

P.L. 2005, CHAPTER 54, *approved March 24, 2005*  
Assembly, No. 2482 (*First Reprint*)

1 **AN ACT** concerning mercury in certain vehicles, and supplementing  
2 Title 13 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "Mercury  
8 Switch Removal Act of 2004."

9

10 2. The Legislature finds and declares that mercury is a persistent  
11 and toxic pollutant that bioaccumulates in the environment and that 41  
12 states, including New Jersey, have issued fish advisories that warn  
13 certain individuals to restrict or avoid consuming fish from bodies of  
14 water contaminated with mercury.

15 The Legislature further finds and declares that the United States  
16 Food and Drug Administration has advised pregnant women and  
17 women of childbearing age who may become pregnant not to eat  
18 shark, swordfish, king mackerel, and tilefish due to methyl mercury  
19 contamination, and that according to estimates of the United States  
20 Environmental Protection Agency, over 600,000 babies are born  
21 annually at risk for adverse neuro-developmental effects from in-utero  
22 exposure to methyl mercury resulting from the consumption of  
23 mercury contaminated fish.

24 The Legislature further finds and declares that recent findings show  
25 that historic and current use of mercury in vehicles can cause the  
26 release of as much as 10 tons of mercury to the nation's environment  
27 each year.

28 The Legislature further finds and declares that the vehicle recycling  
29 industry, consisting primarily of small business operators, is a vital  
30 component of the State's overall recycling efforts; that iron and steel  
31 manufacturers provide a valuable scrap metal recycling service; that  
32 reliable estimates indicate that iron and steel manufacturing plants are  
33 the largest in-State source of mercury emissions; that the main feed  
34 stock for these plants is scrap metal which includes shredded  
35 end-of-life vehicles, some of which contain mercury in switches that  
36 can be emitted to the atmosphere when the scrap metal is melted in  
37 high-temperature processes to convert it into new iron and steel

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

**<sup>1</sup> Assembly AEN committee amendments adopted September 30, 2004.**

1 products; that mercury provides no benefit to iron and steel  
2 manufacturing plants and has no role in the manufacture of iron and  
3 steel; and that the federal Environmental Protection Agency recently  
4 finalized regulations that would require certain iron and steel foundries  
5 to implement work practice standards to exclude mercury switches  
6 from the scrap metal feed materials of these foundries.

7 The Legislature further finds and declares that, with regard to  
8 mercury emissions, pollution prevention is more desirable than waste  
9 management and pollution control; and that removing mercury  
10 switches from end-of-life vehicles before they are crushed or shredded  
11 and preventing mercury from entering high temperature processes is  
12 an effective way to reduce mercury emissions into the environment.

13 The Legislature further finds and declares that a majority of vehicle  
14 manufacturers have responsibly ceased using mercury switches in  
15 currently-manufactured vehicles; that over the next decade and beyond  
16 millions of vehicles containing mercury switches will be recycled; that  
17 vehicle mercury switch collection programs are being established  
18 across the country to protect human health and the environment; and  
19 that iron and steel foundries, vehicle recyclers and the residents of this  
20 State would benefit from a Statewide program that removes mercury  
21 switches from end-of-life vehicles.

22 The Legislative therefore determines that it is in the public interest  
23 of the residents of New Jersey to reduce the quantity of mercury in the  
24 environment by removing mercury switches from end-of-life vehicles  
25 in New Jersey, by creating a collection and recovery program for  
26 mercury switches removed from end-of-life vehicles in New Jersey,  
27 and by establishing a system to store the mercury collected and  
28 recovered from vehicle mercury switches in the event that  
29 environmentally appropriate management technologies are not  
30 available.

31

32 3. As used in this act:

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

36 "Commissioner" means the Commissioner of Environmental  
37 Protection;

38 "Department" means the Department of Environmental Protection;

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

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

1 "Mercury minimization plan" means a plan for removing, collecting  
2 and recovering mercury switches from end-of-life vehicles and  
3 prepared pursuant to section 4 of this act;

4 "Mercury switch" means <sup>1</sup>[any light switch or an anti-lock braking  
5 system switch that contains mercury and that is installed by a  
6 manufacturer in a vehicle] each mercury-containing capsule,  
7 commonly known as a "bullet," that is part of a convenience light  
8 switch assembly or part of an anti-lock braking system assembly  
9 installed in a vehicle. An anti-lock braking system assembly may  
10 contain more than one mercury switch<sup>1</sup>;

