



The Commonwealth of Massachusetts

CHAIRMAN
HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133-1054



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House Committee on
Personnel and Administration

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June 8, 2005

The Honorable Frank I. Smizik
House Chairman
Committee on Environment, Natural Resources and Agriculture
State House, Room 473F
Boston, MA 02133

Dear Chairman Smizik,

I would like to go on record as supporting House Bill 1392, An Act Relative to Safer Alternatives for Mercury Containing Products; House Bill 1286, An Act for a Healthy Massachusetts: Safer Alternatives to Toxic Chemicals; Senate Bill 554, An Act Relative to Safer Alternatives for Mercury Containing Products; and Senate Bill 553, An Act for a Healthy Massachusetts: Safer Alternatives to Toxic Chemicals; and respectfully request that they be reported out of committee favorably.

Thank you in advance for your attention to this matter. Please do not hesitate to contact me with any questions you may have.

Sincerely,

JAMES R. MICELI
Chairman

Ric Erdheim
Senior Counsel
Legislative and Regulatory Affairs

Philips Position on HB 4319 January 2006

Philips Electronics is composed of five major product lines: Medical Devices, with its worldwide headquarters in Andover Massachusetts employing over 2,000 people, Lighting, Consumer Electronics, Domestic Appliances and Semiconductors. Philips Electronics is an acknowledged leader in environmental design of its products. In 2004 and 2005, it was the top ranked company in its category in the Dow Jones Sustainability Index. It has the lowest mercury lamps in the industry. And our company wide sustainability program focuses on the development of "Green Flagship" products. While Philips Electronics has been a leader in mercury reduction, we have a number of significant concerns about the bill that would do nothing to reduce mercury pollution while adding unnecessary costs.

1. Section 6E -- This section would ban Philips Medical from selling refurbished medical equipment (primarily hospital X-ray machines) that was manufactured with and contains a mercury switch. According to NEMA's submission to IMERC, the total amount of mercury in such products is less than 4 pounds. A number of other states including Illinois and New York have exempted refurbished medical equipment from this prohibition because of the lack of value and the impact on health care. Selling refurbished equipment reduces cost of health care since this equipment costs less than new equipment and extends product life reducing disposal issues.
2. Section 6J -- This section requires manufacturers of products with mercury to be responsible for collecting those products. Virtually every other state that has considered this provision has deleted it. Lamp recyclers are on record as opposing manufacturer take back of lamps because it would interfere with existing business relationships and is not necessary to recover lamps. While some electronics products use lamps for backlighting, recycling of electronics products is being addressed in separate legislation that focuses on recycling of all such products rather than a portion of the product. Locally, this provision would require collection of flat panel displays in televisions and computers but not cathode ray tube products. Rhode Island has a collection provision but exempts button cells, lamps and products containing button cells. A similar exemption with the addition of an exemption for the refurbished medical equipment would address Philips' concerns about this provision.



3. Section 6K -- This section requires labeling of many products. It contains three problems for Philips:

a. Lamps -- There already is a nationwide lamp labeling program. We would need language found in many other state bills including Maine, Rhode Island, New York, Maryland and Washington that provides a label consistent with another state is consistent with the Mass requirement.

b. Products Containing Lamps -- The bill exempts products containing one lamp from labeling. The problem is that many displays with backlighting contain more than one lamp. There is no reason to label such products. We would need the legislature to remove the one lamp limit and exempt as Maine, Rhode Island and Washington explicitly do products containing lamps from the labeling requirement.

c. Refurbished Medical Equipment -- This section would require manufacturers of refurbished medical equipment to place a label on the equipment even though such equipment is not disposed in the solid waste stream. Such a provision adds an unnecessary barrier to the resale of less expensive refurbished medical equipment.

Connecticut's mercury law exempts products not intended to be used for the general public from the labeling requirements.

exempt products that include lamps

clear that landfills, which are the ultimate destination of lamps in household trash, do not emit mercury into the air at anything near significant, hazard producing levels.

Batteries

A disposal ban on button cell batteries is impractical, unenforceable, and would lead to potential fire hazards and safety risks.

Justification: US battery manufacturers have eliminated the use of mercury in all primary household batteries with the exception of button cells (BCs). These are small, button-sized batteries used in a wide range of small portable products such as hearing aids, digital thermometers, insulin pumps, portable medical monitors, hospital pagers, watches, toys, and calculators.

Under HB4319, all of these products would be mercury-added products and subject to a disposal ban because they contain a button battery. They would either need to be recycled or treated as hazardous waste. Since BCs are exempted in the collection requirements contained in SECTION 6J of the bill, the remaining option is to consider them hazardous and treat them accordingly.

This is a totally unnecessary restriction. Mercury levels in most button cells are measured in single digits of milligrams. It would take, for example, 57,000 average zinc air, hearing aid batteries to recover one pound of mercury. Thus removing these batteries from landfills would achieve virtually nothing in terms of reducing mercury deposition into the environment.

In addition, as with lamps, it is simply not reasonable to expect consumers to treat small button cell batteries as hazardous waste. The vast majority of BCs are used in hearing aids, most of which are used by senior citizens. A state requirement that forces them and other consumers to collect and otherwise handle BCs introduces safety concerns such as accidental ingestion and shorting, which could create a fire hazard. The latter is especially true if batteries of different chemistries, such as zinc air and lithium coin cell, are mixed in the same container.

Finally, as noted in the case of lamps, there are ample studies to show that mercury emissions from landfills, and specifically the contribution to those emissions of discarded lamps and batteries, are an insignificant contributor to environmental mercury deposition.

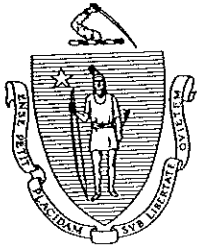
Section 6J. Collection of Mercury-Added Products

This section would impose requirements on lamp manufacturers that are virtually impossible to implement and enforce. Manufacturers do not have control over the ultimate disposition of their products and collecting discarded lamps from households and small businesses is a totally cost inefficient activity that gains nothing in terms of environmental protection.

ordinarily are less expensive than new systems. **There is precedent for this exemption in Connecticut state law [Title Chap 446m, Section 22a-619 (g) (8)].**

Further Information:

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COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS SENATE
STATE HOUSE, BOSTON 02133-1053

SENATOR MARIAN WALSH
ASSISTANT MAJORITY LEADER
SUFFOLK AND NORFOLK DISTRICT
ROOM 405
TEL. (617) 722-1348

September 23, 2005

Representative Frank Smizik
Joint Committee on the Environment, Natural Resources and Agriculture
Room 33, State House
Boston, MA 02133

Dear Rep. Smizik,

This correspondence is to express my support for several bills in your Committee:

S1244/H2738 – AN ACT TO REDUCE ASTHMA BY USING SAFER ALTERNATIVES TO CLEANING PRODUCTS

S554/H1392 – AN ACT RELATIVE TO SAFER ALTERNATIVES FOR MERCURY CONTAINING PRODUCTS

S553/H1286 - AN ACT FOR A HEALTHY MASSACHUSETTS: SAFER ALTERNATIVES TO TOXIC CHEMICALS.

Scientific evidence increasingly points to toxic chemicals as contributing factors to a large number of health problems including breast cancer, asthma, birth defects, ALS, Parkinson's disease and a variety of other disorders.

The above mentioned legislation would ultimately address the issues of identifying harmful chemicals in our environment, disposing of them properly, and replacing them with safer alternatives.

The speedy passage of these bills would make incredible strides in ridding our air, water, food, schools, workplaces, and our bodies of potentially dangerous substances. I respectfully urge the members of the Joint Committee on the Environment, Natural Resources and Agriculture to report all three bills out favorably.

