

2009 -- H 5794

LC01118

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

A N A C T

RELATING TO HEALTH AND SAFETY - MERCURY REDUCTION AND EDUCATION
ACT

Introduced By: Representatives Malik, Walsh, Gablinske, and Winfield

Date Introduced: February 26, 2009

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 23-24.9-2, 23-24.9-3, 23-24.9-6, 23-24.9-9 and 23-24.9-10 of the
2 General Laws in Chapter 23-24.9 entitled "Mercury Reduction and Education Act" are hereby
3 amended to read as follows:

4 **23-24.9-2. Findings.** -- The general assembly has found and hereby declares that:

5 (1) Mercury is a persistent and toxic pollutant that bioaccumulates in the environment;

6 (2) Mercury deposition has proven to be a significant problem in the northeastern United
7 States;

8 (3) Consumption of mercury-contaminated freshwater fish poses a significant public
9 health threat to the residents of Rhode Island;

10 (4) In order to address these real threats to public health and the environment, the state
11 has been and should continue to actively cooperate with other states in the region to help
12 minimize harm resulting from mercury in food, soil, air and water; ~~and~~

13 (5) According to a 2004 study by the U.S. environmental protection agency titled
14 "International mercury market study and the role and impact of U.S. environmental policy," more
15 than ten percent (10%) of the estimated mercury reservoir in the United States is in thermostats;

16 (6) In 1998, thermostat manufacturers general electric, Honeywell, and White Rodgers
17 established the thermostat recycling corporation "(TRC)" that runs the program for collecting
18 discarded mercury-containing thermostats under the TRC program, thermostat wholesalers

1 volunteer to place bins where heating, ventilation and air-condition (HVAC) contractors can
2 discard thermostats;

3 (7) The manufacturers of mercury-containing thermostats, with the cooperation of the
4 department, should be encouraged to submit a single unified plan for the collection of mercury-
5 containing thermostats, the cost of which should be appropriately apportioned between
6 participating manufacturer;

7 (8) The northeast waste management officials' Association "(NEWMOA)" review of the
8 experience in other states found that the most successful mercury thermostat collection and
9 recycling efforts include mandated financial incentives for heating ventilation and air
10 conditioning "(HVAC)", electrical contractors, and homeowners that collect and recycle
11 thermostats; and

12 ~~(8)~~ (9) The intent of this chapter is to achieve significant reductions in environmental
13 mercury by encouraging the establishment of effective waste reduction, recycling, management
14 and education programs.

15 **23-24.9-3. Definitions.** – For the purpose of this chapter:

16 (1) "Component" means a mercury-added product which is incorporated into another
17 product to form a fabricated mercury-added product, including, but not limited to, electrical
18 switches and lamps.

19 (2) "Department" means the department of environmental management.

20 (3) "Director" means the director of the department of environmental management or any
21 subordinate or subordinates to whom the director has delegated the powers and duties vested in
22 him or her by this chapter.

23 (4) "Fabricated mercury-added product" means a product that consists of a combination
24 of individual components that combine to make a single unit, including, but not limited to,
25 mercury-added measuring devices, lamps and switches to which mercury or a mercury compound
26 is intentionally added in order to provide a specific characteristic, appearance, or quality, or to
27 perform a specific function or for any other reason.

28 (5) "Formulated mercury-added product" means a product that includes, but is not
29 limited to, laboratory chemicals, cleaning products, cosmetics, pharmaceuticals and coating
30 materials that are sold as a consistent mixture of chemicals to which mercury or a mercury
31 compound is intentionally added in order to provide a specific characteristic, appearance, or
32 quality, or to perform a specific function or for any other reason.

33 (6) "Healthcare facility" means any hospital, nursing home, extended care facility, long-
34 term care facility, clinical or medical laboratory, state or private health or mental institution,

1 clinic, physician's office or health maintenance organization.

2 (7) "Manufacturer" means any person, firm, association, partnership, corporation,
3 governmental entity, organization, combination or joint venture that produces a mercury-added
4 product or an importer or domestic distributor of a mercury-added product produced in a foreign
5 country. In the case of a multi-component mercury-added product, the manufacturer is the last
6 manufacturer to produce or assemble the product. If the multi-component product is produced in
7 a foreign country, the manufacturer is the importer or domestic distributor. In the case of
8 mercury-containing thermostats, the manufacturer is the original equipment manufacturer.

9 (8) "Mercury-added button cell battery" means a button cell battery to which the
10 manufacturer intentionally introduces mercury for the operation of the battery.

