

The Mercury Export Ban of 2008 only regulates “elemental mercury.” The law does not define “elemental mercury.” DOE’s draft Standards and Procedures document makes the assumption that the term will be defined as a material that is 99.5% mercury or greater by volume. How should “elemental mercury” that is subject to the Ban be defined?

- One state recommended that the law be interpreted as broadly as possible to minimize loopholes and exemptions that would allow mercury exports. This state interpreted the intention of the law as to cover mercury from all sources, including mercury recovered from wastes under RCRA. This state recommended that anything subject to or eligible for management under RCRA C and/or the Universal Waste Rule (UWR) as a mercury waste (e.g., mercury-containing devices, lamps) be considered “elemental mercury.”
- Other states did not recommend any specific definition of “elemental mercury,” but felt the definition of should be explicitly clarified to meet the DOE assumed standard (99.5%) or other specific definition.

How will the Ban affect mercury contaminated waste which is exempt under the Ban? Will exports of mercury waste increase to meet the demand for mercury on the international market for mining operations, etc? Will the Ban adversely affect mercury recyclers?

- One state believed wastes containing elemental mercury should not be exempt under the ban. They felt this was not the intent of the export ban and that there should not be exports of mercury contaminated wastes. Also, they believed the ban would not adversely affect mercury recyclers. They thought the recycler’s services would be needed to process wastes to recover and transfer mercury to the long term storage facility or facilities. Recyclers would also have the ability to sell elemental mercury to domestic customers.
- Other states believe the ban will significantly affect the international market for mercury. By taking “elemental mercury” out of the international supply/demand equation, production and shipping of “new” and waste mercury worldwide may increase. It may become more profitable to ship wastes containing recoverable mercury overseas, rather than convert it into elemental mercury in the US which is then subject to MEBA including long-term "storage" fees.

What would be the regulatory status of “elemental mercury” that is intentionally contaminated to reduce its purity to avoid the Ban?

- One state believed such material would be subject to the export ban including material that had been chemically altered (e.g., converted to mercury compounds).
- Other states did not believe this practice would be banned by RCRA or MEBA as long as the material was not considered a waste. They did not believe this would automatically subject the material to the LDR prohibition on “dilution”.

The law indicates that the elemental mercury will be managed and stored at a long-term designated facility subject to the requirements of the Solid Waste Disposal Act, including the requirements of subtitle C of the Act. Would the elemental mercury in long-term storage be considered a hazardous waste?

- All states believed the elemental mercury in the long term storage facility would be considered a hazardous waste.

If it is considered a hazardous waste, at what point would elemental mercury become a hazardous waste: when the decision to send it to long-term storage is made? When it enters the long-term storage facility?

- All states believed elemental mercury would become subject to the RCRA requirements when the decision is made to send it to the storage facility.

What would be the regulatory status of a retort facility that processes (increases purity to “elemental mercury” standard or higher) mercury bearing material that has been designated for storage at the long-term storage facility?

- While some states believed a retort facility processing or purifying mercury for domestic commodity sale or long term storage would be regulated under RCRA as it is now regulated under RCRA. Other states thought the retort could be considered a generator, co-generator or even a treatment facility of hazardous waste.

Would the status of mercury containing devices currently managed as universal waste be changed if the mercury from those devices is sent to the long-term designated facility instead of a destination facility?

- Most states felt the status of universal waste would remain unchanged, but several states believed that neither the retort nor long term storage facility could be considered a destination facility in this situation; therefore, the material would not be a universal waste.

The Ban states “A designated facility in existence on or before January 1, 2013, is authorized to operate under interim status pursuant to section 3005(e) of the Solid Waste Disposal Act until a final decision on a permit application is made pursuant to section 3005(c) of the Solid Waste Disposal Act. Not later than January 1, 2015, the Administrator of the Environmental Protection Agency (or an authorized State) shall issue a final decision on the permit application.” Would a designated facility be able to obtain interim status under the state program?

- All states believed the repository would not qualify for interim status under state laws and regulations. Most thought there would be some kind of Federal interim status, but there would be some potential conflict with the State's hazardous waste program authorization.

What would happen if the designated facility has a current permit?

- Most states believed that if a site is chosen for the designated facility that already has a RCRA permit, the permit could be modified to allow construction and operation of the designated facility. There was no agreement about the status of the designated facility prior to the issuance of the modification. Some felt no construction would be allowed, while others thought a temporary authorization might be obtained that would allow construction and even operation prior to the approval of the modification.

What funding mechanism would be used to cover the state's permitting/review process?

- Most states have statutory and regulatory authority to recover certain direct and indirect costs associated with engineering and geologic review of permit applications and issuance of permits and permit modifications. Some states voiced an opinion that some of the fee collected for long term storage be given to the site state to cover such costs.