

EDITORIAL

Mercury: Persistence, Pollution, and Politics

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As this issue of *Environmental Practice* goes to press, the United States Environmental Protection Agency (USEPA) has put mercury from coal-fired plants into front-page news. The battle seems simple on the surface: USEPA seeks to reverse a decision made in December 2000 that Section 112 of the Clean Air Act would govern these emissions.

This rule from December 2000 placed all coal-fired plants on a list of regulated sources, and it required that each plant acquire the Maximum Available Control Technology—no exceptions. Section 112 is intended to deal with the most serious air pollutants. Extensive scientific studies indicated that mercury, a persistent bio-accumulative toxic metal, was worthy of this stringency.

Reflective of these concerns was the new water quality criterion for methylmercury issued by USEPA in January 2001. This criterion was based on excellent epidemiological evidence showing existing harm to children in the Faroe Islands who have consumed marine fish. That these fish are contaminated suggests that further additions of mercury to the global environment are, at the very least, unwise.

Now the USEPA wants to delist all those coal-fired plants and move regulation of mercury emissions to the more flexible Section 111 of the Clean Air Act. The Agency proposes to use a cap-and-trade system that allows the nation's coal-fired plants to bid on a limited amount of

permitted mercury emissions. As the cap is progressively lowered, argues the USEPA, mercury emissions will diminish, as needed, at a lower cost. Such a system has been used successfully for some years with sulfur dioxide emissions.

Is there anything wrong with the USEPA proposal? Why did it elicit a withering blast from a remarkably bipartisan and well-known group of critics? Some of the points made by these critics are:

- properly vetted scientific advice was ignored;
- the new proposed rule slowed and lowered the projected reductions of mercury emissions;
- USEPA officials, or somebody in another agency, lifted the language of their new proposed rule directly from a law firm that represents the utility industry;
- the USEPA officials in charge of mercury and the Clean Air Act formerly worked for that very same law firm;
- the cap-and-trade system so successfully used for sulfur dioxide is not suitable for mercury because too many unacceptably polluted “hot spots” will occur from plants that elect to buy emission credits rather than emission control technology; and
- health is not adequately protected.

Given these criticisms, what is to be made of the situation? Did USEPA make a good-faith effort to use science fairly and competently in making its new proposed rule? Or is this a decision in which many highly reputable scientists argue that the Agency sidestepped the use of science?

USEPA has put its rationale for wanting to change the Clinton-era decision into the *Federal Register*, and it seems a bit of a stretch to argue that it made good use of

science. The Agency argued first that the decision would unfairly subject coal-fired plants to regulation of *all* Hazardous Air Pollutants by the stringent methods of Section 112. Second, staff maintained that the earlier decision called pollutants from such plants “serious . . . environmental hazards,” when the record mentioned only human health hazards.

In the *Federal Register*, USEPA also noted they consulted at many times with “stakeholders,” meaning the utility industry. In fact, the language of the new proposal is reported to have come from a law firm representing the industry, and the USEPA officials in charge of preparing the rule once worked for the same law firm. But what about the input of ordinary citizens? Are they and their children not stakeholders in the outcome of this work? Failure to consult broadly is unacceptable on ethical grounds.

These reasons for reversing the rule of December 2000 seem weak to refute a large and growing scientific literature on the dangers of mercury. If an earlier decision is proclaimed inadequate and reversed, the reversing party needs to do some rather serious science itself. And it needs to consult with *all* affected parties.

Within weeks of publishing the new proposed rule, USEPA started to back away from its own proposal because it seemed to be incapable of achieving the levels of mercury reduction needed. This is the sort of homework that should have been done *before*, not *after*, the proposal to jettison an earlier decision made after considerable hard work.

The USEPA, to its credit, has taken a step back to re-examine what to do about mercury from coal-fired plants. Perhaps this is a first step in re-establishing

USEPA's reputation as an agency that uses science to protect everybody.

References

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