Michigan Manufacturers Association℠

MMA Comments on the DEQ's Regulatory Impact Statement 10/2/08

The State of Michigan is in the process of developing a discretionary rule package to reduce mercury emissions from the State's coal-fired power plants in excess of the impending federal regulations intended to reduce mercury emissions nationally. The federal regulation continues to be developed by the EPA, after the original rule was over turned in federal court with support from Michigan. The impending new federal law will be more aggressive than the original rule, diminishing the potential incremental environmental benefits of a state only rule. Moreover, the discretionary state rule will add unnecessary layers of regulation and costs that will be passed on to electric rate payers, of all classes - residential, commercial, and industrial. Unfortunately, the agency has not produced a cost benefit analysis that would either indicate cost of the program or any demonstrable incremental environmental benefit for having spent the money.

We find it troubling that the administration would continue to move forward with this regulation. Michigan participated in a federal suit challenging the federal mercury rule because it was deemed inadequate to protect Michigan's citizens. The plaintiffs won the suit and EPA is currently redrafting the federal rule, which will certainly be more stringent than the original rule.

We are concerned the Regulatory Impact Statement, which was filed two months after the court vacated the federal rule, and before the new federal rule is promulgated, is fraught with inaccuracies and obfuscations. We believe the legislature deserves an accurate impact statement from the agency, particularly on a rule with such significant impacts on electric rate payers, and Michigan's competitive position compared to other states. However, this RIS is grossly inadequate in its attempt to justify a discretionary regulatory initiative that will cost the State, its businesses and citizens, unnecessary hundreds of millions of dollars – without any additional, demonstrable, environmental benefits of its own. We call on the agency to voluntarily rescind the RIS and if they do not, we call on the State Office of Administrative Hearings and Rules to reject the submitted RIS.

In tough budget times, the agency should not be looking to create new programs that will require increased resources. We believe the agency should focus on carrying out currently mandated state and federal programs. However, the agency's RIS states: *"The rules are expected to result in minimal additional costs to the agency. They will become part of the normal compliance activity of the agency."* We find it hard to believe that a regulatory program of this scope and impact, with inevitable conflicts with the eventual federal regulation, would result in "minimal additional costs."

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The following is our section by section response regarding our fundamental concerns with the agency's Regulatory Impact Statement:

A.1 SOAHR #, title, and rule numbers (or rule set range of numbers).

DEQ Response: *SOAHR 2005-038EQ; Michigan Air Pollution Control Rules; Part 15, Emission Limitations and Prohibitions – Mercury, R 336.2501 to R 336.2513 (Rules 1501 to 1513).*

MMA Comment: **The reference to the proposed rule number is accurate.**

A.2 Identify the relationship of the rule to state and federal statutes and regulations.

DEQ Response: *These rules are being developed as authorized by Sections 5503 and 5512 of Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451). These rules are being developed to meet the requirements of Governor Granholm's directive to reduce mercury emissions from coal-fired electric utility steam generating units. (EGUs).*

MMA Comment: During the rule development workgroup process, DEQ maintained that the only justification it needed was the directive signed by the Governor. By virtue of the State's victories in the DC Circuit Court, the premise of that directive is no longer valid. The RIS ignores mentioning the Federal Clean Air Act as Amended in 1990. The State fought and won to have EGUs regulated under the Act's Maximum Achievable Control Technology (MACT) provisions. The authorization in statute is general at best. The legislature has not authorized this rule with specific legislation.

A.3 Identify how the rule compares to an industry standard set by a state or national licensing organization.

DEQ Response: *These rules are similar to rules proposed and/or promulgated in Illinois, Pennsylvania, and proposed in the STAPPA/ALAPCO* Mercury Model Rule. Specifically, 90 percent reduction of input mercury by 2015, with some exceptions, will be required and interstate trading of mercury emissions will be prohibited. (*Formerly State and Territorial Air Pollution Program Administrators and Association of Local Air Pollution Control Officials now known as the National Association of Clean Air Agencies.)*

MMA Comment: The RIS references rules developed by the States of Illinois and Pennsylvania. Both are coal producing states. Illinois' rule is an artifact of rules regulating other pollutants, rules that were necessary to resolve air pollution problems for ozone and particulate matter that are much more severe than those experienced in Michigan. In fact, Illinois needed these rules to address transported pollution that affected Michigan's western side.

