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Clean Air, Public Health Advocates:
EPA Mercury Rule Leaves Public Health at Risk, Violates Law
Lawsuits filed challenging EPA approach at curbing power plant toxic air emissions

Washington, D.C.— Clean air and public health advocates today filed legal challenges in federal court, challenging the Environmental Protection Agency's (EPA's) approach for reducing toxic air emissions from power plants. Rather than adopt a rule that limits this pollution, the groups contend, EPA unlawfully removed power plants from the list of industrial pollution sources for which the Clean Air Act requires strong air toxic standards.

“EPA is refusing point blank to set the protective emission standards for power plants that the Clean Air Act requires,” said Staff Attorney James Pew of Earthjustice, which filed suit on behalf of Sierra Club, Environmental Defense and the National Wildlife Federation. “Instead of protecting the public from pollution, this agency is doing its best to protect polluters from the law.”

“Mercury does not affect everyone equally,” said Sierra Club Executive Director Carl Pope. “The EPA’s job is to ‘protect human health and the environment’ but what it’s really doing is putting more women and children at risk of mercury poisoning.”

“EPA’s action paves the way for substantial additional unchecked toxic air pollution releases,” said Ann Brewster Weeks, Litigation Director of the Clean Air Task Force, which sued on behalf of Ohio Environmental Council, U.S. Public Interest Research Group (U.S. PIRG), and the Natural Resources Council of Maine. “That means more mercury in the air, more mercury in the water, and more mercury in fish.”

“In what is becoming an all-too-familiar pattern, instead of protecting the public, the Bush administration chose to side with polluters,” said Supryia Ray, a Clean Air Advocate at U.S. PIRG. “The administration is imposing risks on America’s children that no parent would want to take.”

Conservation Law Foundation (CLF), Waterkeeper Alliance, and the Chesapeake Bay Foundation also filed suit today challenging the rule.

“The EPA’s illegal rule breaks the promise the agency made five years ago to slash hazardous pollutants, including mercury, from coal-burning power plants,” said Jon Devine, an attorney with the Natural Resources Defense Council, which also filed suit today. “It is a sad reality that EPA today cannot be trusted to protect public health, which is why we must ask the courts to step in.”

At least 13 states have filed litigation challenging EPA’s mercury rule.

The Clean Air Act, as amended in 1990, requires that EPA set the strongest limits on toxic air emissions like mercury from listed industries as much as is technologically feasible. In the United States, coal-burning power plants are the largest unregulated man-made source of

mercury to our air. Collectively, they spew about 45 tons of mercury and more than 350,000 tons of other air toxics into the air each year.

"We are compelled to take legal action because EPA's rule reflects flawed science, a flawed reading of the law and a failure to protect the nation's most vulnerable populations from the health hazards of mercury pollution," said Environmental Defense attorney Jenea Scott. The EPA's plan delays significant reductions in mercury emissions for decades longer than is possible. According to its own estimates, EPA found there are affordable technologies available right now that can reduce mercury by as much as 90 percent and, coupled with emerging technologies, we could eliminate most of the mercury from utilities with a cost to utility industry revenues of less than one percent. Without EPA's rule, these maximum controls on power plant pollution would go into effect in three years, but the agency instead has created a program that it acknowledges will not be fully implemented until sometime after 2020.

"Everyone knows that this rule is illegal," stated Waterkeeper Alliance President Robert F. Kennedy, Jr. "Congress knows it, industry knows it, even EPA knows it – and the courts are about to know it."

Mercury is a developmental neurotoxin that can affect fetuses developing in the womb, young children, and at higher doses, can lead to serious health effects in adults. EPA scientists estimate that one in six women of childbearing age has mercury levels in her blood that are high enough to put a baby at risk. Nationwide, as many as 630,000 infants are born every year with unsafe mercury levels, putting them at risk of cognitive and developmental damage.

"We have a responsibility to future generations to ensure that toxins like mercury are not in our food chain," said National Wildlife Federation President and CEO Larry Schweiger. "That's the intent of this action today – to get EPA to live up to that responsibility."

EPA decided that rather than setting new limits for power plant pollution as required under the Clean Air Act, the agency would simply remove power plants from the list of facilities subject to the strict air toxic provisions in the Act.

"Technologies to control mercury emissions are feasible and affordable, and their application is long overdue," said CLF staff attorney Brad Kuster. "It is now time to step in where the EPA has failed and start enforcing the Clean Air Act."

Mercury emitted by power plants settles on the nation's waters and bioaccumulates up the food chain. Every year the number of lakes, rivers and streams under mercury fish consumption advisories increases. Human exposure is primarily through the consumption of contaminated fish. Currently, 44 states have issued fish consumption advisories due to mercury contamination in some or all of the state's waters.

"Mercury pollution is a serious human health problem in the Chesapeake Bay watershed, with warnings for anglers in Pennsylvania, Maryland and Virginia to limit fish consumption to as little as one serving a month," Chesapeake Bay Foundation President William C. Baker said.

“The technology to reduce this pollution is available today, and power plants must be required to install it now, not decades from now.”

The agency’s mercury rule sets the stage for a cap-and-trade system for mercury emissions from power plants that is completely unsuitable for reducing mercury levels. A system in which some plants must control but others may escape control creates mercury hotspots – or areas of even greater mercury contamination – near power plants across the country.

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National Wildlife Federation is America's conservation organization protecting wildlife for our children's future. Visit www.nwf.org.

Sierra Club's mission is to explore, enjoy and protect the wild places of the Earth. Visit www.sierraclub.org.

Earthjustice is the nonprofit law firm for the environment. Visit www.earthjustice.org.

Environmental Defense is a leading national nonprofit organization, represents more than 400,000 members. Since 1967, Environmental Defense has linked science, economics, law and innovative private-sector partnerships to create breakthrough solutions to the most serious environmental problems. Visit www.environmentaldefense.org

Chesapeake Bay Foundation is a member-supported organization working with citizens to save the Bay, restore our rivers and streams and ensure safe drinking water. Visit www.cbf.org.

The Natural Resources Defense Council is a national, non-profit organization of scientists, lawyers and environmental specialists dedicated to protecting public health and the environment. NRDC has more than 1 million e-activists and members nationwide. Visit www.nrdc.org.

Waterkeeper Alliance and our local Waterkeeper programs fight for clean water and strong communities. Visit www.waterkeeper.org.

Conservation Law Foundation works to solve the environmental problems that threaten the people, natural resources and communities of New England. Visit www.clf.org.

Clean Air Task Force is a non-profit organization dedicated to restoring clean air and healthy environments through legal advocacy, scientific research, and public education. Visit www.caf.us.

U.S PIRG is a non-profit, non-partisan, public-interest advocacy organization working to preserve the environment, protect consumers, and promote good government. Visit www.uspirg.org.