

[COMMITTEE PRINT]

[SHOWING THE TEXT OF THE BILL AS APPROVED BY THE SUBCOMMITTEE ON ENVIRONMENT AND HAZARDOUS MATERIALS ON AUGUST 2, 2007]

110TH CONGRESS
1ST SESSION

H. R. 1534

To prohibit the sale, distribution, or transfer of mercury, to prohibit the export of mercury, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2007

Mr. ALLEN introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prohibit the sale, distribution, or transfer of mercury, to prohibit the export of 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Mercury Export Ban
5 Act of 2007”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

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

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

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

9 (4) the most significant source of mercury expo-
10 sure to people in the United States is ingestion of
11 mercury-contaminated fish;

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

14 (A) 44 States have fish advisories covering
15 over 13,000,000 lake acres and over 750,000
16 river miles;

17 (B) in 21 States the freshwater advisories
18 are statewide; and

19 (C) in 12 States the coastal advisories are
20 statewide;

21 (6) the long-term solution to mercury pollution
22 is to minimize global mercury use and releases to
23 eventually achieve reduced contamination levels in
24 the environment, rather than reducing fish consump-

1 tion since uncontaminated fish represents a critical
2 and healthy source of nutrition worldwide;

3 (7) mercury pollution is a transboundary pollutant,
4 depositing locally, regionally, and globally, and
5 affecting water bodies near industrial sources (including
6 the Great Lakes) and remote areas (including the Arctic Circle);

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

14 (9) the intentional use of mercury is declining
15 in the United States as a consequence of process
16 changes to manufactured products (including batteries,
17 paints, switches, and measuring devices), but
18 those uses remain substantial in the developing
19 world where releases from the products are extremely
20 likely due to the limited pollution control and waste
21 management infrastructures in those
22 countries;

23 (10) the member countries of the European
24 Union collectively are the largest source of elemental
25 mercury exports globally;

1 (11) the European Commission has proposed to
2 the European Parliament and to the Council of the
3 European Union a regulation to ban exports of ele-
4 mental mercury from the European Union by 2011;

5 (12) the United States is a net exporter of ele-
6 mental mercury and, according to the United States
7 Geological Survey, exported 506 metric tons of ele-
8 mental mercury more than the United States im-
9 ported during the period of 2000 through 2004; and

10 (13) banning exports of elemental mercury from
11 the United States will have a notable effect on the
12 market availability of elemental mercury and switch-
13 ing to affordable mercury alternatives in the devel-
14 oping world.

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

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

20 “(f) MERCURY.—

21 “(1) PROHIBITION ON SALE, DISTRIBUTION, OR
22 TRANSFER OF ELEMENTAL MERCURY BY FEDERAL
23 AGENCIES.—Except as provided in paragraph (2),
24 effective beginning on the date of enactment of this
25 subsection, no Federal agency shall convey, sell, or

1 distribute to any other Federal agency, any State or
2 local government agency, or any private individual or
3 entity any elemental mercury under the control or
4 jurisdiction of the Federal agency.

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

9 **SEC. 4. PROHIBITION ON EXPORT OF ELEMENTAL MER-**
10 **CURY.**

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

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

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

16 “(c) PROHIBITION ON EXPORT OF ELEMENTAL MER-
17 CURY.—

18 “(1) PROHIBITION.—Effective January 1,
19 2010, the export of elemental mercury from the
20 United States is prohibited.

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

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

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

10 “(i) the sources and amounts of each
11 of the mercury compounds imported into
12 the United States or manufactured in the
13 United States annually;

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

20 “(iii) the sources and amounts of each
21 mercury compound exported from the
22 United States annually in each of the last
23 three years;

24 “(iv) the potential for these com-
25 pounds to be processed into elemental mer-

1 cury after export from the United States;
2 and

3 “(v) other relevant information that
4 Congress should consider in determining
5 whether to extend the export prohibition to
6 include one or more of these mercury com-
7 pounds.

