

110TH CONGRESS
1ST SESSION

H. R. 1534

IN THE SENATE OF THE UNITED STATES

NOVEMBER 14, 2007

Received; read twice and referred to the Committee on Environment and
Public Works

AN ACT

To prohibit certain sales, distributions, and transfers of elemental mercury, to prohibit the export of elemental mercury, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Mercury Export Ban
3 Act of 2007”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1) mercury is highly toxic to humans, eco-
7 systems, and wildlife;

8 (2) as many as 10 percent of women in the
9 United States of childbearing age have mercury in
10 the blood at a level that could put a baby at risk;

11 (3) as many as 630,000 children born annually
12 in the United States are at risk of neurological prob-
13 lems related to mercury;

14 (4) the most significant source of mercury expo-
15 sure to people in the United States is ingestion of
16 mercury-contaminated fish;

17 (5) the Environmental Protection Agency re-
18 ports that, as of 2004—

19 (A) 44 States have fish advisories covering
20 over 13,000,000 lake acres and over 750,000
21 river miles;

22 (B) in 21 States the freshwater advisories
23 are statewide; and

24 (C) in 12 States the coastal advisories are
25 statewide;

1 (6) the long-term solution to mercury pollution
2 is to minimize global mercury use and releases to
3 eventually achieve reduced contamination levels in
4 the environment, rather than reducing fish consump-
5 tion since uncontaminated fish represents a critical
6 and healthy source of nutrition worldwide;

7 (7) mercury pollution is a transboundary pollut-
8 ant, depositing locally, regionally, and globally, and
9 affecting water bodies near industrial sources (in-
10 cluding the Great Lakes) and remote areas (includ-
11 ing the Arctic Circle);

12 (8) the free trade of elemental mercury on the
13 world market, at relatively low prices and in ready
14 supply, encourages the continued use of elemental
15 mercury outside of the United States, often involving
16 highly dispersive activities such as artisanal gold
17 mining;

18 (9) the intentional use of mercury is declining
19 in the United States as a consequence of process
20 changes to manufactured products (including bat-
21 teries, paints, switches, and measuring devices), but
22 those uses remain substantial in the developing
23 world where releases from the products are ex-
24 tremely likely due to the limited pollution control

1 and waste management infrastructures in those
2 countries;

3 (10) the member countries of the European
4 Union collectively are the largest source of elemental
5 mercury exports globally;

6 (11) the European Commission has proposed to
7 the European Parliament and to the Council of the
8 European Union a regulation to ban exports of ele-
9 mental mercury from the European Union by 2011;

10 (12) the United States is a net exporter of ele-
11 mental mercury and, according to the United States
12 Geological Survey, exported 506 metric tons of ele-
13 mental mercury more than the United States im-
14 ported during the period of 2000 through 2004; and

15 (13) banning exports of elemental mercury from
16 the United States will have a notable effect on the
17 market availability of elemental mercury and switch-
18 ing to affordable mercury alternatives in the devel-
19 oping world.

20 **SEC. 3. PROHIBITION ON SALE, DISTRIBUTION, OR TRANS-**
21 **FER OF ELEMENTAL MERCURY.**

22 Section 6 of the Toxic Substances Control Act (15
23 U.S.C. 2605) is amended by adding at the end the fol-
24 lowing:

25 “(f) MERCURY.—

1 “(1) PROHIBITION ON SALE, DISTRIBUTION, OR
2 TRANSFER OF ELEMENTAL MERCURY BY FEDERAL
3 AGENCIES.—Except as provided in paragraph (2),
4 effective beginning on the date of enactment of this
5 subsection, no Federal agency shall convey, sell, or
6 distribute to any other Federal agency, any State or
7 local government agency, or any private individual or
8 entity any elemental mercury under the control or
9 jurisdiction of the Federal agency.

10 “(2) EXCEPTION.—Paragraph (1) shall not
11 apply to a transfer between Federal agencies of ele-
12 mental mercury for the sole purpose of facilitating
13 storage of mercury to carry out this Act.”.

14 **SEC. 4. PROHIBITION ON EXPORT OF ELEMENTAL MER-**
15 **CURY.**

16 Section 12 of the Toxic Substances Control Act (15
17 U.S.C. 2611) is amended—

18 (1) in subsection (a) by striking “subsection
19 (b)” and inserting “subsections (b) and (c)”; and

20 (2) by adding at the end the following:

21 “(c) PROHIBITION ON EXPORT OF ELEMENTAL MER-
22 CURY.—

23 “(1) PROHIBITION.—Effective January 1,
24 2010, the export of elemental mercury from the
25 United States is prohibited.

1 “(2) INAPPLICABILITY OF SUBSECTION (a).—
2 Subsection (a) shall not apply to this subsection.