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Pennsylvania crafted a rule to protect and benefit its in-state coal production. The Pennsylvania rule includes presumptive compliance features that are unlikely to pass muster, once the new Federal rule is in place.

This section also references a model rule drafted by the National Association of Clean Air Agencies. This reference is not appropriate for the RIS. While this group is comprised of state and local agency regulators, it is not a state or national licensing organization. Many states have not and likely will not craft a state only rule. They will instead only meet the requirements of the federal rule without imposing increased costs on their citizens and business community.

A.4 Is the rule more restrictive or less restrictive than the federal rule or industry standard?

DEQ Response: *The rules are more restrictive than federal requirements; since CAMR was vacated by the courts, there are no federal requirements.*

MMA Comment: The information in this section is both accurate and misleading. Yes, this rule package will, in all likelihood, be more restrictive than the Federal rule. Yes, since the State of Michigan prevailed in the courts, the rule was vacated and is no longer in effect. However, EPA must now craft the rule that Michigan believed should have been issued. EPA is now in the process of doing just that. It will be put in place on a schedule that meets or beats the one proposed in Michigan's draft rule. Should Michigan's rule go forward, affected sources will be faced with two sets of overlapping regulatory requirements, dealing with the same issue in similar but different manners with inevitable and costly regulatory conflicts.

A.5 What are the sanctions on the state if the rule is not adopted?

DEQ Response: *None*

MMA Comment: To be complete, the answer should read, "None. This rule is totally discretionary. It will simulate much of a Federal rule that Michigan fought for in the courts."

B.6 Identify the conduct and its frequency of occurrence that the rule is designed to change.

DEQ Response: *The rules will reduce mercury emissions from coal-fired EGU's, which will reduce the mercury impacts to surface waters in Michigan and downwind areas.*

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MMA Comment: This response masks the information on deposition exchanged within two State-organized workgroups, spanning the last 5 years. To be complete, the response should read, "This discretionary rule will overlap with a Federal rule designed to reduce mercury deposition. The Federal rule will apply to all coal-fired EGUs, nationally. Michigan's rule may reduce an additional, indiscernible increment of mercury deposition, but that incremental environmental benefit has never been identified."

B.7 Identify the harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed.

DEQ Response: *Mercury emissions to the air deposit in water bodies, bioaccumulate, and have resulted in statewide fish consumption advisories in Michigan and numerous other states. The advisories are to protect public health.*

MMA Comment: This response is misleading and continues the masking of information on deposition exchanged within two State-organized workgroups, spanning the last 5 years. Global mercury emissions, from anthropogenic and biogenic sources, deposit in water bodies. A fraction of the mercury from air deposition, as well as point and non-point discharges, and naturally occurring geologic mercury is converted to methyl-mercury, which bioaccumulates and is responsible for fish consumption advisories in Michigan and numerous other states. The DEQ is well aware that advisories in specific water bodies, like the St. Clair River, Lake St. Clair and the Detroit River, have histories tied to direct discharges into the water. Truth is the vast majority of mercury deposition in Michigan, is global, both anthropogenic and natural and will therefore not be effected by this state only rule. The DEQ does not predict that the state only rule will reduce any fish advisories.

B.8 Estimate the change in the frequency of the targeted conduct expected from the rule change.

DEQ Response: *The proposed rules will significantly reduce mercury emissions from coal-fired EGUs. The EGUs operated by electric utilities in Michigan currently get between 20 to 30 percent reduction, and some of the small municipal utilities get higher native mercury reduction. The EPA estimated from the data collected in the 1999 Information Collection Request (ICR) that Michigan EGUs emitted 3,081.2 pounds of mercury into the air each year. The proposed rules could result in EGU mercury emissions that are as low as 700 to 800 pounds per year beginning in 2015, depending on the installed generation capacity and electrical demand.*

MMA Comment: The response is totally misleading. It is the Federal rule that will produce significant reductions in mercury emissions from coal-fired EGUs. Michigan's discretionary rule may produce an additional, indiscernible increment in emission reductions, but the agency has never identified what

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that incremental benefit would be and whether that incremental benefit would be justified by the potentially billions in increased costs.

