

Michael F. Easley, Governor
William G. Ross Jr., Secretary
Dexter R. Matthews, Director

North Carolina
Department of Environment and Natural Resources
Division of Waste Management

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005 & 2007
SESSION LAWS 2005-384 & 2007-142
HOUSE BILLS 1136 & 1758 Respectively

AN ACT To reduce the release of mercury into the environment by the removal, collection, and recovery of mercury switches from certain motor vehicles.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part and revising in part existing regulations to read:

"Part 6. Mercury Switch Removal.

Section 1

"§ 130A-310.50. Definitions. As amended by Session Law 2007-142

As used in this Part:

- (1) Capture Rate removed – See (5a) & (5b)
- (2) "End-of-life vehicle" means a vehicle that is sold, given, or otherwise conveyed to a vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility for the purpose of recycling.
- (2a) "Inaccessible", when used in connection with mercury switch, means that, due to the condition of the vehicle, the mercury switch cannot be removed from a vehicle without a significant risk of a release of mercury into the environment.
- (3) Manufacturer removed - See (7c)
- (4) Mercury Minimization Plan – See (5c)
- (5) "Mercury switch" means each capsule or assembly containing mercury that is part of a convenience light switch installed in a vehicle.
- (5a) "Mercury recovery performance ratio" means the ratio of the number of pounds of mercury recovered from mercury switches from the State in a calendar year to the estimated number of pounds of mercury available to be recovered from mercury switches from the State in the same calendar year.
- (5b) "National mercury recovery performance ratio" means the ratio of the number of pounds of mercury recovered from mercury switches from the United States in a calendar year to the estimated number of pounds of mercury available to be recovered from mercury switches from the United States in the same calendar year.
- (5c) "NVMSRP" means the Memorandum of Understanding to establish the National Vehicle Mercury Switch Recovery Program dated 11 August 2006.

- (6) "Scrap vehicle processing facility" means a fixed location where machinery and equipment are used to process scrap vehicles into specification grade commodities including facilities where a shredder or fragmentizer is used to process scrap vehicles into shredded scrap and facilities where end-of-life vehicles are prepared to be shredded.
- (7) "Vehicle" means any passenger automobile or passenger car, station wagon, truck, van, or sport utility vehicle with a gross vehicle weight rating of less than 12,000 pounds.
- (7a) "Vehicle crusher" means a person who engages in the business of flattening, crushing, or otherwise processing end-of-life vehicles for recycling. Vehicle crusher includes, but is not limited to, a person who uses fixed or mobile equipment to flatten or crush end-of-life vehicles for a vehicle recycler or a scrap vehicle processing facility.
- (7b) "Vehicle dismantler" has the same meaning as "vehicle recycler."
- (7c) "Vehicle manufacturer" means a person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture that is the last person in the production or assembly process of a motor vehicle that contains one or more mercury switches, or in the case of an imported vehicle, the importer or domestic distributor of the vehicle. "Vehicle manufacturer" does not include any person engaged in the business of selling new motor vehicles at retail or any person who converts or modifies new motor vehicles after the production or assembly process.
- (8) "Vehicle recycler" means a person 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 parts of the vehicle, including scrap metal."

"§ 130A-310.51. Purpose.

The purpose of this Part is to reduce the quantity of mercury that is released into the environment by removing mercury switches from end-of-life vehicles and by creating a removal, collection, and recovery program for mercury switches that are removed from end-of-life vehicles in this State.

Section 2

"§ 130A-310.52. Section repealed by **Session Law 2007-142**

Section 3

"§ 130A-310.53. Removal of mercury switches from end-of-life vehicles. **As amended by Session Law 2007-142**

(a) A vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility shall not flatten, crush, bale, or shred an end-of-life vehicle that contains accessible mercury switches. Except as provided in this subsection, a vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility shall remove all accessible mercury switches from end-of-life vehicles before the vehicle is flattened, crushed, baled, or shredded, or before the vehicle is conveyed to another vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility. If a vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility conveys an end-of-life vehicle to another vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility without removing accessible mercury switches, the receiving vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility must agree to accept the end-of-life vehicle and assume responsibility for the proper removal of all accessible mercury switches. The agreement to assume

responsibility for the proper removal of all accessible mercury switches shall be documented on an invoice that is provided by the vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility to the person to whom the vehicle is conveyed.

