

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 906

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## AN ACT

To prohibit the sale, distribution, transfer, and 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 2008”.

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) EXCEPTIONS.—Paragraph (1) shall not  
11 apply to—

12           “(A) a transfer between Federal agencies  
13 of elemental mercury for the sole purpose of fa-  
14 cilitating storage of mercury to carry out this  
15 Act; or

16           “(B) a conveyance, sale, distribution, or  
17 transfer of coal.

18           “(3) LEASES OF FEDERAL COAL.—Nothing in  
19 this subsection prohibits the leasing of coal.”.

20 **SEC. 4. PROHIBITION ON EXPORT OF ELEMENTAL MER-**  
21 **CURY.**

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

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

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

2 “(c) PROHIBITION ON EXPORT OF ELEMENTAL MER-  
3 CURY.—

4 “(1) PROHIBITION.—Effective January 1,  
5 2013, the export of elemental mercury from the  
6 United States is prohibited.

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

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

11 “(A) REPORT.—Not later than one year  
12 after the date of enactment of the Mercury Ex-  
13 port Ban Act of 2008, the Administrator shall  
14 publish and submit to Congress a report on  
15 mercuric chloride, mercurous chloride or cal-  
16 omel, mercuric oxide, and other mercury com-  
17 pounds, if any, that may currently be used in  
18 significant quantities in products or processes.  
19 Such report shall include an analysis of—

20 “(i) the sources and amounts of each  
21 of the mercury compounds imported into  
22 the United States or manufactured in the  
23 United States annually;

24 “(ii) the purposes for which each of  
25 these compounds are used domestically, the

1 amount of these compounds currently con-  
2 sumed annually for each purpose, and the  
3 estimated amounts to be consumed for  
4 each purpose in 2010 and beyond;

5 “(iii) the sources and amounts of each  
6 mercury compound exported from the  
7 United States annually in each of the last  
8 three years;

9 “(iv) the potential for these com-  
10 pounds to be processed into elemental mer-  
11 cury after export from the United States;  
12 and

13 “(v) other relevant information that  
14 Congress should consider in determining  
15 whether to extend the export prohibition to  
16 include one or more of these mercury com-  
17 pounds.

18 “(B) PROCEDURE.—For the purpose of  
19 preparing the report under this paragraph, the  
20 Administrator may utilize the information gath-  
21 ering authorities of this title, including sections  
22 10 and 11.

23 “(4) ESSENTIAL USE EXEMPTION.—(A) Any  
24 person residing in the United States may petition  
25 the Administrator for an exemption from the prohi-

1        bition in paragraph (1), and the Administrator may  
2        grant by rule, after notice and opportunity for com-  
3        ment, an exemption for a specified use at an identi-  
4        fied foreign facility if the Administrator finds that—

5                “(i) nonmercury alternatives for the speci-  
6                fied use are not available in the country where  
7                the facility is located;

8                “(ii) there is no other source of elemental  
9                mercury available from domestic supplies (not  
10              including new mercury mines) in the country  
11              where the elemental mercury will be used;

12              “(iii) the country where the elemental mer-  
13              cury will be used certifies its support for the ex-  
14              emption;

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

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



1           “(vi) the elemental mercury will be handled  
2           and managed in a manner that will protect  
3           human health and the environment, taking into  
4           account local, regional, and global human  
5           health and environmental impacts; and

6           “(vii) the export of elemental mercury for  
7           the specified use is consistent with international  
8           obligations of the United States intended to re-  
9           duce global mercury supply, use, and pollution.

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

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

23          “(D) A violation of this subsection or the terms  
24          and conditions of an exemption, or the submission of  
25          false information in connection therewith, shall be

1 considered a prohibited act under section 15, and  
2 shall be subject to penalties under section 16, in-  
3 junctive relief under section 17, and citizen suits  
4 under section 20.

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

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

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

13 (a) DESIGNATION OF FACILITY.—

14 (1) IN GENERAL.—Not later than January 1,  
15 2010, the Secretary of Energy (referred to in this  
16 section as the “Secretary”) shall designate a facility  
17 or facilities of the Department of Energy, which  
18 shall not include the Y-12 National Security Com-  
19 plex or any other portion or facility of the Oak  
20 Ridge Reservation of the Department of Energy, for  
21 the purpose of long-term management and storage  
22 of elemental mercury generated within the United  
23 States.

24 (2) OPERATION OF FACILITY.—Not later than  
25 January 1, 2013, the facility designated in para-

1 graph (1) shall be operational and shall accept cus-  
2 tody, for the purpose of long-term management and  
3 storage, of elemental mercury generated within the  
4 United States and delivered to such facility.

