

10160

I N A S S E M B L Y

March 8, 2010

Introduced by M. of A. SWEENEY -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to the collection of mercury containing thermostats

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. The environmental conservation law is amended by adding a  
2 new section 27-2119 to read as follows:  
3 S 27-2119. PHASE-OUT OF MERCURY-CONTAINING THERMOSTATS.  
4 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION:  
5 (A) "MANUFACTURER" MEANS THE ENTITY THAT OWNS A NAME BRAND OF MERCU-  
6 RY-CONTAINING THERMOSTATS.  
7 (B) "MERCURY-CONTAINING THERMOSTAT" MEANS A PRODUCT OR DEVICE THAT  
8 USES A MERCURY SWITCH TO SENSE AND CONTROL ROOM TEMPERATURE THROUGH  
9 COMMUNICATION WITH HEATING, VENTILATING, OR AIR-CONDITIONING EQUIPMENT.  
10 "MERCURY-CONTAINING THERMOSTAT" INCLUDES THERMOSTATS USED TO SENSE AND  
11 CONTROL ROOM TEMPERATURE IN RESIDENTIAL, COMMERCIAL, INDUSTRIAL AND  
12 OTHER BUILDINGS BUT DOES NOT INCLUDE A THERMOSTAT USED TO SENSE AND  
13 CONTROL TEMPERATURE AS PART OF A MANUFACTURING PROCESS.  
14 (C) "THERMOSTAT RETAILER" MEANS ANY INDIVIDUAL, CORPORATION, PARTNER-  
15 SHIP, COOPERATIVE, ASSOCIATION, FIRM, OR OTHER ENTITY THAT SELLS THERMO-  
16 STATS OF ANY KIND DIRECTLY TO HOMEOWNERS OR OTHER NONPROFESSIONALS  
17 THROUGH ANY SELLING OR DISTRIBUTION MECHANISM, INCLUDING BUT NOT LIMITED  
18 TO SALES USING THE INTERNET OR CATALOGUES. A RETAILER MAY ALSO BE A  
19 WHOLESALER IF IT MEETS THE DEFINITION OF A WHOLESALER.  
20 (D) "THERMOSTAT WHOLESALER" MEANS ANY INDIVIDUAL, CORPORATION, PART-  
21 NERSHIP, COOPERATIVE, ASSOCIATION, FIRM, OR OTHER ENTITY THAT IS ENGAGED  
22 PRIMARILY IN THE DISTRIBUTION AND WHOLESALE OF HEATING, VENTILATION, AND  
23 AIR-CONDITIONING COMPONENTS TO CONTRACTORS WHO INSTALL HEATING, VENTI-  
24 LATION, AND AIR-CONDITIONING COMPONENTS.  
25 2. MANUFACTURER RESPONSIBILITIES. (A) EACH MERCURY-CONTAINING THERMO-  
26 STAT MANUFACTURER THAT HAS OFFERED FOR FINAL SALE, SOLD AT FINAL SALE,  
27 OR HAS DISTRIBUTED MERCURY-CONTAINING THERMOSTATS IN NEW YORK SHALL,  
28 INDIVIDUALLY OR COLLECTIVELY, AND NOT LATER THAN JUNE FIRST, TWO THOU-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 SAND ELEVEN, SUBMIT A PLAN TO THE DEPARTMENT FOR APPROVAL THAT DESCRIBES  
2 A COLLECTION PROGRAM FOR OUT-OF-SERVICE MERCURY-CONTAINING THERMOSTATS  
3 FROM CONTRACTORS, SERVICE TECHNICIANS AND HOMEOWNERS. THE COLLECTION  
4 PROGRAM SHALL NOT INVOLVE ANY DIRECT COST TO CONTRACTORS, SERVICE TECH-  
5 NICIANS OR HOMEOWNERS FOR PARTICIPATING IN THE PROGRAM. THE COLLECTION  
6 PROGRAM MAY INCLUDE A FINANCIAL INCENTIVE FOR THE RETURN OF EACH MERCURY-  
7 CONTAINING THERMOSTAT IN THE FORM OF CASH OR COUPONS THAT ARE REDEEM-  
8 ABLE BY CONTRACTORS AND/OR HOMEOWNERS.

