

“Regulating Mercury in Pennsylvania”

By Senator Ray Musto

In mid-May, the Pennsylvania Department of Environmental Protection (DEP) acknowledged that it was recommending to the Environmental Quality Board (EQB) the development and adoption of regulations to control the emissions of mercury from coal-fired power plants. DEP’s regulations would include not only electric generating units, but also other sources of mercury; a method for assessing mercury “hotspots”; the development of clean coal technologies; and an approach that considers the capacity and reliability of our electric grid infrastructure.

Many environmental groups and other organizations have urged the state’s EQB to back DEP’s effort to adopt Pennsylvania-specific mercury controls. However, as a long-time member of the EQB, I have serious concerns regarding DEP’s proposed action on mercury. Other legislative members of the EQB have also joined me in expressing anxiety regarding this activity.

Unfortunately, the concerns that my colleagues and I share over efforts to craft a Pennsylvania-specific mercury reduction rule have been misrepresented. Some groups have erroneously argued that my colleagues and I are urging that no action be taken to protect the health of Pennsylvanians from the dangers of mercury. My motives for offering a different perspective on this issue have also been questioned by those more interested in a sound bite rather than sound policy.

Let me be crystal clear, I have never requested that Pennsylvania be idle on the issue of controlling mercury. And, it goes without saying that I am concerned about children’s health.

What I am in support of is the adoption of a strong mercury reduction rule at the national level. Earlier this year for example, the U.S. Environmental Protection Agency (EPA) adopted a federal rule that would slash mercury emissions by as much as 70 percent - perhaps as high as 86 percent, in Pennsylvania. It is worth noting that the federal rule requires a 64 percent reduction in mercury emissions in Pennsylvania by 2010.

By law, the federal mercury rule is already incorporated into Pennsylvania’s Air Pollution Control Act. As the prime sponsor of Pennsylvania’s Air Pollution Control Act amendments in 1992, I strongly supported language stipulating that Pennsylvania should not adopt air quality standards more stringent than applicable federal standards except in limited circumstances.

There are valid reasons for federal air quality standards. Some air pollutants are national in scope and effect. Federal air quality standards provide uniformity and

prevent economic dislocation. Research shows that mercury can circulate in the atmosphere for long periods of time and be transported thousands of miles before it gets deposited. For these reasons, it is difficult to link mercury accumulation in the food chain with individual emission sources.

As a state policymaker, I have to be not only concerned about the state's environment, but also its economy and resource usage. Pennsylvania's electric generators compete in one of the most competitive power markets in the world. In my view, a Pennsylvania-specific mercury emission standard could place Pennsylvania's electric generating units, industries, and consumers at an economic disadvantage with little, if any, environmental benefit. Energy policy is environmental policy that should be delicately balanced.

Mercury is a toxic element that poses health threats and must be controlled. After many years of study and analysis, coal-fired power plants, for the first time, will have their mercury emissions controlled under a federal regulation.

My question has always been whether it is necessary and advantageous for Pennsylvania to do something more stringent than required under federal law. This is a complex, costly, and important issue. It is only prudent and reasonable to be asking questions now.

State Senator Raphael J. Musto, D-Luzerne, is the Minority Chairman of the Senate Environmental Resources and Energy Committee.

CDC Study: Mercury Amounts Below Levels of Concern

A study updating an earlier report from the Centers for Disease Control and Prevention (CDC) shows that the blood mercury levels in young children and childbearing-aged women "usually are below levels of concern."

The report updates the CDC's National Health and Nutrition Examination Survey of 1999-2000, which was the first nationally representative estimates of U.S. women's and children's exposure to mercury based on biological measures. The new study, which runs through 2002, shows that mercury levels were actually lower for the 2001-2002 two-year period compared to the 1999-2000 period.

In addition, the study recommends women follow federal and state advisories on the consumption of fish to reduce exposure to mercury.

For more information go to Fish advisory in PA is at:
<http://www.epa.gov/waterscience/fishadvice/advice.html>

Schedule for PA's "Mercury Rule Public Involvement Process" Set; Move Called Unnecessary in Light of Federal Action

A series of workshop meetings aimed at arriving at Pennsylvania-specific mercury emission regulations have been set under the auspices of the Department of Environmental Protection (DEP). The state-specific rules would take precedence over a federal rule, which would reduce emissions by close to 90 percent.

DEP is aiming to have final-form regulations approved by fall of 2006.

Given the federal emission rules, labor groups and representatives of the electric generating industry contend that the state-specific regulations will be ineffective, and will result in job losses and higher costs.

A recent statement from the United Mine Workers, the Coal Association, the International Brotherhood of Electric Workers, and the Electric Power Generation Association, says that state-specific mercury reduction rules ignore fundamentals about the issue. The group notes that mercury emissions represent a global problem since they travel hundreds, even thousands of miles. Plant emissions, moreover, are responsible for only one percent of total mercury emissions worldwide.

The "Mercury Rulemaking Public Involvement" process is being jointly hosted by the Air Quality Technical Advisory Committee, and the Citizens Advisory Council on behalf of DEP. The agenda for the first meeting includes discussions on "Atmospheric Fate and Transport of Mercury", the "U.S. EPA's Clean Air Mercury Rule," and "States' Mercury Legislation and Regulation."

FERC Proposes Rules to Update Merger Policy

The Federal Energy Regulatory Commission recently proposed rules and amendments to the Commission's regulations to implement merger review provisions of the Energy Policy Act of 2005, which amended section 203 of the Federal Power Act.

