

CHAPTER 54

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:*

C.13:1E-99.82 Short title.

1. This act shall be known and may be cited as the "Mercury Switch Removal Act of 2005."

C.13:1E-99.83 Findings, declarations relative to mercury pollution from switches in scrap vehicles.

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 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.

C.13:1E-99.84 Definitions relative to mercury switches in scrap vehicles.

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 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 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.

C.13:1E-99.85 Development of mercury minimization plan for vehicles by manufacturers.

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 one or more 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 method for 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 storage of mercury switches collected and recovered from end-of-life vehicles in the event that 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. 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 \$2 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 \$2 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.

e. 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.

C.13:1E-99.86 Approval, disapproval, conditional approval of mercury minimization plan.

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 to by the commissioner, and submit a revised mercury minimization plan for the disapproved parts within 30 days after receipt of 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 paragraph (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.

C.13:1E-99.87 Removal of mercury switches.

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. The 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.

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

C.13:1E-99.88 Manufacturer's report to commissioner relative to implementation of mercury minimization plan.

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.

C.13:1E-99.89 Violations, civil action, penalty.

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.

C.13:1E-99.90 Revision of policies of Department of the Treasury relative to purchase of vehicles.

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.

Approved March 24, 2005.