



Department of Energy

Washington, DC 20585

March 30, 2009

MEMORANDUM FOR DISTRIBUTION

FROM:

INÉS R. TRIAY *Inés Triay*
ACTING ASSISTANT SECRETARY FOR
ENVIRONMENTAL MANAGEMENT

SUBJECT:

Assistance Required to Identify a Storage Facility for
Elemental Mercury

The purpose of this memorandum is to obtain your assistance as we seek information on current and planned facilities that may be available for the long-term storage of elemental mercury. The Mercury Export Ban Act (the Act) of 2008 prohibits the export of elemental mercury from the United States (U.S.) effective January 1, 2013. It directs the Department of Energy (DOE) to provide a facility or facilities for the long-term storage of elemental mercury generated in the U.S. but specifically prohibits the facility from being sited on the Oak Ridge Reservation, including Y-12. The Act requires DOE to identify a storage facility (or facilities) by January 1, 2010, and to have at least one facility operational by January 1, 2013. Pursuant to the Act, such a facility will need to have and operate under a Resource Conservation and Recovery Act (RCRA) hazardous waste facility permit.

DOE has determined the Office of Environmental Management (EM) in coordination with the Office of Legacy Management (LM) will have the lead for this project (Attachment 1). EM will be accomplishing the selection of the storage facility by means of an environmental impact statement in accordance with the National Environmental Policy Act. In order to designate such a facility or facilities I am requesting that you assess facilities and areas for the sites under your purview and provide a list of viable candidates for further evaluation. For your information, a copy of the Federal Register notice seeking Expressions of Interest (EOI) from parties outside DOE is attached (Attachment 2). The criteria described in the EOI should be used by DOE sites to evaluate potential storage facilities.

The amount of mercury expected to be stored is not well-defined. Based on the current available information, for planning purposes DOE is looking for locations with one or more existing facilities (i.e., storage capacity) of approximately 20,000 – 100,000 square feet, or locations where such facilities could be constructed. Therefore, we are seeking information from sites about existing or planned buildings that could provide long-term storage of elemental



mercury, and that have or could obtain a RCRA permit. DOE anticipates refining the estimate of required storage space during the environmental review process.

Please respond by April 22, 2009, with a listing of potentially suitable facilities as described in the attached EOI. Negative responses are also requested. Your response should be directed to Mr. David Levenstein, the Office of Environmental Management (EM) National Environmental Policy Act Document Manager for the Mercury Storage Environmental Impact Statement. If you have any further questions, please contact Mr. Levenstein at (301) 903-6500 or by email: david.levenstein@em.doe.gov .

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The Deputy Secretary of Energy
Washington, DC 20585

December 1, 2008

MEMORANDUM FOR INES TRIAY
ACTING ASSISTANT SECRETARY FOR
ENVIRONMENTAL MANAGEMENT

MICHAEL OWEN
DIRECTOR, OFFICE OF LEGACY MANAGEMENT

FROM: JEFFREY F. KUPFER *JK*
ACTING DEPUTY SECRETARY

SUBJECT: Mercury Export Ban Act of 2008

Section 5 of the Mercury Export Ban Act of 2008 (the Act), Pub. L. 110-414, 122 Stat. 4341, sets forth ambitious requirements for the Department of Energy (DOE) to establish and manage a facility for the storage of Government and commercial stocks of elemental mercury within the United States. At a meeting on November 12, 2008, we discussed assigning the responsibilities for complying with the Act to operational elements within the Department. We agreed that these responsibilities would be assigned to the Offices of Environmental Management (EM) and Legacy Management (LM), and, therefore, I am sending you this memorandum to formalize those assignments.

Pursuant to section 5(a)(1) of the Act, EM will have the lead responsibility to designate one or more DOE facilities (other than Oak Ridge) for the purpose of long-term management and storage of elemental mercury generated within the United States. EM also will have the lead responsibility to have these facilities operational and able to receive mercury for storage, as provided under section 5(a)(2) of the Act. After consulting with the Environmental Protection Agency (EPA), EM will prepare guidance establishing procedures and standards for managing mercury at these facilities in accordance with section 5(d)(1) of the Act. Prior to operation of the facilities, EM also will be responsible for setting fees based on the costs of providing long-term management and storage of elemental mercury delivered to the facilities and will publicly announce the amount of such fees by October 1, 2012, as required under section 5(b) of the Act.

Once the facilities are operational and able to receive elemental mercury, LM will manage the facilities, assess, collect, and manage the mercury storage and management fees, and report each year to Congress on all of the costs incurred during the previous year in accordance with sections 5(b) and 5(c) of the Act. Pursuant to sections 5(b)(1)(B)-(C) of the Act, LM may adjust such fees annually as necessary. LM will train all staff responsible for managing the mercury and ensure that all facilities are properly equipped for routine operations and emergencies, as required under sections 5(d)(2)-(4)



of the Act. LM and the Office of the General Counsel also will implement section 5(e) of the Act regarding indemnification. After consulting with EPA, LM will comply with section 5(h) of the Act by submitting by July 1, 2014, a report to Congress discussing the impact of the long-term storage program on mercury recycling; this report will include any proposals to mitigate any negative impact from such program.

