

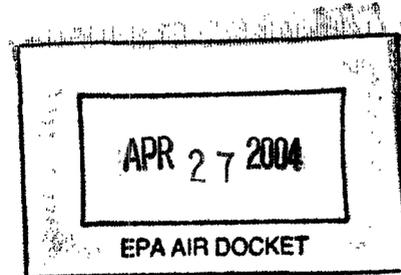
BAD RIVER BAND OF LAKE SUPERIOR TRIBE OF CHIPPEWA INDIANS

CHIEF BLACKBIRD CENTER

P.O.Box 39 • Odanah, Wisconsin 54861

April 19th, 2004

Thomas Skinner, Regional Administrator
USEPA – Region V
77 West Jackson Blvd
Chicago, IL 60604-3590



Michael Leavitt, Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

EPA Docket Center (Air Docket)
Air & Radiation Docket and Information Center (6102T)
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

RE: Proposed Utility Mercury Reductions Rule
Docket No. QAR-2002-0056

Dear Administrators Skinner and Leavitt:

The Bad River Band of Lake Superior Chippewa wishes to submit comments on the Environmental Protection Agency (EPA)'s proposed Utility Mercury Reductions Rule, published in the Federal Register on January 30, 2004, with a supplemental document published on February 24, 2004. The EPA's trust responsibility to tribal nations requires serious consideration of tribal concerns and consultation with tribal governments.

The Bad River Reservation is located on 124,000 acres along Wisconsin's north shore on Lake Superior. The rivers flowing through the Reservation and Lake Superior itself are important spawning grounds for sturgeon, lake-run trout, and walleye as well as many other fish, which make up a significant subsistence resource for the 1,200 Tribal members living on the Reservation and in the surrounding area. However, Band members, like many other Americans, need to restrict their fish consumption to avoid mercury poisoning.

Mercury is a serious problem in the environment. It is a persistent substance that affects the nervous system and is especially dangerous for pregnant women and children. These proposals directed toward controlling mercury from power plants come at a time when EPA itself estimates that 600,000 children each year may be exposed to dangerous levels of mercury in the womb¹. A new EPA study found that for the 12-month period of 1999-2000, the estimate of newborn children at risk for health problems because of unsafe mercury level in their blood had nearly doubled². The neurological problems caused by mercury poisoning are well documented, and exposed individuals can suffer from learning problems, memory loss, numbness, impaired fine motor skills, deafness, and changes in vision. A swift, decisive action is required to cut mercury emissions by the greatest extent possible. It is unacceptable to continue to let our children be exposed to such a dangerous toxin while partaking of a food source that tribal members have enjoyed for centuries; a food source that should be a healthy part of their diet.

Mercury contamination is also threatening our environment, especially fish and wildlife. The primary exposure to mercury in the U.S. is through the consumption of contaminated fish. In 2002, health departments in 44 states issued advisories warning the public to limit or avoid their consumption of locally caught fish. Seventeen states have issued statewide warnings that cover every lake and stream in the state. These warnings cover 12 million acres of lakes and 473,000 miles of streams³. Prior research on the Bad River Reservation show not only mercury contamination in fish but elevated mercury levels in otter tissue above any other recorded in the state of Wisconsin. The Bad River watershed is under a state mercury advisory for fish consumption, and the Tribe is presently sampling reservation fish to create their own Tribal fish advisory to protect our community members.

All of these findings are unacceptable and point to a real need to reduce mercury emissions from electric utilities nationwide. The options of Maximum Achievable Control Technology (MACT) and the Cap and Trade System that EPA proposes achieve significantly lower public health benefits than the Clean Air Act (CAA) requires. The EPA has proposed three control options to limit emissions of this pollutant from coal-fired power plants. The first proposal calls for utilities to install "maximum achievable control technology" (MACT) under Section 112 of the Clean Air Act (CAA), reducing annual emissions of mercury by 14 tons (29%) by the end of 2007. The second proposal proposes to establish a market-based "cap and trade" program under Section 111 (CAA) that could reduce nationwide annual utility mercury emissions by 33 tons (69%) by 2018 (an interim cap would be in effect by 2010). The third control option is a cap and trade program under Section 112, which would be federally implemented and would be based on a declining cap. This option would also call for a 69% reduction by 2018.