3 “(3) REPORT TO CONGRESS ON MERCURY COM-
4 POUNDS.—

5 “(A) REPORT.—Not later than one year
6 after the date of enactment of the Mercury Ex-
7 port Ban Act of 2007, the Administrator shall
8 publish and submit to Congress a report on
9 mercuric chloride, mercurous chloride or cal-
10 omel, mercuric oxide, and other mercury com-
11 pounds, if any, that may currently be used in
12 significant quantities in products or processes.
13 Such report shall include an analysis of—

14 “(i) the sources and amounts of each
15 of the mercury compounds imported into
16 the United States or manufactured in the
17 United States annually;

18 “(ii) the purposes for which each of
19 these compounds are used domestically, the
20 amount of these compounds currently con-
21 sumed annually for each purpose, and the
22 estimated amounts to be consumed for
23 each purpose in 2010 and beyond;

24 “(iii) the sources and amounts of each
25 mercury compound exported from the

1 United States annually in each of the last
2 three years;

3 “(iv) the potential for these com-
4 pounds to be processed into elemental mer-
5 cury after export from the United States;
6 and

7 “(v) other relevant information that
8 Congress should consider in determining
9 whether to extend the export prohibition to
10 include one or more of these mercury com-
11 pounds.

12 “(B) PROCEDURE.—For the purpose of
13 preparing the report under this paragraph, the
14 Administrator may utilize the information gath-
15 ering authorities of this title, including sections
16 10 and 11.

17 “(4) ESSENTIAL USE EXEMPTION.—(A) Any
18 person residing in the United States may petition
19 the Administrator for an exemption from the prohi-
20 bition in paragraph (1), and the Administrator may
21 grant by rule, after notice and opportunity for com-
22 ment, an exemption for a specified use at an identi-
23 fied foreign facility if the Administrator finds that—

1 “(i) nonmercury alternatives for the speci-
2 fied use are not available in the country where
3 the facility is located;

4 “(ii) there is no other source of elemental
5 mercury available from domestic supplies (not
6 including new mercury mines) in the country
7 where the elemental mercury will be used;

8 “(iii) the country where the elemental mer-
9 cury will be used certifies its support for the ex-
10 emption;

11 “(iv) the export will be conducted in such
12 a manner as to ensure the elemental mercury
13 will be used at the identified facility as de-
14 scribed in the petition, and not otherwise di-
15 verted for other uses for any reason;

16 “(v) the elemental mercury will be used in
17 a manner that will protect human health and
18 the environment, taking into account local, re-
19 gional, and global human health and environ-
20 mental impacts;

21 “(vi) the elemental mercury will be handled
22 and managed in a manner that will protect
23 human health and the environment, taking into
24 account local, regional, and global human
25 health and environmental impacts; and

1 “(vii) the export of elemental mercury for
2 the specified use is consistent with international
3 obligations of the United States intended to re-
4 duce global mercury supply, use, and pollution.

5 “(B) Each exemption issued by the Adminis-
6 trator pursuant to this paragraph shall contain such
7 terms and conditions as are necessary to minimize
8 the export of elemental mercury and ensure that the
9 conditions for granting the exemption will be fully
10 met, and shall contain such other terms and condi-
11 tions as the Administrator may prescribe. No exemp-
12 tion granted pursuant to this paragraph shall exceed
13 three years in duration and no such exemption shall
14 exceed 10 metric tons of elemental mercury.

15 “(C) The Administrator may by order suspend
16 or cancel an exemption under this paragraph in the
17 case of a violation described in subparagraph (D).

18 “(D) A violation of this subsection or the terms
19 and conditions of an exemption, or the submission of
20 false information in connection therewith, shall be
21 considered a prohibited act under section 15, and
22 shall be subject to penalties under section 16, in-
23 junctive relief under section 17, and citizen suits
24 under section 20.

1 “(5) CONSISTENCY WITH TRADE OBLIGA-
2 TIONS.—Nothing in this subsection affects, replaces,
3 or amends prior law relating to the need for consist-
4 ency with international trade obligations.

5 “(6) EXPORT OF COAL.—Nothing in this sub-
6 section shall be construed to prohibit the export of
7 coal.”.

8 **SEC. 5. LONG-TERM STORAGE.**

9 (a) ESTABLISHMENT OF PROGRAM.—Not later than
10 January 1, 2010, the Secretary of Energy (in this section
11 referred to as the “Secretary”) shall accept custody, for
12 the purpose of long-term management and storage, of ele-
13 mental mercury generated within the United States and
14 delivered to a facility of the Department of Energy des-
15 ignated by the Secretary.