Sincerely,

MARIAN WALSH

MW/ch

Relative to Comprehensive Mercury Management

Whereas, mercury poses a threat to human health and the environment in Massachusetts due to high levels of mercury in fish; and

Whereas, more than 100 water bodies in Massachusetts have been placed on the US Environmental Protection Agency's 2004 list of Impaired Waters in accordance with Section 303D of the federal Clean Water Act as a result of excessive levels of mercury in fish, requiring that the state Department of Environmental Protection create plans to reduce atmospheric deposition of mercury into these bodies; and

Whereas, the Department of Public Health has issued a health advisory with respect to fish consumption from more than 100 bodies of water within Massachusetts due to high levels of mercury in fish; and has warned pregnant women, women of childbearing age, nursing mothers, and children under the age of twelve not to eat any freshwater fish caught in the state of Massachusetts or any shark, swordfish, king mackerel, tilefish or steak tuna due to the high risks of irreversible damage on developing brains and nervous systems in fetuses and young children caused by mercury poisoning; and

Whereas, a major cause of mercury contamination in fish in Massachusetts is man-made mercury emissions, attributable to a significant degree to mercury-added products that release mercury upon their disposal and combustion in municipal waste incinerators and upon accidental breakage; and

Whereas, The New England Governors and the Eastern Canadian Premiers in 1998 established a long term goal of virtually eliminating mercury emissions in the region and in 2001 adopted a Mercury Action Plan calling for a seventy-five percent reduction in mercury emissions by 2010, and called for separation and recycling of waste products containing mercury as a means of achieving those goals; and

Whereas, safer alternatives exist for many mercury-containing products and components; for example studies prepared by the Lowell Center for Sustainable Production for the Maine Department of Environmental Protection in 2003; and

Investigation of Alternatives to Mercury-Containing Products and A Review of Thermostat Energy Efficiency and Pricing, found that there are cost effective non-mercury alternatives available on the market today for products containing mercury such as thermostats, instruments, measuring devices, switches, and relays; and therefore

It is hereby resolved, that the policy goals of this Act shall be (1) to replace the use of mercury-added products with safer alternatives whenever feasible, (2) to prohibit the disposal mercury-containing waste products as solid waste, and (3) to promote and ensure the proper collection, transportation, recycling and disposal of all mercury-containing waste products with an emphasis on using existing systems to achieve these ends.

SECTION 2. Section 2 of chapter 21H of the General Laws is hereby amended by inserting after the definition "Assessment" the following definitions:-

"Automobile manufacturer", any person, firm, association, partnership, corporation, governmental entity, organization, combination or joint venture which is the last person to produce or assemble a new vehicle that utilizes mercury-added components or in the case of an imported vehicle, the importer or domestic distributor of such vehicle;

"Capture rate", the annual removal, collection, and recovery of mercury-added vehicle switches, as a percentage of that total number of mercury-added vehicle switches available for the removal from end-of-life motor vehicles as determined by the

department. Capture rate shall not include mercury-added vehicle switches that are inaccessible due to significant damage to the motor vehicle in the area where the mercury-added vehicle switch is located.

SECTION 3. Section 2 of chapter 21H of the General Laws is hereby amended by inserting after the definition "Drinking water supply" the following definitions:-

"Electric lamp", the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet, visible and infrared regions of the electromagnetic spectrum. Examples of common electric lamps include, but are not limited to, incandescent, fluorescent, high intensity discharge, and neon lamps.

"End-of-life motor vehicles", any motor vehicle which is sold, given or otherwise conveyed to a vehicle recycler or scrap recycling facility for the purpose of dismantling, recycling and/or disposal.

SECTION 4. Section 2 of chapter 21H of the General Laws is hereby amended by inserting after the definition "Facility" the following definitions:-

"Healthcare facility", any hospital, nursing home, extended care facility, long-term care facility, clinical or medical laboratory, state health or mental institution, institution for the mentally ill or retarded, clinic, physician's office, or health maintenance organization.

"Motor Vehicle" a vehicle propelled by an internal combustion engine or an electric motor, such as an automobile, van, truck, motorized construction equipment, motorized recreational vehicle, motorcycle or forklift.

SECTION 6. Section 2 of chapter 21H of the General Laws is hereby amended by inserting after the definition "Public way the following definitions:-

"Scrap recycling facility", a facility, location, device or unit where machinery and equipment are utilized for processing and manufacturing scrap metal into prepared grades and whose principal product is scrap iron, scrap steel, or nonferrous metallic scrap for sale remelting purposes.

SECTION 7. Section 2 of chapter 21H of the General Laws is hereby amended by inserting after the definition "Tipping fee" the following definitions:-

"Vehicle in commerce", any vehicle offered for sale by a dealer, or registered (by state or in the United States) to be operated on public roads and highways.

"Vehicle recycler", any individual or entity engaged in the business of acquiring, dismantling or destroying six or more vehicles in a calendar year for the primary purpose of resale of their parts.

SECTION 8. Chapter 21H of the General Laws is hereby amended by inserting after section 6 the following new sections:-

Section 6A. Multi-State Cleanhouse. The department is authorized and directed to participate in the implementation of the Interstate Mercury Education and Reduction Cleanhouse established at the Northeast Waste Management Officials Association to assist in carrying out the requirements of sections 6A through 6M of this chapter and to help coordinate reviews of the manufacturers' applications for phase-out exemptions and collection system plans.

Section 6B. Notification.

(a) Within 6 months of the effective date of this section, no mercury-added product shall be offered for final sale or use or distributed in Massachusetts without prior notification in writing by the manufacturer of the product to the department through the IMERC in accordance with the requirements of this section.

(b) Notification that complies with the notification forms of the IMERC shall satisfy the requirements of this section. The department may require that it be notified directly in addition to or in lieu of reporting through IMERC. The manufacturer or trade group shall update and revise the notification information whenever there are significant changes in the product category.

(c) Any mercury-added product for which federal law governs notice in a manner that preempts state authority shall be exempt from the requirements of this section.

(d) Public disclosure of confidential business information submitted to the department pursuant to this section shall be governed by the requirements of section 10 of chapter 66 of the general laws. The department and the IMERC may compile or publish analyses or summaries of such information provided that the analyses or summaries do not identify any manufacturer's confidential information.

(e) The department shall protect trade secrets.

Section 6C. Automobile Mercury.

(a) No person shall sell or offer to sell or distribute a motor vehicle manufactured on or after January 1, 2007, containing one or more mercury-added vehicle switches.

(b) No person shall sell or offer to sell or distribute a mercury-added vehicle switch for new installation in a motor vehicle.

(c) If a mercury-added vehicle switch in a motor vehicle in commerce requires replacement it shall be replaced with a non-mercury alternative.

(d) No later than 1 year after the effective date of this section, no person shall crush or cause to be crushed or otherwise arrange for an end-of-life motor vehicle to be crushed without first having removed any and all mercury-added components, including but not limited to mercury-added vehicle switches. A scrap recycling facility may agree

to accept an end-of-life motor vehicle that has not been flattened, crushed or baled containing mercury-added components, in which case the scrap recycling facility is responsible for proper removal, recycling, transporting, storage and general containment of all mercury-added components in accordance with chapter 21C and 310 CMR 30.000.

(e) Any person or facility removing a mercury-added component from a vehicle in commerce or an end-of-life vehicle shall manage the mercury-added component in accordance with chapter 21C and 310 CMR 30.000.

(f) No later than 1 year after the effective date of this section, every automobile manufacturer shall, individually or as a group, develop, implement, comply and file with the department, a plan that describes the proper removal, recycling, transportation, storage and general containment of mercury added switches from end-of-life vehicles in accordance with chapter 21C and 310 CMR 30.000.

