



April 1, 2010

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Via email to: [gagnere@saic.com](mailto:gagnere@saic.com)

And at: <http://www.mercurystorageeis.com/comment.asp>

Re: DOE/EIS-0423D

Dear Mr. Levenstein,

**Nuclear Watch New Mexico** respectfully submits these comments on the Department of Energy's Long-Term Management and Storage of Elemental Mercury draft Environmental Impact Statement (EIS).

The draft EIS states that one objective is to meet the requirements of the Mercury Export Ban Act of 2008.

*DOE's objectives for the long-term management and storage of mercury are important to DOE, EPA, and the public. They are, in part, as follows:*

- Protect human health and the environment and ensure safety of the public and facility workers.*
- Meet the requirements of the Mercury Export Ban Act of 2008.*
- Comply with applicable Federal, state, and local statutes and regulations. (Pg.1-5)*

However, the EIS misquotes the Mercury Export Ban Act of 2008. For instance -

- The U.S. Department of Energy (DOE) must designate a facility(ies) for long-term management and storage of mercury generated in the United States and have it operational by January 1, 2013. (Summary Pg. 1)*

However, the actual language is –

***SEC. 5. LONG-TERM STORAGE.***

***(a) DESIGNATION OF FACILITY.—***

***(1) IN GENERAL.—Not later than January 1, 2010, the Secretary of Energy (referred to in this section as the "Secretary") shall designate a facility or facilities of the Department of Energy, which shall not include the Y-12 National Security Complex or any other portion or facility of the Oak Ridge Reservation of***

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*the Department of Energy, for the purpose of long-term management and storage of elemental mercury generated within the United States.*

This clearly states that “a facility or facilities of the Department of Energy” shall be designated for mercury storage.

And the Act is misquoted in other places -

The Act specifies that the DOE-designated mercury storage facility(ies) shall not include Y-12 National Security Complex or any other portion or facility at the Oak Ridge Reservation in Oak Ridge, Tennessee (42 U.S.C. 6939f(a)(1)).

(Summary Pg. 17)

Explain the process whereby a “DOE facility or facilities”, as specified in the Act, becomes a “DOE-designated” facility as specified in this EIS.

The draft EIS attempts to address this issue -

*DOE has interpreted Section 5 of the Act to authorize DOE to designate existing and/or new storage facilities at property either owned or leased by DOE. (Pg. 1-9)*

Is WCS going to lease or sell part of the site to DOE to store Mercury? The details of this arrangement must be explained in this EIS. Financial assurance must be part of this arrangement. Please include other examples of DOE purchasing or leasing private facilities. Please explain DOE’s authority to reinterpret this Act or any Law. Please include the applicable DOE regulations. Is DOE required to explain to Congress any reinterpretation of an act?

There is an admission that DOE’s interpretation of Section 5 of the Act is outside of the scope of what Congress has approved.

*DOE may sometimes include reasonable alternatives that are outside the scope of what Congress has approved. (Pg. 1-9)*

An explanation of the administrative process that concluded leasing or purchasing part of WCS was a reasonable alternative must be included in this EIS. Please include the applicable DOE regulations.

**Please explain why only a 10-mile radius of influence was assessed.**

*For example, impacts on historic resources were evaluated at specific facility locations within each site, whereas human health risks to the general public were assessed for an area within a 16-kilometer (10-mile) radius of the facility location. (S-6)*

**Please explain the characterization program.**

*Inspections. Upon arrival at the mercury storage facility, concentrations of mercury vapor would be measured to verify that they are below actionable levels. A visual inspection would follow to detect obvious problems that may have occurred during transport. If initial inspections and manifest documentation are acceptable, the mercury would be moved to the Shipping and Receiving Area where additional visual inspections would be performed. The mercury would then be moved to the Handling Area for additional verification that it meets waste*

*acceptance criteria (e.g., 99.5 percent purity). Containers and pallets that pass the acceptance/verification process would be placed into long-term storage.*

*Containers that fail inspection would be returned to the sender. (S-16)*

Please use the WIPP model and characterize the shipments BEFORE shipping to avoid the need to return to sender. The actual actionable levels of vapor must be stated in this EIS.