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

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

20 “(i) nonmercury alternatives for the speci-
21 fied use are not available in the country where
22 the facility is located;

23 “(ii) there is no other source of elemental
24 mercury available from domestic supplies in the

1 country where the elemental mercury will be
2 used;

3 “(iii) the country where the elemental mer-
4 cury will be used certifies its support for the ex-
5 emption;

6 “(iv) the export will be conducted in such
7 a manner as to ensure the elemental mercury
8 will be used at the identified facility as de-
9 scribed in the petition, and not otherwise di-
10 verted for other uses for any reason;

11 “(v) the elemental mercury will be used in
12 a manner that will protect human health and
13 the environment, taking into account local, re-
14 gional, and global human health and environ-
15 mental impacts;

16 “(vi) the elemental mercury will be handled
17 and managed in a manner that will protect
18 human health and the environment, taking into
19 account local, regional, and global human
20 health and environmental impacts; and

21 “(vii) the export of elemental mercury for
22 the specified use is consistent with international
23 obligations of the United States intended to re-
24 duce global mercury supply, use, and pollution.

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

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

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

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

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

4 **SEC. 5. EXCESS ELEMENTAL MERCURY STORAGE ADVI-**
5 **SORY COMMITTEE.**

6 (a) AMENDMENT.—Title I of the Toxic Substances
7 Control Act is amended by adding at the end the following
8 new section:

9 **“SEC. 32. EXCESS ELEMENTAL MERCURY STORAGE ADVI-**
10 **SORY COMMITTEE.**

11 “(a) ESTABLISHMENT.—There is established an advi-
12 sory committee, to be known as the ‘Excess Elemental
13 Mercury Storage Advisory Committee’ (referred to in this
14 section as the ‘Committee’).

15 “(b) MEMBERSHIP.—

16 “(1) IN GENERAL.—The Committee shall be
17 composed of 14 members, of whom—

18 “(A) 2 members shall be jointly appointed
19 by the Speaker of the House of Representatives
20 and the Majority Leader of the Senate—

21 “(i) 1 of whom shall be designated to
22 serve as Chairperson of the Committee;
23 and

1 “(ii) 1 of whom shall be designated to
2 serve as Vice-Chairperson of the Com-
3 mittee;

4 “(B) 1 member shall be jointly appointed
5 by the Minority Leader of the House of Rep-
6 resentatives and the Minority Leader of the
7 Senate;

8 “(C) 1 member shall be the Administrator;

9 “(D) 1 member shall be the Secretary of
10 Defense;

11 “(E) 1 member shall be the Secretary of
12 Energy;

13 “(F) 1 member shall be a representative of
14 State environmental agencies;

15 “(G) 1 member shall be a representative of
16 the public health community;

17 “(H) 1 member shall be a representative of
18 State attorneys general;

19 “(I) 1 member shall be a representative of
20 the electrical manufacturers industry;

21 “(J) 1 member shall be a representative of
22 the mining industry;

23 “(K) 1 member shall be a representative of
24 the chlorine industry;

1 “(L) 1 member shall be a representative of
2 the mercury waste treatment industry; and

3 “(M) 1 member shall be a representative of
4 a nonprofit environmental organization.

5 “(2) APPOINTMENTS.—Not later than 45 days
6 after the date of enactment of this section, the Ad-
7 ministrator, in consultation with Committee on En-
8 ergy and Commerce of the House of Representatives
9 and the Committee on Environment and Public
10 Works of the Senate, shall appoint the members of
11 the Committee described in subparagraphs (F)
12 through (M) of paragraph (1).

13 “(c) INITIAL MEETING.—Not later than 30 days
14 after the date on which all members of the Committee
15 have been appointed, the Committee shall hold the initial
16 meeting of the Committee.

17 “(d) MEETINGS.—The Committee shall meet at the
18 call of the Chairperson and hold meetings as necessary
19 to effectuate the purposes of the Committee and its timely
20 presentation of findings and recommendations.

21 “(e) QUORUM.—A majority of the members of the
22 Committee shall constitute a quorum.

