



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 17 2004

OFFICE OF
AIR AND RADIATION

The Honorable Henry Waxman
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Waxman:

Thank you for your letter of July 1, 2004, to Administrator Michael O. Leavitt regarding the efforts of the Environmental Protection Agency (EPA) to develop the first-ever rule to regulate mercury emissions from power plants. Administrator Leavitt has referred your letter to me for reply.

Your letter expresses your dissatisfaction with a June 29, 2004 letter from Administrator Leavitt responding to a communication from you, Senator Leahy, and Representatives Allen and Schakowsky. Your letter asked several questions regarding the power plant mercury rule.

First, as you know, the Administrator has outlined five principles that provide a context for additional inquiry and help focus the Agency's deliberations as we move toward a final rule in March 2005. The final rule will: 1) concentrate on the need to protect children and pregnant women from the health impacts of mercury; 2) stimulate and encourage early adopters of new technology that can be adequately tested and widely deployed across the full fleet of U.S. power plants and coal types; 3) significantly reduce total emissions by leveraging the \$50 billion investment that the Clean Air Interstate Rule (CAIR) will require; 4) consider the need to maintain America's competitiveness; and 5) be one component of the Agency's overall effort to reduce mercury emissions.

Consistent with these five guiding principles, I want to assure you that we share your desire that the proposed mercury rule be based on the best available information. To that end, the Agency has been and continues to analyze the risks posed by mercury in the environment and the degree to which those risks can be reduced by regulating mercury emissions from power plants. As part of this effort, we are evaluating control technologies that are currently available, and those that may be available in the future, to reduce power plant emissions of mercury.

Because as we are still in the rulemaking process, the Administrator has not yet made some of the decisions that are relevant to the questions posed in your earlier letter. However, I am enclosing responses that can provide you with additional information that was not available at the time of the Administrator's June 29th response.

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If you have further questions, please contact me or your staff may contact Catherine Sulzer in the Office of Congressional and Intergovernmental Relations at (202) 564-2464.

Sincerely,



Jeffrey R. Holmstead
Assistant Administrator

Enclosures

cc: The Honorable Patrick Leahy
The Honorable Thomas H. Allen
The Honorable Janice D. Schakowsky

ENCLOSURE

1. EPA's schedule for carrying out the following activities in time to assure final issuance of the mercury rule by March 15, 2005: (a) conducting additional analyses of the mercury control levels identified by environmental and state stakeholders (as specifically recommended in the Working Group report of as subsequently updated by the Working Group members); (b) issuing a new or supplemental proposal based on such analyses; (c) providing for public comment; (d) drafting the final rule; and (e) providing for OMB review of the draft.

First, please be assured that we are on track to develop and issue a final mercury rule by March 15, 2005.

As Administrator Leavitt has stated, EPA will make sure that we have all the analysis necessary to make the right decision about how to address mercury emissions from power plants. During the comment period on the proposal, EPA received a number of relevant analyses from various groups, including both industry and environmental groups. These analyses address many of the key issues faced by EPA and can help inform the Agency's ongoing mercury work. They are available in EPA's docket, and the Agency will be seeking public comment on these analyses in its upcoming Notice of Data Availability (NODA).

In some cases, EPA and commenters modeled the same or similar policy scenarios, sometimes using the same model, but obtained substantially different results due to differences in the assumptions employed. In these cases, the importance of understanding model input assumptions can be better understood by comparing and contrasting the modeling performed. This highlights why the Administrator has made it clear that he wants to be comfortable with the policy judgments EPA makes in developing input assumptions in IPM before EPA runs the model in support of a final rule.

To this end, the Administrator has spent many hours understanding these policy judgments and working with EPA's engineers, economists, and modelers to ensure that the assumptions are consistent with the Agency's belief about mercury control technology and its application to the power sector. In the case of IPM, many of the original assumptions may need to be updated. For example, IPM contains assumptions that are inconsistent with the Agency's assessment of the near-term availability of technology. For these reasons, the Agency is updating IPM before conducting additional modeling.

As we also iterated to Rep. Allen, one of the technology assumptions in IPM that needs to be reviewed is that plants burning all types of coal can install ACI to achieve a 90 percent reduction in their mercury emissions immediately (measured by comparing the mercury content in the coal they burn to their mercury stack emissions). This assumption is appropriate for analyzing longer-term cap-and-trade options (such as those in the President's Clear Skies legislation and the Clean Air Mercury Rule), but is inappropriate for analyzing some near-term options, such as those suggested by the different stakeholders involved in the Working Group, because ACI will not be available on all coal types until after 2010.

Enclosure to the Honorable Henry Waxman from Assistant Administrator Jeff Holmstead
November 17, 2004

Consequently, we would need to update the assumptions about technology before we could reliably model control options like the ones suggested by the stakeholders involved in the Working Group, which would require power plants to install control technology before 2010, as would be required by the MACT timeframe.

2. A detailed description of the additional analysis EPA plans to conduct. Please explicitly state whether you intend to limit additional analysis to the proposal issued under section 111 of the CAA, as Mr. Holmstead indicted.

The Administrator has made it clear that he wants to have the analysis necessary to allow him to make the right decision in the final rule and to ensure that EPA can take action to protect public health in the most cost-effective way. To this end, EPA will seek additional information relevant to options under, Clean Air Act Section 111 and Section 112.

A cap and trade system under Section 111 dovetails well with the multi-pollutant approach we are pursuing. Historically, federal and state rules for power plants have generally regulated one pollutant at a time. In contrast, we are working to finalize a comprehensive approach to reduce three major pollutants of concern from power plants: sulfur dioxide (SO₂), nitrogen oxides (NO_x), and mercury. A carefully designed multipollutant approach is the most effective way to reduce emissions from the power sector. This comprehensive approach includes our Clean Air Mercury Rule (CAMR) and a companion rule, the Clean Air Interstate Rule. Together, these rules will require the power industry to invest approximately \$50 billion to reduce emissions.

We are working to finalize CAIR later this year and, at that point, will have a better estimate of what the level of mercury co-benefit is associated with control technologies installed to reduce SO₂ and NO_x. We expect the applicable part of CAIR to be in the baseline for both the cap and trade and MACT approaches. If we pursue the cap and trade alternative, the co-benefit information will be useful in setting the first phase cap and will allow for a refined assessment of the impacts of the CAMR.

3. A detailed description of the additional regulatory options or variations on current options that you will consider.

We are currently evaluating the options that have been submitted during the public comment period. The Administrator has not identified specific additional options for further consideration at this time.

4. A detailed description of the additional public process that you commit to provide, including when you will make new information and proposals available for public comment, the length of the comment period, and any additional public hearings you will hold.

As noted above, we plan to issue a NODA to address various issues and to solicit public comment on analyses that were submitted during the public comment period. We plan to

complete all necessary steps to ensure an open public process on a schedule that will allow the Agency to issue the final rule by March 15, 2005.

5. An explanation of the manner and extent to which Mr. Connaughton and Dr. Graham, or any other White House officials, have been involved in planning the additional analysis that EPA will conduct to provide technical support for its decisions on the mercury rule

As you know, Executive Order 12866, issued by President Clinton, set forth an interagency process for the development of all major rules such as the mercury rule. We have found this deliberative process to be very helpful because it ensures that the Administrator has the best possible information from a number of different perspectives before he makes final decisions on major policy issues. In order to protect deliberative discussions, we do not disclose the views of individuals who are involved in this process.