

**Ryley Carlock & Applewhite Lawyers Represent**  
**Colorado Electric Utilities In Reaching Landmark Consensus**  
**Regulation Reducing Mercury Air Emissions From Power Plants**

RC&A lawyers, Jim Sanderson, Mike Kafka and Olivia Lucas represented four Colorado electric utilities in reaching a landmark consensus on how to reduce mercury air emissions from the 22 coal-fired power plants located in Colorado. The U.S. Environmental Protection Agency has created a national program for reducing mercury air emissions. However, about 16 states and numerous environmental groups have challenged that program in the Federal Courts asserting it is not tough enough. Pending a judicial decision, each state must develop a program that is consistent with the Federal plan but which may exercise significant options for tailor making a program for each state. The new Colorado Mercury Reduction Program does just that.

Environmental organizations, including Environmental Defense and Environment Colorado, and a series of Colorado local governments initially pushed for a “one size fits all” command and control type of program with 90% mercury reductions, to be imposed on each plant. It would also have imposed a hard, not to be exceeded annual mercury emissions cap in Colorado, limiting future energy development. The four Colorado electric utilities (Xcel Energy, Tri-State Generation & Transmission, Inc., Platte River Power Authority and Colorado Springs Utilities) favored state adoption of the EPA’s model rule which uses a national mercury emissions trading program underneath a national emissions cap that decreases emissions on a nation-wide basis over time. Jim Sanderson has represented the group through the Colorado Utilities Coalition (“CUC”) in

a number of environmental policy initiatives since 1992. The utilities often find it more efficient to work together as a group through the CUC when their interests are aligned.

After three days of state agency hearings in November 2006 failed to reach a decision and the issue remained polarized, additional hearings were scheduled for late January, 2007.

Negotiations led by Jim Sanderson on behalf of the utilities and Vickie Patton on behalf of the environmental organizations turned into a multi-week marathon which included the Colorado Air Pollution Control Division Director and staff. The efforts resulted in a landmark consensus which all parties embraced and which the Colorado Air Quality Control Commission adopted unanimously.

Colorado's newly elected Governor, Bill Ritter, stated, "This is great news for Colorado and its citizens. I know how complex this issue is, and how many hours all of the parties spent working out these details, and I applaud them for their efforts. The utilities, the environmentalists, local government officials and others should be commended for their extraordinary efforts to hammer out an agreement that will protect Colorado's air, water and public health."

Newly appointed Executive Director of the Colorado Department of Public Health and Environment, Jim Martin, applauded the proposal, "This agreement will lead to earlier mercury emissions reductions than we would have seen from the EPA program. It is a workable plan that is good for Colorado."

The plan calls for mercury controls to be installed in 2012 at two coal-fired power plants in Colorado: Pawnee Power Plant near Fort Morgan operated by Xcel Energy and

Rawhide Power Plant near Ft. Collins operated by Platte River Power Authority. These are two plants believed to have the highest mercury emissions among Colorado plants.

Additional reductions would come from other high emitting plants in 2014 and again in 2018 from all other high mercury emitting coal-fired power plants in the state. By 2018, plants must either capture 90% of the mercury in the coal or sufficiently reduce emissions to become “low emitters.” Plants qualifying as low emitters are exempt from the 2014 and 2018 mandates to reduce emissions. Focusing on high emitters creates a cost-effective plan.

The Colorado plan couples the call for reductions from high emitting plants with participation in EPA’s trading program in such a way as to set aside sufficient mercury emission allowances under EPA’s cap and trade program to accommodate future new electric generation in Colorado. A recent study by electric utilities estimated a need for an additional 5,200 mega watts of electric generation between now and 2025. Thus, the plan embraces a flexibility for new generation, and flexibility of the phasing in of additional control technologies. In addition, plants that are unable to meet their 2012, 2014 or 2018 limitations despite best efforts can seek an alternative standard from the state agency. The negotiators referred to this provision as a “soft landing.”

Pointing to the fact that mercury emissions have been one of the more contentious environmental issues in Colorado in recent times, Matt Baker, Director of Environment Colorado, said “this will be a chance to de-politicize the debate.” Mark Stutz, Xcel energy spokesman stated “It’s a good agreement for the company. While it will call for significant reductions in mercury emissions, it also provides us with flexibility to assure compliance, and to plan for future (power) generation.”

RC&A attorneys, Jim Sanderson, Mike Kafka, Olivia Lucas worked around the clock during the final 2 week-long negotiating/drafting exercise that culminated in the consensus. “You have to keep drafting new provisions to capture the ideas that emerge from the negotiations in order to keep the momentum going. Having the depth of personnel at the firm to carry this out was a key factor in our success” Sanderson noted.

Mike Kafka also represented Tri-State in the mercury reduction regulatory process in Arizona. Tri-State, owner of Springerville Unit 3, participated with other utilities in Arizona’s mercury rulemaking process that concluded in late 2006.