United States Senate

WASHINGTON, DC 20510

May 20, 2004

The Honorable Michael O. Leavitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Leavitt:

We are writing to express our great concern about the inadequacies of the U.S. Environmental Protection Agency's (EPA) December 19, 2003, final air regulation that sets standards for mercury emissions from chlor-alkali plants. Not only does the rule fail to adequately limit the large amount of toxic mercury emitted by chlorine manufacturing facilities, it does not fully account for the fate of all mercury used at these facilities.

In the rule preamble, EPA admits that more than 65 tons of mercury a year goes unaccounted from the nine plants that still use a mercury-based process to manufacture chlorine. EPA described this missing 65 tons of mercury as "somewhat of an enigma", and rather than investigate this toxin's fate, the Agency relied on poorly documented claims by industry that this mercury is being retained by the plant equipment and is not escaping into the environment. Merely declaring that the whereabouts of 65 tons of mercury is "somewhat of an enigma" does not meet either the spirit or letter of the Clean Air Act's air toxic provisions.

While we understand that EPA has now granted a petition to reconsider this final rule, this alone is not sufficient to allay our concerns about the fate of this mercury, the health effects on communities surrounding these chlor-alkali plants, how the agency came to issue the December 19th rule declaring this mercury an "enigma", and what steps the EPA is taking to determine where this mercury is going.

The Agency has told Congress and the American people that it recognizes that mercury in the environment poses a significant public health threat that it takes seriously. Therefore, EPA should investigate the path of the "enigmatic" mercury, rather than rely on chlor-alkali plants to perform "good housekeeping" practices that may or may not control mercury emissions. Such practices are inconsistent with the Agency's mission to protect human health and safeguard the natural environment.

We are also troubled that EPA's chlor-alkali rulemaking : ignored existing data showing that mercury is released from the manufacturing process at these plants; required some monitoring of mercury while simultaneously claiming that such measurement technology is not

feasible for purposes of setting an emission standard; and actually weakened regulations on these facilities that were adopted in the 1970s.

We urge you to take immediate action to find the 65 tons of "enigmatic" mercury and determine the risk to public health from any mercury that is being emitted from these plants. In particular, please specify the amount of mercury that is unaccounted for from each of the chlor-alkali plants using mercury cell technology, the source of this information, and all analyses of the estimated risks to public health and the environment from mercury emissions leaving these plants. In addition, please provide us with the agency's timeline for reconsidering the final rule, detail the information that EPA will gather, and describe specifically the actions EPA will take to correct the flaws in its current rule.

EPA has the responsibility to protect the health of our Nation's people and environment, thus it is critical that that the 65-ton mercury "enigma" is accounted for and the mercury emissions reduced. Thank you for your prompt attention to our request.

Sincerely,

Patrick Leahy

Barbara Boxer

Jim Jeffords

Tom Carper

Jon Corzine

Chris Dodd

Mark Dayton

Hillary Rodham Clinton

(Chlor-alkali plants)

Olympia Snowe

Ted Kennedy

Mark Pryor

Frank R. Lautenberg

Susan Collins

Bill Nelson

Russell D. Feingold

Charles Schumer

Jack Reed

Ron Wyden