

## MERCURY POLLUTION REDUCTION ACT

DECEMBER 16, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WAXMAN, from the Committee on Energy and Commerce,  
submitted the following

### R E P O R T

together with

### DISSENTING VIEWS

[To accompany H.R. 2190]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2190) to amend the Toxic Substances Control Act to phase out the use of mercury in the manufacture of chlorine and caustic soda, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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## AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Mercury Pollution Reduction Act”.

**SEC. 2. FINDINGS.**

Congress finds that—

- (1) mercury and mercury compounds are highly toxic to humans, ecosystems, and wildlife;
- (2) as many as 10 percent of women in the United States of childbearing age have mercury in their bloodstreams at a level that could pose risks to their unborn babies, and hundreds of thousands of children born annually in the United States are at risk of neurological problems relating to mercury exposure in utero;
- (3) the most significant source of mercury exposure to people in the United States is ingestion of mercury-contaminated fish;
- (4) the long-term solution to mercury pollution is to minimize global mercury use and releases of mercury to eventually achieve reduced contamination levels in the environment, rather than reducing fish consumption, since uncontaminated fish represents a critical and healthy source of nutrition for people worldwide;
- (5) mercury pollution is a transboundary pollutant that—
  - (A) is deposited locally, regionally, and globally; and
  - (B) affects bodies of water near industrial areas, such as the Great Lakes, as well as bodies of water in remote areas, such as the Arctic Circle;
- (6) of the approximately 30 plants in the United States that produce chlorine, only 7 use the obsolete “mercury cell” chlor-alkali process, and 4 have not yet committed to phasing out mercury use;
- (7)(A) less than 5 percent of the total quantity of chlorine and caustic soda produced in the United States comes from the chlor-alkali plants described in paragraph (6) that use the mercury cell chlor-alkali process;
- (B) cost-effective alternatives are available and in use in the remaining 95 percent of chlorine and caustic soda production; and
- (C) other countries, including Japan, have already banned the mercury cell chlor-alkali process;
- (8) the chlor-alkali industry acknowledges that—
  - (A) mercury can contaminate products manufactured at mercury cell facilities; and
  - (B) the use of some of those products results in the direct and indirect release of mercury;
- (9) despite those quantities of mercury known to have been used or to be in use, neither the chlor-alkali industry nor the Environmental Protection Agency is able—
  - (A) to adequately account for the disposition of the mercury used at those facilities; or
  - (B) to accurately estimate current mercury emissions; and
- (10) it is critically important that the United States work aggressively toward the minimization of supply, demand, and releases of mercury, both domestically and internationally.

**SEC. 3. STATEMENT OF POLICY.**

Congress declares that the United States should develop policies and programs that will—

- (1) reduce mercury use and emissions within the United States;
- (2) reduce mercury releases from the reservoir of mercury currently in use or circulation within the United States; and
- (3) reduce exposures to mercury, particularly exposures of women of child-bearing age and young children.

**SEC. 4. USE OF MERCURY IN CHLORINE AND CAUSTIC SODA MANUFACTURING.**

(a) IN GENERAL.—Title I of the Toxic Substances Control Act (15 U.S.C. 2601 et seq.) is amended by inserting after section 6 the following:

**“SEC. 6A. USE OF MERCURY IN CHLORINE AND CAUSTIC SODA MANUFACTURING.**

“(a) DEFINITION OF CHLOR-ALKALI FACILITY.—In this section, the term ‘chlor-alkali facility’ means a facility used for the manufacture of chlorine or caustic soda using a mercury cell process.

“(b) PROHIBITION.—

“(1) IN GENERAL.—Except as otherwise provided in this subsection, it shall be unlawful to manufacture chlorine or caustic soda using mercury cells at any facility in the United States.

“(2) NOTICE.—The owner or operator of any existing chlor-alkali facility shall notify the Administrator no later than June 30, 2012, whether it will—

“(A) replace its chlor-alkali facility with a new manufacturing facility that does not use mercury; or

“(B) cease operations.

“(3) CLOSURE.—A chlor-alkali facility for which a closure notice is filed under paragraph (2)(B) shall cease manufacturing chlorine or caustic soda using mercury cells no later than June 30, 2013.

“(4) REPLACEMENT.—A chlor-alkali facility for which a replacement notice is filed under paragraph (2)(A) may continue to manufacture chlorine or caustic soda using mercury cells until all of the permitting, financing, engineering, and construction of a non-mercury replacement facility is complete, or June 30, 2015, whichever is earlier.

“(c) EXPORT BAN.—Effective on the date of the enactment of this section, the export of any elemental mercury or the sale of elemental mercury for purposes of export, including compounds and mixtures containing elemental mercury, by the owner or operator of a chlor-alkali facility is prohibited.

“(d) SAVINGS PROVISION.—Nothing in this section affects the ability of the owner or operator of any chlor-alkali facility to store elemental mercury in accordance with section 5(g)(2) of the Mercury Export Ban Act of 2008 (42 U.S.C. 6939f).”

(b) CONFORMING AMENDMENTS.—(1) The table of contents of the Toxic Substances Control Act (15 U.S.C. 2601 note) is amended by inserting after the item relating to section 6 the following:

Sec. 6A. Use of mercury in chlorine and caustic soda manufacturing.”.

(2) Paragraphs (1) and (2) of section 15 of such Act are each amended by striking “or 6” and inserting “, 6 or 6A”.

#### PURPOSE AND SUMMARY

H.R. 2190, the “Mercury Pollution Reduction Act”, was introduced on April 30, 2009, by Rep. Janice Schakowsky (D-IL). H.R. 2190 is intended to eliminate a significant source of mercury pollution by prohibiting the manufacture of chlorine or caustic soda using mercury in the United States. In addition, the bill prohibits the export of mercury and mercury compounds by chlor-alkali facilities, effective immediately upon enactment.

