



Protecting the environment and working for a healthy community.

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New York State Department of Environmental Conservation  
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October 20, 2006

**RE: New York State Proposed  
Part 246 Mercury Reduction Program**

Dear Mr. Gardner,

Citizens Campaign for the Environment (CCE) is an 80,000 member, not-for-profit, non-partisan advocacy organization working to protect public health and the natural environment throughout New York State. CCE operates from five regional offices across the state and interacts with New York residents to advance sound environmental policies throughout the year.

CCE recognizes New York State's leadership in reducing and controlling mercury, a bioaccumulative, toxic heavy metal that leads to developmental and neurological damage in wildlife and children. CCE applauds New York for rejecting the US EPA's ill-conceived plan to allow trading of mercury pollution from one community to another for profit. In addition to trading poison, the Federal Clean Air Mercury Rule (CAMR) forces the nation to wait until 2018 before mercury emissions are reduced. Mercury is classified as a Hazardous Air Pollutant under the Clean Air Act and should be regulated using a Maximum Achievable Control Technology (MACT) standard. Unregulated coal and oil fired power plant mercury emissions account for 40% of the mercury released into our nation's environment. CCE applauds the New York State Department of Environmental Conservation (Department) for requiring 90% mercury reduction by the coal-fired electric utility sector and establishing the 0.6 pounds of mercury/tBtu on 30 day rolling average basis for new sources and existing sources.

The threats of mercury are not new, the source of mercury pollution is not new, and New Yorkers are ready for swift action at the state level. CCE members demand mercury emission reductions to be required by the end of this decade. During the public comment period, more than 8,500 New Yorkers signed petitions calling upon the Department to enact 90% mercury reductions by the end of this decade. **90% mercury reductions by**

***2010, instead of the proposed 2015, would save almost 3000 pounds of mercury pollution from entering the environment!***

New York State studies indicate that virtually all of the state's more than 4,000 reservoirs and lakes—including the 21 in the New York City water system—are contaminated with mercury and that larger fish in those waters have unhealthy levels in their bodies. In the mid-1990s, the NYS Department of Environmental Conservation (DEC) caught and tested fish in three major reservoirs in the New York City system. These included the Neversink, Ashokan and Roundout and found that they all had fish with relatively high levels of mercury. In 2001, NYS tested six species of fish in 80 major lakes and reservoirs throughout New York. All fish tested positive for mercury.

This large amount of mercury has caused New York State to issue fish consumption advisories for a significant and growing number of water bodies in the state. Consuming fish and seafood is a nutritious and often inexpensive protein source. The U.S. Food and Drug Administration (FDA) and EPA recommend the best low-mercury seafood choices include clams, ocean perch, canned salmon, shrimp, and whiting. However, these meals should be limited to no more than 12 ounces per week (12 ounces is about 2 average meals). The New York State Department of Health (DOH) has a general advisory that no more than one meal (1/2 pound) of fish per week from any of the State's freshwaters should be eaten by anyone.

The impacts to wildlife from mercury are becoming more apparent. The Common Loon illustrates the hazards of elevated mercury levels on long-term species survival. Affecting their nervous system; high mercury blood levels cause lethargy and behavioral abnormalities that make loons less successful at rearing young. Wildlife mercury poisoning was once thought to be limited to fish-eating fauna, like the common loon and otter, but recently elevated mercury levels have been documented in forest dwelling and insect eating songbirds, including Bicknell's Thrush.

The good news is that controlling mercury pollution reduces mercury contamination in the environment. A significant amount of mercury tends to deposit locally, according to recent research published in *Environmental Science & Technology*, which found 70% of the mercury pollution from local coal plants in Ohio fell within 60 miles. Stringent mercury controls for Massachusetts incinerators correlated to a 32% reduction of mercury in local fish, according to the Boston Globe. *Requiring 90% mercury reductions sooner will benefit New Yorkers health and environment sooner!*

### Specific Comments:

- 1. The Department clearly has the legal authority** under state statute to promulgate regulations to control and reduce harmful mercury emission from the New York coal fired electric utility sector. CCE strongly supports the Department using this legal authority to ensure mercury pollution is significantly reduced in New York's environment as soon as possible.
- 2. New York's Mercury reduction plan exceeds the requirements of the Federal Clean Air Mercury Rule.** To ensure New York's mercury control program becomes effective before the federal 2018 timeline and does not participate in the market based cap and trade approach, CCE strongly supports the Department meeting EPA's November 15<sup>th</sup> deadline.
- 3. New York's mercury reduction rule should be consistent with Department's previously stated position.** In the Department's 2004 comments to EPA on the proposed federal mercury rule, the Department contended that EPA's 2018 timeline was illegal and presented 2008 and 2011 as years when a properly determined MACT standard would be achieved. While the proposed rule will become effective before the federal CAMR rule, it is only three years earlier. CCE urges the Department to mandate mercury controls on electric generating units using a properly determined MACT standard.
- 4. The Department should require 90% mercury reductions by 2010.** The Department argues that the proposed reduction plan is designed to allow the regulated community an opportunity to plan by establishing the dates to work in conjunction with several existing timeframes for rules regulating the coal fired electric utility sector. These rules include the Clean Air Interstate Transport Rule (CAIR) which is the federal program for Eastern states to control Nitrogen Oxides (NO<sub>x</sub>) and Sulfur Dioxide (SO<sub>2</sub>), precursors to acid rain; and the Regional Greenhouse Gas Initiative (RGGI), a northeast regional approach to reduce greenhouse gases, like Carbon Dioxide (CO<sub>2</sub>) that contribute to global climate change. Technological controls for NO<sub>x</sub>, SO<sub>2</sub>, and CO<sub>2</sub> provide co-benefits of reducing mercury emissions. Recognizing the need for the regulated community plan effectively, CCE believes requiring significant mercury reductions by 2010 is consistent with the immediacy of pervasive mercury pollution and provides incentives for the industry to begin controlling mercury emissions sooner.
- 5. New York State should continue its leadership to reduce mercury pollution from point sources.** The state required municipal waste incinerators to reduce mercury emissions by 90% in 1999 and is proactively addressing cement plant mercury emissions, absent federal leadership. The state has addressed mercury pollution in the solid waste stream through prohibiting the use and possession of non-encapsulated mercury, establishing standards for dental amalgam waste to eliminate from wastewater stream, collecting and recycling mercury containing switches, and banning mercury novelty products, mercury containing thermometers without prescriptions, and elemental mercury in New York Schools. CCE strongly urges the Department to adopt a more aggressive timeline