B.9 Identify any alternatives to regulation by rule that would achieve the same or similar goals.

DEQ Response: *The provisions could be adopted in legislation instead of through rulemaking.*

MMA Comment: The response intentionally omits the impending Federal rule, which will be on the books and implemented in a quicker timeframe. This Federal rule, which Michigan sought through litigation, will achieve similar goals, statewide, and more significant goals, nationally.

B.10 Discuss the feasibility of establishing a regulatory scheme within the industry independent of state intervention.

DEQ Response: *The utilities will not reduce mercury emissions without state intervention. The EPA's Clean Air Mercury Rule (CAMR) would result in some EGU mercury emission reductions, but it was vacated by court action recently.*

MMA Comment: Once again, the response is woefully misleading. The State is well aware that a Federal rule will produce the regulatory scheme. That is why the State litigated this issue.

Further, stating that the utilities will not reduce mercury emissions without State intervention is totally false and masks the information exchanged within two State-organized workgroups, spanning the last 5 years. The DEQ knows, full well, that the State's utilities are already implementing controls to comply with the impending Federal rule.

C.11 Estimate the cost of rule imposition on the department or agency promulgating the rule, including the costs of equipment, supplies, labor, and increased administrative costs for initial imposition of the rule and any ongoing monitoring.

DEQ Response: *The rules are expected to result in minimal additional costs to the agency. They will become part of the normal compliance activity of the agency.*

MMA Comment: There are two means by which the response may be accurate. One is to assume that the DEQ is currently overstaffed and has somehow acquired the equipment and expertise to accommodate the monitoring and reporting requirements spelled out within the rule. It should be pointed out that the State's electric utilities have spent years working their way up the learning curve of continuous mercury emission monitors, as they continue with installation, maintenance, certification and operation .

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The second is to assume that the State is aware that a Federal rule is coming. Consequently, that rule will, in itself, justify any additional staffing, hardware, software and training. However, the state rule will inevitably conflict with the as yet unpromulgated rule, causing increased and different operational and reporting requirements, which will increase the costs to both the agency and the regulated community.

C.12 Estimate the cost of rule imposition on other state or local governmental agencies, including the cost of equipment, supplies, labor, and increased administrative costs, in both the initial imposition of the rule and any ongoing monitoring.

DEQ Response: *There will be no additional cost to other state or local agencies*

MMA Response: To say there will be no cost, is to ignore the fact that these agencies, like all Michigan citizens, businesses and industries, will incur increased electric rates due to this discretionary rule. State government and local units of government will also incur higher electric bills.

D.13 Estimate the actual statewide compliance costs of the rule to individuals, including the costs of education, training, application fees, examination fees, license fees, new equipment or increased labor, exclusive of those costs identified in section C above.

DEQ Response: *These rules do not apply to individuals.*

MMA Comment: While the rules do not apply to individuals, the increase in electric rated, resulting from this discretionary rule, will apply to each and every citizen who purchases electricity off the grid.

D.14 Identify any compliance costs requiring reports and the estimated cost of their preparation by individuals who would be required to comply with the rule.

DEQ Response: *These rules do not apply to individuals.*

MMA Comment: No Comment

D.15 Estimate the cost of any legal, consulting, and accounting services and any other administrative expenses individuals will incur in complying with the rule.

DEQ Response: *These rules do not apply to individuals.*

MMA Comment: The response expertly limits itself to the question raised. It does not; however, alert the reader to the fact, raised in the rule workgroup, that individuals will see their electric rates increase, incrementally, as a result of this discretionary rule. While the DEQ may feel this cost is trivial, they

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should be upfront in telling the citizens of the State that they will be paying even more for electricity, in order to accommodate a discretionary rule.

D.16 Estimate the number of individuals the rule affects.