#### BACKGROUND AND NEED FOR LEGISLATION

Mercury pollution is a threat to the environment and to public health. It is a known neurotoxin that accumulates in the body and can cause serious, permanent harm to human health, especially to children. Mercury can be emitted from both natural and man-made sources into the air, water or land, resulting in contamination of the local, regional, and global environment. EPA estimates that one-third of mercury emissions from the United States stay within our nation’s borders, with a disparate amount deposited in the Northeast due to weather patterns, while the balance enters the global ecosystem.<sup>1</sup> Once in the environment, mercury can alter into a more toxic form, methylmercury, which builds up in the fish that humans consume.

One significant source of mercury emissions in the United States is chlorine production, although mercury is not necessary to the production of chlorine, and not all chlorine plants use mercury technology. In fact, more than 95% of the chlorine production ca-

<sup>1</sup> Environmental Protection Agency, Mercury: Human Exposure (online at [www.epa.gov/mercury/exposure.htm](http://www.epa.gov/mercury/exposure.htm)) (accessed Dec. 14, 2009).

capacity in the United States is now mercury-free. Only four chlor-alkali plants in the United States continue to use an outdated technology that releases mercury in significant quantities into the communities in which they operate, without any plans to modernize to the alternative mercury-free technologies. All of the areas surrounding the four facilities have fishing advisories warning of elevated mercury levels.<sup>2</sup>

Current law does not adequately address the use of mercury in chlorine production. While the Environmental Protection Agency (EPA) has taken steps since 2002 towards reducing mercury emissions from chlor-alkali plants under the Clean Air Act,<sup>3</sup> these facilities continue to emit significant amounts of mercury each year despite the availability of safer, mercury-free technologies.

There are significant costs associated with modernization of these facilities, estimated in an internal EPA memorandum to be on average \$84 million per facility.<sup>4</sup> This memorandum, however, goes on to state that “the conversion, once completed, would have many benefits, including less energy demand and fewer procedures that are required to support the purchase and handling of mercury, a hazardous substance.”

#### LEGISLATIVE HISTORY

The Mercury Pollution Reduction Act originally was introduced as H.R. 5580, the Missing Mercury in Manufacturing Monitoring and Mitigation Act, in the 110th Congress. That bill was introduced by Rep. Janice Schakowsky, for herself and Reps. Henry Waxman (D-CA), Keith Ellison (D-MN), and Mazie K. Hirono (D-HI).

On April 30, 2009, Rep. Schakowsky, for herself and Reps. Howard L. Berman (D-CA), Earl Blumenauer (D-OR), Russ Carnahan (D-MO), Rosa L. DeLauro (D-CT), Keith Ellison (D-MN), Sam Farr (D-CA), Raul M. Grijalva (D-AZ), Phil Hare (D-IL), Mazie K. Hirono (D-HI), Barbara Lee (D-CA), James P. Moran (D-VA), Grace F. Napolitano (D-CA), Eleanor Holmes Norton (D-DC), Frank Pallone, Jr. (D-NJ), David E. Price (D-NC), Joe Sestak (D-PA), Diane E. Watson (D-CA), and Lynn C. Woolsey (D-CA), reintroduced the bill as the “Mercury Pollution Reduction Act” in the 111th Congress. The bill was referred to the Subcommittee on Commerce, Trade, and Consumer Protection on May 1, 2009.

On May 12, 2009, the Subcommittee on Commerce, Trade, and Consumer Protection held a legislative hearing on H.R. 2190. Testimony was heard by witnesses representing industry as well as public health and academic organizations.

<sup>2</sup> Ohio Environmental Protection Agency, Ohio Sport Fish Consumption Advisory—Ashtabula County (online at [www.epa.state.oh.us/dsw/fishadvisory/counties/Ashtabula.aspx](http://www.epa.state.oh.us/dsw/fishadvisory/counties/Ashtabula.aspx)) (accessed Dec. 14, 2009); Tennessee Wildlife Resources Agency, Contaminants in Fish (online at [www.state.tn.us/twra/fish/contaminants.html](http://www.state.tn.us/twra/fish/contaminants.html)) (accessed Dec. 14, 2009); West Virginia Department of Health and Human Resources, Fish Consumption Advisories Available for 2009 (online at [www.wvdhhr.org/fish/current.asp](http://www.wvdhhr.org/fish/current.asp)) (accessed Dec. 14, 2009); Georgia Department of Natural Resources, Guidelines for Eating Fish from Georgia Waters (2007) (online at [www.gaepd.org/Files\\_PDF/gaenviron/fish\\_advisory/GADNR\\_FishConsumptionGuidelines\\_Y2007.pdf](http://www.gaepd.org/Files_PDF/gaenviron/fish_advisory/GADNR_FishConsumptionGuidelines_Y2007.pdf))

<sup>3</sup> Environmental Protection Agency, Rule and Implementation Information for National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants (online at [www.epa.gov/ttn/atw/hgcellcl/hgcellclpg.html](http://www.epa.gov/ttn/atw/hgcellcl/hgcellclpg.html)) (accessed Dec. 14, 2009).

<sup>4</sup> Memorandum from Donna Lee Jones, PhD, EPA/OAQPS/SPDD/MMG; Heather P. Brown, P.E., and Phil Norwood, EC/R Incorporated to Project File—Mercury Chlor-Alkali NESHAP, Revised Conversion Costs and Baseline Emissions—Conversion from Mercury Cell Chlor-Alkali to Membrane Cell Technology (Sept. 15, 2009).