5 (b) FEES.—

6 (1) IN GENERAL.—After consultation with per-  
7 sons who are likely to deliver elemental mercury to  
8 a designated facility for long-term management and  
9 storage under the program prescribed in subsection  
10 (a), and with other interested persons, the Secretary  
11 shall assess and collect a fee at the time of delivery  
12 for providing such management and storage, based  
13 on the pro rata cost of long-term management and  
14 storage of elemental mercury delivered to the facil-  
15 ity. The amount of such fees—

16 (A) shall be made publically available not  
17 later than October 1, 2012;

18 (B) may be adjusted annually; and

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

21 (2) COSTS.—The costs referred to in paragraph  
22 (1)(C) are the costs to the Department of Energy of  
23 providing such management and storage, including  
24 facility operation and maintenance, security, moni-  
25 toring, reporting, personnel, administration, inspec-

1 tions, training, fire suppression, closure, and other  
2 costs required for compliance with applicable law.  
3 Such costs shall not include costs associated with  
4 land acquisition or permitting of a designated facil-  
5 ity under the Solid Waste Disposal Act or other ap-  
6 plicable law. Building design and building construc-  
7 tion costs shall only be included to the extent that  
8 the Secretary finds that the management and stor-  
9 age of elemental mercury accepted under the pro-  
10 gram under this section cannot be accomplished  
11 without construction of a new building or buildings.

12 (c) REPORT.—Not later than 60 days after the end  
13 of each Federal fiscal year, the Secretary shall transmit  
14 to the Committee on Energy and Commerce of the House  
15 of Representatives and the Committee on Environment  
16 and Public Works of the Senate a report on all of the  
17 costs incurred in the previous fiscal year associated with  
18 the long-term management and storage of elemental mer-  
19 cury. Such report shall set forth separately the costs asso-  
20 ciated with activities taken under this section.

21 (d) MANAGEMENT STANDARDS FOR A FACILITY.—

22 (1) GUIDANCE.—Not later than October 1,  
23 2009, the Secretary, after consultation with the Ad-  
24 ministrator of the Environmental Protection Agency  
25 and all appropriate State agencies in affected States,

1 shall make available, including to potential users of  
2 the long-term management and storage program es-  
3 tablished under subsection (a), guidance that estab-  
4 lishes procedures and standards for the receipt,  
5 management, and long-term storage of elemental  
6 mercury at a designated facility or facilities, includ-  
7 ing requirements to ensure appropriate use of flasks  
8 or other suitable shipping containers. Such proce-  
9 dures and standards shall be protective of human  
10 health and the environment and shall ensure that  
11 the elemental mercury is stored in a safe, secure,  
12 and effective manner. In addition to such procedures  
13 and standards, elemental mercury managed and  
14 stored under this section at a designated facility  
15 shall be subject to the requirements of the Solid  
16 Waste Disposal Act, including the requirements of  
17 subtitle C of that Act, except as provided in sub-  
18 section (g)(2) of this section. A designated facility in  
19 existence on or before January 1, 2013, is author-  
20 ized to operate under interim status pursuant to sec-  
21 tion 3005(e) of the Solid Waste Disposal Act until  
22 a final decision on a permit application is made pur-  
23 suant to section 3005(c) of the Solid Waste Disposal  
24 Act. Not later than January 1, 2015, the Adminis-  
25 trator of the Environmental Protection Agency (or

1 an authorized State) shall issue a final decision on  
2 the permit application.

3 (2) TRAINING.—The Secretary shall conduct  
4 operational training and emergency training for all  
5 staff that have responsibilities related to elemental  
6 mercury management, transfer, storage, monitoring,  
7 or response.

8 (3) EQUIPMENT.—The Secretary shall ensure  
9 that each designated facility has all equipment nec-  
10 essary for routine operations, emergencies, moni-  
11 toring, checking inventory, loading, and storing ele-  
12 mental mercury at the facility.

13 (4) FIRE DETECTION AND SUPPRESSION SYS-  
14 TEMS.—The Secretary shall—

15 (A) ensure the installation of fire detection  
16 systems at each designated facility, including  
17 smoke detectors and heat detectors; and

18 (B) ensure the installation of a permanent  
19 fire suppression system, unless the Secretary  
20 determines that a permanent fire suppression  
21 system is not necessary to protect human  
22 health and the environment.

23 (e) INDEMNIFICATION OF PERSONS DELIVERING  
24 ELEMENTAL MERCURY.—

1           (1) IN GENERAL.—(A) Except as provided in  
2           subparagraph (B) and subject to paragraph (2), the  
3           Secretary shall hold harmless, defend, and indemnify  
4           in full any person who delivers elemental mercury to  
5           a designated facility under the program established  
6           under subsection (a) from and against any suit,  
7           claim, demand or action, liability, judgment, cost, or  
8           other fee arising out of any claim for personal injury  
9           or property damage (including death, illness, or loss  
10          of or damage to property or economic loss) that re-  
11          sults from, or is in any manner predicated upon, the  
12          release or threatened release of elemental mercury as  
13          a result of acts or omissions occurring after such  
14          mercury is delivered to a designated facility de-  
15          scribed in subsection (a).

