

S T A T E O F N E W Y O R K

10160--B

I N A S S E M B L Y

March 8, 2010

Introduced by M. of A. SWEENEY, MAISEL, LAVINE, SPANO, WEISENBERG, DINOWITZ, JAFFEE, CASTRO, STIRPE, MILLMAN, COLTON, SKARTADOS, ROSENTHAL, KOON -- Multi-Sponsored by -- M. of A. BOYLAND, CRESPO, GIBSON, GLICK, GOTTFRIED, HIKIND, MARKEY, THIELE -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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 MERCURY-
6 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 WHOLESALE IF IT MEETS THE DEFINITION OF A WHOLESALE.
20 (D) "THERMOSTAT WHOLESALE" 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

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

LBD16110-04-0

1 AIR-CONDITIONING COMPONENTS TO CONTRACTORS WHO INSTALL HEATING, VENTI-
2 LATION, AND AIR-CONDITIONING COMPONENTS.

3 2. MANUFACTURER RESPONSIBILITIES. (A) EACH MERCURY-CONTAINING THERMO-
4 STAT MANUFACTURER THAT HAS OFFERED FOR FINAL SALE, SOLD AT FINAL SALE,
5 OR HAS DISTRIBUTED MERCURY-CONTAINING THERMOSTATS IN NEW YORK SHALL,
6 INDIVIDUALLY OR COLLECTIVELY, AND NOT LATER THAN JUNE FIRST, TWO THOU-
7 SAND ELEVEN, SUBMIT A PLAN TO THE DEPARTMENT FOR APPROVAL THAT DESCRIBES
8 A COLLECTION PROGRAM FOR OUT-OF-SERVICE MERCURY-CONTAINING THERMOSTATS
9 FROM CONTRACTORS, SERVICE TECHNICIANS AND HOMEOWNERS. THE COLLECTION
10 PROGRAM SHALL NOT INVOLVE ANY DIRECT COST TO CONTRACTORS, SERVICE TECH-
11 NICIANS OR HOMEOWNERS FOR PARTICIPATING IN THE PROGRAM. THE COLLECTION
12 PROGRAM MAY INCLUDE A FINANCIAL INCENTIVE FOR THE RETURN OF EACH MERCU-
13 RY-CONTAINING THERMOSTAT IN THE FORM OF CASH OR COUPONS THAT ARE REDEEM-
14 ABLE BY CONTRACTORS AND/OR HOMEOWNERS.

15 THE COLLECTION PROGRAM SHALL AT A MINIMUM INCLUDE:

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

19 (II) THE DISTRIBUTION OF CONTAINERS FOR MERCURY-CONTAINING THERMOSTAT
20 COLLECTION. COLLECTION METHODS MAY INCLUDE, BUT ARE NOT LIMITED TO,
21 INDIVIDUAL PRODUCT MAIL RETURN AND/OR MULTIPLE COLLECTION CONTAINERS AND
22 COLLECTION SITES LOCATED AT THERMOSTAT RETAILERS, THERMOSTAT WHOLE-
23 SALERS, MUNICIPALITIES FOR COLLECTION AT HOUSEHOLD HAZARDOUS WASTE
24 COLLECTION FACILITIES OR HOUSEHOLD HAZARDOUS WASTE EVENTS.

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

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

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

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

35 (C) BEGINNING JUNE FIRST, TWO THOUSAND TWELVE, AND ANNUALLY THEREAFT-
36 ER, EACH MANUFACTURER OF MERCURY-CONTAINING THERMOSTATS SHALL SUBMIT A
37 REPORT TO THE DEPARTMENT THAT INCLUDES, AT A MINIMUM, THE FOLLOWING
38 INFORMATION:

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

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

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

45 (IV) AN ACCOUNTING OF THE ADMINISTRATIVE COSTS INCURRED IN THE COURSE
46 OF ADMINISTERING THE COLLECTION AND RECYCLING PROGRAM AND ANY FINANCIAL
47 INCENTIVE PLAN.

