

Legislative Analysis



MERCURY-ADDED PRODUCTS

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House Bill 4277
Sponsor: Rep. Pam Byrnes

House Bills 4279 & 4280
Sponsor: Rep. Kate Ebli

House Bill 4278
Sponsor: Rep. Mary Valentine

House Bill 4281
Sponsor: Rep. Rebekah Warren

Committee: Great Lakes and Environment
Complete to 3-25-09

A SUMMARY OF HOUSE BILLS 4277-4280 AS INTRODUCED 2-17-09

Each of the bills would amend the Natural Resources and Environmental Protection Act to address matters related to mercury.

House Bill 4277 would (1) adopt the "financial test" for Type II landfills found in a federal regulations; and (2) prohibit products labeled as containing mercury or a mercury compound from being delivered to or disposed in a landfill (as of January 1, 2013) or incinerator (as of January 1, 2011).

House Bill 4278 would (1) define the terms "mercury-added novelty" and "mercury-added product"; (2) establish labeling requirements for mercury-added products (as of July 1, 2010); (3) require that when mercury-added products are sold over the telephone or Internet (or in any situation where the buyer can't view the required labels) that the purchaser is clearly advised about the product's mercury content at the time of the sale; (4) allow manufacturers to comply with another state's labeling rules, rather than Michigan's, if the other state belongs to the Interstate Mercury Education and Reduction Clearinghouse (IMERC).

House Bill 4279 would prohibit mercury-added novelties (as defined in House Bill 4278) from being sold or offered for sale, use, or promotional purposes in Michigan (as of January 1, 2010) and would likewise prohibit mercury-added button cell batteries (as of July 1, 2011).

House Bill 4280 would require elemental mercury distributors to provide a material safety data sheet with the mercury; and (2) require recipients of elemental mercury to sign a written statement concerning the use, storage, toxicity, and proper disposal of the mercury, upon receipt. (Among other things, recipients of mercury would have to agree not to dispose of it in solid waste or wastewater treatment systems.)

(A dental office would not have to provide material safety data sheets to its patients who receive amalgam fillings, and dental patients would not have to sign for receipt of the mercury in an amalgam filling. A dental practice that collects and recycles its mercury

amalgam waste in compliance with a new law and related administrative rules concerning the use of amalgam separators would not have to agree to follow rules banning the disposal of mercury in a wastewater treatment system when it signs for receipt of its mercury.)

House Bill 4281 would (1) broaden the definition of manufacturer to cover all mercury-added products, not just mercury thermometers; (2) ban the sale or offer of a barometer or manometer that is a mercury-added product (as of January 1, 2011); (3) ban the sale or offer of a flow meter, hydrometer, or psychrometer that is a mercury-added product (as of January 1, 2012); (4) ban the sale or offer of a mercury switch or mercury relay, as defined in the bill (as of January 1, 2012); (5) prohibit a dairy farming operation from using a manometer that is a mercury-added product (as of January 1, 2011); (6) state that these prohibitions would not apply if use of the mercury-added product is required by federal law; (7) allow the Department of Environmental Quality to grant one or more exemptions for up to three years to manufacturers and prescribe the application procedure and standard for exemptions; (8) require the DEQ to post a list of exempt products on its website and to join IMERC; (9) allow, but not require, the DEQ to promulgate rules under Part 172 (Mercury-Added Products).

Tie-bars. House Bills 4277, 4279, and 4281 are tie-barred to House Bill 4278, meaning that none of these bills will take effect unless House Bill 4278 is enacted into law.

FISCAL IMPACT:

The bills would have an indeterminate fiscal impact on the Department of Environmental Quality. The bills do not provide an appropriation to the department to cover additional administrative duties under the bills.

TIMELINE FOR VARIOUS PROVISIONS TO TAKE EFFECT:

Here is a summary of provisions that would be phased in over time:

January 1, 2010

- Sales and offers of mercury-added novelties banned.
- Distributors of elemental mercury must provide material safety data sheets and recipients must sign statements at time of receipt agreeing to various things, including that the mercury will not be put in solid waste or wastewater treatment systems.

July 1, 2010

- Mercury-added products and components required to be labeled.

