



May 19, 2021

Transmitted Electronically

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Office of Pollution Prevention and Toxics (OPPT)
US EPA
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001

Re: Docket # EPA-HQ-OPPT-2020-0617

Dear Sir/Madam:

The Natural Resources Defense Council (NRDC) hereby submits comments on the information collection request (ICR) for the TSCA mercury inventory reporting, as published at 86 FR 15661 (March 24, 2021). NRDC is a national, non-profit environmental organization of lawyers, scientists, and other professionals. We present these comments on behalf of our over three million members and online activists. NRDC does not have any financial interest in the topic of these comments.

NRDC generally supports the ICR, because the information is necessary to produce the Congressionally required triennial inventory of mercury supply, use, and trade. The inventory provides an important informational basis for further mercury use reductions, and for implementing the United States' obligations as a Party to the Minamata Convention on Mercury.

As EPA's ICR Supporting Statement indicates, NRDC successfully challenged an exemption to the Agency's reporting rules for imported mercury-added components (i.e., batteries, switches) in larger assembled products.¹ Accordingly, importers of such assembled products must report during the next cycle, anticipated in 2022. NRDC urges EPA to publish the necessary regulatory changes as soon as possible, consistent with the Court decision.

¹ Supporting Statement for an ICR Under the Paperwork Reduction Act, p. 7, available at <https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0617-0002>.

Our remaining ICR comment concerns how EPA can enhance the quality and utility of the information to be collected. Specifically, EPA should make each reporting form submitted publicly available in an easily accessible and searchable data base, for the following reasons.

First, under Section 5(d) of the President's Memorandum of January 27, 2021, EPA is required to expand open and secure access to Federal data routinely collected in the normal course of administering its programs, making the data available by "default".²

Second, EPA's failure to make the reporting forms available for the first reporting round adversely affected the quality of the information obtained. Specifically, NRDC was concerned that data on mercury use in switch and relays was underreported, but because the reporting forms were not public, NRDC could not actually identify the non-reporting companies.³ Instead, NRDC had to provide EPA with a list of companies it considered large mercury switch manufacturers, because only EPA staff knew which companies reported. Ultimately, several non-reporters were identified, and EPA had to revise its inventory data substantially upward months later.⁴ It's quite possible that, to date, not all significant non-reporters have been identified, since NRDC's initial search focused on a particular product category.

Third, the decision to make the reporting forms publicly unavailable was never subject to public comment, and this lack of public access is contrary to EPA's other data bases on which it relies to support the inventory (CDR, TRI). Moreover, the state products data base, also on which EPA relies, makes the individual company reporting data public in a searchable data base.⁵ Indeed, using the historical forms in this data base was how NRDC identified the non-reporting switch and relay manufacturers. These other data bases are publicly available because public disclosure provides an added incentive for companies to minimize the use of toxic chemicals where possible to do so.

Fourth, there is no significant policy basis for not making the forms publicly available. Certainly, there is no legal authority prohibiting it. Perhaps EPA believed companies would more likely provide data if the forms were not public, but this was certainly not the case in the first round. EPA is aware of companies which still have failed to report mercury use. Moreover, EPA's reporting form allows companies to declare data CBI, thus in the unlikely event companies have a valid basis to seek protection from public disclosure, they already have a means to do so.⁶ Withholding access to all reporting forms merely deprives public access without any societal benefit not already provided through the CBI designation process.

² 86 Fed. Reg. 8845 (February 10, 2021).

³ Another organization had similar concerns regarding amalgam manufacturers.

⁴ See https://www.epa.gov/sites/production/files/2021-01/documents/updated_mercury_inventory_totals_december_2020.pdf.

⁵ See <http://www.newmoa.org/prevention/mercury/imerc/notification/>.

⁶ The state reporting system also allows for CBI claims, but we are not aware of any instance where CBI designations have been requested from the states. Companies cannot assert CBI protection at the federal level while waiving CBI protection at the state level.

For these reasons, NRDC urges EPA to make the reporting forms publicly available, as required by Administration policy, and to facilitate the collection of comprehensive, accurate mercury data.

Respectfully submitted,

A handwritten signature in cursive script that reads "David J. Lennett". The signature is written in dark ink and is positioned above the printed name.

David Lennett,
Senior Attorney