances from current levels of 48 tons down to 38 tons in 2010 and 15 tons in 2018. In the rule, EPA said the Clinton-era decision "lacked foundation" and could be overturned based on new information and analysis. The Bush administration in the mercury rule spells out some of its initial legal arguments for a trading program, noting that other provisions of the Clean Air Act may simultaneously reduce toxic emissions without creating cost-prohibitive requirements for industry.

Holmstead has acknowledged that the agency's own modeling shows U.S. power plant mercury pollution will not actually reach the 15-ton cap by 2026, which is nearly a decade after the limits are required. Instead, the agency's projections show the mercury rule, coupled with a separate standard released this month for nitrogen oxides, sulfur

dioxides and fine particulate matter in the East, will lower mercury pollution to 31 tons in 2010, 28 tons in 2015 and 24 tons in 2020.

As EPA touts CAIR's benefits, N.E. states seek more help – March 11, 2005

Darren Samuelsohn, *Greenwire* senior reporter

U.S. EPA is touting its new regulations for reducing smog and fine particulate matter in the eastern United States as one of the most significant programs ever crafted to protect public health and environmental benefits.

The agency's top air pollution official predicted yesterday the Clear Air Interstate Rule, CAIR, would rank third in the history of the Clean Air Act for reductions in premature deaths -- behind the removal of lead from gasoline in the late 1970s and a program to reduce acid rain.

Jeff Holmstead, EPA's assistant administrator for air and radiation, told reporters CAIR "marks a major milestone in our nation's continued progress toward cleaner air."

In an unusual twist, the Bush administration was not universally condemned by environmental groups for an air quality regulation. Environmental Defense President Fred Krupp joined Holmstead on the podium at EPA headquarters yesterday to welcome the CAIR's use of a market-based system to encourage emission reductions from electric utilities.

"It's good for our country that President Bush and his administration have decided to move forward on the Clean Air Interstate rule, and I thank the president for his decision to do so," Krupp said.

The EPA rule includes a [777-page preamble](#) and [466 pages](#) of regulatory text. The agency says CAIR, when fully implemented in 2015, will reduce acid-rain causing sulfur dioxide emissions by more than 70 percent and smog-forming nitrogen oxide by more than 60 percent.

The Bush administration had said throughout last year's presidential campaign that it would issue the CAIR rule before the start of 2005. But Bush and then-EPA Administrator Mike Leavitt agreed with Senate Republican leaders last December to hold back the rule to give Congress a chance to pass the president's "Clear Skies" initiative, which would set CAIR-like limits nationwide ([Greenwire](#), Dec. 13, 2004).

But Clear Skies also proposed regulatory changes to the Clean Air Act that sparked controversy and ultimately led Wednesday to the bill's failure to clear a key Senate committee ([E&E Daily](#), March 9).

CAIR is in many ways a regulatory alternative to Clear Skies. It aims to reduce the interstate transport of air pollution by requiring industrial sources in upwind states to reduce their emissions. Under the plan, 28 Eastern states and the District of Columbia must meet specific SO₂ and NO_x caps either by participating in a federal cap-and-trade system for electric utilities or by requiring cuts on local industrial facilities that does not necessarily have to involve power plants.

EPA expects most states will opt for the market-based plan, thereby placing the burden on their local coal-fired power plants because it would represent the most cost effective approach to meeting the pollution limits.

Driving the CAIR process are federal ozone and fine particulate matter standards, with more than 450 counties in the East named last year as being out of compliance with the Clinton-era requirements. EPA said in the rule that CAIR would bring into attainment 57 of 74 counties that would otherwise not meet the PM standard in 2015, as well as six of the 22 counties that would still not reach the ozone requirements.

According to [EPA projections](#), CAIR does not bring some of the largest East Coast metro areas, including Washington, Baltimore, Philadelphia and New York, into compliance with the federal ozone standard by 2015. Fine particulate nonattainment areas also persist after 2015 in Atlanta, Birmingham, Ala., St. Louis, Indianapolis, Cincinnati, Chicago and Detroit. EPA said in the CAIR rule that those areas will "find it less burdensome and less expensive" to reach attainment by relying on local pollution control measures.

Taking issue with the CAIR plan's shortcomings, Democratic Sen. Tom Carper of Delaware noted that the rule still leaves all his state's counties out of compliance with the ozone rule. "The administration's new CAIR rule would mean healthier air for millions of Americans, especially those on the East Coast, but it doesn't go far enough," he said. "We can do better."

New Jersey Department of Environmental Protection Commissioner Bradley Campbell also lashed out at the program. "Unfortunately, EPA's rule is just another example of the federal government's failure to adequately protect air quality and public health," he said. "The reductions in the rule come too late and the measures do not go far enough to limit emissions from power plants and factories in other states."

Asked whether New Jersey would press EPA for more reductions, either through litigation against CAIR or a petition for more Clean Air Act programs, Campbell spokeswoman Karen Hershey said, "It's just too early to comment. We really need to take time and understand it."

Republican Sen. George Voinovich of Ohio said he welcomed the new CAIR rule, while also indicating a strong preference to enact Clear Skies. "I fully expect that this rule will be blocked by litigation, further leaving in limbo communities seeking to clean their air and companies trying to make sense out of a decade of ever-shifting regulations," Voinovich said. "Only the permanence of law will ensure the air quality improvements we want and need."

States dropped from CAIR programs

In the time between the CAIR proposal in December 2003 and yesterday, EPA made a number of changes to the plan. It moved up the first phase of compliance for NO_x reductions from 2010 to 2009, while leaving SO₂ requirements to begin in 2010. EPA also opted to hold off in making a decision as to how the CAIR plan will affect a separate Clean Air Act requirement to improve visibility in national parks and wilderness areas by noting that the agency faces an April 15 deadline to complete a rule under a consent decree with environmental groups.

Elsewhere, EPA decided to drop Kansas from the CAIR plan after examining data that showed the state's industries were not a significant contributor to downwind PM nonattainment.

EPA also opted to leave five states out of the SO₂ program -- Arkansas, Connecticut, Delaware, Massachusetts and New Jersey -- because their industries do not cause another state's air quality problems. In a separate rule proposal issued yesterday, EPA said it would reconsider adding Delaware and New Jersey back into the SO₂ plan. And three states -- Georgia, Minnesota and Texas -- were left out of the NO_x reduction program.

States included in the SO₂ program are Alabama, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, West Virginia and Wisconsin.

For the NO_x program, participants are Alabama, Arkansas, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia and Wisconsin.

The District of Columbia is included in both the NO_x and SO₂ programs.

Reporter Tasha Eichenseher contributed to this report.