### **The Environmental Impacts of Waste Control Specialists (WCS) Must Be Reexamined**

WCS's licenses are with the state of Texas. Most of the reference documents cited are older documents written by WCS. DOE must independently reach its own conclusions about the environmental impacts of storing mercury at WCS.

- DOE must independently examine the environmental impacts of storing mercury at WCS and NOT take any previous analyses by other entities at face value.
- DOE must independently assess the quality of any WCS documents used as references in this EIS.

### **The Site Conditions at WCS Must Be Reexamined**

WCS's licenses are with the state of Texas. DOE must independently reach its own conclusions about the site conditions at WCS.

- DOE must independently examine the environmental impacts of storing mercury at WCS and NOT take any previous analyses by other entities at face value.
- DOE must independently assess the quality of any WCS documents used as references in this EIS.

### **Alternatives to a Generic Storage Facility Must Be Analyzed**

The scoping presentation for this EIS describes a generic facility. Some sites have proposed using existing facilities.

- Existing facilities under consideration must be thoroughly analyzed. Please include construction details of the existing facilities.

### **Explain the Financial Details**

The Mercury Export Ban Act requires DOE to assess fees based upon the pro rata costs of long-term management and storage.

- Please explain these costs.
- Compare the alternatives and analyze which sites would be cheaper.
- Please explain the funding mechanism.
- Private users will be encouraged to ship to the facility but will have to pay for storage. Who pays for storage of DOE mercury and what is the funding mechanism?
- WCS is seeking \$75 million in bonds from Andrews County, TX. How would the storage of mercury affect the repayment of the bond?
- Will financial assurance be required of WCS?
- What are projected fees that the federal government will pay to WCS if it is selected for long-term storage of mercury?
- Describe any lease or purchase arrangements.

### **All Impacts On Surface And Groundwater Must Be Analyzed**

*Construction of a new mercury storage facility would require approximately 1,270,000 liters (336,000 gallons) of water over the 6-month construction period for dust suppression and for potable and sanitary needs. (Pg. 2-41)*

- Where will the construction water come from?
- Describe the storm water pollution prevention.
- The actual location of the Ogallala Aquifer must be determined as to whether it is under WCS or not.
  - There is no reason to consider the most recent map, issued 7 months after the previous (December, 2006, and April, 2006), to be the final version. This controversy must be resolved by an independent, accurate scientific survey sponsored by DOE.
  - Please include the map of the Ogallala that was used in determining that this aquifer is not located under the site.
- The WCS non-potable water supply is obtained from a well in the Santa Rosa Formation. Explain the effects of WCS water use and drawdown due to pumping in the Santa Rosa.

### **Analyze Socioeconomic Impacts – Please Don’t Just Characterize**

The draft EIS does a good job of characterizing the socioeconomic data for the projected sites, but falls a bit short on analyzing the impacts of the proposed action at each site. If the impacts are determined to be negligible, please state that.

- Is there enough housing for the construction workers? Will housing prices increase?
- Will the increased traffic be a burden?
- How does expanding WCS affect future land use in the area?
- Where do the economic benefits accrue?
- How much of every dollar spent for mercury storage would actually stay in the local region of the selected site?
- All existing places that are proposed to ship mercury to the proposed facilities, where mercury is now stored, must be examined to compare to relative socioeconomic impacts.

### **Impacts from accidents at nearby facilities, including the National Enrichment Facility must be analyzed.**

- Include all other known existing and possible future contaminants at each facility that would be involved in an accident.

### **Status of Compliance With All Applicable Federal, State and Local Statutes and Regulations**

- Describe the two-year gap from when the facility starts up (Jan. 1, 2013) and when it will be RCRA permitted (Jan. 1, 2015) as described in the scoping presentation.

### **Place Reference Documents Online**

- DOE should make cited reference documents immediately available on the Internet.

**Thank you for Analyzing Climate Change Effects**

**Describe The DOE Approval Process**

- After the final EIS, what is the process for DOE to approve any site for mercury storage?

These comments and questions respectfully submitted,

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