

SENATE, No. 1292

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED MARCH 1, 2004

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Senator BARBARA BUONO

District 18 (Middlesex)

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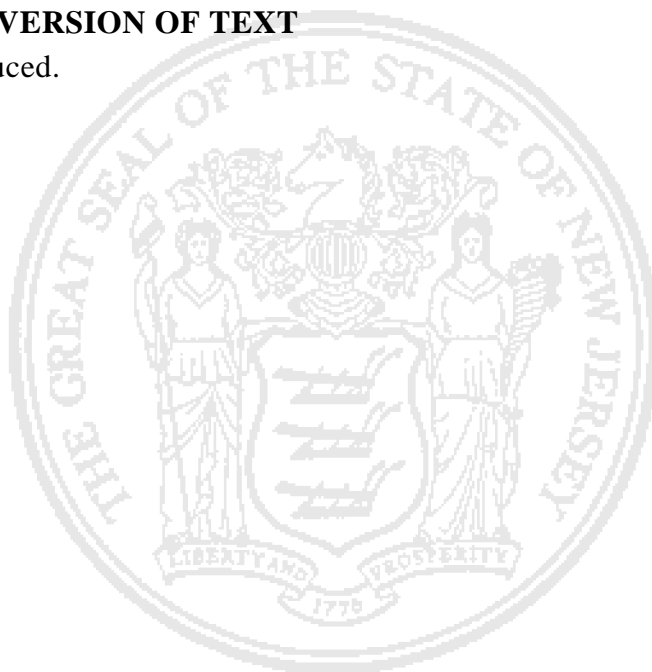
Senators Adler, Coniglio and Madden

SYNOPSIS

Establishes program for removal of mercury switches from scrapped vehicles.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/26/2004)

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

3

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

6

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

9

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

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

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

28 The Legislature further finds and declares that the vehicle recycling
29 industry, consisting primarily of small business operators, is a vital
30 component of the State's overall recycling efforts; that iron and steel
31 manufacturers provide a valuable scrap metal recycling service; that
32 reliable estimates indicate that iron and steel manufacturing plants are
33 the largest in-State source of mercury emissions; that the main feed
34 stock for these plants is scrap metal which includes shredded
35 end-of-life vehicles, some of which contain mercury in switches that
36 can be emitted to the atmosphere when the scrap metal is melted in
37 high-temperature processes to convert it into new iron and steel
38 products; that mercury provides no benefit to iron and steel
39 manufacturing plants and has no role in the manufacture of iron and
40 steel; and that the federal Environmental Protection Agency recently
41 finalized regulations that would require certain iron and steel foundries
42 to implement work practice standards to exclude mercury switches
43 from the scrap metal feed materials of these foundries.

44 The Legislature further finds and declares that, with regard to
45 mercury emissions, pollution prevention is more desirable than waste
46 management and pollution control; and that removing mercury

1 switches from end-of-life vehicles before they are crushed or shredded
2 and preventing mercury from entering high temperature processes is
3 an effective way to reduce mercury emissions into the environment.

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

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

22

23 3. As used in this act:

24 "Capture rate" means the annual removal, collection, and recovery
25 of mercury switches as a percentage of the total number of mercury
26 switches available for removal from end-of-life vehicles;

27 "Commissioner" means the Commissioner of Environmental
28 Protection;

29 "Department" means the Department of Environmental Protection;

30 "End-of-life vehicle" means a vehicle that is sold, given or
31 otherwise conveyed to a vehicle recycler or scrap recycling facility for
32 the purpose of recycling;

33 "Manufacturer" means a person, firm, association, partnership,
34 corporation, governmental entity, organization, combination, or joint
35 venture which is the last person in the production or assembly process
36 of a new vehicle that utilizes mercury switches, or in the case of an
37 imported vehicle, the importer or domestic distributor of the vehicle;

38 "Mercury minimization plan" means a plan for removing, collecting
39 and recovering mercury switches from end-of-life vehicles and
40 prepared pursuant to section 4 of this act;

