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Environment, Health Secretaries Join Other States in Strong Opposition to EPA's Proposed Mercury Rule

(Santa Fe, NM) -- New Mexico Environment Department (NMED) Secretary Ron Curry has united with Attorneys General from eight other states and the Environment Secretary of Pennsylvania to jointly file formal comments today with the U.S. Environmental Protection Agency (EPA) challenging EPA's proposed rule on mercury emissions from power plants. These legal filings assert that the EPA's proposals are inconsistent with the Clean Air Act and fail to protect people – particularly children and pregnant women – from the grave dangers posed by mercury.

According to the coalition of Attorneys General and Secretaries, EPA's mercury proposals do not meet the requirements of the Clean Air Act and would not withstand legal challenge. The coalition includes the Attorneys General of California, Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Vermont and Wisconsin.

In addition, the New Mexico Environment and Health Departments have also filed state specific comments to the proposed rule.

“As the only Rocky Mountain state involved in this coalition, I am proud that New Mexico is out in front on this vital public health issue,” said NMED Secretary Ron Curry. “There are a number of problems I have with EPA's proposals. I don't think a cap-and-trade program is a good idea for a neurotoxin like mercury and I am very concerned about the impact such a program would have on the four corners region where some large power plants are located.”

“We estimate that 30,000 women of childbearing age in New Mexico have elevated levels of mercury in their blood and that 4,000 newborns are at risk for neurologic deficits in New Mexico annually,” said NMDOH Secretary Patricia Montoya. “It simply isn't acceptable to not take the strongest action possible to reduce these numbers.”

New Mexico has the highest mercury emissions from power plants in the western U.S. at over one ton annually. In addition, there are 22 bodies of waters in New Mexico with fish advisories due to mercury levels found in fish.

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EPA's proposals include an emissions "cap and trade" scheme that would allow power plants to purchase emissions credits from other plants that reduce emissions below targeted levels, rather than reducing their own mercury emissions. EPA's proposed trading approach therefore would not address hot spots of mercury contamination created in the vicinity of power plants that elect not to reduce emissions. In their filing, the Attorneys General and Secretaries note that power plants are the largest remaining source of mercury, which is one of the most toxic substances that we face.

The comments filed today outline the legal deficiencies of these proposals. The filing rejects EPA's assertion that mercury emissions trading is authorized by the Clean Air Act. Instead the Attorneys General and Secretaries argue that EPA has a clear statutory obligation to set a plant-specific standard for mercury.

The coalition also criticizes EPA's proposal to establish a "safety valve" provision through which industry can obtain relief if the price of purchasing emissions credits exceeds a set threshold. As stated in the comments, "the (Clean Air) Act requires EPA to 'protect public health with an ample margin of safety,' not to enact regulations that only serve to protect the economic interests of the power industry." The coalition asserts that the weak trading program would result in hot spots of mercury contamination around many power plants, which would not be required to install additional pollution controls.

Mercury pollution can have devastating implications for young children, who can suffer permanent neurological damage as a result of exposure, frequently in utero. Mercury is a dangerous neurotoxin proven to cause a variety of developmental neurological abnormalities in babies and young children, including delayed developmental milestones, cerebral palsy, reduced neurological test scores and delays and deficits in learning abilities.

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