48 3. DEPARTMENT RESPONSIBILITIES. (A) WITHIN NINETY DAYS OF RECEIPT OF A
49 COMPLETE MANUFACTURER PLAN REQUIRED BY SUBDIVISION TWO OF THIS SECTION,
50 THE DEPARTMENT SHALL REVIEW AND MAY GRANT, DENY OR APPROVE WITH MODIFI-
51 CATIONS. THE DEPARTMENT SHALL NOT APPROVE A PLAN UNLESS ALL ELEMENTS OF
52 SUBDIVISION TWO OF THIS SECTION ARE ADEQUATELY ADDRESSED. IN REVIEWING A
53 PLAN, THE DEPARTMENT MAY CONSIDER CONSISTENCY OF THE PLAN WITH
54 COLLECTION IN OTHER STATES AND CONSIDER CONSISTENCY BETWEEN MANUFACTURER
55 PROGRAMS. IN REVIEWING PLANS, THE DEPARTMENT SHALL ENSURE THAT EDUCATION

1 AND OUTREACH PROGRAMS ARE UNIFORM AND CONSISTENT TO ENSURE EASE OF
2 IMPLEMENTATION.

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

7 (C) IN CONJUNCTION WITH THE EDUCATIONAL AND OUTREACH PROGRAMS IMPL-
8 MENTED BY MANUFACTURERS, THE DEPARTMENT MAY CONDUCT AN EDUCATION AND
9 OUTREACH PROGRAM DIRECTED AT WHOLESALERS, RETAILERS, CONTRACTORS, AND
10 HOMEOWNERS TO PROMOTE THE COLLECTION OF DISCARDED MERCURY-CONTAINING
11 THERMOSTATS.

12 (D) BY DECEMBER FIRST, TWO THOUSAND TWELVE, AND ANNUALLY THEREAFTER,
13 THE DEPARTMENT SHALL POST A REPORT ON ITS WEBSITE DETAILING THE
14 COLLECTION AND RECYCLING OF MERCURY-CONTAINING THERMOSTATS IN THE STATE.
15 SUCH REPORT SHALL INCLUDE AN EVALUATION OF THE EFFECTIVENESS OF THE
16 THERMOSTAT COLLECTION AND RECYCLING PROGRAMS, AND INFORMATION ON ACTUAL
17 COLLECTION RATES.

18 (E) BY JANUARY FIFTEENTH, TWO THOUSAND TWELVE, AND ANNUALLY THEREAFT-
19 ER, THE DEPARTMENT SHALL ESTIMATE THE NUMBER OF OUT-OF-SERVICE THERMO-
20 STATS GENERATED IN NEW YORK ON AN ANNUAL BASIS. BEGINNING JUNE FIRST,
21 TWO THOUSAND THIRTEEN, SHOULD COLLECTION EFFORTS FAIL TO RESULT IN THE
22 COLLECTION AND RECYCLING OF AT LEAST TWENTY-FIVE PERCENT OF THE OUT-OF-
23 SERVICE MERCURY-CONTAINING THERMOSTATS IN THE STATE, THE DEPARTMENT MAY
24 REQUIRE MODIFICATION TO MANUFACTURERS' COLLECTION PLANS TO IMPROVE
25 COLLECTION RATES INCLUDING A REQUIREMENT TO IMPLEMENT A FINANCIAL INCEN-
26 TIVE IN THE FORM OF CASH OR COUPONS NOT LESS THAN FIVE DOLLARS OR NOT
27 GREATER THAN TEN DOLLARS THAT ARE REDEEMABLE BY CONTRACTORS AND/OR HOME-
28 OWNERS. BEGINNING JUNE FIRST, TWO THOUSAND FIFTEEN, SHOULD COLLECTION
29 EFFORTS FAIL TO RESULT IN THE COLLECTION AND RECYCLING OF AT LEAST
30 SIXTY-FIVE PERCENT OF THE OUT-OF-SERVICE MERCURY-CONTAINING THERMOSTATS
31 IN THE STATE, THE DEPARTMENT SHALL REQUIRE MODIFICATION TO MANUFACTUR-
32 ERS' COLLECTION PLANS TO INCLUDE A FINANCIAL INCENTIVE IN THE FORM OF
33 CASH OR COUPONS NOT LESS THAN FIVE DOLLARS OR GREATER THAN TEN DOLLARS
34 THAT ARE REDEEMABLE BY CONTRACTORS AND/OR HOMEOWNERS. BEGINNING JANUARY
35 FIFTEENTH, TWO THOUSAND EIGHTEEN, THE DEPARTMENT MAY ADOPT REGULATIONS
36 SETTING FORTH FUTURE COLLECTION GOALS.

37 S 2. This act shall take effect immediately.