9 THE COLLECTION PROGRAM SHALL AT A MINIMUM INCLUDE:

10 (I) AN EDUCATION AND OUTREACH PROGRAM DIRECTED TOWARD WHOLESALERS,  
11 RETAILERS, CONTRACTORS AND HOMEOWNERS. SUCH PROGRAM SHALL BE CONDUCTED  
12 AT NO COST TO SUCH ENTITIES.

13 (II) THE DISTRIBUTION OF CONTAINERS FOR MERCURY-CONTAINING THERMOSTAT  
14 COLLECTION. COLLECTION METHODS MAY INCLUDE, BUT ARE NOT LIMITED TO,  
15 INDIVIDUAL PRODUCT MAIL RETURN AND/OR MULTIPLE COLLECTION CONTAINERS AND  
16 COLLECTION SITES LOCATED AT THERMOSTAT RETAILERS, THERMOSTAT WHOLE-  
17 SALERS, MUNICIPALITIES FOR COLLECTION AT HOUSEHOLD HAZARDOUS WASTE  
18 COLLECTION FACILITIES OR HOUSEHOLD HAZARDOUS WASTE EVENTS.

19 (III) MEASURES TO PROTECT AGAINST THE FRAUDULENT RETURN OF  
20 MERCURY-CONTAINING THERMOSTATS.

21 (IV) CRITERIA TO ENCOURAGE THE PURCHASE OF MERCURY-FREE PROGRAMMABLE  
22 THERMOSTATS QUALIFIED BY THE ENERGY STAR PROGRAM AS REPLACEMENTS FOR  
23 MERCURY-CONTAINING THERMOSTATS.

24 (V) CRITERIA TO ENSURE THAT THE CAPTURE RATE OF OUT-OF-SERVICE MERCURY  
25 THERMOSTATS IS MAXIMIZED AND THE ESTABLISHMENT OF A COLLECTION GOAL.

26 (B) NOT LATER THAN DECEMBER FIRST, TWO THOUSAND ELEVEN, MANUFACTURERS  
27 OF MERCURY-CONTAINING THERMOSTATS SHALL IMPLEMENT THE COLLECTION PROGRAM  
28 OUTLINED IN THEIR PLAN.

29 (C) BEGINNING JUNE FIRST, TWO THOUSAND TWELVE, EACH MANUFACTURER OF  
30 MERCURY-CONTAINING THERMOSTATS SHALL SUBMIT A REPORT TO THE DEPARTMENT  
31 THAT INCLUDES, AT A MINIMUM, THE FOLLOWING INFORMATION:

32 (I) THE NUMBER OF MERCURY-CONTAINING THERMOSTATS COLLECTED AND RECY-  
33 CLED BY THE MANUFACTURER DURING THE PREVIOUS CALENDAR YEAR.

34 (II) THE ESTIMATED TOTAL AMOUNT OF MERCURY CONTAINED IN THE THERMOSTAT  
35 COMPONENTS COLLECTED BY THAT MANUFACTURER IN THE PREVIOUS CALENDAR YEAR.

36 (III) AN EVALUATION OF THE EFFECTIVENESS OF THE MANUFACTURER'S  
37 COLLECTION PROGRAM AND ANY FINANCIAL INCENTIVES.

38 (IV) AN ACCOUNTING OF THE ADMINISTRATIVE COSTS INCURRED IN THE COURSE  
39 OF ADMINISTERING THE COLLECTION AND RECYCLING PROGRAM AND ANY FINANCIAL  
40 INCENTIVE PLAN.

