

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SUBPOENA AND INFORMATION REQUEST

I. STATUTORY AUTHORITY

This Subpoena and Information Request is issued pursuant to the authority vested in the EPA Administrator, as delegated to the Assistant Administrator for Chemical Safety and Pollution Prevention, under Section 11(c) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2610(c).

II. CERTIFICATION

The information provided shall be verified by, and submitted under an authorized signature by a responsible corporate officer,¹ with the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

III. CONFIDENTIAL BUSINESS INFORMATION

The information requested herein must be provided notwithstanding the possibility that the information requested may be characterized as confidential business information or trade secrets. Request for confidential treatment must be made when information or access to records is provided and in accordance with the instructions provided in Section V.M. below.

IV. SUBMISSION OF YOUR RESPONSE TO THE INFORMATION REQUESTED

All submissions required by this request shall be provided within thirty (30) days of receipt of this request, and addressed to:

Tanya Hodge Mottley
Director, National Program Chemicals Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
MC: 7404M
Washington, DC 20460

¹ The term "responsible corporate officer," as used herein, means a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation.

Do not submit information that you consider to be confidential business information (CBI) electronically through EPA's electronic public docket or by e-mail. For guidance on submitting CBI, see paragraph V.M. Addresses for CBI:

U.S. Mail

U.S. EPA
Office of Pollution Prevention and Toxics
Document Control Office (7407M)
1200 Pennsylvania Ave., NW
Washington, DC 20460

Courier

U.S. EPA
Office of Pollution Prevention and Toxics
Confidential Business Information Center (CBIC)
William Jefferson Clinton East Building, Room 6428
1201 Constitution Ave., NW
Washington, DC 20004-3302

V. INSTRUCTIONS

A. Respond to Each Request Completely. Each request is numbered. A separate response must be made to each request. Provide a separate narrative response to each request and clearly identify your responses with the number and text of the request to which it corresponds. Each question posed must be answered. If the appropriate response is "none" or "not applicable," that information should be so stated. You must also submit any documents you relied on in preparing your response. Incomplete, evasive, or ambiguous answers shall constitute failure to respond to this Subpoena and Information Request and may subject you to penalties as discussed in the cover letter.

B. Source(s) of Response. Include with each narrative response, the name, position, and title of each person(s) who provided information responsive to the request.

C. Submission of Documents. Label each document submitted with the request number and subpart (if applicable) to which it corresponds. Date stamp each document you submit. If anything is deleted from a document produced in response to this Information Request, state the reason for and the subject matter of the deletion.

D. Documents Responsive to More than One Request. If a document you submit is responsive to more than one request, provide one copy of the document and identify all the requests, by number and subpart, to which it corresponds.

E. Do Not Substitute Derivative or Summary Documents. Where a document is requested, please provide the responsive document. You may, if you wish, provide additional or explanatory documents to accompany the responsive document(s). However, your failure to provide the document requested will be considered a failure to completely respond to this Subpoena and Information Request.

F. Provide the Best Information Available. Unless otherwise specified, responses do not require you to create new data or information. However, you should provide responses to the best of your ability, even if the information sought was never put down in writing or if the written documents are no longer available. You should seek responsive information from current and former employees and/or agents. Submission of cursory responses when other responsive information is available to you will be considered a failure to completely respond to this Subpoena and Information Request. If you cannot provide a precise answer to any questions, please approximate and state the reason for your inability to be specific.

G. Unavailability of Records. If you are unable to respond to a request in a detailed and complete manner, or if you are unable to provide any of the information requested, indicate the reason for your inability to do so. If a record(s) responsive to a request is not in your possession, custody, or control and you have reason to believe that another person may be able to provide it, state the reasons for your belief and provide the person's name, address, telephone number, and any information available (i.e., author, date, or subject matter) about the record(s).

H. Documents That Have Been Transferred. If any records responsive to a request have been transferred or otherwise disposed of, identify the document, identify the person to whom it was transferred, describe the circumstances surrounding such transfer or other disposition, and state the date or approximate date of such transfer or other disposition.