(g) The plan shall include at a minimum:
(1) method of collection of mercury-added vehicle switches after removal from motor vehicles;

(2) establishment and maintenance of facilities where mercury-added vehicle switches may be received and accepted from vehicle recyclers, scrap recyclers and any and all other persons removing mercury-added vehicle switches from vehicles;

(3) transportation of mercury-added vehicle switches collected pursuant to subsection (g)(1) of this section to facilities pursuant to subsection (g)(2) of this section;

- (4) information, training and technical assistance to vehicle recyclers, scrap recyclers and any and all other persons removing mercury-added vehicle switches from motor vehicles:
- (5) a mercury-added vehicle switch capture rate of at least 90%, consistent with the principle that mercury-added vehicle switches shall be recovered unless the mercury-added vehicle switch is inaccessible due to significant damage to the motor vehicle in the area surrounding where the mercury-added vehicle switch is located;
- (6) a financing system for the total cost of removal, collection, record keeping and recovery of mercury-added vehicle switches, that shall be borne by the automobile manufacturers, and shall include, but not be limited to \$3.00 for every mercury-added vehicle switch removed by a vehicle recycler or scrap recycling facility, as partial compensation for labor and other costs incurred by a vehicle recycler or scrap recycling facility in the removal of the mercury-added vehicle switch.
- (h) In developing a removal, collection, record keeping and recovery system, automobile manufacturers shall, to the extent practicable, utilize the existing end-of-life vehicle recycling infrastructure. Where an automobile manufacturer does not utilize such infrastructure, the automobile manufacturer shall include in its plan reasons for establishing a separate removal, collection and recovery system.
- (i) After the plan is filed with the department, each automobile manufacturer shall certify to the department in writing, on an annual basis, that it is implementing the plan in accordance with the requirements of this section.

(i) The department shall evaluate the compliance of all persons subject to this section by conducting audits, inspections or implementing other compliance measures deemed appropriate by the department.

(k) Automobile manufacturers shall report annually to the department and joint committee on environment, natural resources and agriculture. Said reports shall at a minimum include the following:

(1) The number of mercury-added vehicle switches removed during the previous year; and

(2) Where and how the mercury-added vehicle switches are stored, recycled or otherwise disposed of.

(l) Upon reasonable request, automobile manufacturers and vehicle recyclers shall provide the department with information necessary to determine the number of end-of-life vehicles with mercury-added vehicle switches.

Section 6D. Thermostats, instruments and measuring devices:

(a) No later than 2 years after the effective date of this section, no person shall sell or offer to sell or distribute a mercury-added thermostat in Massachusetts.

(b) No later than 2 years after the effective date of this section, no person shall

sell or offer to sell or distribute in Massachusetts the following mercury-added products:

(1) a barometer

(2) an esophageal dilator, bougie tube or gastrointestinal tube;

(3) a flow meter;

(4) a hydrometer;

- (5) a hygrometer or psychrometer;
 - (6) a manometer;
 - (7) a pyrometer;
 - (8) a sphygmomanometer; or
 - (9) a basal thermometer
- (c) Subsections (a) and (b) do not apply to the sale of a mercury-added product if use of the product is a federal requirement.

Section 6E. Switches and Relays.

- (a) No later than 3 years after the effective date of this section, no person shall sell or offer to sell or distribute a mercury switch or mercury relay, individually or as a product component. This prohibition does not apply if the mercury switch or mercury relay that is a component in a larger product in use prior to the effective date of this section and there is no mercury free alternative available for the component and one of the following applies:
 - (1) The larger product is used in manufacturing; or
 - (2) The switch or relay is integrated and not physically separate from other components of the larger product.
- (b) This section does not apply to the sale of a mercury switch or a mercury relay if the use of the switch or relay is a federal requirement.

Section 6F. Exemptions.

- (a) The department, at its discretion and in consultation with the executive office of economic development and the department of public health allow for exemptions to prohibitions in sections 6D and 6E.
- (b) Applications for exemptions must demonstrate:
 - (1) use of the product is beneficial to the environment or protective of public health or public safety; and
 - (2) there is no technically feasible alternative to the use of mercury in the product; and
 - (3) there is no comparable non-mercury-added product available at reasonably cost; and
 - (4) An effective system exists for the collection, transportation and processing of the mercury added-product. Such a system may include direct return of a waste product to the manufacturer or an industry or trade group supported collection and recycling system, or other similar private and public section efforts.
- (c) The department shall establish timelines and fees for reviewing applications for exemptions.
- (d) Prior to issuing an exemption, the department shall consult with neighboring states and regional organizations to promote consistency. The department shall avoid, to the extent feasible, inconsistencies in the implementation of this section.

Section 6G. Restriction on Sale of Mercury to Schools

H1392 ✓



ENVIRONMENTAL DEFENSE

finding the ways that work

July 7, 2005

Representative Frank Smizik
Chair, Joint Committee on Environment, Natural Resources & Agriculture
Massachusetts State House, Room 33
Boston, MA 02133

Dear Representative Smizik:

Thank you for taking the time to tour Prolerized on June 24 and talk with members of our coalition about how best to reduce mercury emissions from junked vehicles. Because of your leadership, the legislature has a real opportunity to help protect the health of Massachusetts residents while creating a "tipping point" for broader federal action.

A key component of an effective state system will be the inclusion of financial incentives for dismantlers. Maine has been successfully implementing a financial incentives program since 2003, and New Jersey and Arkansas have recently adopted this effective approach. Additional experience from Minnesota and Canada has proven that programs with financial incentives result in higher capture rates than programs without them. If Massachusetts joins these states, it will provide additional momentum for a consistent federal system.

Because we have entered the peak years for retirement of vehicles containing mercury switches, addressing this issue now will prevent the release of additional mercury to the environment. The need for timely action is also great because the Environmental Protection Agency is poised to implement a national rule on electric arc furnaces. If Massachusetts has an effective switch collection program in place when the national rule is made final, dismantling and shredding businesses in the state will have a competitive advantage over companies in states with no such program. Enactment and implementation of an effective program this session, therefore, will be a win for the environment and a win for Massachusetts businesses.

Thank you for your time and your leadership on this issue. I look forward to working with you as the mercury legislation goes forward.

Sincerely,

Gwen Ruta
Regional Director



The Commonwealth of Massachusetts

CHAIRMAN
HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133-1054



JAMES R. MICELI
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House Committee on
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June 8, 2005

The Honorable Frank I. Smizik
House Chairman
Committee on Environment, Natural Resources and Agriculture
State House, Room 473F
Boston, MA 02133

Dear Chairman Smizik,

I would like to go on record as supporting House Bill 1392, An Act Relative to Safer Alternatives for Mercury Containing Products; House Bill 1286, An Act for a Healthy Massachusetts: Safer Alternatives to Toxic Chemicals; Senate Bill 554, An Act Relative to Safer Alternatives for Mercury Containing Products; and Senate Bill 553, An Act for a Healthy Massachusetts: Safer Alternatives to Toxic Chemicals; and respectfully request that they be reported out of committee favorably.

Thank you in advance for your attention to this matter. Please do not hesitate to contact me with any questions you may have.

Sincerely,

JAMES R. MICELI
Chairman



The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133-1054

JAMES B. LEARY
STATE REPRESENTATIVE
14TH WORCESTER DISTRICT
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Vice Chairman:
Labor and Workforce Development

Committees on:
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ROOM 43, STATE HOUSE
TEL. (617) 722-2030
FAX (617) 626-0657

May 31, 2005

The Honorable Frank I. Smizik
Chairman
Committee on Environment, Natural Resources, and Agriculture
State House, Room 473F
Boston, MA 02133

Dear Chairman Smizik,

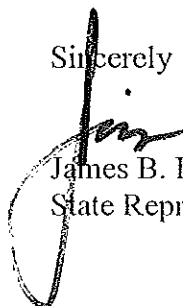
I am writing to express my support of House Bill 1392, *An Act Relative to Safer Alternatives to Mercury Containing Products*.

