

NO. 149. AN ACT RELATING TO THE COLLECTION AND
DISPOSAL OF MERCURY-ADDED THERMOSTATS.

(H.515)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The general assembly finds:

(1) According to a 2004 study by the U.S. Environmental Protection Agency, titled "International Mercury Market Study and the Role and Impact of U.S. Environmental Policy," more than 10 percent of the estimated mercury reservoir in the United States is in thermostats.

(2) In 2000, thermostat manufacturers General Electric, Honeywell, and White Rodgers established the Thermostat Recycling Corporation (TRC) that runs the program for collecting mercury-containing thermostat discarded in Vermont. Under the TRC program, thermostat wholesalers volunteer to place bins where heating, ventilation, and air-conditioning (HVAC) contractors can discard thermostats.

(3) The manufacturers of mercury-containing thermostats, with the cooperation of the agency of natural resources, should be encouraged to submit a single unified plan for the collection of mercury-containing thermostats, the cost of which should be appropriately apportioned between participating manufacturers.

Sec. 2. 10 V.S.A. § 7102 is amended to read:

§ 7102. DEFINITIONS

As used in this chapter:

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(6)(A) “Manufacturer” means any person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture that (i) produces a mercury-added product, or (ii) serves as an importer or domestic distributor of a mercury-added product produced outside the United States.

(B) This definition shall not apply to retailers for whom importing is not their primary business.

(C) In the case of a multi-component mercury-added product, the manufacturer is the last manufacturer to produce or assemble the product.

(D) In the case of mercury-containing thermostats, the manufacturer is the original equipment manufacturer.

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(16) “Mercury-containing thermostat” means 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-containing 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.

(17) “Person” means any individual, corporation, partnership, cooperative, association, firm, sole proprietorship, governmental agency, or other entity.

(18) “Thermostat retailer” means a person who sells thermostats of any kind directly to homeowners or other nonprofessionals through any selling or distribution mechanism, including but not limited to sales using the Internet or catalogues. A retailer may also be a wholesaler if it meets the definition of wholesaler.

(19) “Thermostat wholesaler” means a person that is engaged in the distribution and wholesale sale of heating, ventilation, and air-conditioning components to contractors who install heating, ventilation, and air-conditioning components.

Sec. 3. 10 V.S.A. § 7107 is amended to read:

§ 7107. DISCARDED MERCURY-ADDED PRODUCTS

(a) Management of discarded mercury-added products. After July 1, 2007, discarded mercury-added products, except for mercury-added button cell batteries, products containing mercury-added button cell batteries as their only mercury-added components, and photographic film shall be managed as provided in this section.

(1) Disposal ban. No person shall knowingly dispose of mercury-added products in a solid waste landfill or combustor.

(2) Source separation. Except as otherwise provided by this section, every person who discards solid waste shall separate mercury-added products from that solid waste for management as hazardous waste or universal hazardous waste, according to all applicable state and federal regulations. Any contractor who replaces or removes mercury-added products shall assure that any discarded mercury-added product is subject to proper separation and management as a hazardous waste or universal hazardous waste. Any contractor who replaces a mercury-containing thermostat from a building shall deliver the mercury-containing thermostat to an appropriate collection location for recycling.

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(d) Removal of mercury-added components. The agency shall conduct a study and make recommendations for requirements to remove effectively and feasibly mercury-added components in products prior to disposal or recycling processes. This report shall identify removal and collection systems at public and private solid waste management facilities and salvage businesses, manufacturer-sponsored or operated collection and take-back programs; and other feasible programs. The agency will identify costs mechanisms for financing such programs. The study shall address removal and collection of mercury-added components in automobiles and the collection of switches,

relays, and gauges in home appliances, heating devices, and other equipment.

The agency shall report to the general assembly no later than January 15, 2006.

~~The agency shall conduct a study, and in consultation with the advisory committee on mercury pollution, make recommendations on methods to increase recycling of mercury thermostats. The study shall identify incentive-based programs and other feasible programs, including costs and mechanisms for financing such programs. The agency shall report to the general assembly no later than January 15, 2008.~~

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Sec. 4. 10 V.S.A. § 7116 is added to read:

§ 7116. MERCURY-CONTAINING THERMOSTATS

(a) Manufacturer responsibility. Each thermostat manufacturer that has offered for final sale, sold at final sale, or has distributed mercury-containing thermostats in Vermont shall, individually or collectively:

(1) Not later than October 1, 2008 submit a plan to the agency for approval that describes a collection and financial incentive program for mercury thermostats. The program contained in this plan shall ensure that the following take place:

(A) that an effective education and outreach program shall be developed and shall be directed toward wholesalers, retailers, contractors, and homeowners. There shall be no cost to thermostat wholesalers or thermostat retailers for education and outreach materials.