## COMMITTEE CONSIDERATION

On June 3, 2009, the Subcommittee met in open markup session to consider H.R. 2190. An amendment in the nature of a substitute, offered as a manager's amendment by Subcommittee Chairman Bobby L. Rush, made several changes to the bill as introduced. The manager's amendment provided a legal mechanism for the affected facilities to store mercury between the date of enactment and the date on which a permanent storage facility becomes available, which is currently scheduled for January 2013. It also deleted reporting and inventory requirements seen as redundant with current obligations. The Subcommittee subsequently favorably forwarded H.R. 2190 to the full Committee, amended, by a rollcall vote of 16 yeas to 10 nays.

The Committee on Energy and Commerce met in open markup session on October 21, 2009, to consider H.R. 2190. An amendment offered by Rep. Charlie Melancon (D-LA) to modify the process and deadlines for transition was approved by a voice vote. The Committee subsequently ordered H.R. 2190 reported to the House, amended, by a rollcall vote of 29 yeas and 14 nays.

## COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments and motions thereto. The Committee agreed to a motion by Mr. Waxman to order H.R. 2190 favorably reported to the House, amended, by a record vote of 29 yeas and 14 nays. The following is the recorded votes taken during Committee consideration, including the names of those Members voting for and against:

**COMMITTEE ON ENERGY AND COMMERCE – 111<sup>TH</sup> CONGRESS**  
**ROLL CALL VOTE # 133**

**BILL:** H.R. 2190, the "Mercury Pollution Reduction Act".

**AMENDMENT:** An amendment in the nature of a substitute by Mr. Gingrey, Mrs. Blackburn, and Mr. Murphy of Pennsylvania, # 1, to strike the *Findings* section, amend the *Statement of Policy*, and amend the text to be inserted into the Toxic Substances Control Act.

**DISPOSITION:** NOT AGREED TO by a roll call vote of 19 yeas to 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall	X		
Mr. Markey		X		Mr. Upton	X		
Mr. Boucher		X		Mr. Stearns			
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon				Mr. Whitfield	X		
Mr. Rush		X		Mr. Shimkus	X		
Ms. Eshoo		X		Mr. Shadegg			
Mr. Stupak				Mr. Blunt	X		
Mr. Engel		X		Mr. Buyer			
Mr. Green		X		Mr. Radanovich			
Ms. DeGette		X		Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack	X		
Mr. Doyle				Mr. Walden			
Ms. Harman				Mr. Terry	X		
Ms. Schakowsky		X		Mr. Rogers	X		
Mr. Gonzalez				Mrs. Myrick			
Mr. Inslee				Mr. Sullivan	X		
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess	X		
Mr. Weiner				Ms. Blackburn	X		
Mr. Matheson		X		Mr. Gingrey	X		
Mr. Butterfield				Mr. Scalise	X		
Mr. Melancon		X					
Mr. Barrow	X						
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space	X						
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

**COMMITTEE ON ENERGY AND COMMERCE – 111<sup>TH</sup> CONGRESS**  
**ROLL CALL VOTE # 134**

**BILL:** H.R. 2190, the “Mercury Pollution Reduction Act”.

**AMENDMENT:** An amendment by Mr. Burgess, # 3, to add a section at the end of the bill to suspend the provisions of this Act if job losses associated with implementation of this Act exceed 500 jobs.

**DISPOSITION:** NOT AGREED TO by a roll call vote of 16 yeas to 31 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall	X		
Mr. Markey		X		Mr. Upton	X		
Mr. Boucher				Mr. Stearns	X		
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon		X		Mr. Whitfield	X		
Mr. Rush		X		Mr. Shimkus	X		
Ms. Eshoo		X		Mr. Shadegg			
Mr. Stupak		X		Mr. Blunt	X		
Mr. Engel		X		Mr. Buyer			
Mr. Green		X		Mr. Radanovich			
Ms. DeGette				Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack			
Mr. Doyle		X		Mr. Walden			
Ms. Harman				Mr. Terry	X		
Ms. Schakowsky		X		Mr. Rogers			
Mr. Gonzalez		X		Mrs. Myrick			
Mr. Inslee				Mr. Sullivan	X		
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess	X		
Mr. Weiner				Ms. Blackburn	X		
Mr. Matheson		X		Mr. Gingrey	X		
Mr. Butterfield		X		Mr. Scalise	X		
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

**COMMITTEE ON ENERGY AND COMMERCE – 111<sup>TH</sup> CONGRESS  
ROLL CALL VOTE # 135**

**BILL:** H.R. 2190, the "Mercury Pollution Reduction Act".

**AMENDMENT:** An amendment by Mr. Burgess, # 4, to add a section at the end of the bill to suspend the provisions of this Act if job losses associated with implementation of this Act exceed 100 jobs.

**DISPOSITION:** NOT AGREED TO by a roll call vote of 15 yeas to 30 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall	X		
Mr. Markey				Mr. Upton	X		
Mr. Boucher				Mr. Stearns	X		
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon		X		Mr. Whitfield	X		
Mr. Rush		X		Mr. Shimkus	X		
Ms. Eshoo		X		Mr. Shadegg			
Mr. Stupak		X		Mr. Blunt	X		
Mr. Engel		X		Mr. Buyer			
Mr. Green		X		Mr. Radanovich			
Ms. DeGette				Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack			
Mr. Doyle		X		Mr. Walden			
Ms. Harman				Mr. Terry	X		
Ms. Schakowsky		X		Mr. Rogers			
Mr. Gonzalez		X		Mrs. Myrick			
Mr. Inslee				Mr. Sullivan			
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess	X		
Mr. Weiner				Ms. Blackburn	X		
Mr. Matheson		X		Mr. Gingrey	X		
Mr. Butterfield		X		Mr. Scalise	X		
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

**COMMITTEE ON ENERGY AND COMMERCE – 111<sup>TH</sup> CONGRESS**  
**ROLL CALL VOTE # 136**

**BILL:** H.R. 2190, the "Mercury Pollution Reduction Act".

**AMENDMENT:** An amendment by Mr. Burgess, # 5, to add a section at the end of the bill to suspend the provisions of this Act if one or more chlor-alkali facilities in the United States are likely to be closed as a result of implementation of this Act.