DEQ Response: *These rules do not apply to individuals.*

MMA Comment: This response deliberately avoids answering the question. This discretionary rule will affect each individual in the State, who purchases electricity.

D.17 Will the rule have a disproportionate impact on individuals based on their geographic location?

DEQ Response: *These rules do not apply to individuals.*

MMA Comment: The cost of the rules will be distributed to customers based on their location in a utility's service territory. The costs will vary by location based on the regulatory costs imposed on the utility.

E.18 Estimate the actual statewide compliance costs of the rule to specifically include small businesses, including the costs of equipment, supplies, labor, training, application fees, permit fees, supervisory costs, exclusive of those identified in sections C and D.

DEQ Response: *According to the U.S. Department of Energy National Energy Technology Laboratory's Phase II Mercury Control Technology Field Testing Program: Preliminary Economic Analysis of Activated Carbon Injection (ES&T, Vol. 41, No. 4, 2007), the incremental cost of mercury control ranged from $3,810 per pound of mercury removed to $166,000 per pound of mercury removed. Activated carbon injection is just one method that can be used to control mercury emissions at EGUs. If ~2,000 pounds per year of potential mercury emissions are controlled in Michigan by 2015, costs could range from $11.4 million per year to $498 million per year statewide. The EGUs will decide which type of mercury control to implement, as the method of control is not dictated by the proposed rule.*

MMA Comment: Once again, the response masks the information exchanged within two State-organized workgroups, spanning the last 5 years. The DEQ knows, full well, that the State's utilities are already implementing controls and what those controls will be. The DEQ is also aware of the incremental cost estimates for implementing a State rule. Rather than cite statistics from national compilations, why not present the State-specific data that the DEQ has in its hands.

- Incremental costs to go beyond CAMR and accommodate the State's rule,

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- Consumers Energy: $79 million additional annual revenue requirement
- DTE Energy: $100 million additional annual revenue requirement

- Incremental Rate Increases due to implementing the State rule:
  - Percentage Increase: 2.4% to 4.0%
  - Typical Residential Customer: $18.50 to $48.00 per year
  - Average Commercial Customer: $114 per year
  - Average Industrial Customer: $1975 per year
  - Typical Large Industrial Customer: $900,000 per year
- Incremental cost per pound of mercury removed, resulting from the State's rule"
  - $307,000 to $1,000,000 per pound of mercury removed.

The State should acknowledge those incremental costs that will result solely from the imposition of its discretionary rule. If the State believes that there will be no Federal rule, than it should take credit for the full cost of implementation. Those costs are higher.

E.19 Identify any reports the rule requires and the estimated cost of their preparation by businesses; specifically include small businesses.

DEQ Response: *The rules will not result in any additional costs for reports.*

MMA Comment: There are only two ways that this response could be accurate. One would be if the DEQ was to put a rule in place that had no monitoring, reporting or recordkeeping requirements, for all affected sources large and small.

The second would be if the State were simply to adopt the impending Federal rule, without any state-specific control, monitoring, reporting or recordkeeping requirements, for all affected sources large and small.

E.20 Estimate the cost of any legal, consulting and accounting services, and any other administrative expenses businesses will incur in complying with the rule; specifically include small businesses.

DEQ Response: *There will be no additional costs.*

MMA Comment: This is a blatantly inaccurate response. The only way it could be accurate would be if the State were simply to adopt the impending Federal rule, without any state-specific control, monitoring, reporting or recordkeeping requirements, for all affected sources large and small. But that is not the case. If this rule is put in place, the affected sources would be faced with dual compliance requirements – one set for a mandatory Federal rule and another set for the discretionary State rule.

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E.21 Estimate the number of businesses the rule affects.

DEQ Response: *The rule affect 59 EGU's at 20 stationary sources. These sources are owned by 10 corporations or municipal entities.*

MMA Comment: While 59 EGUs will be required to implement this rule, its effects will be felt by each and every business, including State and local governments that purchase electricity off the grid.

E.22 Identify any disproportionate impact the rule may have on small businesses because of their size or geographic location.

