2015 -- S 0608

STATE OF RHODE ISLAND
IN GENERAL ASSEMBLY
JANUARY SESSION, A.D. 2015

A N A C T
RELATING TO HEALTH AND SAFETY - MERCURY REDUCTION AND EDUCATION ACT

Introduced By: Senators Ruggerio, Conley, Archambault, McCaffrey, and Goldin

Date Introduced: March 05, 2015

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:


23-24.9-2. Findings. -- The general assembly has found and hereby declares that:
(1) Mercury is a persistent and toxic pollutant that bioaccumulates in the environment;
(2) Mercury deposition has proven to be a significant problem in the northeastern United States;
(3) Consumption of mercury-contaminated freshwater fish poses a significant public health threat to the residents of Rhode Island;
(4) In order to address these real threats to public health and the environment, the state has been and should continue to actively cooperate with other states in the region to help minimize harm resulting from mercury in food, soil, air and water;
(5) According to a 2004 study by the U.S. environmental protection agency titled "International mercury market study and the role and impact of U.S. environmental policy," more than ten percent (10%) of the estimated mercury reservoir in the United States is in thermostats;
(6) In 1998, thermostat manufacturers, General Electric, Honeywell, and White Rodgers established the thermostat recycling corporation "(TRC)", a non-profit corporation to facilitate recycling of mercury thermostats nationwide. The TRC originally operated solely through
wholesalers but has since expanded to enable collection by contractors, household hazardous waste facilities, and retailers. The TRC is a voluntary program in all states, but several states require wholesalers to act as collection points for waste mercury thermostats. Participation in the TRC is likely the simplest, least-cost means of complying.

(7) The manufacturers of mercury-containing thermostats, with the cooperation of the department, should be encouraged to submit a single unified plan for the collection of mercury-containing thermostats, the cost of which should be appropriately apportioned between participating manufacturers; and

(8) The manufacturers of mercury-containing lamps, with the cooperation of the corporation in collaboration with the department, should be encouraged to submit a single unified plan for the collection of mercury-containing lamps, the cost of which should be appropriately apportioned between participating manufacturers; and

(9) The intent of this chapter is to achieve significant reductions in environmental mercury by encouraging the establishment of effective waste reduction, recycling, management and education programs.

23-24.9-3. Definitions. -- For the purpose of this chapter:

(1) "Component" means a mercury-added product which is incorporated into another product to form a fabricated mercury-added product, including, but not limited to, electrical switches and lamps.

(2) "Corporation" means the Rhode Island resource recovery corporation created and established pursuant to chapter 19 of title 23.

(3) "Covered entity" means any person who presents to a collection facility that is included in an approved plan:

(i) Any number of compact fluorescent mercury-containing lamps; or

(ii) Ten (10) or fewer mercury-containing lamps that are not compact fluorescent lamps and are not from a large use application.

(4) "Department" means the department of environmental management.

(5) "Director" means the director of the department of environmental management or any subordinate or subordinates to whom the director has delegated the powers and duties vested in him or her by this chapter.

(6) "Fabricated mercury-added product" means a product that consists of a combination of individual components that combine to make a single unit, including, but not limited to, mercury-added measuring devices, lamps and switches to which mercury or a mercury compound is intentionally added in order to provide a specific characteristic, appearance, or...
quality, or to perform a specific function or for any other reason.

(7) "Formulated mercury-added product" means a product that includes, but is not
limited to, laboratory chemicals, cleaning products, cosmetics, pharmaceuticals and coating
materials that are sold as a consistent mixture of chemicals to which mercury or a mercury
compound is intentionally added in order to provide a specific characteristic, appearance, or
quality, or to perform a specific function or for any other reason.

(8) "Healthcare facility" means any hospital, nursing home, extended care facility,
long-term care facility, clinical or medical laboratory, state or private health or mental institution,
clinic, physician's office or health maintenance organization.

(9) "Manufacturer" means any person, firm, association, partnership, corporation,
governmental entity, organization, combination or joint venture that produces a mercury-added
product or an importer or domestic distributor of a mercury-added product produced in a foreign
country. In the case of a multi-component mercury-added product, the manufacturer is the last
manufacturer to produce or assemble the product. If the multi-component product is produced in
a foreign country, the manufacturer is the importer or domestic distributor. In the case of
mercury-containing thermostats, the manufacturer is the original equipment manufacturer who
sells or sold a mercury-containing thermostat under a brand or label it owns, or is or was licensed
to use a mercury-containing thermostat produced by other suppliers.

