

COMMENTS

on **NOTICE OF RECONSIDERATION OF
FINAL CLEAN AIR MERCURY RULE
(Docket Number OAR-2002-0056)**

By the National Association of Manufacturers

Submitted to the Environmental Protection Agency on
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**COMMENTS OF THE
NATIONAL ASSOCIATION OF MANUFACTURERS
to the
ENVIRONMENTAL PROTECTION AGENCY
regarding
DOCKET NUMBER OAR-2002-0056**

RECONSIDERATION NOTICE FOR CLEAN AIR MERCURY RULE

The National Association of Manufacturers (NAM) submits these comments in response to the Environmental Protection Agency's (EPA) Reconsideration Notice of the Clean Air Mercury Rule (CAMR). The agency issued the final rule on March 15, 2005 and published it in the May 18, 2005 issue of the Federal Register at *70 Fed. Reg. 28606 et seq.* The NAM is the nation's largest industrial trade association representing small and large manufacturers in every industrial sector and in all 50 states. The CAMR will affect most facilities operated by NAM members either directly or indirectly.

The NAM's mission is to enhance the competitiveness of manufacturers and improve American living standards by shaping a legislative and regulatory environment conducive to U.S. economic growth. As a general matter, the NAM is supportive of EPA regulations that are designed to provide real net benefits to the public health, including the health of manufacturing workers, retirees and their families. Conversely, the NAM opposes emissions regulations that are either unfounded in sound science or that fail a net health benefits test. We are concerned that the EPA's Reconsideration Notice may lead to a revised CAMR that will result in unnecessary increases in the costs of electricity and natural gas while causing net harm to public health.

I. Background

The manufacturing sector uses about one-third of the nation's energy, including one-third of its natural gas and almost 30 percent of its electricity. According to a 2003 study from the Manufacturing Institute, external overhead costs related to pollution abatement compliance add approximately 7 percent to U.S. manufacturers' unit labor costs relative to their major foreign competitors. More specifically, as a percentage of output, American manufacturers spend considerably more on pollution abatement than do their competitors in Germany, Japan, France, Great Britain, Canada, Mexico, China, South Korea and Taiwan. Accordingly, the NAM has a vested interest in the EPA's development of rules that address air pollutants in a cost-effective manner without interfering with affordable and reliable energy for American consumers and manufacturers. The NAM's broad-based membership includes fossil fuel-fired electric generating units and all other manufacturing sectors.

Although targeted at the electric utility industry, the EPA's CAMR is also of consequence to manufacturers and electricity consumers at large. Even if the new rule does not lead directly to future mercury emissions regulation of industrial boilers and other sources, the manufacturing sector is nevertheless greatly affected by the cost of electricity, which remains the primary energy source for the manufacturing sector. Furthermore, non-flexible regulation of mercury emissions will place increased market pressures on sky high natural gas costs. If coal fired power plants cannot regulate their mercury emissions in a cost-effective manner, they will switch to more expensive, and often imported, natural gas. U.S. consumers currently pay the highest prices in the world for natural gas, approximately \$12 per million British Thermal Units (BTUs). Prices have recently spiked to above \$15.00 per mBTU, an all time record. This price is almost double the rate paid by our major trading partners in western Europe, and almost triple the rates paid by China, South Korea and Japan. The Energy Information Administration (EIA) Annual Energy Outlook 2006 released on December 12, 2005 forecasts continued high natural gas prices for all sectors of the economy, increasing imports of natural gas, and growing use of coal. Any constraints on the use of coal can only make a very bad situation worse.

Moreover, natural gas costs have had a strong adverse impact on the manufacturing sector since 2000. The chemical industry alone estimates that 100,000 jobs were lost since 2000 as a direct result of the high natural gas prices due to the gas supply and demand imbalance. Over half of the fertilizer capacity in the United States is shut in or closed permanently. The chemical industry has gone from the lead net export industry in the United States to a net importer of chemicals. Other industries, including plastics, aluminum, steel, metal heat treating, glass and paper are struggling to stay afloat in the current natural gas cost environment. If the EPA does not continue to regulate mercury emissions in a flexible manner, it could seriously impede the manufacturing recovery that has resulted in a loss of three million manufacturing jobs since 2000. Analysis to comply with E.O. 13211 will demonstrate the negative impact of such a reversal of policy.

