

November 29, 2010

Administrator Lisa Jackson  
US EPA Headquarters  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Mail Code: 1101A  
Washington, DC 20460

Dear Administrator Jackson,

The undersigned environmental commissioners represent a subset of the 18 states that participated in the first-ever pollutant Management Conference under Section 319(g) of the Clean Water Act (CWA) on June 22<sup>nd</sup> and 23<sup>rd</sup> 2010. We wish to thank you for convening the conference, which opened a dialogue among the states and with EPA that we hope will lead to a collaborative initiative to reduce mercury deposition to our watersheds and restore our mercury-impaired water bodies. Because we believe that federal leadership is critical to this effort, we write to request EPA's action on a specific set of recommendations.

As you know, the impetus for the conference was EPA's approval in 2007 of a Northeast Regional Mercury TMDL for seven Northeast states whose surface waters are impaired by mercury. Modeling used in the development of the mercury TMDL established that eliminating water quality impairments in the Northeast states would require a 98 percent reduction in anthropogenic atmospheric deposition. Additional modeling demonstrated that the water quality impairments in the Northeast states were due in part to mercury emissions from sources in 11 upwind states, as well as sources in other states and countries. At the request of the Northeast states, EPA convened the conference with the 11 contributing states to explore opportunities for a collaborative regional mercury emission reduction effort.

We learned through the conference that the participating states, all of which have fish consumption advisories, have implemented a wide range of state regulatory programs to reduce mercury releases to the environment. These range from bans on mercury containing products to adoption of stringent mercury emission limits on electric generating units (EGUs) and other significant sources of mercury. While these programs have been effective in reducing mercury emissions, much greater emission reductions are needed if states can ever hope to eliminate mercury impairments. Even the most aggressive regional mercury reduction program cannot achieve emission reductions of the magnitude needed to meet water quality standards and the Northeast Regional TMDL targets. We remain mindful of the significant contribution of sources of deposition throughout the United States and the 70 percent contribution that comes from outside our borders.

Mercury pollution is a national and international problem that transcends both state and national boundaries and requires a robust and coordinated national strategy. In this regard, amongst the states participating in the conference, there was consensus on two key issues—the importance of strong federal leadership in the effort to reduce mercury releases to the environment and the need for a national cross-media regulatory approach. We understand that there are many competing priorities facing your agency, but we urge EPA to dedicate the resources necessary to do the best job possible to meet this challenge.

We seek commitments from EPA that will achieve the greatest and most cost effective reductions in mercury emissions and other releases to the environment. Given the breadth of EPA's regulatory authority, the agency should establish a comprehensive mercury reduction strategy that addresses sources of mercury both within and outside of the U.S. Such a strategy should incorporate controls on air emissions, water discharges, and mercury-containing products, and further position the nation to assume a leadership role in securing global reductions of mercury. In this regard, we make the following recommendations:

- EPA should adopt maximum available control technology (MACT) standards under § 112 of the Clean Air Act (CAA) for EGUs and other large sources of mercury emissions. We commend EPA for adopting a stringent new mercury MACT standard for cement kilns and we urge the agency to proceed promptly with MACT standards for other major source categories, including industrial, commercial, and institutional (ICI) boilers, incinerators, foundries and electric arc furnaces. These sources are best regulated at the federal level. When developing MACT standards, EPA should consult with the states that have evaluated the feasibility of EGU mercury reductions and adopted stringent mercury emission standards.
- When developing mercury MACT standards, EPA should consider water quality impairments in accordance with its authority under CAA § 112(d)(2) to consider “non-air quality health and environmental impacts.” EPA should set mercury MACT standards at a level that will facilitate compliance with water quality standards. Where an initial MACT standard does not achieve the desired environmental goals, both air and water, EPA should have a plan to obtain further mercury emission reductions over the longer term. These reductions should be addressed through the Residual Risk Program and implemented no later than eight years after the promulgation of the MACT standard.
- When developing mercury MACT standards, EPA should consider the option to comply with either a mercury reduction percentage or an output based emissions rate.
- EPA should, to its maximum ability, adopt national standards for mercury in both consumer and industrial products to establish a federal regulatory floor, and should expand work with states and industry to develop and implement effective pollution prevention initiatives targeting new and end-of-life mercury-added products.
- We are pleased to learn that EPA is moving forward on developing effluent guidelines for dental facilities. We look forward to EPA working in concert with the states on its follow through efforts related to this rulemaking. The rule should require the use of amalgam separators and other best management practices that will reduce releases of mercury to the environment.
- In addition to adoption of stringent mercury MACT standards for EGUs, further reductions in mercury emissions from EGUs are possible by employing energy efficiency measures and developing renewable energy sources. We urge EPA to take a leadership role in facilitating these initiatives. These measures support other important

environmental goals, including reducing emissions of greenhouse gases and other pollutants that contribute to unhealthy air quality.

- Because mercury emissions from many other countries contribute significantly to elevated mercury deposition in our nation and the United States is in a position to lead by example, we believe EPA should expand its efforts to seek and support an international agreement to reduce global mercury use and releases.
- EPA should update its [Mercury Roadmap](#)<sup>1</sup> on a periodic basis, taking into consideration the best technical information available, and working with the states, implement a comprehensive plan for the Roadmap. Research on sources, trends in use, release and environmental levels, remediation, and the environmental and health impacts of mercury should be strengthened, in partnership with the states and academic institutions.
- EPA should work with private industry to develop technologies that will reduce mercury releases to the environment in the most cost-effective manner.

This is an initial list of recommendations based on our discussions at the Management Conference. The states have committed to an on-going exchange of information on state mercury reduction initiatives, and we also hope to move forward in partnership with EPA to address the issues discussed at the Management Conference. In order to ensure the most effective communication among the states and with EPA on these issues, we request that EPA establish a process for working with the states in order to track progress and discuss a national strategy moving forward.

We hope that you see this effort as continuing to be worthy of your attention, given the human health risks posed by mercury-contaminated fish, and the great difficulty many states will face in achieving compliance with state and federal water quality standards without substantial national reductions in mercury emissions.

Sincerely,



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Commissioner Amy Marrella, Connecticut Department of Environmental Protection



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Director Douglas Scott, Illinois Environmental Protection Agency

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<sup>1</sup><http://www.epa.gov/mercury/roadmap.htm>



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Acting Commissioner Beth Nagusky, Maine Department of Environmental Protection



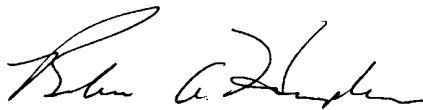
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Secretary Shari T. Wilson, Maryland Department of the Environment



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Commissioner Laurie Burt, Massachusetts Department of Environmental Protection



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Director Rebecca Humphries, Michigan Department of Natural Resources and Environment



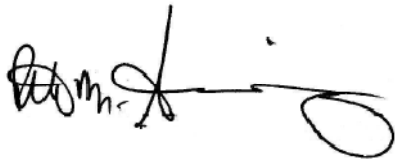
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Commissioner Thomas Burack, New Hampshire Department of Environmental Services



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Commissioner Bob Martin, New Jersey Department of Environmental Protection



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Acting Commissioner Peter Iwanowicz, New York Department of Environmental Conservation

John Hanger

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Secretary John Hanger, Pennsylvania Department of Environmental Protection

W. Michael Sullivan

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Director Michael Sullivan, Rhode Island Department of Environmental Management

Justin C. Johnson

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Commissioner Justin Johnson, Vermont Department of Environmental Conservation