

TESTIMONY BEFORE THE  
ENVIRONMENTAL PROTECTION AGENCY  
ON THE  
**MERCURY RULE**  
(Docket ID # OAR-2002-0056)

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by

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**Representing the Mercury-Free Minnesota Coalition**

(Alliance for Sustainability, Clean Water Action Alliance, DAMS, Inc., Ecology Center, Environmental Association for Great Lakes Education, Environmental Justice Advocates of Minnesota, Honor the Earth, Indigenous Environmental Network, Institute for Agriculture & Trade Policy, Institute for a Sustainable Future, Izaak Walton League of America, Minnesota Center for Environmental Advocacy, Minnesota Children's Health Environmental Coalition, Minnesota Conservation Federation, Minnesotans for an Energy-Efficient Economy (ME3), Minnesota Natural Health Coalition, Minnesota Public Interest Research Group (MPIRG), Mississippi River Revival, National Environmental Trust, National Wildlife Federation, North American Water Office, Physicians for Social Responsibility, Sierra Club North Star Chapter, U.S. Public Interest Research Group, White Earth Land Recovery Project, Women's Cancer Resource Center)

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Thank you for the opportunity to testify on EPA's mercury rule for coal plants. My name is Matt Little and I am representing Mercury-Free Minnesota, a broad coalition of twenty-six organizations – representing indigenous and environmental justice communities, public health professionals, and environmental and conservation interests – working in partnership to reduce mercury threats in Minnesota<sup>1</sup>. As the Clean Air Coordinator of Minnesota's Sierra Club Chapter, I work within this Coalition to promote mercury reduction initiatives in Minnesota and nation-wide. My background includes working on mercury issues in Congress for Senator Daniel Patrick Moynihan of New York and the Northeast-Midwest Institute, where I served also as a member of the United Nations Working Group on Mercury. In addition, I worked on policy issues with the Environmental Protection Agency's Water Office in Washington, DC.

Mercury-Free Minnesota is working diligently towards a goal of reducing mercury inputs in Minnesota by 90 percent in 2010 and to virtually eliminate man-made mercury emissions by 2020. This is an aggressive goal that we believe the Clean Air Act could have helped us achieve – with 90 percent reductions in mercury from coal plants – if the EPA had only implemented this law as Congress had intended.

I have been tracking the development of this rule for years and it is clear to me that politics have superceded all other concerns on this issue, including public health, the environment, and even the letter of the law. How otherwise would one explain an EPA rule that started out following the Clean Air Act calculations by requiring 90 percent

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<sup>1</sup> See [www.mercuryfreeminnesota.org](http://www.mercuryfreeminnesota.org) and the coalition's campaign fact sheet that is submitted with this testimony.

reductions at all coal plants across the country by 2008, but ended up as a rule that will require no specific mercury control technologies at any plants until 2018, will allow some plants to continue emitting uncontrolled mercury past this date, and will certainly end up in the courts?

Let us review the facts. First, mercury is not an element to take lightly. Just last month, we learned from EPA that twice as many children, over 600,000 a year, are at risk of learning and behavioral disorders from mercury<sup>2</sup>. This puts one in six women of childbearing age with enough mercury in their blood right now to endanger a developing fetus. In addition, the EPA and FDA are issuing new warnings against eating fish because of mercury<sup>3</sup>, and 45 states and territories – including Minnesota – now have mercury fish consumption advisories<sup>4</sup>. This means that mercury is becoming more of a health concern for our families, not less.

The biggest source of mercury emissions in the U.S. and in Minnesota is coal-fired power plants<sup>5</sup>. Even though EPA determined that mercury was the most dangerous pollutant coming from coal plants<sup>6</sup>, and even though the Clean Air Act says that all major

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<sup>2</sup> Data presented by Kathryn R. Mahaffey, PhD, of EPA at the National Forum on Fish Contamination in San Diego, January 25-28, 2004

<sup>3</sup> See [www.fda.gov/oc/opacom/mehgadvisory1011.html](http://www.fda.gov/oc/opacom/mehgadvisory1011.html)

<sup>4</sup> EPA Office of Water May 2003 “Update: National Listing of Fish and Wildlife Advisories” EPA-823-F-03-003 ([www.epa.gov/waterscience/fish/advisories/factsheet.pdf](http://www.epa.gov/waterscience/fish/advisories/factsheet.pdf))

<sup>5</sup> Accounting for 40 percent nationwide ([www.epa.gov/mercury/information1.htm](http://www.epa.gov/mercury/information1.htm)) and 43 percent in Minnesota (MN Department of Commerce, 2000)

<sup>6</sup> EPA Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generating Units -- Final Report to Congress, February 1998

sources of mercury emissions must be regulated<sup>7</sup>, it took a lawsuit from the Sierra Club and NRDC to make EPA regulate the powerful coal industry.

