

No. 2008-97

AN ACT

HB 44

Prohibiting the sale, installation and disposal of mercury thermostats; and prescribing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Mercury-Free Thermostat Act.

Section 2. Legislative findings.

The General Assembly finds and declares as follows:

(1) Waterways throughout this Commonwealth have been placed under fish consumption advisory warnings due to high levels of mercury contamination.

(2) Human exposure to mercury from thermostats is primarily through improper disposal of items in landfills or through incineration.

(3) Mercury thermostats represent the largest amount of mercury in ordinary household products. A single mercury thermostat contains between three and five grams of mercury. According to the Environmental Protection Agency's 2002 estimates, each year about six to eight tons of mercury from discarded thermostats end up in solid waste facilities and between one and two tons are released into the air.

(4) Electronic programmable thermostats that do not contain mercury are readily available and can save consumers considerable money in energy costs when used properly. Snap-switch thermostats that function like mercury thermostats, but contain no mercury, are also available.

(5) The Commonwealth supports shared responsibility for all stakeholders including manufacturers, retailers, wholesalers, local and state governments working to resolve those issues and efforts to reduce mercury entering the atmosphere and water supply from all sources in the most cooperative and cost-effective means available.

(6) The nonprofit Thermostat Recycling Corporation (TRC), created and supported by thermostat manufacturers, is a voluntary program designed to collect mercury thermostats from wholesalers. The TRC has been operating in this Commonwealth since 2000 and has recycled almost 30,000 thermostats, thereby diverting more than 284 pounds of mercury in seven years in Pennsylvania. This Commonwealth has been a consistently high-performing state under the program, with collections higher than all but five other states in 2007. Collections in Pennsylvania peaked at 7,019 thermostats in 2006.

(7) It is in the public interest to increase the scope and effectiveness of mercury thermostat collection programs through promotion and expansion of recycling efforts and banning the sale, installation and disposal of mercury thermostats in this Commonwealth.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Department.” The Department of Environmental Protection of the Commonwealth.

“Manufacturer.” The owner of a brand name on a thermostat.

“Mercury thermostat.” A product or device that contains mercury or a mercury compound and is used to sense and control room temperature through communication with heating, ventilating or air-conditioning equipment. The term does not include such products or devices used to sense and control temperature as part of a manufacturing process.

“Retailer.” A business that sells thermostats of any kind directly to homeowners, other nonprofessionals or contractors through any selling or distribution mechanism, including, but not limited to, sales using the Internet or catalogs. A retailer may also be a wholesaler if the retailer meets the definition of wholesaler.

“Wholesaler.” A business that the Department of Environmental Protection determines is primarily engaged in the distribution and wholesale selling of large quantities of heating, ventilation and air conditioning components to contractors who install heating, ventilation and air conditioning components.

Section 4. Prohibition on sale and installation of mercury thermostats.

Beginning one year after the effective date of this section, no person shall sell, offer for sale or install a mercury thermostat in this Commonwealth.

Section 5. Prohibiting disposal of mercury thermostats.

(a) General rule.—Beginning one year after the effective date of this section, no person, municipality or operator of a solid waste treatment, processing or disposal facility shall knowingly dispose, permit the disposal of or send to a resource recovery facility for processing a mercury thermostat from which the mercury has not been removed for reuse, recycling or other methods approved by the department.

(b) Exception.—No operator of a solid waste treatment, processing or disposal facility shall be found to have knowingly disposed of a mercury thermostat if the facility has notified customers of the ban in writing and posted signs at the facility clearly noting the prohibition.

(c) Construction.—This subsection shall not be construed to affect prior existing laws, rules or regulations more stringent than the provisions under subsection (a) governing the disposal of mercury, mercury thermostats and other products containing mercury.

Section 6. Collection and recycling programs.

(a) Manufacturer programs.—

(1) Each manufacturer of mercury thermostats that have been sold in this Commonwealth shall, individually or collectively, establish and maintain a department-approved collection and recycling program for out-of-service mercury thermostats from wholesalers, contractors and retailers, service technicians and homeowners.

(2) The program shall be developed in a manner that ensures to the maximum extent that:

(i) The capture of out-of-service mercury thermostats is maximized.

(ii) There is no direct cost to contractors, service technicians or homeowners for participating in the program, except that wholesalers, contractors and retailers may be assessed a nominal administrative fee to offset the cost of each collection bin for each collection location for out-of-service thermostats.

(iii) Information and education on proper management and recycling of mercury thermostats are provided to contractors, service technicians, wholesalers, retailers, institutions and homeowners to encourage the return of out-of-service thermostats at established recycling collection points.

(iv) The purchase of mercury-free programmable thermostats qualified by the Environmental Protection Agency's Energy Star program as replacements for mercury thermostats is encouraged.

(v) Mechanisms are in place to protect against the fraudulent return of thermostats.

(vi) The handling and recycling of mercury thermostats is accomplished in a manner compliant with section 5 and all other applicable Federal, State and local requirements.