16 (b) FEES.—

17 (1) IN GENERAL.—After consultation with per-
18 sons who are likely to deliver elemental mercury to
19 a designated facility for long-term management and
20 storage under the program prescribed in subsection
21 (a), and with other interested persons, the Secretary
22 shall assess and collect a fee at the time of delivery
23 for providing such management and storage, based
24 on the pro rata cost of long-term management and

1 storage of elemental mercury delivered to the facil-
2 ity. The amount of such fees—

3 (A) shall be made publically available not
4 later than October 1, 2009;

5 (B) may be adjusted annually; and

6 (C) shall be set in an amount sufficient to
7 cover the costs described in paragraph (2).

8 (2) COSTS.—The costs referred to in paragraph
9 (1)(C) are the costs to the Department of Energy of
10 providing such management and storage, including
11 facility operation and maintenance, security, moni-
12 toring, reporting, personnel, administration, inspec-
13 tions, training, fire suppression, closure, and other
14 costs required for compliance with applicable law.
15 Such costs shall not include costs associated with
16 land acquisition or permitting of a designated facil-
17 ity under the Solid Waste Disposal Act or other ap-
18 plicable law. Building design and building construc-
19 tion costs shall only be included to the extent that
20 the Secretary finds that the management and stor-
21 age of elemental mercury accepted under the pro-
22 gram under this section cannot be accomplished
23 without construction of a new building or buildings.

24 (c) REPORT.—Not later than 60 days after the end
25 of each Federal fiscal year, the Secretary shall transmit

1 to the Committee on Energy and Commerce of the House
2 of Representatives and the Committee on Environment
3 and Public Works of the Senate a report on all of the
4 costs incurred in the previous fiscal year associated with
5 the long-term management and storage of elemental mer-
6 cury. Such report shall set forth separately the costs asso-
7 ciated with activities taken under this section.

8 (d) MANAGEMENT STANDARDS FOR A FACILITY.—

9 (1) GUIDANCE.—Not later than October 1,
10 2009, the Secretary, after consultation with the Ad-
11 ministrator of the Environmental Protection Agency
12 and all appropriate State agencies in affected States,
13 shall make available, including to potential users of
14 the long-term management and storage program es-
15 tablished under subsection (a), guidance that estab-
16 lishes procedures and standards for the receipt,
17 management, and long-term storage of elemental
18 mercury at a designated facility or facilities, includ-
19 ing requirements to ensure appropriate use of flasks
20 or other suitable shipping containers. Such proce-
21 dures and standards shall be protective of human
22 health and the environment and shall ensure that
23 the elemental mercury is stored in a safe, secure,
24 and effective manner. In addition to such procedures
25 and standards, elemental mercury managed and

1 stored under this section at a designated facility
2 shall be subject to the requirements of the Solid
3 Waste Disposal Act, including the requirements of
4 subtitle C of that Act, except as provided in sub-
5 section (g)(2) of this section. A designated facility in
6 existence on or before January 1, 2010, is author-
7 ized to operate under interim status pursuant to sec-
8 tion 3005(e) of the Solid Waste Disposal Act until
9 a final decision on a permit application is made pur-
10 suant to section 3005(c) of the Solid Waste Disposal
11 Act. Not later than January 1, 2012, the Adminis-
12 trator of the Environmental Protection Agency (or
13 an authorized State) shall issue a final decision on
14 the permit application.

15 (2) TRAINING.—The Secretary shall conduct
16 operational training and emergency training for all
17 staff that have responsibilities related to elemental
18 mercury management, transfer, storage, monitoring,
19 or response.

20 (3) EQUIPMENT.—The Secretary shall ensure
21 that each designated facility has all equipment nec-
22 essary for routine operations, emergencies, moni-
23 toring, checking inventory, loading, and storing ele-
24 mental mercury at the facility.

1 (4) FIRE DETECTION AND SUPPRESSION SYS-
2 TEMS.—The Secretary shall—

3 (A) ensure the installation of fire detection
4 systems at each designated facility, including
5 smoke detectors and heat detectors; and

6 (B) ensure the installation of a permanent
7 fire suppression system, unless the Secretary
8 determines that a permanent fire suppression
9 system is not necessary to protect human
10 health and the environment.

11 (e) INDEMNIFICATION OF PERSONS DELIVERING
12 ELEMENTAL MERCURY.—

13 (1) IN GENERAL.—(A) Except as provided in
14 subparagraph (B) and subject to paragraph (2), the
15 Secretary shall hold harmless, defend, and indemnify
16 in full any person who delivers elemental mercury to
17 a designated facility under the program established
18 under subsection (a) from and against any suit,
19 claim, demand or action, liability, judgment, cost, or
20 other fee arising out of any claim for personal injury
21 or property damage (including death, illness, or loss
22 of or damage to property or economic loss) that re-
23 sults from, or is in any manner predicated upon, the
24 release or threatened release of elemental mercury as
25 a result of acts or omissions occurring after such

1 mercury is delivered to a designated facility de-
2 scribed in subsection (a).