**DISPOSITION:** NOT AGREED TO by a roll call vote of 15 yeas to 30 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall	X		
Mr. Markey				Mr. Upton	X		
Mr. Boucher				Mr. Stearns	X		
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon		X		Mr. Whitfield	X		
Mr. Rush		X		Mr. Shimkus	X		
Ms. Eshoo		X		Mr. Shadegg			
Mr. Stupak		X		Mr. Blunt	X		
Mr. Engel		X		Mr. Buyer			
Mr. Green		X		Mr. Radanovich			
Ms. DeGette				Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack			
Mr. Doyle		X		Mr. Walden			
Ms. Harman				Mr. Terry	X		
Ms. Schakowsky		X		Mr. Rogers			
Mr. Gonzalez		X		Mrs. Myrick			
Mr. Inslee				Mr. Sullivan			
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess	X		
Mr. Weiner				Ms. Blackburn	X		
Mr. Matheson		X		Mr. Gingrey	X		
Mr. Butterfield		X		Mr. Scalise	X		
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes		X					
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

**COMMITTEE ON ENERGY AND COMMERCE – 111<sup>TH</sup> CONGRESS**  
**ROLL CALL VOTE # 137**

**BILL:** H.R. 2190, the "Mercury Pollution Reduction Act".

**AMENDMENT:** Two amendments by Mr. Shimkus, # 6 en bloc, to add a section at the end of the bill to suspend the provisions of this Act if the domestic supply of chlorine for disinfecting public drinking water supplies, or homeland security is likely to be adversely affected as a result of implementation of this Act.

**DISPOSITION:** NOT AGREED TO by a roll call vote of 13 yeas to 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall	X		
Mr. Markey				Mr. Upton	X		
Mr. Boucher				Mr. Stearns	X		
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon		X		Mr. Whitfield	X		
Mr. Rush				Mr. Shimkus	X		
Ms. Eshoo		X		Mr. Shadegg			
Mr. Stupak		X		Mr. Blunt			
Mr. Engel		X		Mr. Buyer			
Mr. Green		X		Mr. Radanovich			
Ms. DeGette				Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack			
Mr. Doyle		X		Mr. Walden			
Ms. Harman				Mr. Terry	X		
Ms. Schakowsky		X		Mr. Rogers			
Mr. Gonzalez				Mrs. Myrick			
Mr. Inslee				Mr. Sullivan			
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess			
Mr. Weiner				Ms. Blackburn	X		
Mr. Matheson		X		Mr. Gingrey			
Mr. Butterfield		X		Mr. Scalise	X		
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes							
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney	X						
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

**COMMITTEE ON ENERGY AND COMMERCE – 111<sup>TH</sup> CONGRESS  
ROLL CALL VOTE # 138**

**BILL:** H.R. 2190, the “Mercury Pollution Reduction Act”.

**AMENDMENT:** Two amendments by Mr. Barton and Mr. Stearns, # 7 en bloc, to add a section at the end of the bill to suspend the provisions of this Act if China does not sign and ratify an international treaty or agreement which requires China to enforce mercury emissions standards at least as stringent as those of the United States, or if the Member States of the European Union have discontinued the manufacture of chlorine and caustic soda using a mercury cell process.

**DISPOSITION:** NOT AGREED TO by a roll call vote of 13 yeas to 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman		X		Mr. Barton	X		
Mr. Dingell		X		Mr. Hall	X		
Mr. Markey				Mr. Upton	X		
Mr. Boucher				Mr. Stearns	X		
Mr. Pallone		X		Mr. Deal	X		
Mr. Gordon		X		Mr. Whitfield	X		
Mr. Rush		X		Mr. Shimkus	X		
Ms. Eshoo		X		Mr. Shadegg			
Mr. Stupak		X		Mr. Blunt			
Mr. Engel		X		Mr. Buyer			
Mr. Green		X		Mr. Radanovich			
Ms. DeGette				Mr. Pitts	X		
Mrs. Capps		X		Ms. Bono Mack			
Mr. Doyle		X		Mr. Walden			
Ms. Harman				Mr. Terry	X		
Ms. Schakowsky		X		Mr. Rogers			
Mr. Gonzalez				Mrs. Myrick			
Mr. Inslee				Mr. Sullivan			
Ms. Baldwin		X		Mr. Murphy of PA	X		
Mr. Ross		X		Mr. Burgess			
Mr. Weiner				Ms. Blackburn	X		
Mr. Matheson		X		Mr. Gingrey	X		
Mr. Butterfield		X		Mr. Scalise	X		
Mr. Melancon		X					
Mr. Barrow		X					
Mr. Hill		X					
Ms. Matsui		X					
Mrs. Christensen		X					
Ms. Castor		X					
Mr. Sarbanes							
Mr. Murphy of CT		X					
Mr. Space		X					
Mr. McNerney		X					
Ms. Sutton		X					
Mr. Braley		X					
Mr. Welch		X					

