State of Arkansas
85th General Assembly
Regular Session, 2005

SENATE BILL 323

By: Senators Bryles, Altes, Higginbothom, J. Jeffress, Laverty, Luker, Wooldridge
By: Representatives Childers, Blair, Dickinson, Goss

For An Act To Be Entitled
AN ACT TO BE KNOWN AS THE “MERCURY SWITCH REMOVAL ACT OF 2005”; TO ACHIEVE REDUCTIONS OF MERCURY IN THE ENVIRONMENT THROUGH REMOVAL AND COLLECTION OF MERCURY SWITCHES FROM MOTOR VEHICLES WEIGHING LESS THAN TWELVE THOUSAND POUNDS (12,000 LBS.); AND FOR OTHER PURPOSES.

Subtitle
AN ACT TO BE KNOWN AS THE “MERCURY SWITCH REMOVAL ACT OF 2005”.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 8, Chapter 9 is amended to add an additional subchapter to read as follows:

8-9-601. Short title.
This subchapter shall be known and may be cited as the "Mercury Switch Removal Act of 2005".

8-9-602. Purpose.
The purpose of this subchapter is to reduce the quantity of mercury in the environment by removing mercury switches from end-of-life vehicles and by creating a collection and recovery program for mercury switches removed from end-of-life vehicles in the State of Arkansas.
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8-9-603. Definitions.

As used in this subchapter:

(1) "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;

(2) "Department" means the Arkansas Department of Environmental Quality;

(3) "Director" means the Director of the Arkansas Department of Environmental Quality;

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

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

(6) "Mercury minimization plan" means a plan for removing, collecting, and recovering mercury switches from end-of-life vehicles that is prepared pursuant to § 8-9-604;

(7) "Mercury switch" means each mercury-containing capsule, commonly known as a "bullet", that is part of a convenience light switch assembly or part of an anti-lock braking system assembly installed in a vehicle. An anti-lock braking system assembly may contain more than one (1) mercury switch;

(8) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, venture, or municipal, state, or federal government or agency, or any other legal entity, however organized;

(9) "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 steel, or nonferrous metallic scrap for sale for remelting purposes;

(10) "Vehicle" means any passenger automobile or passenger car, station wagon, truck, van, or sport utility vehicle with a gross vehicle weight rating of less than twelve thousand pounds (12,000 lbs.); and
(11) "Vehicle recycler" means an individual or entity engaged in the business of acquiring, dismantling, or destroying six (6) or more end-of-life vehicles in a calendar year for the primary purpose of resale of their parts.


(a) Within ninety (90) days after the effective date of this subchapter, every manufacturer of vehicles sold within this state, individually or as part of a group, shall develop in consultation with the Arkansas Department of Environmental Quality, a mercury minimization plan prepared pursuant to this section and submit the mercury minimization plan to the Director of the Arkansas Department of Environmental Quality for review and approval pursuant to § 8-9-605.

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

(1)(A)(i) Information identifying the make, model, and year of vehicles, including current or anticipated future production models that may contain one (1) or more mercury switches;

(ii) A description of the mercury switches;

(iii) A system to mark vehicles to be processed for shredding or crushing to indicate presence or absence of mercury switches;

(iv) The location of these mercury switches; and


(B) To the extent a manufacturer is uncertain as to the content of a switch installed during the manufacture of a vehicle, the mercury minimization plan shall presume that the switch is a mercury switch;

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

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

(4) A proposal for the storage of mercury switches collected and
recovered from end-of-life vehicles if environmentally appropriate management
technologies are not available; and

(5) A plan for implementing and financing the system in
accordance with subsection (d) of this section.

(c) To the extent practicable, a mercury minimization plan shall
utilize the existing end-of-life vehicle recycling infrastructure. If the
existing end-of-life vehicle recycling infrastructure is not utilized, the
mercury minimization plan shall include the reasons for establishing a
separate infrastructure.

(d)(1) A mercury minimization plan must provide for the financing of
the removal, collection, and recovery system for mercury switches installed
in vehicles manufactured by the manufacturer and its predecessors and
affiliates as provided in this subsection (d).

