



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

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OFFICE OF  
LAND AND EMERGENCY  
MANAGEMENT

David Case  
Executive Director  
Environmental Technology Council  
1112 16th Street, NW  
Suite 420  
Washington, D.C. 20036

Dear Mr. Case:

Thank you for your letter of March 10, 2020, concerning appropriate management of waste elemental mercury and how mercury handling requirements may have changed over the past several years as different aspects of the Mercury Export Ban Act (MEBA) have been progressively implemented. While there are many aspects to MEBA (and the 2016 Lautenberg Act, which modified some aspects of MEBA), your letter focused on two questions of concern to your members.

Your first question concerns whether a recycling facility for mercury (e.g., retort facility) is exempt from Resource Conservation and Recovery (RCRA) permitting if some or all recovered elemental mercury is sent to the MEBA-required Department of Energy (DOE) long-term mercury storage repository. This question arises because until the implementation of MEBA's export ban, most mercury waste retort units have operated as RCRA-exempt recycling units, without RCRA treatment permits, because they could sell all the mercury they recovered as product. However, a portion of mercury sales always included some mercury export for sale in the global market, and MEBA prohibited elemental mercury export. The result has been that mercury waste retort operators now generate some surplus elemental mercury, which, because it is unsaleable, is RCRA hazardous waste (U151). MEBA anticipated this surplus and required DOE to establish the long-term storage facility to address it.

As EPA has explained previously,<sup>1</sup> MEBA does not affect RCRA or RCRA regulations, with the exception that elemental mercury stored at the DOE facility, or elemental mercury that is destined for the DOE facility and accumulated for 90 days or less, is not subject to the RCRA storage prohibition, 3004(j) of the Solid Waste Disposal Act. Elemental mercury sent to the DOE facility is considered discarded and thus constitutes a solid waste. Because the elemental mercury is a solid waste and is also classified as a hazardous waste under EPA's regulations, it is considered a hazardous waste under RCRA Subtitle C. The decision to deliver elemental mercury into DOE storage is considered discard because a decision was made by the generator to place that mercury into indefinite storage and not to use it or sell it domestically. A determination as to whether a specific retorting unit is part of a legitimate recycling process, and therefore is exempt from permitting per 40 CFR 261.6(c), is a case-specific one and is generally made by the RCRA-authorized state or by the EPA Region in states that are not authorized for the RCRA permitting program and may take into consideration the potential for domestic sale of recovered mercury, among other factors.

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<sup>1</sup> U.S. EPA *Questions and Answers on the Mercury Export Ban Act of 2008*, <https://www.epa.gov/mercury/questions-and-answers-mercury-export-ban-act-meba-2008>

Your second question concerns whether Treatment, Storage, and Disposal Facilities (TSDFs) can store elemental mercury at their RCRA-permitted facilities rather than sending it to the DOE long-term storage facility. This question arises because MEBA authorizes RCRA-permitted TSDFs to store surplus/waste elemental mercury on an extended, interim basis, in the event that the MEBA-required DOE storage facility was unable to accept mercury on the effective date of the export ban (January 1, 2013). TSDFs serving as interim storage facilities were required by MEBA to certify to DOE that they would not sell, and would forward all interim stored mercury to the DOE facility when the facility was able to accept it.

Both MEBA and RCRA requirements are involved in answering your question. Any mercury stored by the TSDFs under the extended, interim storage authority of MEBA needs to be forwarded to the DOE facility on an appropriate schedule, as required by the MEBA certification requirements, regardless of how long the mercury has been stored. Such mercury could have been sent by a generator for interim storage, or may be mercury generated at the facility by retorting mercury waste sent for treatment.

Mercury accumulated by the TSDF for less than one year to facilitate appropriate treatment and disposal, and for which the extended storage provisions of MEBA have never been applied, need not be sent to the DOE storage facility. However, at the end of one year of storage, such mercury would be required to be sent for appropriate treatment and disposal, or sent to the DOE facility, to avoid violating RCRA's ban on the long-term storage of hazardous waste in lieu of treatment and disposal<sup>2</sup>. EPA anticipates that RCRA recordkeeping requirements, as well as manifests and TSDF billing records, would be adequate to distinguish between these two possible situations.

Thank you again for your questions about mercury storage and mercury retort units. EPA plans to continue to monitor this issue in coordination with our state partners. If you have additional questions or information for us to consider, please do not hesitate to contact my office or Gregory Helms of my staff at [helms.greg@epa.gov](mailto:helms.greg@epa.gov).

Sincerely,

Kathleen Salyer, Acting Director  
Office of Resource Conservation and Recovery

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<sup>2</sup> See 40 CFR 268.50 (b) and (c). Given the existence of the DOE storage facility, the Agency believes it would be difficult for a TSD to make the showing required to extend storage beyond one year.