

Congress of the United States
House of Representatives
Washington, DC 20515

May 20, 2005

The Honorable Stephen L. Johnson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001

The Honorable James L. Connaughton
Chairman
Council on Environmental Quality
722 Jackson Place, NW
Washington, DC 20503

Dear Mr. Johnson and Mr. Chairman:

The House Energy and Commerce Committee plans to hold a hearing later this month on the Administration's proposal to amend the Clean Air Act. We have been informed that EPA and CEQ will be testifying at this hearing. We are writing to request information that is critical to understanding and considering proposals to amend the Clean Air Act.

Many Members of Congress have repeatedly requested that you provide basic analyses allowing an apples-to-apples comparison across different multi-pollutant proposals. Such analyses must use updated modeling tools and account for regulations that EPA recently issued. It is, in fact, unthinkable that Congress would move forward to enact major changes to the Clean Air Act without such fundamental information regarding the effects of retaining current law and alternative approaches. We urge you to provide this information.

Additional information is also necessary to evaluate many of the details of the legislative proposals, particularly proposals made by the Administration and Senator Inhofe to weaken or eliminate numerous air quality protections currently provided by the Clean Air Act. This letter details our request for such additional data and information.

Information Request

1. The most recent version of S. 131 exempts sources that emit less than 30 lbs of mercury per year, while the previous version of S. 131 exempted sources that emit less than 50 lbs of mercury per year. The Administration's bill does not include any such exemption. In fact, EPA rejected a proposal to include a narrower 25 lb exemption in its recently

finalized rule on mercury emissions from power plants.¹ EPA stated that such an exemption would provide almost no benefits for small businesses and could increase the program's overall costs. Of the 1,120 coal-fired units that were active in 1999, 581 (52%), emitted less than 50 lbs per year of mercury and 441 (39%) emitted less than 30 lbs per year of mercury.² In addition, the provision appears to allow somewhat higher emitting units to reduce just enough to reach the 30 or 50 lb limit and become exempt from the program. This would allow those units to avoid responsibility for meeting the cap levels, which would require larger reductions for many units.

- a. Please detail the emissions and economic effects of including the exemption for sources that emit less than 30 lbs, and less 50 lbs, of mercury annually, as provided in the Inhofe bills. Include in the analysis the assumption that sources with emissions above those levels will reduce down to the 30 (or 50) lb cut-off to avoid larger reduction requirements, if it is economical for them to do so.
 - b. Please explain whether the Administration supports an exemption for sources that emit either less than 30 lbs or 50 lbs of mercury per year.
2. The Administration's proposal and S. 131 also contain numerous other provisions that would remove, limit, or delay the effectiveness of many key aspects of the existing Clean Air Act. These changes apply broadly, well beyond the requirements for electric utilities, and they affect emissions of criteria pollutants and numerous toxic air pollutants besides mercury. These weakening changes include:
- Delaying existing deadlines for achieving safe air quality;³
 - Eliminating existing tools for cleaning up areas with unsafe air (through applying the transitional designation);⁴
 - Removing existing anti-backsliding provisions for newly clean areas;⁵
 - Exempting industrial sources from existing requirements to cut toxic air pollution;⁶

¹ U.S. EPA, *Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units, Final Rule*, 70 Fed. Reg. 28606 (May 18, 2005).

² U.S. PIRG, *The Fine Print: How a Loophole in the "Clear Skies" Bill Lets Power Plants off the Hook for Mercury Emissions* (Apr. 2005) (based on EPA data on power plant mercury emissions in 1999).

³ See CAA §§107, 110, 181-185B.

⁴ See CAA §§182.

⁵ See CAA §175A.

- Undermining states' existing authority to obtain relief from out-of-state pollution;⁷
 - Slashing protections for National Parks;⁸
 - Removing existing protections for clean air areas;⁹
 - Eliminating existing requirements for new and upgraded facilities to install up-to-date pollution controls;¹⁰
 - Avoiding existing requirements for mercury control;¹¹ and
 - Reducing noncompliance penalties for excess sulfur dioxide emissions.¹²
- a. Please explain whether EPA has modeled or otherwise quantified in any way the effect of each of these changes to existing CAA provisions. Please provide all such analyses, including any summaries, briefing papers, power point presentations etc.
- b. To the extent that the effects of any of these changes to existing CAA provisions are not incorporated in the basic modeling of alternative legislative proposals, please provide a separate analysis of each of those changes. For example, please explain how the provisions of S. 131 may affect air quality in National Parks.
- c. Please provide an analysis of the air quality, attainment, and public health effects that would occur if all areas potentially eligible for transitional status requested redesignation to transitional status. As part of this analysis, please address:
- i. How many areas may qualify for transitional status?
 - ii. What is the combined population of these areas?
 - iii. Assuming that current deadlines for these areas are extended until 2015 at a minimum, what are the impacts of the additional health damages from the extended deadlines?
- d. S. 131 § 406 allows boilers and process heaters that are not already subject to the program to opt into the program and accept weak caps on their emissions of SO₂,

