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May 1, 2008

RULES AND LEGISLATION COMMITTEE
Oakland, Ca.


Chairperson De La Fuente and Members of the Rules and Legislation Committee:

SUBJECT: RESOLUTION IN SUPPORT OF AB 2347 (RUSKIN) - "MERCURY THERMOSTATS TAKE-BACK" WHICH WOULD PROVIDE FOR FREE AND CONVENIENT RETURN OF MERCURY-CONTAINING THERMOSTATS TO ANY LOCATION THAT SELLS THEM

I am submitting the attached resolution for your review and support of AB 2347, which would provide for free and convenient return of mercury-containing thermostats to any location that sells them.

I have asked our Environmental Services staff to prepare a detailed analysis of AB 2347 for your supplemental packet.

Respectfully submitted,


JEAN QUAN
Councilmember, District Four

ASSEMBLY THIRD READING
AB 2347 (Ruskin)
As Amended April 3, 2008
Majority vote

ENVIRONMENTAL SAFETY 5-0
APPROPRIATIONS 12-5

Ayes:	Huffman, Eng, Evans, Feuer, Nava	Ayes:	Leno, Caballero, Davis, DeSaulnier, Furutani, Huffman, Karnette, Krekorian, Lieu, Nava, Solorio
		Nays:	Walters, Emmerson, La Malfa, Nakanishi, Sharon Runner

SUMMARY : Requires thermostat manufacturers, as defined, to establish a mercury-added thermostat collection and recycling program (CARP). Specifically, this bill :

- 1) Requires manufacturers, as defined, to establish and maintain a collection and recycling program for used mercury-added thermostats.
- 2) Defines the three parties involved in the CARP as follows:
 - a) A manufacturer is a business concern that owns or owned a name brand of mercury-added thermostats sold in this state before January 1, 2006 (when mercury-added thermostats sold in this state became illegal in California);
 - b) A wholesaler is a person engaged in distribution and wholesale selling of heating, ventilation, and air conditioning components to installation contractors. Manufacturers cannot be wholesalers; and,
 - c) A retailer is a person who sells thermostats directly to a homeowner or other nonprofessional through a mechanism

□

including, but not limited to, catalogs or the Internet. A retailer may be a wholesaler if he or she also meets that definition.

3) Establishes requirements for the CARP as follows:

- a) The CARP must be financed and managed by, or provided by, the manufacturer;
- b) Manufacturers may work collectively on the CARP if it meets all standards set in law; and,
- c) Additional requirements of the CARP include that it must:
 - i) Provide for collection, transportation, recycling, and disposal of out-of-service mercury-added thermostats;
 - ii) Comply with hazardous waste laws and regulations;
 - iii) Provide authorized recycling bins free to all participating retailers and wholesalers. Authorizes the CARP to contract with retailers for collection of thermostats;
 - iv) Make bins available, by January 1, 2010, at no cost to local governmental agencies for household hazardous waste collection;
 - v) Collect or pay for shipping when collection bins are full;
 - vi) Develop educational and other outreach material as specified, and provide that material to retailers, wholesalers, and household hazardous waste program. Materials may include signage, written materials, and other information; and,
 - vii) Publish on the Internet annually, beginning April 1, 2010, information regarding the CARP including data on effectiveness.

4) Requires a wholesaler with a physical location in the state to act as a collection site for used thermostats.

□

- 5) Requires a wholesaler to distribute the CARP educational and outreach materials to its customers.
- 6) Requires retailers or wholesalers that distribute new thermostats by mail to buyers in the state to include specified information about how to obtain a prepaid mail-in label to send a used mercury thermostat to an authorized recycler.
- 7) Makes findings and declarations related to mercury-added thermostats.

EXISTING LAW provides:

- 1) A person from selling, offering to sell, or distributing for promotional purposes, in this state, a mercury-added thermostat unless the mercury-added thermostat meets specified criteria.
- 2) Placing mercury-added thermostats in solid waste landfills.

FISCAL EFFECT : According to the Assembly Appropriations Committee, minor ongoing costs, about \$80,000 annually starting in 2009-10, to the Department of Toxic Substances Control to ensure the CARPs are established and operated in compliance with existing department regulations. (Hazardous Waste Control Account.) The bill includes a new crimes and infractions disclaimer.

COMMENTS :

Purpose of the bill : According to the author, there is no adequate system in place for collecting and recycling mercury-added thermostats at the end of their useful lives. Current statute bans the sale of new mercury-added thermostats for most uses after January 1, 2006, but, according to the author, the long life of thermostats means that many of them are still in use. Each mercury-added thermostat contains approximately three grams of mercury. Mercury is a known neurotoxin. It accumulates in the body and can lead to developmental disorders, serious illness, and other health effects.