(b) A vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility that removes all accessible mercury switches from an end-of-life vehicle shall mark the vehicle to indicate that all accessible mercury switches have been removed. The vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility shall certify to any person to whom the vehicle is conveyed, in a form acceptable to the Department, that all accessible mercury switches have been removed from the vehicle.

(c) Removed by amendment

(d) Removed by amendment

(e) Mercury switches that are removed from end-of-life vehicles are considered 'universal waste' as defined in 40 Code of Federal Regulations § 273.9 (1 July 2006 Edition). Mercury switches that are removed from end-of-life vehicles shall be collected, transported, treated, stored, disposed of, and otherwise handled in accordance with rules adopted by the Commission governing universal waste.

(f) Vehicle manufacturers, in cooperation with the Department, shall develop, implement, and bear the costs of a mercury switch collection system in accordance with the NVMSRP. This system shall be developed and implemented so as to enhance vehicle recyclability, promote public education and outreach, and provide for the proper removal, collection, and disposal of mercury switches from end-of-life vehicles."

Section 4

"§ 130A-310.54. Mercury Switch Removal Account.

As amended by Session Law 2007-142

(a) The Mercury Switch Removal Account is established in the Department. Revenue is credited to the Account from the certificate of title fee under G.S. 20-85.

(b) Revenue in the Mercury Pollution Prevention Switch Removal Account shall be used to reimburse the Department and others for costs incurred in implementing the mercury switch removal program. The reimbursable costs are:

(1) Five dollars (\$5.00) for each mercury switch removed by a vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility pursuant to this Article and sent to destination facilities in accordance with the NVMSRP for recycling or disposal.

(2) Costs incurred by the Department in administering the plan program.

(c) The Department shall reimburse vehicle crushers, vehicle dismantlers, vehicle recyclers, and scrap vehicle processing facilities based on a reimbursement request that attests to the number of switches sent to destination facilities for recycling or disposal in accordance with the NVMSRP. Each reimbursement request shall be verified against information posted on the Internet site provided by the vehicle manufacturers in accordance with the NVMSRP, or against other information that verifies the reimbursement requested to the satisfaction of the Department. The vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility shall provide the Department with any information requested by the Department to verify the accuracy of a reimbursement request. Each vehicle crusher, vehicle dismantler, vehicle recycler, or scrap vehicle processing facility shall maintain accurate records that support each reimbursement request for a minimum of three years from the date the reimbursement request is approved."

Section 5

"§ 130A-310.55. Violations of Article; enforcement.

As amended by Session Law 2007-142

(a) It is unlawful for a person to do any of the following:

- (1) Knowingly flatten, crush, bale, shred, or otherwise alter the condition of a vehicle from which accessible mercury switches have not been removed, in any manner that would prevent or significantly hinder the removal of a mercury switch.
- (2) Willfully fail to remove a mercury switch when the person is required to do so.
- (3) Knowingly make a false report that a mercury switch has been removed from an end-of-life vehicle.
- (4) Obtain a mercury switch from another source and falsely report that it was removed from a vehicle processed for recycling.

(b) Any person who violates subdivision (1) or (2) of subsection (a) of this section shall be punished as provided in G.S. 14-3. *non specific - Class 1 misdemeanor up to a Class H felony*

(c) Any person who violates subdivision (3) or (4) of subsection (a) of this section shall be guilty of a Class 2 misdemeanor and, upon conviction, shall be punished as provided in G.S. 130A-26.2.

(d) A violation of any provision of this Part, any rule adopted pursuant to this Part, or any rule governing universal waste may be enforced by an administrative or civil action as provided in Part 2 of Article 1 of this Chapter."