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

16 "Vehicle" means any passenger <sup>1</sup>[automobile or passenger  
17 automobile derivative capable of seating 15 or fewer passengers, or  
18 any motor vehicle rated at 6,000 pounds gross vehicle weight or less  
19 and a loaded vehicle weight of 5,750 pounds or less, which is designed  
20 primarily for purposes of transportation of property, or is a derivative  
21 of such motor vehicle including, but not limited to, pick-ups, vans, and  
22 window vans] car, station wagon, truck, van, or sport utility vehicle  
23 with a gross vehicle weight rating of less than 12,000 pounds<sup>1</sup>; and

24 "Vehicle recycler" means an individual or entity engaged in the  
25 business of acquiring, dismantling or destroying six or more end-of-life  
26 vehicles in a calendar year for the primary purpose of resale of their  
27 parts.

28

29 4. a. Within 90 days after the effective date of this act, every  
30 manufacturer of vehicles sold within the State, individually or as part  
31 of a group, shall develop, in consultation with the department, a  
32 mercury minimization plan prepared pursuant to this section and  
33 submit the mercury minimization plan to the commissioner for review  
34 and approval pursuant to section 5 of this act.

35 b. The mercury minimization plan prepared and submitted pursuant  
36 to this section shall include, at a minimum, the following:

37 (1) information identifying the make, model, and year of vehicles  
38 <sup>1</sup>, including current or anticipated future production models,<sup>1</sup> that may  
39 contain <sup>1</sup>[a] one or more<sup>1</sup> mercury <sup>1</sup>[switch] switches<sup>1</sup>; a description  
40 of the mercury <sup>1</sup>[switch] switches<sup>1</sup>; the location of these mercury  
41 switches; and the safe and environmentally sound methods for their  
42 removal from end-of-life vehicles. To the extent a manufacturer is  
43 uncertain as to the content of a switch installed during the manufacture  
44 of a vehicle, the mercury minimization plan shall presume that the  
45 switch is a mercury switch;

46 (2) educational materials to assist a vehicle recycler or a scrap

1 recycling facility in undertaking a safe and environmentally sound  
2 method for the removal of the mercury switches from end-of-life  
3 vehicles, including information on the hazards related to, and the  
4 proper handling of, mercury;

5 (3) a proposal for the method of storage or disposal of the mercury  
6 switches, including the method of packaging and shipping mercury  
7 switches to authorized recycling, storage, or disposal facilities;  
8 <sup>1</sup>[and]<sup>1</sup>

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

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

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

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

27 (1) a minimum of <sup>1</sup>[\$1] ~~\$2~~<sup>1</sup> for each mercury switch removed by  
28 a vehicle recycler pursuant to subsection a. of section 6 of this act as  
29 partial compensation for the labor and other costs incurred by a  
30 vehicle recycler in the removal of the mercury switch;

31 (2) a minimum of <sup>1</sup>[\$1] ~~\$2~~<sup>1</sup> for each mercury switch removed by  
32 a scrap recycling facility pursuant to subsection b. of section 6 of this  
33 act as partial compensation for the labor and other costs incurred by  
34 a scrap recycling facility in the removal of the mercury switch;

35 (3) \$0.25 for each mercury switch removed by a vehicle recycler  
36 pursuant to subsection a. of section 6 of this act or by a scrap  
37 recycling facility pursuant to subsection b. of section 6 of this act as  
38 partial compensation for the department for costs incurred in  
39 administering and enforcing the provisions of this act;

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

42 (5) shipping of mercury switches to recycling, storage or disposal  
43 facilities;

44 (6) recycling, storage or disposal of the mercury switches;

45 (7) the preparation and distribution to vehicle recyclers and scrap  
46 recycling facilities of the educational materials required pursuant to

1 paragraph (2) of subsection b. of this section; and

2 (8) maintenance of all appropriate record-keeping systems.

3 <sup>1</sup>e. Within 30 days after the effective date of this act, every  
4 manufacturer of vehicles sold within the State, individually or as part  
5 of a group, shall provide to vehicle recyclers and scrap recycling  
6 facilities containers suitable for storing mercury switches until such  
7 time that vehicle recyclers and scrap recycling facilities can be  
8 reimbursed pursuant to this section.

