

**Senator Mary Jo White, Chairman
Environmental Resources & Energy**
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Senate of Pennsylvania

**Senator Raphael J. Musto,
Democratic Chairman
Environmental Resources & Energy**
17 East Wing
Senate Box 203014
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To: All Senators

From: Senator Mary Jo White, Chair & Senator Raphael J. Musto, Democratic Chair
Senate Environmental Resources & Energy Committee

Date: November 28, 2006

Re: Update on DEP Mercury Regulations

The following points will provide an update on the DEP mercury regulation. As you may recall, the Senate approved legislation (SB 1201) in June that would implement a mercury emission reduction program without the overreaching embodied in the DEP proposal.

- On October 17, 2006 the Environmental Quality Board (EQB) approved the regulation and submitted it to the Independent Regulatory Review Commission (IRRC) and the Senate and House Environmental Resources and Energy Committees for review.
- On October 18, 2006 the Senate Environmental Resources & Energy Committee voted unanimously to extend its review period by an additional 14 days, as prescribed under the Regulatory Review Act. The 14 day period began after IRRC delivered its order to the standing committees.
- On November 16, 2006 IRRC approved the regulations by a 3-2 vote and the EQB delivered its order to the standing committees.
- On November 21, 2006 the General Assembly adopted a resolution ending the 2005-2006 legislative session on November 28, 2006 at 6:00 PM.
- On November 27, 2006 Senator White notified DEP that because the General Assembly will adjourn prior to the conclusion of the Senate Environmental Resources & Energy Committee's 14 day review period, the Committee will resume its review period next session. Section 5.1 (j.3) of the Regulatory Review Act specifies that the Committee shall receive at least ten days to review the regulation in the new legislative session, starting on the fourth Monday in January. Under the Regulatory Review Act, DEP is precluded from publishing the rule as final until the Committee completes its review.

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Unfortunately, DEP has characterized the Senate Committee's action as a "procedural trick" and condemned legislators for engaging in secret "backroom deals outside the light of day". The record speaks otherwise:

- Despite working on a mercury regulation for over two years, DEP manipulated the regulatory review process in a manner so as to constrain both the review periods and options available to the General Assembly in evaluating the rule.
- On September 22, 2006 the Senate Environmental Resources & Energy Committee submitted eight pages of comments and recommendations regarding how to structure a final mercury rule. However, on September 7th – more than two weeks before receiving or considering the Senate Committee's comments – DEP announced it had finalized its rule.
- The October 18th meeting to extend the Committee's review period was properly sunshined, held in the morning and attended by DEP staff. Further, Secretary McGinty acknowledged receipt of a letter informing her of the extended review and was fully aware of its implications regarding publishing the rule as final.
- The Committee is simply following established procedures for reviewing regulations as set forth in the Regulatory Review Act. To suggest otherwise is disingenuous.

The DEP regulation has met with strong opposition within the General Assembly, as well as with labor, business, coal, utility and electric generating organizations. We believe it is incumbent on the legislature to utilize the full time authorized by law to review this regulation to determine if it is in the public's interest. Additionally, we will continue our efforts to reach a compromise with Governor Rendell on this issue.

If you have any questions, please feel free to contact either of our offices (Sen. White: 787-9684 or Sen. Musto: 787-7105).