

**MERCURY POLICY PROJECT
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**OMNIBUS MERCURY REDUCTION ACT: 1999 MODEL STATE LEGISLATION
(Draft 1/12/99)**

Definition

The term "mercury-added product" as used in this chapter means a product, device, instrument, or equipment into which elemental mercury or mercury compounds are intentionally added during its formulation or manufacture and in which the continued presence of mercury is desired to provide a specific characteristic or to perform a specific function.

The term "mercury-containing material" as used in this chapter means any material that contains mercury that was not intentionally added, including, but not limited to ash, sludge bottoms from manufacturing process, scrubber effluent, sewage sludge, cement kiln dust, and products made from mercury containing waste such as asphalt tiling, road asphalt, playground mats, or any other material-containing mercury. Mercury-containing material does not include material used as fuels, specifically and without exception, coal, oil, gasoline, diesel, or natural gas.

The term "person" shall mean any entity including, but not limited to people, businesses, corporation, state agencies, and federal agencies.

Lamp recycling facility means a facility operated to remove, recover, and recycle for reuse mercury or other hazardous materials from fluorescent or high intensity discharge lamps.

Agency means the [relevant state agencies that permits hazardous waste facilities].

Affected source means any source that emits mercury except electric utility generators.

Public Notification and Participation

The public has a fundamental right to participate in decisions which could affect their health, well-being, and the quality of their environment. To encourage public participation, and accountability to the public, the commissioner of the state must keep a mailing list (mandatory mailing list-mercury) of all parties interested in mercury-added products and mercury-containing materials and notify them in a timely manner of any public hearings, public comment periods, final decisions on exemptions, the availability of monitoring and reporting data, and any other relevant information regarding this act the commissioner deems important or relevant. Any member of the public may request to be added to this list at any time.

Disclosure of Mercury Content

A manufacturer or wholesaler may not supply a mercury-added product for sale in this state without first notifying the commissioner of the state environmental agency in writing of the amount of mercury in the product, the amount of mercury in products sold each year and the essential-use purpose that the mercury serves. The commissioner shall send this notification letter to the mandatory mailing list-mercury.

Mercury-Added Products Phase Out

Manufacturers are no longer allowed to sell mercury-added products in the State after January 1, 2000 unless they have applied for and been granted an exemption from this section by the commissioner of the state environmental agency. The commissioner may only grant the exemption after a 60 day public comment period has been held and a formal public hearing has been held. In making the determination, the commissioner shall only grant such an exemption if (1) the mercury-added products meets an essential use requirement, (2) find that there are no comparable non mercury-added products available in the marketplace at a reasonable cost, and (3) through verifiable documentation submitted by the manufacturer, the commissioner must assure that applicants have established take-back programs in place for all mercury-added products sold in the state that are available to all residents on a regular basis. Exemptions may only be granted by the state for up to two years and then may be renewed biannually. The renewal of each exemption shall follow the same process as the initial exemption. Each year the commissioner shall list all products that have been given exemptions and send this list to the mandatory mailing list-mercury.

The decision to grant the exemption is discretionary and subject to public review.

Mercury Disposal Prohibition

(a) A person may not place any elemental mercury or mercury-added products including, but not limited to, batteries, lamps, thermostats, thermometers, electric switches, Cantor tubes, (separate or as part of a larger product), appliances, gauges, medical or scientific instruments or devices, or electric relays or any other electrical device from which the mercury has not been removed for reuse or recycling:

(1) in solid waste destined for landfill, waste incineration, or construction and demolition disposal;

(2) in medical waste destined for landfill, waste incineration, or construction and demolition disposal

(3) in hazardous waste destined for waste incineration or recycling in a cement kiln, light weight aggregate kiln, boiler or industrial furnace, plasma arc, furnace, hazardous waste incinerator, or any other device which heats the material, except for the purpose of retorting the mercury for recovery.

(3) in wastewater disposal systems, including individual home septic systems.

Variances and Exemptions

Except for specifically provided in other portions of this act, there shall be no exemptions or variances to any provision of this act.