(2) These costs shall be borne by the manufacturers of vehicles
sold in the state, ensuring that additional financial burdens are not placed
on automobile dealers or businesses dealing with end-of-life vehicles. The
manufacturers shall develop a method that ensures the prompt payment to
vehicle recyclers, scrap recycling facilities, and the department for costs
associated with mercury switch removal and disposal. Costs shall include,
but not be limited to, the following:

(A) A minimum of five dollars ($5.00) for each mercury
switch removed by a vehicle recycler pursuant to § 8-9-606(a) as partial
compensation for the labor and other costs incurred by a vehicle recycler in
the removal of the mercury switch;

(B) A minimum of five dollars ($5.00) for each mercury
switch removed by a scrap recycling facility pursuant to § 8-9-606(b) as
partial compensation for the labor and other costs incurred by a scrap
recycling facility in the removal of the mercury switch;

(C) One dollar ($1.00) for each mercury switch removed by
a vehicle recycler pursuant to § 8-9-606(a) or by a scrap recycling facility
pursuant to § 8-9-606(b) as partial compensation to the department for costs
incurred in administering and enforcing the provisions of this subchapter;

(D) Packaging in which to transport mercury switches to
recycling, storage, or disposal facilities;

(E) Shipping of mercury switches to recycling, storage, or
disposal facilities;
(F) Recycling, storage, or disposal of the mercury switches;

(G) The preparation and distribution to vehicle recyclers and scrap recycling facilities of the educational materials required pursuant to subdivision (b)(2) of this section; and

(H) Maintenance of all appropriate record-keeping systems.

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

(f) Manufacturers of vehicles sold within the state shall provide vehicle recyclers or scrap recycling facilities with reimbursement for each mercury switch in the amount established pursuant to this section regardless of when these switches were removed from the vehicles, if the vehicle recyclers or scrap recycling facilities maintain the records required by § 8-9-606.

(g) Manufacturers shall indemnify, defend, and hold harmless vehicle recyclers and scrap recycling facilities for any liabilities arising from the release of the mercury from the mercury-added components after the components are transferred to the manufacturer or its agent or contractor.

8-9-605. Plan approval and implementation.

(a)(1) Within one hundred twenty (120) days after receipt of a mercury minimization plan, the Director of the Arkansas Department of Environmental Quality shall approve, disapprove, or conditionally approve the entire mercury minimization plan. The director may solicit input from representatives of vehicle recyclers, scrap recycling facilities, and other stakeholders as the director deems appropriate.

(2)(A) If the entire mercury minimization plan is approved, the manufacturer shall begin implementation within thirty (30) days after receipt of approval or as otherwise agreed to by the director.

(B) If the entire mercury minimization plan is disapproved, the director shall inform the manufacturer as to the reasons for the disapproval. The manufacturer shall have thirty (30) days thereafter to
submit a new mercury minimization plan.

(3)(A) The director may approve those parts of a mercury minimization plan that meet the requirements of § 8-9-604 and disapprove the parts that do not comply with the requirements of § 8-9-604.

(B) The manufacturer shall implement the approved parts of the mercury minimization plan within thirty (30) days after receipt of approval or as otherwise agreed to by the director and submit a revised mercury minimization plan for the disapproved parts within thirty (30) days after receipt of notification of the disapproval of the director.

(C) The director shall review and approve, conditionally approve, or disapprove a revised mercury minimization plan within thirty (30) days after receipt.

(4)(A) If at the conclusion of the time period of one hundred twenty (120) days after receipt of a mercury minimization plan the director has neither approved nor disapproved the mercury minimization plan pursuant to subdivision (a)(2)(A) or (B) of this section, the mercury minimization plan shall be considered to be conditionally approved.

(B) Subject to any modifications required by the director, a manufacturer shall implement a conditionally effective mercury minimization plan within thirty (30) days after receipt of approval or as otherwise agreed to by the director.

(b) At the conclusion of a time period two hundred forty (240) days after the effective date of this subchapter, the director shall reserve the right to complete, on behalf of a manufacturer any portion of a mercury minimization plan that has not been approved pursuant to this section.

(c) The director may review a mercury minimization plan approved pursuant to this section and recommend modifications to the plan at any time upon a finding that the approved mercury minimization plan is deficient or not accomplishing the purposes set out in this subchapter in any material respect.

8-9-606. Removal and proper management of mercury-added vehicle components.

(a) Commencing thirty (30) days after the approval or conditional approval of a mercury minimization plan pursuant to § 8-9-605, a vehicle recycler that sells, gives, or otherwise conveys ownership of an end-of-life
vehicle to a scrap recycling facility for recycling shall remove all mercury switches identified in the approved mercury minimization plan from the end-of-life vehicle prior to delivery to a scrap recycling facility, unless a mercury switch is inaccessible due to significant damage to the vehicle in the area surrounding the location of the mercury switch, in which case the damage shall be noted on the normal business records of the vehicle recycler who delivered the end-of-life vehicle to the scrap recycling facility.

(b) Notwithstanding subsection (a) of this section, a scrap recycling facility may agree to accept an end-of-life vehicle which has not been intentionally flattened, crushed, or baled, containing mercury switches, in which case the scrap recycling facility shall be responsible for removing the mercury switches identified in the mercury minimization plan approved pursuant to § 8-9-605 before the end-of-life vehicle is intentionally flattened, crushed, baled, or shredded.