January 1, 2011

- Labeled mercury-added products banned from delivery to or disposal in a incinerator.

- Sales or offers of barometers and manometers that are mercury-added products banned.
- Use of a manometer that is a mercury-added product by a dairy farming operation banned.

July 1, 2011

- Sales or offers of mercury-added button cell batteries banned.

January 1, 2012

- Sales or offers of flow meters, hydrometers, or psychrometers that are mercury-added products banned.
- Sales or offers of mercury switches and mercury relays banned.

January 1, 2013

- Labeled mercury-added products banned from delivery to or disposal in a landfill.

DETAILED SUMMARY

House Bill 4277 would amend Part 115 (Solid Waste Management) of NREPA in the following ways:

- Adopt the "financial test" for Type II landfills found in federal regulations (40 CFR Part 258).
- Beginning January 1, 2013, (1) prohibit a person from delivering a "labeled mercury-added product," meaning a mercury-added product labeled as required by Section 17208 (found in House Bill 4278), to a landfill for disposal; and (2) prohibit the landfill's owner or operator from allowing the disposal of labeled mercury-added products.
- Beginning January 1, 2011, (1) prohibit a person from delivering a labeled mercury-added product to an incinerator for disposal; and (2) prohibit the incinerator's owner or operator from allowing disposal of labeled mercury-added products at the incinerator.
- Revise the language of an existing subsection under which a solid waste management plan update does not have to provide for recycling and composting if the plan establishes that recycling or composting are not necessary or feasible or only so to a limited extent.

House Bill 4278 would amend Part 172 (Mercury-Added Products) of NREPA in the following ways:

- Define "mercury-added novelty" as a mercury-added product intended mainly for personal or household enjoyment or adornment, including, but not limited to, items used for practical jokes, figurines, adornments, toys, games, cards,

ornaments, yard statues or figures, candles, jewelry, and apparel (including footwear).

- Define "mercury-added product" as a product, commodity, or chemical to which mercury or a mercury compound has been intentionally added or which contains a component to which mercury or a mercury compound has been intentionally added. For example, this could be a laboratory chemical, cleaning product, cosmetic, pharmaceutical, coating material, measuring device, lamp, or a switch. A button cell battery or product in which the only mercury content is in the button cell battery is excluded from the definition of "mercury-added product."
- As of July 1, 2010, require a manufacturer of a mercury-added product to affix a label to each mercury-added product intended for sale or use in Michigan that meets the following requirements:
 - The label tells the purchaser using words or symbols that (1) the product contains mercury or a mercury compound (minimum 10-point font) and (2) that the product should not be disposed of in (or placed in a waste stream that is heading for) a landfill or incinerator.
 - The required label is clearly visible before the sale or use of the product. If the product is packaged in a way that prevents the product's mercury label from being clearly visible before the sale or other distribution, the manufacturer would also have to affix a label to the outside package. (Visibility requirements would not apply to refrigerators, freezers, ovens, ranges, washers, and driers.)
 - In general, if a product has more than one component which contains mercury or a mercury compound, a label would have to be affixed to each such component. In the case of motor vehicles, the manufacturer could place a label on the door post that lists all of the vehicle's components that contain mercury or a mercury compound.
 - A label would have to be sufficiently durable to remain legible for the useful life of the product.
- Allow manufacturers to comply with Michigan's mercury labeling requirements by complying with another state's requirements if the other state is a member of the Interstate Mercury Education and Reduction Clearinghouse. A manufacturer would have to provide documentation of its compliance with another state's requirements to the Department of Environmental Quality upon request.
- Require a person offering a mercury-added product for final sale or other distribution to a Michigan address under circumstances in which the purchaser or recipient can't view the labels on the product or its package (such as a catalogue, telephone, or Internet sale or promotion) to clearly advise the purchaser or recipient at the point of sale or other distribution that the product contains mercury or a mercury compound.

House Bill 4279 would prohibit mercury-added novelties (as defined in House Bill 4278, and described above) from being sold, offered for sale, offered for use, or offered for

promotional purposes in Michigan as of January 1, 2010. The Mercury-added button cell batteries would be prohibited as of July 1, 2011.