3 (B) To the extent that a person described in
4 subparagraph (A) contributed to any such release or
5 threatened release, subparagraph (A) shall not
6 apply.

7 (2) CONDITIONS.—No indemnification may be
8 afforded under this subsection unless the person
9 seeking indemnification—

10 (A) notifies the Secretary in writing within
11 30 days after receiving written notice of the
12 claim for which indemnification is sought;

13 (B) furnishes to the Secretary copies of
14 pertinent papers the person receives;

15 (C) furnishes evidence or proof of any
16 claim, loss, or damage covered by this sub-
17 section; and

18 (D) provides, upon request by the Sec-
19 retary, access to the records and personnel of
20 the person for purposes of defending or settling
21 the claim or action.

22 (3) AUTHORITY OF SECRETARY.—(A) In any
23 case in which the Secretary determines that the De-
24 partment of Energy may be required to make indem-
25 nification payments to a person under this sub-

1 section for any suit, claim, demand or action, liabil-
2 ity, judgment, cost, or other fee arising out of any
3 claim for personal injury or property damage re-
4 ferred to in paragraph (1)(A), the Secretary may
5 settle or defend, on behalf of that person, the claim
6 for personal injury or property damage.

7 (B) In any case described in subparagraph (A),
8 if the person to whom the Department of Energy
9 may be required to make indemnification payments
10 does not allow the Secretary to settle or defend the
11 claim, the person may not be afforded indemnifica-
12 tion with respect to that claim under this subsection.

13 (f) TERMS, CONDITIONS, AND PROCEDURES.—The
14 Secretary is authorized to establish such terms, conditions,
15 and procedures as are necessary to carry out this section.

16 (g) EFFECT ON OTHER LAW.—

17 (1) IN GENERAL.—Except as provided in para-
18 graph (2), nothing in this section changes or affects
19 any Federal, State, or local law or the obligation of
20 any person to comply with such law.

21 (2) EXCEPTION.—(A) Elemental mercury that
22 the Secretary is storing on a long-term basis shall
23 not be subject to the storage prohibition of section
24 3004(j) of the Solid Waste Disposal Act (42 U.S.C.
25 6924(j)). For the purposes of section 3004(j) of the

1 Solid Waste Disposal Act, a generator accumulating
2 elemental mercury destined for a facility designated
3 by the Secretary under subsection (a) for 90 days or
4 less shall be deemed to be accumulating the mercury
5 to facilitate proper treatment, recovery, or disposal.

6 (B) Elemental mercury that is stored at a facil-
7 ity with respect to which a permit has been issued
8 under section 3005(c) of the Solid Waste Disposal
9 Act (42 U.S.C. 6925(c)) shall not be subject to the
10 storage prohibition of section 3004(j) of the Solid
11 Waste Disposal Act (42 U.S.C. 6924(j)) if—

12 (i) the Secretary is unable to accept the
13 mercury at a facility designated by the Sec-
14 retary under subsection (a) for reasons beyond
15 the control of the owner or operator of the per-
16 mitted facility;

17 (ii) the owner or operator of the permitted
18 facility certifies in writing to the Secretary that
19 it will ship the mercury to the designated facil-
20 ity when the Secretary is able to accept the
21 mercury; and

22 (iii) the owner or operator of the permitted
23 facility certifies in writing to the Secretary that
24 it will not sell, or otherwise place into com-
25 merce, the mercury.

1 This subparagraph shall not apply to mercury with
2 respect to which the owner or operator of the per-
3 mitted facility fails to comply with a certification
4 provided under clause (ii) or (iii).

5 (h) STUDY.—Not later than July 1, 2011, the Sec-
6 retary shall transmit to the Congress the results of a
7 study, conducted in consultation with the Administrator
8 of the Environmental Protection Agency, that—

9 (1) determines the impact of the long-term stor-
10 age program under this section on mercury recy-
11 cling; and

12 (2) includes proposals, if necessary, to mitigate
13 any negative impact identified under paragraph (1).

14 **SEC. 6. REPORT TO CONGRESS.**

15 At least 3 years after the effective date of the prohibi-
16 tion on export of elemental mercury under section 12(c)
17 of the Toxic Substances Control Act (15 U.S.C. 2611(c)),
18 as added by section 4 of this Act, but not later than Janu-
19 ary 1, 2014, the Administrator of the Environmental Pro-
20 tection Agency shall transmit to the Committee on Energy
21 and Commerce of the House of Representatives and the
22 Committee on Environment and Public Works of the Sen-
23 ate a report on the global supply and trade of elemental
24 mercury, including but not limited to the amount of ele-
25 mental mercury traded globally that originates from pri-

1 mary mining, where such primary mining is conducted,
2 and whether additional primary mining has occurred as
3 a consequence of this Act.

Passed the House of Representatives November 13,
2007.

Attest: LORRAINE C. MILLER,
Clerk.