

[A decade later, the state still hasn't enforced laws curbing mercury](#)



PAT GREENHOUSE/GLOBE STAFF

The Massachusetts State House.

By [David Abel](#) GLOBE STAFF MAY 22, 2017

More than a decade after Massachusetts lawmakers passed sweeping legislation to reduce the amount of mercury released into the environment, state regulators have yet to enforce the law.

As a result, the manufacturers of millions of fluorescent light bulbs, one of the main sources of the toxic metal, have avoided millions of dollars in fees and fines, and little has been done to increase the state's recycling rate for mercury, also found in batteries, automotive parts, and thermometers and thermostats.

The long delay has outraged lawmakers and environmental advocates, who say industry lobbyists have stymied the law. They also blame budget cuts at the

state Department of Environmental Protection, the agency charged with implementing the law, which has struggled with a growing workload and a significantly diminished staff.

“It’s very distressing and disturbing that this has taken so long,” said state Senator Marc Pacheco, a Taunton Democrat and a chief proponent of the legislation. “I don’t remember a case where it has taken this long to get something done.”

The law, called the Mercury Management Act, has languished since its passage in 2006. Three years ago, in a compromise designed to break the impasse, Pacheco sponsored a controversial amendment to the law that reduced its financial burden on manufacturers of fluorescent bulbs — rescinding at least \$5 million in fines levied against the industry and eliminating the requirement that they substantially increase recycling rates.

Instead, some 40 companies that sell the bulbs in Massachusetts would be required to pay \$300,000 to the state each year through 2024 to promote mercury recycling. Environmental advocates criticized the changes as a giveaway to an industry that had fought the original law, but the amendment passed.

Still, state officials never issued the updated rules, leaving the law unenforced.

Lobbyists for the lightbulb industry acknowledge meeting with state officials to discuss the law, but they couldn’t explain the delay.

Officials in Governor Charlie Baker’s administration declined to be interviewed about why the regulations have not been issued and denied a Globe request for the latest draft regulations, saying they’re exempt from public records laws as “deliberative process materials.”

In a written response, state officials said they expect to form a “stakeholder working group” this summer and issue draft regulations this year. It typically takes at least another six months after that for the rules to take effect.

“The Mercury Management Act does not require MassDEP to issue regulations within a certain time frame,” wrote Ed Coletta, a Department of Environmental Protection spokesman.

The delay has risks. Mercury enters the environment through coal-fired power plants and the burning of discarded products that contain mercury, in addition to fluorescent bulbs. From landfills and dumps, mercury can leach into groundwater.

Over the years, state studies have found elevated mercury levels in lakes and ponds, making many freshwater fish unsafe to eat. Even minuscule amounts can cause serious health consequences for consumers of fish.

Power plants, however, have cut emissions and manufacturers have reduced the amount of mercury in their products, so its levels have been declining. A 2014 state study found that mercury pollution in Massachusetts had dropped by around 90 percent since the 1990s.

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The recycling of thermostats, for example, has increased since 2000 at a rate twice the national average, according to the Thermostat Recycling Corp, a nonprofit group founded by manufacturers. But thermostats represent a relatively small source of mercury.

With fluorescent bulbs, the state stopped publishing its recycling rate in 2009, when officials estimated Massachusetts had recycled 34 percent of nearly 15 million discarded that year. The original mercury law sought to double that rate.

In all, state officials say they have no way of tracking exactly how much mercury is being released into the environment, complicating their regulations.

“As a result of the diversity of products that contain mercury, the complexity of determining the amount of these products currently in the marketplace, and identifying the percentage of those products that will be disposed in any given year, no state calculates a single recycling rate for mercury,” Coletta said.

As for why the mercury management program is delayed, “I don’t know what happened,” said Mark Kohorst, a spokesman for the National Electrical Manufacturers Association, which represents fluorescent bulb manufacturers. “When Baker took office, he set new priorities. I’m not sure why they haven’t gotten around to these particular regulations.”

He defended his group’s opposition to the initial mercury law, saying it relied on “unobtainable targets.”

“The whole thing was crazy, and the Legislature realized that,” Kohorst said. “The state realized that there was no accurate way to compute a recycling rate.”

Environmental advocates, however, have urged officials to emulate Maine and Vermont, which require manufacturers to offer consumers financial incentives for recycling and fine those that don’t meet specific targets.

They’ve also urged the state to rebuild the depleted staff at its environmental agencies. Over the past decade, as the Department of Environmental Protection shed nearly a third of its employees, enforcement actions for serious violations dropped by more than half.

Among those who left the department in recent years was John Reinhardt, a senior official who until two years ago oversaw its mercury management program.

“There has been an enormous loss of experience,” he said.

The 2006 law required the state to assign three agency staffers to oversee mercury management. But that never happened, and when he left in 2015, he was never replaced, he said.

Reinhardt attributed part of the delay to an executive order issued by Baker that required all state agencies to review their regulations to ensure they didn't exceed federal mandates.

He and others at the agency submitted draft mercury regulations to their supervisors the month before Baker assumed office. The rules would have required companies to pay fees based on how many fluorescent bulbs they sold.

But nothing was done.

“The draft regulations went to the commissioner's desk, and it was like they went into a black hole,” Reinhardt said.

State officials said Baker's regulatory review hasn't delayed the law from taking effect.

Kohorst, the industry lobbyist, said the manufacturers have done their best to educate contractors and consumers about the need to recycle products with mercury, but the responsibility for that ultimately falls to the state, he said.

Scott Cassel, chief executive of the Product Stewardship Institute, a consumer advocacy group in Boston, said the industry has saddled the state with the costs of curbing mercury pollution.

But that doesn't excuse the state from enforcing the law already on the books, he and others said.

"It's just ridiculous — egregious — that it has taken this long," said Elizabeth Saunders, director for Clean Water Action in Massachusetts.

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