DEQ Response: *Five small municipal utilities will have the option to participate in an alternative compliance demonstration project with an alternative mercury emission standard in lieu of installing controls to achieve a 90 percent reduction in emissions from the inlet mercury. This will resolve any disproportionate impacts the rule may have on small business.*

MMA Comment: The response to this question appears to be deliberately misleading. It leads the reader to believe that this is where all requirements on the small utilities end. That is hardly the case. They will still be subject to the impending Federal rule. That rule, which Michigan fought for in the courts, will not grant these sources the same degree of optional relief.

Furthermore, the response does not even attempt to address impacts on small businesses that are not regulated by this rule, but see an additional, incremental increase in their electric rates, as a result of a discretionary rule.

E.23 Discuss the ability of small businesses to absorb the costs estimated above without suffering economic harm and without adversely affecting competition in the market place.

DEQ Response: *The provisions in the alternative compliance demonstration project should allow small businesses to absorb the costs without suffering economic harm or affecting competition in the larger electricity supply market.*

MMA Comment: Once again, the response to this question is misleading. As in E.22, it leads the reader to believe that this is where all requirements on the small utilities end. That is hardly the case. They will still be subject to the impending Federal rule. That rule, which Michigan fought for in the courts, will not grant these sources the same degree of optional relief.

The workgroup process provided the DEQ with specific information pertaining to the Lansing Board of Water & Light, complete with costs for controls and monitoring, as well as the number of units that would have to be shut down.

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As with E.22, this response does not even attempt to address impacts on small businesses that are not regulated by this rule, but see an additional, incremental increase in their electric rates, as a result of a discretionary rule.

E.24 Estimate the cost of the agency enforcing or administering the rule to exempt or set lesser standards for small businesses.

DEQ Response: *The agency cost will be the same or similar to the cost of administering the rule on other affected sources because the alternative compliance demonstration project will be implemented using the same compliance mechanisms.*

MMA Comment: The DEQ is being very coy in stating, "The agency cost will be the same or similar to the cost of administering the rule on other affected sources…" The DEQ never provides an estimate of any of their costs.

As is the case with many of the responses in this RIS, the only way it could be accurate would be if the State were simply to adopt the impending Federal rule, without any state-specific control, monitoring, reporting or recordkeeping requirements, for all affected sources large and small. But that is not the case. If this rule is put in place, the affected sources would be faced with dual compliance requirements – one set for a mandatory Federal rule and another set for the discretionary State rule. The DEQ, in turn, would be faced with administering requirements for a mandatory Federal rule and separate requirements for a discretionary State rule. Unless the Agency is currently overstaffed with the necessary equipment and software, there will be additional costs incurred.

E.25 Determine the impact on the public interest of exempting or setting lesser standards for small businesses.

DEQ Response: *The impact is estimated to be the same or similar with the alternative compliance demonstration project. The alternative compliance demonstration project will require reductions in mercury through other projects implemented locally that meet or exceed the reductions required within the rules.*

MMA Comment: While the response may be accurate, it ignores the fact that there will be a Federal rule which is not expected to accommodate these exemptions for the small business sources. Rather, they will have another layer of regulatory requirements, which their customers will have to fund.

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E.26 Explain how the agency reduced the economic impact of the rule on small businesses, as MCL 24.240 requires, or discuss why such a reduction was not feasible.

DEQ Response: *The Department of Environmental Quality (DEQ) included an alternative compliance demonstration project, addressing potential inequities in the implementation of the requirements. See Nos. 22 and 25.*

MMA Comment: As with E.25, the response may be accurate but ignores the fact that there will be a Federal rule which is not expected to accommodate these exemptions for the small business sources. Rather, they will have another layer of regulatory requirements, which their customers will have to pay for.

E.27 Discuss whether and how the agency has involved both industry and small business in the development of the rule.

DEQ Response: *The DEQ formed a stakeholder workgroup for rule development that included representatives of industry as well as various associations that represented the industry, both large and small businesses, institutional entities, and environmental organizations.*

MMA Comment: While the DEQ did facilitate workgroups, the discussion and final products were limited to the Agency's evolving interpretations of the letter signed by the Governor.