**COMMITTEE ON ENERGY AND COMMERCE – 111<sup>TH</sup> CONGRESS  
ROLL CALL VOTE # 139**

**BILL:** H.R. 2190, the “Mercury Pollution Reduction Act”.

**MOTION:** A motion by Mr. Waxman to order H.R. 2190 favorably reported to the House, amended.  
(Final Passage)

**DISPOSITION:** **AGREED TO** by a roll call vote of 29 yeas to 14 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman	X			Mr. Barton		X	
Mr. Dingell	X			Mr. Hall		X	
Mr. Markey	X			Mr. Upton		X	
Mr. Boucher				Mr. Stearns		X	
Mr. Pallone	X			Mr. Deal		X	
Mr. Gordon	X			Mr. Whitfield		X	
Mr. Rush	X			Mr. Shimkus		X	
Ms. Eshoo	X			Mr. Shadegg			
Mr. Stupak	X			Mr. Blunt			
Mr. Engel	X			Mr. Buyer			
Mr. Green	X			Mr. Radanovich			
Ms. DeGette				Mr. Pitts		X	
Mrs. Capps	X			Ms. Bono Mack			
Mr. Doyle	X			Mr. Walden			
Ms. Harman				Mr. Terry		X	
Ms. Schakowsky	X			Mr. Rogers			
Mr. Gonzalez				Mrs. Myrick			
Mr. Inslee				Mr. Sullivan			
Ms. Baldwin	X			Mr. Murphy of PA		X	
Mr. Ross	X			Mr. Burgess		X	
Mr. Weiner				Ms. Blackburn		X	
Mr. Matheson	X			Mr. Gingrey		X	
Mr. Butterfield	X			Mr. Scalise		X	
Mr. Melancon	X						
Mr. Barrow	X						
Mr. Hill	X						
Ms. Matsui	X						
Mrs. Christensen	X						
Ms. Castor	X						
Mr. Sarbanes	X						
Mr. Murphy of CT	X						
Mr. Space	X						
Mr. McNerney	X						
Ms. Sutton	X						
Mr. Braley	X						
Mr. Welch							

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portions of this report.

#### NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2190 would result in no new budget authority, entitlement authority, or tax expenditures or revenues.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of the Committee are reflected in the descriptive portions of this report.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 2190. Article I, section 8, clauses 3 and 18 of the Constitution of the United States grants the Congress the power to enact this law.

#### EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 2190 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

#### FEDERAL ADVISORY COMMITTEE STATEMENT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., section 5(b).

#### APPLICABILITY OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1 requires a description of the application of this bill to the legislative branch where the bill relates to terms and conditions of employment or access to public services and accommodations. H.R. 2190 does not relate to employment or access to public services and accommodations in the legislative branch.

#### FEDERAL MANDATES STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104-4) requires a statement on whether the provisions of the report include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

## COMMITTEE COST ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 2190. Clause 3(d)(3)(B) of that rule provides, however, that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2190 from the Director of the Congressional Budget Office:

OCTOBER 30, 2009.

Hon. HENRY A. WAXMAN,  
*Chairman, Committee on Energy and Commerce,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2190, the Mercury Pollution Reduction Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 2190—Mercury Pollution Reduction Act*

H.R. 2190 would prohibit the manufacture of chlorine or caustic soda using mercury in the United States. Manufacturers would have until June 30, 2012, to notify the Environmental Protection Agency (EPA) whether they intend to replace their manufacturing processes with mercury-free processes or cease manufacturing. This legislation also would prohibit the export from the United States of any mixtures containing mercury, effective immediately upon enactment.

Because only a few facilities in the United States currently use manufacturing processes involving mercury, CBO estimates that enacting this bill would not impose any significant costs on EPA. Any additional administrative or enforcement costs incurred would be subject to the availability of appropriations. Enacting this legislation would not affect direct spending or revenues.

H.R. 2190 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

By prohibiting the export or use of mercury by facilities that manufacture chlorine or caustic soda, H.R. 2190 would impose mandates as defined in UMRA. According to information from EPA, four facilities in the United States use mercury for those purposes. The bill would require those facilities to cease operations by June 30, 2013, or convert to a manufacturing process that does not

use mercury by June 30, 2015. Based on information from the U.S. Geological Survey Yearbook and because only a small number of facilities would be affected, CBO estimates that the cost of prohibiting exports would be minimal. Using information from EPA and industry sources, CBO estimates that, whichever method the facilities use to comply with the prohibition on using mercury in the manufacturing process, the direct cost of the mandates would be substantial. However, CBO estimates that the costs probably would fall below the annual threshold established in UMRA (\$139 million in 2009, adjusted annually for inflation).

The CBO staff contacts for this estimate are Susanne S. Mehlman (for federal costs) and Sam Wice (for the private-sector impact). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short title*

Section 1 provides that the short title of H.R. 2190 is the “Mercury Pollution Reduction Act”.

##### *Section 2. Findings*

Section 2 describes findings by Congress regarding the toxicity of and exposure to mercury and mercury compounds, and the use of mercury in chlor-alkali facilities and the availability of alternative mercury-free processes.

##### *Section 3. Statement of policy*

Section 3 describes a declaration of policy by Congress that the United States should develop policies and programs that will reduce mercury use and emissions.

##### *Section 4. Use of mercury in chlorine and caustic soda manufacturing*

Section 4 inserts a new section 6A, Use of Mercury in Chlorine and Caustic Soda Manufacturing, within Title I of the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

New section 6A(a) defines “chlor-alkali facility” to mean a facility used for the manufacture of chlorine or caustic soda using a mercury cell process.

New section 6A(b)(1) prohibits the manufacturing of chlorine or caustic soda using mercury cells at any facility in the United States.