I. Duty to Provide and/or Correct Information on a Continuing Basis. If any records responsive to a request are not known or are not available to you at the time you submitted your response, but later become known or available to you, you must submit the new information as a supplement to your response. If at any time after submission of your response you learn that any portion is or becomes false, incomplete, or misrepresents the facts, you must notify EPA of this fact as soon as possible and provide a corrected response. Failure to supplement your response within thirty (30) days of discovering such responsive information may subject you to an enforcement action. If any part of the response to this Subpoena and Information Request is found to be false, the signatory to the response and the company may be subject to criminal prosecution.

J. Identify Personal Privacy Information. Personnel and medical files, and similar files, the disclosure of which to the general public may constitute an invasion of privacy, should be segregated from your responses, included on separate sheet(s), and marked as "Personal Privacy Information." You should note however, that unless prohibited by law, EPA may disclose this information to the general public without further notice to you.

K. Indicate Objections to Requests. While you may indicate that you object to certain requests contained in this Subpoena and Information Request, you must provide responsive information notwithstanding those objections. To object without providing responsive information may subject you to the penalties discussed in the cover letter.

L. Claims of Privilege. If you claim that an entire document responsive to this Subpoena and Information Request is a communication for which you assert that a privilege exists, identify the document and provide the basis for asserting the privilege. For any document for which you assert that a privilege exists for a portion of it, provide the portion of the document for which you are not asserting a privilege; identify the portion of the document for which you are asserting the privilege; and provide the basis for such an assertion. Please note that regardless of the assertion of any privilege, any facts

contained in the document which are responsive to the Subpoena and Information Request must be disclosed in your response.

M. Confidential Business Information. You must provide the information requested even though you consider it confidential information or trade secrets. You may assert a business confidentiality claim for part or all of the information requested, as described below and set forth in 40 C.F.R. Part 2, Subpart B. Information covered by such a claim will be disclosed by EPA only to the extent and only by the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no confidentiality claim accompanies the information when EPA receives it, the information may be made available to the public by EPA without further notice to you.

If you wish EPA to treat any information or response as “confidential,” you must advise EPA and comply with the following procedures. Place on or attach to the information at the time it is submitted to EPA a cover sheet, stamped or typed legend, or other suitable form of notice employing such language as *trade secret*, *proprietary*, or *company confidential*.² You must clearly identify allegedly confidential portions of otherwise non-confidential documents and you may want to submit these separately to facilitate identification and handling by EPA. EPA will ask you to substantiate each claim of confidential business information by separate letter in accordance with applicable EPA regulations, 40 C.F.R. Part 2, Subpart B.

VI. DEFINITIONS

Except as otherwise defined below, terms in this Subpoena and Information Request have the same definition used in TSCA, 15 U.S.C. §§ 2601 through 2695d, and the regulations promulgated thereunder.

- A. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Subpoena and Information Request any information which might otherwise be construed to be outside its scope.
- B. The term “any,” as in “any documents,” for example, shall mean “any and all.”
- C. The term “company” means the entity identified as the addressee on the cover letter to this Subpoena and Information Request and all related and affiliated facilities or corporate entities (including, but not limited to, parent corporations, subsidiaries, joint ventures, partnerships, and affiliates) that manufacture, process, or distribute in commerce mercury and/or mercury compounds.
- D. The terms “distribute in commerce” and “distribution in commerce” when used to describe an action taken with respect to a chemical substance or mixture or article containing a substance or mixture mean to sell, or the sale of, the substance, mixture, or article in commerce; to introduce or deliver for introduction into commerce, or the introduction or delivery for introduction into commerce of, the substance, mixture, or article; or to hold, or the holding of, the substance, mixture, or article after its introduction into commerce.

