

2005

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### Recommended Citation

Michelle Schindler, *EPA Sparks Debate over Reducing Mercury Emissions*, 10 Pub. Interest L. Rptr. 1 (2005).  
Available at: <http://lawcommons.luc.edu/pilr/vol10/iss3/2>

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**NEWS****EPA Sparks Debate Over Reducing Mercury Emissions**

By Michelle Schindler

Only weeks after the Environmental Protection Agency (“EPA”) announced the new Clean Air Mercury Rule, a coalition of 15 states and another coalition of environmental groups filed separate law suits against the EPA.<sup>1</sup> Both coalitions assert that the new rule fails to adequately protect public health and neglects to uphold the standards set forth by Congress in the Clean Air Act.<sup>2</sup>

Endorsed by the EPA as “the nation’s first rule to regulate utility emissions of mercury,” the new Clean Air Mercury Rule (“CAMR”) implements a “cap-and-trade” approach that allots a specific number of allowable units of mercury pollution to each coal-fired power plant.<sup>3</sup> Power plants that do not use all of their allowable units of pollution may sell their extra units to other plants.<sup>4</sup> The rule aims to reduce mercury emissions by 70 percent by 2018.<sup>5</sup>

The controversy arising from this rule stems from the fact that the rule is a revision of a December 2000 EPA finding, in which it determined it was “appropriate and necessary” to regulate mercury emissions using the maximum achievable control technology (“MACT”) standards provided in the Clean Air Act.<sup>6</sup> The MACT standards differ from the “cap-and-trade” approach in that they require each power plant to individually reduce its mercury pollution by a certain percentage each year. The MACT standards aimed to reduce mercury emission by 90 percent by 2008.<sup>7</sup>

Seeing the new rule as a dramatic departure from the MACT standards, environmental groups filed a Motion to Stay, hoping to stop the new rule from being implemented until the court hears the legal merits of the case.<sup>8</sup> However, the U.S. Circuit Court of Appeals denied the motion because the coalition did not satisfy the four stringent requirements for obtaining a stay.<sup>9</sup>

Pleased with the Court’s ruling, proponents of the new rule contend that rolling back the rule will merely delay the reduction of mercury emissions.<sup>10</sup> First, without the new rule, mercury will not be regulated because the EPA’s December 2000 finding was merely

a recommendation and no rule was ever written or implemented.<sup>11</sup> Second, Scott Segal, Director of the Electric Reliability Coordinating Council, a coalition of power companies, argues that the old regulatory approach does not create economic incentives for the industry to reduce pollutants.<sup>12</sup>

“By doggedly holding on to an inflexible and litigation-heavy approach to New Source Review (air pollution controls imposed by the Clean Air Act), these advocates create perverse disincentives to the installation of new technology,” Segal said.

On the other hand, the coalition of states, lead by New Jersey Attorney General Peter Harvey, contends that the “cap-and-trade” approach is inappropriate for reducing and mitigating the effects of mercury pollution because, unlike airborne pollutants, mercury does not dissipate in the environment, but instead accumulates and creates “hot spots” that have detrimental effects on the public health of the community.<sup>13</sup>

(Mercury Emissions, *continued on page 2*)**Mercury in the U.S.A.**

- 101.1 tons of mercury are emitted into the environment every year.\*

- Small doses of mercury can harm the brain, heart, liver and kidney functions, especially in young children.\*

- Coal-burning plants, municipal waste incinerators and industrial and commercial boilers are the principle sources of mercury emissions.\*

\* Environmental Protection Agency



(Mercury Emissions, continued from page 1)

Combating this theory, Segal points out that under the “cap and trade” regime to control acid rain, the highest emitting facilities had the greatest reductions because of the economic incentives to reduce emissions created by the program.<sup>14</sup>

Segal further points out that the new rule does not limit state options for regulating mercury emissions.<sup>15</sup> “The rule is perfectly consistent with the notion of cooperative federalism in the Clean Air Act,” Segal said.<sup>16</sup>

While many individual states have adopted more stringent restrictions, the coalition of states argues that a stricter national standard is necessary because a bulk of mercury deposits can come from out of state.<sup>17</sup> For example, New Jersey’s regulations aim to reduce mercury emission from in-state power plants by 90 percent.<sup>18</sup> However, more than a third of mercury deposits in New Jersey come from out-of-state sources.<sup>19</sup> The coalition asserts that the new federal rule has a very local impact that will usurp state efforts to reduce emissions.<sup>20</sup>

<sup>1</sup> Darren Samuelson, *Mercury: Court rejects pleas from enviros to stop EPA rule*, 10 GREENWIRE 9 (Aug. 5, 2005).

<sup>2</sup> New Jersey Department of Law & Public Safety News Release, *Attorney General Harvey Files Suit for Nine-State Coalition Against EPA Rule that Fails to Protect Children From Dangerous Mercury Emissions* (Mar. 29, 2005), <http://www.state.nj.us/lps/newsrelease05/pr20050329a.html>.

<sup>3</sup> United States Environmental Protection Agency, *Mercury: Frequent Questions About Mercury* (last updated Mar. 15, 2005), <http://www.epa.gov/mercury/faq.htm>.

<sup>4</sup> New Jersey Department of Law & Public Safety News Release, *supra* note 2, at 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Darren Samuelson, *supra* note 1.

<sup>9</sup> *Court denies stay, utilities to trade mercury*, IN THE NEWS, Aug. 9, 2005, at 11.

<sup>10</sup> Darren Samuelson, *supra* note 1.

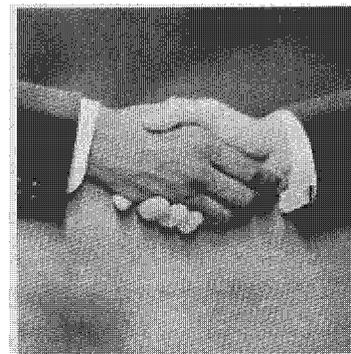
<sup>11</sup> *Id.*

(Mercury Emissions, continued on page 8)

## Union Card Check Legislation Provides Powerful Tool for Unions

By Claire Mariano

A recent Illinois law allowing public sector employees to form a union through majority sign up or “card check verification” has resulted in several major union certifications in Illinois.<sup>1</sup> Similar legislation at the federal level has stalled



Illinois’ new check card verification law is a boon to union organizers.

for the past several years, but labor unions have had increasing success at the state level, as New York, California and New Jersey have enacted similar card check verification laws.

The law provides a powerful organizing tool for labor unions. When a majority of employees in a public sector unit sign a card indicating their wish to join a union, the law requires that the employer recognize the union, allowing the union to avoid an election.<sup>2</sup>

Opponents argue that the legislation will limit the democratic process of union elections.

At the federal level, the Employee Free Choice Act<sup>3</sup> was introduced on April 19, 2005, to allow card check on a nation-wide basis, and the Secret Ballot Protection Act<sup>4</sup> was introduced to prohibit card check. Both measures await committee consideration and have not moved to the full House or Senate.

The U.S. Chamber of Commerce has fought any national legislation allowing card check legislation and has lobbied in support of the Secret Ballot Protection Act. The legislation would require the use of secret ballot for union elections conducted by the National Labor Relations Board.<sup>5</sup> The bill would also make it an unfair labor practice for a union to attempt to achieve union recognition through card check procedure.<sup>6</sup>

“We feel that the secret ballot process is good for employees and employers,” said Michael Eastman, Director of Labor Policy for the U.S.

(Unions, continued on page 3)