11 (9) "Mercury-added novelty" means a mercury-added product intended mainly for
12 personal or household enjoyment or adornment. Mercury-added novelties include, but are not
13 limited to, items intended for use as figurines, adornments, toys, games, cards, ornaments, yard
14 statues and figures, candles, jewelry, holiday decorations, items of apparel (including footwear),
15 or similar products.

16 (10) "Mercury-added product" means a product, commodity, chemical or a product with
17 a component that contains mercury or a mercury compound intentionally added to the product,
18 commodity, chemical or component in order to provide a specific characteristic, appearance, or
19 quality, or to perform a specific function or for any other reason. These products include
20 formulated mercury-added products and fabricated mercury-added products.

21 (11) "Mercury fever thermometer" means a mercury-added product that is used for
22 measuring body temperature.

23 (12) "Mercury-containing thermostat" means a product or device that uses a mercury
24 switch to sense and control room temperature through communication with heating, ventilating,
25 or air-conditions equipment. "Mercury-containing thermostat" includes thermostats used to sense
26 and control room temperature in residential, commercial, industrial, and other buildings but does
27 not include a thermostat used to sense and control temperature as part of a manufacturing process.

28 (13) "Person" means an individual, trust, firm, joint stock company, corporation
29 (including a government corporation), partnership, association, the federal government or any
30 agency or subdivision thereof, a state, municipality, commission, political subdivision of a state,
31 or any interstate body.

32 (14) "Thermostat retailer" means a person who sells thermostats of any kind directly to
33 homeowners or other nonprofessionals through any selling or distribution mechanism, including,
34 but not limited to, sales using the internet or catalogues. A retailer may also be a wholesaler if it

1 [meets the definition of wholesaler.](#)

2 [\(15\) "Thermostat wholesaler" means a person that is engaged in the distribution and](#)
3 [wholesale sale of heating, ventilation, and air-conditioning components to contractors who install](#)
4 [heating, ventilation, and air-conditioning components.](#)

5 **23-24.9-6. Restrictions on the sale of certain mercury-added products.** -- (a) No later
6 than January 1, 2003, no mercury-added novelty shall be offered for final sale or use or
7 distributed for promotional purposes in Rhode Island. Manufacturers that produce and sell
8 mercury-added novelties must notify retailers about the provisions of this product ban and how to
9 dispose of the remaining inventory properly. The requirements of this section shall apply to all
10 mercury-added novelties irrespective of whether or not the product is exempt from the phase-out
11 requirements of section 23-24.9-11.

12 (b) No mercury fever thermometer may be distributed, sold or offered for sale in this
13 state on or after January 1, 2002, except by prescription. As used in this section, the term
14 "mercury fever thermometer" includes any device containing mercury in which the mercury is
15 used to measure the internal body temperature of a person. This restriction shall not apply to
16 digital thermometers utilizing mercury-added button cell batteries. The manufacturers of mercury
17 fever thermometers shall supply clear instructions on the careful handling of the thermometer to
18 avoid breakage and proper cleanup should a breakage occur with all mercury fever thermometers
19 sold through prescription. Mercury fever thermometers manufacturers must also comply with
20 sections 23-24.9-5 and 23-24.9-7 -- 23-24.9-10.

21 (c) After January 1, 2003, no school in Rhode Island may use or purchase for use in a
22 primary or secondary classroom, bulk elemental or chemical mercury, or mercury compounds.
23 Manufacturers that produce and sell such materials must notify retailers about the provisions of
24 this ban and how to dispose of the remaining inventory properly. Other mercury-added products
25 that are used by schools are not subject to this prohibition.

26 (d) Button cell batteries. - After June 30, 2011 a person may not sell or offer to sell or
27 distribute for promotional purposes a mercury-added cell battery for consumer use or a product
28 for consumer use that contains a mercury-added button cell battery.

29 [\(e\) Commencing April 1, 2010, the following sales prohibitions shall apply to](#)
30 [manufacturers, thermostat wholesalers, and thermostat retailers:](#)

31 [\(1\) A manufacturer not in compliance with section 23-24.9-10.2, is prohibited from](#)
32 [offering any thermostat for final sale in the state, selling any thermostat at final sale in the state or](#)
33 [distributing any thermostat in the state. A manufacturer not in compliance with this law shall](#)
34 [provide the necessary support to thermostat wholesalers and thermostat retailers to ensure the](#)

1 manufacturer's thermostats are not offered for final sale, sold at final sale, or distributed in this
2 state.