41 3. DEPARTMENT RESPONSIBILITIES. (A) WITHIN NINETY DAYS OF RECEIPT OF A  
42 COMPLETE MANUFACTURER PLAN REQUIRED BY SUBDIVISION TWO OF THIS SECTION,  
43 THE DEPARTMENT SHALL REVIEW AND MAY GRANT, DENY OR APPROVE WITH MODIFI-  
44 CATIONS. THE DEPARTMENT SHALL NOT APPROVE A PLAN UNLESS ALL ELEMENTS OF  
45 SUBDIVISION TWO OF THIS SECTION ARE ADEQUATELY ADDRESSED. IN REVIEWING A  
46 PLAN, THE DEPARTMENT MAY CONSIDER CONSISTENCY OF THE PLAN WITH  
47 COLLECTION IN OTHER STATES AND CONSIDER CONSISTENCY BETWEEN MANUFACTURER  
48 PROGRAMS. IN REVIEWING PLANS, THE AGENCY SHALL ENSURE THAT EDUCATION AND  
49 OUTREACH PROGRAMS ARE UNIFORM AND CONSISTENT TO ENSURE EASE OF IMPLEMEN-  
50 TATION.

51 (B) THE DEPARTMENT SHALL MAINTAIN AND POST ON ITS WEBSITE A LIST OF  
52 ENTITIES AND LOCATIONS THAT SERVE AS COLLECTION POINTS FOR MERCURY-CON-  
53 TAINING THERMOSTATS, INCLUDING BUT NOT LIMITED TO MUNICIPALITIES AND  
54 THERMOSTAT RETAILERS AND THERMOSTAT WHOLESALERS.

55 (C) IN CONJUNCTION WITH THE EDUCATIONAL AND OUTREACH PROGRAMS IMPL-  
56 MENTED BY MANUFACTURERS, THE DEPARTMENT SHALL CONDUCT AN EDUCATION AND

1 OUTREACH PROGRAM DIRECTED AT WHOLESALERS, RETAILERS, CONTRACTORS, AND  
2 HOMEOWNERS TO PROMOTE THE COLLECTION OF DISCARDED MERCURY-CONTAINING  
3 THERMOSTATS.

4 (D) BY DECEMBER FIRST, TWO THOUSAND TWELVE, AND ANNUALLY THEREAFTER,  
5 THE DEPARTMENT SHALL POST A REPORT ON ITS WEBSITE DETAILING THE  
6 COLLECTION AND RECYCLING OF MERCURY-CONTAINING THERMOSTATS IN THE STATE.  
7 SUCH REPORT SHALL INCLUDE AN EVALUATION OF THE EFFECTIVENESS OF THE  
8 THERMOSTAT COLLECTION AND RECYCLING PROGRAMS, AND INFORMATION ON ACTUAL  
9 COLLECTION RATES.

10 (E) BY JANUARY FIFTEENTH, TWO THOUSAND THIRTEEN, THE DEPARTMENT SHALL  
11 ESTIMATE THE NUMBER OF OUT-OF-SERVICE THERMOSTATS GENERATED IN NEW YORK  
12 ON AN ANNUAL BASIS. BEGINNING JANUARY FIFTEENTH, TWO THOUSAND FOURTEEN,  
13 SHOULD COLLECTION EFFORTS FAIL TO RESULT IN THE COLLECTION AND RECYCLING  
14 OF AT LEAST SIXTY-FIVE PERCENT OF THE OUT-OF-SERVICE MERCURY-CONTAINING  
15 THERMOSTATS IN THE STATE, THE DEPARTMENT MAY REQUIRE MODIFICATION TO  
16 MANUFACTURERS' COLLECTION PLANS IN AN ATTEMPT TO IMPROVE COLLECTION  
17 RATES IN ACCORDANCE WITH THESE GOALS INCLUDING A REQUIREMENT TO IMPLI-  
18 MENT A FINANCIAL INCENTIVE IN THE FORM OF CASH OR COUPONS NOT GREATER  
19 THAN TEN DOLLARS THAT ARE REDEEMABLE BY CONTRACTORS AND/OR HOMEOWNERS.  
20 BEGINNING JANUARY FIFTEENTH, TWO THOUSAND EIGHTEEN, THE DEPARTMENT SHALL  
21 ADOPT REGULATIONS SETTING FORTH FUTURE COLLECTION GOALS.

22 S 2. This act shall take effect immediately.