(10) In the case of mercury-containing lamps, the manufacturer is a person who
(i) Manufactures or manufactured a mercury-containing lamp under its own brand or
label for sale in the state;
(ii) Sells in the state under its own brand or label a mercury containing lamp produced by
another supplier;
(iii) Owns a brand that it licenses, or licensed to another person for use on a mercury-
containing lamp sold in the state;
(iv) Imports into the United States for sale in the state a mercury-containing lamp
manufactured by a person without a presence in the United States;
(v) Manufactures a mercury-containing lamp for sale in the state without affixing a brand
name; or
(vi) Assumes the responsibilities, obligation, and liabilities of a manufacturer as defined
under paragraphs (i) through (v) of this subdivision.

(11) "Mercury-containing lamp" means a general purpose lamp to which mercury is
intentionally added during the manufacturing process. "Mercury-containing lamp" does not mean
a lamp used for medical, disinfection, treatment or industrial purposes.
“Mercury-added button cell battery” means a button cell battery to which the manufacturer intentionally introduces mercury for the operation of the battery.

“Mercury-added novelty” means a mercury-added product intended mainly for personal or household enjoyment or adornment. Mercury-added novelties include, but are not limited to, items intended for use as figurines, adornments, toys, games, cards, ornaments, yard statues and figures, candles, jewelry, holiday decorations, items of apparel (including footwear), or similar products.

“Mercury-added product” means a product, commodity, chemical or a product with a component that contains mercury or a mercury compound intentionally added to the product, commodity, chemical or component in order to provide a specific characteristic, appearance, or quality, or to perform a specific function or for any other reason. These products include formulated mercury-added products and fabricated mercury-added products.

“Mercury fever thermometer” means a mercury-added product that is used for measuring body temperature.

“Mercury-containing thermostat” means a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilating, or air-conditioning equipment. “Mercury-containing thermostat” includes thermostats used to sense and control room temperature in residential, commercial, industrial, and other buildings, but does not include a thermostat used to sense and control temperature as part of a manufacturing process.

“Person” means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, the federal government or any agency or subdivision thereof, a state, municipality, commission, political subdivision of a state, or any interstate body.

“Thermostat retailer” means a person who sells thermostats of any kind directly to homeowners or other nonprofessionals through any selling or distribution mechanism, including, but not limited to, sales using the internet or catalogues. A retailer may also be a wholesaler if it meets the definition of wholesaler.

“Thermostat wholesaler” means a person that is engaged in the distribution and wholesale sale of thermostats and other heating, ventilation, and air-conditioning components to contractors who install heating, ventilation, and air-conditioning components.

“Contractor” means a person engaged in the business of installation, service, or removal of heating, ventilation, and air-conditioning components.

“Qualified contractor” means a person engaged in the business of installation, service, or removal of heating, ventilation, and air-conditioning components who employs seven
(7) or more service technicians or installers or who is located in an area outside of an urban area, as defined by the United States bureau of the census.

"Local government collections" means collections completed by household hazardous waste facilities, solid waste management agencies, environmental management agencies, or the department of health.

**23-24.9-9. Disposal ban.** (a) Except as otherwise provided for in this chapter, after July 1, 2006, no person shall dispose of mercury-added products in a manner other than by recycling or disposal as hazardous waste. Mercury from mercury-added products may not be discharged to water, wastewater treatment, and wastewater disposal systems except when it is done in compliance with local, state, and federal applicable requirements.

(b) If a formulated mercury-added product is a cosmetic or pharmaceutical product subject to the regulatory requirements relating to mercury of the federal Food and Drug Administration, then the product is exempt from the requirements of this section.

(c) This section shall not apply to: (1) anyone who disposes of a mercury-added button cell battery; or (2) mercury-added components as contained in motor vehicles except as provided in subdivision 23-24.9-10(b)(2) and in accordance with such regulations as may be adopted by the department in order to achieve the purposes of subdivision 23-24.9-10(b)(2).

(d) The restrictions on the disposal of mercury-added components in motor vehicles shall be as set forth in subsection (a) of this section effective January 1, 2006, and shall be implemented as provided for in subdivision (c)(2) of this section and subdivision 23-24.9-10(b)(2).

(e) The restrictions on amalgam waste recycling and disposal shall be implemented as provided for in § 23-24.9-9.3.

(f) Any contractor who replaces a mercury-containing thermostat from a building shall recycle the thermostat using its own collection container provided by thermostat manufacturers, or deliver the mercury-containing thermostat to an appropriate wholesaler, retailer or local government collection for recycling.

