NW Energy Coalition

for a clean and affordable energy future

November 9, 2009

Sarah Rees
Washington State Department of Ecology
Air Quality Program
P.O. Box 47600
Lacey, WA
98504-7600

Dear Sarah,

The NW Energy Coalition appreciates the opportunity to provide comments on the proposed Settlement Agreement with TransAlta on air quality issues. These comments address only the mercury components of the Settlement since we have had experience working with the State is that area. The Coalition participated in the Department's stakeholder process to develop the Proposed Electric Generating Unit Rule for mercury in 2006-07. We attended numerous stakeholder meetings with Department staff and outside stakeholders and provided written and oral comments throughout the rulemaking process.

The proposed mercury rule circulated for comment in August 2007 was at the cutting edge of mercury reduction policy nationwide. Our comments, submitted in October 2007, supported the state's proposed emissions reduction targets and the timelines established in the draft rule. While we raised a number of concerns with some of the implementation details, we generally felt the proposed rule was appropriate and well designed. The timeline proposed in the draft rule – 90% reductions by 2013 -- reflected the significant human health and environmental impacts of mercury emissions and the need to take clear and firm action to reduce emissions.

During the stakeholder process, Ecology staff presented compelling scientific analysis of the devastating health impacts of mercury emissions. The scientific consensus on the health impacts has grown even deeper since the summer of 2006. Despite the strong health concerns the Department presented during the rulemaking process, the state did not move forward with proposed rules after the federal mercury emissions trading rule was ruled invalid.

The National Association of Clean Air Agencies reports that 12 states moved forward with adoption of state-based mercury rules. Most of the rules require 90% reductions by 2015 for new generators and some require reductions for existing generators. Just this month Michigan approved its

state rules reducing mercury emissions 90% by 2015. Oregon has adopted a Utility Mercury Rule that limits mercury emissions for new plants and mandates installation of mercury control technology at Oregon's only existing coal-fired power plant.

A table listing the status of state activities is available at www.4cleanair.org. We continue to believe, as outlined on page 15-16 of our July 2, 2009, joint comments to the SW Clean Air Agency regarding the draft Air Operating Permit SW98-8-R3 for TransAlta, that the state currently has the legal authority to develop and issue a regulatory limit on mercury from electric generating plants.

Given the magnitude of the impact of the mercury emissions from the Centralia plant and Ecology's previous finding that a 90% reduction by 2013 is appropriate and viable, we find the Settlement Agreement with TransAlta for a voluntary reduction of 50% by 2013 or an investment of $3 million in operations and maintenance, including mercury control investments, is inadequate and insufficient.

We have no concerns identifying halogenated sorbent injection technology or a viable alternative; the literature shows that sorbent injection is very effective at mercury removal.

We have serious concerns with point No. 4, which is at the heart of this portion of the Settlement Agreement. First, as stated above, we believe that a 90% reduction in emissions is feasible and cost-effective.

The October General Accountability Office report on Mercury Control Technologies at Coal-Fired Power Plants (GAO-10-47) has a number of very interesting findings, most importantly:

> "Commercial deployments and 50 DOE and industry tests of sorbent injection systems have achieved, on average, 90 percent reductions in mercury emissions. These systems are being used on 25 boilers at 14 coal-fired plants, enabling them to meet state or other mercury emission requirements--generally 80 percent to 90 percent reductions. The effectiveness of sorbent injection is largely affected by coal type and boiler configuration. Importantly, the substantial mercury reductions using these systems commercially and in tests were achieved with all three main types of coal and on boiler configurations that exist at nearly three-fourths of U.S. coal-fired power plants. While sorbent injection has been shown to be widely effective, DOE tests suggest that other

> strategies, such as blending coals or using other technologies, may be needed to achieve substantial reductions at some plants."