□

Universal wastes : Mercury-added thermostats fall into a category of wastes called "universal wastes." These wastes pose a lower threat than most other hazardous wastes and are generated by a wide range of sectors - thus are 'universally'

generated. They can not be disposed of in solid waste landfills, but may, if handled in accordance to the universal waste regulations, be managed under less stringent management requirements than other hazardous wastes. Currently, the burden to manage this new waste stream falls almost entirely on local governments. Small batteries, fluorescent tubes, and electronic wastes are also universal wastes.

Existing voluntary mercury-added thermostat recycling program :
In 1998, the three largest thermostat manufacturers established the Thermostat Recycling Corporation (TRC) to run a voluntary collection program for mercury-added thermostats. According to TRC, California was one of the top five states in terms of pounds of mercury recovered in 2006. In that same year, 5,110 thermostats containing 77.3 pounds of mercury were collected in the state by TRC. There were 129 TRC collection bins in the state in 2006. The author is concerned that the voluntary program is not as effective as it might be at removing mercury-added thermostats from the waste stream.

Analysis Prepared by : Kate Riley / E.S. & T.M. / (916)
319-3965

FN: 0004214

AMENDED IN ASSEMBLY APRIL 3, 2008
AMENDED IN ASSEMBLY MARCH 24, 2008
CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2347

Introduced by Assembly Member Ruskin

February 21, 2008

An act to add Article 10.2.2 (commencing with Section 25214.8.10) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2347, as amended, Ruskin. Mercury-added thermostats: collection program.

(1) Existing law prohibits, on and after January 1, 2006, a person from selling, offering to sell, or distributing for promotional purposes, in this state, a mercury-added thermostat, as defined, unless the mercury-added thermostat meets specified criteria. A violation of the hazardous waste control laws is a crime.

This bill would enact the Mercury Thermostat Collection Act of 2008 and would require a manufacturer, ~~on and after January 1, 2009, that sold mercury-added thermostats in this state before January 1, 2006, and that sells thermostats in this state on and after January 1, 2009, that owns or owned the name brand of mercury-added thermostats sold in this state before January 1, 2006,~~ to establish and maintain a collection and recycling program for out-of-service mercury-added thermostats.

The bill would require a collection and recycling program for out-of-service mercury-added thermostats to meet certain requirements, including developing educational and outreach materials, providing

adequate incentives and education to contractors, service technicians, and homeowners to encourage return of thermostats to established recycling collection points and, on and after April 1, ~~2009~~ 2010, and by April 1 annually thereafter, publishing specified information on an Internet Web site.

The bill would require a wholesaler that has a physical location in the state to act as a collection site for out-of-service mercury-added thermostats, and would require a retailer or wholesaler that distributes new thermostats by mail to buyers in the state to include an Internet Web site address and toll-free telephone number with instructions on obtaining a prepaid mail-in label with the new thermostat. A wholesaler would also be required to distribute to its customers the educational and outreach materials developed by the program.

Because a violation of the act's requirements would be a crime, the bill would impose a state-mandated local program by creating new crimes.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 10.2.2 (commencing with Section
2 25214.8.10) is added to Chapter 6.5 of Division 20 of the Health
3 and Safety Code, to read:

4
5 Article 10.2.2. Mercury Thermostat Collection Act of 2008

6
7 25214.8.10. (a) The Legislature finds and declares all of the
8 following:

9 (1) Mercury that is released into the atmosphere can be
10 transported long distances and deposited in aquatic ecosystems,
11 where it is methylated to methylmercury, the organic and most
12 toxic form of mercury.

13 (2) Methylmercury bioaccumulates and biomagnifies in animals,
14 including fish and humans.

1 (3) The March 2007 report of the Office of Environmental
2 Health Hazard Assessment stated that fish consumption advisories
3 exist in about 40 states, including, within California, for the San
4 Francisco Bay and ~~delta~~ Delta, Tomales Bay, and eight other
5 county water bodies, and more locations may be included as more
6 fish and water bodies are tested.

7 (4) Methylmercury is a known neurotoxin to which the human
8 fetus is very sensitive.

9 (5) The federal Centers for Disease Control and Prevention
10 estimate that between 300,000 and 630,000 infants are born in the
11 United States each year with mercury levels that are associated,
12 at later ages, with the loss of IQ.

13 (6) New evidence indicates that methylmercury exposure may
14 increase the risk of cardiovascular disease in humans, especially
15 adult men.

16 (7) According to a 2004 study by the federal Environmental
17 Protection Agency, more than 10 percent of the estimated mercury
18 reservoir still currently in use in the United States resides in
19 mercury-added thermostats.

20 (8) Decreases in local and regional sources of mercury emissions
21 have been shown to lead to decreases in mercury levels in fish and
22 wildlife.