(g) Any contractor who demolishes a building shall remove any mercury-containing thermostats from the building prior to demolition and shall deliver the mercury-containing thermostats to an appropriate wholesaler, retailer or collection location for recycling.

(h) Any person who replaces a mercury-containing thermostat from any location in the state that is participating in an energy efficiency and/or weatherization program supported or administered in whole or in part by any department, agency, instrumentality, or political
subdivision of the state or conducted as a result of any statutory requirement, including but not
limited to, demand-side management pursuant to, household hazardous waste drop-off event §
39-2-1.2, or least-cost procurement pursuant to § 39-1-27.7, shall deliver the mercury-containing
thermostats to an appropriate wholesaler, retailer or collection location for recycling.

(i) After January 1, 2018, the ban will apply to disposal of mercury-containing lamps.

mercury-added product shall be offered for final sale or use or distribution for promotional
purposes in Rhode Island unless the manufacturer, either on its own or in concert with other
persons, has implemented a system, after review and approval of the corporation in collaboration
with the director, for the convenient and accessible collection of such products when the
consumer is finished with them. Where a mercury-added product is a component of another
product, the collection system must provide for removal and collection of the mercury-added
component or collection of both the mercury-added component and the product containing it.
Mercury-added components in motor vehicles shall be collected and recycled as provided for in
subsection (b) (2) of this section. Mercury-containing thermostats shall be collected and recycled
as provided for in § 23-24.9-10.2. Mercury-containing lamps from covered entities shall be
collected and recycled as provided for in subsection (b)(4) of this section.

(b) (1) This section shall not apply to the collection of mercury-added button cell
batteries or mercury-added lamps or products where the only mercury contained in the product
comes from a mercury-added button cell battery or a mercury-added lamp; and

(2) Mercury-added components in motor vehicles at end-of-life shall be collected and
recycled as provided in this subsection. Significant, willful failure to comply with rules and/or
regulations to implement the provisions of this section shall constitute, as may be determined by
the department, a violation of the ban established in § 23-24.9-9. No scrap recycling facility or
other person that receives a flattened, crushed or baled end-of-life vehicle shall be deemed to be
in violation of subdivision 23-24.9-10(b)(2) and rules and regulations pursuant thereto or § 23-
24.9-9 if a mercury switch is found in the vehicle after its acquisition.

For the purposes of subdivision 23-24.9-10(b)(2) the following terms shall have the
following meanings: (i) "Capture rate" means the annual removal, collection, and recovery of
mercury switches, as a percentage of the total number of mercury switches available for removal
from end-of-life vehicles as determined by the department of environmental management.
Capture rate shall not include mercury switches that are inaccessible due to significant damage to
the motor vehicle in the area where the mercury switch is located; (ii) "Mercury added
component" or "Mercury switch" means a mercury-added convenience light switch assembly or
capsule from an end-of-life motor vehicle; (iii) "Scrap recycling facility" means a fixed location where machinery and equipment are utilized for processing and manufacturing scrap metal into prepared grades and whose principal product is scrap iron, scrap steal, or nonferrous metallic scrap for sale for remelting purposes; and (iv) "Vehicle recycler" means an individual or entity licensed under the provisions of § 42-14.2-3 that engages in the business of acquiring, dismantling, parts recycling from, or destroying six (6) or more end-of-life vehicles in a calendar year.

(A) Manufacturers of motor vehicles sold in Rhode Island that contain mercury switches shall, individually or collectively, establish and implement a collection program for mercury switches to achieve a capture rate of not less than fifty percent (50%) for calendar year 2006, and not less than seventy percent (70%) for calendar year 2007 and each calendar year thereafter through calendar year 2017.

(B) The department shall develop, issue, administer and enforce regulation compelling the manufacturers of motor vehicles sold in Rhode Island that contain mercury switches to undertake a collection program as set forth in this subparagraph, 23-24.9-10(b)(2)(B). The department shall determine that the capture rate in each year of the program and shall access whether any failure to achieve the capture rate was the result of a force majeure. The department shall report publicly on or before March 31, each year its findings with regard to the capture rate during the prior year. The manufacturer or manufacturers shall pay the total cost of the removal, replacement, collection and recovery system for mercury switches, under this subparagraph, 23-24.9-10(b)(2)(B), to the vehicle recycler or scrap recycling facility that removed the switch. The total cost shall include, but not be limited to a minimum of five dollars ($5.00) for each mercury switch removed by a vehicle recycler or by a scrap recycling facility, as partial compensation for the labor and other costs incurred in the removal of the mercury switch.