When manufacturers shed jobs, they are often forced to scale back health benefits as well. If the federal government fails to implement policies that reduce the overhead cost of energy, then thousands of workers who lose their jobs will also lose their health care coverage. This will add more economic pressure on federal, state, and local governments that implement programs that attempt to mitigate health care costs on those lacking private health insurance policies. Sky high energy costs may also add pressure to some companies to scale back pension benefits for retirees, thus adding financial burdens on another vulnerable social demographic, retirees living on fixed incomes. It should be noted that higher energy costs generally have a far greater adverse impact on individuals with lower and fixed incomes, including retirees. According to a study by American for Balanced Energy Choices, which analyses data from the U.S. Census Bureau and the Energy Information Administration (EIA), energy costs will consume 48 percent of the budgets of U.S. families with incomes of less than \$10,000 in 2005."

The NAM focuses its comments on the following issues raised by the Reconsideration Notice and advocates the following:

- That the public comment period leading to promulgation of the final CAMR was adequate, thereby negating any necessary revisions, at least based on the grounds raised by petitioners;
- That the EPA’s decision to remove affected “utility units” from the Clean Air Act (CAA) Section 112 list of sources of Hazardous Air Pollutants (HAPs) was appropriate;
- And that any regulatory action, including possible revision of regulations of mercury emissions, should be based on sound science. There is no scientific basis for changing the current CAMR in a manner that would further reduce mercury emissions without the necessary flexibility to deploy appropriate technologies.

II. The Public Has Already Had Adequate Opportunity to Comment on the CAMR

The public had an adequate opportunity to submit comments to the EPA for a period of more than 14 months prior to issuance of the CAMR, a period which is reasonable and adequate. Although the NAM is pleased to reinforce support for aspects of the reconsideration, the NAM disagrees with petitioners’ assertion that they “had an inadequate opportunity to provide input ... during the designated comment period.” The NAM agrees with the EPA’s statement that “the public had three separate opportunities to submit comments on whatever matters ... deemed relevant to the rulemaking.” The EPA embarked on three preliminary regulatory processes prior to issuing its final CAMR, including a Notice of Proposed Rulemaking (NPR) in January 2004, a Supplemental Notice of Proposed Rulemaking (SNPR) in March 2004, and a Notice of Data Availability (NODA) in December 2004. The EPA received thousands of comments from the public during these processes, and then issued its final rule in March 2005.

III. EPA’s Removal of “Utility Units” from CAA Section 112 is Consistent with Sound Public Policy

The NAM disagrees with petitioners’ claim that the EPA should reconsider its decision to remove coal and oil-fired utility units from the CAA section 112 (c) source category list. Section 112 (c) lists sources of Hazardous Air Pollutants (HAPs) and imposes correspondingly stringent air emission control measures. The delisting on the part of the EPA allows introduction of cap-and-trade as a means of reducing mercury emissions, thereby providing the necessary flexibility for utilities to implement the most efficient emission reduction technologies. Furthermore, the current definition and classification contained within the CAMR is based on interpretation of the CAA in light of the 1990 Amendments. The previous classification, however, was based on the 1970 version of the CAA. Removal of coal and oil-fired power plants from Section 112 (c) is therefore consistent with the intent of the 101st Congress, which enacted the 1990 amendments to the CAA. The NAM endorses comments submitted by the Utility Air Regulatory Group

(UARG) and the Edison Electric Institute (EEI), especially analysis supporting the EPA's interpretation of Section 112 (c) of the CAA.

