



## 6. AIR POLLUTION: House mercury bill would require strict power plant controls (02/06/2009)

Robin Bravender, E&E reporter

Rep. Eddie Bernice Johnson (D-Texas) introduced legislation this week that would require coal-fired power plants to meet the strictest pollution control standards for mercury emissions.

H.R. 821 would require U.S. EPA to issue a new rule subjecting power plants to the most rigorous mercury emissions standards under the Clean Air Act's Section 112.

Johnson's legislation comes after the U.S. Circuit Court of Appeals for the District of Columbia last February struck down the Bush administration's cap-and-trade Clean Air Mercury Rule (CAMR), which hinged on removing power plants from Section 112.

The Clinton-era EPA decided in 2000 that coal plants should be regulated for mercury emissions under Section 112 -- which requires "maximum achievable control technology." But the Bush administration decided to regulate power plants under Section 111 in order to create the cap-and-trade mercury program, a move that the appeals court rejected.

EPA has petitioned the Supreme Court to reinstate the Bush-era mercury program, but many experts predict that new EPA Administrator Lisa Jackson will soon announce plans to issue a new mercury rule requiring the "maximum achievable control technology" required under Section 112, which could persuade the court not to hear the case.

With possible upcoming actions from the Supreme Court or EPA, several observers said the bill could prove unnecessary.

"Whether by denial of the *cert* petitions from the Supreme Court or administrative action by the Obama EPA, EPA will begin working on a MACT standard for power plants as the Clean Air Act provides," said John Walke, a senior attorney at the Natural Resources Defense Council.

Frank O'Donnell, president of the advocacy group Clean Air Watch, said the legislation served a symbolic purpose. "I think it's an effort to try to goose the EPA to do the right thing," he said. "It is a sign that there is still interest in Congress in dealing with the mercury mess."

But EPA is already legally obligated to develop those standards, said industry attorney William Bumpers. "The one thing that this would do, it appears, would greatly accelerate the time frame because it would require the administrator to promulgate standards that would have to be effective one year after enactment" of the legislation," Bumpers added. "That's probably not doable."

A preferred approach, he said, would be comprehensive multi-pollutant legislation that addresses the problems of the mercury rule, climate change and the Clean Air Interstate Rule, another Bush-era air regulation that was thrown out in federal court. A comprehensive approach would help utilities to make long-term capital investments at a time when the industry is facing huge financial uncertainty, Bumpers added.

Johnson said she is prepared to fight to get the bill through Congress. "This legislation is a basic, common-sense effort to promote public health, and I am confident it will become law during the Obama administration," she said in a statement.

[Click here](#) to read the bill.