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Try Not To Breathe!

By Catherine O'Neill, Center for American Progress. Posted July 12, 2004.

Scant attention has been given to the Bush administration's embrace of risk avoidance as the supposed 'solution' to public health hazards and environmental contamination.

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An industry spokesperson once offered this cheap solution to the problem of air pollution: on "bad air" days "asthmatic kids need not go out and ride their bicycles" - the idea being that industrial facilities should not have to take steps to reduce health risks caused by their pollution; rather, individuals should take steps to avoid these risks.

The Bush administration followed this reasoning in its recent proposal on mercury pollution, offering a reprieve in mercury emissions reductions while suggesting that people should protect themselves by forgoing fish.

The administration's proposal replaces an approach that would have resulted in an estimated 90 percent reduction in mercury emissions from coal-fired utilities by 2007 with one that the administration contends would result in, at most, a 70 percent reduction by 2018. Shortly after this proposal was put forward, the Environmental Protection Agency and the Food and Drug Administration issued expanded national fish consumption advisories due to mercury contamination.

Thus, while these agencies aim to tolerate more mercury emissions for a longer period of time, they place responsibility on a broad swath of the population - including women of childbearing age and children up to age 20 - to avoid the resulting risk of neurological damage by decreasing their fish consumption.

This reliance upon risk avoidance is one of several troubling elements of the proposed mercury rule. While the proposal has generated a record half million-plus comments from the public, relatively little attention has been given to the administration's embrace of risk avoidance as the supposed "solution" to this and other health hazards.

Environmental regulatory efforts have traditionally reduced environmental risk by eliminating the source of the risk, i.e., contamination. Risk avoidance strategies, by contrast, permit contamination but look to risk-bearers to alter their practices to avoid the risk. The approach is flawed for several reasons.

First, it's not clear that risk avoidance measures are effective. In order for risk avoidance to work, advisories must be received and understood; restrictions must be enforced; and ultimately human behaviors must be changed.

Even proponents of risk avoidance concede the considerable hurdles here. For example, signs meant to warn against eating fish from contaminated waters get taken down; fences intended to keep children from playing in contaminated soils get scaled; and zoning restrictions designed to limit future uses of contaminated properties get waived. These hurdles loom larger when those affected do not speak the language or share the culture of the dominant population. And they may become insurmountable when those affected refuse to change their lifeways on philosophical, moral, or cultural grounds.

Second, risk avoidance does not provide a comprehensive solution to environmental problems. While human health has been the touchstone for traditional regulatory efforts, a focus on pollution reduction has benefited ecological health as well. Risk avoidance strategies do nothing for non-human components of ecosystems. Fish advisories do not protect loons and other fish-eating birds. Even if only human health is at stake, risk avoidance may disappoint. Strategies that leave contamination untreated may beget multiple indirect human health effects. As a result, any cost savings may be overstated.

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be left with only poor substitutes in terms of protein and other nutrients.

Finally, risk avoidance is unjust. The burden of avoiding risk will likely fall disproportionately on American Indians and Alaska Natives, other communities of color, and low-income communities. It is these communities who are likely to be among the most exposed. People who live near a Superfund site or who depend on the walleye they catch for their family's next meal are more likely to be asked to move or to quit eating fish than are those who enjoy relative freedom from contact with environmental contaminants.

Moreover, the burden of avoiding risk may be understood differently by the general population than by those asked to alter their lifeways. A member of the general population who habitually consumes two meals of fish per week might be able to accommodate a suggestion that she find substitute food sources. A member of the various Ojibwe tribes fishing the Great Lakes might see such avoidance as impossible.

The administration's mercury rule may save industry some money. But it would do so by allowing dangerously high levels of mercury pollution, and forcing some of society's most vulnerable members to make profound sacrifices. Rather than burdening individuals with avoiding health risks created by industry, the administration should force industry to reduce its pollution to protect everyone's health.

Catherine O'Neill is a member scholar of the Center for Progressive Regulation and an associate professor of law at Seattle University School of Law.

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