

October 14, 1999

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Secretaria
Secretaría de Medio Ambiente,
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Re: North American Regional Action Plan for Mercury

Dear Minister Anderson, Administrator Browner and Minister Carabias:

We are writing to you today to provide comments on the North American Regional Action Plan on Mercury, released by the Commission for Environmental Cooperation.

First, we commend the governments on the effort they have put into this initiative and on the marked improvement over the Phase I NARAP for mercury. There are still a number of significant shortcomings in the Phase II NARAP to which we would like to draw your attention.

We are providing the three countries with general comments that apply to the overall purpose of the document, as well as more specific comments that focus on detailed weaknesses within the report.

The Phase II NARAP has four basic weaknesses. First, the document is very weak in terms of efforts to reduce or eliminate the deliberate use of mercury. Mercury continues to be used in many products despite the fact that cost-effective and safer alternatives exist. These alternatives should be promoted and regulations should be put in place to discourage and eventually eliminate these "non-essential" uses of mercury. In many cases, the most cost-effective and environmentally preferred route for reducing mercury emissions is through pollution prevention. Pollution prevention refers to a reduction in the use of a substance, not merely separation and segregation from the waste stream.

Second, the NARAP II relies too heavily on the concepts of "safe use", "life-cycle management" and "risk management." There is no "safe use" of mercury, and this is evident once one understands the life-cycle of a mercury product and the physical behavior of mercury in the environment. These "risk" concepts are contrary to the stated objectives of the parties, who have committed to reductions that go far beyond the NARAP and consider the phase-out of the deliberate use of mercury and virtual elimination of anthropogenic releases (i.e. Binational Toxics Strategy). These "risk" notions are even contrary to the NARAP II resolutions. To achieve "naturally occurring levels and fluxes" (as stated in the NARAP) one must seek to reduce and eliminate, where possible, all deliberate uses and incidental releases of mercury.

Third, there are few specific targets and timelines in the document, and those that exist are reiterations of existing agreements (for example, the 50% reduction goal in Action Item 1ai. and the chlor-alkali industry reduction target). Furthermore, there appears to be a reliance on the use of voluntary initiatives with limited reference to the role of regulatory mechanisms. The CEC and the NARAP should help identify best practices in North America, not adopt the lowest common denominator. Aggressive mercury reduction targets and timetables, with effective mechanisms to enforce them, are clearly necessary to implement the Council's Resolution on the Sound Management of Chemicals (95-05), which calls for "the phasing out or banning of . . . [substances] that are toxic, persistent and bioaccumulative."

Fourth, the document contains no specific reference to the electric power generation sector and the need to address mercury emissions in this sector, which is the largest unregulated emission source on the continent. Action Item 1ai., which sets an aggregate reduction target of 50% from major sources, is not sufficient. As it is written now, it may be possible for any sector to continue emitting or even increase emissions (as is the projection for coal-fired utilities) by reducing other emissions in other sectors.

This loophole should be eliminated from the draft and language should be added to require coal-fired electric power plants to reduce emissions of mercury by ninety percent by 2010 -- a reduction target and timetable which the CEC's Sound Management of Chemicals Mercury Implementation Task Force and Air Issues Program have previously found to be feasible.

Following are the more detailed comments for specific sections:

Preamble

Point b. states "target for reduction, through life cycle management approaches..." It is unclear what is meant by a "life-cycle management approach". If this means ensuring that there are no emissions throughout the life-cycle of a mercury-bearing product then this may be a useful approach. Reference to life-cycle management is made throughout the report and needs to be clarified. The document's definition of this term under "Definitions" is unclear given the vague reference to "risk" which is not generally included in life-cycle management definitions.

Objectives

Under the General Mercury Use Objective there is reference to the need to determine "where there is unreasonable or otherwise unmanageable risk of release to the environment or risk to human health" before phasing-out specific uses of mercury. This seems to be an unnecessary and ill-defined qualifier. There are many clear examples where specific uses ought to be phased out based on a more reasonable analysis of available alternatives, benefits and costs.

Definitions

For "virtual elimination", the definition includes life-cycle management. Again, this is an unusual and misleading concept to include in a definition of virtual elimination. It ought to be deleted from the definition.

Action Item 1

This section should include an emissions reduction target of 90% by 2010 for coal-fired power plants, as discussed above.

Action Item 2

The title and description of item 2a are misleading, as described above. It is not clear what "a life-cycle management practice" is in the context presented. Perhaps the authors are referring to "product stewardship practices." The title for this section ought to be "Product stewardship and use reduction" given the four points addressed in Item 2a.

Action Item 3

References to specific reduction targets and timelines should be included throughout the action items. Under item 3f, a third point should be added (as the first in priority), promoting the development and adoption of environmentally preferable mercury-free alternative products.

Another point should be added on the importance of avoiding "new" uses for mercury in products and not permitting any new, non-essential use of mercury.

Section 3 also does not address mercury releases from mercury-contaminated sites across North America, specifically chlor-alkali, mining, and industrial sites and the need for site remediation. A particularly troubling aspect of the document is this Action Item's promotion of mercury trading for new sources of mercury ("emissions offsets" in item 3e ii.). Trading of emissions offsets may be appropriate for some pollutants, but not for persistent bioaccumulative toxic

pollutants like mercury. When virtual elimination of anthropogenic releases is the goal, as it is here, emission trading creates the wrong incentives, particularly if it is allowed for new sources. It also allows the development of mercury "hotspots." The three countries should endeavor to prevent new sources of mercury releases, not allow them to do emissions trading.

International trade and trade agreements need to be examined and referenced to determine the role they should play in reducing mercury use, releases, and permanently retiring mercury from commerce. This is particularly important given that the Phase II NARAP stems from the North American Agreement on Environmental Cooperation (NAAEC) which is a parallel side agreement to NAFTA. Importing/exporting of recyclable waste for disposal should not be allowed between the three countries.

In summary, although the Phase II NARAP for mercury is a much improved document, it contains significant weaknesses that, if not corrected, will prevent the parties from reaching their goals. The document needs to make clearer reference to the importance of reducing the use of mercury in products and to include more specific targets, timelines and reduction programs consistent with jurisdictions such as New England and Minnesota. Lack of action with respect to coal-fired utilities, North America's largest mercury emitter, is particularly disappointing.

The signatories listed below encourage the Parties to consider these comments and look forward to your response.

Yours truly,

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(Pollution Probe)

encl.

Signatories to the Mercury NARAP II Letter

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Anne Mitchell, Canadian Institute for Environmental Law and Policy

John Jackson, Citizens' Network on Waste Management

Tony Tweedale, Coalition for Health, Environmental and Economic Rights

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