

quirement contained in such an agreement, permit, or order, that is in existence on October 6, 1992, and that requires corrective action or closure at a federally owned treatment works or solid waste management unit or facility related to such a treatment works.

(Pub. L. 89-272, title II, §3023, as added Pub. L. 102-386, title I, §108(a), Oct. 6, 1992, 106 Stat. 1514.)

§ 6939f. 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 the Department of Energy, for the purpose of long-term management and storage of elemental mercury generated within the United States.

(2) Operation of facility

Not later than January 1, 2013, the facility designated in paragraph (1) shall be operational and shall accept custody, for the purpose of long-term management and storage, of elemental mercury generated within the United States and delivered to such facility.

(b) Fees

(1) In general

After consultation with persons who are likely to deliver elemental mercury to a designated facility for long-term management and storage under the program prescribed in subsection (a), and with other interested persons, the Secretary shall assess and collect a fee at the time of delivery for providing such management and storage, based on the pro rata cost of long-term management and storage of elemental mercury delivered to the facility. The amount of such fees—

(A) shall be made publically¹ available not later than October 1, 2012;

(B) may be adjusted annually; and

(C) shall be set in an amount sufficient to cover the costs described in paragraph (2).

(2) Costs

The costs referred to in paragraph (1)(C) are the costs to the Department of Energy of providing such management and storage, including facility operation and maintenance, security, monitoring, reporting, personnel, administration, inspections, training, fire suppression, closure, and other costs required for compliance with applicable law. Such costs shall not include costs associated with land acquisition or permitting of a designated facility under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] or other applicable law. Building design and building construction costs shall only be included to the extent that the Secretary finds that the management and storage of elemental mercury accepted under

the program under this section cannot be accomplished without construction of a new building or buildings.

(c) Report

Not later than 60 days after the end of each Federal fiscal year, the Secretary shall transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on all of the costs incurred in the previous fiscal year associated with the long-term management and storage of elemental mercury. Such report shall set forth separately the costs associated with activities taken under this section.

(d) Management standards for a facility

(1) Guidance

Not later than October 1, 2009, the Secretary, after consultation with the Administrator of the Environmental Protection Agency and all appropriate State agencies in affected States, shall make available, including to potential users of the long-term management and storage program established under subsection (a), guidance that establishes procedures and standards for the receipt, management, and long-term storage of elemental mercury at a designated facility or facilities, including requirements to ensure appropriate use of flasks or other suitable shipping containers. Such procedures and standards shall be protective of human health and the environment and shall ensure that the elemental mercury is stored in a safe, secure, and effective manner. In addition to such procedures and standards, elemental mercury managed and stored under this section at a designated facility shall be subject to the requirements of the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.], including the requirements of subtitle C of that Act [42 U.S.C. 6921 et seq.], except as provided in subsection (g)(2) of this section. A designated facility in existence on or before January 1, 2013, is authorized to operate under interim status pursuant to section 3005(e) of the Solid Waste Disposal Act [42 U.S.C. 6925(e)] until a final decision on a permit application is made pursuant to section 3005(c) of the Solid Waste Disposal Act [42 U.S.C. 6925(c)]. Not later than January 1, 2015, the Administrator of the Environmental Protection Agency (or an authorized State) shall issue a final decision on the permit application.

(2) Training

The Secretary shall conduct operational training and emergency training for all staff that have responsibilities related to elemental mercury management, transfer, storage, monitoring, or response.

(3) Equipment

The Secretary shall ensure that each designated facility has all equipment necessary for routine operations, emergencies, monitoring, checking inventory, loading, and storing elemental mercury at the facility.

(4) Fire detection and suppression systems

The Secretary shall—

¹ So in original. Probably should be “publicly”.

(A) ensure the installation of fire detection systems at each designated facility, including smoke detectors and heat detectors; and

(B) ensure the installation of a permanent fire suppression system, unless the Secretary determines that a permanent fire suppression system is not necessary to protect human health and the environment.

(e) Indemnification of persons delivering elemental mercury

(1) In general

(A) Except as provided in subparagraph (B) and subject to paragraph (2), the Secretary shall hold harmless, defend, and indemnify in full any person who delivers elemental mercury to a designated facility under the program established under subsection (a) from and against any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of elemental mercury as a result of acts or omissions occurring after such mercury is delivered to a designated facility described in subsection (a).

(B) To the extent that a person described in subparagraph (A) contributed to any such release or threatened release, subparagraph (A) shall not apply.

(2) Conditions

No indemnification may be afforded under this subsection unless the person seeking indemnification—

(A) notifies the Secretary in writing within 30 days after receiving written notice of the claim for which indemnification is sought;

(B) furnishes to the Secretary copies of pertinent papers the person receives;

(C) furnishes evidence or proof of any claim, loss, or damage covered by this subsection; and

(D) provides, upon request by the Secretary, access to the records and personnel of the person for purposes of defending or settling the claim or action.

(3) Authority of Secretary

(A) In any case in which the Secretary determines that the Department of Energy may be required to make indemnification payments to a person under this subsection for any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal injury or property damage referred to in paragraph (1)(A), the Secretary may settle or defend, on behalf of that person, the claim for personal injury or property damage.

(B) In any case described in subparagraph (A), if the person to whom the Department of Energy may be required to make indemnification payments does not allow the Secretary to settle or defend the claim, the person may not be afforded indemnification with respect to that claim under this subsection.

