

TESTIMONY OF ASHTA CHEMICALS INC.

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BEFORE THE

SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION

COMMITTEE ON ENERGY AND COMMERCE

UNITED STATES

HOUSE OF REPRESENTATIVES

PERTAINING TO THE MERCURY POLLUTION REDUCTION ACT OF 2009

(H. R. 2190)

MAY 12, 2009

Introduction

Mr. Chairman and Members of the Subcommittee:

ASHTA Chemicals appreciates the opportunity to testify before you concerning the Mercury Pollution Reduction Act of 2009 (H. R. 2065) and the Mercury Pollution Reduction Act of 2009 (H. R. 2190). These two bills are duplicative in many respects and may be referred to collectively as “the bill” in this testimony. This testimony is being provided on behalf of ASHTA Chemicals Inc. and intended to address the impact the bill may have on our company and the environment. While others in the chlor-alkali industry may be similarly impacted by this proposed legislation, we do not intend to speak for them.

The chlor-alkali industry is represented by two distinct businesses, the production of chlorine and sodium hydroxide (caustic soda) and the production of chlorine and potassium hydroxide (KOH). The production of chlorine and caustic soda represents a very large market with annual production in the United States estimated to be 13 million tons while the production of chlorine and KOH represent a relatively small market with production in the United States estimated to be less than 600 thousand tons. Approximately 50% of the annual KOH production in the United States is currently from mercury cell production.

ASHTA Chemicals Inc. (ASHTA) is a privately held company with its offices and sole production facility in Ashtabula, OH. Located about one mile from the shores of Lake Erie on 92 acres of land, ASHTA employs nearly 100 people with an annual payroll of approx. \$7 million in an economically depressed part of Northeast Ohio. Additionally, the company supports a number of local businesses and contractors with close to \$2 million of annual capital

investments in our facilities and \$3.6 million in maintenance, operating supplies and contracted services. Our production facility has been operating as a mercury cell chlor-alkali plant for 45 years under several different owners. We currently produce two (2) principle products in Ashtabula, OH - chlorine and KOH by means of electrolysis. Utilizing this process, these “co-products” are produced in the identical manner as chlorine and caustic soda (sodium hydroxide).

ASHTA has an excellent environmental, health and safety record. The health and safety of our employees and being good environmental stewards, is of the utmost concern to us. Our facility currently produces less than one half of one percent (<0.5%) of the chlorine manufactured in the United States; however, we produce about thirteen (13) percent of the KOH manufactured in North America.

We believe that everyday life in this country would be very different without the benefits of chlorine and KOH chemistry. Combined with the power of human innovation, chlorine and KOH chemistry play an essential role in providing the indispensable products of modern life. Chlorine chemistry is an important part of the process to provide clean drinking water for all of us. It is also used to make high-tech first-responder equipment, sustainable building materials, food protection chemicals, computer microprocessor chips and more than 90 percent of prescription pharmaceuticals. KOH is used as a principle source of alkalinity in many soaps and cleaning products, disinfecting applications, alkaline batteries and water treatment applications. It is also used as a source of potassium - one of the three essential plant nutrients - in liquid fertilizers. You can also find KOH in a wide variety of other applications including photo processing chemicals, herbicides, runway de-icers and in chemical formulations that require KOH. In many of the above applications, there is simply no substitute for KOH.

The mercury cell process is one of three manufacturing processes used in the chlor-alkali industry to produce chlorine and caustic soda and one of two manufacturing processes used to produce chlorine and KOH. With the mercury cell process, mercury is contained in enclosed mercury “cells” where it is used as a flowing cathode to extract potassium from potassium chloride. It is used in a non-dispersive way to support chemical reactions and is recycled within the cells. Strict safety procedures and process controls are followed to prevent workplace exposure and to minimize mercury emissions. For that reason, chlorine production is a very small source of mercury emissions to the environment today, contributing less than one tenth of one percent (< 0.1%) of total global emissions of mercury from all natural and man-made sources. ASHTA’s represents an even smaller fraction of the total global mercury emissions (see Exhibit 1).

ASHTA does not propose to challenge the findings by the Committee that (1) mercury is toxic to humans, ecosystems and wildlife; (2) a significant source of mercury exposure to people is the ingestion of mercury-contaminated fish; (3) the long term solution to mercury pollution is to minimize global mercury use and releases; (4) mercury is a transboundary pollutant that is deposited locally regionally and globally and affects various bodies of water. ASHTA does, however, strongly disagree with the findings that (1) mercury cell production is obsolete; (2) cost effective alternatives are in use in the vast majority of production of the products that we produce (chlorine and KOH) and, most importantly, (3) that that the elimination of mercury cell production by ASHTA Chemicals will materially impact the presence of mercury in the environment.

ASHTA has a long history of working in a cooperative manner with regulatory agencies such as the U.S. EPA, the Ohio EPA, OSHA and the DOT. We work in close cooperation with our local Community Advisory Panel (CAP) on local environmental, health and safety issues. We are and have consistently been in compliance with regulations that govern our site and the operating permits that we have been issued. We also have a history of aggressive improvement of our environmental performance over the past several years. In 1996 ASHTA made a substantial financial investment of our own funds to eliminating mercury emissions in water by becoming a ZERO WATER DISCHARGE FACILITY. By eliminating the release or discharge of any storm water or process water from its process areas, ASHTA has long complied with the Great Lakes Water Quality Initiative. We do this through the use of a proprietary technology that we developed and installed.

