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TITLE 329 SOLID WASTE MANAGEMENT BOARD

CONTINUATION OF FIRST NOTICE 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 the collection of mercury switches in end-of-life vehicles. Since publication of the First Notice for this rulemaking in October 2005 (29 IR 221), the Indiana Legislature enacted Public Law 170-2006 regarding removing mercury switches from end-of-life vehicles. This rulemaking will implement P.L.170-2006 by proposing to add reporting requirements for motor vehicle recyclers and other persons that remove mercury switches from end-of-life vehicles to report to IDEM; the allowance for motor vehicle recyclers to remove and recycle mercury switch assemblies and ABS mercury switches and receive payment; the amount of the payment for a mercury switch removed from a vehicle; the procedure for the commissioner to pay a claim for the removal of a mercury switch; clarification of a "motor vehicle that is intentionally and unintentionally flattened, crushed, or baled"; clarification of the effect on the rule if the statutory authority expires; and any necessary definitions and requirements in order to meet the statutory provisions of HEA 1110-2006 (Public Law 170-2006) and establish an effective program.

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

HISTORY

First Notice of Comment Period: October 1, 2005, Indiana Register (29 IR 221).

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; P.L.170-2006.

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 a 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.

House Enrolled Act 1110-2006 (Public Law 170-2006) requires the removal of mercury switches from motor vehicles and has the following additional provisions:

- Requires manufacturers of motor vehicles offered for sale in Indiana to develop and implement a plan to remove, collect, recover, and recycle or dispose of certain mercury switches from end-of-life vehicles.
- Exempts from mercury switch plan development requirements motor vehicle manufacturers that have never installed mercury switches in their motor vehicles.
- Requires the Indiana Department of Environmental Management (IDEM) to allow a public comment period on a plan of at least 30 days, and to act on the plan within 120 days.
- Requires motor vehicle recyclers to remove all mercury switches from end-of-life vehicles.
- Provides that motor vehicle recyclers include automotive salvage recyclers, automobile scrap yards, hulk crushers, scrap metal processors, and vehicle disposal facilities.
- Provides that mercury switch removal requirements take effect 30 days after IDEM approves a plan and expire the earlier of July 1, 2016, or the date a national mercury switch recovery program takes effect.
- Provides for a payment out of the solid waste management fund (SWMF) to a motor vehicle recycler for each mercury switch removed:

- (1) in an amount of at least \$1 and not more than \$5 as determined by the IDEM commissioner; and
- (2) to the extent that the commissioner makes money available from the SWMF for that purpose.
- Allows money to be redirected to the SWMF for that purpose from the Indiana recycling promotion and assistance fund and the environmental management special fund (EMSF).
- Allows any person to contribute or assign assets to the solid waste management fund to be used by IDEM to make payments for mercury switches.
- Requires IDEM to report information on mercury switch removal to the legislative council and the environmental quality service council.

This rulemaking will implement P.L.170-2006 by proposing to add reporting requirements for motor vehicle recyclers and other persons that remove mercury switches from end-of-life vehicles to report to IDEM; the allowance for motor vehicle recyclers to remove and recycle mercury switch assemblies and ABS mercury switches and receive payment; the amount of the payment for a mercury switch removed from a vehicle; the procedure for the commissioner to pay a claim for the removal of a mercury switch; clarification of a “motor vehicle that is intentionally and unintentionally flattened, crushed, or baled”; clarification of the effect on the rule if the statutory authority expires; and any necessary definitions and requirements in order to meet the statutory provisions of HEA 1110-2006 (Public Law 170-2006) and establish an effective program.

Alternatives to be Considered Within the Rulemaking

Alternative 3. This rulemaking will implement P.L.170-2006 by proposing to add reporting requirements for motor vehicle recyclers and other persons that remove mercury switches from end-of-life vehicles to report to IDEM; the allowance for motor vehicle recyclers to remove and recycle mercury switch assemblies and ABS mercury switches and receive payment; the amount of the payment for a mercury switch removed from a vehicle; the procedure for the commissioner to pay a claim for the removal of a mercury switch; clarification of a “motor vehicle that is intentionally and unintentionally flattened, crushed, or baled”; clarification of the effect on the rule if the statutory authority expires; and any necessary definitions and requirements in order to meet the statutory provisions of HEA 1110-2006 (Public Law 170-2006) and establish an effective program.

Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No, if the National Mercury Switch Recovery Program becomes effective, the Indiana statute regarding this program expires.

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. If a National Mercury Switch Recovery Program is determined by the Commissioner to meet the goals of the statute, the Indiana statute regarding this program expires.

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 3. This rulemaking does not result in any new costs to the regulated community, state or local governments that are not already imposed by state law (HEA 1110-2006; Public Law 170-2006).

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, Planning, and Outreach 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 May 30, 2006.

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

Bruce H. Palin
Assistant Commissioner
Office of Land Quality