(3) The provisions of subdivision 23-24.9-10(b) (2) shall satisfy collection programs and disposal requirements for mercury switches for all motor vehicles sold in the state.

(4) Effective January 1, 2017, manufacturers of mercury-containing lamps sold in Rhode Island shall, individually or collectively, establish and implement a statewide collection program, approved by the corporation in collaboration with the department, for the recycling of mercury-containing lamps from covered entities.

(i) The recycling program required under this subsection must include:

(A) Convenient collection locations located throughout the state where mercury-containing lamps from covered entities can be dropped off without cost, including, but not limited to, municipal collection sites and participating retail establishments;
(B) Handling and recycling equipment and practices in compliance with the universal waste rules;

(C) Effective education and outreach, including, but not limited to, point-of-purchase signs and other materials provided to retail establishments without costs,

(ii) A manufacturer required to implement a statewide collection program under this subsection shall submit its proposed recycling program for review and approval by the corporation in collaboration with the department. The corporation shall solicit public comment on the proposed program before approving or denying the program.

(iii) Beginning April 1, 2017, a manufacturer not in compliance with this section is prohibited from offering any mercury-containing lamp for final sale in the state or distributing any mercury-containing lamp in the state. A manufacturer not in compliance with this section shall provide support to retailers to ensure the manufacturer's mercury-containing lamps are not offered for sale, sold at final sale or distributed in the state.

(iv) Beginning April 1, 2017, a retailer may not offer for final sale a mercury-containing lamp produced by a manufacturer not in compliance with this section.

(v) Beginning in 2018, and biennially thereafter, the corporation shall report to the general assembly on any modifications to the manufacturer recycling programs it intends to make to improve mercury-containing lamp recycling rates and any recommendations for statutory changes needed to facilitate mercury-containing lamp collection and recycling.

(vi) Manufacturers of mercury-containing lamps sold in Rhode Island shall individually or collectively enter into an agreement with the corporation to reimburse for reasonable costs directly related to administering the program but not to exceed the cost of less than one full-time equivalent employee.

23-24.9-10.2. Mercury-containing thermostats. - (a) Manufacturer responsibility. - Each thermostat manufacturer that has offered for final sale, sold at final sale, or has distributed mercury-containing thermostats in Rhode Island shall, individually or collectively:

(1) No later than November 1, 2010, submit a detailed description of a collection program for mercury thermostats that meets the requirements of this section to the department. The department shall have thirty (30) days from the date of submittal to review and provide comment on the program. The final program description shall be submitted to the department no later than December 31, 2010.

(2) On or after January 1, 2011, make collection containers available to all qualified contractors, thermostat wholesalers, thermostat retailers, and local government collections in this state that request a container. Each thermostat manufacturer shall with each container include
information regarding the proper management of mercury containing thermostats as universal
waste in accordance with the collection program and the department's rules.

(3) Establish a system to collect, transport, and properly manage out-of-service mercury
thermostats from all collection sites established under this section.

(4) Not include any fees or other charges to persons participating in the program, except
that each thermostat wholesaler, qualified contractor, local government collection, or thermostat
retailer that is provided with one or more collection containers may be charged a one-time
program administration fee not to exceed seventy-five dollars ($75.00) per collection container.

(5) From January 1, 2011, through December 31, 2014 conduct education and outreach
efforts including, but not limited to: (i) Promoting the availability of collection containers to
qualified contractors, wholesalers, thermostat retailers, and units of local government in this state:
(ii) Educating contractors, homeowners and other interested persons on the importance of
properly managing out-of-service mercury thermostats and opportunities for the collection of
those thermostats and the availability of manufacturer supported program(s): (iii) Providing
signage to participating collection locations that can be prominently displayed to promote the
collection and recycling of out-of-service mercury thermostats to contractors and consumers; and
(iv) Written materials or templates of materials for reproduction by participating wholesalers and
thermostat retailers to be provided to customers at the time of purchase or delivery of a
thermostat. These materials shall include, but not limited to, information on the importance of
properly managing out-of-service mercury thermostats and opportunities for the collection of
those thermostats.

(6) For calendar year 2011, collect at least two thousand (2000) mercury thermostats
taken out-of-service in the state during the calendar year. For calendar year 2012, the goal shall
be to collect at least two thousand two hundred fifty (2,250) mercury thermostats. For calendar
year 2013 and 2014, the goal shall be to collect at least two thousand five hundred (2,500)
mercury thermostats taken out-of-service in the state during each calendar year.

