

PROTECT WOMEN AND CHILDREN FROM TOXIC MERCURY POLLUTION

In March 2005, EPA finalized a rule that “delists” power plants as a source of mercury and other air toxics subject to strict controls under the Clean Air Act.¹ The rule rescinds EPA’s 2000 finding that it is appropriate and necessary to regulate mercury from coal-fired power plants as a hazardous air pollutant² and removes power plants from a list of sources required to reduce their toxic emissions by the maximum achievable amount. S.J. Res. 20, introduced by Senators Leahy and Collins under the Congressional Review Act, would disapprove EPA’s delisting rule and restore integrity to the rule-making process.

Mercury harms human health. Mercury is a potent neurotoxin that can affect the brain, heart, and immune system. Developing fetuses and children are especially at risk; even low-level exposure to mercury can cause learning disabilities, developmental delays, lowered IQ, and problems with attention and memory. EPA scientists estimate that one in six women has enough mercury in her body to put her child at risk should she become pregnant.³

Power plants are the largest manmade source of U.S. mercury emissions.⁴ Mercury pollution is so pervasive that 44 states have posted mercury-related fish consumption advisories—in half of these states, for every lake and/or river.⁵ EPA data show that 29% of the mercury deposited in the U.S. comes from U.S. power plants alone, and deposition can be much higher near individual plants, since local sources can account for 50-80% of mercury deposition at hot spots.⁶

EPA’s mercury rule is an about-face that fails to protect public health. In 1998, after studying health hazards from utility emissions of hazardous air pollutants (HAPs), EPA found that power plants were significant emitters of HAPs and that mercury was the HAP of greatest concern.⁷ In 2000, EPA found that power-plant mercury emissions “are a threat to human health and the environment” and that it was appropriate and necessary to reduce power-plant emissions of mercury and other HAPs to the maximum extent.⁸ And in 2001, EPA told the electric utilities’ trade association that the Clean Air Act required national reductions in mercury emissions on the order of 90% by December 2007.⁹ Yet EPA now claims its 2000 finding “lacked foundation,” asserting that “the level of [mercury] emissions remaining after imposition of the requirements of the Act will not cause hazards to public health” and that it is neither necessary nor appropriate to regulate *any* power-plant HAP emissions.¹⁰ This total—and irresponsible—about-face is the result of intense industry pressure and White House manipulation of the rule-making process, as revealed in numerous press reports.¹¹

EPA’s delisting rule is illegal. Under the Clean Air Act, EPA cannot remove power plants from the source list unless it first determines that no industry source emits hazardous air pollutants in amounts that adversely affect public health or the environment.¹² EPA did not even try to make this showing and instead simply declared that it was under no obligation to do so.¹³ Fourteen states—California, Connecticut, Delaware, Illinois, Maine, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Pennsylvania, Vermont, and Wisconsin—have already filed suit challenging the rule, and numerous public health groups, Indian tribes, and the City of Baltimore have intervened in delisting cases to oppose it.

Congress should act to reject the rule now. EPA delisted power plants to avoid setting strict controls for mercury and other air toxics and to clear the way for an industry-backed “cap-and-trade” system that parallels the mercury provisions in S. 131, the latest version of the administration’s “Clear Skies” initiative. The cap-and-trade plan enables power plants to buy and trade mercury “credits” rather than reduce their mercury pollution, which increases the risk of creating or exacerbating hot spots. Moreover, although the plan calls for 70% reductions in power-plant mercury pollution by 2018, the Congressional Research Service has concluded that these reductions may not occur until 2030.¹⁴ While the states are likely to win in court, the litigation process is slow. By contrast, Congress can act now to nullify the delisting rule and restore integrity to the rulemaking process. A vote for the disapproval resolution will direct EPA to finalize a rule that complies with the Clean Air Act, reducing toxic air pollution by the maximum achievable amount. It is long past time for power plants to meet this standard, reducing their mercury pollution about 90% by 2008, just as other major sources of mercury have already done.

**Protect Americans from mercury pollution by voting for the Leahy-Collins resolution.
For more information, contact Supryia Ray, U.S. PIRG, (202) 546-9707.**

¹ 70 Fed. Reg. 15993 (Mar. 29, 2005).

² 65 Fed. Reg. 79825 (Dec. 20, 2000).

³ Kathryn Mahaffey, Robert P. Cliffner, and Catherine Bodurov, “Blood Organic Mercury and Dietary Mercury Intake: National Health and Nutrition Examination Survey, 1999 and 2000,” *Environmental Health Perspectives*, 112(5): 562-570 (Apr. 2004).

⁴ 65 Fed. Reg. at 79829.

⁵ Zachary Corrigan, U.S. PIRG Education Fund, *Fishing for Trouble*, Oct. 2004; West Virginia Fish Consumption Advisories (advisory upgraded to statewide level after publication of *Fishing for Trouble*), available at <http://www.wvdhhr.org/fish/current.asp>.

⁶ Environmental Defense, *Out of Control and Close to Home: Mercury Pollution from Power Plants* (2003).

⁷ EPA, *Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generating Units* (Feb. 1998).

⁸ 65 Fed. Reg. at 79827.

⁹ EPA, Presentation to the Edison Electric Institute, 18 Sept. 2001, available at: <http://cta.policy.net/epamercury.pdf> (stating that a MACT standard would require national reductions in mercury emissions of 89, 90, or 98 percent by Dec. 2007).

¹⁰ 70 Fed. Reg. 15993, Section IV.

¹¹ See, e.g., Tom Hamburger and Alan C. Miller, “Mercury Emissions Rule Geared to Benefit Industry, Staffers Say,” *L.A. Times* (Mar. 16, 2004).

¹² Clean Air Act, § 112(c)(9)(B)(ii).

¹³ 70 Fed. Reg. 15993, Section VIII.

¹⁴ Congressional Research Service, *Mercury Emissions from Electric Power Plants: An Analysis of EPA’s Cap-and-Trade Regulations* (Apr. 15, 2005).