The Department's stated rationale for just a 50% reduction is that TransAlta is already achieving some emissions reductions as a side benefit of its other air pollution control technologies. This may be true, though the actual relevance depends on which baseline the 90% reductions are based upon and on the actual pounds-per-year levels achieved. When Ecology proposed its 90% reduction in the 2007draft rule, the expectation was that TransAlta would get to about 146 pounds of mercury emissions per year in 2013. On what baseline is the 50% reduction based and what are the expected 2012 emissions in pounds per year?

In addition, we are very concerned about language that allows TransAlta to show compliance either by showing emissions reductions or by spending $3 million per year on operations and maintenance.

First, the expenditure would not need to be tied to the installation of the technology or the operations and maintenance of the mercury emission control system. The expenditure could be for emission control, but the actual language is "operations and maintenance costs including, but not limited to routine operations and maintenance, sorbent costs, byproduct disposal costs associated with mercury capture, and monitoring costs." This leaves the door wide open for spending $3 million on routine O&M with no additional emissions reductions. How will the Department ensure that this does not happen?

Second, we know from working with electric and natural-gas utilities on energy efficiency acquisitions that utilities must be evaluated on actual kWh and therm savings rather than on dollars invested. An investment standard can lead to gold-plating of measures and investment in the most expensive measures with the smallest amount of savings.

We have specific concerns with some of the provisions in Section III. B. of the Settlement Agreement.

- **Page 6, Nos. 5 and 6.** The Settlement Agreement timing is confusing. Some of the dates in the Agreement should be updated and additional text should outline the history of status compliance thus far, at least through the date the Settlement was publicly issued(September 2009). For example, has the monitoring equipment been installed and is data being collected as of January 2009? Have quarterly status reports been filed starting the first quarter in 2009?

- **Page 6, No.7c.** TransAlta decides the "method for determining mercury removal efficiency." The Agreement previously states that

TransAlta determines the technology to be used to reduce emissions and this provision appears to further grant TransAlta sole authority for determining what constitutes efficient removal. Is this referring to the method of calculating "efficiency" and therefore the emissions reductions? If so, this is a very inappropriate provision for the state to grant the company. The method of determining removal efficiency is fundamental to finding if emissions have been reduced. This relates to our earlier concerns with determination of the baseline – 50% below what number? Is it the previous year? A rolling average of the past three years? Something else? All this must be determined in a public process with stakeholders and the state.

- **Page 7, No. 11.** How can the Department agree to support future proposals with no caveat that at least says something to the effect of "assuming the proposals are in the public interest or at least consistent with state laws"? Is Ecology bound to support proposals that reduce costs but increase environmental risk?

- **Page 7, No. 12**.Allowing some mercury credit banking against the possibility of a future a national scheme might have some merit. But it is not in the state's interest to have a blanket statement of support for whatever TransAlta proposes within a federal system. It may become important for the state to support limits on banking, particularly if the federal rule is significantly more stringent. The Agreement, as written, does not provide for how and under what conditions Ecology will support banking of credits.

- **Page 7 No. 13.** What value does the Settlement Agreement have in the absence of state enforcement or compliance options? If TransAlta fails to comply with the terms of the Settlement Agreement, then the Agreement is merely terminated. The state forgoes the opportunity to issue mercury reduction rules under state law in exchange for a voluntary agreement with TransAlta that has no back-up provision for the state. This does not constitute a win-win-win for the company, the state or the environment. This provision appears to benefit only TransAlta.

Thank you for the opportunity to provide comments on this Settlement Agreement. We hope that the Department will reconsider the terms in this Agreement and require at least 90% mercury emissions reductions by 2012 as the Department proposed in the 2006-07 CAMR process. The state has made no statement of finding that the environmental and public health impacts now warrant a lower emissions reduction level.

We would welcome the opportunity to participate in a more public discussion on the impacts of mercury on the environment and public health and on the emission control technology options available. Many states have

more stringent requirements than the ones presented in the this Agreement and it is not at all clear why Ecology has agreed to a weaker mercury emissions reduction timeline.

Thank you,

Nancy Hirsh
Policy Director