41 "Mercury switch" means any light switch or an anti-lock braking
42 system switch that contains mercury and that is installed by a
43 manufacturer in a vehicle;

44 "Scrap recycling facility" means a fixed location where machinery
45 and equipment are utilized for processing and manufacturing scrap
46 metal into prepared grades and whose principal product is scrap iron,

1 scrap steel or nonferrous metallic scrap for sale for remelting
2 purposes;

3 "Vehicle" means any passenger automobile or passenger automobile
4 derivative capable of seating 15 or fewer passengers, or any motor
5 vehicle rated at 6,000 pounds gross vehicle weight or less and a loaded
6 vehicle weight of 5,750 pounds or less, which is designed primarily for
7 purposes of transportation of property, or is a derivative of such motor
8 vehicle including, but not limited to, pick-ups, vans, and window vans;
9 and

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

14

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

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

23 (1) information identifying the make, model, and year of vehicles
24 that may contain a mercury switch; a description of the mercury
25 switch; the location of these mercury switches; and the safe and
26 environmentally sound methods for their removal from end-of-life
27 vehicles. To the extent a manufacturer is uncertain as to the content
28 of a switch installed during the manufacture of a vehicle, the mercury
29 minimization plan shall presume that the switch is a mercury switch;

30 (2) educational materials to assist a vehicle recycler or a scrap
31 recycling facility in undertaking a safe and environmentally sound
32 method for the removal of the mercury switches from end-of-life
33 vehicles, including information on the hazards related to, and the
34 proper handling of, mercury;

35 (3) a proposal for the method of storage or disposal of the mercury
36 switches, including the method of packaging and shipping mercury
37 switches to authorized recycling, storage, or disposal facilities; and

38 (4) a proposal for the storage of mercury switches collected and
39 recovered from end-of-life vehicles in the event that environmentally
40 appropriate management technologies are not available; and

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

43 c. A mercury minimization plan shall, to the extent practicable,
44 utilize the existing end-of-life vehicle recycling infrastructure. Where
45 the existing end-of-life vehicle recycling infrastructure is not utilized,
46 the mercury minimization plan shall include the reasons for establishing

1 a separate infrastructure.

2 d. A mercury minimization plan must provide for the financing of
3 the removal, collection, and recovery system for mercury switches as
4 provided in this subsection. These costs shall be borne by the
5 manufacturers of vehicles sold in the State, and the manufacturers shall
6 develop a method that ensures the prompt payment to vehicle
7 recyclers, scrap recycling facilities and the department, for costs
8 associated with mercury switch removal and disposal. Costs shall
9 include, but not be limited to, the following:

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

14 (2) a minimum of \$1 for each mercury switch removed by a scrap
15 recycling facility pursuant to subsection b. of section 6 of this act as
16 partial compensation for the labor and other costs incurred by a scrap
17 recycling facility in the removal of the mercury switch;

18 (3) \$0.25 for each mercury switch removed by a vehicle recycler
19 pursuant to subsection a. of section 6 of this act or by a scrap
20 recycling facility pursuant to subsection b. of section 6 of this act as
21 partial compensation for the department for costs incurred in
22 administering and enforcing the provisions of this act;

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

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

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

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

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

32

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

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

46 (2) The commissioner may approve those parts of a mercury

1 minimization plan that meet the requirements of section 4 of this act
2 and disapprove the parts that do not comply with the requirements of
3 section 4 of this act. The manufacturer shall implement the approved
4 parts within 30 days after receipt of approval or as otherwise agreed
5 to by the commissioner, and submit a revised mercury minimization
6 plan for the disapproved parts within 30 days after receipt of
7 notification of the disapproval of the commissioner. The
8 commissioner shall review, and approve, conditionally approve, or
9 disapprove a revised mercury minimization plan within 30 days after
10 receipt.

