



THE ADMINISTRATIVE WATCH

ADMINISTRATIVE WATCH ADDRESSES ENVIRONMENTAL, HEALTH & SAFETY ISSUES

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Pennsylvania Mercury Rule Declared Unlawful and Unenforceable by Commonwealth Court

On January 30, 2009, the Pennsylvania Commonwealth Court declared the Pennsylvania Mercury Rule unlawful, invalid, and unenforceable. *See PPL Generation, LLC et. al v. Commonwealth of Pa.*, (No. 446 M.D. 2008) (Pa. Commw. Ct. Jan. 30, 2009). The Court further enjoined the Pennsylvania Department of Environmental Protection (“DEP”) from continued implementation and enforcement of the Mercury Rule. The DEP has stated that it is assessing its legal options in light of the Commonwealth Court’s decision.

On February 17, 2007, the “Standards for Contaminants – Mercury Emissions,” commonly known as the “Mercury Rule,” became effective in Pennsylvania. *See* 37 Pa. Bull. 883. The Mercury Rule was developed after Pennsylvania elected not to participate in the “cap-and-trade” program established under the federal Clean Air Mercury Rule. The Mercury Rule regulated mercury emissions from coal-fired electric generating units (“EGUs”) located in Pennsylvania, and imposed specific emission reduction requirements. The Phase I requirements of the Mercury Rule were set to begin on January 1, 2010.

In *PPL Generation, LLC et. al v. Commonwealth of Pa.*, several PPL companies filed a Petition for Review challenging the Mercury Rule and seeking declaratory and injunctive relief. The Commonwealth Court found in favor of the Petitioners, stating that Pennsylvania’s Air Pollution Control Act expressly prohibits the Commonwealth from regulating mercury emissions from EGUs because EGUs are listed as “source categories” under Section 112 of the Federal Clean Air Act.

Entities affected by the Mercury Rule should carefully monitor subsequent developments regarding this decision.

BCCZ’s Environmental Health and Safety Group closely tracks state and federal air regulatory and litigation developments. For more information regarding the case discussed above or its impact on your business, please contact Michael H. Winek at (412) 394-6538 or mwinek@bccz.com or Seth A. Rice at (412) 394-5490 or srice@bccz.com.

TWO GATEWAY CENTER
PITTSBURGH, PA 15222
412.394.5400
WWW.BCCZ.COM

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