As you are aware, mercury is a toxic chemical that, upon its release into the environment, finds its way into our food sources. This is especially the case regarding both freshwater and ocean fish, making these foods unsafe for consumption in substantial quantities by women of childbearing age and young children due to mercury's deleterious effect upon developing nervous systems. (In addition it is probably not so great for middle aged guys like us either).

House Bill 1392 would help reduce mercury contamination by replacing mercury-containing products with safer alternatives. It would ban mercury thermostats, switches, relays and measuring devices that already have safer alternatives available. This bill also takes a proactive step towards cleaning up and removing the mercury products currently on the market by requiring manufacturers of mercury products to set up and pay for the collection and disposal of these products. Another key component of this bill bans mercury from schools and requires manufacturers to provide information about the mercury content of products sold to hospitals.

Thank you for your consideration on this matter and I respectfully request that this bill be reported favorably by the Committee.

Sincerely



James B. Leary
State Representative

PETITION -- HOUSE

CHIEF SPONSOR:

Representative Petersen of Marblehead

(Note in this space if petition is "By Request")

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts
in General Court assembled.*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill or
resolution.

PETITIONERS: LEGISLATOR/CITIZEN	DISTRICT/FULL MAILING ADDRESS
Douglas W. Petersen	8 th Essex
Susan C. Tucker	2 nd Essex and Middlesex
James B. Leary	14 th Worcester
Susan W. Pope	13 th Middlesex
William C. Gavin	6 th Norfolk
David Paul Linsky	5 th Middlesex
Patricia A. Haddad	9 th Bristol
Brian Paul Golden	18 th Suffolk
Barbara A. L'Heureux	18 th Essex
Michael A. Costello	1 st Essex
Philip Travis	2 nd Bristol
Joyce A. Spilions	12 Essex
Jay R. Kaufman	15 th Middlesex
Paul J. Donato	35 th Middlesex
Ruth B. Balser	12 th Middlesex
Peter V. Keocot	1 st Hampshire
Rachael Kaprelian	29 th Middlesex
Timothy J. Toomey, Jr.	26 th Middlesex
Byron Rushing	9 th Suffolk
Robert M. Kovena	11 th Bristol
David M. Torrisi	14 th Essex
Frank J. Smizik	15 th Norfolk
Martha M. Walz	9 th Suffolk
Carl M. Seifried, Jr.	34 th Middlesex
Thomas M. McGee	3 rd Essex and Middlesex
Theodore C. Speltonis	10 th Essex
Anthony J. Veriga	5 th Essex
John D. Keenan	7 th Essex
Barry R. Finesgold	17 th Essex
Cory Atkins	14 th Middlesex District
Christine E. Canavan	10 th Plymouth
Edward G. Connolly	14 th Essex
Michael E. Festa	32 nd Middlesex
Matthew C. Patrick	3 rd Barnstable
Karen E. Spilka	2 nd Middlesex and Norfolk
Jennifer M. Callahan	18 th Worcester
Antonio F. D. Cabral	13 th Bristol
Kevin G. Homan	17 th Suffolk
Kathleen M. Teahan	7 th Plymouth
Mark C. Montigny	2 nd Bristol and Plymouth
John A. Hart, Jr.	1 st Suffolk
Dianne Wilkerson	2 nd Suffolk
Patricia D. Jahlen	27 th Middlesex

Use "TABLE > INSERT > ROWS BELOW" to add more lines for petitioners' signatures.
 Signature Sheet for file "ON\NATURALRESOURCES\Committee Staff\05-06 Session\05-06
 Legislation\BILLS\H1392.doc".

Stephen Kulik	1 st Franklin
Ellen Story	3 rd Hampshire
Steven A. Tolman	2 nd Suffolk and Middlesex
Kay Khan	1 st Middlesex
Deborah D. Blumer	6 th Middlesex
Geoffrey D. Hall	2 nd Middlesex
Shirley Gomes	4 th Barnstable
Mary E. Grant	6 th Essex
Alice K. Wolf	25 th Middlesex
Lida E. Hartins	13 th Norfolk
Thomas P. Kennedy	9 th Plymouth
Kath-Anne Reussstein	16 th Suffolk
Paul C. Casey	31 st Middlesex
Peter J. Kontoujan	10 th Middlesex
James B. Eldridge	37 th Middlesex
David B. Sullivan	6 th Bristol
James R. Miceil	19 th Middlesex
John W. Schick	2 nd Hampshire
Thomas A. Golden Jr.	16 th Middlesex
Mark J. Caron	6 th Worcester
Frank M. Hynes	4 th Plymouth
Aime M. Paulsen	26 th Middlesex
Stephen M. Brewer	Worcester, Hampden, Hampshire, and Franklin
Martin J. Walsh	13 th Suffolk
William Lantigua	16 th Essex
Susan C. Fargo	3 rd Middlesex
Mark V. Falzone	9 th Essex
Daniel E. Bosley	1 st Berkshire
Bruce J. Ayers	1 st Middlesex
Tom Samiantando	7 th Middlesex
Steven M. Walsh	11 th Essex
Robert K. Coughlin	11 th Norfolk
Demetrius J. Atzalis	2 nd Barnstable
Robert P. Spellane	13 th Worcester
Alice Hanlon Peisch	14 th Norfolk
Thomas J. O'Brien	12 th Plymouth
Geraldine Creedon	11 th Plymouth
Michael J. Rodrigues	8 th Bristol
Garrett J. Bradley	3 rd Plymouth
Jeffrey Sanchez	15 th Suffolk
Patricia A. Valrath	3 rd Middlesex
Brian Kunttilla	2 nd Worcester
Elizabeth A. Malia	11 th Suffolk

J. James Marzilli, Jr.	23 rd Middlesex
Louis L. Kafka	8 th Norfolk
Anne M. Gobi	5 th Worcester
Harold P. Naughton, Jr.	12 th Worcester
Michael P. Rush	10 th Suffolk
Walter F. Timilty	7 th Norfolk



The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND FIVE

AN ACT ACT RELATIVE TO SAFER ALTERNATIVES FOR MERCURY CONTAINING PRODUCTS

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. *Whereas* mercury poses a threat to human health and the environment in Massachusetts due to high levels of mercury in fish; and

Whereas ninety water bodies in Massachusetts have been placed on the US Environmental Protection Agency's 2004 list of Impaired Waters pursuant to Section 303D of the federal Clean Water Act because of excessive levels of mercury in fish, requiring the state Department of Environmental Protection to prepare Total Maximum Daily Load plans to reduce the atmospheric deposition of mercury into these water bodies; and

Whereas the Department of Public Health has issued health advisories with respect to fish consumption from ninety water bodies in Massachusetts due to high levels of mercury in fish; and has warned pregnant women, women of childbearing age, nursing mothers, and children under the age of twelve not to eat any freshwater fish caught in the state of Massachusetts or any shark, swordfish, king mackerel, tilefish, or steak tuna; and

Whereas A major cause of mercury contamination in fish in Massachusetts is man-made mercury emissions from solid waste incinerators; and

Whereas The New England Governors and the Eastern Canadian Premier in 1998 established a long term goal of virtually eliminating mercury emissions in the region and in 2001 adopted a Mercury Action Plan calling for a fifty percent reduction in mercury emissions by 2003, a seventy-five percent reduction in mercury emissions by 2010, and called for separation and recycling of waste products containing mercury as a means of achieving those goals; and

Whereas, safer alternatives exist for many mercury-containing products; for example studies prepared by the Lowell Center for Sustainable Production for the Maine Department of Environmental Protection in 2003, An Investigation of Alternatives to Mercury-Containing Products and A Review of Thermosist Energy Efficiency and Pricing, found that there are cost-effective non-mercury alternatives available on the market today for many mercury-containing products, including thermosists, instruments, measuring devices, switches, and relays; and therefore

It is hereby resolved, that the policy goals of this Act shall be (1) to replace the use of mercury-added products with safer alternatives wherever feasible, (2) to prohibit the disposal of mercury-containing waste products as solid waste, and (3) to promote and ensure the proper collection, transportation and recycling and disposal of all mercury-containing waste products with an emphasis on using existing systems to achieve these ends.

