

LC01128

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2005

A N A C T

RELATING TO HEALTH AND SAFETY -- REMOVAL OF MERCURY SWITCHES FROM
END-OF-LIFE VEHICLES

Introduced By: Senators Ruggerio, Sosnowski, Paiva-Weed, Doyle, and Goodwin

Date Introduced: February 17, 2005

Referred To: Senate Environment & Agriculture

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:

CHAPTER 24.10

THE MERCURY SWITCH REMOVAL ACT OF 2005

5 **23-24.10-1. Short title.** – This chapter shall be known and may be cited as the "Mercury
6 Switch Removal Act of 2005."

7 **23-24.10-2. Legislative findings.** – The general assembly hereby finds and declares as
8 follows:

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

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

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

3 (4) That the vehicle recycling industry, consisting primarily of small business operators,
4 is a vital component of the state's overall recycling efforts; that iron and steel manufacturers
5 provide a valuable scrap metal recycling service; that reliable estimates indicate that iron and
6 steel manufacturing plants are the largest in-state source of mercury emissions; that the main feed
7 stock for these plants is scrap metal which includes shredded end-of-life vehicles, some of which
8 contain mercury in switches that can be emitted to the atmosphere when the scrap metal is melted
9 in high temperature processes to convert it into new iron and steel products; that mercury
10 provides no benefit to iron and steel manufacturing plans and has no role in the manufacture of
11 iron and steel; and that the federal Environmental Protection Agency recently finalized
12 regulations that would require certain iron and steel foundries to implement work practice
13 standards to exclude mercury switches from the scrap metal feed materials of these foundries.

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

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

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

30 **23-24.10-3. Definitions.** – As used in this act:

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

34 (2) "Director" means the director of the department of environmental management;

1 (3) "Department" means the department of environmental protection;

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

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

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

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

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

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

20 (10) "Vehicle recycler" means an individual or entity engaged in the business of
21 acquiring, dismantling or destroying six (6) or more end-of-life vehicles in a calendar year for the
22 primary purpose of resale of their parts.

23 **23-24.10-4. Mercury minimization plan.** – (a) Within ninety (90) days after the
24 effective date of this chapter, every manufacturer of vehicles sold within the state, individually or
25 as part of a group, shall develop, in consultation with the department, a mercury minimization
26 plan prepared pursuant to this section and submit the mercury minimization plan to the director
27 for review and approval pursuant to section 23-24.10-5 of this chapter.

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

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

1 vehicle, the mercury minimization plan shall presume that the switch is a mercury switch;

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

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

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

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

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

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

24 (1) a minimum of three dollars (\$3.00) for each mercury switch removed by a vehicle
25 recycler pursuant to subsection (a) of section 23-24.10-6 of this chapter as partial compensation
26 for the labor and other costs incurred by a vehicle recycler in the removal of the mercury switch;

27 (2) a minimum of three dollars (\$3.00) for each mercury switch removed by a scrap
28 recycling facility pursuant to subsection (b) of section 23-24.10-6 of this chapter as partial
29 compensation for the labor and other costs incurred by a scrap recycling facility in the removal of
30 the mercury switch;

31 (3) fifty cents (\$0.50) for each mercury switch removed by a vehicle recycler pursuant to
32 subsection (a) of section 23-24.10-6 of this chapter or by a scrap recycling facility pursuant to
33 subsection (b) of section 23-24.10-6 of this chapter as partial compensation to the department for
34 costs incurred in administering and enforcing the provisions of this chapter;

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

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

12 (f) Manufacturers of vehicles sold within the state shall provide recyclers or scrap
13 recycling facilities with reimbursement for each mercury switch in the amount set pursuant to this
14 section regardless of when these switcher were removed from the vehicles; provided, that the
15 vehicle recyclers or scrap recycling facilities record and provide the vehicle identification number
16 (VIN) associated with each mercury switch as required pursuant to section 23-24.10-6.

