

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:

¹ 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 ¹[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 switch¹;

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 ¹[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 pounds¹; 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 ¹, including current or anticipated future production models,¹ that may
39 contain ¹[a] one or more¹ mercury ¹[switch] switches¹; a description
40 of the mercury ¹[switch] switches¹; 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 ¹[and]¹

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 ¹[\$1] ~~\$2~~¹ 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 ¹[\$1] ~~\$2~~¹ 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 ¹e. 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.¹

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 ¹[effective] approved¹ 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. ¹The 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.¹ 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.

1

2

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

4 vehicles.