(c)(1) A vehicle recycler or scrap recycling facility that removes mercury switches pursuant to subsections (a) or (b) of this section shall maintain records documenting the number of:

(A) Mercury switches collected;
(B) End-of-life vehicles containing mercury switches;
(C) End-of-life vehicles processed for recycling;
(D) The makes and models of vehicles from which mercury switches were removed; and
(E) Switches collected from each make.

(2) These records shall be made available for review by the Department of Arkansas Environment Quality upon the request of the department.

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

(e) Upon removal, mercury switches shall be collected, stored, transported, and otherwise handled in accordance with the:

(1) Mercury minimization plan approved pursuant to § 8-9-605; and
(2) Provisions of the rules and regulations concerning universal waste adopted by the department pursuant to the Arkansas Hazardous Waste
Management Act of 1979, § 8-7-201 et seq.

(f) No scrap recycling facility or other person that receives an intentionally flattened, crushed or baled, end-of-life vehicle shall be deemed in violation of this subchapter if a mercury switch is found in the vehicle after its acquisition.

8-9-607. Annual reporting.

(a) One (1) year after the implementation of a mercury minimization plan approved pursuant to § 8-9-605, and annually thereafter, a manufacturer subject to § 8-9-604 shall report individually or as part of a group to the Director of the Arkansas Department of Environmental Quality concerning the implementation of the mercury minimization plan. The report shall include, but need not be limited to, the following:

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

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

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

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

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

8-9-608. Design for recycling.

(a) One (1) year after the implementation of a mercury minimization
plan approved pursuant to § 8-9-605, and annually thereafter, a manufacturer subject to § 8-9-604 shall report individually or as part of a group to the Director of the Arkansas Department of Environmental Quality concerning the steps being taken by manufacturers to design vehicles and their components for recycling. The report shall include, but need not be limited to, the following:

(1) A list of all vehicle components included in the manufacturer’s vehicles in each of the previous three (3) model years, the current model year, and the next upcoming model year that contain mercury;

(2) Design changes that each manufacturer has implemented or is implementing to reduce or eliminate all sources of mercury listed in compliance with subdivision (a)(1) of this section from its vehicles, the amount of any reductions, and the year in which mercury will be eliminated from each of the vehicle components listed in compliance with subdivision (a)(1) of this section;

(3) Policies which each manufacturer has implemented to ensure that its vehicles are designed to be recycled in a safe, cost effective, and environmentally sound manner using existing technologies and infrastructures;

(4) A listing of all:

(A) Complaints and reports that the manufacturer has received within the last twelve (12) months from vehicle recyclers, scrap recycling facilities, government entities, or organizations representing any of the persons; or

(B) Other facts and circumstances which have made the manufacturer aware that the manufacturer’s vehicles contain vehicle components or are designed in such a way that present environmental risks which make it uneconomical to recycle the vehicles or components; and

(5) The design or manufacturing changes that the manufacturer has implemented or is implementing to reduce or remove any environmental risks listed in compliance with subdivision (a)(4) of this section and the year in which design changes will eliminate the environmental risk listed in compliance with subdivision (a)(4) of this section.

(b) The Arkansas Department of Environmental Quality may conduct hearings from time to time as the director deems appropriate to evaluate the steps manufacturers are taking to design for recycling, and to recommend additional legislative action as may be appropriate in order to promote
vehicle recycling for the purpose of preserving scarce resources and the safe
and efficient reduction of solid waste.

8-9-609. Arkansas Pollution Control and Ecology Commission.

The Arkansas Pollution Control and Ecology Commission may adopt rules
and regulations to effectuate and implement the purposes and intent of this
subchapter and the powers and duties of the Department of Environmental
Quality.

8-9-610. Penalties and enforcement.

(a) Any person who violates any provisions of this subchapter or any
rule or order issued pursuant to this subchapter shall be subject to the same
penalty and enforcement provisions as are contained in § 8-6-204.

(b) Except as otherwise provided in this subchapter, the procedure of
the Arkansas Pollution Control and Ecology Commission for issuance of rules,
conduct of hearings, notice, power of subpoena, review of action on permits,
right of appeal, presumptions, finality of actions, and related matters shall
be as provided in §§ 8-4-101 – 8-4-106 and 8-4-201 – 8-4-229 of the Arkansas
Water and Air Pollution Control Act, including, without limitation, §§ 8-4-
205, 8-4-210, 8-4-212 – 8-4-214, and 8-4-218 – 8-4-229.

APPROVED:  3/03/2005