17 **23-24.10-5. Procedure for approval of plan.** – (a) Within one hundred and twenty (120)
18 days after receipt of a mercury minimization plan, the director shall approve, disapprove, or
19 conditionally approve the entire mercury minimization plan. The director may solicit input from
20 representatives of vehicle recyclers, scrap recycling facilities, the mercury hazard reduction and
21 elimination oversight and system planning commission established pursuant to R.I.G.L. section
22 23-24.9-2.1, the mercury advisory working group established pursuant to R.I.G.L. section 23-
23 24.9-19, and other stakeholders as the director deems appropriate.

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

29 (2) The director may approve those parts of a mercury minimization plan that meet the
30 requirements of section 23-24.10-4 of this chapter and disapprove the parts that do not comply
31 with the requirements of section 23-24.10-4 of this chapter. The manufacturer shall implement
32 the approved parts within thirty (30) days after receipt of approval or as otherwise agreed to by
33 the director, and submit a revised mercury minimization plan for the disapproved parts within
34 thirty (30) days after receipt of notification of the disapproval of the director. The director shall

1 review, and approve, conditionally approve, or disapprove a revised mercury minimization plan
2 within thirty (30) days after receipt.

3 (3) If, at the conclusion of the time period of one hundred twenty (120) days after receipt
4 of a mercury minimization plan, the director has neither approved nor disapproved the mercury
5 minimization plan pursuant to paragraphs (1) or (2) of this subsection, the mercury minimization
6 plan shall be considered to be conditionally approved. A manufacturer, subject to any
7 modifications required by the director, shall implement a conditionally approved mercury
8 minimization plan within thirty (30) days after receipt of approval or as otherwise agreed to by
9 the director.

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

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

17 **23-24.10-6. Removal of switches. - -** (a) Commencing thirty (30) days after the approval
18 or conditional approval of a mercury minimization plan pursuant to section 23-24.10-5 of this
19 chapter, a vehicle recycler who sells, gives or otherwise conveys ownership of an end-of-life
20 vehicle to a scrap recycling facility for recycling shall remove all mercury switches identified in
21 the approved mercury minimization plan from the end-of-life vehicle prior to delivery to a scrap
22 recycling facility, unless a mercury switch is inaccessible due to significant damage to the vehicle
23 in the area surrounding the location of the mercury switch, in which case such damage shall be
24 noted on the normal business records of the vehicle recycler who delivered the end-of-life vehicle
25 to the scrap recycling facility.

26 (b) Notwithstanding subsection (a) of this section, a scrap recycling facility may agree to
27 accept an end-of-life vehicle, which has not been intentionally flattened, crushed or baled,
28 containing mercury switches, in which case the scrap recycling facility shall be responsible for
29 removing the mercury switches identified in the mercury minimization plan approved pursuant to
30 section 23-24.10-5 of this chapter before the end-of-life vehicle is intentionally flattened, crushed,
31 baled, or shredded.

32 (c) A vehicle recycler or scrap recycling facility who removes mercury switches pursuant
33 to subsections (a) or (b) of this section shall maintain records documenting the number of
34 mercury switches collected, the number of end-of-life vehicles containing mercury switches, and

1 the number of end-of-life vehicles processed for recycling. The records shall include the Vehicle
2 Identification Number (VIN) of each vehicle from which one or more mercury switches were
3 removed, and the number of mercury switches removed from that vehicle. These records shall be
4 made available for review by the department upon the request of the department.

5 (d) No person shall represent that mercury switches have been removed from an end-of-
6 life vehicle being sold, given or otherwise conveyed for recycling if that person has not removed
7 the mercury switches, or arranged with another person to remove the mercury switches.

8 (e) Upon removal, mercury switches shall be collected, stored, transported, and otherwise
9 handled in accordance with the mercury minimization plan approved pursuant to section 23-
10 24.10-5 of this chapter.

11 (f) Upon removal, mercury switches shall be collected, stored, transported, and otherwise
12 handled as hazardous waste as provided for in section 23-24.9-9.

13 **23-24.10-7. Annual reporting requirements. - -** (a) One year after the implementation
14 of a mercury minimization plan approved pursuant to section 23-24.10-5 of this chapter, and
15 annually thereafter, a manufacturer subject to section 23-24.10-4 of this chapter shall,
16 individually or as part of a group, report to the director concerning the implementation of the
17 mercury minimization plan. The report shall include, but need not be limited to, the following:

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

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

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

29 (4) a description of the amounts paid to cover the costs of implementing the mercury
30 minimization plan.