EM and LM will coordinate their respective responsibilities and also will coordinate with EPA, the Department of Defense, and other affected agencies and DOE organizations, including the Office of the General Counsel and the National Nuclear Security Administration.

cc: Thomas Paul D'Agostino, NA-1
Glenn Podonsky, HSS-1

ATTACHMENT 2

6540-01-P

DEPARTMENT OF ENERGY

Request for Expressions of Interest in Hosting a Facility or Facilities for the Long-Term Management and Storage of Elemental Mercury

AGENCY: Department of Energy

ACTION: Request for Expressions of Interest

SUMMARY: THIS IS A REQUEST FOR EXPRESSIONS OF INTEREST. NO PROPOSALS ARE ALLOWED.

The U.S. Department of Energy (DOE) is seeking Expressions of Interest from Federal agencies and from the private sector regarding potential locations for a facility or facilities where DOE can store and manage elemental mercury pursuant to the Mercury Export Ban Act of 2008 (the Act). The Act directs DOE to designate by January 1, 2010, a facility or facilities of DOE for the long-term management and storage of elemental mercury. At least one such facility must be operational by January 1, 2013.

DOE intends to initiate an Environmental Impact Statement in early 2009 and seeks to identify facilities to consider as potential alternatives. Accordingly, respondents to this Request for Expressions of Interest may have the facilities they identify considered during the environmental review scoping process.

DATES: Federal agencies and commercial entities wishing to make an Expression of Interest should do so in writing no later than 30 days from the date this notice is published. Questions may be submitted in writing by letter or email. DOE may ask vendors to clarify information provided in their Expressions of Interest or submit additional information.

ADDRESSES: Please submit hard copies of Expressions of Interest to Mr. David Levenstein, Mail Stop: EM-11/Cloverleaf 2128, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-2040. Electronic versions of Expressions of Interest may be submitted in portable document format (pdf) by email to david.levenstein@em.doe.gov.

SUPPLEMENTARY INFORMATION:

Background: The Mercury Export Ban Act of 2008 prohibits the export of elemental mercury from the United States effective January 1, 2013. To ensure that elemental mercury is managed and stored safely, the Act directs DOE to take a number of actions. By October 1, 2009, DOE must issue guidance establishing standards and procedures for the receipt, management and long-term storage of elemental mercury generated within the United States at a facility or facilities of DOE. DOE must designate such facilities by January 1, 2010, but is prohibited by the Act from locating such a facility at DOE's Oak Ridge Reservation. At least one such facility must be operational by January 1, 2013. In addition to the standards and procedures referenced above, elemental mercury managed and stored at a designated facility will be subject to the requirements of the Solid Waste Disposal Act, as amended (Resource Conservation and Recovery Act (RCRA)), 42 U.S.C. § 6901 et seq. A designated facility in existence on or before January 1, 2013, is authorized to operate under interim status pursuant to RCRA section 3005(e), 42 U.S.C. § 6925(e), until a final decision on a permit application is made pursuant to RCRA section 3005(c), 42 U.S.C. § 6925(c). The U.S. Environmental Protection Agency (EPA), or an authorized State, shall issue a final decision on the permit application by January 1, 2015.

Currently elemental mercury in the United States comes from several sources, including mercury used in the chlorine and caustic soda manufacturing process, mercury reclaimed from recycling and waste recovery activities, and mercury generated as a byproduct of the gold mining process. In a November 2007 "Mercury Storage Costs Estimates" report, EPA assumed the total amount of excess mercury supply from commercial sources that would require storage to be between 7,500 and 10,000 metric tons over 40 years. The 7,500 metric ton scenario assumes that approximately 1,200 metric tons would come from mercury cell chlor-alkali plants, approximately 2,050 metric tons would come from product recycling and waste recovery, and approximately 4,250 metric tons would be a byproduct of gold mining. The 10,000 metric ton scenario assumes that an additional 2,500 metric tons would result from imports. There are uncertainties associated with these estimates, and DOE anticipates updating these estimates in conjunction with its activities to comply with the National Environmental Policy Act (NEPA).

In addition, DOE currently stores approximately 1,200 metric tons of elemental mercury at its Oak Ridge Reservation in Tennessee. Also, the Department of Defense (DOD) stores approximately 4,400 metric tons at various locations. At this time, no decision has been made as to how much elemental mercury from DOE or DOD would be stored in the DOE-designated facilities required by the Act.

As required by Council on Environmental Quality and DOE NEPA regulations, DOE's designation of facilities for the purpose of long-term management and storage of elemental mercury generated in the United States must include consideration of the range of reasonable management and storage alternatives and the environmental impacts of those alternatives. The purpose of this Request is to determine if there is interest on the part of Federal agencies or

commercial entities in proposing locations for long-term DOE management and storage facilities. Identification of such facilities will enable DOE to consider them for potential inclusion in its NEPA review.