Labeling; Products Containing Mercury

A manufacturer or wholesaler may not sell and a retailer may not knowingly sell any products, devices, instruments or equipment in this state that contain mercury unless the item is labeled in a manner to clearly inform a purchaser or consumer that mercury is present in the item and that the item may not be placed in solid waste, medical waste, hazardous waste, or construction and demolition waste or down the drain until the mercury is removed and reused, recycled, or otherwise managed to ensure that it does not become part of solid waste, hazardous waste or wastewater stream. Label placement shall be on both the product and the product package. The label should be clearly visible at time of purchase. Primary responsibility for affixing labels required under this section shall be on the manufacturer, and not on the wholesaler or retailer.

Source Separation

Every person who discards solid waste, medical waste or wastewater within the state shall separate mercury-added products from wastewater, municipal and medical waste streams. Any contractor who replaces, removes or transports mercury-added products shall assure the proper separation of any discarded mercury-added product. [Penalty?]

Collection

Manufacturers of mercury-added products shall:

1. Provide a system for the collection of the product from users in this state; and
2. Clearly inform each purchaser of the product of the available system for proper collection of the product and that disposal of the product in municipal or medical waste or wastewater is prohibited. A fee may not be assessed for use of the collection system.

Elemental mercury

1. Sale. A person may not sell mercury to another person in this state without providing a material data safety sheet, as defined in United States Code, title 42, section 11049, and requiring the purchaser to sign a statement that the purchaser:
 - A. Will use the mercury only for a medical, dental, instructional, research, or manufacturing purpose;
 - B. Understands that mercury is toxic, and will store and use it appropriately so that no person is exposed to the mercury unknowingly; and
 - C. Will not place, or allow anyone under the purchaser's control to place, the mercury in the trash for disposal as solid waste or in a wastewater disposal system.
2. Use. A person who uses elemental mercury in any application may not place, or deliver the mercury to another person who places residues, particles, scrapings or other materials that contain mercury in solid waste, medical waste, construction or demolition waste or wastewater, except for traces of materials (less than XX grams per year) that may inadvertently pass through a filtration system during a dental procedure.

Mercury Emissions Reduction

Sales. A person may not sell mercury to another person in this state without providing a material safety data sheet, as defined in United States Code, title 42, section 11049, and requiring the purchaser to sign a statement that the purchaser:

- (1) will use the mercury only for a medical, dental, instructional, research, or manufacturing purpose; and
- (2) understands the toxicity of mercury and will appropriately store and use it and will not place, or allow anyone under the purchaser's control to place, the mercury in the solid waste stream or in a wastewater disposal system.
- (3) Use of mercury. A person who uses mercury in any application may not place, or deliver the mercury to another person who places residues, particles, scrapings, or other materials that contain mercury in solid waste or wastewater, except for traces **[should have definition here of trace]** of materials that may inadvertently pass through a filtration system during a dental procedure.

Removal from service; products containing mercury

- (a) When a mercury-added product is removed from service the mercury in the item must be source separated for reuse, recycling, or otherwise managed to prevent its release into the environment.
- (b) A person who is in the business of replacing or repairing an item in households shall ensure, or deliver the item to manufacturer collection system established in section ___, that will ensure, that the mercury contained in an item that is replaced or repaired is reused or recycled or otherwise managed in compliance with section---.
- (c) A person may not crush a motor vehicle unless the person has first made a good faith effort to remove all of the mercury switches in the motor vehicle.
- (d) Appliance recyclers shall be required to receive training and remove mercury switches from appliances before any reclamation processes or disposal take place. Appliance recyclers shall be required to report or manifest annually all mercury items removed and submitted to manufacturer's collection programs.
- (e) Building, electrical and maintenance contractors must make a good faith effort to pull all mercury containing items from buildings before demolition and be required to report and manifest annually all mercury items removed and submitted to manufacturer's collection programs.

Displacement relays

- (a) A manufacturer of a displacement relay containing mercury is responsible for the costs of collecting and managing its displacement relays to ensure that the relays do not become part of the solid waste stream.
- (b) A manufacturer of a displacement relay that contains mercury shall, in addition to the requirements of____, provide incentives for, and sufficient information to, purchasers and consumers of the relay to ensure that the relay does not become part of the waste stream. A manufacturer that has complied with this subdivision is not liable for improper disposal by purchasers or consumers of its relays.
- (c) A manufacturer subject to this subdivision, or an organization of such manufacturers and its officers, members, employees, and agents, may participate in projects or programs to collect and properly manage waste displacement relays. Any person who participates in such a project or program is immune from liability under state law relating

to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce for activities related to the collection and management of the relays under this subdivision.