Section 2 of chapter 21H of the General Laws is hereby amended by inserting the following definitions: ---

"Battery", an enclosed device or sealed container consisting of a combination of one or more voltaic or galvanic cells, electrically connected to produce energy.

"Button cell battery", a button- or coin-shaped battery.

"Electric lamp", the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common electric lamps include, but are not limited to, incandescent, fluorescent, high intensity discharge, and neon lamps.

1 "End of life motor vehicles" means any motor vehicle which is sold, given or otherwise conveyed to a vehicle recycler or scrap recycling facility for the purpose of dismantling, recycling and/or disposal.

2 "Health care facility", a health care facility as defined in section nine C of chapter one hundred and twelve, and any hospital, nursing home, extended care facility, long-term care facility, clinical or medical laboratory, state health or mental institution, institution for the mentally ill or retarded, clinic, physician's office, or health maintenance organization.

3 "Manufacturer", any person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture which produces a product containing mercury or an importer or domestic distributor of a product containing mercury produced in a foreign country. In the case of a multi-component product containing mercury the manufacturer is the last manufacturer to produce or assemble the product. If the multi-component product is produced in a foreign country, the manufacturer is the importer or domestic distributor. "Manufacturer" means any person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture which is the last person to produce or assemble a new vehicle introducing mercury-added components or in the case of an imported vehicle, the importer or domestic distributor of such vehicle.

"Mercury-added battery", a button cell or mercuric oxide battery to which the manufacturer intentionally introduces mercury for the operation of the battery.

"Mercury-added vehicle component" means a component that contains mercury and is part of and/or contained in a vehicle, including but not limited to switches, sensors, lights, headlamps, navigation systems, screens, and speakers.

*Mercury added component
Mercury vehicle*

"Mercury-added lamp", an electric lamp to which the manufacturer intentionally introduces mercury for the operation of the lamp.

"Mercury-added novelty", a mercury-added product intended mainly for personal or household enjoyment or adornment including items intended for use as practical jokes, figurines, adornments, toys, games, cards, ornaments, yard statues and figures, candles, jewelry, holiday decorations, and items of apparel, including footwear.

"Mercury-added product", a product to which the manufacturer intentionally introduces mercury, including, but not limited to, button cell or mercuric oxide batteries, electric lamps, thermosists, thermometers, automotive devices, electric switches, medical or scientific instruments, electric relays, or other electrical devices.

"Mercury-added switch", a switch installed in a motor vehicle containing mercury including but not limited to light switches and antilock braking systems and other switches containing mercury.

"Mercury-added thermostat", a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilating or air-conditioning equipment. "Mercury-added thermostat" includes thermostats used to sense and control room temperature in residential, commercial, industrial and other buildings but does not include a thermostat used to sense and control temperature as part of a manufacturing process.

"Person", any natural or corporate person, whether public or private, including corporations, societies, associations and partnerships and bodies politic and corporate, public agencies, authorities, departments, offices and political subdivisions of the commonwealth.

"Scrap recycling facility", a facility, toxication, deacid, or anti, where machinery and equipment are utilized for processing and manufacturing scrap metal into prepared grades and whose principal product is scrap iron, scrap steel, or nonferrous metallic scrap for sale for remelting purposes.

"Solid waste collector", a person that accepts, collects or transfers solid waste for purposes other than scrap recycling.

"Solid waste management facility", an established site or works, and other appurtenances thereto, which is, has been, or will be used for the handling, storage, transfer, processing, treatment or disposal of solid waste for purposes other than scrap recycling, including all land, structures or improvements which are directly related to solid waste activities.

11 "Vehicle in commerce" means any vehicle offered for sale by a dealer, or registered (by state or in the United States) to be operated on public roads and highways.

13 "Vehicle recycler" means any individual or entity engaged in the business of acquiring, dismantling or destroying six or more vehicles in a calendar year for the primary purpose of resale of their parts.

Handwritten notes:
 - Mercury added component
 - Mercury vehicle
 - Mercury added product
 - Mercury added switch
 - Mercury added thermostat
 - Person
 - Scrap recycling facility
 - Solid waste collector
 - Solid waste management facility
 - Vehicle in commerce
 - Vehicle recycler

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SECTION 3, Chapter 21H of the General Laws is hereby amended by inserting after section the following new sections:—

Section 6A. Multi-State Clearinghouse The department is authorized and directed to participate in the implementation of the Interstate Mercury Education and Reduction Clearinghouse established at the Northeast Waste Management Officials Association to assist in carrying out the requirements of sections 6A through 6T of this chapter and to help coordinate reviews of the manufacturers' applications for phase-out exemptions, the collection system plans, applications for alternative labeling/notification systems, education and outreach activities and any other related functions. The clearinghouse may also maintain a list of all products containing mercury, including mercury-added products; a file on all exemptions granted by the state; a file of all the manufacturers' reports on the effectiveness of their collection systems; and a file of the certificates of analysis for certain products containing mercury used by health care facilities.

Section 6B. Notification (a) After six months from the effective date of this section no mercury-added product shall be offered for final sale or use or distributed for promotional purposes in Massachusetts without prior notification in writing by the manufacturer of the product to the department or to the Interstate Mercury Education and Reduction Clearinghouse in accordance with the requirements of this section. Such notification shall at a minimum include:

- i. a brief description of the product to be offered for sale, use, or distribution,
 - ii. the amount of and purpose for mercury in each unit of the product,
 - iii. the total amount of mercury contained in all products manufactured by the manufacturer,
 - iv. the name and address of the manufacturer, and the name, address, and phone number of a contact.
- (b) Any mercury-added product for which federal law governs notice in a manner that preempts state authority shall be exempt from the requirements of this section.

(c) With the approval of the department, the manufacturer or a trade group may supply the information required above for a product category rather than an individual product. The manufacturer or trade group shall update and revise the information in the notification whenever there is significant change in the information or when requested by the department. The department may define and adopt specific requirements in accordance with chapter 30A of the general laws, as so appearing, for the content and submission of the required notification.

(d) Public disclosure of confidential business information submitted to the department pursuant to this section shall be governed by the requirements of section 10 of chapter 66 of the general laws. Notwithstanding the requirements of the said act, the state may provide the Interstate Clearinghouse with copies of such information, and the department and the Interstate Mercury Education and Reduction Clearinghouse may compile or publish analyses or summaries of such information provided that the analyses or summaries do not identify any manufacturer or reveal any confidential information.

(e) The department shall protect trade secrets.

Section 6C. Restriction on Sale of Certain Products (a) No later than one year after the effective date of this section, no mercury-added novelty shall be offered for final sale or use or distributed for promotional purpose in this state if the seller knows or has reason to know that the product contains mercury. Manufacturers that produce and sell mercury-added novelties shall notify retailers about the provisions of this section and how to recycle or dispose of the remaining inventory properly.

(b) Within 6 months of the effective date of this section, no school in this state shall use or purchase for use in a primary or secondary classroom element mercury, mercury compounds, or mercury-added instructional equipment and materials, except measuring devices and thermometers for which no adequate substitute exists which are used in school laboratories.