Section 6

"§ 130A-310.56. Section repealed by Session Law 2007-142

Section 7

"§ 130A-310.57. Reports **As amended by Session Law 2007-142**

The Department shall submit an annual report on the mercury switch removal program under this Part to the Environmental Review Commission and the Senate and House of Representatives Appropriations Subcommittees on Natural and Economic Resources on or before October of each year. The report shall include, at a minimum, all of the following:

(1) A detailed description of the mercury recovery performance ratio achieved by the mercury switch removal program.

(1a) A detailed description of the mercury switch collection system developed and implemented by vehicle manufacturers in accordance with the NVMSRP.

(2) In the event that a mercury recovery performance ratio of at least 0.90 of the national mercury recovery performance ratio as reported by the NVMSRP is not achieved, a description of additional or alternative actions that may be implemented to improve the mercury switch removal program.

(3) The number of mercury switches collected and a description of how the mercury switches were managed.

(4) A statement that details the costs required to implement the mercury switch removal program including a summary of receipts and disbursements from the Mercury Switch Removal Account."

Section 8

"§ 20-85. As amended by Session Law 2007-142

G.S. 20-85(a1) reads as rewritten:

(a) The following fees are imposed concerning a certificate of title, a registration card, or a registration plate for a motor vehicle. These fees are payable to the Division and are in addition to the tax imposed by Article 5A of Chapter 105 of the General Statutes.

- (1) Each application for certificate of title ~~\$39.00~~\$40.00
- (2) Each application for duplicate or corrected certificate of title..... ~~14.00~~15.00
- (3) Each application of reposessor for certificate of title..... ~~14.00~~15.00
- (4) Each transfer of registration..... 15.00
- (5) Each set of replacement registration plates..... 15.00
- (6) Each application for duplicate registration card..... 15.00
- (7) Each application for recording supplementary lien..... ~~14.00~~15.00
- (8) Each application for removing a lien from a certificate of title..... ~~14.00~~15.00
- (9) Each application for certificate of title for a motor vehicle transferred to a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale..... ~~14.00~~15.00
- (10) Each application for a salvage certificate of title made by an insurer 15.00
- (11) Each set of replacement Stock Car Racing Theme plates issued under G.S. 20-79.4 25.00.

"(a1) One dollar (\$1.00) of the fee imposed for any transaction assessed a fee under subdivision (a)(1), (a)(2), (a)(3), (a)(7), (a)(8), or (a)(9) of this section shall be credited to the North Carolina Highway Fund. The Division shall use the fees derived from transactions with the Division for technology improvements. The Division shall use the fees derived from transactions with commission contract agents for the payment of compensation to commission contract agents. An additional one dollar (\$1.00) of the fee imposed for any transaction assessed a fee under subdivision (a)(1) of this section shall be credited to the Mercury Switch Removal Account in the Department of Environment and Natural Resources."

(b) The fees collected under subdivisions (a)(1) through (a)(9) of this section shall be credited to the North Carolina Highway Trust Fund. The fees collected under subdivision (a)(10) of this section shall be credited to the Highway Fund. Fifteen dollars (\$15.00) of each title fee credited to the Trust Fund under subdivision (a)(1) shall be added to the amount allocated for secondary roads under G.S. 136-176 and used in accordance with G.S. 136-44.5.

(c) The Division shall not collect a fee for a certificate of title for a motor vehicle entitled to a permanent registration plate under G.S. 20-84."

SECTION 9.

Sections 1, 2, 6, 7, and 9 of this act become effective when this act becomes law. Sections 3, 4, and 8 of this act become effective 1 July 2007. Section 5 of this act becomes effective 1 July 2007 and applies to violations that occur on or after that date. The Department shall submit the first annual report required by G.S. 130A-310.57, as enacted by Section 7 of this act, on or before 1 October 2008. This act expires on 31 December 2017.

