



EPA's Mercury MACT Rule: "Maximum Achievable Control Technology" or Maximum Industry Profits?

In order to comply with a federal court order, the United States Environmental Protection Agency (EPA) has released proposed rules for limiting mercury emissions from coal-fired power plants. Multiple possible approaches are proposed, and public hearings on all are scheduled for late February, 2004. The proposed rules, instead of being a victory for the environment and public health, are instead a departure from the legal requirements of the Clean Air Act and do little to protect us from these toxic emissions.

Coal-fired power plants are the largest source of mercury emissions in the United States. In 1990, when the Clean Air Act was amended to mandate regulation of industrial sources of toxic air pollution, power plants were given a temporary exemption. Now, EPA is ending that exemption with their proposed standards. Although EPA solicited input from a diverse range of stakeholders, the proposed standards ignore much of that input, instead pandering to industry desires.

With these mercury emissions no longer exempted, mercury must be controlled as dictated under the Clean Air Act. This law requires that emissions be reduced as much as possible using the best technology currently available. During her term as EPA administrator, Christie Todd Whitman stated that this requirement means reducing mercury power plant emissions to a total of 5 tons from all plants by 2007. Depending on which of the proposed rules goes into effect, the EPA only plans to cut emissions to between 30 and 34 tons by 2010 and 15 tons by 2018. This clearly does not satisfy the requirements of the Clean Air Act.

The Specifics

The Clean Air Act requires EPA to develop a MACT (maximum achievable control technology) standard reflecting an average of the top 12 percent of the best performing power plants. In one of the proposed regulatory approaches, the MACT limit was recalculated using inflated emission levels for these power plants. EPA justified this as necessary to account for variability, ignoring other suggestions of how to deal with this issue without sacrificing the environment and public health.

EPA is also considering using a "cap and trade" approach to reduce overall mercury emissions. This would allow some plants to reduce pollution more than required and sell pollution credits to other plants, which could then use those credits to reach standards without actually cutting emissions. To take this approach, either mercury would be reclassified as a non-hazardous pollutant or cap and trade programs would be expanded to include hazardous pollutants. Either of these two options is dangerous. While a cap and trade program would reduce overall mercury emissions, it would create "hotspots," or localized areas of extremely high mercury pollution. By localizing the pollution, this program would unfairly burden those living closest to the dirtiest power plants, further increasing the disparity between these and other communities.

The potential that EPA now has for improving air quality is great, but it is necessary that true MACT standard be set, as the law mandates. Unless this happens, EPA will have shown once again that they are willing to sacrifice public health by caving to industry pressure.