¹ USA Today, Weise, Elizabeth "Mercury Damage Irreversible"
http://www.usatoday.com/news/health/2004-02-08-mercury-usat_x.htm

² USEPA Website, "Prenatal Exposure to Methylmercury."
http://www.epa.gov/economics/children/body_burdens/index.htm

³ USEPA Website, "Update: National Listing of Fish and Wildlife Advisories."
<http://www.epa.gov/waterscience/fish/advisories/factsheet.pdf>

We believe that none of these proposals are adequate to protect the public from the toxic effects of this pollutant. While the proposals referenced above would reduce the amount of mercury emitted from utilities from 48 tons per year (tpy) to 34 tpy by the year 2007 (via MACT) or from 48 tpy to 15 tpy by 2018 (via state or federal cap and trade programs), EPA estimated in 2001 that emissions could be reduced to only 5 tpy by 2008, a 90% reduction over current levels. EPA's new plan would allow six to seven times more pollution to be released than EPA's 2001 determination, and for a decade longer.

Bad River asserts that the MACT standard is insufficient because it would not require utilities to specifically control mercury emissions. It would not impose any additional control of mercury beyond the co-benefits expected from the control technologies that are aimed to reduce sulfur dioxide and nitrogen oxide emissions in other programs. In other words, the MACT standard proposed would not require utilities to install control equipment specifically designed to control mercury emissions. Instead, EPA proposes to allow power plants to take credit for mercury controlled incidentally during control of sulfur dioxide and nitrogen oxide emissions. However, it is expected that these measures will only achieve mercury reductions of, at most, 54% - a far cry from the 90% reductions that are possible with specific mercury control equipment. In contrast to EPA's approach, several states are moving ahead and setting higher limits than EPA's proposed legislation, in the 80-90% control range. Under this approach, the mercury levels that EPA is proposing are far less stringent than required by the CAA's MACT mandate using specific mercury controls.

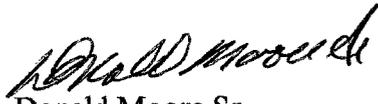
The EPA's effective delisting of mercury to Section 111 under a cap and trade program would apply only to the utility industry - other sources of mercury would continue to have to meet MACT standards, creating inconsistencies in the EPA's approach to mercury control. Bad River questions the legality of shifting control of this toxic pollutant to Section 111 and EPA's proper delisting process set forth in Section 112 (d). Furthermore, a cap and trade program would have the potential effect of creating mercury "hot spots" close to major emitters that have the highest levels of pollutants. This is unacceptable because mercury is toxic at even low levels and because it tends to concentrate closer to its source than other pollutants do. EPA's own models show that in the states with the highest mercury concentrations, more than 50% of the mercury deposited comes from local sources. If neighboring states were included, the effects from local sources would be even higher. Recent studies completed in Wisconsin, Florida, and New Hampshire have shown that if local mercury emissions decrease, so do mercury deposition levels and levels found in fish and wildlife. Moreover, recovery has been shown to take place in a matter of years, not decades as was previously thought. Another study has shown that mercury emitted today is taken up into the food chain faster than mercury emitted in the past. This makes fast, decisive action crucial. Although the acid rain program that this cap and trade proposal is based on has been successful, it is simply an ineffective and inappropriate way to deal with mercury emissions, whether cap and trade programs are enacted under federal or state programs. These emitters will have the opportunity to purchase allowances from other companies to meet the proposed requirements while still emitting the same amount of mercury into the environment thus impacting local communities.

While we oppose cap and trade, if it is to go forward the cap and trade proposals made by EPA also make no provision for tribal allowances. If a cap and trade approach is promulgated, tribes will need to have access to potential emission credits in the same manner as states. Tribes may need credits to continue to operate tribally owned sources, to allow tribes to build sources in the future, or to allow tribes to retire credits. This oversight needs to be corrected with extensive tribal consultation.

We also oppose EPA's proposal of state-based cap and trade approach because states do not have trust responsibility to the tribes and may not take into account the quantity of fish consumed in a subsistence lifestyle. Also, tribes have no formal role in state rulemaking, unlike federal rulemaking where tribes must be consulted. The use of state-based trading programs would also leave each and every state with the responsibility of taking politically unpopular actions and expending great amounts of time and money for research purposes. This is unfair, inefficient, and not in the best interests of the environment.

The EPA has a trust responsibility to Tribes and we believe that none of the proposals put forth by the EPA are sufficient nor adequately address tribal concerns nor the EPA's trust responsibility. Mercury is of special interest to tribes due to its impact on subsistence fish consumption and our cultural beliefs and traditions. We urge you to withdraw the entire proposed rule package and re-propose a more stringent rule for controlling mercury that protects our tribal lands, local communities, and our nation as a whole from mercury contamination.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald Moore Sr.", written in a cursive style.

Donald Moore Sr.
Tribal Chairman