New section 6A(b)(2) directs the owner or operator of a chlor-alkali facility to notify the Administrator of EPA by June 30, 2012, whether it will (A) modernize to a process that does not use mercury, or (B) cease operations. This will allow sufficient time for the facilities to conduct the economic and physical planning necessary prior to making a determination.

New section 6A(b)(3) requires facilities that notify the Administrator of their decision to close shall do so no later than June 30, 2013.

New section 6A(b)(4) requires facilities that notify the Administrator of their decision to modernize to do so no later than June 30, 2015. This provides the facilities three years to complete the

modernization process after notifying the Administrator. To date, no facility that has modernized has taken longer than 2 years and 10 months to complete the process.

New section 6(A)(c) prohibits the export or sale for purposes of export of any elemental mercury, including mercury compounds or mixtures containing elemental mercury, from any chlor-alkali facility, effective on the date of enactment.

New section 6(A)(d) provides for the owner or operator to store elemental mercury in accordance with the Mercury Export Ban Act of 2008 (42 U.S.C. 6939f).

#### EXPLANATION OF AMENDMENTS

The Committee adopted an amendment offered by Rep. Melancon striking subsection (b) of new section 6A that would prohibit mercury cell production at any chlor-alkali plant 24 months after the date of enactment, and inserting a new subsection (b) that requires the owner or operator of a chlor-alkali facility to notify the Administrator of EPA of its decision to modernize or close by June 30, 2012, and to follow through with closure by June 30, 2013, or with modernization by June 30, 2015. This amendment provides the companies with sufficient time, until June 30, 2012, to make this decision to modernize or close. All 3 affected companies have indicated that they could modernize within 3 years, as provided by this amendment.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

### TOXIC SUBSTANCES CONTROL ACT

#### TITLE I—CONTROL OF TOXIC SUBSTANCES

##### SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the “Toxic Substances Control Act”.

##### TABLE OF CONTENTS

##### TITLE I—CONTROL OF TOXIC SUBSTANCES

*	*	*	*	*	*	*
Sec. 6A.	<i>Use of mercury in chlorine and caustic soda manufacturing.</i>					
*	*	*	*	*	*	*

##### SEC. 6A. USE OF MERCURY IN CHLORINE AND CAUSTIC SODA MANUFACTURING.

(a) *DEFINITION OF CHLOR-ALKALI FACILITY.*—*In this section, the term “chlor-alkali facility” means a facility used for the manufacture of chlorine or caustic soda using a mercury cell process.*

(b) *PROHIBITION.*—

(1) *IN GENERAL.*—*Except as otherwise provided in this subsection, it shall be unlawful to manufacture chlorine or caustic soda using mercury cells at any facility in the United States.*

(2) *NOTICE.*—The owner or operator of any existing chlor-alkali facility shall notify the Administrator no later than June 30, 2012, whether it will—

(A) replace its chlor-alkali facility with a new manufacturing facility that does not use mercury; or

(B) cease operations.

(3) *CLOSURE.*—A chlor-alkali facility for which a closure notice is filed under paragraph (2)(B) shall cease manufacturing chlorine or caustic soda using mercury cells no later than June 30, 2013.

(4) *REPLACEMENT.*—A chlor-alkali facility for which a replacement notice is filed under paragraph (2)(A) may continue to manufacture chlorine or caustic soda using mercury cells until all of the permitting, financing, engineering, and construction of a non-mercury replacement facility is complete, or June 30, 2015, whichever is earlier.

(c) *EXPORT BAN.*—Effective on the date of the enactment of this section, the export of any elemental mercury or the sale of elemental mercury for purposes of export, including compounds and mixtures containing elemental mercury, by the owner or operator of a chlor-alkali facility is prohibited.

(d) *SAVINGS PROVISION.*—Nothing in this section affects the ability of the owner or operator of any chlor-alkali facility to store elemental mercury in accordance with section 5(g)(2) of the Mercury Export Ban Act of 2008 (42 U.S.C. 6939f).

\* \* \* \* \*

**SEC. 15. PROHIBITED ACTS.**

It shall be unlawful for any person to—

(1) fail or refuse to comply with (A) any rule promulgated or order issued under section 4, (B) any requirement prescribed by section 5 [or 6], 6 or 6A, (C) any rule promulgated or order issued under section 5 or 6, or (D) any requirement of title II or any rule promulgated or order issued under title II;

(2) use for commercial purposes a chemical substance or mixture which such person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of section 5 or 6, a rule or order under section 5 [or 6], 6 or 6A, or an order issued in action brought under section 5 or 7;

\* \* \* \* \*

## DISSENTING VIEWS

We, the undersigned Members of the Committee on Energy and Commerce, oppose the passage of H.R. 2190 and submit the following comments to express our significant concerns with this legislation.

We believe *all* Members want to protect public health and shield Americans from the risks posed by unhealthy exposures to mercury. Yet, while this is both the stated policy goal and the short title of H.R. 2190, we believe this legislation will not achieve that objective, nor does it represent good public policy. To the contrary, this bill has major manufacturing policy implications, ensuring severe economic and employment consequences for the U.S. companies and workers targeted by the bill. We believe, moreover, that given the current economy and employment conditions in the United States, Congress should not be passing misidentified environmental legislation that will effectively shut down U.S. manufacturers and displace U.S. workers.