Section 6D. Requiring Use of Safer Alternatives to Mercury-containing Products

(a) Mercury-added thermostats. No later than one year following the effective date of this section, a person may not sell or offer to sell or distribute for promotional purposes a mercury-added thermostat except for a thermostat used by a blind or visually impaired person.

(b) Instruments and measuring devices. No later than one year following the effective date of this section, a person may not sell or offer to sell or distribute the following mercury-added products in Massachusetts:

- (1) A barometer;
- (2) An esophageal dilator, bougie tube or gastrointestinal tube;
- (3) A flow meter;
- (4) A hydrometer;
- (5) A hygrometer or psychrometer;
- (6) A manometer;
- (7) A pyrometer; or
- (8) A sphygmomanometer; or
- (9) A basal thermometer.

This subsection does not apply to the sale of a mercury-added product if use of the product is a federal requirement.

(c) Mercury switches and relays. No later than one year following the effective date of this section, a person may not sell or offer to sell or distribute a mercury switch or mercury relay individually or as a product component. This prohibition does not apply if the switch or relay is used to replace a switch or relay that is a component in a larger product in use prior to January 1, 2006 and there is no mercury free alternative available for that component and one of the following applies:

- (1) The larger product is used in manufacturing; or
- (2) The switch or relay is integrated and not physically separate from other components of the larger product.

This subsection does not apply to the sale of a mercury switch or mercury relay if use of the switch or relay is a federal requirement.

(d) New products. No later than one year following the effective date of this section, no person shall without the written approval of the department sell or offer to sell or distribute for

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promotional purposes a mercury-added product or mercury-added formulated product in Massachusetts that was not available in Massachusetts on the effective date of this section, excepting the use of mercury in a product that is required by the federal government. The department shall not grant such approval if a feasible safer alternative to the mercury-containing product is available for use to accomplish the same purpose.

(e) **Additional products.** The department shall annually review information on mercury-added products and may by regulation ban the sale of mercury-added products in addition to those addressed by this chapter upon a determination by the department that (a) said ban is necessary to protect public health, safety, or the environment and (b) that a non-mercury added safer alternative is available.

Section 6E. Automobile mercury phaseout.

- (a) A person may not sell a motor vehicle manufactured on or after January 1, 2007, containing one or more mercury added light switches.
- (b) A person may sell a motor vehicle manufactured on or after January 1, 2007, with a mercury added vehicle component, other than a mercury added light switch, only if that person has created a collection plan pursuant to section 6L of this chapter.
- (c) Upon enactment of this section, a person shall not sell or distribute a mercury added light switch for installation in a motor vehicle.
- (d) When mercury added light switches in a vehicle in commerce require replacement they shall be replaced with non mercury alternatives.
- (e) Within one year of enactment of this section, no person shall crush or cause to be crushed or otherwise arrange for an end of life motor vehicle to be crushed without first having removed any and all mercury added vehicle components. A scrap recycling facility may agree to accept an end of life motor vehicle that has not been flattened, crushed or baled containing mercury added vehicle components, in which case the scrap recycling facility is responsible for the proper removal, recycling, transporting, storage, and general containment of all mercury added components in accordance with chapter 21C and 310 CMR 30.000.
- (f) Any person or facility removing a mercury added component in either a vehicle in commerce or an end of life vehicle shall manage the mercury added component in accordance with chapter 21C and 310 CMR 30.000 and safely contain and ship or transport the mercury added component pursuant to the collection plan required in section 6L.

Section 6E. Exemptions. (a) Manufacturers of a mercury-added product may apply to the department for an exemptions set forth in section 6D and 6E for a product or category of products.

- (b) Applications for exemptions must (1) document the basis for the requested exemption or removal of exemption, (2) describe how the manufacturer will ensure that a system exists for the proper collection, transportation, and processing of the product(s) at the end of their useful life.
- (3) document the readiness or all necessary parties to perform as intended in the planned system and (4) demonstrate that there is no technically feasible safer alternative to the mercury-added product.
- (c) The department may grant with modifications or conditions an exemption for a product or category of products if it finds that (1) a system exists for the proper collection, transportation, and processing of the mercury-added product; and (2) each of the following criteria are met:
- (i) use of the product is beneficial to the environment or protective of public health or public safety;

- (ii) there is no technically feasible safer alternative to use of mercury in the product; and
- (iii) there is no comparable non-mercury-added product available at reasonable cost.
- (3) In determining whether to grant an exemption, the department shall consider whether the product that would substitute for the mercury-added product would be less energy efficient than the mercury-added product.

- (4) In determining whether to grant an exemption, the department shall consider whether an exemption is necessary to comply with federal or state energy efficiency goals or requirements.
- (d) Prior to issuing an exemption the department shall consult with neighboring states and regional organizations to promote consistency. The department shall avoid, to the extent feasible, inconsistencies in the implementation of this section. Upon reapplication by the manufacturer and findings by the department of continued eligibility under the criteria of this section and of compliance by the manufacturer with the conditions of its original approval, an exemption may be renewed one or more times and each renewal may be for a period of no longer than four years.

Section 6G. Labeling. No later than one year after the effective date of this section, every manufacturer of mercury-added products shall ensure that such products and their packaging are labeled in a manner to clearly inform purchasers that mercury is present in the item and that the item may not be disposed of or placed in a waste stream destined for disposal or sent for recycling unless the mercury is reused, recycled, or properly disposed of as a hazardous waste or otherwise managed to ensure that the mercury does not become mixed with other solid waste or wastewater. Every manufacturer shall inform purchasers of how to access systems for the collection, transportation and recycling of mercury-added products. Where a mercury-added product is a component of another product, the product containing the component and the component must both be labeled. The label on the product containing a mercury-added component shall identify the component with sufficient detail so that it may be readily located for removal. Labels affixed to the product shall be constructed of materials that are sufficiently durable to remain legible for the useful life of the product.

- (b) **Labeling for Specific Products.** (1) Labeling of appliances (commonly called white goods) sold in a store where the appliance is on display shall meet all requirements of this section except that no package labeling is required.
- (2) Labeling of button cell batteries shall meet all requirements of this section except that no product labeling is required.
- (3) Labeling of motor vehicles as well as nonmotorized travel trailers and truck campers shall meet all requirements of this section except that the mercury-added components are not required to be labeled. A doorpost label shall list the mercury-added components that may be present in the vehicle.
- (c) **Written Advisory to Purchaser.** No person shall offer a mercury-added product for final sale or use or promotional purposes to an address in Massachusetts unless the purchaser or recipient at the point of sale is clearly advised in writing that the product contains mercury and that the item may not be disposed of, placed in a waste stream destined for disposal, or sent for recycling

until the mercury is reused, recycled, or properly disposed of as a hazardous waste or otherwise managed to ensure that the mercury does not become mixed with other solid waste or wastewater. This requirement applies to all transactions where the purchaser or recipient is unable to view the labels on the package or the product prior to purchase or receipt, including but not limited to, catalogue, telephone and internet sales.

(2) **Labeling Alternatives** A manufacturer may apply to the department for an alternative to the requirements of subsection (a) where strict compliance with the requirements is not feasible or where the proposed alternative would be at least as effective in providing pre-sale notification of mercury content and in providing instructions on proper disposal. Applications for an alternative to the requirements of subsection (a) must: (1) document the justification for the requested alternative; (2) describe how the alternative ensures that purchasers or recipients of mercury-added products are made aware of mercury content prior to purchase or receipt; (3) describe how a person discarding the product will be made aware of the need for proper handling to ensure that it does not become part of solid waste or wastewater; (4) document the readiness of all necessary parties to implement the proposed alternative; and (5) describe the performance measures to be utilized by the manufacturer to demonstrate that the alternative is providing effective pre-sale notification and pre-disposal notification. The department may grant, deny, modify, or condition a request for an alternative to the requirements of subsection (a) and approval of an alternative. Such an approval shall be for a period of not more than two years and may, upon continued eligibility under the criteria of this section and compliance with the conditions of its prior approval, be renewed at two-year intervals. Prior to approving an alternative, the department shall consult with neighboring states and regional organizations to insure that its labeling requirements are consistent with those of other governments in the region.