11 (3) If, at the conclusion of the time period of 120 days after receipt
12 of a mercury minimization plan, the commissioner has neither
13 approved nor disapproved the mercury minimization plan pursuant to
14 paragraphs (1) or (2) of this subsection, the mercury minimization plan
15 shall be considered to be conditionally approved. A manufacturer,
16 subject to any modifications required by the commissioner, shall
17 implement a conditionally effective mercury minimization plan within
18 30 days after receipt of approval or as otherwise agreed to by the
19 commissioner.

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

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

28

29 6. a. Commencing 30 days after the approval or conditional
30 approval of a mercury minimization plan pursuant to section 5 of this
31 act, a vehicle recycler who sells, gives or otherwise conveys ownership
32 of an end-of-life vehicle to a scrap recycling facility for recycling shall
33 remove all mercury switches identified in the approved mercury
34 minimization plan from the end-of-life vehicle prior to delivery to a
35 scrap recycling facility, unless a mercury switch is inaccessible due to
36 significant damage to the vehicle in the area surrounding the location
37 of the mercury switch, in which case such damage shall be noted on
38 the normal business records of the vehicle recycler who delivered the
39 end-of-life vehicle to the scrap recycling facility.

40 b. Notwithstanding subsection a. of this section, a scrap recycling
41 facility may agree to accept an end-of-life vehicle, which has not been
42 intentionally flattened, crushed or baled, containing mercury switches,
43 in which case the scrap recycling facility shall be responsible for
44 removing the mercury switches identified in the mercury minimization
45 plan approved pursuant to section 5 of this act before the end-of-life
46 vehicle is intentionally flattened, crushed, baled, or shredded.

1 c. A vehicle recycler or scrap recycling facility who removes
2 mercury switches pursuant to subsection a. or subsection b. of this
3 section shall maintain records documenting the number of mercury
4 switches collected, the number of end-of-life vehicles containing
5 mercury switches, and the number of end-of-life vehicles processed for
6 recycling. These records shall be made available for review by the
7 department upon the request of the department.

8 d. No person shall represent that mercury switches have been
9 removed from an end-of-life vehicle being sold, given or otherwise
10 conveyed for recycling if that person has not removed the mercury
11 switches, or arranged with another person to remove the mercury
12 switches.

13 e. Upon removal, mercury switches shall be collected, stored,
14 transported, and otherwise handled in accordance with the mercury
15 minimization plan approved pursuant to section 5 of this act.

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

23

24 7. a. One year after the implementation of a mercury minimization
25 plan approved pursuant to section 5 of this act, and annually
26 thereafter, a manufacturer subject to section 4 of this act shall,
27 individually or as part of a group, report to the commissioner
28 concerning the implementation of the mercury minimization plan. The
29 report shall include, but need not be limited to, the following: (1) a
30 detailed description and documentation of the capture rate achieved,
31 with the goal of achieving a mercury switch capture rate of at least 90
32 percent, consistent with the principle that mercury switches shall be
33 recovered unless the mercury switch is inaccessible due to significant
34 damage to the end-of-life vehicle in the area surrounding where the
35 mercury switch is located; (2) a description of additional or alternative
36 actions that may be implemented to improve the mercury minimization
37 plan and its implementation in the event that a mercury switch capture
38 rate of at least 90 percent is not achieved; (3) the number of mercury
39 switches collected, the number of end-of-life vehicles containing
40 mercury switches, the number of end-of-life vehicles processed for
41 recycling, and a description of how the mercury switches were
42 managed; and (4) a description of the amounts paid to cover the costs
43 of implementing the mercury minimization plan.

44 b. The commissioner may discontinue the requirement for the
45 annual report pursuant to subsection a. of this section upon a finding
46 that mercury switches in end-of-life vehicles no longer pose a

1 significant threat to the environment or to public health.