Mercury is a naturally-occurring element found in air, water and soil. Humans cannot create or destroy mercury. Pure mercury is a liquid metal that volatilizes readily. Mercury in the air eventually settles into water or onto land where it can be washed into water. Once deposited, certain microorganisms can change it into methylmercury, a potent neurotoxin which builds up in fish, shellfish and animals that eat fish. Fish and shellfish are the main sources of methylmercury exposure to humans. Methylmercury builds up more in some types of fish and shellfish than others. According to the U.S. Geological Survey, “consumption of ocean fish and shellfish account for over 90 percent of human methylmercury exposure in the United States, and tuna harvested in the Pacific Ocean account for 40 percent of this total exposure.”

Notwithstanding the view expressed by some Committee leaders that mercury deposition is solely a local issue, mercury deposition in a given area depends on mercury emitted from local, regional, national, *and* international sources. The U.S. Environmental Protection Agency (EPA) has estimated, based on an advanced, state-of-the-science modeling assessment of atmospheric fate, transport, and deposition of mercury, that 83 percent of the mercury deposited in the United States originates from international sources. The remaining 17 percent comes from U.S. and Canadian sources. Further, it is now estimated that China is the leading contributor to atmospheric mercury levels.

While mercury exposure at high levels can harm the brain, heart, kidneys, lungs, and immune system of people of all ages—it has been demonstrated that high levels of methylmercury in the bloodstream of unborn babies and young children may harm the developing nervous system—according to EPA’s website, research shows that most people’s fish consumption does not cause a health

concern. Further, where a potential health concern is indicated, there are governmental efforts in place to warn potentially vulnerable persons of threats from consuming more than the recommended amounts of seafood that may contain elevated amounts of mercury.

Notwithstanding other available remedies the federal government has to mitigate the above mentioned risks, and before available regulatory remedies have been exhausted, H.R. 2190 takes the position that an already heavily-regulated process for manufacturing chlorine should be banned by statute simply because: (1) there are only four plants affected; (2) there are other replacement manufacturing methods that do not use mercury; and (3) that this mercury cell process is too old of a technology and needs to be replaced. Whereas Congress in limited situations in the past has statutorily banned a chemical substance—like asbestos—we are not aware of any legislative precedent for banning an entire manufacturing process. We find this notion and precedent particularly troubling.

As we understand the body of existing environmental law, this bill is not necessary to address any deficiencies in existing law. If there are health-threatening releases from one of these plants, the mercury releases that this bill is trying to address are already covered under the Clean Air Act and the Clean Water Act. Specifically, sections 112(r)(9) and 303 of the Clean Air Act and Section 1431 of the Safe Drinking Water Act give EPA the authority to take whatever action is necessary to prevent a real or potential threat of imminent and substantial endangerment to public health or welfare, or the environment that would be caused by a release of mercury. In addition, section 504(a) of the Clean Water Act has similar authorities and expands the scope to also include damage to shellfish. Finally, section 113(c)(5) of the Clean Air Act and Section 309(c)(3) of the Clean Water Act subject persons who “knowingly” release pollutants and place another person in imminent danger of death or serious bodily injury to criminal penalties.

From a regulatory perspective, the four plants targeted by the bill are regulated heavily by several federal environmental and worker safety laws that address the treatment, handling and storage of mercury and chlorine. These regulations flow from laws that include: the Clean Air Act, the Clean Water Act, the Occupational Health and Safety Act, Solid Waste Disposal Act, Emergency Planning and Community Right to Know Act, Safe Drinking Water Act, Hazardous Materials Transportation Act, and the Chemical Facility Anti-Terrorism Standards Act. Most importantly, the EPA has legal authority it could use under Clean Air Act Section 112, which authorizes regulation of hazardous air pollutants, to phase out this technology process. While EPA has declined to phase out this specific manufacturing practice in the past, the Agency is currently considering further limits on fugitive mercury emissions from these plants.

In view of this, we consider the policy articulated in H.R. 2190 to be a grim warning to small manufacturers or those whose businesses may be politically unfashionable. We are concerned that the choice in this legislation to single out four plants, and to require them to invest an average of \$100 million to convert their manufac-

turing processes or otherwise close their facilities, may not be based on a desire to protect public health from the most dangerous sources of mercury—which are global, not local—but rather may be based on a political calculation that this group could be targeted because it is small.

Noteworthy to us is the fact that chlorine manufacturers who use mercury cell technology are not the largest emitters of mercury into the air or water. Before making serious investments to improve their emissions, pursuant to a Federal mandate to make technology changes by 2006, 2005 EPA data showed these plants ranked 9th overall in the U.S.—16 times lower than the highest domestic emitter. Additionally, EPA's National Emissions Inventory shows an 89 percent decrease in mercury emissions from the U.S. chlor-alkali industry between 1990 and 2005. This means these four plants contribute negligibly, if at all, to global atmospheric mercury levels.

In addition, the 2002 United Nations Environmental Programme's Global Mercury Assessment states that although a large part of the mercury consumption and releases remain in less-developed nations, about three-fourths of the entire global chlorine production capacity is situated in Western Europe, North America and Northeast Asia, with a large part of the mercury at work in the world's chlor-alkali plants in Europe (currently 37 plants). Based on actual records of easily-recoverable mercury from decommissioned chlorine production facilities in the European Union (EU) and the United States, it can be estimated roughly that about half of the mercury inventories associated with chlor-alkali production in the world are situated within the EU. Curiously, in response to the increasing amount of mercury at chlor-alkali plants in Europe, the EU's response has been to voluntarily phase out the use of these plants by 2020, allowing a competitive advantage to exist versus other developed nations who choose to ban this practice. In view of the absence of more aggressive actions from other nations to significantly or similarly curb their mercury emissions, we believe no net global environmental gain will be achieved under H.R. 2190 and its suggested public health gains will go unrealized. Rather, we believe the elimination of up to 1,000 or more U.S. jobs is likely to be the most enduring result of H.R. 2190.