Removal of "utility units" from the list of sources to be regulated under CAA Section 112 paves the way for introducing the proven cap and trade program as a regulatory mechanism for reducing mercury emissions. The NAM believes that EPA has taken the right regulatory approach with CAMR, balancing deep reductions in mercury emissions where they are the most cost-effective with reducing costs to consumers. Such incentives will help assure compliance with the new rule, thereby expediting emission reductions. The NAM supports the CAMR for establishing control requirements that utilize a market-based cap-and-trade approach under Section 111 of the CAA. The cap-and-trade program creates incentives for continued development and testing of sophisticated mercury control technologies that are efficient and effective. U.S. manufacturers who develop this technology can then market the tools to other countries that may engage in mercury emission reduction, thereby enhancing our competitiveness while improving overall air quality. By making mercury emissions a tradable commodity, the system provides a strong motivation for some utilities to make early emission reductions.

The CAMR, as written, is a common-sense approach to reducing power plant mercury emissions and we see no reason to change the final rule. Significant alteration of the CAMR, especially one that hinders cap-and-trade or changes the allowance allocations, will force manufacturers to incur higher energy costs which will increase their electricity bill and their cost for natural gas. The CAMR allows utilities to receive credit in meeting their mercury reduction targets through mercury emissions reductions that occur as a co-benefit for reducing SO₂ and NO_x emissions. For some coal ranks, however, co-beneficial mercury removal is very limited, possibly forcing utilities to purchase costly emissions allowances in order to comply if mercury specific technology isn't available even for the first phase. For such coals, changes to the cap and trade approach would be detrimental. Because mercury specific reduction technologies are not yet commercially available, the CAMR provides time for industry to further develop and deploy those technologies instead of forcing companies to switch to alternative sources of electricity generation such as natural gas. Vendors are not willing to provide guarantees for technology that is currently available and would be mandated in the event a more stringent mercury emission standard were to emerge from the EPA.

IV. Sound Science Must be the Basis of All Mercury Regulation, or Revision of Existing Regulations

Although the Reconsideration Notice does not directly address the issue of sound science, this is a requirement that should underpin any action taken by the EPA, including possible revision of an existing rule based on information gathered as a result of the Reconsideration Notice. The NAM does not believe that a sufficient body of sound science exists to justify any change to the CAMR based on the four points of reconsideration requested by petitioners. The NAM will endorse comments submitted by the Electric Power Research Institute (EPRI), especially those that address the inadequacy of recent health effects and mercury deposition

studies. Because the science underlying mercury regulation is often contradictory and inconclusive, government agencies should approach its regulation in a flexible manner. For example, various studies offer broad ranges regarding threshold requirements to determine human health impacts of exposure to mercury and disputes surrounding the actual impact of anthropogenic mercury.

Stringent mercury regulation simply is not justified by the latest publicly available scientific studies. U.S. coal powered plants account for less than 1 percent of annual world emissions. This percentage will continue to decline as the U.S. implements the Clean Air Mercury Rule (CAIR), which calls for a 70 percent reduction in sulfur dioxide (SO₂) and nitrogen oxide (NO_x) emissions over the next 15 years. Reductions in emissions of these two pollutants have the co-benefit of reducing mercury, even though the implementing technology is aimed at SO₂ and NO_x. Any reduction reductions in the U.S. forced by expensive rules that go beyond the co-benefits and set on an unrealistic timetable, before adequate mercury reduction technology can be brought into the marketplace, would quickly be made up by emissions increases in other countries. Stringent U.S. regulation, therefore, would be irrelevant with respect to reducing worldwide anthropogenic contributions.

Inaccurate and overstated impacts of mercury deposition into oceans and other bodies, and resulting in the presence of methyl-mercury in fish consumed by humans actually create additional risks to human health rather than mitigate them. There is no conclusive study showing that methyl-mercury contained in fish poses a health risk to humans, particularly to children and pregnant women. In fact, there are several peer reviewed studies which indicate the opposite. Those studies have documented that if large portions of the population, however, are convinced to reduce or discontinue fish consumption in their diets, serious health risks will follow. This will be especially true for children and women of childbearing age. Fish constitute an important source of protein and fatty acids that are essential for a balanced diet and maintenance of a healthy lifestyle.

