

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2005

A N A C T

RELATING TO HEALTH AND SAFETY

Introduced By: Representatives Handy, Gallison, McNamara, E Coderre, and Rice

Date Introduced: March 02, 2005

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 23 of the General Laws entitled "Health and Safety" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 24.10

4 MERCURY SWITCH REMOVAL ACT

5 **23-24.10-1. Short Title.** – This chapter shall be known as the "Mercury Switch Removal
6 Act."

7 **23-24.10-2. Findings.** – The general assembly has found and hereby declares that:

8 (1) Mercury is a persistent and toxic pollutant that bioaccumulates in the environment
9 and that forty-one (41) states have issued fish advisories that warn certain individuals to restrict
10 or avoid consuming fish from bodies of water contaminated with mercury.

11 (2) The United States Food and Drug Administration has advised pregnant women and
12 women of childbearing age who may become pregnant not to eat shark, swordfish, king mackerel
13 and tilefish due to methyl mercury contamination, and that according to estimates of the United
14 States Environmental Protection Agency, over six hundred thousand (600,000) babies are born
15 annually at risk for adverse neuro-development effects from in-utero exposure to methyl mercury
16 resulting from the consumption of mercury contaminated fish.

17 (3) Recent findings show that historic and current use of mercury in vehicles can cause
18 the release of as much as ten (10) tons of mercury to the nation's environment each year.

19 (4) The vehicle recycling industry, consisting primarily of small business operators, is a

1 vital component of the state's overall recycling efforts; that iron and steel manufacturers provide a
2 valuable scrap metal recycling service; that reliable estimates indicate that iron and steel
3 manufacturing plants are one of the largest in-state source of mercury emissions; that the main
4 feed stock for these plants is scrap metal which includes shredded end-of-life vehicles, some of
5 which contain mercury in switches that can be emitted to the atmosphere when the scarp metal is
6 melted in high-temperature processes to convert it into new iron and steel products; that mercury
7 provides no benefit to iron and steel manufacturing plants and has no role in the manufacture of
8 iron and steel; and that the federal environmental protection agency recently finalized regulations
9 that would require certain iron and steel foundries to implement work practice standards to
10 exclude mercury switches from the scrap metal feed materials of these foundries.

11 (5) With regard to mercury emissions, pollution prevention is more desirable than waste
12 management and pollution control; and that removing mercury switches from end-of-life vehicles
13 before they are crushed or shredded and preventing mercury from entering high temperature
14 processes is an effective way to reduce mercury emissions into the environment.

15 (6) A majority of vehicle manufacturers have responsibly ceased using mercury switches
16 in currently-manufactured vehicles that over the next decade and beyond millions of vehicles
17 containing mercury switches will be recycled; that vehicle mercury switch collection programs
18 are being established across the country to protect human health and the environment; and that
19 iron and steel foundries, vehicle recyclers and the residents of this state would benefit from a
20 statewide program that removes mercury switches from end-of-life vehicles.

21 (7) It is in the public interest of the residents of Rhode Island to reduce the quantity of
22 mercury in the environment by removing mercury switches from end-of-life vehicles in Rhode
23 Island, by creating a collection and recovery program for mercury switches removed from end-of-
24 life vehicles in Rhode Island and by establishing a system to store the mercury collected and
25 recovered from vehicle mercury switches in the even that environmentally appropriate
26 management technologies are not available.

27 **23-24.10-3. Definitions.** – For the purpose of this chapter:

28 (1) "Capture rate" means the annual removal, collection and recovery of mercury
29 switches as a percentage of the total number of mercury switches available for removal from end-
30 of-life vehicles;

31 (2)"Department" means the department of environmental management;

32 (3) "Director" means the director of the department of environmental management or any
33 subordinate(s) to whom the director has delegated the powers or duties vested in him or her by
34 this chapter;

1 (4) "End-of-life vehicle" means a vehicle that is sold, given or otherwise conveyed to a
2 vehicle recycler or scrap recycling facility for the purpose of recycling;