(B) that handling and recycling of mercury-containing thermostats are accomplished in a manner that is consistent with the provisions of the universal waste rules adopted by the secretary.

(C) that containers for mercury-containing thermostat collection are provided to all thermostat wholesalers. The cost to thermostat wholesalers shall be limited to an initial, reasonable one-time fee per container as specified in the plan.

(D) that collection systems are provided to all collection points registered pursuant to subdivision (d)(3) of this section. Collection systems can include individual product mail back or multiple collection containers. The cost to registered collection points shall be limited to an initial, reasonable one-time fee per container as specified in the plan.

(E) that a financial incentive is established with a minimum value of \$5.00 for the return of each mercury-containing thermostat to a thermostat wholesaler by a contractor or service technician. The financial incentive shall be in the form of cash or coupons that are redeemable by the contractor or service technician.

(F) that a financial incentive is established with a minimum value of \$5.00 to homeowners or nonprofessionals for the return of each mercury-containing thermostat to a collection point registered with the agency. The financial incentive shall be in the form of cash or in the form of a coupon that can be redeemed for cash from the manufacturer or can be redeemed for a

credit toward purchase of general merchandise in the retail location where the thermostat was returned.

(G) mechanisms to protect against the fraudulent return of thermostats are established.

(2) No later than April 1, 2009, implement a mercury thermostat collection plan approved by the secretary under subdivision (d)(1) of this section.

(3) Beginning in 2010, submit an annual report to the secretary by April 1 of each year that includes, at a minimum, all of the following:

(A) The number of mercury-containing thermostats collected and recycled by that manufacturer pursuant to this section during the previous calendar year.

(B) The estimated total amount of mercury contained in the thermostat components collected by that manufacturer pursuant to this section.

(C) An evaluation of the effectiveness of the manufacturer's collection program and the financial incentive.

(D) An accounting of the administrative costs incurred in the course of administering the collection and recycling program and the financial incentive plan.

(b) Thermostat wholesaler and thermostat retailer responsibilities.

(1) By April 1, 2009, a thermostat wholesaler shall not offer for final sale, sell at final sale, or distribute thermostats unless the wholesaler:

(A) acts as a collection site for thermostats that contain mercury.

(B) promotes and utilizes the collection containers provided by thermostat manufacturers to facilitate a contractor collection program as established by subsection (a) of this section, and all other tasks as needed to establish and maintain a cost-effective manufacturer collection and financial incentive program.

(2) By April 1, 2009, a thermostat retailer shall not offer for final sale, sell, or distribute thermostats in the state unless the thermostat retailer participates in an education and outreach program to educate consumers on the collection program for mercury thermostats.

(c) Sales prohibition. Beginning April 1, 2009, the following sales prohibitions shall apply to manufacturers, thermostat wholesalers, and thermostat retailers:

(1) A manufacturer not in compliance with this section is prohibited from offering any thermostat for final sale in the state, selling any thermostat at final sale in the state, or distributing any thermostat in the state. A manufacturer not in compliance with this section shall provide the necessary support to thermostat wholesalers and thermostat retailers to ensure the manufacturer's thermostats are not offered for final sale, sold at final sale, or distributed in this state.

(2) A thermostat wholesaler or thermostat retailer shall not offer for final sale, sell at final sale, or distribute in this state any thermostat of a manufacturer that is not in compliance with this section.

(d) Agency responsibilities.

(1) Within 60 days of receipt of a complete application from a manufacturer, the agency shall review and may grant, deny, or approve with modifications a manufacturer plan required by subdivision (a)(1) of this section. The agency shall not approve a plan unless all elements of subdivision (a)(1) are adequately addressed. In reviewing a plan, the agency may consider consistency of the plan with collection and financial incentive requirements in other states and consider consistency between manufacturer collection programs. In reviewing plans, the agency shall ensure that education and outreach programs are uniform and consistent to ensure ease of implementation by thermostat wholesalers and thermostat retailers.