The NAM has historically been united in its advocacy that federal regulatory agencies such as the EPA must use sound science and risk prioritization. More specifically, NAM policy has supported “scientifically sound risk analysis; risk-based prioritization; benefit-cost analysis; flexible, efficient, cost-effective risk management; and public participation in all phases of the process.” NAM policy also expressly supports a conclusion made by EPA in its document, “Reducing Risk: Setting Priorities and Strategies for Environmental Protection, 2 September 1990,” which states:

There are heavy costs involved if society fails to set environmental priorities based on risk. If finite resources are expended on lower-priority problems, at the expense of higher-priority risks, then society will face needlessly high risks. If the priorities are established based on the greatest opportunities to reduce risk, total risk will be reduced in a more efficient way, lessening threats to both public health and local and global ecosystems.

Accordingly, the NAM is concerned that the EPA may be led to pursue a mercury emissions reduction goal that is a low-priority problem that represents little or no risk, but would

nevertheless be squandering finite economic resources that are needed for economic growth and for meeting higher priority risks. Since the EPA's mercury decisions could have the effect of dramatically reducing coal use in the United States, generators trying to fulfill the nation's growing need for electricity would then be forced from abundant coal to scarce natural gas.

The NAM supports the broadest spectrum of electric generation options, so that the least expensive can be used to provide affordable and reliable electricity to the manufacturing sector and the overall economy. Natural gas consumption to generate electricity increased 66 percent during the 1990s while domestic supplies have remained relatively constant. The natural gas market — and the many industrial sectors that rely on affordable natural gas — cannot withstand more federal regulatory policies that push the use of natural gas to generate electricity.

V. Executive Order 13211

Any change in mercury emissions regulations will trigger Executive Order 13211, which requires that federal agencies implementing rules that have a significant impact on the supply, distribution, and use of energy file a report with the Administrator of the Office Of Information and Regulatory Affairs within the White House Office of Management and Budget. In the event the EPA considers changes to the current CAMR, for the reasons outlined above regarding impacts on coal powered utilities, the EPA should file such a report and make it available for comments. E.O. 13211, issued on May 18, 2001, states as follows:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to appropriately weigh and consider the effects of the Federal Government's regulations on the supply, distribution, and use of energy, it is hereby ordered as follows:

Section 1. Policy. The Federal Government can significantly affect the supply, distribution, and use of energy. Yet there is often too little information regarding the effects that governmental regulatory action can have on energy. In order to provide more useful energy-related information and hence improve the quality of agency decision making, I am requiring that agencies shall prepare a Statement of Energy Effects when undertaking certain agency actions. As described more fully below, such Statements of Energy Effects shall describe the effects of certain regulatory actions on energy supply, distribution, or use.

Sec. 2. Preparation of a Statement of Energy Effects.

(a) To the extent permitted by law, agencies shall prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for those matters identified as significant energy actions.

(b) A Statement of Energy Effects shall consist of a detailed statement by the agency responsible for the significant energy action relating to:

- (i) any adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increased use of foreign supplies) should the proposal be implemented, and
 - (ii) reasonable alternatives to the action with adverse energy effects and the expected effects of such alternatives on energy supply, distribution, and use.
- (c) The Administrator of the Office of Information and Regulatory Affairs shall provide guidance to the agencies on the implementation of this order and shall consult with other agencies as appropriate in the implementation of this order.

Sec. 3. Submission and Publication of Statements.

(a) Agencies shall submit their Statements of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, whenever they present the related submission under Executive Order 12866 of September 30, 1993, or any successor order.

(b) Agencies shall publish their Statements of Energy Effects, or a summary thereof, in each related Notice of Proposed Rulemaking and in any resulting Final Rule.

Sec. 4. Definitions. For purposes of this order:

(a) "Regulation" and "rule" have the same meaning as they do in Executive Order 12866 or any successor order.

(b) "Significant energy action" means any action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking:

(1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and

(ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or

(2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

Sec. 5. Judicial Review. Nothing in this order shall affect any otherwise available judicial review of agency action. This order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

VI. Conclusion

In summary, the NAM strongly urges the EPA initiate no changes to the final CAMR based on points raised by petitioners within the Reconsideration Notice. The current rule is

based on the best available science. For more information related to the NAM's position on the CAMR and the regulation of mercury in general, please contact Bryan Brendle at (202) 637-3176 or bbrendle@nam.org.