3 (5) "Manufacturer" means a person, firm, association, partnership, corporation,
4 governmental entity, organization, combination or joint venture which is the last person in the
5 production or assembly process of a new vehicle that utilizes mercury switches or in the case of
6 an imported vehicle, the importer or domestic distributor of the vehicle;

7 (6) "Mercury minimization plan" means a plan for removing, collecting and recovering
8 mercury switches from end-of-life vehicles and prepared pursuant to this chapter;

9 (7) "Mercury switch" means each mercury-containing capsule, commonly known as a
10 "bullet", that is part of a convenience light switch assembly or part of an anti-lock braking system
11 assembly installed in a vehicle. An anti-lock braking system assembly may contain more than one
12 mercury switch;

13 (8) "Scrap recycling facility" means a fixed location where the machinery and equipment
14 are utilized for processing and manufacturing scrap metal into prepared grades and whose
15 principal product is scrap iron, scrap steel or nonferrous metallic scrap for sale for remelting
16 purposes;

17 (9) "Vehicle" means any passenger car, station wagon, truck, van or sport utility vehicle
18 with a gross vehicle weight rating of less than twelve thousand (12,000) pounds;

19 (10) "Vehicle recycler" means an individual or entity engaged in the business of
20 acquiring, dismantling or destroying six or more end-of-life vehicles in a calendar year for the
21 primary purpose of resale of their parts.

22 **23-24.10-4. Mercury minimization plan.** – (a) Within ninety (90) days after the
23 effective date of this chapter, every manufacturer of vehicles sold within the state, individually or
24 as part of a group, shall develop, in consultation with the department, a mercury minimization
25 plan prepared pursuant to this section and submit the mercury minimization plan to the director
26 for review and approval pursuant to this chapter.

27 (b) The mercury minimization plan prepared and submitted pursuant to this section shall
28 include, at a minimum, the following:

29 (1) information identifying the make, model and year of vehicles including current or
30 anticipated future production models, that may contain one or more mercury switches; a
31 description of the mercury switches; the location of these mercury switches; and the safe and
32 environmentally sound methods for their removal from end-of-life vehicles. To the extent a
33 manufacturer is uncertain as to the content of a switch installed during the manufacture of a
34 vehicle, the mercury minimization plan shall presume that the switch is a mercury switch;

1 (2) educational materials to assist a vehicle recycler or a scrap recycling facility in
2 undertaking a safe and environmentally sound method for the removal of the mercury switches
3 from end-of-life vehicles, including information on the hazards related to, and the proper
4 handling of, mercury;

5 (3) a proposal for the method of storage or disposal of the mercury switches, including
6 the method of packaging and shipping mercury switches to authorized recycling, storage or
7 disposal facilities;

8 (4) a proposal for the storage of mercury switches collected and recovered from end-of-
9 life vehicles in the event that environmentally appropriate management technologies are not
10 available; and

11 (5) a plan for implementing and financing the system, in accordance with subsection (d)
12 of this section.

13 (c) A mercury minimization plan shall, to the extent practicable, utilize the existing end-
14 of-life vehicle recycling infrastructure. Where the existing end-of-life vehicle recycling
15 infrastructure is not utilized, the mercury minimization plan shall include the reasons for
16 establishing a separate infrastructure.

17 (d) A mercury minimization plan must provide for the financing of the removal,
18 collection and recovery system for mercury switches as provided in this subsection. These costs
19 shall be borne by the manufacturers of vehicles sold in the state, and the manufacturers shall
20 develop a method that ensures the prompt payment to vehicle recyclers, scrap recycling facilities
21 and the department, for costs associated with mercury switch removal and disposal. Costs shall
22 include, but not limited to, the following:

23 (1) a minimum of three dollars (\$3.00) for each mercury switch removed by a vehicle
24 recycler pursuant to this chapter as partial compensation for the labor and other costs incurred by
25 a vehicle recycler in the removal of the mercury switch;

26 (2) a minimum of three dollars (\$3.00) for each mercury switch removed by a scrap
27 recycling facility pursuant to this chapter as partial compensation for the labor and other costs
28 incurred in administering and enforcing the provisions of this chapter;