23 “(f) REPORT.—Not later than 1 year after the date
24 of enactment of this section, the Committee shall submit

1 to Congress a report describing the findings and rec-
2 ommendations of the Committee relating to—

3 “(1) the environmental, health, and safety re-
4 quirements necessary to prevent—

5 “(A) the release of elemental mercury into
6 the environment; and

7 “(B) worker exposure from the storage of
8 elemental mercury;

9 “(2) the estimated annual cost of storing ele-
10 mental mercury on a per-pound or per-ton basis;

11 “(3) for the 40-year period beginning on the
12 date of submission of the report, the optimal size,
13 number, and other characteristics of Federal facili-
14 ties required to store elemental mercury under cur-
15 rent and anticipated jurisdictions of each Federal
16 agency;

17 “(4) the estimated quantity of—

18 “(A) elemental mercury that will result
19 from the decommissioning of mercury cell chlor-
20 alkali facilities in the United States; and

21 “(B) any other supplies that may require
22 storage to carry out this Act;

23 “(5) for the 40-year period beginning on the
24 date of submission of the report, the estimated
25 quantity of elemental mercury generated from the

1 recycling of unwanted products and other wastes
2 that will require storage to comply with the export
3 prohibitions under this Act;

4 “(6) any legal, technical, economic, or other
5 barrier that may prevent the private sector from
6 storing elemental mercury produced by the private
7 sector during the 40-year period beginning on the
8 date of submission of the report, including a descrip-
9 tion of measures to address the barriers;

10 “(7) the advantages and disadvantages of con-
11 solidating the storage of elemental mercury produced
12 by public and private sources under the management
13 of the public or private sector;

14 “(8) the optimal plan of the Committee for the
15 long-term storage and management of excess ele-
16 mental mercury produced by public and private
17 sources; and

18 “(9) additional studies, if any, required to de-
19 termine a long-term disposal option for the storage
20 of excess elemental mercury.

21 “(g) COMPENSATION OF MEMBERS.—

22 “(1) IN GENERAL.—

23 “(A) NON-FEDERAL EMPLOYEES.—A
24 member of the Committee who is not an officer
25 or employee of the Federal Government shall be

1 compensated at a rate equal to the daily equiva-
2 lent of the annual rate of basic pay prescribed
3 for level V of the Executive Schedule under sec-
4 tion 5316 of title 5, United States Code, for
5 each day (including travel time) during which
6 the member is engaged in the performance of
7 the duties of the Committee.

8 “(B) FEDERAL EMPLOYEES.—A member
9 of the Committee who is an officer or employee
10 of the Federal Government shall serve without
11 compensation in addition to the compensation
12 received for the services of the member as an
13 officer or employee of the Federal Government.

14 “(2) TRAVEL EXPENSES.—A member of the
15 Committee shall be allowed travel expenses, includ-
16 ing per diem in lieu of subsistence, at rates author-
17 ized for an employee of an agency under subchapter
18 I of chapter 57 of title 5, United States Code, while
19 away from the home or regular place of business of
20 the member in the performance of the duties of the
21 Committee.

22 “(h) STAFF AND FUNDING.—The Administrator
23 shall provide to the Committee such funding and addi-
24 tional personnel as are necessary to enable the Committee
25 to perform the duties of the Committee.

1 “(i) **TERMINATION.**—The Committee shall terminate
2 180 days after the date on which the Committee submits
3 the report of the Committee under subsection (f).”.

4 (b) **TABLE OF CONTENTS AMENDMENT.**—The table
5 of contents of the Toxic Substances Control Act is amend-
6 ed by adding after the item relating to section 31 the fol-
7 lowing new item:

 “Sec. 32. Excess Elemental Mercury Storage Advisory Committee.”.

8 **SEC. 6. REPORT TO CONGRESS.**

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

 Amend the title so as to read: “A Bill to prohibit the
sale, distribution, or transfer of elemental mercury, to

prohibit the export of elemental mercury, and for other purposes.”.