II

111TH CONGRESS
1ST SESSION

S. 1428

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.

IN THE SENATE OF THE UNITED STATES

JULY 9, 2009

Mr. WHITEHOUSE (for himself, Mr. CARDIN, Mrs. FEINSTEIN, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

---

A BILL

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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)(A) 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

(B) 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, because uncontaminated fish represent 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—

(i) near industrial areas, such as the Great Lakes; and

(ii) in remote areas, such as the Arctic Circle;

(6) of the approximately 30 facilities in the United States that produce chlorine—

(A) only 5 use the obsolete ''mercury cell'' chlor-alkali process; and

(B) 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.

It is the policy of the United States 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 childbearing 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) DEFINITIONS.—In this section:

''(1) CHLOR-ALKALI FACILITY.—The term 'chlor-alkali facility' means a facility used for the manufacture of chlorine or caustic soda using a mercury cell process.

''(2) HAZARDOUS WASTE; SOLID WASTE.—The terms 'hazardous waste' and 'solid waste' have the meanings given those terms in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).

''(b) PROHIBITION; USE PRIOR TO PROHIBITION.—

''(1) PROHIBITION.—Effective on the date that is 2 years after the date of enactment of this section, the manufacture of chlorine or caustic soda using a mercury cell is prohibited in the United States.

''(2) EXPORT BAN.—Effective on the date of enactment of this section, the export of any mercury, mercury cell, mercury compound, or mixture con-

taining mercury by the owner or operator of a chlor-alkali facility is prohibited.

''(c) REPORTING.—

''(1) IN GENERAL.—Not later than 2 years after the date of enactment of this section, the owner or operator of each chlor-alkali facility shall submit to the Administrator and the State in which the chlor-alkali facility is located a report that identifies—

''(A) each type and quantity of mercury-containing hazardous waste and nonhazardous solid waste generated by the chlor-alkali facility during the preceding calendar year;

''(B) the mercury content of the wastes;

''(C) the manner in which each waste was managed, including the location of each offsite location to which the waste was transported for subsequent handling or management;

''(D) the volume of mercury released, intentionally or unintentionally, into the air or water by the chlor-alkali facility, including mercury released from emissions or vaporization;

''(E) the volume of mercury estimated to have accumulated in pipes and plant equipment

of the chlor-alkali facility, including a description of—

''(i) the applicable volume for each type of equipment; and

''(ii) methods of accumulation; and

''(F) the quantity and forms of mercury found in all products produced for sale by the chlor-alkali facility.

''(2) AVOIDANCE OF DUPLICATION.—To avoid duplication, the Administrator may permit the owner or operator of a facility described in paragraph (1) to combine and submit the report required under this subsection with any report required to be submitted by the owner or operator under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.).

''(d) INVENTORY.—

''(1) IN GENERAL.—For each chlor-alkali facility that ceases operations on or after January 1, 2009, not later than 1 year after the date of cessation of operations, the Administrator, in consultation with the State in which the facility is located, shall conduct a comprehensive mercury inventory covering the life and closure of the chlor-alkali facility, taking into account—

''(A) the total quantity of mercury purchased to start and operate the chlor-alkali facility;

''(B) the total quantity of mercury remaining in mercury cells and other equipment at the time of closure of the chlor-alkali facility;

''(C) the estimated quantity of mercury in hazardous waste, nonhazardous solid waste, and products generated at the chlor-alkali facility during the operational life of the chlor-alkali facility; and

''(D) the estimated aggregate mercury releases from the chlor-alkali facility into air and other environmental media.

''(2) RECORDS AND INFORMATION.—In carrying out paragraph (1), the Administrator shall obtain mercury purchase records and such other information from each chlor-alkali facility as the Administrator determines to be necessary to determine, as accurately as practicable from available information, the magnitude and nature of mercury releases from the chlor-alkali facility into air and other environmental media.

''(3) AUTHORITIES.—This Administrator shall use the authorities of section 11 and any other ap-

propriate authorities of this Act to carry out this subsection.''.

(b) CONFORMING AMENDMENTS.—

(1) TABLE OF CONTENTS.—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) ENFORCEMENT.—Section 15 of the Toxic Substances Control Act (15 U.S.C. 2614) is amended by striking ''or 6'' each place it appears and inserting '', 6, or 6A''.

○