⁶ See CAA §112 and implementing regulations.

⁷ See CAA §§110(a)(2)(D), 126.

⁸ See CAA §§165(a)(4), 165(d), 169A.

⁹ See CAA §165.

¹⁰ See CAA §165(a); 173(a)(2).

¹¹ See CAA §112(n).

¹² See CAA §411.

NOx, and mercury. Boilers and process heaters are used at facilities such as refineries, chemical plants, manufacturing plants, and paper mills. These opt-in sources are exempted from *existing* air toxics requirements for all toxic air emissions besides mercury, such as hydrogen chloride, manganese, lead, and arsenic.

Please provide a qualitative and quantitative analysis of the impact of this provision. If EPA is uncertain how many units may apply to opt in, please use a high, middle, and low estimate for the number of opt-ins. (The high case should reflect the maximum number of boilers and process heaters that could opt in, which should correspond to the number that are not already covered by the cap-and-trade program.) Please indicate the resulting quantity of additional emissions for each air toxic that would otherwise be controlled under the existing section 112(d) rule for "Industrial, Commercial, and Institutional Boilers and Process Heaters."

3. In a letter dated April 21, 2005, to Senator Jeffords, EPA committed to provide information that would allow a "common platform" for analysis of multi-pollutant legislative proposals. After Mr. Johnson was confirmed by the Senate as Administrator, an unnamed EPA official was reported as saying that the Agency would not provide the promised information, ostensibly because Senator Carper had requested additional information beyond what EPA committed to provide.¹³ Please explain whether it is correct that EPA does not currently plan to provide the information detailed in the letter from then-Acting Administrator Johnson. If so, why not?
4. The Administration has claimed that the mercury caps in both the Administration's bill and the mercury rule were based on what EPA estimates could reasonably be achieved through cost-effective application of SO₂ and NO_x controls, as well as later use of cost-effective mercury-specific control technology, over the next thirteen years. In 2002, the Administration determined that the maximum amount of mercury reduction that should be required through amending the Clean Air Act was the quantity of reductions produced by setting a 15 ton cap effective in 2018 (which, due to emissions banking, would allow continued higher levels of mercury emissions until 2025 or later). Just a few months ago, the Administration again selected this cap level and date for mercury emission limits in the final mercury rule. However, since the Administration first selected this option, extensive information has become available indicating that more stringent and faster reductions are affordable and justified by the benefits. (They are also, of course, legally required under section 112.)

¹³ *EPA Retreats on Clean Air Analysis Following Johnson Confirmation*, InsideEPA (Apr. 29, 2005).

For example, the costs of sorbent injection control technologies have fallen by a factor of four, according to pollution control manufacturers.¹⁴ EPA has positive results from 16 full scale tests of this control technology on facilities using all types of coal, including one year-long test. The manufacturers state publicly that they are currently selling the control technology and are providing the same performance guarantees as they provide for other types of emissions control technologies.

In addition, extensive new evidence of the benefits of mercury reductions has become available since 2002. For example, the Harvard Center for Risk Analysis, funded by an EPA grant, conducted a study titled “Economic Valuation of Human Health Benefits of Controlling Mercury Emissions from U.S. Coal-Fired Power Plants.”¹⁵ This study found that controlling mercury emissions would produce annual health benefits of between \$100 million and \$5 billion, in part from reductions in cardiovascular disease. In contrast, EPA considered a very limited subset of the harm caused by mercury emissions — only the health impacts from mercury in recreationally-caught fresh-water fish — and estimated these benefits at \$0.4 to \$3 million annually.

