



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
120 BROADWAY  
NEW YORK, NY 10271

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

(212) 416-8050

February 14, 2011

Honorable Fred Upton  
Chairman  
House Energy & Commerce Committee  
United States House of Representatives  
2183 Rayburn House Office Building  
Washington, D.C. 20515

Re: H.J.Res.9: Joint Resolution Seeking to Block Regulations on Hazardous Air Pollutants  
from Portland Cement Plants

Dear Chairman Upton:

We write to urge you to oppose House Joint Resolution No. 9, a resolution that would block important regulations, requiring cement plants to install state-of-the-art pollution controls. As discussed below, these regulations will achieve critical reductions in their emissions of toxic mercury and other hazardous air pollutants that harm human health and are fully consistent with the health protections Congress required under the Clean Air Act's 1990 amendments.

Portland cement plants are one of the largest sources of mercury air emissions in the country. Sources of mercury emitted during manufacturing include limestone, additives (*e.g.*, silica), coal, and petroleum coke. Mercury released into the air can make its way into lakes, rivers, and coastal waters, where the most toxic form can build up in fish and shellfish, the main sources of mercury exposure to humans. For example, in New York, the state health department has issued fish consumption advisories for more than 100 specific bodies of water, warning women of childbearing age not to eat fish because of dangerously high mercury levels. Mercury can damage the brain, heart, kidneys, lungs, and immune system. Children and developing fetuses are at special risk, with even minute levels of mercury being linked to problems with memory, attention and language development. Mercury can also lead to reduced reproduction, slower growth and development, abnormal behavior, and even death in wildlife that eat contaminated fish.

To protect our citizens from dangerous levels of mercury and other harmful pollutants, our states sued the U.S. Environmental Protection Agency (EPA) in February 2007, challenging EPA's emission standards issued the previous year for hazardous air pollutants from new and existing Portland cement plants, 71 Fed. Reg. 76,518 (Dec. 20, 2006). New York, et al. v. EPA (D.C. Cir. 07-1052). In Section 112 of the Clean Air Act, Congress required EPA to establish emission standards for hazardous air pollutants, such as mercury, from major emitting sources that represent the maximum degree of reduction, taking into account the costs, and health, environmental, and energy impacts (referred to as "Maximum Available Control Technology," or "MACT," standards). 42 U.S.C. § 7412(d). In establishing MACT standards, EPA sets the MACT "floor" based solely on emission levels achieved by the best performing sources in that industry. Section 112 does not allow EPA to consider costs in establishing the MACT floor for hazardous air pollutants. See Sierra Club v. EPA, 479 F.3d 875 (D.C. Cir. 2007). By contrast, the statute expressly requires EPA to consider costs in determining whether to establish even more stringent, "beyond-the-floor" standards. 42 U.S.C. § 7412(d)(2).

Our states challenged EPA's 2006 regulations on several grounds, including that the regulations would have allowed sources to use work practice standards – as opposed to standards based on the use of pollution control equipment -- to meet the MACT standard for mercury emissions. Subsequent to the filing of our lawsuit, the D.C. Circuit issued a decision in Sierra Club v. EPA, 479 F.3d 875 (D.C. Cir. 2007), in which it invalidated EPA's MACT standards for hazardous air pollutants from brick kilns. In light of the fact that the court rejected legal arguments upon which EPA relied in justifying the regulations for cement plants, EPA agreed to reconsider the MACT standards for hazardous air pollutants from Portland cement plants.

Based on an extensive analysis of emissions from existing cement plants, EPA proposed revised MACT standards for mercury and other pollutants in May 2009. 74 Fed. Reg. 21,136 (May 6, 2009). Following a lengthy public comment period, the agency promulgated the final revised MACT standards for the Portland cement manufacturing industry in September 2010. 75 Fed. Reg. 54,970 (Sept. 9, 2010). Regarding mercury, EPA set MACT floor standards for new and existing cement kilns based on emission rates achieved by the best performing cement plants. Id. at 54,976 (MACT floor based on emission levels from plants that use wet scrubbers and/or activated carbon injection). EPA decided not to set beyond-the-floor standards for mercury on grounds that the additional reductions could not be justified based on the related cost. Id. at 54,980.

The final regulations are consistent with the statutory language in Section 112 and will result in significant health benefits to the citizens of our states impacted by hazardous air pollution from Portland cement plants. For example, with respect to mercury, EPA

established the MACT floor for mercury emissions using a technology-based determination compelled by Section 112, *i.e.*, by evaluating the best performing sources in the industry as required under the statute. The agency then proceeded to consider cost in deciding whether to also set beyond-the-floor standards for mercury, and determined that requiring additional emission reductions would be too expensive. This approach is exactly what Congress intended the agency to do in deciding what sources must do in addressing hazardous air pollutants from their operations.

Regarding health benefits from the regulations, beginning in 2013, the date for compliance with the MACT standards, mercury emissions from cement plants will be reduced by 16,600 pounds per year, a reduction of approximately 92 percent. As scientific evidence shows mercury emission sources -- such as Portland cement plants -- can result in local and regional impacts, these reductions in mercury emissions will benefit public and environmental health in our states, and across the country.

In addition to mercury reductions, the EPA regulations will require new and existing cement plants to clean up their emissions of other harmful pollutants, collectively reducing hydrochloric acid emissions by 97 percent, particulate matter emissions by 92 percent, total hydrocarbons by 83 percent, and sulfur dioxide emissions by 78 percent. Based on EPA's analysis, the regulations will prevent approximately 2,500 premature deaths from occurring. In addition, health benefits from reductions in particulate matter alone will total between \$6.7 and \$18 billion annually, compared to the projected cost of \$350 million for Portland cement plants collectively to comply with the regulations.

Contrary to claims of the supporters of H.J.Res.9, blocking the EPA regulations is also not needed to ensure the continued vitality of our country's cement industry. Pollution control technologies for Portland cement plants are readily available. Because American companies manufacture pollution control equipment and American workers will install and maintain this equipment, the assertions that the EPA regulations will cost thousands of jobs are erroneous. In fact, EPA's analysis shows that the net effect of the regulations on jobs is likely to be positive -- potentially resulting in as many as 1,300 new jobs.

In summary, our states have been fighting for several years to ensure that our citizens are protected from mercury and other harmful air pollutants emitted from Portland cement plants. Our efforts helped compel EPA to set emission standards that are compliant with the statute and will make our air cleaner without adverse economic consequences.

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Given your record of support of the 1990 Clean Air Act Amendments, which established the EPA's requirements to adopt the regulations some now seek to overturn, we hope that, as Chair of the Energy & Commerce Committee, you will oppose H.J.Res.9 and ensure that the citizens and environment in our states are able to enjoy these important air quality benefits.

Sincerely,



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Eric T. Schneiderman  
Attorney General  
State of New York



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George C. Jepsen  
Attorney General  
State of Connecticut



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Joseph R. Biden, III  
Attorney General  
State of Delaware

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Douglas F. Gansler  
Attorney General  
State of Maryland



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Martha Coakley  
Attorney General  
Commonwealth of Massachusetts

cc: Honorable John Boehner, Speaker  
Honorable Nancy Pelosi, Minority Leader  
Honorable Henry A. Waxman, Ranking Member, Committee on Energy and  
Commerce  
Honorable Edward Whitfield, Chair, Subcommittee on Energy and Power  
Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy and  
Power