Session Law 2005- 384

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

s/ Beverly E. Perdue
President of the Senate
s/ James B. Black
Speaker of the House of Representatives
s/ Michael F. Easley
Governor

Approved 3:22 p.m. this 13th day of September, 2005

Session Law 2007-142

In the General Assembly read three times and ratified this the 28th day of June, 2007.

s/ Beverly E. Perdue
President of the Senate
s/ Joe Hackney
Speaker of the House of Representatives
s/ Michael F. Easley
Governor

Approved 1:58 p.m. this 29th day of June, 2007

Referenced Statutes

§ 14-3. Punishment of misdemeanors, infamous offenses, offenses committed in secrecy and malice, or with deceit and intent to defraud, or with ethnic animosity.

(a) Except as provided in subsections (b) and (c), every person who shall be convicted of any misdemeanor for which no specific classification and no specific punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor. Any misdemeanor that has a specific punishment, but is not assigned a classification by the General Assembly pursuant to law is classified as follows, based on the maximum punishment allowed by law for the offense as it existed on the effective date of Article 81B of Chapter 15A of the General Statutes:

- (1) If that maximum punishment is more than six months imprisonment, it is a Class 1 misdemeanor;
- (2) If that maximum punishment is more than 30 days but not more than six months imprisonment, it is a Class 2 misdemeanor; and
- (3) If that maximum punishment is 30 days or less imprisonment or only a fine, it is a Class 3 misdemeanor.

Misdemeanors that have punishments for one or more counties or cities pursuant to a local act of the General Assembly that are different from the generally applicable punishment are classified pursuant to this subsection if not otherwise specifically classified.

(b) If a misdemeanor offense as to which no specific punishment is prescribed be infamous, done in secrecy and malice, or with deceit and intent to defraud, the offender shall, except where the offense is a conspiracy to commit a misdemeanor, be guilty of a Class H felony.

(c) If any Class 2 or Class 3 misdemeanor is committed because of the victim's race, color, religion, nationality, or country of origin, the offender shall be guilty of a Class 1 misdemeanor. If any Class A1 or Class 1 misdemeanor offense is committed because of the victim's race, color, religion, nationality, or country of origin, the offender shall be guilty of a Class I felony. (R.C., c. 34, s. 120; Code, s. 1097; Rev., s. 3293; C.S., s. 4173; 1927, c. 1; 1967, c. 1251, s. 3; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, ss. 2, 47, 48; 1981, c. 63, s. 1; c. 179, s. 14; 1991, c. 702, s. 2; 1993, c. 538, s. 7; 1994, Ex. Sess., c. 14, s. 2; c. 24, s. 14(b); 1995 (Reg. Sess., 1996), c. 742, s. 6.)

§ 130A-26.2. Penalty for false reporting under Article 9.

Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under Article 9 of this Chapter or rules adopted under Article 9 of this Chapter; or who knowingly makes a false statement of a material fact in a rule-making proceeding or contested case under Article 9 of this Chapter; or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under Article 9 of this Chapter or rules adopted under Article 9 of this Chapter is guilty of a Class 2 misdemeanor. The maximum fine that may be imposed for an offense under this section is ten thousand dollars (\$10,000). (1993 (Reg. Sess., 1994), c. 598, s. 3.)

§ 130A-22. Administrative penalties.

(a) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates Article 9 of this Chapter, rules adopted by the Commission pursuant to Article 9, or any order issued under Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed five thousand dollars (\$5,000) per day in the case of a violation involving non-hazardous waste. The penalty shall not exceed twenty-five thousand dollars (\$25,000) per day in the case of a first violation involving hazardous waste as defined in G.S. 130A-290 or involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State; and shall not exceed fifty thousand dollars (\$50,000) per day for a second or further violation involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner that results in medical waste entering waters or lands of the State. The penalty shall not exceed twenty-five thousand dollars (\$25,000) per day for a violation involving a voluntary remedial action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted pursuant to G.S. 130A-310.12(b). If a person fails to pay a civil penalty within 60 days after the final agency decision or court order has been served on the violator, the Secretary of Environment and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

(a1) Part 5 of Article 21A of Chapter 143 of the General Statutes shall apply to the determination of civil liability or penalty pursuant to subsection (a) of this section.

(b) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who violates G.S. 130A-325. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed twenty-five thousand dollars (\$25,000) for each day the violation continues.

