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TITLE 329 SOLID WASTE MANAGEMENT BOARD

FIRST NOTICE OF COMMENT PERIOD LSA Document #05-250(SWMB)

DEVELOPMENT OF NEW RULES AT 329 IAC 11.5 CONCERNING MERCURY SWITCHES

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on the addition of new rules at 329 IAC 11.5 concerning collection of mercury switches in end-of-life vehicles. This rule adds pertinent definitions and minimum requirements for operations that plan to store, crush, bale, or dismember end-of-use vehicles, such as, auto salvage yards, junk yards, auto dismantlers, or scrap metal dealers. These operations must remove mercury switches and recycle or dispose of the mercury switches properly. The rule would also cause metal shredding operations, scrap metal recyclers, metal smelters, and steel manufacturers to only recycle scrap metal that did not contain any mercury or mercury switches.

IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

CITATIONS AFFECTED: 329 IAC 11.5.

AUTHORITY: IC 4-22-2; IC 13-14-9; IC 13-14-8-1; IC 13-14-8-2; IC 13-15-2; IC 13-19-3-1; IC 13-30-2.

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

Basic Purpose and Background

Vehicles have historically used mercury containing switches to turn on lights when the hood or trunk is opened and to operate some anti-lock brake systems (ABS systems). A mercury switch is a small bullet-shaped capsule that contains mercury and two electrical contacts. Domestic vehicles manufactured before 2001 and imported vehicles manufactured before 1992 may contain mercury switches. These switches do not pose at threat to human health or the environment when used in a properly maintained vehicle. Once a vehicle is sent for salvage and is shredded and sent to a smelter for reuse, the mercury contained in the switches can leak out and be released into the air or water. Mercury is a neurotoxin that can cause serious brain and nervous system damage in humans. Mercury can be inhaled, absorbed through the skin, or ingested by eating contaminated food. Mercury is an element that does not break down and can remain in the environment for years. Mercury also bio-accumulates in higher concentrations as it moves up the food chain, and may cause brain, liver, and kidney damage in humans. There are two methods to harvest mercury switches. The switches may be replaced with non-mercury switches while the vehicle is still in use or the mercury switches may be removed at the end of the vehicle's life. Although, the first approach has merit, this rulemaking is based on the second approach. It is environmentally safer for the mercury switches to be removed at the salvage or junk yards within sixty (60) days of receipt of the vehicle. The mercury switches may be stored on-site in proper containment for up to one (1) year prior to recycling or disposal. This rule will propose management standards that meet all the hazardous waste universal waste standards for the protection of the salvage operations. The management standards in the rule will allow all salvage yards, regardless of generator or handler status, to meet the universal waste rule requirements.

Alternatives to be Considered Within the Rulemaking

Alternative 1. Specify that operations that plan to store, crush, bale, or dismember end-of-use vehicles, such as, auto salvage yards and junk yards, must remove mercury switches from vehicles containing mercury switches, tag the vehicles, abide by management standards in the rule, and record the number of switches removed. The mercury switches may only be stored for up to one (1) year. Mercury switches might not have to be removed from a particular place on a vehicle that has sustained considerable damage from an accident that occurred prior to arrival at the operation. Metal shredders and smelters would not be allowed to process metal unless all mercury and mercury switches had been removed.

Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Partially, the management standards under the universal waste rule.

Is this alternative imposed by federal law or is there a comparable federal law? No

If it is a federal requirement, is it different from federal law? N/A

If it is different, describe the differences.

Alternative 2. Require metal shredding operations and smelting operations to remove mercury switches from vehicles or metal before it is processed, abide by management standards in the rule, and record the number of switches removed.

Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Partially, the management standards under the universal waste rule.

Is this alternative imposed by federal law or is there a comparable federal law? No

If it is a federal requirement, is it different from federal law? N/A

If it is different, describe the differences.

Applicable Federal Law

New federal regulations allow mercury containing devices to be managed as a universal waste with streamlined management standards. Indiana has a rulemaking that proposes to adopt these federal standards. Federal regulations (40 CFR 257.3) prohibit solid waste practices that violate the established environmental criteria and pose a reasonable probability of adverse effects on human health or the environment.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. There would be a cost for:

1. Removal of all switches--\$2.50 per switch; there are an average of four (4) to six (6) switches per vehicle.
2. Management of the mercury switches—approximately \$0.25 per switch.
3. Tagging clean vehicles—approximately \$0.10 per vehicle.
4. Record keeping---approximately \$0.05 per switch.

This is a total cost of \$2.90 per switch, which could be passed onto the vehicle owner by the salvage yard. A mercury recycling kit for proper storage costs approximately \$100 and a mercury spill kit cost approximately \$14 to \$75 and can be ordered from laboratory and safety supply stores.

Potential Fiscal Impact of Alternative 2.

1. Removal of all switches--\$5 per switch; there are an average of four (4) to six (6) switches per vehicle.
2. Management of the mercury switches—approximately \$0.25 per switch.
3. Record keeping---approximately \$0.05 per switch.

This is more costly because many of the vehicles are already crushed, compressed, or in a cube and ready access to the mercury switches is unavailable or very difficult. The total cost is \$5.30 per switch. A mercury recycling kit for proper storage costs approximately \$100 and a mercury spill kit cost approximately \$14 to \$75 and can be ordered from laboratory and safety supply stores.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under IC 13-28-3. The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with IC 13-28-3 and IC 13-28-5, there is a small business assistance program Ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at www.in.gov/idem/ctap.

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Sandra El-Yusuf

IDEM Compliance and Technical Assistance Program

OPPTA - MC60-04

100 N. Senate Avenue

W-041

Indianapolis, IN 46204-2251

(317) 232-8578

selyusuf@idem.IN.gov

The Small Business Assistance Program Ombudsman is:

Eric Levenhagen

IDEM Small Business Assistance Program Ombudsman

External Affairs - MC50-01

100 N. Senate Avenue

IGCN 1301

Indianapolis, IN 46204-2251

(317) 234-3386

elevenha@idem.IN.gov

Public Participation and Workgroup Information

An external workgroup will be established to discuss issues involved in this rulemaking. The workgroup will be made up of IDEM

staff and a cross-section of stakeholders.

If you wish to provide comments to the workgroup on the rulemaking, attend meetings, or have suggestions related to the workgroup process, please contact Lynn West, Rules, Planning, and Outreach Section, Office of Land Quality at (317) 232-3593 or (800) 451-6027 (in Indiana). Please provide your name, phone number and email address, if applicable, where you can be contacted. The public is also encouraged to submit comments and questions to members of the workgroup who represent their particular interests in the rulemaking.

STATUTORY AND REGULATORY REQUIREMENTS

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#05-250(SWMB) [Mercury Switch Rule]

Marjorie Samuel

Rules, Outreach, and Planning Section

Office of Land Quality

Indiana Department of Environmental Management

100 North Senate Avenue

Indianapolis, Indiana 46204-2251.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the Eleventh floor reception desk, Office of Land Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 232-3403, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Marjorie Samuel, Rules, Planning and Outreach Section, Office of Land Quality at (317) 232-7995.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by November 1, 2005.

Additional information regarding this action may be obtained from Lynn West, Rules, Outreach, and Planning Section, Office of Land Quality, (317) 232-3593 or (800) 451-6027 (in Indiana).

Bruce H. Palin

Assistant Commissioner

Office of Land Quality