

**Response to Comments**

**to**

**Amendments to Rules and Regulations Governing the Administration and Enforcement of the RI Mercury Reduction and Education Act**



*RI Department of Environmental Management*

*July 2007*

The following individuals submitted comments, verbally or in writing, at the May 18, 2007 public hearing held at the RI DEM in Providence or in direct written correspondence to the Department of Environmental Management between April 12, 2007 and May 24, 2007. Copies of all comments are on file and available for public review at the RI Department of Environmental Management, 235 Promenade Street, Providence, RI 02908.

<b>Paul D'Adamo</b>	Auto Recyclers Association of RI
<b>Sheila Dormody</b>	Clean Water Action (RI)
<b>Brian Rippon</b>	End of Life Vehicle Solutions (ELVS)
<b>Dan Asdit</b>	Ford Motor Company

The following responses by the Department of Environmental Management address both specific individual comments and general categories of similar comments offered by two or more individuals.

All comments received focused on either the new dental amalgam requirements (Section 15) or amendments to Section 12 on mercury-added convenience light switches.

**Comment:**

The proposed regulations omit reference to the requirements established in 23-24.9-9.2 on best management practices. DEM should amend the proposed regulations to incorporate this requirement.

**Response:**

*RI DEM agrees with this comment. As such, a new section 15.2.1 has been added to the regulations.*

*15.2.1 Rhode Island dental offices, facilities and vocational dental educational programs shall use, instruct, and comply with best management practices (BMPs) as maintained by the Department to minimize the presence of elemental mercury, used amalgam and waste amalgam in their wastewater discharge and in their solid waste. Such BMPs shall include a requirement for an amalgam removal efficiency of at least ninety-nine percent (99%).*

**Comment:**

The estimated number of switches available for collection in Section 12.2.1 and 12.2.2 and the associated capture rate needs to be adjusted to reflect diminishing switch availability.

**Response:**

*Through this rulemaking, RI DEM is not proposing amendments to the mercury switch count in 12.2.1 or 12.2.2. We reviewed the End Of Life Vehicle Solutions (ELVS) information presented about the number of switches available for removal. The switch numbers in the regulations were developed based upon findings in the "Recommendations to Prevent Mercury Pollution from Auto Parts: A Report to the Mercury Reduction Oversight Commission from the Subgroup on Auto Mercury (March 2005)."*

*In order to address concerns that the number of mercury switches available for capture and recycling will gradually decline in coming years, DEM has incorporated language in the regulations which calls for a biennial review of reported capture rates to determine if amendments to Section 12.2.2 are necessary.*

**Comment:**

Section 12.3.5.2 requires that the payment of the \$5.00 fee for each mercury switch shall be made to vehicle recyclers or scrap recycling facilities no later than 30 days after the vehicle recycler or scrap recycling facility relinquishes the switch(s) to the manufacturer as part of the collection program in Section 12.2. Please consider amending this provision to allow 60 to 90 days for mailing of the checks to the recycler.

**Response:**

*RI DEM agrees with this comment. The time period for payment has been changed to **60 days** after the vehicle recycler or scrap recycling facility relinquishes the switch(s) to the manufacturer.*

**Comment:**

Section 12.6 requires vehicle recyclers report (by February 15<sup>th</sup> of each year) to RI DEM on the total number of mercury switches removed from end-of-life mercury vehicles during the pervious calendar year. Instead of reporting on the “number of mercury switches removed from end-of-life vehicles” the regulations should ask for the number of switches bulk shipped to ELVS. This will result in a more consistent tracking tool for RI DEM, recyclers and the manufacturers.

**Response:**

*RI DEM agrees with this comment. Rather than reporting on the “number of mercury switches removed”, the regulation has been amended to ask for the “number of switches returned to the manufacturer for recycling.”*

**Comment:**

Section 12.11 would allow any person to petition the state for an increased bounty if they can demonstrate that a different fee is necessary. This section is neither necessary nor productive for switch collection efforts in Rhode Island.

**Response:**

*RI DEM has gone to great lengths to ensure that these regulations accurately reflect legislative intent. RI’s mercury law as amended by the RI General Assembly in 2006 specifically states that the reimbursement for recyclers “shall include, but not be limited to a minimum of five-dollars (\$5.00) for each mercury switch. . . . “ As such, we feel it is appropriate to include such a petitioning provision. Any change in the fee paid to recyclers for the return of mercury switches would be subject to public review and comment through the Department’s rule making process.*

**Comment:**

Section 12.3 stipulates that vehicles manufacturers shall, by June 30, 2007 submit a plan to RI DEM setting forth a proposed mercury switch collection program. RIGL §23-24.9-10(b)(2) makes no requirement for the submission of such plans. A plan is not required by the statute.

**Response:**

*RI DEM feels that it is within the Department’s authority to request such a plan. RIGL §23-24.9-20 states: “The department shall promulgate rules and regulations as may be necessary to implement and carry out the provisions of this chapter.” We believe that requesting the submittal of a plan outlining how the manufacturers intend to collectively comply with RI’s mercury switch law is an important part of RI DEM’s implementation and oversight responsibilities.*

*Due to the timing of the filing of the regulations, the date for submittal of the plan in Section 12.3 has been changed to August 30, 2007.*

**Comment:**

The state proposes that in addition to providing information and training to facilitate the removal and recycling of mercury switches, “options for direct on-site assistance if requested” must be provided to dismantlers. The provision for on-site technical assistance is unnecessary.

**Response:**

*RI DEM disagrees with the opinion that having on-site technical assistance available upon request is unnecessary. We believe targeted on-site assistance is an important part of RI's mercury switch removal and recycling program. DEM receives calls for assistance which are probably better handled by representatives of ELVS or manufacturers familiar with and trained in mercury switch removal and recycling practices. On-site technical assistance can come in many forms.*

**Comment:**

Section 12.3.4 requires that information be provided to the general public concerning services to remove mercury switches in motor vehicles. ELVS has developed an excellent publicly-available website, [www.elvsolutions.org](http://www.elvsolutions.org), which provides considerable detailed information about the ELVS program including a state-by-state menu with information pertinent to individual states like Rhode Island.

**Response:**

*RI DEM acknowledges the work ELVS and the manufacturers have already undertaken to advise the general public about the presence of mercury switches and proper removal/recycling techniques. We do not feel this comment warrants any changes to the regulations.*

**Comment:**

The annual reporting requirements contained in Section 12.5 of the regulations should be eliminated. This information is already available instantaneously from the ELVS contractor's website. Therefore an annual report will provide the state with nothing more than is already, and constantly, available via the website

**Response:**

*As part of RI DEM's management and oversight of the entire Mercury Reduction and Education Act (RIGL 23-24.9), we feel it is appropriate to request the submission of an annual report. RI DEM feels the submission of a short annual report will enable the Department to do a better job keeping the general public and members of the RI General Assembly updated on the program's progress. We do not feel this comment warrants any changes to the regulations.*