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EPA Takes Steps to Regulate Use and Disposal of Mercury

On Wednesday, March 29, the U.S. Environmental Protection Agency (EPA) published a notice in the *Federal Register* making available the first national Mercury Inventory. 82 Fed. Reg. 15522 (March 29, 2017). The Mercury Inventory is part of a multi-faceted effort by Congress and EPA to regulate use and disposal of mercury, and to ban exports of mercury from the United States.

The Lautenberg Act, TSCA, and Mercury

The Mercury Inventory is required by Section 8 of the Frank R. Lautenberg Chemical Safety for the 21st Century Act. Pub. L. No. 114-182, 130 Stat. 448 (June 22, 2016)(the Lautenberg Act). The Lautenberg Act amended and reformed the Toxic Substances Control Act (TSCA), and addressed a host of chemical safety and regulatory issues important to government, businesses, and the public. Section 10 of the Lautenberg Act strengthens and expands the 2008 Mercury Export Ban Act, which banned exports of elemental mercury from the United States on or after Jan. 1, 2013. 15 U.S.C. § 2611(c)(1). Section 10 expands the export ban to include five mercury compounds, effective Jan. 1, 2020, and gives EPA authority to ban other mercury compounds administratively. 15 U.S.C. § 2611(c)(7). Combined, these actions are part of a broader effort by developed nations to keep mercury supplies out of the hands of unregulated or poorly regulated artisanal gold miners whose mercury use is the single largest source of mercury emissions in the global atmosphere. See United Nations Environment Programme, Global Mercury Assessment, 2013.

The Mercury Inventory Requirement

Section 8 of the Lautenberg Act directed EPA to conduct “an inventory of mercury supply, use, and trade in the United States” not later than April 1, 2017, and every three years thereafter. 15 U.S.C § 2607(b)(10)(B). In doing so, EPA must identify “any manufacturing processes or products that intentionally add mercury,” and recommend changes in federal law or regulations, or other actions to achieve reductions in mercury use. 15 U.S.C. § 2607(b)(10)(C).

The Act contemplates that EPA will gather information for the inventory from persons who manufacture mercury or mercury-added products or who otherwise intentionally use mercury. EPA is required to publish a rule establishing reporting requirements not later than June 22, 2018. 15 U.S.C. § 2607(b)(1)(D). EPA has not yet started that rulemaking.

The 2017 Mercury Inventory

In advance of the reporting rule to be promulgated in 2018, EPA could have gathered information for the 2017 Mercury Inventory using existing authorities under TSCA or other regulatory programs. However, the Agency did not do so, relying instead on publicly available information about mercury supply, use, and trade. Environmental Protection Agency. (2017). *Mercury, US. Inventory Report: Supply Use and Trade*. EPA acknowledged the limitations of the data available, and noted, as a result, that the Agency did not perform economic analyses or data interpretations, and did not include the recommendations to reduce mercury use that are required by statute.

Notwithstanding these limitations, EPA's report contains some surprising figures that require further explanation. For instance, despite the 2013 export ban and the resulting glut of mercury available domestically, EPA reported that 335 metric tons of mercury compounds were imported into the United States in 2016. EPA based the report on International Trade Commission import/export records, and offered no explanation or analysis regarding how and by whom such a large quantity of mercury compounds was utilized in the United States. Similarly, EPA reported, without explanation, that 639 metric tons of mercury compounds were exported from the United States in 2016. Given global interest in reducing mercury in the environment, these figures are likely to attract the interest and further attention of EPA and other policymakers.

Future Mercury Developments

The United States will continue to work with other countries to restrict the movement of mercury from developed to less-developed nations, to limit mercury contamination in the environment, and to require long-term secure disposal or storage of mercury supplies. A more thorough mercury inventory may be an important part of that effort.

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