



Press Release

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OEC sues EPA over toxic power plant pollution

Last-gasp effort by Bush Administration puts Ohioans' health, economy at risk

WASHINGTON D.C. -- Today, a coalition of state and national environmental and public health groups filed a lawsuit in federal court, seeking a firm and enforceable new deadline for the U.S. Environmental Protection Agency to require deep reductions in mercury and other toxic air pollutants emitted from coal- and oil-fired power plants. Power plants are the nation's largest unregulated source of mercury pollution, and also emit enormous quantities of lead, arsenic and other hazardous chemicals.

The Clean Air Act required the federal government to issue final standards for power plant emissions of mercury and other hazardous pollutants by December 2002. Those rules would have been effective at new facilities immediately, and by December 2005 at existing facilities. The Bush Administration first stalled, and then issued weak rules allowing mercury trading, which were struck down entirely by the D.C. federal appellate court earlier this year.

The lawsuit was filed today in DC District Court by attorneys at Clean Air Task Force and Earthjustice on behalf of Ohio Environmental Council. Ten other environmental and public health organizations joined in the suit.

"We are far past both the legal and, indeed, the moral deadline for EPA to take action to require significant controls on mercury and the many other toxic air pollutants emitted by power plants," said Ann Weeks, of the Clean Air Task Force, who represents Ohio Environmental Council in the lawsuit. "While we are forced to seek a deadline in court, because of the Bush Administration's intransigence, we are hopeful that the Obama Administration will act quickly to mandate the deep cuts that the Clean Air Act requires."

According to the Centers for Disease Control and Prevention, eight percent of American women of childbearing age have mercury in their bodies at levels high enough to put their babies at risk of birth defects, loss of IQ, learning disabilities and developmental problems. Mercury contamination has also been demonstrated to cause serious impacts to wildlife, including behavioral and reproductive damage.

Trent Dougherty, Staff Attorney of Ohio Environmental Council said, "Nothing less than the health of countless Ohioans is at stake, especially children and women of childbearing age. Ohio's dangerous legacy of mercury pollution injures our health and our economic competitiveness. How will we ever attract the emerging, high-tech generation to the Ohio Valley's "toxic alley"? It is well past time to require a cleaner and healthier legacy through deep reductions from this industry."

The mission of the Ohio Environmental Council (www.theOEC.org) is to secure healthy air, land, and water for all who call Ohio home. The OEC is a network of more than 100 local and state environmental-conservation organizations.

Background on Mercury and the Coal-and Oil-fired Electric Utility Industry:

- Coal-fired power plants emit about 48 tons of mercury every year, or about 41% of the total U.S. emissions of mercury according to 1999 data. Coal- and oil-fired power plants also emit significant amounts of the other hazardous air pollutants listed in the Clean Air Act.
- Mercury is a dangerous neurotoxin that interferes with the development and function of the central nervous system.
- Exposure, for example through eating contaminated fish, can cause subtle but permanent harm to the brain in humans and reproductive harm in wildlife. The most sensitive populations are young children whose brains are still developing, and women of childbearing age.
- In January 2004, Environmental Protection Agency scientists released research indicating that 630,000 U.S. newborns had unsafe levels of mercury in their blood in 1999-2000, doubling previous estimates. This estimate equates to at least one in eight American women of childbearing age with mercury levels in her blood above what is considered safe for a developing fetus.
- Fifty U.S. states and one territory now have issued fish consumption advisories, warning women of childbearing age and young children against eating most freshwater and some saltwater fish due to the risks of neurological damage that may result from even low levels of such exposure.

Background on the Lawsuit

- This lawsuit seeks a court-ordered expeditious and enforceable schedule for EPA to develop and issue final standards for the air toxics emissions from coal- and oil-fired power plants.
- The Clean Air Act requires that the U.S. Environmental Protection Agency must develop regulations that require the “maximum degree of emissions reductions” of air toxics achievable at each new and existing source in listed industries. (CAA 112(d)). These are known as MACT standards.
- The Clean Air Act further requires that MACT standards for new sources shall not be less stringent than the emissions control achieved in practice by the best controlled similar source. For existing sources the Act requires that emissions standards shall not be less stringent than the average emission limitation achieved by the top 12 percent of existing sources, or the average of the best performing five sources in an industrial category or subcategory where there are fewer than 30 sources.
- Mercury was listed as a hazardous air pollutant by Congress in the 1990 Clean Air Act Amendments, as were 187 other air toxics. (CAA 112(b)).
- U.S. EPA listed the coal- and oil-fired power plant industry on December 20, 2000, after finding that regulation of the industry is “appropriate and necessary” (65 Fed. Reg. 79825).
- EPA has stated that 90 percent reductions in mercury emissions are achievable from the coal-fired utility industry.
- The Clean Air Act requires that once an industry that emits hazardous air pollutants is listed, MACT standards must be promulgated within two years after the date the industry is listed. (CAA 112(c)(5)). EPA therefore was required to promulgate final MACT standards for the coal- and oil-fired power plant industry by December 20, 2002.
- In February of 2008, the U.S. Court of Appeals struck down a 2005 Bush Administration attempt to remove coal- and oil-fired power plants from the list of industries requiring the most protective controls for air toxics, in a lawsuit brought by a coalition of environmental and public health groups, states and Native American tribes. Baffled by the Bush administration’s reasons as to why it should not set these requirements, the Court [compared](#) its logic to that of the dangerously irrational Queen of Hearts character in *Alice in Wonderland*. Now EPA is back where it started: in violation of the 2002 statutory deadline to control power plants’ toxic pollution.