(b1) The Secretary may impose an administrative penalty on a person who violates Article 19 of this Chapter or a rule adopted pursuant to that Article. Except as provided in subsection (b2) of this section, the penalty shall not exceed one thousand dollars (\$1,000) per day per violation. Until the Department has notified the person of the violation, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate violation.

In determining the amount of a penalty under this subsection or subsection (b2) of this section, the Secretary shall consider all of the following factors:

- (1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation.
- (2) The duration and gravity of the violation.
- (3) The effect on air quality.
- (4) The cost of rectifying the damage.
- (5) The amount of money the violator saved by noncompliance.
- (6) The prior record of the violator in complying or failing to comply with Article 19 of this Chapter or a rule adopted pursuant to that Article.
- (7) The cost to the State of the enforcement procedures.
- (8) If applicable, the size of the renovation and demolition involved in the violation.

(b2) The penalty for violations of the asbestos NESHAP for demolition and renovation, as defined in G.S. 130A-444, shall not exceed ten thousand dollars (\$10,000) per day per violation. Until the Department has provided the person with written notification of the violation of the asbestos NESHAP for demolition and renovation that describes the violation, recommends a general course of action, and establishes a time frame in which to correct the violations, a continuing violation shall be treated as one violation. Each day thereafter of a continuing violation shall be treated as a separate violation. A violation of the asbestos NESHAP for demolition and renovation is not considered to continue during the period a person who has received the notice of violation is following the general course of action and complying with the time frame set forth in the notice of violation.

(b3) The Secretary may impose an administrative penalty on a person who violates Article 19A of this Chapter or any rules adopted pursuant to Article 19A of this Chapter. Each day of a continuing violation is a separate violation. The penalty shall not exceed one thousand dollars (\$1,000) for each day the violation continues. The penalty authorized by this section does not apply to a person who is not required to be certified under this Article.

(c) The Secretary of Environment and Natural Resources may impose an administrative penalty on a person who willfully violates Article 11 of this Chapter, rules adopted by the Commission pursuant to Article 11 or any condition imposed upon a permit issued under Article 11. An administrative penalty may not be imposed upon a person who establishes that neither the site nor the system may be improved or a new system installed so as to comply with Article 11 of this Chapter. Each day of a continuing violation shall constitute a separate violation. The penalty shall not exceed fifty dollars (\$50.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of no more than 480 gallons or in the case of any system serving a single one-family dwelling. The penalty shall not exceed three hundred dollars (\$300.00) per day in the case of a wastewater collection, treatment and disposal system with a design daily flow of more than 480 gallons which does not serve a single one-family dwelling.

(c1) The Secretary may impose a monetary penalty on a vendor who violates rules adopted by the Commission pursuant to Article 13 of this Chapter when the Secretary determines that disqualification would result in hardship to participants in the Women, Infants, and Children (WIC) program. The penalty shall be calculated using the following formula: multiply five percent (5%) times the average dollar amount of the vendor's monthly redemptions of WIC food

instruments for the 12-month period immediately preceding disqualification, then multiply that product by the number of months of the disqualification period determined by the Secretary.

(d) In determining the amount of the penalty in subsections (a), (b) and (c), the Secretary and the Secretary of Environment and Natural Resources shall consider the degree and extent of the harm caused by the violation and the cost of rectifying the damage.

(e) A person contesting a penalty shall, by filing a petition pursuant to G.S. 150B-23(a) not later than 30 days after receipt by the petitioner of the document which constitutes agency action, be entitled to an administrative hearing and judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act.

(f) The Commission shall adopt rules concerning the imposition of administrative penalties under this section.

(g) The Secretary or the Secretary of Environment and Natural Resources may bring a civil action in the superior court of the county where the violation occurred or where the defendant resides to recover the amount of an administrative penalty authorized under this section whenever a person:

- (1) Who has not requested an administrative hearing in accordance with subsection (e) of this section fails to pay the penalty within 60 days after being notified of the penalty; or
- (2) Who has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the final agency decision.