(vii) The program otherwise implements all aspects of the collection program as instructed by the department.

(b) Wholesaler and retailer participation.—

(1) Beginning one year after the effective date of this section, except as provided for in paragraph (4), a wholesaler or retailer may not sell a thermostat in this Commonwealth unless the wholesaler, retailer or contractor acts as a collection site for thermostats that contain mercury.

(2) A wholesaler, retailer or contractor may meet the requirements of this subsection by participating as a collection site in a manufacturer collection program as described under subsection (a) or by collecting thermostats that contain mercury and managing the collected thermostats in accordance with applicable Federal and State universal waste rules.

(3) A wholesaler or retailer acting as a collection site shall provide visible signage at the site about the collection and recycling of mercury thermostats.

(4) A retailer or contractor that sells thermostats, but chooses not to act as a collection site or participate in a manufacturer collection program as a collection site, shall provide notice to consumers that recycling of

mercury thermostats is required under Pennsylvania law, and the notice shall include the specific names and locations of any collection sites within reasonably close proximity that recycle mercury thermostats.

(c) Department oversight.—

(1) Each manufacturer shall submit to the department for review and approval the collection and recycling program required under subsection (a) no later than 180 days after the effective date of this section. The proposed collection and recycling program may include appropriate enhancements to an existing program or a new program.

(2) Within 30 days after receipt of a manufacturer's proposed collection and recycling program, the department shall issue a public notice of the availability of the proposal and solicit public comment for 30 calendar days. Within 90 days after receipt of a proposal, the department shall approve, conditionally approve or disapprove the proposed collection and recycling program.

(3) If the proposed collection and recycling program is approved, with or without conditions, the manufacturer or manufacturers shall begin implementing the program within 90 days after receipt of approval.

(4) If the entire proposed collection and recycling program is not approved, the department shall inform the manufacturer as to the reasons for the disapproval. The manufacturer shall have 30 days thereafter to submit a revised plan.

(5) Within 30 days after receipt of a manufacturer's revised collection and recycling program, the department shall issue a public notice of the availability of the revised proposal and solicit public comments for 30 calendar days. Within 90 days after receipt of a proposal, the department shall approve, conditionally approve or disapprove the proposed collection and recycling program.

(6) If the revised collection and recycling program is not approved, the manufacturer shall be considered out of compliance for the purposes of subsection (b) beginning on the date the revised plan is disapproved by the department.

(7) In conducting its duties under this subsection, the department shall take into account the experience of thermostat collection programs in other states. The department shall approve a manufacturer's proposed collection and recycling program if it contains terms and conditions sufficient for the department to conclude that the proposed program will substantially improve and sustain mercury thermostat collection and recycling in this Commonwealth.

(d) Safe management and recycling program.—The department shall provide education and outreach to business, local government, schools and the public on proper management of mercury thermostats and other products containing mercury, including a listing of department-approved collection sites. A list of department-approved collection sites shall also be distributed

to wholesalers, retailers and contractors or made available on the department's Internet website.

(e) Reporting.—

(1) Each manufacturer with an approved collection and recycling program shall submit an annual report to the department by June 1 of each year that includes:

(i) The number of mercury thermostats collected and recycled by the manufacturer pursuant to this act during the previous year.

(ii) The estimated total amount of mercury contained in the mercury components collected by the manufacturer pursuant to this act during the previous year.

(iii) An evaluation of the effectiveness of the manufacturer's collection and recycling program and any recommendations for improvements, including modifications to the program.

(iv) Collection goals which shall be established to ensure an increase in the number of mercury thermostats collected each year until 2015 or a time that the department determines that the number of in-service thermostats is steadily declining as a result of the ban on sales and installation.

(2) Within 90 days after receipt of the manufacturer's annual reports, the department shall publish information in its Internet website about the collection and recycling of mercury thermostats in this Commonwealth. This information shall include:

(i) A description of the collection and recycling program established under this act.

(ii) Collection goals and data on actual collection rates.

(3) In conjunction with the manufacturer, the department may alter any and all elements of the previously approved manufacturer collection and recycling program, including, but not limited to, the number and location of the collection points and collection goals and means to achieve established goals, provided alterations are not inconsistent with the requirements of this and other applicable laws.

(4) The Secretary of Environmental Protection may discontinue the requirement for the annual report pursuant to this subsection on finding that mercury thermostats no longer pose a threat to the environment and to public health.

Section 7. Penalties.

The department may assess civil penalties for violations of this act. The penalty shall not exceed \$2,500 per day for each violation. Each day of continued violation, and each violation of any provision of this act, any rule or regulations adopted under this act, any order of the department or any condition or term of a collection and recycling program approved pursuant to this act shall constitute a separate offense and violation.

Section 8. Effective date.

This act shall take effect in 60 days.

APPROVED—The 9th day of October, A.D. 2008.

EDWARD G. RENDELL