29 (3) twenty-five cents (\$0.25) for each mercury switch removed by a vehicle recycler
30 pursuant to this chapter or by a scrap recycling facility pursuant to this chapter as partial
31 compensation for the department for costs incurred in administering and enforcing the provisions
32 of this chapter;

33 (4) packaging in which to transport mercury switches to recycling, storage or disposal
34 facilities;

- 1 (5) shipping of mercury switches to recycling, storage or disposal facilities;
- 2 (6) recycling, storage or disposal of the mercury switches;
- 3 (7) the preparation and distribution to vehicle recyclers and scrap recycling facilities of
4 the educational materials required pursuant to this chapter; and
- 5 (8) maintenance of all appropriate record-keeping systems.

6 (e) Within thirty (30) days after the effective date of this chapter, every manufacturer of
7 vehicles sold within the state, individually or as part of a group, shall provide to vehicle recyclers
8 and scrap recycling facilities containers suitable for storing mercury switches until such time that
9 vehicle recyclers and scrap recycling facilities can be reimbursed pursuant to this section.

10 (f) Manufacturers of vehicles sold within the state shall provide recyclers or scrap
11 recycling facilities with reimbursement for each mercury switch in the amount set pursuant to this
12 section regardless of when these switches were removed from the vehicles; provided, that the
13 vehicle recyclers or scrap recycling facilities record and provide the vehicle identification number
14 (VIN) associated with each mercury switch as required pursuant to this chapter.

15 **23-24.10-5. Departmental review of mercury minimization plan.** – (a) Within one
16 hundred twenty (120) days after receipt of a mercury minimization plan, the director shall
17 approve, disapprove or conditionally approve the entire mercury minimization plan. The director
18 may solicit input from representatives of vehicle recyclers, scrap recycling facilities and other
19 stakeholders as the director deems appropriate.

20 (1) If the entire mercury minimization plan is approved, the manufacturer shall begin
21 implementation within thirty (30) days after receipt of approval or as otherwise agreed by the
22 director. If the entire mercury minimization plan is disapproved, the director shall inform the
23 manufacturer as to the reasons for the disapproval. The manufacturer shall have thirty (30) days
24 thereafter to submit a new mercury minimization plan.

25 (2) The director may approve those parts of a mercury minimization plan that meet the
26 requirements of this chapter and disapprove the parts that do not comply with the requirements of
27 this chapter. The manufacturer shall implement the approved parts within thirty (30) days after
28 receipt of approval or as otherwise agreed to by the director, and submit a revised mercury
29 minimization plan for the disapproved parts within thirty (30) days after receipt of notification of
30 the disapproval of the director. The director shall review, and approve, conditionally approve or
31 disapprove a revised mercury minimization plan within thirty (30) days after receipt.

32 (3) If, at the conclusion of the time period of one hundred twenty (120) days after receipt
33 of a mercury minimization plan, the director has neither approve nor disapproved the mercury
34 minimization plan pursuant to paragraphs (1) or (2) of this subsection, the mercury minimization

1 plan shall be considered to be conditionally approved. A manufacturer, subject to any
2 modifications required by the director, shall implement a conditionally approved mercury
3 minimization plan within thirty (30) days after receipt of approval or as otherwise agreed to by
4 the director.

5 (b) The director shall reserve the right to complete, at the conclusion of a time period of
6 two hundred forty (240) days after the date of enactment of this chapter, on behalf of a
7 manufacturer, any portion of a mercury minimization plan that has not been approved pursuant to
8 this section.

9 (c) The director may review a mercury minimization plan approved pursuant to this
10 section and recommend modifications thereto at any time upon a finding that the approved
11 mercury minimization plan is deficient.

12 **23-24.10-6. Removal of mercury switches.** – (a) Commencing thirty (30) days after the
13 approval or conditional approval of a mercury minimization plan pursuant to this chapter, a
14 vehicle recycler who sells, gives or otherwise conveys ownership of an end-of-life vehicle to a
15 scrap recycling facility for recycling shall remove all mercury switches identified in the approved
16 mercury minimization plan from the end-of-life vehicle prior to delivery to a scrap recycling
17 facility, unless a mercury switch is inaccessible due to significant damage to the vehicle in the
18 area surrounding the location of the mercury switch, in which case such damage shall be noted on
19 the normal business records of the vehicle recycler who delivered the end-of-life vehicle to the
20 scrap recycling facility.