In 1996, the industry worked with EPA and voluntarily agreed to a mercury reduction goal that resulted in a mercury use reduction of more than 90%. In 2001, the mercury cell chlor-alkali industry publicly supported legislation to ban the export of elemental mercury after a facility was established to permanently store surplus mercury. In 2003, mercury cell chlor-alkali producers further committed to a full accounting of all mercury used by the industry. In 2005, the industry provided data to the EPA to allow it to promulgate further reductions in air emissions that became effective later that year. In 2008, the industry worked with a diverse group of stakeholders to secure passage of the Mercury Export Ban Act of 2008.

In 2005, ASHTA specifically achieved early compliance with the Maximum Achievable Control Technology (MACT) under the mercury cell chlor-alkali NESHAP regulations to minimize mercury air emissions from point sources at its facility. ASHTA also has completed additional

supplemental environmental projects to minimize fugitive emissions from its chlor alkali process and work areas. We currently estimate that mercury air emissions from ASHTA's facility are approximately 0.1 grams per day which equates to approx. 0.08 lbs per year. ASHTA is also currently working with the Ohio EPA to process and monitor additional storm water from non-production areas of our property and we are in the process of completing a Voluntary Action Program (VAP), also in conjunction with the Ohio EPA.

Phase out of this Technology

With the substantial reductions in mercury use and emissions by ASHTA that have been achieved, we believe there are no human health or environmental issues that justify mandating this phase out of mercury cell technology and the phase out of our company. Closing ASHTA's facility will have no measurable effect on global or local mercury emissions. It will also have no measurable effect on human health and the environment in the United States, in the state of Ohio, or in the city of Ashtabula where most of our employees live and work. However, closure of mercury cell chlor-alkali plants that produce chlorine and KOH, which represent approx. 60% of the potassium hydroxide capacity in North America, would have a substantial adverse effect on the KOH supply in North America and those businesses which require it. For ASHTA specifically, the phase out of this technology could result in the closure of our only production facility, and thus the loss of nearly 100 high paying jobs in Northeast Ohio. Closing ASHTA's facility will also negatively impact many of our customers who rely on the chlorine, potassium hydroxide and other products that we supply. 100% of the chlorine that we produce is sold to a company located adjacent to ASHTA's facility. Closing our plant would result in a large increase in the number of rail car shipments of chlorine (a Toxic Inhalation Hazard) across our nation's main-line rail infrastructure in order to serve the needs of our customer.

ASHTA has repeatedly evaluated the financial impact of converting our plant to membrane cell technology. In each case, we have concluded that the economic risk to the Company was not warranted, particularly considering our longstanding record of operating well within compliance of all environmental regulations and operating permits. At this time, when the country and our local community find themselves in the worst economic condition since the Company's beginnings, requiring us to make a further financial investment of approx \$60 million to convert to membrane technology is unwarranted, it is confiscatory, and it is bad public policy. Therefore we urge you to consider the broader impact that the adoption of this bill would have, and we urge you to defeat this proposed legislation.

The Proposed Legislation

We do not believe that H. R. 2190 is warranted. Furthermore, we believe this legislation has the real potential to undermine the mercury export ban that was enacted last year. Further, there are several specific portions of H.R. 2190 that we believe are not only impractical, but also not possible. We also do not believe the committee has fully considered the potential impact of this phase out on the KOH business in North America. We would like to briefly address each of these portions of the proposed legislation.

Under the prohibition section of the bill, if ASHTA were to make the decision to make the capital investment to convert its facility to membrane technology, we do not believe it would be feasible to do so within a period of 24 months after the enactment of the bill. Attempting to accomplish design, engineering, financing, permitting, procurement and contracting, construction and start-up would be very difficult and put onerous requirements on our company

and our available resources. We also believe it would drive up the cost of conversion and out additional strains on our company's financial health.

Under the "Export Ban" section of the bill, until the Department of Energy has established a site for the receipt of surplus mercury, facilities like ASHTA's will have no place to store surplus mercury. RCRA regulations prohibit the temporary storage of hazardous wastes at our site for more than 90 days. The bill clearly states that mercury is to be treated as hazardous waste. If you cause us to stop using mercury at our facility, we will have no place to store the inventory of mercury that we carefully monitor and use in our current manufacturing process.

Under the "Reporting Requirements" section of the bill, ASHTA is willing to provide data specified in the bill for the current and future years, however, congress needs to recognize that the data is simply not available for early years. ASHTA keeps certain records in accordance with its record retention policies and current laws and regulations and thus the records of the type specified in the bill are simply not available from ASHTA.

Summary

ASHTA considers itself to be a responsible corporate citizen and a responsible employer. Our mercury cell manufacturing technology is used to make many products that are important to all of our daily lives. We have been proactive in inventing and employing technology that allows us to monitor and safely contain the mercury used in our production process. The amount of mercury that escapes into the atmosphere from our closed cycle process is so small, so insignificant, that it does not merit the prohibitions imposed by this legislation. The adoption of H.R. 2190 unfairly targets ASHTA and the chlor-alkali industry and imposes on us costs – costs

that are so substantial and so unnecessary, that it could cause our company to close its doors and add nearly 100 well paid employees to the ranks of the “newly unemployed”. This is not smart public policy from a variety of perspectives, and we urge this committee and congress to exercise restraint and to not enact H.R. 2190.