



**Final-omitted Rulemaking:
Repeal of Standards for Contaminant
Mercury Emissions
25 *Pa. Code* Chapter 123**

Environmental Quality Board Meeting
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Commonwealth of Pennsylvania

Final-omitted Rulemaking:
Repeal of Standards for Contaminant Mercury Emissions



OVERVIEW

- The Department is recommending a final-omitted rulemaking to repeal the state-specific requirements to reduce mercury emissions from large coal-fired electric generating units (EGUs).
- The Pennsylvania Mercury Rule (PA Mercury Rule) codified in *25 Pa. Code* §§ 123.201-123.215 is invalid and unenforceable as a result of federal and state court decisions.
- The final-omitted rulemaking process is appropriate because notice of proposed rulemaking is impracticable, unnecessary and contrary to the public interest.

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Chronology of Federal Legal Actions

- March 29, 2005 – the U.S. Environmental Protection Agency (EPA) issued the “Delisting Rule,” which removed coal and oil-fired EGUs from the list of sources whose emissions are regulated under section 112 of the Clean Air Act (“CAA”).
- May 18 2005 -- EPA adopted the Clean Air Mercury Rule (“CAMR”) which established emission limits and a “cap-and-trade” program under Section 111 of the CAA to reduce mercury emissions from new and existing coal-fired EGUs; the rules were challenged.
- February 8, 2008 -- the U.S. Court of Appeals for the D.C. Circuit issued an opinion invalidating both the Delisting Rule and the CAMR; the court issued its mandate on March 14, 2008.

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- On February 17, 2007, the Board promulgated a state-specific regulation (PA Mercury Rule) to reduce emissions from EGUs in the Commonwealth and to develop a state plan to satisfy the federal CAMR requirements.
- On January 30, 2009, the Commonwealth Court issued an unreported opinion in *PPL Generation, LLC v. Commonwealth of Pennsylvania*, declaring the PA Mercury Rule “unlawful, invalid and unenforceable.” The Department was enjoined from implementing and enforcing the rule.
- On December 23 2009, the Pennsylvania Supreme Court issued a decision which upheld the lower court’s decision that the PA Mercury Rule is “unlawful, invalid and unenforceable.”



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- The final-omitted rulemaking repeals the invalid PA Mercury Rule provisions in 25 Pa. Code §§ 123.201-123.215 .
- Under Court order, EPA will propose technology-based standards to control emissions of mercury and other air toxics from fossil fuel-fired EGUs in March 2011; the final rule is expected on or before November 16, 2011.
- In accordance with Section 6.6 of the Pennsylvania Air Pollution Control Act, the requirements under this new EPA rule will be adopted in their entirety and incorporated by reference in 25 *Pa. Code* Section 127.35.
- Pending the adoption of federal MACT requirements for EGUs, MACT standards must be established on a case-by-case basis under Section 112(g) of the CAA, Section 6.6 of the APCA and its implementing regulation in 25 Pa. Code Section 127.35(d).



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Advisory Committee Review

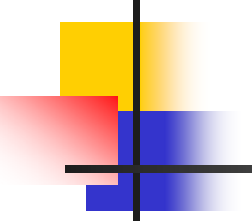
- On April 29, 2010, the Air Quality Technical Advisory Committee (AQTAC) voted to concur with the Department's recommendation to present the final-omitted amendments to the Board for consideration.

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RECOMMENDATION

- The Department recommends that the Board approve the final-omitted rulemaking to repeal the Pennsylvania Mercury Rule.
- Your consideration of this final-omitted rulemaking is greatly appreciated.



pennsylvania

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