21 (b) Notwithstanding subsection (a) of this section, a scrap recycling facility may agree to
22 accept an end-of-life vehicle, which has not been intentionally flattened, crushed or baled
23 containing mercury switches, in which case the scrap recycling facility shall be responsible for
24 removing the mercury switches identified in the mercury minimization plan approved pursuant to
25 this chapter before the end-of-life vehicle is intentionally flattened, crushed, baled or shredded.

26 (c) A vehicle recycler or scrap recycling facility who removes mercury switches pursuant
27 to subsection (a) or subsection (b) of this section shall maintain records documenting the number
28 of mercury switches collected, the number of end-of-life vehicles containing mercury switches
29 and the number of end-of-life vehicles processed for recycling. The records shall include the
30 vehicle identification number (VIN) of each vehicle from which one or more mercury switches
31 were removed and the number of mercury switches removed from that vehicle. These records
32 shall be made available for review by the department upon the request of the department.

33 (d) No person shall represent that mercury switches have been removed from an end-of-
34 life vehicle being sold, given or otherwise conveyed for recycling if that person has not removed

1 the mercury switches, or arranged with another person to remove the mercury switches.

2 (e) Upon removal, mercury switches shall be collected, stored, transported and otherwise
3 handled in accordance with the mercury minimization plan approved pursuant to this chapter.

4 (f) Upon removal, mercury switches shall be collected, store, transported and otherwise
5 handled in accordance with the provisions of the rules and regulations concerning universal waste
6 adopted by the department.

7 **23-24.10-7. Reporting requirement.** – (a) One (1) year after the implementation of a
8 mercury minimization plan approved pursuant to this chapter and annually thereafter, a
9 manufacturer subject to this chapter shall individually or as part of a group, report to the director
10 concerning the implementation of the mercury minimization plan. The report shall include, but
11 need not be limited to, the following:

12 (1) a detailed description and documentation of the capture rate achieved, with the goal of
13 achieving a mercury switch capture rate of at least ninety percent (90%), consistent with the
14 principle that mercury switches shall be recovered unless the mercury switch is inaccessible due
15 to significant damage to the end-of-life vehicle in the area surrounding where the mercury switch
16 is located;

17 (2) a description of additional or alternative actions that may be implemented to improve
18 the mercury minimization plan and its implementation in the event that a mercury switch capture
19 rate of at least ninety percent (90%) is not achieved;

20 (3) the number of mercury switches collected, the number of end-of-life vehicles
21 containing mercury switches, the number of end-of-life vehicles processed for recycling and a
22 description of how the mercury switches were managed; and

23 (4) a description of the amounts paid to cover the costs if implementing the mercury
24 minimization plan.

25 (b) The director may discontinue the requirement for the annual report pursuant to
26 subsection (a) of this section upon a finding that mercury switches in end-of-life vehicles no
27 longer pose a significant threat to the environment or to public health.

28 **23-24.10-8. Violations and penalties.** – (a) Whenever the director finds that a person has
29 violated any provision of this chapter or any rule or regulation adopted pursuant thereto, the
30 director may:

31 (1) issue an order requiring the person found to be in violation to comply in accordance
32 with subsection (b) of this section;

33 (2) bring a civil action in accordance with subsection (c) of this section;

34 (3) levy a civil administrative penalty in accordance with subsection (d) of this section;

1 (4) bring an action for a civil penalty in accordance with subsection (e) of this section;
2 (5) petition the attorney general to bring a criminal action in accordance with subsection
3 (f) of this section. Pursuit of any of the remedies specified under this section shall not preclude
4 the seeking of any other remedy specified.