While we have been waiting for EPA to control coal plant mercury, EPA required all incinerators in this country to reduce mercury beyond 90 percent – under the same section of the Clean Air Act EPA is weakening today, and using the same technologies that can reduce mercury at coal plants<sup>8</sup>. In response to these 90 percent reductions, the Florida Department of Environmental Protection has shown us that mercury levels in largemouth bass near the incinerators decreased by 60 to 75 percent<sup>9</sup>. We can do the same with coal plants. Some may say that the nature of incinerator mercury is different than coal mercury, and it is slightly – with roughly 80 percent of incinerator mercury falling locally compared to 50 percent of coal mercury<sup>10</sup> – but no one can argue that reducing either source of mercury will reduce mercury in the fish we eat. It's common sense.

The Clean Air Act lays it out very clearly – mercury is a hazardous air pollutant that must be regulated under a technology-based standard called the “Maximum Achievable Control Technology”<sup>11</sup>. In 2001, EPA knew this fact and in a detailed presentation they told the energy industry that 90 percent reductions would be required

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<sup>7</sup> Section 112 of the Clean Air Act

<sup>8</sup> See EPA's solid waste incinerator rules at [www.epa.gov/ttn/atw/eparules.html](http://www.epa.gov/ttn/atw/eparules.html) and a brief summary at [www.epa.gov/mercury/information1.htm](http://www.epa.gov/mercury/information1.htm)

<sup>9</sup> Florida DEP Everglades Mercury TMDL Pilot Study, revised November 2003 (see <http://www.dep.state.fl.us/labs/mercury/index.htm>)

<sup>10</sup> Coal plant mercury is approximately 50% elemental (which travels long distances), 45% oxidized and 5% particulate (which falls more locally); while incinerators' mercury breakdown is approximately 20% elemental, 60% oxidized, and 20% particulate (interviews with EPA, MPCA, and mercury control technology vendors)

<sup>11</sup> Clean Air Act Section 112

under this strict rule, based on technologies that existed over two years ago and even accounting for the various types of coals<sup>12</sup>. Other groups have supported this analysis with their own. By averaging the mercury emissions reductions already being achieved by the best-performing twelve percent of existing coal plants (the analysis required by the Clean Air Act<sup>13</sup>), the Northeast States for Coordinated Air Use Management and Clear the Air have released reports detailing that over 90 percent reductions should be required under this rule<sup>14</sup>.

There are many vendors of mercury-control technologies who have tested or installed their equipment on coal plants with great success<sup>15</sup>. The Department of Energy has been working with these vendors to test mercury technologies at coal plants for many years<sup>16</sup> and has recently reported that last year they demonstrated between 70 and 90 mercury reductions at coal plants<sup>17</sup>. Then why is the Bush Administration only proposing 29 percent reductions in 2010?

Compared to technologies for other power plant pollutants, mercury technologies are not very expensive. For example, the Iowa DNR is requiring the MidAmerican Council Bluffs coal plant to reduce mercury by 83% by 2006 (interestingly, using the same Clean Air Act provisions that the EPA is now using to justify delaying mercury

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<sup>12</sup> EPA Assistant Administrator Jeffery Holmstead presented the following powerpoint presentation (written by Bill Maxwell of EPA's Office of Air Quality and Planning Standards) to the Edison Electric Institute on Dec. 4th, 2001: <http://cta.policy.net/epamercury.pdf>

<sup>13</sup> Clean Air Act Section 112 (d)

<sup>14</sup> October, 2003 NESCAUM report at <http://bronze.nescaum.org/newsroom/rpt031104mercury.pdf> and December, 2003 Clear the Air "Toxic Neighbors" report at <http://cta.policy.net/reports>

<sup>15</sup> See a list of technology vendors with websites at [www.northstar.sierraclub.org/air/mercury/technologiesvendors.htm](http://www.northstar.sierraclub.org/air/mercury/technologiesvendors.htm)