F.28 Estimate the primary and direct benefits of the rule, including but not limited to the rule's impact on business competitiveness, the environment, worker safety and consumer protection.

DEQ Response: *The rule will reduce emissions of mercury and will likely result in lower levels of this toxic pollutant in surface waters in Michigan, neighboring states, and Canada. There is a significant body of evidence demonstrating that a reduction in mercury emissions will result in a reduction in deposition, which will result in a proportional reduction in methylmercury concentrations in fish tissue.*

Reduction in mercury emissions will contribute to Michigan meeting water quality standards, and in addressing future load allocation requirements for the mercury Total Maximum Daily Load (TMDL) water bodies not meeting designated uses as required by the Clean Water Act.

Methylmercury accumulation in fish tissue results in exposure for those consuming the fish. Methylmercury exposure has been linked to impaired neurodevelopment and the groups most at risk are fetuses and young children. Neurotoxic effects from relatively low-level exposure to methylmercury in the diet are more subtle, but reported effects include deficits in memory, language, learning, and intelligence. Other studies have focused on the contribution of methylmercury in the diet to cardiovascular

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disease and decreased neurocognitive function in adults. Both of these add up to costs to the public in decreased earning potential and additional health care.

MMA Comment: The response to this question is evasive and ignores the discussions and findings of 5 years worth of effort by two State-formed workgroups. It is true that a reduction in emissions will result in a reduction in deposition. Beyond that, the DEQ offers absolutely no quantification of any discernable benefits that the State will realize from this discretionary action. During the workgroups, the DEQ deliberately avoided any such declarations. Quantification of deposition reductions and the expected decline in fish tissue concentrations, resulting from a Michigan rule, were not compiled. Projections in the number of lakes without fish advisories, resulting from a Michigan rule, were not compiled. Cost benefit studies for a Michigan rule were not permitted. The recurring justification given was a letter that was signed by the Governor.

F.29 Estimate the secondary or indirect benefits of the rule, including the spin-off benefits to business, the environment, workers and consumers.

DEQ Response: *Fish consumption advisories due to mercury contamination impact Michigan's sport fishing and commercial fisheries, in addition to impacting subsets of the population that culturally and economically depend on fishing for subsistence. Fewer advisories on Michigan lakes and streams would encourage sport fishing and tourism with the associated boost to local economies.*

MMA Comment: This response is deliberately vague and conjectural. As such, it misleads the reader to believe that fish consumption advisories will go away as a result of this discretionary rule. When pressed for quantification during two workgroups, spanning five years, the DEQ deliberately refrained from making any sort of quantification. The DEQ is steering the reader to drawing a conclusion that absolutely has no factual justification.

F.30 Are the direct and indirect benefits of the rule likely to justify the cost?

DEQ Response: *A better environment resulting in better health and productivity for Michigan's citizens justifies the costs involved in implementing these rules.*

MMA Comment: The response provided to this question is absurd. The DEQ has not conducted any semblance of a cost-benefit study with regard to this rule. When the first workgroup convened five years ago, members of the workgroup requested a cost-benefit analysis. The Department declined, saying that there was not enough time to conduct such a study. When the request was repeated during the second workgroup, the Department stated that a cost-benefit analysis was not necessary, due to the letter signed by the Governor.

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F.31 Estimate the cost reductions to government, individuals, and businesses as a result of the rule.

DEQ Response: *There are no expected cost reductions to government, individuals, or businesses as a result of this rule.*

MMA Comment: The response is accurate but incomplete. It should also state that by imposing this discretionary rule, government, individuals and businesses will incur an incremental cost that is higher, compared to their counterparts in states that simply implement the impending Federal rule – the one Michigan pursued so vigorously through litigation.

In addition, the response ignores the fact that several municipal utilities affected by this discretionary rule are units of government. As such, their costs will increase.

F.32 Estimate the increased revenues to state or local government units as a result of the rule.

DEQ Response: *No revenue increase is expected.*

MMA Comment: With increased electric rates as a result of this discretionary state action, it could either chase existing investment away or dissuade new investment that would result in a negative revenue effect for Michigan.

F.33 Identify the sources you relied upon in calculating your cost and benefit responses.

