



## ENVIRONMENTAL LAW & POLICY CENTER

Protecting the Midwest's Environment and Natural Heritage

March 8, 2016

Michigan Attorney General Bill Schuette  
Solicitor General Aaron D. Lindstrom  
G. Mennen Williams Building, 7th Floor  
525 W. Ottawa Street  
P.O. Box 30212  
Lansing, Michigan 48909

Dear Attorney General Schuette and Solicitor General Lindstrom,

The Environmental Law & Policy Center requests that the State of Michigan withdraw its appeal and take no further action challenging the U.S. Environmental Protection Agency's Mercury and Air Toxics Standards in the *Michigan et al. v. Environmental Protection Agency et al.* litigation pending before the United States Court of Appeals for the District of Columbia. As you know, on December 15, 2015, the Court of Appeals denied your request on behalf of Michigan and other states to vacate the Mercury and Air Toxics Standards and kept the standards in place with the effect of binding law. On March 3, 2016, U.S. Supreme Court Chief Justice Roberts then denied Michigan's and other states' request to stay or enjoin further operation of the Mercury and Air Toxics Standards.

Mercury is a neurotoxin that passes through the placental barriers and impairs fetal brain development. This toxin harms both children's and adults' health. The Mercury and Air Toxics Standards will reduce mercury, acid gases and other toxics pollution from coal-fired power plant smokestacks and thereby protect human health and our environment. This is sound regulation to avoid mercury contamination of the Great Lakes, inland lakes and rivers that results in the bioaccumulation of mercury in fish, which are eaten by people. Sadly, it's not safe for many people – especially pregnant women – to eat much of the fish they catch in the Great Lakes, inland lakes and rivers as the Michigan Department of Health and Human Services has recognized. Consumers Energy and DTE have already or will soon install modern pollution control equipment on the coal plants, which these companies plan to continue operating, by the extended April 2016 deadline to comply with the Mercury and Air Toxics Standards.

The U.S. EPA stated that it plans to issue a final finding under 42 U.S.C. § 7412(n)(1)(a) in which the agency will consider “costs” in determining that it is “appropriate and necessary” to regulate emissions of hazardous air pollutants from coal plants under the Clean Air Act. At this point, why is it in the State of Michigan's interest to continue leading the national litigation before the U.S. Court of Appeals seeking to further delay and invalidate the EPA's Mercury and Air Toxics Standards that are already in effect? The Environmental Law & Policy Center believes that your continuing this litigation is not in the State of Michigan's and its citizens' interest for at least the following reasons:

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David C. Wilhelm, Chairperson • Howard A. Learner, Executive Director  
Chicago, IL • Columbus, OH • Des Moines, IA • Duluth, MN • Grand Rapids, MI  
Jamestown, ND • Madison, WI • Sioux Falls, SD • Washington, D.C.

First, mercury is a known neurotoxin that impairs fetal brain development, reduces children's IQ and their ability to learn, and otherwise harms children's health. Especially in light of the Flint lead poisoning tragedy, you and Michigan's other leading public officials are painfully aware of the importance of appropriate and necessary regulation to protect public health, clean air, safe water and safe food.

Second, the Michigan Department of Health and Human Services has recognized the threat to public health – especially for pregnant women – from the risks of consuming fish in which mercury has bioaccumulated.

Third, Michigan's two largest coal plant owners, DTE and Consumers Energy, are already installing pollution control equipment to comply with the Mercury and Air Toxics Standards by April 2016. Your continued litigation challenging the EPA's final finding under 42 U.S.C. § 7412(n)(1)(a) would have little or no impact on these coal plants because it would not make sense for the utilities to stop using or uninstall the mercury pollution controls that they have already installed. (Moreover, if the EPA's Mercury and Air Toxics Standards were to not take effect in the future, then Michigan's own mercury pollution reduction standards would take effect.)

Fourth, ironically, if the *Michigan v. EPA* petitioners were to prevail in continued litigation challenging the U.S. EPA's final finding on the Mercury and Air Toxics Standards rule, expected to be issued by April 15, 2016, then that would allow coal plants, if any have not yet installed mercury pollution reduction controls, in other states to continue emitting pollution that could contaminate the Great Lakes and Michigan's inland lakes and rivers. Michigan utilities would be placed at a competitive disadvantage while Michigan citizens would continue to face the harms resulting from continued coal plant emissions of mercury and other toxins that contaminate Michigan's waters.

Fifth, a recently-published study by a team of highly-regarded scientists concludes that: "On the basis of recent peer-reviewed scientific literature, we find the monetized benefits for EGU [Electric Generating Units] mercury emissions reductions identified by EPA in the regulatory impact analysis supporting MATS vastly understate the benefits associated with reductions of those emissions. Specifically we elaborate upon three key points: (1) Recent research demonstrates that quantified societal benefits associated with declines in mercury deposition attributable to implementation of MATS are much larger than the amount estimated by EPA in 2011. (2) As-yet-unquantified benefits to human health and wildlife from reductions in EGU mercury emissions are substantial. (3) Contributions of EGUs to locally deposited mercury have been underestimated by EPA's regulatory assessment." Sunderland, et al., *Benefits of Regulating Hazardous Air Pollutants from Coal and Oil-Fired Utilities in the United States*, ENVIRONMENTAL SCIENCE & TECHNOLOGY (Feb. 5, 2016), available at <http://pubs.acs.org/doi/pdf/10.1021/acs.est.6b00239>.

The U.S. EPA's Mercury and Air Toxics Standards are important, appropriate and necessary to help protect children's health, clean air and clean water. It is time for the litigation challenging these important standards to come to an end. As Michigan's Attorney General, you cannot of

course control what other states or utilities choose to do in this litigation. However, just as you led the states in commencing the *Michigan et al. v. EPA* litigation, you can now likewise lead the states by withdrawing Michigan's appeal and taking no further action challenging the U.S. EPA's Mercury and Air Toxics Standards.

Your withdrawal of the State of Michigan's challenge to the Mercury and Air Toxics Standards would show the people of Michigan your understanding of the importance of taking actions now to better protect children's health, clean air and safe water. It's time for the State of Michigan to move forward in this positive direction to reduce mercury and other toxics pollution that harms our children's health and our environment.

I would be pleased to discuss this opportunity and these issues with you in greater detail. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Howard A. LEARNER". The signature is written in a cursive style with some capital letters.

Howard A. Learner  
Executive Director, and  
Attorney on behalf of the  
Environmental Law & Policy Center