(d) For the purposes of this subdivision, a "displacement relay" means an electrical flow control device having one or more poles that contain metallic mercury and a plunger which, when energized by a magnetic field, moves into a pool of mercury, displacing the mercury sufficiently to create a closed electrical circuit.

Fluorescent and high intensity discharge lamps; large use applications

(a) A person who sells fluorescent or high intensity discharge lamps that contain mercury to the owner or manager of an industrial, commercial, office, or multiunit residential building, or to any person who replaces or removes from service outdoor lamps that contain mercury, shall clearly inform the purchaser in writing on the invoice for the lamps, or in a separate writing, that the lamps contain mercury, a hazardous substance that is regulated by federal or state law and that they may not be placed in solid waste. This paragraph does not apply to a person who incidentally sells fluorescent or high intensity discharge lamps at retail to the specified purchasers.

(b) A person who contracts with the owner or manager of an industrial, commercial, office, or multiunit residential building, or with a person responsible for outdoor lighting, to remove from service fluorescent or high intensity discharge lamps that contain mercury shall clearly inform, in writing, the person for whom the work is being done that the lamps being removed from service contain mercury and what the contractor's arrangements are for the management of the mercury in the removed lamps.

Ban: toys, games, cosmetics, and apparel

A person may not sell for resale or at retail in this state a toy or game that contains mercury, or cosmetics or an item of clothing or wearing apparel that contains an electric switch that contains mercury.

Ban: Sale of mercury thermometers by health care providers

A medical facility, including a hospital lab or health care provider may not ever distribute thermometers containing mercury. Thermometers shall be prohibited from sale by January 1, 2000.

Ban: Mercury experiments in school labs and the purchase of mercury in schools and universities and clean out of existing stocks.

Effective July 1, 1999, elemental mercury and mercury compounds shall not be used in laboratory procedures that elementary, secondary or college student perform and no elementary, secondary or university shall purchase mercury for any reason. By January 1, 2000, the state environmental agency shall develop a plan for cleaning out existing stocks of elemental mercury in all schools and universities in the state.

Replacement of Mercury Manometers

The state agriculture commissioner, in cooperation with the state environmental agency, dairy equipment manufacturers and suppliers, and other interested parties,

shall develop a program to provide replacement non-mercury manometers and to arrange for the acceptance and recycling of the mercury, apparatus, and manometers at no cost to the dairy farmer. The mercury, manometers, and apparatus shall be managed in accordance with section____. The state appropriates future resources fund to the agriculture commissioner to fund this program through December 31, 2002.

Dental Office Requirements

All dental offices shall be required to submit an annual amalgam mercury report describing quantities stored and recycled of two separate sources. Dry sources (chair-side traps, clean scrap, elemental mercury) and wet sources (amalgam sludge, vacuum pump traps)

Ban on Installation of Mercury Amalgam Dental Fillings in Pregnant Women and Children under Seven Years of Age.

After July 1, 1999, dentists practicing in the state are no longer allowed to provide pregnant women and children under seven years of age with dental fillings containing mercury amalgams. Care should be also taken in the removal of dental fillings containing mercury to minimize personal exposure to a pregnant women or child under seven. Concerning the ability of dentists to use non-mercury amalgams as a dental restorative material Nothing in this section shall be construed to deprive any dental patient of the right to choose or replace any professionally recognized restorative material or permit disciplinary action against a dentist solely for removing or replacing any professionally recognized restorative material.

Health Care Provider Requirements

All health care providers using mercury containing fixatives shall be required to capture for recycling all solutions that have come in contact with said fixatives, including but not limited to all tissue rinse waters, tissue processor wastes, and formalin still residue.

Lamp Recycling Facility Requirements

(a) A person may not operate a lamp recycling facility without obtaining a permit or license for the facility from the agency. The permit or license must require:

- (1) a plan for response to releases, including emergency response;
- (2) proof of financial responsibility for closure and any necessary post closure care at the facility which may include a performance bond or other insurance; and
- (3) liability insurance or another financial mechanism that provides proof of

financial responsibility for response actions required under____.

(b) A lamp recycling facility that is licensed or permitted by a county under section ____complies with this subdivision if the license or permit held by the facility contains at least all the terms and conditions required by the agency for a license or permit issued under this subdivision.