(c) **Federal Labeling Exemption** No person shall sell, offer for sale, or offer for promotional purposes in the commonwealth a mercury-added product, unless the product bears the labels required by subsection (a) or meets the requirements of an alternative notification procedure under subsection (d). The labeling requirement in subsection (a) shall not apply to any mercury-added product for which federal law governs labeling in a manner that preempts state authority.

Section 6H. Disposal Ban (a) No person shall knowingly dispose of mercury-added products in any manner other than by their recycling or disposal as hazardous waste.

(b) When a mercury-added product is removed from service, the mercury in the item must be source separated for reuse or recycling, stabilized for retirement, or otherwise managed to prevent its release into the environment. No person shall knowingly send a multi-component product that contains mercury to a scrap recycling facility for recycling without first removing the mercury-added product(s). Notwithstanding the foregoing, a scrap recycling facility may agree to accept a multi-component product (which has not been intentionally flattened, crushed, or baled) knowing it contains mercury-added product(s), in which case the scrap recycling facility shall be responsible for removing such product(s). This subsection shall not apply to households disposing of mercury-added products.

(c) The provisions of this section shall take effect no later than one year after the effective date of this section.

Section 6I. Solid Waste Collectors A solid waste collector shall refuse to collect the contents of a solid waste container that said collector knows or reasonably should know contains one or more mercury-added products, unless such solid waste is collected for the purposes of being reused, recycled, or properly disposed of as a hazardous waste or otherwise managed to ensure that the mercury does not become mixed with other solid waste or waste water.

Section 6J. Notification and Inspection at Solid Waste Collection Facilities (a) An owner or operator of a solid waste management facility shall refuse to accept for disposal the contents of a solid waste container that said owner or operator knows or reasonably should know contains one or more mercury-added products, unless such solid waste is accepted for the purposes of being reused, recycled, or properly disposed of as a hazardous waste or otherwise managed to ensure that the mercury does not become mixed with other solid waste or waste water.

(b) All owners and operators of solid waste management facilities shall have appropriate notification and inspection procedures in place designed to prohibit mercury-added products from being disposed of at such facility. At a minimum, said owner or operator shall implement the following mechanisms:

(i) Posting of signs at the facility providing notice of the prohibition of the disposal and incineration of mercury-added products;

(ii) Written notification to or contractual agreements with the facility's customers, providing notice of the prohibition of the disposal and incineration of mercury-added products;

(iii) Implementation of a procedure approved by the department for periodically monitoring incoming wastes to detect the presence of mercury-added products at the facility and practice of separation of observed mercury-added products, for return to the generator, recycling, or disposal as hazardous waste.

(c) An owner or operator of a solid waste management facility shall not be found to have failed to refuse to accept for disposal the contents of a solid waste container in violation of subsection (a) if it has complied with the provisions of subsection (b).

Section 6K. Collection System (a) Within one year of the effective date of this section, every manufacturer of mercury-added products that have been or may be sold or offered for sale or promotional purposes in the commonwealth shall ensure that the proper collection, transportation and recycling of mercury-added products occurs in the commonwealth by: (1) utilizing existing collection systems through which the used mercury-added products sold or offered for sale by that manufacturer can be returned for recycling or proper disposal; and / or (2) establishing and funding, directly or with the use of third parties, a collection system through which the used mercury-added products sold or offered for sale by that manufacturer can be returned for recycling or proper disposal.

(b) Where a mercury-added product is a component of another product, the collection system must provide for removal and collection of the mercury-added component or collection of both the mercury-added component and the product containing it.

(c) Every manufacturer of mercury-added products sold or offered for sale or promotional purposes in the commonwealth shall be financially responsible for such collection and recycling systems. All collection and recycling under subsection (a) shall be conducted in a manner so as to prevent the release of mercury to the environment and must be in full compliance with all applicable local, state and federal regulations. Every manufacturer of mercury-added products sold or offered for sale or promotional purposes in the commonwealth either on its own or in concert with other persons shall submit a collection plan to the department and receive plan approval therefrom. As part of the approval process, the department shall ensure that all Massachusetts residents have access to mercury collection and recycling systems that are convenient, comprehensive, and cost-effective. The department shall develop requirements for said plans. Said plans shall include, at a minimum, targeted capture rates for mercury-added products or components.

(d) Mercury-added formulated products intended to be totally consumed in use, such as reagents, cosmetics, pharmaceuticals, and other laboratory chemicals, shall be exempt from the requirements of this section.

Section 6L. Collection system for automobile mercury. No later than one year following the effective date of this section, no person shall crush or cause to be crushed or otherwise arrange for an end of life motor vehicle to be crushed without first having removed any and all mercury added components.

(a) A scrap recycling facility may agree to accept an end of life motor vehicle that has not been flattened, crushed, or baled, containing mercury added components, in which case the scrap recycling facility is responsible for the proper removal, recycling, transporting, storage, and general containment of all mercury added components in accordance with chapter 21C and 310 CMR 30.000.

(b) Any person or facility removing a mercury added component in either a vehicle in commerce or an end of life vehicle shall manage the mercury added component in accordance with chapter 21C and 310 CMR 30.000 and safety contain and ship or transport the mercury added component to a manufacturer facility established under Section 4(a)(1) of this act.

(c) No later than one year of the effective date of this section the manufacturers of motor vehicles sold in Massachusetts that contain mercury added components shall as a group, or individually, create, implement, comply and file with the department, a plan that describes a system for the proper removal, recycling, transportation, storage, and general containment of all mercury added components in accordance with chapter 21C and 310 CMR 30.000.

(d) This plan shall provide at a minimum for:

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The establishment and maintenance of facilities geographically located to serve all areas of the state where all mercury added components may be removed or transported. These facilities shall:

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(a) Receive and accept all mercury added components removed by dismantlers, vehicle recyclers, scrap facilities, and any and all other persons removing mercury added components from automobiles. Service vehicles in commerce containing mercury added components for the removal, collection, and recovery of mercury added components and replacement with a non mercury alternative, where requested by consumer. This shall be at no cost to the consumer.

(b) These facilities shall be managed in accordance with chapter 21C and 310 CMR 30.000. Information, training, and other technical assistance to all facilities removing mercury added components such that the safe removal, recycling, transportation, storage and general containment of mercury are achieved. The information provided must include information identifying the make, model, and year of vehicles containing mercury added components, a description of the component, and the location in the automobile of the component.

(c) Reasonable payments shall be made to those persons and facilities removing mercury added components for labor, shipping, and containment costs associated with the removal of such components. Acceptable payment rates may be those established by the manufacturer for the removal and replacement of said components under the manufacturer/dealer warranty program. The payment schedule shall be submitted and approved by the joint committee on natural resources and agriculture 1 year after the effective date of this act and annually thereafter.

(d) A plan to store and recycle the mercury added component collected and recovered from the facilities. segregate such components by manufacturer.

(e) After a plan is filed with the department each manufacturer shall thereafter certify to the department on an annual basis, in writing, on a form prescribed by the department, that it is implementing the plan in accordance with the requirements of this chapter.

