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United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510–6175

January 14, 2014

The Honorable Barack H. Obama
President
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Obama:

I write today to express concern with your Administration's poor implementation of the Mercury Export Ban Act of 2008 which was passed by Congress and signed into law by President George W. Bush.

The failure of your Administration to implement this law is in direct contradiction to the Constitution. According to Article I, Section 8 of the United States Constitution, Congress has the exclusive authority "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States." Article II, Section 3, makes clear the President's role is to "care that the Laws be faithfully executed." Despite a clear articulation of duties, concern has been raised innumerable times regarding your Administration's selective enforcement of numerous laws to the point that it equals unconstitutionally legislating by administrative fiat.

With regard specifically to the Mercury Export Ban Act, you were the lead sponsor in the United States Senate. By all accounts, it was your one signature environmental legislative victory. That makes it particularly troubling that your Administration, after five full years in office, has failed to execute the law.

Your legislation specifically requires the Secretary of Energy to designate a facility for the long-term management and storage of elemental mercury by "not later than January 1, 2010" and to "require such facility to be operational by January 1, 2013." Your Administration is now tasked with implementing your bill, which set forth clear deadlines; however, those deadlines have been woefully missed.

A full year after the facility was obligated under law to be operational, the selection of the facility site has yet to be finalized and still remains in the cumbersome federal environmental review process. This comes four years after the site was required to be designated following a review by your Administration which looked at a range of options including a "No Action Alternative" to the action you yourself passed into law.

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I certainly acknowledge the potential harm of exposure to elemental mercury if it is mismanaged and applaud your efforts in the Senate to reduce exposures to people both in and outside of the United States; however, the legislation's goal was not only the export ban of this substance. If we're not exporting mercury, we obviously need to store it somewhere. At both the May 13, 2008, hearing on your bill, as well as the July 31, 2008, mark- up of your bill, a broad spectrum of individuals touted the importance of the long-term management of elemental mercury at a facility operated by the Department of Energy.

Chairwoman Barbara Boxer claimed one of the main benefits of the legislation would be to "help decrease the supply of dangerous mercury by providing a safe facility to permanently store elemental mercury." From an industry perspective, Arthur Dungan, then-President of the Chlorine Institute, Inc. said in his opening statement, "With an export ban in place, this surplus mercury will have to be stored somewhere. Few options would have the safeguards that a permanent, federally-managed storage site would have."

Despite support of your bill across both sides of the aisle, it unfortunately appears a major portion of your legislative legacy subsequently has run into a roadblock in your own Administration. As you continue to selectively enforce provisions of law like Obamacare, I hope that you can direct the Secretary of Energy to at least attempt to implement the Mercury Export Ban Act of 2008, a law you yourself authored.

Thank you for your attention to this important environmental matter. I look forward to your response.

Sincerely,

David Vitter
Ranking Member
U.S. Senate Committee on
Environment and Public Works