5 (b) Whenever the director finds that a person has violated this chapter or any rule or
6 regulation adopted pursuant thereto, the director may issue an order specifying the provision or
7 provisions of this chapter, or the rule or regulation adopted pursuant thereto, of which the person
8 is in violation, citing the action that constituted the violation, ordering abatement of the violation
9 and giving notice to the person of the person's right to a hearing on the matters contained in the
10 order. The ordered person shall have twenty (20) calendar days from receipt of the order within
11 which to deliver to the director a written request for a hearing. After the hearing and upon finding
12 that violation has occurred, the director may issue a final order. If no hearing is requested, the
13 order shall become final after the expiration of the twenty (20) day period. A request for hearing
14 shall not automatically stay the effect of the order.

15 (c) The director may institute an action or proceeding in the superior court for injunctive
16 and other relief to enforce the provisions of this chapter, and to prohibit and prevent a violation of
17 this chapter or of any rule or regulation adopted pursuant thereto, and the court may proceed in
18 the action in a summary manner. In any such proceeding the court may grant temporary or
19 interlocutory relief.

20 Such relief may include, singly or in combination:

21 (1) a temporary or permanent injunction;
22 (2) assessment of the violator for the reasonable costs of any inspection that led to the
23 establishment of the violation, and for the reasonable costs of preparing and litigating the case
24 under this subsection.

25 (d) The director may assess a civil administrative penalty of not more than seven
26 thousand five hundred dollars (\$7,500) for a first offense, not more than ten thousand dollars
27 (\$10,000) for a second offense and not more than twenty-five thousand dollars (\$25,000) for a
28 third and every subsequent offense. Each day that a violation continues shall constitute an
29 additional, separate and distinct offense. No assessment may be levied pursuant to this section
30 until after the violator has been notified by certified mail or personal service. The notice shall
31 include a reference to the section of the statute, rule, regulation or order violated, a concise
32 statement of the facts alleged to constitute a violation, a statement of the amount of the civil
33 administrative penalties to be imposed and a statement of the person's right to a hearing. The
34 ordered person shall have twenty (20) calendar days from receipt of the notice within which to

1 deliver to the director a written request for a hearing.

2 After the hearing and upon finding that a violation has occurred, the director may issue a
3 final order after assessing the amount of the fine specified in the notice. If no hearing is
4 requested, the notice shall become a final order after the expiration of the twenty (20) day period.
5 Payment of the assessment is due when a final order is issued or the notice becomes a final order.
6 The authority to levy a civil administrative penalty is in addition to all other enforcement
7 provisions in this chapter and the payment of any assessment shall not be deemed to affect the
8 availability of any other enforcement provisions in connection with the violation for which the
9 assessment is levied. The director may compromise any civil administrative penalty assessed
10 under this section in an amount the director determines appropriate.

11 (e) A person who violates this chapter or any other rule or regulation adopted pursuant
12 thereto, shall be liable for a penalty of not more than seven thousand five hundred dollars
13 (\$7,500) per day to be collected in a civil action commenced by the director.

14 A person who violates an administrative order issued pursuant to subsection (b) of this
15 section, or a court order issued pursuant to subsection (c) of this section, or who fails to pay an
16 administrative assessment in full pursuant to subsection (d) of this section is subject upon order of
17 a court to a civil penalty not to exceed fifty thousand dollars (\$50,000) per day of each violation.

18 (f) A person who willingly or negligently violates this chapter shall, upon conviction, be
19 subject to a fine of not less than two thousand five hundred dollars (\$2,500) nor more than
20 twenty-five thousand dollars (\$25,000) per day of violation. A second offense under this
21 subsection shall subject the violator to a fine of not less than five thousand dollars (\$5,000) nor
22 more than fifty thousand dollars (\$50,000) per day of violation. A person who knowingly makes
23 a false statement, representation or certification in any application, record or other document filed
24 or required to be maintained under this chapter or who falsifies, tampers with or knowingly
25 renders inaccurate, any monitoring device or method required to be maintained pursuant to this
26 chapter shall upon conviction, be subject to a fine of not more than ten thousand dollars
27 (\$10,000).

28 SECTION 2. This act shall take effect upon passage.

=====
LC02335
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY

- 1 This act would create the mercury switch removal act.
- 2 This act would take effect upon passage.

=====
LC02335
=====