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Resource Conservation and Recovery Act Guidance: U.S. Environmental Protection Agency Addresses Management of Waste Elemental Mercury

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The United States Environmental Protection Agency (“EPA”) responded in a July 1st letter to questions regarding the:

... 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.

Ms. Kathleen Salyer, EPA Acting Director, Office of Resource Conservation and Recovery, was responding to a March 10th letter from David Case of the Environmental Technology Council.

Mr. Case’s letter focused on two primary questions.

First, Mr. Case asked whether:

... a recycling facility for mercury (e.g., retort facility) is exempt from Resource Conservation and Recovery (RCRA) permitting if some or all elemental mercury is sent to the MEBA-required Department of Energy (“DOE”) long-term mercury storage repository.

The question is stated to have arisen because until implementation of MEBA’s export ban most mercury waste retort units operated as RCRA-exempt recycling units (i.e., because they could sell all of the mercury they recovered as product).

MEBA prohibited elemental mercury exports. As a result, mercury waste retort operators are stated to now generate some surplus elemental mercury that is unsaleable and, therefore, a RCRA hazardous waste (U151).

EPA responds that MEBA does not affect either RCRA or the RCRA regulations. The only exception referenced is elemental mercury that is destined for the DOE facility and accumulated for 90 days or less. Further, elemental mercury sent to the DOE facility is stated to be discarded and, therefore, a solid waste.

The second question posed is whether treatment, storage, and disposal facilities can store elemental mercury at their RCRA-permitted facilities rather than sending it to the DOE long-term storage facility. The question is stated to have arisen because MEBA authorizes RCRA-permitted treatment storage disposal facilities (“TSDFs”) to store surplus/waste elemental mercury on an extended, interim basis, in the event

that the MEBA-required DOE storage facility is unable to accept mercury on the effective date of the export ban.

EPA responds that 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. This is stated to be required by the MEBA certification requirements, regardless of how the mercury has been stored.

EPA also notes in the guidance letter that mercury accumulated by the TSDF for less than one year to facilitate appropriate treatment and disposal need not be sent to the DOE storage facility. However, that assumes the extended storage provision of MEBA has never been applied. Further, 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. This is to avoid violating RCRA's ban on long-term storage of hazardous waste in lieu of treatment and disposal.

A copy of the letter can be downloaded [here](#).