9 f. Manufacturers of vehicles sold within the State shall provide  
10 recyclers or scrap recycling facilities with reimbursement for each  
11 mercury switch in the amount set pursuant to this section regardless  
12 of when these switches were removed from the vehicles, provided that  
13 the vehicle recyclers or scrap recycling facilities record and provide  
14 the Vehicle Identification Number (VIN) associated with each mercury  
15 switch as required pursuant to section 6 of this act.<sup>1</sup>

16

17 5. a. Within 120 days after receipt of a mercury minimization plan,  
18 the commissioner shall approve, disapprove, or conditionally approve  
19 the entire mercury minimization plan. The commissioner may solicit  
20 input from representatives of vehicle recyclers, scrap recycling  
21 facilities, and other stakeholders as the commissioner deems  
22 appropriate.

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

30 (2) The commissioner may approve those parts of a mercury  
31 minimization plan that meet the requirements of section 4 of this act  
32 and disapprove the parts that do not comply with the requirements of  
33 section 4 of this act. The manufacturer shall implement the approved  
34 parts within 30 days after receipt of approval or as otherwise agreed  
35 to by the commissioner, and submit a revised mercury minimization  
36 plan for the disapproved parts within 30 days after receipt of  
37 notification of the disapproval of the commissioner. The  
38 commissioner shall review, and approve, conditionally approve, or  
39 disapprove a revised mercury minimization plan within 30 days after  
40 receipt.

41 (3) If, at the conclusion of the time period of 120 days after receipt  
42 of a mercury minimization plan, the commissioner has neither  
43 approved nor disapproved the mercury minimization plan pursuant to  
44 paragraphs (1) or (2) of this subsection, the mercury minimization plan  
45 shall be considered to be conditionally approved. A manufacturer,  
46 subject to any modifications required by the commissioner, shall

1 implement a conditionally <sup>1</sup>[effective] approved<sup>1</sup> mercury  
2 minimization plan within 30 days after receipt of approval or as  
3 otherwise agreed to by the commissioner.

4 b. The commissioner shall reserve the right to complete, at the  
5 conclusion of a time period 240 days after the date of enactment of  
6 this act, on behalf of a manufacturer, any portion of a mercury  
7 minimization plan that has not been approved pursuant to this section.

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

12

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

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

31 c. A vehicle recycler or scrap recycling facility who removes  
32 mercury switches pursuant to subsection a. or subsection b. of this  
33 section shall maintain records documenting the number of mercury  
34 switches collected, the number of end-of-life vehicles containing  
35 mercury switches, and the number of end-of-life vehicles processed for  
36 recycling. <sup>1</sup>The records shall include the Vehicle Identification  
37 Number (VIN) of each vehicle from which one or more mercury  
38 switches were removed, and the number of mercury switches removed  
39 from that vehicle.<sup>1</sup> These records shall be made available for review  
40 by the department upon the request of the department.

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

46 e. Upon removal, mercury switches shall be collected, stored,  
47 transported, and otherwise handled in accordance with the mercury

1 minimization plan approved pursuant to section 5 of this act.

2 f. Upon removal, mercury switches shall be collected, stored,  
3 transported, and otherwise handled in accordance with the provisions  
4 of the rules and regulations concerning universal waste adopted by the  
5 department pursuant to the "Solid Waste Management Act," P.L.1970,  
6 c.39 (C.13:1E-1 et seq.) and the "New Jersey Statewide Mandatory  
7 Source Separation and Recycling Act," P.L.1987, c.102  
8 (C.13:1E-99.11 et al.), as applicable.

9

10 7. a. One year after the implementation of a mercury minimization  
11 plan approved pursuant to section 5 of this act, and annually  
12 thereafter, a manufacturer subject to section 4 of this act shall,  
13 individually or as part of a group, report to the commissioner  
14 concerning the implementation of the mercury minimization plan. The  
15 report shall include, but need not be limited to, the following: (1) a  
16 detailed description and documentation of the capture rate achieved,  
17 with the goal of achieving a mercury switch capture rate of at least 90  
18 percent, consistent with the principle that mercury switches shall be  
19 recovered unless the mercury switch is inaccessible due to significant  
20 damage to the end-of-life vehicle in the area surrounding where the  
21 mercury switch is located; (2) a description of additional or  
22 alternative actions that may be implemented to improve the mercury  
23 minimization plan and its implementation in the event that a mercury  
24 switch capture rate of at least 90 percent is not achieved; (3) the  
25 number of mercury switches collected, the number of end-of-life  
26 vehicles containing mercury switches, the number of end-of-life  
27 vehicles processed for recycling, and a description of how the mercury  
28 switches were managed; and (4) a description of the amounts paid to  
29 cover the costs of implementing the mercury minimization plan.