(7) Beginning in 2012, submit an annual report to the department by March 1, of each
year that includes, at a minimum, all of the following:
(i) The number of mercury-containing thermostats collected and recycled by that
manufacturer pursuant to this section during the previous calendar year;
(ii) The estimated total amount of mercury contained in the thermostat components
collected by that manufacturer pursuant to this section in the previous calendar year;
(iii) An elevation of the effectiveness of the manufacturer's collection program;
(iv) An accounting of the administrative costs incurred in the course of administering the
collection and recycling program; and

(v) A list of locations that participate as collection sites.

(b) Department responsibilities.

(1) Collection points. - The department shall maintain and post on their website a list of
units of local government, thermostat retailers and any other locations that are collection points
for mercury thermostats.

(2) Education outreach. - In conjunction with the educational and outreach programs
implemented by manufacturers, the department shall conduct an education and outreach program
directed toward wholesalers, retailers, contractors, and homeowners to promote the collection of
out-of-service mercury-containing thermostats.

(3) Rate of collection. - For calendar year 2015 through 2020 and every year
thereafter that the program is in place, the collection goals shall be established by the department
by regulation. The department shall establish collection goals no later than November 1, 2016. In developing collection goals, the department shall take into account, at a minimum:
(i) The effectiveness of collection programs for out-of-service mercury thermostats in the state
and other states; (ii) Collection requirements in other states; (iii) Any reports or studies on the
number of out-of-service mercury thermostats that are available for collection in this state, other
states, and nationally; and (iv) Department estimates of mercury-added thermostats that become
waste annually based on Rhode Island data that is verified by a statistically valid sampling of
Rhode Island residential properties and businesses; and (v) Other factors. Prior to establishing the
collection goals, the department shall consult with stakeholder groups that include, at minimum,
representatives of thermostat manufacturers, environmental groups, thermostat wholesalers,
contractors, and thermostat retailers.

(4) Modifications to collection programs. - Modifications required by the department
may include, but not be limited to, improvements to outreach and education conducted under the
collection program, expansion of the number of collections sites established under the program,
and modification of the roles of participants. Modifications that may include a five dollar ($5)
incentive in the form of either cash or a coupon offered by the manufacturer to contractors and
consumers for each out-of-service mercury thermostat returned to a collection site may not be
considered prior to January 1, 2014. In the event that the department determines that a program
shall be modified, the department shall consult with thermostat manufacturers, thermostat
wholesalers, thermostat retailers, service contractors, environmental groups and municipalities to
develop the revisions to the program. If the program is modified to include a financial incentive,
the department may exempt local government collections from the financial incentive provision.
Any modifications made to the collection program shall be subject to the provisions of chapter 42-35, ("The Administrative Procedures Act").

23-24.9-15. State procurement preferences for low or nonmercury-added products. -

(a) Notwithstanding other policies and guidelines for the procurement of equipment, supplies, and other products, the Rhode Island department of administration shall by January 1, 2003, revise its policies, rules and procedures to implement the purposes of this chapter.

(b) The Rhode Island department of administration shall give priority and preference to the purchase of equipment, supplies, and other products that do not contain mercury-added compounds or components, unless there is no economically feasible nonmercury-added alternative that performs a similar function. In circumstances where a nonmercury-added product is not available, preference shall be given to the purchase of products that contain the least amount of mercury-added to the product necessary for the required performance.

(c) State dental insurance contracts negotiated after January 1, 2003, shall provide coverage for non-mercury fillings at no additional expense to the state employee.

(d) Mercury-containing lamp purchasing. When making purchasing decisions on mercury-containing lamps, the Rhode Island department of administration shall request information on mercury content, energy use, lumen output and lamp life from potential suppliers and shall issue specifications and make purchasing decisions that favor models at comparable cost with high energy efficiency, lower mercury content and longer lamp life. Information obtained on mercury content, energy use and lamp life must be made available by the Rhode Island department of administration to other purchasers who purchase a large number of mercury-containing lamps. This information must also be posted on the state's publicly accessible website.

(e) Extra consideration shall be given to those vendors who provide substitute information on non-mercury lamps like light-emitting diode (LED) that have the same price, specifications lumen output and lamp life of what is being sought in the bid abstract.

23-24.9-20. Regulations. -- The department shall promulgate rules and regulations as may be necessary to implement and carry out the provisions of this chapter.

SECTION 2. This act shall take effect upon passage.
EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N   A C T
RELATING TO HEALTH AND SAFETY - MERCURY REDUCTION AND EDUCATION ACT

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1 This act would require manufacturers of mercury-containing lamps to establish and
   implement a statewide collection for the recycling of mercury-containing lamps.
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3 This act would take effect upon passage.

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