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Forty-three states have issued advisories against eating mercury-contaminated fish, in recognition of the harm that organic methylmercury pollution can cause to the environment and to human health. In response to stepped-up legal and political pressure on the federal government, the US Environmental Protection Agency (EPA) moved to develop a policy for reducing mercury emissions from coal-fired power plants, the largest source of such emissions in this country. Environmental groups, however, made public their opposition to the industry-favored “cap-and-trade” mercury regulation months in advance of the EPA policy announced on 15 March. The chorus of outrage from the environmental community thus was no surprise to EPA officials.

What EPA officials may not have anticipated was the comparably strong opposition from state governments. By 27 April, officials in 12 states—California, Connecticut, Illinois, Maine, Massachusetts, New Hampshire, New Jersey, New Mexico, New York, Pennsylvania, Vermont, and Wisconsin—had announced that they were pursuing federal court action to invalidate the mercury regulation. New Jersey Attorney General Peter Harvey asserted that “EPA’s emissions trading plan will allow some power plants to actually increase mercury emissions, creating hot spots of mercury deposition and threatening communities.” EPA officials vowed to vigorously defend the agency’s action, noting that EPA is confident in the legality of its rulemaking process.

The new mercury rule would supersede a decision by EPA in 2000 to strictly regulate mercury from power plants as a hazardous pollutant under the terms of the Clean Air Act. The new

cap-and-trade rule, modeled after the program used to reduce emissions that contribute to acid rain, establishes a national annual cap on emissions from power plants and allows individual utilities to choose whether to reduce their emissions or to instead buy “credits” from other companies operating lower-emitting plants. The EPA says this approach is designed to provide an incentive to cut emissions nationwide without mandating costly reductions at specific individual facilities. According to the EPA, when the rule is fully implemented in 2018, mercury emissions will have dropped from 48 tons per year (the current rate) to 15 tons per year.

The more gradual approach to controlling mercury, as embodied in the new regulation, has drawn criticism in Congress. Two days after the rule was announced, a group of 10 Republican House members, led by Science Committee chairman Sherwood Boehlert of New York, sent a letter to EPA Administrator Stephen L. Johnson expressing “deep disappointment” with the rule. “While we recognize that this is the first time that EPA has taken action to reduce mercury emissions from power plants, we believe that this rule, which proposes to reduce mercury by only 21 percent by 2010 and defers a larger reduction for more than a decade, is not adequately protective of human health or the environment,” the letter said.

Rep. Boehlert and his colleagues argued that rapid progress is being made in developing more effective technologies to control mercury emissions from coal-fired power plants, with “consistent reductions of 70–90 percent” already demonstrated using activated carbon injection. “We believe that current technologies can achieve far greater reductions in mercury than

those mandated in this final rule, and that the health and environmental damage caused by utility mercury pollution demands a far more aggressive response.” That point was disputed by Scott Segal, director of the Electric Reliability Coordinating Council, an organization representing coal-fired utilities. Referring to EPA’s 2000 rule, Segal contended that “there is no mercury control technology that exists today that can achieve the reduction levels.”

Regardless of whether legal or congressional action may halt or alter EPA’s new mercury rule, evidence that the problem may be more far-reaching than previously thought continues to mount. Scientists are increasingly worried that mercury pollution threatens not only the health of humans but also that of wildlife, including birds, in which it can cause reproductive, behavioral, neurological, and physiological effects. These concerns were documented by a recent BioDiversity Research Institute study reporting that many animals, even forest songbirds, have elevated mercury burdens.

For those monitoring public policy developments, the eventual fate of the new mercury rule is likely to offer another significant test case of whether the Bush administration’s industry-friendly regulatory approach will prevail in the years ahead, or whether mounting pressure from state governments, Congress, and public interest groups will prompt the administration to accept stricter controls on major environmental hazards.

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