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

1 **23-24.10-8. Violations.** – (a) Whenever the director finds that a person has violated any
2 provision of this chapter, or any rule or regulation adopted pursuant thereto, the director may:

3 (1) issue an order requiring the person found to be in violation for failure to comply in
4 accordance with subsection (b) of this section;

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

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

7 (4) bring an action for a civil penalty in accordance with subsection (e) of this section; or

8 (5) petition the attorney general to bring a criminal action in accordance with subsection
9 (f) of this section.

10 Pursuit of any of the remedies specified under this section shall not preclude the seeking
11 of any other remedy specified.

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

22 (c) The director may institute an action or proceeding in the Superior Court for injunctive
23 and other relief to enforce the provisions of this chapter and to prohibit and prevent a violation of
24 this chapter, or of any rule or regulation adopted pursuant thereto, and the court may proceed in
25 the action in a summary manner. In any such proceeding the court may grant temporary or
26 interlocutory relief.

27 Such relief may include, singly or in combination:

28 (1) a temporary or permanent injunction;

29 (2) assessment of the violator for the reasonable costs of any inspection that led to the
30 establishment of the violation, and for the reasonable costs of preparing and litigating the case
31 under this subsection.

32 (d) The director may assess a civil administrative penalty of not more than seven
33 thousand five hundred dollars (\$7,500) for a first offense, not more than ten thousand dollars
34 (\$10,000) for a second offense and not more than twenty-five thousand dollars (\$25,000) for a

1 third and every subsequent offense. Each day that a violation continues shall constitute an
2 additional, separate, and distinct offense.

3 (1) No assessment may be levied pursuant to this section until after the violator has been
4 notified by certified mail or personal service. The notice shall include a reference to the section of
5 the statute, rule, regulation, or order violated, a concise statement of the facts alleged to constitute
6 a violation, a statement of the amount of the civil administrative penalties to be imposed, and a
7 statement of the person's right to a hearing. The ordered person shall have twenty (20) calendar
8 days from receipt of the notice within which to deliver to the director a written request for a
9 hearing.

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

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

22 A person who violates an administrative order issued pursuant to subsection (b) of this
23 section, or a court order issued pursuant to subsection (c) of this section, or who fails to pay an
24 administrative assessment in full pursuant to subsection (d) of this section shall be subject upon
25 order of a court to a civil penalty not to exceed fifty thousand dollars (\$50,000) per day of each
26 violation.

27 Any penalty imposed pursuant to this subsection may be collected, with costs, in an
28 action in superior court.

29 (f) A person who willfully or negligently violates this chapter shall be guilty, upon
30 conviction, of a felony and shall be subject to a fine of not less than two thousand five hundred
31 dollars (\$2,500) nor more than twenty-five thousand dollars (\$25,000) per day of violation. A
32 second offense under this subsection shall subject the violator to a fine of not less than five
33 thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000) per day of violation. A
34 person who knowingly makes a false statement, representation, or certification in any application,

1 record, or other document filed or required to be maintained under this chapter, or who falsifies,
2 tampers with or knowingly renders inaccurate, any monitoring device or method required to be
3 maintained pursuant to this chapter, shall, upon conviction, be subject to a fine of not more than
4 ten thousand dollars (\$10,000) for each such fraudulent action.

5 **23-24.10-9. Department of administration.** - - Notwithstanding any other policies and
6 guidelines for the procurement of vehicles to the contrary, the department of the administration
7 shall, within one year after the effective date of this chapter, revise its policies, rules and
8 procedures to give priority and preference to the purchase of vehicles that do not contain mercury,
9 taking into consideration competition, price, availability and performance.

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

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LC01128
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY -- REMOVAL OF MERCURY SWITCHES FROM
END-OF-LIFE VEHICLES

- 1 This act would establish the "Mercury Switch Removal Act of 2005." This act would
- 2 govern the prohibition and disposal of certain motor vehicle components which contain mercury.
- 3 This act would take effect upon passage.

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