

BLOG

What Does Mercury Emission Rollback Mean for Liability?

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A [new rule by the Trump administration](#) to roll back Environmental Protection Agency (EPA) regulations on mercury pollution went into effect in April, but no business should be lulled into thinking the new rule alleviates their environmental liabilities.

Mercury is a toxic metal that's known to cause serious health issues in people, including brain, cardiovascular and lung damage. It's primarily released into the environment from oil and coal-fired power plants, but it comes from the steel industry, other types of manufacturing that deal in steel, and other types of manufacturing that burn fossil fuel.



The administration's new rule relaxes the standards for mercury emission laid out in [Mercury and Air Toxics Standards \(MATS\)](#), by changing how to calculate the cost/benefit analysis of mercury pollution. In other words, the economic cost to businesses of curbing pollution could carry more weight in determining emission standards than the health benefits those higher standards have on the general population. Many people say that the move could undermine the legal justification for other toxic standards set out by the EPA.

However, the loosening of regulations doesn't mean that the oil, coal and steel industries, or factories that burn fossil fuel, will suddenly begin dumping dangerous mercury toxins into the environment. As we wrote about in [this blog](#), companies are accountable to more than just government regulation, and could take on more risk by relaxing their standards.

It's important to note that the new rule doesn't allow manufacturing plants to undo existing mercury pollution containment measures or emit more mercury into the air than they previously did. Rather, it gives Congress the ability to determine whether it's "appropriate and necessary" to regulate emissions after analyzing the costs against the health benefits.

In 2012, the EPA set its first national standard for emissions of mercury. Over the last seven years coal-burning manufacturing plants have made significant investments to bring their operations into regulatory compliance set forth by the Obama administration. Modifications that reduce emissions such as smokestack scrubbers have been widely adopted.

Companies generally want to do the right thing and no company wants to be responsible for spreading community illness. Most will not suddenly stop trying to contain mercury emissions because of this new rollback. Policymakers are temporary as are their policies. What happens if there is a shift in government and regulations go back the other way? The EPA is here to stay.

Any company or M&A firm that's looking to open or purchase a manufacturing plant, power generation plants, steel foundry or manufacturing operations, need to carefully consider how they will operate their operations going forward. Taking account of the environmental impacts is part of any company's risk strategy and environmental insurance is a critical component of it. Despite public policy, companies will always be liable for the negative effects of toxic pollution, whether it be bodily injury or property damage.

As we've seen time and again — from newly emerging [PFAS contamination](#) to long historical risks like lead poisoning — the science behind toxic chemical contamination in the environment and its effects on the human population is imprecise. And lawsuits arising from contamination can quickly turn into major class-action cases.

It's difficult to put a fence around all the liabilities associated with mercury emissions. Standard lines of insurance don't cover damages from toxic contamination and pollution. Companies should take measures to ensure their operations run clean for public safety, but they should also consider the use of environmental insurance to protect against the unknown, including the whims of the day's political climate.

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