(f) Terms, conditions, and procedures

The Secretary is authorized to establish such terms, conditions, and procedures as are necessary to carry out this section.

(g) Effect on other law

(1) In general

Except as provided in paragraph (2), nothing in this section changes or affects any Federal, State, or local law or the obligation of any person to comply with such law.

(2) Exception

(A) Elemental mercury that the Secretary is storing on a long-term basis shall not be subject to the storage prohibition of section 3004(j) of the Solid Waste Disposal Act (42 U.S.C. 6924(j)). For the purposes of section 3004(j) of the Solid Waste Disposal Act, a generator accumulating elemental mercury destined for a facility designated by the Secretary under subsection (a) for 90 days or less shall be deemed to be accumulating the mercury to facilitate proper treatment, recovery, or disposal.

(B) Elemental mercury may be stored at a facility with respect to which any permit has been issued under section 3005(c) of the Solid Waste Disposal Act (42 U.S.C. 6925(c)), and shall not be subject to the storage prohibition of section 3004(j) of the Solid Waste Disposal Act (42 U.S.C. 6924(j)) if—

(i) the Secretary is unable to accept the mercury at a facility designated by the Secretary under subsection (a) for reasons beyond the control of the owner or operator of the permitted facility;

(ii) the owner or operator of the permitted facility certifies in writing to the Secretary that it will ship the mercury to the designated facility when the Secretary is able to accept the mercury; and

(iii) the owner or operator of the permitted facility certifies in writing to the Secretary that it will not sell, or otherwise place into commerce, the mercury.

This subparagraph shall not apply to mercury with respect to which the owner or operator of the permitted facility fails to comply with a certification provided under clause (ii) or (iii).

(h) Study

Not later than July 1, 2014, the Secretary shall transmit to the Congress the results of a study, conducted in consultation with the Administrator of the Environmental Protection Agency, that—

(1) determines the impact of the long-term storage program under this section on mercury recycling; and

(2) includes proposals, if necessary, to mitigate any negative impact identified under paragraph (1).

(Pub. L. 110-414, §5, Oct. 14, 2008, 122 Stat. 4344.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsecs. (b)(2) and (d)(1), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to this chapter. Subtitle C of the Act is classified gen-

erally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

CODIFICATION

Section was enacted as part of the Mercury Export Ban Act of 2008, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§ 6939g. Hazardous waste electronic manifest system

(a) Definitions

In this section:

(1) Board

The term “Board” means the Hazardous Waste Electronic Manifest System Advisory Board established under subsection (f).

(2) Fund

The term “Fund” means the Hazardous Waste Electronic Manifest System Fund established by subsection (d).

(3) Person

The term “person” includes an individual, corporation (including a Government corporation), company, association, firm, partnership, society, joint stock company, trust, municipality, commission, Federal agency, State, political subdivision of a State, or interstate body.

(4) System

The term “system” means the hazardous waste electronic manifest system established under subsection (b).

(5) User

The term “user” means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that—

(A) is required to use a manifest to comply with any Federal or State requirement to track the shipment, transportation, and receipt of hazardous waste or other material that is shipped from the site of generation to an off-site facility for treatment, storage, disposal, or recycling; and

(B)(i) elects to use the system to complete and transmit an electronic manifest format; or

(ii) submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with such regulations as the Administrator may promulgate to require such a submission.

(b) Establishment

Not later than 3 years after October 5, 2012, the Administrator shall establish a hazardous waste electronic manifest system that may be used by any user.

(c) User fees

(1) In general

In accordance with paragraph (4), the Administrator may impose on users such reasonable service fees as the Administrator determines to be necessary to pay costs incurred in

developing, operating, maintaining, and upgrading the system, including any costs incurred in collecting and processing data from any paper manifest submitted to the system after the date on which the system enters operation.

(2) Collection of fees

The Administrator shall—

(A) collect the fees described in paragraph (1) from the users in advance of, or as reimbursement for, the provision by the Administrator of system-related services; and

(B) deposit the fees in the Fund.

(3) Fee structure

(A) In general

The Administrator, in consultation with information technology vendors, shall determine through the contract award process described in subsection (e) the fee structure that is necessary to recover the full cost to the Administrator of providing system-related services, including—

(i) contractor costs relating to—

(I) materials and supplies;

(II) contracting and consulting;

(III) overhead;

(IV) information technology (including costs of hardware, software, and related services);

(V) information management;

(VI) collection of service fees;

(VII) reporting and accounting; and

(VIII) project management; and

(ii) costs of employment of direct and indirect Government personnel dedicated to establishing, managing, and maintaining the system.

(B) Adjustments in fee amount

(i) In general

The Administrator, in consultation with the Board, shall increase or decrease the amount of a service fee determined under the fee structure described in subparagraph (A) to a level that will—

(I) result in the collection of an aggregate amount for deposit in the Fund that is sufficient and not more than reasonably necessary to cover current and projected system-related costs (including any necessary system upgrades); and

(II) minimize, to the maximum extent practicable, the accumulation of unused amounts in the Fund.

(ii) Exception for initial period of operation

The requirement described in clause (i)(II) shall not apply to any additional fees that accumulate in the Fund, in an amount that does not exceed \$2,000,000, during the 3-year period beginning on the date on which the system enters operation.

(iii) Timing of adjustments

Adjustments to service fees described in clause (i) shall be made—

(I) initially, at the time at which initial development costs of the system have been recovered by the Adminis-