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

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

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

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

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

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

The Legislature further finds and declares that the vehicle recycling
industry, consisting primarily of small business operators, is a vital
component of the State's overall recycling efforts; that iron and steel
manufacturers provide a valuable scrap metal recycling service; that
reliable estimates indicate that iron and steel manufacturing plants are
the largest in-State source of mercury emissions; that the main feed
stock for these plants is scrap metal which includes shredded
end-of-life vehicles, some of which contain mercury in switches that
can be emitted to the atmosphere when the scrap metal is melted in
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:
products; that mercury provides no benefit to iron and steel
manufacturing plants and has no role in the manufacture of iron and
steel; and that the federal Environmental Protection Agency recently
finalized regulations that would require certain iron and steel foundries
to implement work practice standards to exclude mercury switches
from the scrap metal feed materials of these foundries.

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

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

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

3. As used in this act:

"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;

"Commissioner" means the Commissioner of Environmental
Protection;

"Department" means the Department of Environmental Protection;

"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;

"Manufacturer" means a person, firm, association, partnership,
corporation, governmental entity, organization, combination, or joint
venture which is the last person in the production or assembly process
of a new vehicle that utilizes mercury switches, or in the case of an
imported vehicle, the importer or domestic distributor of the vehicle;
"Mercury minimization plan" means a plan for removing, collecting and recovering mercury switches from end-of-life vehicles and prepared pursuant to section 4 of this act; "Mercury switch" means any light switch or an anti-lock braking system switch that contains mercury and that is installed by a manufacturer in a vehicle; 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 mercury switch:

"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;

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

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

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

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

(1) information identifying the make, model, and year of vehicles, including current or anticipated future production models, that may contain mercury switches; a description of the mercury switches; the location of these mercury switches; and the safe and environmentally sound methods for their removal from end-of-life vehicles. 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
teaching vehicle or the removal of the mercury switches from end-of-life
vehicles, including information on the hazards related to, 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 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;

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

c. A mercury minimization plan shall, to the extent practicable,
utilize the existing end-of-life vehicle recycling infrastructure. Where
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. A mercury minimization plan must provide for the financing of
the removal, collection, and recovery system for mercury switches as
provided in this subsection. These costs shall be borne by the
manufacturers of vehicles sold in the State, and 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:

(1) a minimum of $0.25 for each mercury switch removed by
a vehicle recycler pursuant to subsection a. of section 6 of this act as
partial compensation for the labor and other costs incurred by a
vehicle recycler in the removal of the mercury switch;

(2) a minimum of $0.25 for each mercury switch removed by
a scrap recycling facility pursuant to subsection b. of section 6 of this
act as partial compensation for the labor and other costs incurred by
a scrap recycling facility in the removal of the mercury switch;

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

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

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

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

(7) the preparation and distribution to vehicle recyclers and scrap
recycling facilities of the educational materials required pursuant to
paragraph (2) of subsection b. of this section; and

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

1. Within 30 days after the effective date of this act, 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
recyclers or scrap recycling facilities with reimbursement for each
mercury switch in the amount set pursuant to this section regardless
of when these switches were removed from the vehicles, provided that
the vehicle recyclers or scrap recycling facilities record and provide
the Vehicle Identification Number (VIN) associated with each mercury
switch as required pursuant to section 6 of this act.¹

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

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

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

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

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

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

6. a. Commencing 30 days after the approval or conditional approval of a mercury minimization plan pursuant to section 5 of this act, a vehicle recycler who 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 such 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 section 5 of this act before the end-of-life vehicle is intentionally flattened, crushed, baled, or shredded.

c. A vehicle recycler or scrap recycling facility who removes mercury switches pursuant to subsection a. or subsection b. of this section shall maintain records documenting the number of mercury switches collected, the number of end-of-life vehicles containing mercury switches, and the number of end-of-life vehicles processed for recycling. These records shall include the Vehicle Identification Number (VIN) of each vehicle from which one or more mercury switches were removed, and the number of mercury switches removed from that vehicle. These records shall be made available for review by the department 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 mercury
minimization plan approved pursuant to section 5 of this act.


7. a. One year after the implementation of a mercury minimization plan approved pursuant to section 5 of this act, and annually thereafter, a manufacturer subject to section 4 of this act shall, individually or as part of a group, report to the commissioner 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 90 percent, 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 90 percent 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 commissioner 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 no longer pose a significant threat to the environment or to public health.

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

(1) issue an order requiring the person found to be in violation to comply in accordance with subsection b. of this section;
(2) bring a civil action in accordance with subsection c. of this section;
(3) levy a civil administrative penalty in accordance with subsection d. of this section;
(4) bring an action for a civil penalty in accordance with subsection e. of this section; or
(5) petition the Attorney General to bring a criminal action in
accordance with subsection f. of this section. Pursuit of any of the remedies specified under this section shall not preclude the seeking of any other remedy specified. b. Whenever the commissioner finds that a person has violated this act, or any rule or regulation adopted pursuant thereto, the commissioner may issue an order specifying the provision or provisions of this act, or the rule or regulation adopted pursuant thereto, of which the person is in violation, citing the action that constituted the violation, ordering abatement of the violation, and giving notice to the person of the person's right to a hearing on the matters contained in the order. The ordered person shall have 20 calendar days from receipt of the order within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order. If no hearing is requested, the order shall become final after the expiration of the 20-day period. A request for hearing shall not automatically stay the effect of the order. c. The commissioner may institute an action or proceeding in the Superior Court for injunctive and other relief to enforce the provisions of this act and to prohibit and prevent a violation of this act, or of any rule or regulation adopted pursuant thereto, and the court may proceed in the action in a summary manner. In any such proceeding the court may grant temporary or interlocutory relief. Such relief may include, singly or in combination: (1) a temporary or permanent injunction; (2) assessment of the violator for the reasonable costs of any inspection that led to the establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subsection. d. The commissioner may assess a civil administrative penalty of not more than $7,500 for a first offense, not more than $10,000 for a second offense and not more than $25,000 for a third and every subsequent offense. Each day that a violation continues shall constitute an additional, separate, and distinct offense. No assessment may be levied pursuant to this section until after the violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, regulation, or order violated, a concise statement of the facts alleged to constitute a violation, a statement of the amount of the civil administrative penalties to be imposed, and a statement of the person's right to a hearing. The ordered person shall have 20 calendar days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall
become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions in this act, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. The commissioner may compromise any civil administrative penalty assessed under this section in an amount the commissioner determines appropriate.

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

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

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

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

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

10. This act shall take effect immediately.
Establishes program for removal of mercury switches from end-of-life vehicles.