23 (9) As of January 1, 2006, state law banned the sale of new
24 mercury-added thermostats for most uses, but the long lifetime of
25 thermostats means that many of them are still in use.

26 (10) State law bans the disposal of mercury-added thermostats
27 in solid waste landfills, ~~but an effective system for collecting and~~
28 ~~recycling out-of-service mercury-added thermostats has not been~~
29 ~~established.~~ *according to an estimate by the Department of Toxic*
30 *Substances Control, less than 5 percent of the mercury-added*
31 *thermostats removed from buildings in the state are turned in to*
32 *the Thermostat Recycling Corporation (TRC) collection program.*

33 (11) In 1998, the largest thermostat makers, General Electric,
34 Honeywell, and White Rodgers, established the ~~Thermostat~~
35 ~~Recycling Corporation (TRC)~~ TRC to implement a program for
36 collecting used mercury-added thermostats. Under the TRC
37 program, thermostat wholesalers and contractors, ~~as well as~~
38 ~~household hazardous waste facilities,~~ volunteer to collect
39 thermostats from heating, ventilating, and air-conditioning
40 contractors, and the general public. *In 2007, the manufacturer,*

1 *Nordyne, joined the program and the TRC expanded its voluntary*
2 *program to household hazardous waste facilities.*

3 ~~(12) Currently, less than 5 percent of the mercury-added~~
4 ~~thermostats removed from buildings in the state are turned in to~~
5 ~~the TRC collection program, according to an estimate by the~~
6 ~~Department of Toxic Substances Control.~~

7 ~~(13)~~

8 (12) The California Integrated Waste Management Board, on
9 January 23, 2008, adopted an Overall Framework for an Extended
10 Producer Responsibility System for California.

11 ~~(14)~~

12 (13) Producers that historically manufactured, *branded*, and
13 sold mercury-added thermostats in California before 2006 have a
14 responsibility to collect out-of-service mercury thermostats and
15 ensure that they are properly handled and recycled.

16 (b) This article shall be known, and may be cited, as the
17 “Mercury Thermostat Collection Act of 2008.”

18 25214.8.11. For purposes of this article, the following
19 definitions shall apply:

20 ~~(a) “Manufacturer” means a business concern that sold~~
21 ~~mercury-added thermostats in this state before January 1, 2006,~~
22 ~~that were made by the business concern, and that sells thermostats~~
23 ~~in this state that are made by that business concern, on and after~~
24 ~~January 1, 2009, that are not mercury-added thermostats.~~

25 (a) “Manufacturer” means a business concern that owns or
26 owned a name brand of mercury-added thermostats sold in this
27 state before January 1, 2006.

28 (b) “Mercury-added thermostat” has the same meaning as
29 defined in paragraph (2) of subdivision (b) of Section 25214.8.1.

30 (c) “Out-of-service mercury-added thermostat” means a
31 mercury-added thermostat that is removed from a building or
32 facility in this state and is intended to be discarded.

33 (d) “Program” means a system for the collection, transportation,
34 recycling, and disposal of out-of-service mercury-added thermostats
35 that is financed, as well as managed or provided, by a manufacturer
36 *or collectively with other manufacturers.*

37 (e) “Retailer” means a person who sells thermostats of any kind
38 directly to a homeowner, or other nonprofessional through a selling
39 or distribution mechanism, including, but not limited to, a sale
40 using catalogs or the Internet. A retailer may be a wholesaler if

1 the person meets the definition of a wholesaler set forth in
2 subdivision (g).

3 (f) (1) "Thermostat" means a product or device that uses a
4 switch to sense and control room temperature through
5 communication with heating, ventilating, or air-conditioning
6 equipment. "Thermostat" includes a thermostat used to sense and
7 control room temperature in residential, commercial, industrial,
8 and other buildings, but does not include a thermostat used to sense
9 and control temperature as part of a manufacturing process.

10 (2) "New thermostat" means a thermostat sold or offered for
11 sale on and after January 1, 2009.

12 (g) "Wholesaler" means a person engaged in the distribution
13 and wholesale selling of heating, ventilation, and air-conditioning
14 components to contractors who install heating, ventilation, and
15 air-conditioning components. A manufacturer, as defined by this
16 section, is not a wholesaler.

17 25214.8.12. A manufacturer shall establish and maintain a
18 collection and recycling program for out-of-service mercury-added
19 thermostats in compliance with this article. A manufacturer may
20 establish a collection and recycling program individually or
21 collectively with other manufacturers, but the program shall meet
22 all of the requirements of Section 25214.8.13. A program may
23 contract with a retailer for an in-store or out-of-store collection of
24 mercury-added thermostats.

25 25214.8.13. A collection and recycling program for
26 out-of-service mercury-added thermostats shall meet all of the
27 following requirements:

28 (a) The mercury-added thermostats collected by the program
29 are collected, handled, and recycled in compliance with this chapter
30 and the regulations adopted pursuant to this chapter.