(c) A lamp recycling facility with a demonstrated capability for recycling that is in operation prior to adoption of rules for a licensing or permitting process for the facility by the agency may continue to operate in accordance with a compliance agreement or

other approval by the commissioner until a license or permit is issued by the agency under this subdivision.

State Education and Outreach

The department and the state planning office shall assist in developing, designing and disseminating information for the public about mercury-added products, the prohibition on disposal of mercury-added products and the need for source separation and the collection programs available to product users.

Mercury Emission Monitoring for Large Emitters

(a) Waste Incinerators. This section requires mercury monitoring systems for mercury and quarterly reporting requirements to the state of mercury emissions for all waste incinerators operating within the state.

(b) Non-Utility Generators. This section requires persons who emit mercury to monitor emissions and provide quarterly reports to the state.

(c) Electric Utility Generators. This section requires persons or utilities who generate or sell power in the state to monitor mercury emissions and provide quarterly reports to the state on the mercury emitted in generating that electricity.

Mercury Reduction Requirement for Large Mercury Emitters

(a) Non-Utility Sources. This section applies to all mercury emitters of over 0.5 pounds annually except for electric utility generators. All affected sources shall reduce mercury releases by 50% by the year 2003 and have zero emissions by 2008, using 1998 as the baseline. By 2000, the state environmental agency shall establish a methodology for determining the baseline annual mercury emissions limit for affected sources.

(b) Utility Sources. This section applies to all electric utility generators emitting more than 0.5 pounds of mercury annually. All electric utility generators which burn any amount of coal shall reduce mercury releases by 95% by 2008, using 1999 as a baseline. By 2000, the baseline will be calculated based on data gathered under the federal mercury monitoring requirements imposed on utility generators for 1991.

Disposal of ash containing mercury and mercury captured through emission controls

Any mercury captured or recovered through the use of an emission control, coal cleaning, or another method and all ash generated from combustion shall be disposed of in a manner that ensures that the hazards from mercury are not transferred from one environmental medium to another; and there is no release of mercury into the environment.

Addition of all Mercury-Added Products to State Universal Waste Rules

The state shall adopt the universal waste rule for mercury-added thermostats and add all mercury-added products, devices and equipment to its universal waste rule.

State Procurement of Non-Mercury-added Products and Annual Report

State agencies involved with procuring products shall purchase non-mercury-added products whenever viable alternative products are determined cost effective and available. On an annual basis, the state purchasing agent shall produce a report to the legislature on the categories and quantities of mercury added products purchased in the prior year and outline the steps taken to investigate and purchase non-mercury-added products.

Recycling of Mercury-Added Lamps and Other Mercury-Added Products

Notwithstanding any general or specific law to the contrary, the Superintendent of State Buildings and Commissioner of the Division of Capital Planning and Operations shall be directed to comply with the U.S. Environmental Protection Agency's "Green Lights Program", and in so doing be required to properly manage mercury-added lamps and other mercury-added products. Recycling shall be used, whenever possible, as the preferred method of disposal.

State advisory committee on mercury pollution

(a) There is created an advisory committee on mercury pollution, to consist of one member of the House of Representatives, appointed by the Speaker; one member of the Senate, appointed by the committee on committees; the state environmental commissioner's designee; and the following persons, appointed by the Governor: one public health specialist; one toxicologist; one representative of a Native American tribe or group; one scientist who is knowledgeable on matters related to mercury contamination; one children's advocate; and one consumer advocate. The advisory committee shall advise the general assembly, the executive branch and the general public on matters relating to the prevention and cleanup of mercury pollution and the reduction in human exposure to mercury.

(b) By January 15 of each year, beginning in 2000, the advisory committee will report to the general assembly regarding:

- (1) The extent of mercury contamination in the soil, waters and air of the state;
- (2) The extent of any health risk from mercury contamination in the state, especially to pregnant women, children and Native Americans, sports fishers and subsistence fishers, and ways to reduce human exposure to mercury;
- (3) All methods available for minimizing risk of further contamination or increased health risk to the public;
- (4) Coordination needed with other states to effectively address mercury issues and pollution;
- (5) Ways to eliminate non-essential uses of mercury in health care institutions, government buildings and consumer and business uses;
- (6) Ways to reduce the waste disposal, wastewater disposal and waste incineration of mercury-added products and the extent to which solid waste and medical waste is incinerated or autoclaved within the state or sent out of state for such purposes.