House Bill 4280 would require anyone who distributes or otherwise provides elemental mercury to a person in Michigan to provide a material safety data sheet, as defined in federal law (at 42 USC 11049), with the elemental mercury.

Signed statements by recipients of elemental mercury. Upon receipt of elemental mercury, a recipient would have to sign a statement in which the recipient agrees to use the mercury only for medical, dental, research, or manufacturing purposes; acknowledges understanding that mercury is toxic; agrees to store and use it in a way that would not expose anyone to undue risk; agrees that neither the recipient nor anyone under the recipient's control will place it or cause it to be placed for disposal in solid waste or a wastewater treatment and disposal system. These signed statements would have to be kept for at least three years and made available to a representative of the state, a local unit of government, or a municipal wastewater treatment plant upon request.

Dental practices. When signing for receipt of elemental mercury, a dental practice would not need to agree not to dispose of the mercury in a wastewater treatment system if the dental practice collects and recycles its mercury amalgam waste in compliance with Section 16631 of the Public Health Code, (MCL 333.16631, added by Public Law 503 of 2008, effective January 13, 2009) and rules promulgated under that section. In addition, placement of a mercury amalgam as an accepted dental practice would not be considered to be the sale or other distribution of elemental mercury for purposes of the material data safety sheet and signed statement requirements. In other words, a dentist would not have to give a patient a material data safety sheet when placing an amalgam filling in a patient and the patient would not have to sign a written statement concerning receipt of the mercury contained in the filling.

House Bill 4281 would amend Part 172 of NREPA to do the following things:

Definitions. The bill would make the following changes or additions to definitions:

- Broaden the definition of "**manufacturer**" in Section 17201 to cover persons who produce, import, or distribute *mercury-added products* in Michigan, not just *mercury thermometers* as in current law.
- Define "**mercury relay**" as "mercury-added product that opens or closes electrical contacts to affect the operation of another device in the same or another electrical circuit and includes, but is not limited to, a mercury displacement relay, a mercury wetted reed relay, a mercury contact relay, and a mercury contactor."
- Define "**mercury switch**" as "a mercury-added product that opens or closes an electrical circuit or gas valve and includes, but is not limited to, a mercury float switch actuated by rising and falling liquid levels, a mercury tilt switch actuated by a change in pressure, a mercury temperature switch actuated by a change in temperature, and a mercury flame sensor. Mercury switch does not include a thermostat.

Ban sales of certain mercury-added products; ban use of manometers by dairy farms.
The bill would also do the following:

- Prohibit a person from selling or offering any of the following products as of the date indicated: (1) a barometer or manometer that is a mercury-added product (January 1, 2011); (2) a flow meter, hydrometer, or psychrometer that is a mercury-added product (January 1, 2012); (3) a mercury switch or mercury relay (January 1, 2012).
- Prohibit a dairy farming operation from using a manometer that is a mercury-added product as of January 1, 2011.
- State that these prohibitions do not apply if the use of the mercury-added product is required by a federal statute or regulation.
- Allow the Department of Environmental Quality to grant an exemption from these prohibitions.

Exemptions and renewals; standard for granting. The department would have to develop a form or forms for manufacturers to use when applying for an initial exemption or a renewal of an exemption. A manufacturer could apply for and receive one or more renewals, but no exemption or renewal could be for more than three years.

The department could only grant or renew an exemption if all of the following requirements were met at the time of application:

- There is no comparable product that does not contain mercury or a mercury compound available at a reasonable cost.
- A manufacturer or an industry or trade association has in place a take-back program for all of the manufacturer's mercury-added products sold in Michigan.
- One or both of the following apply: (1) the use of the product benefits the environment or protects public safety; or (2) there is no technically feasible alternative to the use of mercury or a mercury compound in the product.

Internet list of exempt mercury-added products. The department would have to make a list of all exempt mercury-added products available to the public on its Internet website.

IMERC. The department would be required to join the Interstate Mercury Education and Reduction Clearinghouse. [IMERC's webpage can be found at www.newmoa.org/prevention/mercury/imerc.cfm.]

Rules. The department could, but would not be required to, promulgate administrative rules to implement Part 172 (Mercury-Added Products).

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.