31 (b) The program provides authorized recycling bins for
32 mercury-added thermostat collection to ~~all retailers and~~
33 *participating retailers and all* wholesalers at no cost.

34 (c) On and after January 1, 2010, the program makes available
35 authorized recycling bins at no cost for mercury-added thermostat
36 collection to a local *governmental* agency that requests a bin for
37 mercury-added thermostat collection for use at a household
38 hazardous waste collection facility or *household hazardous waste*
39 event.

1 (d) The program either collects the recycling bins provided
2 pursuant to subdivisions (b) and (c) when they are full, or pays for
3 the costs of shipping the recycling bins ~~to an authorized mercury~~
4 ~~recycler for proper handling and recycling~~, as prescribed by the
5 program.

6 (e) The program develops educational and other outreach
7 materials aimed at contractors and homeowners, and makes those
8 materials available to ~~retailers~~, *participating retailers*, all
9 wholesalers, and household hazardous waste programs. These
10 materials may include, but are not limited to, one or more of the
11 following:

12 (1) Signage that is prominently displayed and easily visible to
13 the consumer.

14 (2) Written materials or templates of materials for reproduction
15 by retailers and wholesalers, to be provided to the consumer at the
16 time of purchase, delivery, or both purchase and delivery of a
17 thermostat. The materials shall include information on the
18 prohibition of improper disposal of mercury-added thermostats,
19 on the proper methods for recycling of mercury-added thermostats,
20 and on the available opportunities for recycling.

21 (3) References to the recycling opportunity in advertising or
22 other promotional materials, or both.

23 (4) Direct communications with the consumer at the time of
24 purchase.

25 (f) The program provides adequate incentives and education to
26 contractors, service technicians, and homeowners to encourage
27 return of thermostats to established recycling collection points.

28 (g) The program encourages the purchase of programmable
29 thermostats that comply with Part 6 (commencing with Section
30 100) of Title 24 of the California Building Code Standards and
31 that qualify for the Energy Star program of the federal
32 Environmental Protection Agency, as replacements for
33 mercury-added thermostats.

34 ~~(h) The program includes mechanisms to protect against the~~
35 ~~fraudulent return of thermostats.~~

36 (i)

37 (h) On and after April 1, ~~2009~~ 2010, and by April 1 annually
38 thereafter, the program publishes on an Internet Web site
39 information that includes all of the following:

1 (1) The number of mercury-added thermostats collected and
2 recycled by the program pursuant to this article during the previous
3 calendar year.

4 (2) The estimated total amount of mercury contained in the
5 thermostat components collected by the program pursuant to this
6 article.

7 (3) An evaluation of the effectiveness of the program.

8 (4) An accounting of the administrative costs incurred in the
9 course of administering the program.

10 (5) Examples of outreach and educational materials used by the
11 program.

12 25214.8.14. (a) A wholesaler that has a physical location in
13 the state shall act as a collection site for out-of-service
14 mercury-added thermostats.

15 (b) A retailer or wholesaler that distributes new thermostats by
16 mail to buyers in the state shall include with the sale of the new
17 thermostat, an Internet Web site address and toll-free telephone
18 number with instructions on obtaining a prepaid mail-in label that
19 a consumer may use to send an out-of-service mercury-added
20 thermostat to an authorized recycler.

21 (c) A wholesaler shall distribute the educational and outreach
22 materials developed by the program pursuant to Section 25214.8.13
23 to the customers of that wholesaler.

24 SEC. 2. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.

OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

City Attorney

DRAFT
C.M.S.

DRAFT RESOLUTION No. _____

2008 MAY 1 11:45 AM

Introduced by Councilmember _____

RESOLUTION IN SUPPORT OF AB 2347 (RUSKIN) - "MERCURY THERMOSTATS TAKE-BACK" WHICH WOULD PROVIDE FOR FREE AND CONVENIENT RETURN OF MERCURY-CONTAINING THERMOSTATS TO ANY LOCATION THAT SELLS THEM

WHEREAS, in 2007 the City Council adopted an Extended Producer Responsibility Resolution (Resolution #80390 C.M.S), authorizing the City to pursue extended producer responsibility legislation that will give incentives for the redesign of products to make them less toxic, and shift the cost for recycling and proper disposal of products from local governments to the producer and distributor of the product; and

WHEREAS, AB 2347 (Ruskin) would allow Californians at no additional charge to return thermostats to any location that sells new thermostats; now, therefore be it

RESOLVED: the City of Oakland declares its support for AB 2347 (Ruskin); and be it

FURTHER RESOLVED: that the City Council hereby directs the City Administrator and the City's legislative lobbyist to advocate for the above position in the California State Legislature.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California