16           (B) To the extent that a person described in  
17          subparagraph (A) contributed to any such release or  
18          threatened release, subparagraph (A) shall not  
19          apply.

20           (2) CONDITIONS.—No indemnification may be  
21          afforded under this subsection unless the person  
22          seeking indemnification—

23                   (A) notifies the Secretary in writing within  
24                   30 days after receiving written notice of the  
25                   claim for which indemnification is sought;

1 (B) furnishes to the Secretary copies of  
2 pertinent papers the person receives;

3 (C) furnishes evidence or proof of any  
4 claim, loss, or damage covered by this sub-  
5 section; and

6 (D) provides, upon request by the Sec-  
7 retary, access to the records and personnel of  
8 the person for purposes of defending or settling  
9 the claim or action.

10 (3) AUTHORITY OF SECRETARY.—(A) In any  
11 case in which the Secretary determines that the De-  
12 partment of Energy may be required to make indem-  
13 nification payments to a person under this sub-  
14 section for any suit, claim, demand or action, liabil-  
15 ity, judgment, cost, or other fee arising out of any  
16 claim for personal injury or property damage re-  
17 ferred to in paragraph (1)(A), the Secretary may  
18 settle or defend, on behalf of that person, the claim  
19 for personal injury or property damage.

20 (B) In any case described in subparagraph (A),  
21 if the person to whom the Department of Energy  
22 may be required to make indemnification payments  
23 does not allow the Secretary to settle or defend the  
24 claim, the person may not be afforded indemnifica-  
25 tion with respect to that claim under this subsection.



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

4 (g) EFFECT ON OTHER LAW.—

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

9 (2) EXCEPTION.—(A) Elemental mercury that  
10 the Secretary is storing on a long-term basis shall  
11 not be subject to the storage prohibition of section  
12 3004(j) of the Solid Waste Disposal Act (42 U.S.C.  
13 6924(j)). For the purposes of section 3004(j) of the  
14 Solid Waste Disposal Act, a generator accumulating  
15 elemental mercury destined for a facility designated  
16 by the Secretary under subsection (a) for 90 days or  
17 less shall be deemed to be accumulating the mercury  
18 to facilitate proper treatment, recovery, or disposal.

19 (B) Elemental mercury may be stored at a fa-  
20 cility with respect to which any permit has been  
21 issued under section 3005(c) of the Solid Waste Dis-  
22 posal Act (42 U.S.C. 6925(c)), and shall not be sub-  
23 ject to the storage prohibition of section 3004(j) of  
24 the Solid Waste Disposal Act (42 U.S.C. 6924(j))  
25 if—

1 (i) the Secretary is unable to accept the  
2 mercury at a facility designated by the Sec-  
3 retary under subsection (a) for reasons beyond  
4 the control of the owner or operator of the per-  
5 mitted facility;

6 (ii) the owner or operator of the permitted  
7 facility certifies in writing to the Secretary that  
8 it will ship the mercury to the designated facil-  
9 ity when the Secretary is able to accept the  
10 mercury; and

11 (iii) the owner or operator of the permitted  
12 facility certifies in writing to the Secretary that  
13 it will not sell, or otherwise place into com-  
14 merce, the mercury.

15 This subparagraph shall not apply to mercury with  
16 respect to which the owner or operator of the per-  
17 mitted facility fails to comply with a certification  
18 provided under clause (ii) or (iii).

19 (h) STUDY.—Not later than July 1, 2014, the Sec-  
20 retary shall transmit to the Congress the results of a  
21 study, conducted in consultation with the Administrator  
22 of the Environmental Protection Agency, that—

23 (1) determines the impact of the long-term stor-  
24 age program under this section on mercury recy-  
25 cling; and

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

3 **SEC. 6. REPORT TO CONGRESS.**

4           At least 3 years after the effective date of the prohibi-  
5           tion on export of elemental mercury under section 12(c)  
6           of the Toxic Substances Control Act (15 U.S.C. 2611(c)),  
7           as added by section 4 of this Act, but not later than Janu-  
8           ary 1, 2017, the Administrator of the Environmental Pro-  
9           tection Agency shall transmit to the Committee on Energy  
10          and Commerce of the House of Representatives and the  
11          Committee on Environment and Public Works of the Sen-  
12          ate a report on the global supply and trade of elemental  
13          mercury, including but not limited to the amount of ele-  
14          mental mercury traded globally that originates from pri-  
15          mary mining, where such primary mining is conducted,  
16          and whether additional primary mining has occurred as  
17          a consequence of this Act.

          Passed the Senate September 26 (legislative day,  
September 17), 2008.

Attest:

*Secretary.*

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 906**

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**AN ACT**

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