(2) The agency shall establish a process under which a plan submitted by a manufacturer is, prior to plan approval, available for public review and comment for 30 days. The agency shall consult with interested persons, including representatives from thermostat manufacturers, environmental groups, thermostat wholesalers, thermostat retailers, service contractors, municipalities, and solid waste districts.

(3) Registered collection points. The agency shall maintain and post on the agency of natural resources' website a list of municipalities, solid waste

districts, and thermostat retailers who wish to register as collection points for mercury thermostats.

(4) Education and outreach. In conjunction with the educational and outreach programs implemented by manufacturers, the agency shall conduct an education and outreach program directed toward wholesalers, retailers, contractors, and homeowners to promote the collection of discarded mercury-containing thermostats.

(5) Report. By January 15, 2010, and annually thereafter, the agency shall submit a report on the collection and recycling of mercury-containing thermostats in the state to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy. The report due in 2010 must include a description and discussion of the financial incentive plan established under this section and recommendations for any statutory changes concerning the collection and recycling of mercury-containing thermostats. Subsequent reports must include an evaluation of the effectiveness of the thermostat collection and recycling programs established under this section, information on actual collection rates, and recommendations for any statutory changes concerning the collection and recycling of mercury-containing thermostats. These reporting requirements may be combined with other reports on mercury that the agency is required to provide to the general assembly.

(e) Rate of collection. By July 1, 2010, the agency shall estimate the number of out-of-service thermostats generated in Vermont on an annual basis, in consultation with interested persons, including representatives from thermostat manufacturers, thermostat wholesalers, thermostat retailers, service contractors, environmental groups, municipalities, and solid waste districts. Beginning July 1, 2011, should collection efforts fail to result in the collection and recycling of at least 65 percent of the out-of-service mercury-containing thermostats in the state, the agency shall, in consultation with interested persons, require modifications to manufacturers' collection plans in an attempt to improve collection rates in accordance with these goals.

Sec. 5. MERCURY ADVISORY COMMITTEE REPORT ON TOXIC
SUBSTANCES

(a) On or before January 15, 2009, the mercury advisory committee shall report to the senate and house committees on natural resources and energy and the house committee on fish, wildlife and water resources and the senate committee on health and welfare regarding whether the jurisdiction of the mercury advisory committee should be expanded to include review of additional toxic substances. In preparing the report, the committee may consult with interested parties. The report shall include:

(1) A summary of existing Vermont programs and entities that identify or address the use of and risks posed by harmful toxic substances.

(2) A summary of how other states identify and minimize the risk posed by harmful toxic substances.

(3) A recommendation as to whether the jurisdiction of the mercury advisory committee or any other existing Vermont program or state agency should be expanded to include review of additional toxic substances.

(4) If a recommendation under subdivision (3) of this subsection is made to expand the jurisdiction of the mercury advisory committee or the jurisdiction of any other Vermont program or state agency, the report shall include each of the following:

(A) A recommendation of the toxic substances or categories of toxic substances that should be added to the jurisdiction of the mercury advisory committee or, if relevant, the jurisdiction of any other Vermont program or state agency, including an explanation of the criteria employed to review and identify such substances;

(B) Recommended statutory changes to the mercury advisory committee's statutory charge under 10 V.S.A. § 7113 or recommended statutory changes to the statutory charge of any other Vermont program or state agency, including an analysis of the impact of such expansion relative to the ability of the committee, program, or state agency to meet its current responsibilities;

(C) A recommendation for how to improve the toxic use reduction and hazardous waste reduction programs established under 10 V.S.A. chapter 159;

(D) A recommended date to which the repeal of the mercury advisory committee should be extended; and

(E) The estimated cost, if any, of expanding the jurisdiction of the mercury advisory committee or expanding the jurisdiction of another Vermont program or state agency, including identification of additional resources that would be required for implementing the expanded jurisdiction.

(b) For the purposes of this section, the mercury advisory committee shall consist of the members set forth in 10 V.S.A. § 7113(a), the attorney general of Vermont or his or her designee, the department of health state toxicologist, an employee of the department of environmental conservation designated by the secretary of the agency of natural resources, and a member of a consumer interest group to be appointed by the governor.

Sec. 6. SUNSET

Subdivisions 7116(a)(3) (reporting requirement for manufacturers of mercury-containing thermostats) and (d)(4) (agency of natural resources reporting requirement regarding mercury-containing thermostats) of Title 10 shall be repealed on April 2, 2015.

Approved: May 19, 2008