2

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

6 (1) issue an order requiring the person found to be in violation to
7 comply in accordance with subsection b. of this section;

8 (2) bring a civil action in accordance with subsection c. of this
9 section;

10 (3) levy a civil administrative penalty in accordance with subsection
11 d. of this section;

12 (4) bring an action for a civil penalty in accordance with subsection
13 e. of this section; or

14 (5) petition the Attorney General to bring a criminal action in
15 accordance with subsection f. of this section.

16 Pursuit of any of the remedies specified under this section shall not
17 preclude the seeking of any other remedy specified.

18 b. Whenever the commissioner finds that a person has violated this
19 act, or any rule or regulation adopted pursuant thereto, the
20 commissioner may issue an order specifying the provision or
21 provisions of this act, or the rule or regulation adopted pursuant
22 thereto, of which the person is in violation, citing the action that
23 constituted the violation, ordering abatement of the violation, and
24 giving notice to the person of the person's right to a hearing on the
25 matters contained in the order. The ordered person shall have 20
26 calendar days from receipt of the order within which to deliver to the
27 commissioner a written request for a hearing. After the hearing and
28 upon finding that a violation has occurred, the commissioner may issue
29 a final order. If no hearing is requested, the order shall become final
30 after the expiration of the 20-day period. A request for hearing shall
31 not automatically stay the effect of the order.

32 c. The commissioner may institute an action or proceeding in the
33 Superior Court for injunctive and other relief to enforce the provisions
34 of this act and to prohibit and prevent a violation of this act, or of any
35 rule or regulation adopted pursuant thereto, and the court may
36 proceed in the action in a summary manner. In any such proceeding
37 the court may grant temporary or interlocutory relief.

38 Such relief may include, singly or in combination:

39 (1) a temporary or permanent injunction;

40 (2) assessment of the violator for the reasonable costs of any
41 inspection that led to the establishment of the violation, and for the
42 reasonable costs of preparing and litigating the case under this
43 subsection.

44 d. The commissioner may assess a civil administrative penalty of
45 not more than \$7,500 for a first offense, not more than \$10,000 for a
46 second offense and not more than \$25,000 for a third and every

1 subsequent offense. Each day that a violation continues shall
2 constitute an additional, separate, and distinct offense.

3 No assessment may be levied pursuant to this section until after the
4 violator has been notified by certified mail or personal service. The
5 notice shall include a reference to the section of the statute, rule,
6 regulation, or order violated, a concise statement of the facts alleged
7 to constitute a violation, a statement of the amount of the civil
8 administrative penalties to be imposed, and a statement of the person's
9 right to a hearing. The ordered person shall have 20 calendar days
10 from receipt of the notice within which to deliver to the commissioner
11 a written request for a hearing.

12 After the hearing and upon finding that a violation has occurred, the
13 commissioner may issue a final order after assessing the amount of the
14 fine specified in the notice. If no hearing is requested, the notice shall
15 become a final order after the expiration of the 20-day period.
16 Payment of the assessment is due when a final order is issued or the
17 notice becomes a final order. The authority to levy a civil
18 administrative penalty is in addition to all other enforcement provisions
19 in this act, and the payment of any assessment shall not be deemed to
20 affect the availability of any other enforcement provisions in
21 connection with the violation for which the assessment is levied. The
22 commissioner may compromise any civil administrative penalty
23 assessed under this section in an amount the commissioner determines
24 appropriate.

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

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

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

41 f. A person who willfully or negligently violates this act shall be
42 guilty, upon conviction, of a crime of the fourth degree and shall be
43 subject to a fine of not less than \$2,500 nor more than \$25,000 per day
44 of violation. A second offense under this subsection shall subject the
45 violator to a fine of not less than \$5,000 nor more than \$50,000 per
46 day of violation. A person who knowingly makes a false statement,

1 representation, or certification in any application, record, or other
2 document filed or required to be maintained under this act, or who
3 falsifies, tampers with or knowingly renders inaccurate, any monitoring
4 device or method required to be maintained pursuant to this act, shall,
5 upon conviction, be subject to a fine of not more than \$10,000.