to reduce the largest source of mercury emissions in the state by requiring 90% mercury reductions from the coal-fired electric sector by 2010.

6. **Controlling mercury pollution will not significantly impact ratepayers.** The Department estimates compliance to lead to a \$0.02-0.03 kWh increase. The Department analysis found the same costs whether New York went with its own proposal, or with the federal CAMR program. Additionally, coal does not set the price for electricity, so consumers will most likely not be impacted by substantial price increases as a result of reducing mercury pollution. The New York State Energy Research and Development Authority (NYSERDA) and the Department estimates that the typical customer using 750 kWh/month could see a \$0.86 increase. CCE strongly believes that the public health, wildlife, and environmental benefits of reducing mercury pollution from New York's coal fired power plants in a timely and aggressive manner far outweigh the minimal costs associated with the program.
7. **The Department failed to adequately consider the cost alternative of requiring mercury reductions earlier.** The Department performed three different cost scenarios associated with mercury reductions but failed to analyze the cost of reducing mercury sooner than 2015. CCE believes the Department should have considered the alternative and associative costs for requiring mercury reductions by 2015.
8. **State mercury proposed allocation actually increases mercury emissions for certain facilities.** CCE is concerned that the allocation of mercury allowances in phase I, actually provide for an increase for some coal fired power plants in particular, AES Somerset (Kintigh), Lovett Generating Station, Black River Generation (Fort Drum), Trigen Energy - Syracuse (Fibertek), WPS Niagara Generation. CCE strongly urges the Department to ensure that the allocation of the New York Mercury budget does not allow or encourage an increase in actual mercury emissions during any phase of the mercury rule implementation. See Table 1.
9. **Requiring mercury emissions by 2010 avoids almost 3000 pounds of mercury pollution in the environment.** New York's rivers, lakes, streams, fish, wildlife, and people would directly benefit by avoiding such a significant amount of bio-accumulative pollution from entering the environment. CCE urges the Department to taking a more aggressive approach to controlling mercury pollution. See Table 1.

**Table 1.** Department Draft Mercury Rule Compared with EPA’s estimate and a 2010 90% limit

Facility	EPA ICR	DEC Prop (Phase I)		DEC Prop (Phase II)		90% 2010 vs. 2015	
	1999 Data	2010-2014	Change	2015	Change	lbs/yr	lbs/5yrs
AES Cayuga (Milliken)	100.8	73.0	-27.58%	15.5	-84.57%	57.5	287.3
AES Greenidge	61.5	35.0	-43.09%	7.5	-87.77%	27.5	137.4
AES Somerset (Kintigh )	75.3	151.0	100.64%	31.5	-58.17%	119.5	597.6
AES Westover (Goudey)	48.5	30.0	-38.09%	6.2	-87.22%	23.8	119.0
Huntley Power	184.5	110.0	-40.38%	20.5	-88.90%	89.5	447.6
Dunkirk	208.2	106.0	-49.09%	21.5	-89.68%	84.5	422.5
Dynergy Danskammer	122.5	72.0	-41.24%	15.1	-87.70%	56.9	284.7
Lovett Generating Station	40.6	64.0	57.71%	11.0	-72.78%	53.0	264.8
Rochester 7 - Russell Station	79.4	48.0	-39.58%	9.9	-87.56%	38.1	190.6
Black River Generation (Fort Drum)	5.8	16.0	174.91%	3.7	-36.95%	12.3	61.7
Trigen Energy - Syracuse (Fibertek) *	6.8	21.0	209.28%	4.1	-39.79%	16.9	84.6
WPS Niagara Generation *	4.3	12.0	176.50%	1.1	-73.93%	10.9	54.3
S A Carlson*	86.0	8.0	-75.58%	1.7	-98.00%	6.3	31.4
<b>Total</b>	<b>938.2</b>	<b>746.0</b>	<b>-20.5%</b>	<b>149.3</b>	<b>-84.1%</b>	<b>596.7</b>	<b>2,983.4</b>

In closing, CCE believes the Department’s rule is more protective of human and environmental health, as compared to the US EPA Clean Air Mercury Rule. CCE supports mandating 90% mercury reductions, however we urge *the Department to mandate mercury control technologies on New York’s power plants by 2010.*

Thank you for your thoughtful consideration of our comments.

Sincerely,

Dereth Glance  
Program Director

cc: Adrienne Esposito, CCE Executive Director