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Thrown back

Judges stand up for our health, the rule of law by rejecting Bush mercury stance

By Rena Steinzor
February 21, 2008

The Bush administration received a judicial rebuke long in the making this month when an exasperated panel of federal appeals judges held that the Environmental Protection Agency's weak-kneed approach to mercury pollution failed to follow the law. The court killed the rules and sent them back to the EPA for revision.

That will almost certainly buck the decision about mercury standards to the next president - a sad situation for a nation that should be leading the fight against global environmental threats such as mercury. Fortunately, many states, including Maryland, have written their own standards to protect pregnant women and their babies.

Scientists tell us that 15 percent of American women of childbearing age have blood mercury levels in excess of what is safe, with an even higher percentage found in Native American women living near the heavily contaminated Great Lakes. About 30 percent of mercury emissions occur naturally. Human sources produce the remainder, with coal-fired power plants and chlor-alkali chemical factories at the top of the list (Maryland has several coal-fired plants).

The primary pathway of human exposure is food, specifically fish that

have absorbed methyl mercury, the most dangerous form of the pollutant, from water bodies contaminated by industrial sources.

Prenatal exposure to methyl mercury, even at very low doses, causes neurological and other developmental damage, even if the mother does not appear ill. As many as 637,000 babies born each year in the United States are in jeopardy from mercury in their mothers' bodies. The pollution is so widespread that 44 states, including Maryland, warn against eating fish caught in waters posted with "fish advisories."

The Clean Air Act gives the EPA authority to restrict mercury and other polluting emissions, and in the final days of the Clinton administration, the agency issued a finding that mercury is a hazardous air pollutant, forcing the Bush administration to require pollution controls on coal-fired plants. But the Bush administration withdrew the proposal and, after several years' delay, issued a much weaker version.

What stunned legal and scientific experts was that the administration decided to ignore the law's clear instruction that it first decide if mercury is hazardous and, if so, require power plants to limit emissions.

Instead, over the objections of career staff, the EPA political appointees issued a toothless rule that waited until at least 2018 to impose controls on mercury, and which even then would allow power plants to buy and sell "allowances." Such a "cap and trade" system would have left decisions about how much pollution to emit in any given location to electric utilities, thus allowing pooling of mercury in poisoned waters, exacerbating the growing environmental problem instead of ameliorating it.

Not only would the approach not solve the problem, but it did not comport with the law. The Clean Air Act didn't call for capping and trading; it called for standards and regulations.

Fortunately, states with the worst problems rose to the occasion. Fourteen states, including Maryland, plus Baltimore, the only local government in the coalition, filed suit against the EPA rule, and their efforts were rewarded this month.

Of course, like climate change, mercury is a global problem. Dirty, coal-fired power plants in China and Latin America emit thousands of tons of this extremely toxic metal, and we will never conquer the problem until we get those sources under control. That is why the United States needs to take a leadership role, not sit on its hands waiting for China and other developing countries to see the light.

It has been 18 years since Congress instructed the EPA to do something about mercury pollution. This administration is unlikely to get the job done before leaving town, but at least its neglectful approach has given the courts occasion to remind us that even presidents are obliged to follow the law.

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-- SEN. CHRISTOPHER J. DODD, Connecticut Democrat, after the resignation of Fidel Castro as Cuba's president yesterday

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