(f) No later than one year following the effective date of this section, and annually thereafter manufacturers shall report to the department and joint committee on natural resources and agriculture:

- a. The number of each mercury added component removed and collected;
- b. Where and how the components are stored, recycled or otherwise disposed of;
- c. An estimated amount of mercury collected from mercury added components;
- d. Makes, models, and years of the automobiles containing mercury added components.

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16 The department shall evaluate the compliance of all persons subject to this chapter by conducting audits, inspections or implementing other compliance measures deemed appropriate by the department. The department shall report to the Committee on Natural Resources once every two years thereafter on the results of the department's compliance evaluation activities.

Section 6K. Disclosure for Mercury-Added Formulated Products That are Used in Healthcare Facilities

Within six months of the effective date of this section, every manufacturer of mercury-containing products used in health care facilities, as defined in section two of this chapter, shall provide each such facility and the department with a certificate of analysis documenting the mercury content of any such product containing more than one part per billion of mercury. Such formulated products include, but are not limited to, acids; alkalis; bleach; materials used for cleaning, in maintenance, or for disinfection; pharmaceutical products; stains; reagents; preservatives; fixatives; buffers; and dyes. The certificate of analysis shall report the result of an analysis performed for mercury on a specific lot or batch of the mercury-added formulated product. The date or lot number of the product shall be clearly identified on the product and on the certificate of analysis. The department may review the data contained in the certificate of analysis, in consultation with the manufacturer, and take appropriate action to require the manufacturer to eliminate or reduce the mercury content of the product.

Section 6L. Limitations on the Use of Elemental Mercury Within six months of the effective date of this section, no person shall sell or provide elemental mercury to another person in this state without providing a material safety data sheet to the purchaser, as defined in 42

U.S.C. section 11049, and requiring the purchaser or recipient to sign a statement that the purchaser: (a) will use the mercury only for medical, dental amalgam dispose-caps, research, or manufacturing purposes; (b) understands that mercury is toxic and that the purchaser will store and use it appropriately so that no person is exposed to the mercury; and (c) will not place or allow anyone under the purchaser's control to place the mercury or cause the mercury to be placed in solid waste for disposal or in a wastewater disposal system.

Section 6M. Public Education and Outreach. (a) The department shall establish a means of addressing consumer inquiries and complaints and a public education program to assure the widespread dissemination of information concerning the purpose of this section. Such public education program shall include, but not be limited to, information regarding source reduction, recycling programs, and collection systems for mercury-added products through one or more published reports and one or more forms of electronic media. The department shall work cooperatively with businesses, including but not limited to, building contractors and the owners of multi-unit office or residential buildings.

(b) The department shall cooperate with the neighboring states and provinces and regional organizations in the Northeastern U.S. and Canada on developing outreach, assistance, and education programs, where appropriate.

(c) The department may develop an awards program to recognize the accomplishments of manufacturers, municipalities, solid waste management facilities, solid waste recycling facilities, household hazardous waste collection facilities, citizens, or others who go beyond the minimum requirements in this legislation or in other mercury-related programs and excel at reducing or eliminating mercury in air emissions, solid waste, and wastewater discharges.

(d) To facilitate compliance with the disposal ban, the department shall prepare and publish best management practice guidelines for dental offices and laboratories.

(e) The department shall, no later than July 1 each even-numbered year, make available to the public information concerning the amount of mercury diverted from the solid waste stream that would otherwise be sent to solid waste management facilities for disposal or incineration.

Section 6N. State Procurement Preferences for Low or Non-Mercury-Added Products. Within six months of the effective date of this section, notwithstanding other policies and guidelines for the procurement of equipment, supplies, and other products, the state procurement officer, the state university system, and state agencies shall not purchase any mercury-added product until such time as said officer, university system, or agency demonstrates to the satisfaction of the department that alternatives have been fully analyzed and are not cost-effective or available. The department shall consider whether the product that would substitute for the mercury-added product would be less energy efficient than the mercury-added product. No later than September 1 of each year, the department shall submit a written report to the legislature on the categories and quantities of alternatives to mercury-added products purchased in the prior fiscal year and outline the steps taken to investigate and purchase alternatives to mercury-added products. Notwithstanding any general or specific law to the contrary, all state agencies and the university system shall comply with the United States Environmental Protection

Agency's Energy Star Program, and in so doing shall recycle or stabilize for retirement mercury-added lamps and other mercury-added products used by the state.

Section 6O. Dental Insurance. State dental insurance contracts negotiated after the effective date of this section shall provide equal coverage for non-mercury fillings and mercury amalgam fillings at no additional expense to the state employee.

Section 6P. Regulations. (a) The department shall adopt rules, regulations, procedures and standards that may be necessary for the implementation of sections 6A through 6T of this chapter. The department shall consider simplifying and clarifying the rules and regulations governing collection, transportation, storage, and management of discarded mercury, mercury-added products, and mercury-added formulated products.

(b) The department shall promulgate regulations under this section which are consistent with the federal Mercury-Containing and Rechargeable Battery Management Act at sections 14302 through 14336 of chapter 42 of the United States Code.

Section 6Q. Fees. The department shall assess one or more fees, pursuant to the provisions of section 18 of chapter 21A, which shall be payable by manufacturers, which shall cover the full costs incurred by the department for the preparation said regulations, for the review of proposed plans for collection and recycling, for other related compliance costs, and for all costs related to implementation of sections 6A through 6T of this chapter.

Section 6R. Review. The department shall, in consultation, with the Conference of the New England Governors/Eastern Canadian Premiers Environment Committee and with the Northeast Waste Managers Officials Association, review the effectiveness of sections 6A through 6T of this chapter no later than four years after its adoption and may provide a report based upon that review to the Governor and the legislature. The report shall review the effectiveness of these programs and may contain recommendations for improvements. As part of this review, the department shall evaluate the effectiveness of the collection systems established under section 6K and 6L and determine whether additional state authority, performance standards, or targeted recovery rates are needed to improve those systems.

SECTION 4. Section 8 of chapter 21H of the General Laws, as so appearing, is hereby amended by inserting after the first appearance of the word "violation" in line 7, the following:—", except that any household that violates section six C of this chapter, or any rule regulation, or order, issued or adopted under that provision shall not be subject to a civil penalty."

SECTION 5. This act shall take effect on January first, two thousand ~~NINE~~ **ACT RELATIVE TO SAVER**
ALTERNATIVES FOR MERCURY CONTAINING PRODUCTS

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:



The Commonwealth of Massachusetts
House of Representatives
State House, Boston 02133-1020

LOUIS L. KAFKA
REPRESENTATIVE
8TH NORFOLK DISTRICT
ROOM 237, STATE HOUSE
TEL. 617-722-2305

PERI O'CONNOR
ADMINISTRATIVE AIDE

PATRICIA YANIKOSKI
ADMINISTRATIVE AIDE

Committees on
Ways & Means
Post Audit & Oversight
Steering & Policy

House Special Committee
on Veteran's Affairs
Vice Chair

August 1, 2005


The Honorable Frank I. Smizik, Chairman
Joint Committee on Environment, Natural Resources and Agriculture
State House Room 473F
Boston, MA 02133

Dear Chairman Smizik,

One of my constituents, who is a member of the recycling industry, has presented two suggestions that he feels may strengthen HB1392. Would you kindly consider these recommendations when you and your members review it during executive session?

- Impose fines either through the DEP or with State Laws on those who knowingly dispose of mercury added products other than recycling or as hazardous waste as addressed in section 6H.
- A specific list of exemptions for mercury added products in addition to having to apply to the DEP for exemptions (section 6F). This will allow the process to be more efficient.

Thank you for taking into consideration these recommendations. If you have any questions or would like to meet with the constituent, please let me know. With best personal regards, I remain,

Sincerely,

Louis L. Kafka
State Representative