3 (2) By April 1, 2010, a thermostat wholesaler shall not offer for final sale, sell at final
4 sale or distribute any thermostat unless the wholesaler:

5 (i) Acts as a collection site for thermostats that contain mercury; and

6 (ii) Promotes and utilizes the collection containers provided by thermostat manufacturers
7 to facilitate a contractor collection program as established by section 23-24.9-10.2, and performs
8 all other tasks as needed to establish and maintain a cost-effective manufacturer collection and
9 financial incentive program.

10 (3) By July 1, 2010, a thermostat retailer shall not offer for final sale, sell, or distribute
11 any thermostat in the state unless the thermostat retailer participates in an education and outreach
12 program to educate consumers on the collection program for mercury thermostats.

13 (4) A thermostat wholesaler or thermostat retailer shall not offer for final sale, sell at final
14 sale, or distribute in this state any thermostat of a manufacturer that is not in compliance with
15 section 23-24.9-10.2.

16 **23-24.9-9. Disposal ban.** -- (a) Except as otherwise provided for in this chapter, after
17 July 1, 2006, no person shall dispose of mercury-added products in a manner other than by
18 recycling or disposal as hazardous waste. Mercury from mercury-added products may not be
19 discharged to water, wastewater treatment, and wastewater disposal systems except when it is
20 done in compliance with local, state, and federal applicable requirements.

21 (b) If a formulated mercury-added product is a cosmetic or pharmaceutical product
22 subject to the regulatory requirements relating to mercury of the federal Food and Drug
23 Administration, then the product is exempt from the requirements of this section.

24 (c) This section shall not apply to: (1) anyone who disposes of a mercury-added button
25 cell battery; or (2) mercury-added components as contained in motor vehicles except as provided
26 in subdivision 23-24.9-10(b)(2) and in accordance with such regulations as may be adopted by
27 the department in order to achieve the purposes of subdivision 23-24.9-10(b)(2); and (3)
28 households disposing of lamps and products containing lamps.

29 (d) The restrictions on the disposal of mercury-added components in motor vehicles shall
30 be as set forth in subsection (a) of this section effective January 1, 2006, and shall be
31 implemented as provided for in subdivision (c)(2) of this section and subdivision 23-24.9-
32 10(b)(2).

33 (e) The restrictions on amalgam waste recycling and disposal shall be implemented as
34 provided for in section 23-24.9-9.3.

1 (f) Any contractor who replaces a mercury-containing thermostat from a building shall
2 deliver the mercury-containing thermostat to an appropriate collection location for recycling.

3 **23-24.9-10. Collection of mercury-added products.** -- (a) After January 1, 2006, no
4 mercury-added product shall be offered for final sale or use or distribution for promotional
5 purposes in Rhode Island unless the manufacturer, either on its own or in concert with other
6 persons, has implemented a system, after review and approval of the director, for the convenient
7 and accessible collection of such products when the consumer is finished with them. Where a
8 mercury-added product is a component of another product, the collection system must provide for
9 removal and collection of the mercury-added component or collection of both the mercury-added
10 component and the product containing it. Mercury-added components in motor vehicles shall be
11 collected and recycled as provided for in subdivision (b)(2) of this section. Mercury-containing
12 thermostats shall be collected and recycled as provided for in section 23-24.9-10.2.

13 (b) (1) This section shall not apply to the collection of mercury-added button cell
14 batteries or mercury-added lamps or products where the only mercury contained in the product
15 comes from a mercury-added button cell battery or a mercury-added lamp; and

16 (2) Mercury-added components in motor vehicles at end-of-life shall be collected and
17 recycled as provided in this subsection. Significant, willful failure to comply with rules and/or
18 regulations to implement the provisions of this section shall constitute, as may be determined by
19 the department, a violation of the ban established in section 23-24.9-9. No scrap recycling facility
20 or other person that receives a flattened, crushed or baled end-of-life vehicle shall be deemed to
21 be in violation of subdivision 23-24.9-10(b)(2) and rules and regulations pursuant thereto or
22 section 23-24.9-9 if a mercury switch is found in the vehicle after its acquisition.

23 For the purposes of subdivision 23-24.9-10(b)(2) the following terms shall have the
24 following meanings: (i) "Capture rate" means the annual removal, collection, and recovery of
25 mercury switches, as a percentage of the total number of mercury switches available for removal
26 from end-of-life vehicles as determined by the department of environmental management.
27 Capture rate shall not include mercury switches that are inaccessible due to significant damage to
28 the motor vehicle in the area where the mercury switch is located; (ii) "Mercury added
29 component" or "Mercury switch" means a mercury-added convenience light switch assembly or
30 capsule from an end-of-life motor vehicle; (iii) "Scrap recycling facility" means a fixed location
31 where machinery and equipment are utilized for processing and manufacturing scrap metal into
32 prepared grades and whose principal product is scrap iron, scrap steel, or nonferrous metallic
33 scrap for sale for remelting purposes; and (iv) "Vehicle recycler" means an individual or entity
34 licensed under the provisions of section 42-14.2-3 that engages in the business of acquiring,

1 dismantling, parts recycling from, or destroying six (6) or more end-of-life vehicles in a calendar
2 year.