² Note that EPA has issued guidance that may be relevant in considering whether to assert confidentiality claims. For example, the Agency has stated that, in general, EPA expects to find that chemical identity in health and safety studies submitted under the Toxic Substances Control Act is not CBI unless it explicitly contains process information or discloses portions of a mixture. 75 Fed. Reg. 29,754 (May 27, 2010). Also, in the interest of transparency, we ask that you exercise prudence and assert CBI claims sparingly.

E. The term “manufacture” means to import into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States), produce, or manufacture.

F. The term “mercury” means elemental mercury (Chemical Abstracts Service Registry Number 7439-97-6).

G. The term “mercury compound” means mercury reacted with another substance (e.g., mercury chloride, mercury oxide, methylmercury).

H. The term “mixture” means any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that such term does include any combination which occurs, in whole or in part, as a result of a chemical reaction if none of the chemical substances comprising the combination is a new chemical substance and if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined.

I. The term “person” means an individual, trust, firm, joint stock company, corporation (including a government corporation), limited liability company, partnership, association, state, municipality, commission, political subdivision of a state, or an interstate body.

J. The term “process” means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce:

1. in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or
2. as part of an article containing the chemical substance or mixture.

VII. SUBPOENA AND INFORMATION REQUEST

Your response to the following questions is due within thirty (30) days of receipt of this request.

To the extent you know or can reasonably ascertain, EPA requests the following information from you in regard to mercury and/or mercury compounds:

1. List of customers that purchase or otherwise receive mercury from your company as of January 1, 2015. For each customer, include contact information (company name, and name, title, mailing address, telephone number, and email address of your main contact(s)).
2. Total quantity in pounds of mercury manufactured or processed by your company from mercury, mercury compounds, or mixtures containing mercury during each of the calendar years 2010 and 2013.
3. Maximum quantity in pounds of mercury stored on-site by your company during each of the calendar years 2010 and 2013.
4. Total quantity in pounds of mercury stored on-site by your company for the purpose of eventual sale during each of the calendar years 2010 and 2013.
5. Total quantity in pounds of mercury stored on-site by your company for the purpose of eventual transfer to a long-term management and storage facility at the U.S. Department of Energy, in accordance with 42 U.S.C. § 6939f(g)(2)(B), during each of the calendar years 2010 and 2013.
6. Total quantity in pounds of mercury distributed in commerce by your company during each of the calendar years 2010 and 2013.
7. Of the quantity in pounds identified in response to question 6, total quantity in pounds of mercury transferred off-site by your company during each of the calendar years 2010 and 2013.
8. Of the quantity in pounds identified in response to question 7, total quantity in pounds of mercury transferred off-site by your company to a separate company for storage and certified for eventual transfer to a long-term management and storage facility at the U.S. Department of Energy, in accordance with the 42 U.S.C. § 6939f(g)(2)(B), during each of the calendar years 2010 and 2013. Also provide the name and address of the receiving facility.
9. Of the quantity in pounds identified in response to question 7, total quantity in pounds of mercury transferred off-site by your company to a separate company for processing³ during each of the calendar years 2010 and 2013. Also provide the name and address of the receiving facility.
10. Of the quantity in pounds identified in response to question 6, total quantity in pounds of mercury sold by your company during each of the calendar years 2010 and 2013.
11. Did your company import mercury, mercury compounds, or mixtures containing mercury for manufacturing or processing during each of the calendar years 2010 and 2013? If so, total quantity in pounds of mercury and/or mercury compounds imported by your company and from which country(ies) of origin during each of the calendar years 2010 and 2013.
12. Did your company export mercury during each of the calendar years 2010 and 2013? If so, total quantity in pounds of mercury exported by your company and to which country(ies) of destination during each of the calendar years 2010 and 2013.

³ Do not include quantities transferred off-site for recycling that were reported to the Toxics Release Inventory for calendar years 2010 and 2013.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SUBPOENA AND INFORMATION REQUEST

SIGNATORY:

DATE: 3/20/2015



JAMES J. JONES
ASSISTANT ADMINISTRATOR
OFFICE OF CHEMICAL SAFETY AND POLLUTION
PREVENTION