



# Senate Environmental Resources and Energy Committee

Senator Mary Jo White  
Chairman

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To: All Republican Senators

From: Senator Mary Jo White, Chairman  
Senate Environmental Resources & Energy Committee

Date: February 3, 2009

Re: Update on DEP Mercury Emission Regulation

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As many of you recall, there has been significant discussion and debate over the past two sessions regarding different approaches to reducing mercury emissions from coal-fired power plants.

In 2004, the Rendell Administration rejected the federal plan to reduce emissions over objections that the plan would use a cap-and-trade, an approach used successfully to reduce other emissions in a market-driven, cost-effective manner. The Rendell Administration instead adopted a regulation mandating reductions at each power plant, without regard for cost, and opposed legislative efforts to modify the rulemaking.

Last year, the Bush Administration mercury rule was overturned by the federal courts because the court found the Administration failed to follow the proper "de-listing" process for removing mercury from the list of "hazardous air pollutants". The court essentially restored mercury to this list, referred to as the "Section 112" list under the Clean Air Act.

The result of the federal court ruling was that the statutory authority under which DEP had relied for its own mercury rule was undercut. PPL Generation sued DEP in Commonwealth Court, arguing that DEP had exceeded its statutory authority and ignored explicit prohibitions which had been placed on the agency by the General Assembly.

On January 30, 2009 Commonwealth Court ruled that DEP's regulation was "unlawful, invalid and unenforceable" (No. 446M.D. 2008). While DEP is appealing this decision, in the interim the agency is barred from continued implementation and enforcement of the mercury rule.

Subsequent statements from DEP and some environmental groups have reinforced the belief that absent a specific state mercury rule, no reductions will be achieved. This is not correct. In fact, DEP even acknowledges that mercury emissions will be significantly reduced (perhaps between 60%-80%) as a co-benefit from reducing sulfur dioxide and nitrogen oxides as required under the federal Clean Air Interstate Rule (CAIR). The CAIR rule is still in effect and thus will lead to significant mercury emission reductions regardless of the Commonwealth Court's ruling.

If you have any questions, please contact me or Patrick Henderson of my office at 787-9684.