Consideration of a facility in the environmental review process is not a guarantee of its selection. Proposed sites and facilities will be reviewed against a series of technical screening criteria to consider their suitability for a long-term elemental mercury management and storage mission. In addition, in accordance with NEPA implementing regulations, DOE will conduct public outreach, such as a scoping meeting or meetings, for those sites and facilities considered to be reasonable alternatives, to allow the public to comment.

Request for Expressions of Interest: THIS IS A REQUEST FOR EXPRESSIONS OF INTEREST. NO PROPOSALS ARE ALLOWED.

DOE intends to consider a range of reasonable alternatives, including existing and new DOE facilities, in its selection process. DOE is in the process of conducting an inventory of its national complex to determine potential alternative facilities. Likewise, DOE is also seeking by this action expressions of interest from Federal agencies and from commercial entities on locations and facilities for the long-term management and storage of elemental mercury. Because the Act states that this mercury would be stored at a "facility or facilities of [DOE]", DOE would work, as necessary, with the Federal agency or commercial entity on acquiring an appropriate interest in the facility prior to site designation.

DOE plans to review each submission to determine if it should be included as a reasonable alternative in DOE's NEPA analysis, which will assess the environmental impacts of each alternative, including existing and new DOE facilities, as they relate to the long-term storage and management of elemental mercury.

The size requirements for long-term storage and management facilities will depend on a number of factors, including the amount of elemental mercury ultimately received and the storage configuration of the elemental mercury containers. Based on currently available information, for planning purposes DOE is looking for locations with one or more existing facilities with a total of approximately 20,000 to 100,000 square feet of storage space, or locations where such facilities could be constructed. DOE anticipates refining the estimate of required storage space during the environmental review process. DOE also requires that the facilities be in compliance with all current building codes and construction standards, be located in a geologically stable area (e.g., not in a flood plain or seismically-active zone), and be operated and maintained with appropriate security measures in place. In addition, the Act requires that the facilities obtain and operate in accordance with a RCRA hazardous waste facility permit.

Content of Expressions of Interest: DOE requires the following information for each potential storage location and facility:

1. Name of the Federal agency or private company making the Expression of Interest, including a contact person's name, telephone number, and email address;
2. Agency or company address;
3. If a private company, company size (please specify as either Large, Small, Small Disadvantaged, Woman Owned Small Business, Veteran Owned Small Business,

Service-Disabled Veteran Owned Small Business, 8(a), Hubzone Small Business or other);

4. Name of the city and state in which each potential facility is or would be located;
5. A site map showing the location of the potential storage building or buildings on the site, as well as nearby (within 10 miles) political (e.g., city, county) boundaries, communities (especially minority, low income or Native American), roads, railroads, airports, and water bodies, wetlands, floodplains, parkland, known fault lines, or other environmentally sensitive areas;
6. A description of the potential site, including ownership, current activities, access control system, hazardous materials handling experience, mercury handling experience, current tenants, existing permits, previous regulatory compliance problems, and existing environmental contamination; and
7. A description of the potential storage building, if pre-existing, including date and type of construction, floor condition, any special features that provide protection against leaks and external environmental hazards, fire suppression system, heating, ventilation and air-conditioning system, access control system, current activities and materials in storage, current tenants, and existing environmental contamination.

If available, Expressions of Interest should also identify equipment, materials, and labor required to upgrade or construct the potential facility to accept elemental mercury for long-term management and storage, as well as any environmental, health and safety approvals that will be required by Federal, state or local law.

Expression of Interest Format: The length of the Expression of Interest should be no more than 20 pages using 12-point font. Although each respondent may determine how best to

organize the Expression of Interest, DOE recommends the following format: Section 1 -- Summary; and Section 2 -- Description of Location with specific reference to the items requested by DOE above.

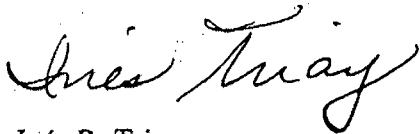
DOE reserves the right to use any and all information submitted by, or obtained from, an interested party in any manner DOE determines is appropriate. An interested party should avoid including any business confidential and/or proprietary information in its Expression of Interest. However, if an interested party must submit such information, the information must be clearly marked accordingly, and the interested party must provide sufficient justification as to why such information is business confidential and/or proprietary. DOE will review said information and handle it in accordance with the Freedom of Information Act (5 U.S.C. § 552) and all applicable Federal law.

This Request for Expressions of Interest is not a formal solicitation requesting proposals and does not represent a commitment by DOE to award a contract. This Request for Expressions of Interest does not confer any commitment or obligation from DOE. Under no circumstances does this Request for Expressions of Interest seek to award a contract for services under the Federal Acquisition Regulations or a financial assistance agreement under Part 600 of Title 10 of the Code of Federal Regulations.

DOE does not intend to formally respond to information submitted in response to this Request for Expressions of Interest.

The cost for the preparation and submittal of a response to the Request for Expressions of Interest is the sole responsibility of the interested party.

Issued in Washington, DC, on March // 2009.

A handwritten signature in cursive script, reading "Inés Triay".

Inés R. Triay,
Acting Assistant Secretary for Environmental Management