6
7 9. Notwithstanding any other policies and guidelines for the
8 procurement of vehicles to the contrary, the Department of the
9 Treasury shall, within one year after the effective date of this act,
10 revise its policies, rules and procedures to give priority and preference
11 to the purchase of vehicles that do not contain mercury, taking into
12 consideration competition, price, availability and performance.

13
14 10. This act shall take effect immediately.

15
16
17 STATEMENT

18
19 This bill would create a collection and recovery program for
20 mercury switches removed from scrapped vehicles in New Jersey, and
21 require vehicle manufacturers, either individually or as part of a group,
22 to develop and submit to the Department of Environmental Protection
23 (DEP) mercury minimization plans within 90 days of the effective date
24 of this bill.

25 The mercury minimization plan would address the removal of
26 mercury switches, i.e., any light switch or an anti-lock braking system
27 switch that contains mercury and that is installed by a manufacturer in
28 a vehicle, by vehicle recyclers prior to vehicles being melted down. As
29 part of the plan, manufacturers would provide information on the
30 makes, models and years of vehicles that may have mercury switches,
31 and implement an education and outreach program to assist vehicle
32 recyclers and scrap recycling facilities in undertaking a safe and
33 environmentally sound method for the removal of the mercury
34 switches from end-of-life vehicles. The bill would also require
35 manufacturers to pay a minimum of \$1 for each mercury switch
36 removed by a vehicle recycler or a scrap recycling facility as partial
37 compensation for the labor and other costs incurred by the vehicle
38 recycler or the scrap recycling facility in the removal of mercury
39 switch, and \$0.25 to the DEP for each mercury switch removed as
40 partial compensation for the DEP's administrative and enforcement
41 costs. Manufacturers would also be responsible for the costs of
42 packaging to transport, and shipping of, mercury switches to recycling,
43 storage or disposal facilities, and the recycling, storage or disposal of
44 the mercury switches;

45 This bill would require vehicle recyclers who sell, give or otherwise
46 convey ownership of end-of-life vehicles to scrap recycling facilities

1 for recycling to remove all mercury switches identified in the mercury
2 minimization plan from end-of-life vehicles prior to delivery to a scrap
3 recycling facility, unless a mercury switch is inaccessible due to
4 significant damage to the vehicle in the area surrounding the location
5 of the mercury switch.

6 The bill would further provide that a scrap recycling facility may
7 agree to accept an end-of-life vehicle, which has not been intentionally
8 flattened, crushed or baled, containing mercury switches, in which case
9 the scrap recycling facility would be responsible for removing the
10 mercury switches.

11 Lastly, this bill, notwithstanding any other policies and guidelines
12 for the procurement of vehicles to the contrary, would require the
13 Department of the Treasury to revise its policies, rules and procedures
14 to give priority and preference to the purchase of mercury-free
15 vehicles, taking into consideration competition, price, availability and
16 performance.

17 This bill is modeled on legislation enacted by the State of Maine in
18 2001.

19 Mercury is a persistent and toxic pollutant that bioaccumulates in
20 the environment. Forty-one states, including New Jersey, have issued
21 fish advisories that warn certain individuals to restrict or avoid
22 consuming fish from bodies of water contaminated with mercury.

23 Iron and steel manufacturing plants provide a valuable scrap metal
24 recycling service. A primary feed stock of such plants is scrap metal
25 from recycled end-of-life vehicles and other recycled products that
26 may contain mercury. Mercury provides no benefit to iron and steel
27 manufacturing plants and has no role in the manufacture of iron and
28 steel. Mercury that is not removed from end-of-life vehicles prior to
29 crushing and shredding contaminates the scrap metal and may be
30 released to the environment when the scrap metal is melted during the
31 steel manufacturing process. As a result, iron and steel manufacturing
32 plants are a significant in-State source of mercury emissions.
33 Removing mercury switches from end-of-life vehicles prior to crushing
34 and shredding and thus preventing mercury from entering high
35 temperature processes is an effective way to reduce mercury emissions
36 into the environment.