

## QUICKSILVER CAUCUS

The Association of State Drinking Water Administrators (ASDWA);  
The Association of State and Interstate Water Pollution Control Administrators (ASIWPCA);  
The Association of State and Territorial Solid Waste Management Officials (ASTSWMO);  
The Environmental Council of the States (ECOS);  
The National Association of Clean Air Agencies (NACAA);  
The National Pollution Prevention Roundtable (NPPR)

January 5, 2011

Administrator Lisa Jackson  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Mail Code: 1101A  
Washington, DC 20460

Dear Administrator Jackson:

Subject: Reducing Mercury Emissions in the United States

The purpose of this letter is to request that the U.S. Environmental Protection Agency (EPA) amend the definition of a major source of hazardous air pollutants (HAPs) to include a threshold for mercury to no more than 25 pounds per year (lbs/year) by using a provision contained within the Clean Air Act (CAA) which permits the EPA to set a lower major source definition for HAPs that are persistent and bioaccumulative. The National Association of Clean Air Agencies (NACAA) has also supported this recommendation. On October 19, 2010, the NACAA Board of Directors unanimously supported the recommendation to lower the major source definition for mercury.

Section 112(a)(1) in the 1990 CAA amendments currently defines a major source as a source that emits or has the potential to emit a HAP at 10 tons/year of any one HAP or 25 tons/year of total HAPs. This CAA provision also specifically allows the EPA to set a lower threshold for pollutants that are persistent and bioaccumulative, such as mercury.

A major source threshold of no more than 25 lbs/year is being recommended for mercury because this amount is consistent with current regulations in some states. Because mercury is a persistent, bioaccumulative and toxic (PBT) air pollutant, even very low emissions can result in unacceptable impacts to the nation's water bodies. To date, all 50 states have issued health advisories for fish consumption due to mercury contamination, with the primary loadings being from atmospheric deposition.<sup>1</sup>

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<sup>1</sup> Environmental Council of States (ECOS) Quicksilver Caucus – Environmental. Resolution for implementing a national vision for mercury. Revised and approved March 24, 2010  
[http://www.ecos.org/files/4026\\_file\\_Resolution\\_07\\_1\\_2010\\_version.doc](http://www.ecos.org/files/4026_file_Resolution_07_1_2010_version.doc)  
Accessed 9 November 2010

The 1990 CAA actually does less than the CAA of 1977 in controlling mercury emissions from new sources. Prior to 1990, a Prevention of Significant Deterioration (PSD) Best Available Control Technology (BACT) demonstration requirement existed for new sources emitting greater than 200 lbs/year of mercury. While 200 lbs/year is arguably still very high for mercury emissions, it was more appropriate than the current 20,000 lbs/year threshold. If the major source threshold was lowered to something more reasonable for such a potent neurotoxicant (following several state examples), this would allow states to better utilize the Section 112(g) provision where states develop a case by case Maximum Achievable Control Technology (MACT) emission standard for any new major source facility. This would essentially replace the lost PSD/BACT tool with an improved permitting tool.

A lower national major source definition for mercury emissions is important for the following reasons:

- 1) This provision would provide a consistent, national approach for reducing this important PBT and would be more in line with the intent of the 1990 CAA, which is to first mandate technically achievable controls regardless of the estimated risk and impact (contrary to the approach taken in the 1977 CAA that was not effective).
- 2) It would provide states with a control technology threshold that could be consistently implemented through the 112(g) process rather than requiring intensive state resources such as conducting a multi-pathway risk assessment.
- 3) This provision would assist states with meeting their mercury total maximum daily load goals, as most have identified the atmospheric deposition of mercury as contributing greater than 90 percent of the mercury to the identified impaired water bodies.
- 4) This provision would cover sources that have not yet been addressed by MACT standards. If a new source in a listed category is identified that isn't covered by a MACT, states can use the tools and authority under 112(g) to require the source to provide a new source MACT determination prior to its construction. However, for existing mercury sources that are being addressed by an area source rule, EPA should ensure that these sources continue to comply with the area source rules until a MACT standard for major sources has been promulgated.
- 5) If there are numerous unregulated existing sources, it provides justification for a MACT and agency outreach to reduce the impacts from those sources.
- 6) This provision would contribute to an improved emissions inventory and significant sources that were previously underestimated would be better quantified (some examples include phosphate mining and sludge dryers). Many facilities will want to demonstrate that they are below the lowered threshold with federally enforceable state operating permits, resulting in better emission estimates and voluntarily controlled emissions.
- 7) State laws already exist that have lowered the emissions threshold for mercury sources, which the EPA could follow as an example including Maine and New Jersey.
- 8) The Regional Great Lakes Mercury Emission Reduction Strategy developed by the eight Great Lakes states and EPA, as recommended by The Council of Great Lakes Governors, also contains a recommendation to lower the major threshold definition for mercury (<http://www.glrc.us>).



- 9) The EPA could also use this provision to address other PBTs such as dioxin, polychlorinated biphenyls or polyaromatic hydrocarbons.

Because of the reasons expressed above, we believe EPA should lower the definition of major sources for mercury not to exceed 25 lbs/year, and consider similar actions for other PBTs, in accordance with the intent of the 1990 CAA.

You may contact either one of us to discuss this important topic.

Sincerely,



Ginger Jordan-Hillier  
Quicksilver Caucus, Lead ECOS Representative  
Maine Department of Environmental Protection  
Environmental Public Health Coordinator  
207-287-7863



G. Vinson Hellwig  
NACAA Air Toxics Committee Co-Chair  
Michigan Department of Natural Resources and Environment  
Air Quality Division, Chief  
517-373-7069

cc: Gina McCarthy, Assistant Administrator, U.S. EPA OAR  
Denise Ney, U.S. EPA OCIR  
David Shaw, Co-President of NACAA, New York State Department of Environmental Conservation  
Lynne Liddington, Co-President of NACAA, Knox County Air Pollution Control Board

The Quicksilver Caucus is a coalition of state environmental association leaders working to reduce mercury in the environment. More information about the Caucus is available at:  
[http://www.ecos.org/section/committees/cross\\_media/quick\\_silver](http://www.ecos.org/section/committees/cross_media/quick_silver)