DEQ Response: *The responses were based on information provided by EPA's Office of Air and Radiation; Michigan's Mercury Electric Utility Workgroup Final Report on Mercury Emissions from Coal-Fired Power Plants (June 20, 2005), and the DEQ's Air Quality Division staff's familiarity with regulatory costs and impacts.*

MMA Comment: The agency has not identified a specific cost benefit analysis. The only cost analysis available was conducted by MMA, which showed the program would cost $1.2 billion more than the federal programs CAIR and CAMR, which alone was projected to be $907 million. On the benefits side, the agency's own mercury report included a study that modeled Michigan's mercury emissions and concluded that if all coal fired utilities were shut down in Michigan, the level of mercury deposition in Michigan would decline only by about 2%-3%. Moreover, the there is no clear indication of what incremental environmental gains would be achieved by the discretionary state program over those projected by the federally mandated program. It seems to us that citizens of Michigan deserve to know what they will get for $1.2 billion in increased electric rates. The state has not even promised that $1.2 billion would have any change in fish advisories in Michigan.

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Reviewed by Department Regulatory Affairs Officer: *Sue Maul*

Reviewed by SOAHR Representative: *Norene Lind, Administrative Rules Manager*

SOAHR Response:	*Date received:*	*4/16/08*
	Approval:	*X*
	Date approved:	*5/20/08*
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APPENDIX A

QUESTIONS THAT SHOULD BE ASKED

- **Where is the cost-benefit analysis for the incremental improvements to be gained by this rule?**
    - **Why was there no cost-benefit analysis performed?**
- **What discernable benefits is the State promising the citizens of Michigan, for the added costs?**
    - **Show me how those were derived.**
- **What is the basis for requiring a 90% reduction from Michigan's electric utilities?**
- **Please define Maximum Achievable Control Technology for existing units. Use the Clean Air Act.**
    - **MACT is not being defined as a 90% reduction. What is the factual basis for requiring a 90% reduction?**
- **The SOAHR guidelines require that a RIS both identify the harm resulting from the conduct the rule is designed to change, and the benefits of the rule. The DEQ's RIS stated that lower utility mercury emissions would result in lower deposition rates, lower methyl mercury levels in fish and fewer fish advisories. Yet EPA's analyses predicts that zeroing out all Michigan mercury emissions would only change mercury deposition levels by a few percent and by analogy methyl mercury levels in fish by few percent. Since only a few percent change in fish tissue concentrations is barely, if at all, detectable, there does not appear to be any basis for predicting fewer advisories. Does DEQ concur that the changes in deposition and fish tissue are on the order of a few percent?**
    - **Does DEQ concur that it has erred in predicted fewer fish advisories?**
    - **DEQ has quantified the impact of mercury emissions from several different sources in the state in various court cases and permit proceedings. If DEQ could quantify the impact of mercury emissions in these proceedings, why has it not been able to quantify the benefit of this proposed rule (except in rather vague, qualitative terms)?**
- **The SOAHR guidelines also require that a RIS identify alternatives that would achieve the same or similar goals, yet the DEQ RIS only offers legislation that would establish identical standards as the only other alternative. On its face this would appear to be unresponsive to the SOAHR guidelines. Additionally the DEQ RIS states that utilities will not reduce mercury emissions without mercury intervention. Is it not true, however, that the largest power plant in the state is reducing its mercury emissions as a co benefit of SOX and NOX control.**

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- **Aren't other power plants in the state also expected to install SOX and NOX control that will have the co benefit of reducing mercury emissions?**

- **So isn't the RIS incorrect in its assertion that there will be no mercury reductions and hasn't the RIS neglected to seriously consider alternatives?**

- **How much mercury is deposited annually in Michigan?**

  - **How much of this deposition does DEQ believe results from Michigan power plants?**

- **How much mercury was formerly emitted by the combination of medical and municipal incinerators and how does this former emission rate compare to today's power plant emission rates.**

  - **What changes in deposition and fish tissue levels were associated with those reductions in mercury emissions?**

  - **How many fewer fish advisories are there as a result of incinerator controls?**

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