"The Energy Policy Act of 2005 improved the ability of the Commission to prevent the exercise of generation market power, by granting authority to review acquisition of electric generation facilities. Today, the Commission acts to implement this significant new responsibility," said Commission Chairman Joseph T. Kelliher.

Section 203 of the Federal Power Act requires Commission authorization for mergers and acquisitions and dispositions of jurisdictional assets. Among other things, the Energy Policy Act amended section 203 of the Federal Power Act to:

- increase the value threshold from \$50,000 to \$10 million for certain transactions subject to section 203;
- extend the scope of Commission review to include transactions involving certain transfers of electric generation facilities and public utility holding company transactions;
- require the Commission to make cross-subsidization findings and generally determine that the transaction will not result in a regulated utility subsidizing a non-utility associate company; and
- direct the Commission to adopt, by rule, procedures for the expeditious consideration of applications for the approval of dispositions, consolidations, or acquisitions under section 203.

The new provisions will take effect February 8, 2006. Under the existing section 203, the Commission reviews utility mergers to ensure they are “consistent with the public interest.” In 1996, the Commission updated and clarified its merger review policy in order to provide greater certainty and means to expedite merger reviews. The Merger Policy Statement (RM96-6) established three factors that the Commission considers when analyzing section 203 transactions: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.

As a result of the changes to section 203, the Commission is seeking comment on the proposed definitions of “value.” The Commission proposes that “value,” as applied to transmission facilities and existing generation facilities, be defined as the market value of such facilities for transactions between non-affiliates. Regarding wholesale contracts, the Commission proposes that “value” would be based on total expected contract revenues over the remaining life of the contract. “Value” for securities would be defined as the market price at the time the security is acquired.

The Commission seeks comment on its proposed definition of “existing generation facility” as a facility that is operational at the time the transaction is consummated. The proposal also seeks comment on cross-subsidization issues.

“In light of the Congress’ clear directive in EAct 2005 that the Commission make findings regarding cross-subsidization and the pledge or encumbrance of utility assets in the context of a section 203 application, we seek comment . . . on what additional safeguards or conditions may need to be placed on section 203 transactions,” the rulemaking proposal says. “[T]he Commission solicits comments on the adequacy of its present policies preventing affiliate abuse and cross-subsidization, and whether conditions such as those imposed by state commissions may need to be placed on section 203 transactions.”

Further, the Commission proposes to provide for the expeditious consideration of completed section 203 applications that are not contested, are not mergers and are consistent with Commission precedent.

The Commission intends to issue a final rule by February 8, 2006, the date on which the amended section 203 provisions take effect.

Comments on the proposed rule are due 30 days after the Notice of Proposed Rulemaking, Transactions Subject to FPA Section 203, is published in the Federal Register (available at www.gpoaccess.gov).

Exelon's Byron Units Operate Safely for Three Consecutive 'Breaker-to-Breaker' Runs

Byron Generating Station operators shut down Unit 2 on Sunday for a scheduled refueling and maintenance outage. The shutdown marks the completion of the third consecutive breaker-to-breaker run for the Exelon Nuclear site.

A primary nuclear station goal is to safely run continuously between refueling shutdowns, an accomplishment known as "breaker-to-breaker" operations. The term refers to closing an electrical breaker at the end of one refueling outage as the plant begins producing electricity for the grid, then 18 months later opening the breaker to shut off power to the grid as the next refueling outage begins. Breaker-to-breaker operations are indicative of a high level of equipment reliability and overall plant performance.

When Unit 2 came offline Sunday, it had operated for 534 consecutive days, the longest ever for a Byron unit.

"These are great accomplishments for the entire Byron team," said Steve Kuczynski, Byron Site Vice President. "Not too many nuclear plants can claim a similar success like this. It reinforces the excellent work that our employees have done to keep our units operating safely and reliably for our customers. By executing the work in this refueling outage, we will be ready to operate for a fourth consecutive breaker-to-breaker run.

During the shutdown, workers will perform more than 10,000 activities on a variety of plant components and systems. This includes replacing approximately 40 percent of the reactor's fuel assemblies with new ones.

Many of the activities performed during the shutdown cannot be performed when the plant is running and all are designed to ensure safe, reliable production of electricity through the 18-month operating cycle.

To support this effort, the station will utilize the talents and expertise of more than 1200 additional workers, many of whom travel to Byron from outside the area, providing a temporary benefit for the local economy.

While the unit is down, one of the cooling towers will not produce any water vapor cloud. This is normal during a shutdown.

Wide Ranging Energy Hearings Being Scheduled by House Environmental Resources and Energy Committee

Hearings into Pennsylvania long-term energy needs are in the works by the House Environmental Resources and Energy Committee. The hearings are expected to last at least through the fall, according to staff working with committee Chairman William Adolph, R-Delaware.

"Most of us have a very short-term view of our energy needs," one staffer said. "Representative Adolph feels it's time we take a long-term look."

The committee plans to gather "the best and brightest" to discuss energy supplies and policy, including whether the state has enough electric capacity to handle future energy needs.

No hearings have been scheduled as yet, but the committee is eyeing the week of October 17 for the first.

Meanwhile, the Rendell Administration announced the creation of a fuel consortium that will purchase nearly the full output of cheaper, cleaner diesel fuel to be produced by the nation's first-ever waste-coal-to-diesel plant planned for Mahanoy City, Schuylkill County. The plant, which is being built by Waste Management and Processors Inc. of Gilberton, Schuylkill County, will use waste coal to produce as much as 40 million gallons of clean-burning diesel annually.