Further, several other sources of emissions far outstrip these chlor-alkali plants, both now and in the future. EPA estimates that 50–70 percent of current global anthropogenic atmospheric emissions come from fuel combustion, and much of this is from China, India, and other Asian countries. Coal consumption in Asia, from less-regulated plants, is expected to grow significantly over the next 20 years. This source of mercury emissions may grow substantially if left unaddressed, a fact reaffirmed this past spring by the U.S. Geological Survey (USGS), resulting in a continued contribution to seafood consumption due to the aforementioned concentration of methylmercury exposure from seafood and shellfish harvested in the Pacific Ocean.

With national unemployment at 10 percent, unemployment in the manufacturing sector at 11.9 percent, and the unemployment rate in the towns in which these plants are located at these levels or higher, we are not persuaded by the claims of H.R. 2190 supporters that these companies will be able to save the jobs of the

workers at these plants. To the contrary, executives from the affected plants have testified, as well as expressly stated in a letter sent to our Committee, that passage of H.R. 2190—either as introduced or as amended by the Committee—would result in the closure of these four plants and the unemployment of approximately 1,000 workers. These companies have previously, unambiguously stated that their future operations—and the employment of their workers—depended on either a guarantee of Federal funds to make this transition or more time to find financing and address the business realities of conversion. H.R. 2190 provides neither the funding nor the time that the companies have indicated would be required to convert their facilities—assuming financing can be obtained and the conversions would be cost-effective.

Moreover, we believe Congress should be very cautious when making assumptions about the financial ability of companies to meet new, costly requirements at these plants. The cost-effectiveness of implementing alternative production technologies must be measured on a site-specific basis—these plants are extremely capital intensive and costly to build, especially for a large site. Current estimates suggest an average conversion cost for one of these plants is \$100 million, depending on its size. In addition, the current, frozen status of the credit markets makes any serious effort to convert to a non-mercury technology difficult to assess since financing, especially in the short term, is elusive.

As it relates to these types of plants, a September 15, 2009, internal EPA memorandum for the Mercury Chlor-Alkali National Emissions Standards for Hazardous Air Pollutants program contains a section entitled, “Unquantifiable Cost Factors.” The comments from this section highlight the challenges associated with the conversion of these facilities, stating:

[F]rom a business perspective, there may be other cost factors that could predominate or, at minimum, contribute to the costs of conversion. The conversion to nonmercury technology would be an extremely disrupting activity in the life of a facility even without the costs associated with the conversion.

There are some costs and/or financial impediments to conversion that are unquantifiable and may have prevented facilities from converting their mercury cell facilities to nonmercury technology up to this point. Some of these issues are as follows: availability of capital and savings; ability to secure financing, which is dependent upon the current profitability and credit worthiness of the company; dynamics of the supply and demand of either of the two co-products (chlorine and caustic) that can cause cyclical and sharp price swings and/or a fall in sales revenue or increases in operating costs; and ability to structure the financing debt to accept these market cycles, which adds time and cost to the overall financing and loan.

Further, we note that in the last Congress our Committee specifically addressed concerns about potential human exposures to mercury and methylmercury by passing the Mercury Export Ban Act of 2008 (MEBA). In the context of considering that bill, our Com-

mittee was made well aware of the potential impacts of such legislation on global economic competition and of the mercury contributions of other countries to the global environment and atmospheric transport. We are concerned that this bill effectively renegotiates certain parts of MEBA just for these four plants, and takes an arbitrary approach to these particular facilities.

We believe, finally, that there were certain factual errors in, and other issues presented by, early sections of H.R. 2190, but we do not address them here.

We appreciate the steps the Majority has taken to eliminate some of the more troubling provisions of this bill—including duplicative reporting and inventory requirements. Yet we still find this bill unworkable, including the provision added at full committee markup that forces the affected companies to make their decisions about conversion or closure by June 30, 2012, and, if they have decided to convert, to do so within three years. While this is a longer amount of time on the front end than H.R. 2190 as originally introduced provided, it is not enough to garner our support given the testimony and record before the Committee.

Though we remain concerned about actions by Congress to ban a manufacturing process, especially in view of other options, we acknowledge that the companies impacted were willing to live with a legislative framework that gave them time to phase out existing technology and meaningfully convert. We believe an amendment we offered—giving the companies until 2015 to make a decision, 2016 to close, and 2018 to convert—provided both the certainty and the time that the affected companies sought. We are disappointed that the Majority rejected this amendment.

Going forward we are concerned that this bill is not an isolated attempt to address just mercury in manufacturing, but rather a veiled attempt to decrease the production and use of chlorine in the United States. We note that the Majority, in the previous Congress and under the banner of public health protection, also made attempts to hem in production of chlorine by plants that used an asbestos diaphragm. We are not persuaded that these efforts are merely coincidence.

We take seriously the need to protect the human health of all Americans, both in this and future generations. We do, however, reject H.R. 2190 and for all the reasons set forth above will continue to fight H.R. 2190, as reported, and urge the Congress to do the same.

JOE BARTON,  
*Ranking Member.*  
JOHN SULLIVAN.  
JOSEPH R. PITTS.  
TIM MURPHY.  
MARSHA BLACKBURN.  
MICHAEL C. BURGESS.  
RALPH M. HALL.  
ED WHITFIELD.  
CLIFF STEARNS.  
ROY BLUNT.  
SUE MYRICK.  
PHIL GINGREY.  
MARY BONO MACK.  
LEE TERRY.  
STEVE BUYER.  
GEOGE RADANOVICH.  
JOHN SHIMKUS.