<sup>16</sup> See [http://www.fe.doe.gov/programs/powersystems/pollutioncontrols/overview\\_mercurycontrols.shtml](http://www.fe.doe.gov/programs/powersystems/pollutioncontrols/overview_mercurycontrols.shtml)

<sup>17</sup> Department of Energy 2005 Budget Request, January 2004

controls for a decade)<sup>18</sup>. This is a significant number because the coal type they burn is subbituminous, the type EPA and the industry say is impossible to reduce at significant levels. Also, looking at the capital costs for this technology, MidAmerican is only projecting to spend \$3.3 million on mercury technologies<sup>19</sup>. Comparing this to the costs of technologies for other pollutants, this is only a drop in the bucket. For example, on a similarly-sized and configured coal plant in Minnesota that burns the same type of coal, Xcel plans to spend \$81 million for nitrogen oxide technologies and \$70 million for sulfur dioxide control technologies<sup>20</sup>.

Knowing this information, other states are requiring 90 percent mercury reductions at their coal plants state-wide. New Jersey just released their plan to reduce mercury 90 percent by December 2007, Connecticut passed a standard that will require 90 percent reductions state-wide by July 2008, and Massachusetts has a proposal for 95 percent reductions by 2012.

So if other states are requiring 90 percent reductions in the near term and the Clean Air Act's MACT standard would do the same, how can the Bush Administration's EPA get away with reducing mercury only 29 percent by 2010? Somehow EPA has determined that it can ignore the section of the Clean Air Act specifically developed to

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<sup>18</sup> See Iowa DNR permits for MidAmerican at <http://aq48.dnraq.state.ia.us/airpermit/eeepsd.asp>. This estimate was based primarily on a test performed at Great River Energy's Stanton Generating Station in ND. Results showed 81% mercury reductions, with a likely potential of 83 to 85% reductions. See discussion beginning on page 43 of IDNR's fact sheet on Council Bluffs at [http://aq48.dnraq.state.ia.us/PSD/7801026/PSD\\_PN\\_02-258/Fact%20Sheet.pdf](http://aq48.dnraq.state.ia.us/PSD/7801026/PSD_PN_02-258/Fact%20Sheet.pdf)

<sup>19</sup> MidAmerican responses to MACT issues raised by IDNR in the January 13, 2003 letter and [www.xcelenergy.com/docs/corpcomm/Att\\_1\\_King\\_Prop.pdf](http://www.xcelenergy.com/docs/corpcomm/Att_1_King_Prop.pdf)

<sup>20</sup> The King plant in Stillwater, Minnesota ([www.xcelenergy.com/docs/corpcomm/Att\\_1\\_King\\_Prop.pdf](http://www.xcelenergy.com/docs/corpcomm/Att_1_King_Prop.pdf))

control hazardous air pollutants like mercury (Section 112 (d)) and use a section designed for less hazardous pollutants (Section 111). This illegal maneuver, which goes against Congress' intent when they wrote the Clean Air Act, allows EPA to develop a standard that is not only weak, but will allow the trading of hazardous mercury pollution credits. Allowing dirty power plants to buy these credits from cleaner plants will ensure that the communities around these plants – communities who have historically been disproportionately subjected to toxic pollution – will continue to have to deal with mercury pollution beyond the 2018 EPA deadline<sup>21</sup>.

This all adds up to the Bush Administration's EPA catering to the interests of the coal industry instead of protecting our environment and our health. Mercury-Free Minnesota, and the tens of thousands of Minnesotans we represent, urges EPA to rescind this rule and develop one that not only meets the existing court-appointed deadlines, but aggressively implements the provisions of the Clean Air Act to reduce mercury 90% by 2008. Congress passed the Clean Air Act's mercury provisions in 1990 – our families and children cannot wait three decades for EPA to begin protecting our health from this toxic pollutant. With this rule, please prove to Minnesota families that EPA's mission statement, "to protect human health and to safeguard the natural environment--air, water, and land--upon which life depends," is not window dressing, but still the priority of our nation's top environmental agency.

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<sup>21</sup> See analysis of EPA modeling that shows that local sources of mercury commonly account for 50 to 80 percent of mercury deposition in a state in the 2003 Environment Defense Report "Out of Control and Close to Home: Mercury Pollution from Power Plants" ([http://www.environmentaldefense.org/documents/3370\\_MercuryPowerPlants.pdf](http://www.environmentaldefense.org/documents/3370_MercuryPowerPlants.pdf))