3 (A) Manufacturers of motor vehicles sold in Rhode Island that contain mercury switches
4 shall, individually or collectively, establish and implement a collection program for mercury
5 switches to achieve a capture rate of not less than fifty percent (50%) for calendar year 2006, and
6 not less than seventy percent (70%) for calendar year 2007 and each calendar year thereafter
7 through calendar year 2017.

8 (B) The department shall develop, issue, administer and enforce regulation compelling
9 the manufacturers of motor vehicles sold in Rhode Island that contain mercury switches to
10 undertake a collection program as set forth in this subparagraph, 23-24.9-10(b)(2)(B). The
11 department shall determine that the capture rate in each year of the program and shall assess
12 whether any failure to achieve the capture rate was the result of a force-majeure. The department
13 shall report publicly on or before March 31, each year its findings with regard to the capture rate
14 during the prior year. The manufacturer or manufacturers shall pay the total cost of the removal,
15 replacement, collection and recovery system for mercury switches, under this subparagraph, 23-
16 24.9-10(b)(2)(B), to the vehicle recycler or scrap recycling facility that removed the switch. The
17 total cost shall include, but not be limited to a minimum of five dollars (\$5.00) for each mercury
18 switch removed by a vehicle recycler or by a scrap recycling facility, as partial compensation for
19 the labor and other costs incurred in the removal of the mercury switch.

20 (3) The provisions of subdivision 23-24.9-10(b)(2) shall satisfy collection programs and
21 disposal requirements for mercury switches for all motor vehicles sold in the state.

22 SECTION 2. Chapter 23-24.9 of the General Laws entitled "Mercury Reduction and
23 Education Act" is hereby amended by adding thereto the following section:

24 **23-24.9-10.2. Mercury-containing thermostats. – (a) Manufacturer responsibility. Each**
25 **thermostat manufacturer that has offered for final sale, sold at final sale, or has distribute**
26 **mercury-containing thermostats in Rhode Island shall, individually or collectively:**

27 **(1) No later than October 1, 2009, submit a plan to the department for approval that**
28 **describes a collection and financial incentive program for mercury thermostats. The program**
29 **contained in this plan shall ensure that the following take place:**

30 **(i) That an effective education and outreach program shall be developed and shall be**
31 **directed toward wholesalers, retailers, contractors, and homeowners. There shall be no cost to**
32 **thermostat wholesalers or thermostat retailers for education and outreach materials.**

33 **(ii) That the handling, transportation and recycling of mercury-containing thermostats is**
34 **accomplished in a manner that is consistent with the provisions of the universal waste rules**

1 adopted by the department, and provided for without cost to thermostat retailers, wholesalers,
2 contractors, nonprofessionals, and homeowners, except as provided in paragraphs (iii) and (iv) of
3 this section.

4 (iii) That containers for mercury-containing thermostat collection are provided to all
5 thermostat wholesalers. The cost to thermostat wholesalers shall be limited to an initial,
6 reasonable one-time fee per container as specified in the plan.

7 (iv) That collection systems are provided to all collection points registered pursuant to
8 subdivision 23-24.9-10.2(b)(3). Collection systems can include individual product mail back or
9 multiple collection containers. The cost to registered collection points shall be limited to an
10 initial, reasonable one-time fee per container as specified in the plan.

11 (v) That a financial incentive is established with a minimum value of five dollars (\$5.00)
12 for the return of each mercury-containing thermostat to a thermostat wholesaler by a contractor or
13 service technician. The financial incentive shall be in the form of cash or coupons that are
14 redeemable by the contractor or service technician.

15 (vi) That a financial incentive is established with a minimum value of five dollars (\$5.00)
16 to homeowners or nonprofessional for the return of each mercury-containing thermostat to a
17 collection point registered with the department. The financial incentive shall be in the form of
18 cash or in the form of a coupon that can be redeemed for cash from the manufacturer or can be
19 redeemed for a credit toward purchase of general merchandise in the retail location where the
20 thermostat was returned.

21 (vii) Mechanisms to protect against the fraudulent return of thermostats are established.

