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January 11, 2018

Thomas Groeneveld
National Program Chemical Division
Office of Pollution Prevention & Toxics
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001

Via regulations.gov: Docket ID No. EPA-HQ-OPPT-2017-0421

Subject: Comments on “Mercury; Reporting Requirements for the TSCA Mercury Inventory,” Docket ID No. EPA-HQ-OPPT-2017-0421 (82 FR 49564)

Dear Mr. Groeneveld:

The Environmental Council of States (ECOS), the nonpartisan, national association of state and territorial environmental agency leaders, is pleased to provide comments to the United States (U.S.) Environmental Protection Agency (EPA) in response to its request for feedback on reporting requirements for the Toxic Substance Control Act (TSCA) Mercury Inventory. ECOS appreciates this opportunity to comment.

ECOS urges EPA to adopt mercury reporting requirements for the TSCA Mercury Inventory that will ensure fulfillment of the statutory requirements under TSCA’s 2016 amendment, the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Lautenberg). High quality data can inform future decisions at the state, national and global levels, and provide data needed for the U.S. to meet its obligations under the Minamata Convention.

As apparent through our support of the Quicksilver Caucus, ECOS has a longstanding interest in addressing mercury pollution in the U.S. and globally. ECOS has two resolutions that recognize and support joint state-federal mercury reduction efforts and opportunities, the Minamata Convention, the Mercury Export Ban Act, and the need for ongoing efforts to reduce use, release, and export of mercury. [Resolution 09-2: Mercury Reduction, Stewardship, and Retirement](#) specifically:

“Requests that U.S. EPA establish mercury reporting requirements to provide data needed to inform and optimize mercury reduction programs and policies of the states and to fulfill U.S. national obligations under the Minamata Convention.”

ECOS restates this need for comprehensive mercury reporting in [Resolution 16-2: Reducing Mercury in the Environment](#) whereby ECOS:

“Requests that the federal government continue to work cooperatively with the states and industry to collect comprehensive data on mercury supply, use, trade and pollution sources to track short and long-term trends and identify essential and non-essential uses for targeted management and phase-out.”

Separately, many states have adopted mercury legislation and regulations designed to reduce mercury pollution as well as unnecessary uses of mercury. State programs include phase-outs of unnecessary mercury uses, in addition to labeling and recycling requirements to enhance consumer knowledge and facilitate

recycling of mercury containing products. ECOS and many states have also supported efforts to better track trends in mercury production, use, recycling and releases to the environment.

In the two Resolutions cited above, ECOS formally recognizes the importance of TSCA Section 8(a) mercury reporting requirements and the need for the resulting inventory to inform domestic and international mercury reduction efforts and obligations. As the Lautenberg Act revisions to TSCA that require EPA to propose a Section 8(a) mercury reporting rule and the current rulemaking proposal are comparable to the mercury reporting rules needed to achieve the goals articulated in these resolutions, ECOS supports the stated goal of this rulemaking effort.

Therefore, ECOS submits the following specific comments and recommendations, which reflect ECOS positions articulated in the noted resolutions. If adopted, ECOS believes these comments and recommendations will ensure and enhance the utility of the mercury data collected. In addition, ECOS supports the comments submitted by the Interstate Mercury Reduction and Education Clearinghouse (IMERC), which assists several ECOS member states regarding a range of issues related to mercury products.

Reporting System

The TSCA Chemical Data Reporting (CDR) system is not adequate for mercury reporting. The system is too infrequent and untimely, and the reporting threshold is too high. Therefore, this system should not be relied upon to gather needed mercury data.

While the Supplementary Information to the proposed rule includes a plan to coordinate reporting and requirements with IMERC and CDR, ECOS is concerned that the proposed reporting schedule and requirements will create challenges. ECOS appreciates EPA's efforts to reduce reporting burden and acknowledge data already collected on behalf of IMERC states or in CDR. However, we are concerned that plans to use IMERC, CDR, and a new mercury reporting system will cause confusion for reporting entities and will lead to a discordant set of data. This will compromise data utility and comparability, which is contrary to the intent of this effort. To ensure data utility and comparability, the reporting schedules should be synchronized so as to obtain reporting data for the same time periods. The most straightforward way to accomplish this is to require all parties to report to EPA, regardless of IMERC or CDR reporting status. Further, since it is anticipated that the universe of IMERC reporters will shrink in the future, covering the entire mercury trade system in the EPA reporting system from the outset would also avoid future difficulties capturing entities in the EPA system when they are no longer in the IMERC system.

With state expertise in mercury management available through the Quicksilver Caucus, ECOS is ready to work with EPA as it develops and implements a reporting system.

Reporting Threshold and Exemptions

In order to obtain the information needed to inform decisions, ECOS supports EPA's decision not to establish reporting thresholds. Additionally, ECOS urges EPA to avoid establishing reporting exemptions or exceptions as these will be confusing, will lead to ambiguities and an incomplete inventory, and will create compliance and enforcement difficulties for the regulated community and EPA.

ECOS believes that components and products containing components should all be subject to reporting, or EPA will not be able to fulfill its mercury inventory obligations under TSCA or the Minamata Convention. Reporting information is necessary to inform take-back and recycling programs designed to prevent mercury contamination of various waste streams. Manufacturers and importers are largely aware of mercury-added components in their products since a significant number of states require mercury product labeling when a component is a mercury-added product and the manufacturer or first importer of the larger product is responsible for labeling. IMERC has required this reporting and has managed the potential double counting issue with minimal costs and difficulty; we believe EPA can do the same.

As TSCA does not define “broker” or “brokering”, ECOS believes there is no basis for EPA to ask for comment on potential reporting requirements or exemptions for brokers or brokering. There should be no TSCA mercury trade and inventory reporting exemptions for any entity defined in TSCA; that is, a manufacturer, importer, or exporter of mercury, mercury-containing products, and mercury compounds, including mercury byproducts and impurities.

Though the proposed rule indicates that persons engaged in mining mercury will be required to report, EPA has also proposed that “[a] generator producing mercury incidentally from the beneficiation or processing of ore or related pollution control activities, who accumulates this mercury on-site” would be exempt from reporting. Unless such mercury is certified as designated for the US Department of Energy (DOE) repository, it is available for potential sale. ECOS believes any mercury available for sale including incidentally produced mercury should be captured in the inventory.

Imports and Exports

While the proposed rule requires reporting by people importing mercury, ECOS would like the rule to clarify that this includes mercury-containing materials or wastes may be imported into the US and the mercury in them recovered. This mercury should be reported when recovered unless designated for the US DOE repository in a separate certification, as required under the Mercury Export Ban Act.

In response to EPA’s request for comment on one-time reporting of export of mercury compounds before export is banned under the Lautenberg revisions, ECOS supports this proposal. ECOS believes this will provide a critical baseline and snapshot for future inventory-informed actions related to mercury compounds.

ECOS appreciates EPA’s work to implement the Lautenberg amendments to TSCA, including the Mercury Inventory, and appreciates the opportunity to comment on the proposed reporting rule for the Mercury Inventory. We look forward to working with you on future actions around mercury especially when we are able to assess the full mercury market as a result of this rule. Please feel free to contact me at 202-266-4924 or chanson@ecos.org with any questions.

Sincerely,



Carolyn Hanson
Acting Executive Director