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

34

35 8. a. Whenever the commissioner finds that a person has violated  
36 any provision of this act, or any rule or regulation adopted pursuant  
37 thereto, the commissioner may:

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

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

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

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

46 (5) petition the Attorney General to bring a criminal action in

1 accordance with subsection f. of this section.

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

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

18 c. The commissioner may institute an action or proceeding in the  
19 Superior Court for injunctive and other relief to enforce the provisions  
20 of this act and to prohibit and prevent a violation of this act, or of any  
21 rule or regulation adopted pursuant thereto, and the court may  
22 proceed in the action in a summary manner. In any such proceeding  
23 the court may grant temporary or interlocutory relief.

24 Such relief may include, singly or in combination:

- 25 (1) a temporary or permanent injunction;  
26 (2) assessment of the violator for the reasonable costs of any  
27 inspection that led to the establishment of the violation, and for the  
28 reasonable costs of preparing and litigating the case under this  
29 subsection.

30 d. The commissioner may assess a civil administrative penalty of  
31 not more than \$7,500 for a first offense, not more than \$10,000 for a  
32 second offense and not more than \$25,000 for a third and every  
33 subsequent offense. Each day that a violation continues shall  
34 constitute an additional, separate, and distinct offense.

35 No assessment may be levied pursuant to this section until after the  
36 violator has been notified by certified mail or personal service. The  
37 notice shall include a reference to the section of the statute, rule,  
38 regulation, or order violated, a concise statement of the facts alleged  
39 to constitute a violation, a statement of the amount of the civil  
40 administrative penalties to be imposed, and a statement of the person's  
41 right to a hearing. The ordered person shall have 20 calendar days  
42 from receipt of the notice within which to deliver to the commissioner  
43 a written request for a hearing.

44 After the hearing and upon finding that a violation has occurred, the  
45 commissioner may issue a final order after assessing the amount of the  
46 fine specified in the notice. If no hearing is requested, the notice shall

1 become a final order after the expiration of the 20-day period.  
2 Payment of the assessment is due when a final order is issued or the  
3 notice becomes a final order. The authority to levy a civil  
4 administrative penalty is in addition to all other enforcement provisions  
5 in this act, and the payment of any assessment shall not be deemed to  
6 affect the availability of any other enforcement provisions in  
7 connection with the violation for which the assessment is levied. The  
8 commissioner may compromise any civil administrative penalty  
9 assessed under this section in an amount the commissioner determines  
10 appropriate.

11 e. A person who violates this act, or any rule or regulation adopted  
12 pursuant thereto, shall be liable for a penalty of not more than \$7,500  
13 per day, to be collected in a civil action commenced by the  
14 commissioner.

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

21 Any penalty imposed pursuant to this subsection may be collected,  
22 with costs, in a summary proceeding pursuant to the "Penalty  
23 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).  
24 The Superior Court and the municipal court shall have jurisdiction to  
25 enforce the provisions of the "Penalty Enforcement Law of 1999" in  
26 connection with this act.

27 f. A person who willfully or negligently violates this act shall be  
28 guilty, upon conviction, of a crime of the fourth degree and shall be  
29 subject to a fine of not less than \$2,500 nor more than \$25,000 per day  
30 of violation. A second offense under this subsection shall subject the  
31 violator to a fine of not less than \$5,000 nor more than \$50,000 per  
32 day of violation. A person who knowingly makes a false statement,  
33 representation, or certification in any application, record, or other  
34 document filed or required to be maintained under this act, or who  
35 falsifies, tampers with or knowingly renders inaccurate, any monitoring  
36 device or method required to be maintained pursuant to this act, shall,  
37 upon conviction, be subject to a fine of not more than \$10,000.

38

39 9. Notwithstanding any other policies and guidelines for the  
40 procurement of vehicles to the contrary, the Department of the  
41 Treasury shall, within one year after the effective date of this act,  
42 revise its policies, rules and procedures to give priority and preference  
43 to the purchase of vehicles that do not contain mercury, taking into  
44 consideration competition, price, availability and performance.

45

46 10. This act shall take effect immediately.

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2

3 Establishes program for removal of mercury switches from end-of-life

4 vehicles.