Even the broader Harvard study did not take into account any of the extensive harm to wildlife and ecosystems from mercury emissions. A series of 21 scholarly papers published in the journal *Ecotoxicology* in 2005 present a new and comprehensive understanding of mercury pollution in freshwater ecosystems in northeastern North America.¹⁶ These articles were based on a database of over 30,000 measurements compiled from 2001 to 2005 by the BioDiversity Research Institute and Environment Canada. They found that mercury levels are high and pervasive throughout the Northeast, both in water bodies and in forests, and that many animals, even forest songbirds, have elevated mercury burdens. These articles also identified and mapped for the first time, biological hotspots in the northeast that pose an ecological risk.

Another study conducted for the EPA Office of Water titled “Benefits of Reducing Mercury in Saltwater Ecosystems: A Case Study” analyzed a large mercury hot spot off

¹⁴ *Briefing by U.S. Manufacturers on Mercury Control Options for Utilities* (Jan. 31, 2005) (congressional briefing).

¹⁵ Glenn Rice and James K. Hammitt, Harvard Center for Risk Analysis, *Economic Valuation of Human Health Benefits of Controlling Mercury Emissions from U.S. Coal-Fired Power Plants* (Feb. 2005).

¹⁶ David C. Evers, *Mercury Connections: The Extent and Effects of Mercury Pollution in Northeastern North America* (2005) (summarizing findings of 21 papers published in *Ecotoxicology* (2005)).

the southeast coast that extends from North Carolina to northern Florida.¹⁷ This study found that reducing U.S. mercury emissions by 30% could produce \$600 million in benefits in the southeastern United States.

- a. In 2002, the Administration proposed to amend the Clean Air Act to mandate in the law a specific level of mercury control, and the Administration decided that the appropriate level of mercury control is a 15 ton cap effective in 2018. Please indicate whether the Administration has re-evaluated this decision since 2002. If not, why not?
 - b. If the Administration has re-evaluated that decision, please describe what information the Administration took into account in deciding to retain the requirement for a 15 ton cap effective in 2018. Please provide any available documentation of and supporting analysis for that decision.
 - c. Please explain whether the Administration considered each piece of information discussed above. Please indicate why the Administration still believes that a 15 ton cap effective in 2018 would adequately reduce mercury emissions, in light of the information about costs and benefits that has become available since 2002.
 - d. Please explain whether the Administration believes that a more stringent cap or earlier deadline would reduce net benefits. If so, what is the analytical basis for that belief? Please provide any such analysis. Has the Administration analyzed the health effects and ecological effects of a more stringent limit? If so, please provide such analysis. If not, why not?
 - e. It appears that the Administration did not consider any of the information discussed above (with the exception of the emissions control technology test outcomes) before issuing the final mercury rule in March. Please explain why the Administration did not consider this information.
5. There are serious concerns about the health effects of the provision in the House energy bill that would delay the clean air deadlines for smog in many cities. EPA Assistant Administrator Holmstead has downplayed the effects of this provision by emphasizing that EPA could block areas from taking full advantage of the extension, which would allow areas to remain polluted until 2015 or beyond.¹⁸ Mr. Holmstead points out that rather than extending the deadline until upwind emissions are required to be controlled,

¹⁷ Douglas Rae and Laura Graham, *Benefits of Reducing Mercury in Saltwater Ecosystems: A Case Study* (Jan. 2004).

¹⁸ *OnPoint – EPA Air Chief Jeff Holmstead* (E&ETV News) (Apr. 25, 2005).

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EPA *could* require the area to clean up its air “as expeditiously as practicable.” In practice, however, it appears that EPA has very rarely (if ever) used such authority. Sections 172 and 181 of the Clean Air Act both require that clean air be achieved “as expeditiously as practicable” but no later than the numeric deadlines indicated in those sections. Please identify any and all instances in which EPA has interpreted the Clean Air Act to require, pursuant to the “as expeditiously as practicable” language, ozone attainment by a date in advance of a specified 3, 5, 6, 9, 15 or 20-year attainment date set forth in section 172 or section 181.

Please provide the information requested above by May 25, 2005. If you cannot answer some of these requests due to time constraints, please identify any such requests and indicate the date by which you will provide those responses.

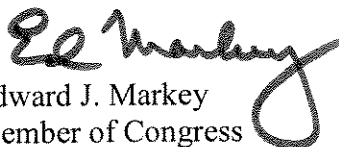
Sincerely,



Henry A. Waxman
Member of Congress



Thomas H. Allen
Member of Congress



Edward J. Markey
Member of Congress



Eliot L. Engel
Member of Congress



Lois Capps
Member of Congress



Hilda L. Solis
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