22 (2) No later than October 1, 2009, submit to the department the national annual mercury
23 thermostat sales data for that manufacturer from 1958 to the present.

24 (3) No later than April 1, 2010, implement a mercury thermostat collection plan approved
25 by the department under subsection 23-24.9-10.2(b) for thermostats collected by contractors or
26 service technicians, and no later than July 1, 2010 implement an approved mercury thermostat
27 collection plan for thermostats collected by homeowners or nonprofessionals.

28 (4) Beginning in 2011, submit an annual report to the department by April 1, of each year
29 that includes, at a minimum, all of the following:

30 (i) The number of mercury-containing thermostats collected and recycled by that
31 manufacturer pursuant to this section during the previous calendar year and the number for each
32 state within the United States.

33 (ii) The estimated total amount of mercury contained in the thermostat components
34 collected by that manufacturer pursuant to this section in the previous calendar year, and the

1 amount for each state within the United States.

2 (iii) An evaluation of the effectiveness of the manufacturer's collection program and the
3 financial incentive.

4 (iv) An accounting of the administrative costs incurred in the course of administering the
5 collection and recycling program and the financial incentive plan.

6 (b) Department responsibilities.

7 (1) Within sixty (60) days of receipt of a complete application from a manufacturer, the
8 department shall review and may grant, deny, or approve with modifications a manufacturer plan
9 required by subdivision 23-24.9-10.2(a)(1). The department shall not approve a plan unless all
10 elements of subdivision 23-24.9-10.2(a)(1) are fully and adequately addressed. In reviewing a
11 plan, the department may consider consistency of the plan with collection and financial incentive
12 requirements in other states and consider consistency between manufacturer collection programs.
13 In reviewing plans, the department shall ensure that education and outreach programs are uniform
14 and consistent to ensure ease of implementation by thermostat wholesalers and thermostat
15 retailers.

16 (2) The department shall establish a process under which a plan submitted by a
17 manufacturer is, prior to plan approval, available for public review and comment for thirty (30)
18 days. The department shall consult with interested persons, including representatives from
19 thermostat manufacturers, environmental groups, thermostat wholesalers, thermostat retailers,
20 service contractors, municipalities, and solid waste districts.

21 (3) Registered collection points. The department shall maintain and post on their website
22 a list of municipalities, solid waste districts, and thermostat retailers who wish to register as
23 collection points for mercury thermostats.

24 (4) Education and outreach. In conjunction with the educational and outreach programs
25 implemented by manufacturers, the department shall conduct an education and outreach program
26 directed toward wholesalers, retailers, contractors, and homeowners to promote the collection of
27 discarded mercury-containing thermostats.

28 (5) Report By January 15, 2011, and annually thereafter, the department shall submit a
29 report on the collection and recycling of mercury-containing thermostats in the state to the house
30 committee on environment and natural resources and the senate committee on environment and
31 agriculture. The report due in 2011 must include a description and discussion of the financial
32 incentive plan established under this section and recommendations for any statutory changes
33 concerning the collection and recycling of mercury-containing thermostats. Subsequent reports
34 must include an evaluation of the effectiveness of the thermostat collection and recycling

1 programs established under this section, information on actual collection rates, and
2 recommendations for any statutory changes concerning the collection and recycling of mercury-
3 containing thermostats. These reporting requirements may be combined with other reports on
4 mercury that the department is required to provide to the general assembly.

5 (6) Rate of collection. By July 1, 2011, the department shall estimate the number of out-
6 of-service thermostats generated in Rhode Island on an annual basis, in consultation with
7 interested persons, including representatives from thermostat manufacturers, thermostat
8 wholesalers, thermostat retailers, service contractors, environmental groups, municipalities, and
9 solid waste districts. Beginning July 1, 2012, should collection efforts fail to result in the
10 collection and recycling of at least sixty-five percent (65%) of the out-of-service mercury-
11 containing thermostats in the state, the department shall, in consultation with interested persons,
12 require modifications to manufacturer's collection plans in an attempt to improve collection rates
13 in accordance with these goals. The department or its representatives may inspect manufacturer
14 records, request the performance of third-party audits, or undertake other investigatory activities
15 as may be necessary to determine or verify historic mercury thermostat sales or collection
16 program effectiveness data.

17 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY - MERCURY REDUCTION AND EDUCATION
ACT

- 1 This act would revise the mercury reduction and education act in order to require
- 2 thermostat manufacturers to submit plans for the collection and disposal of mercury thermostats.
- 3 This act would take effect upon passage.

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