

Department of Legislative Services
 Maryland General Assembly
 2003 Session

FISCAL AND POLICY NOTE

House Bill 62 (Delegate Hubbard, *et al.*)
 Environmental Matters

Environment - Products That Contain Mercury - Labeling and Disposal

This bill establishes prohibitions and requirements relating to the sale and disposal of “mercury-added products.” The Maryland Department of the Environment (MDE) must adopt regulations to implement the bill by October 1, 2004. The bill establishes guidelines for MDE to follow in developing those regulations.

Fiscal Summary

State Effect: General fund expenditure increase of at least \$39,600 in FY 2004 for MDE to begin implementing the regulatory program. Future year estimates are annualized and adjusted for inflation. No effect on revenues.

(in dollars)	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	39,600	76,800	80,100	83,700	87,500
Net Effect	(\$39,600)	(\$76,800)	(\$80,100)	(\$83,700)	(\$87,500)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential increase in local expenditures to post signs at refuse disposal systems, recycle and dispose of mercury-added products used by local governments, and purchase mercury-added products or mercury-free alternatives.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Mercury-added product means any of the following products if containing elemental mercury or a mercury compound that has been added to the product for any reason: dyes or pigments, electric switches, fluorescent lamps, and thermostats.

Beginning April 1, 2005, unless a mercury-added product is labeled in accordance with the bill and regulations adopted by MDE, a manufacturer or wholesaler may not sell the product at retail in the State, to a retailer in the State, or for use in the State. Unless properly labeled, a retailer may not knowingly sell a mercury-added product in the State. The manufacturer of a mercury-added product is responsible for affixing the label required under the bill. The bill establishes specific requirements relating to the label.

Beginning October 1, 2005, a person may not knowingly dispose of a mercury-added product in a refuse disposal system located in the State unless the mercury has been removed from the product and reused, recycled, or otherwise managed to ensure that it does not become part of solid waste or wastewater. By October 1, 2005, a refuse disposal system permit holder must post signs at all entrances to the refuse disposal system informing the public of that prohibition.

The bill does not apply to prescription drugs, any substance regulated by the federal Food, Drug, and Cosmetic Act, or biological products regulated by the federal Food and Drug Administration under the federal Public Health Service Act.

Current Law: Chapter 639 of 2001 prohibits a marketer, with specified exceptions, from selling or providing a fever thermometer containing mercury to a consumer except by prescription. Beginning October 1, 2003, no primary or secondary school, with specified exceptions, may use elemental or chemical mercury in a classroom. Beginning October 1, 2003, all State agencies must give “preference” to products and equipment that are mercury free or contain the least amount of mercury necessary to meet performance standards.

A person may not sell, distribute, or offer for sale in Maryland a mercuric oxide battery unless: (1) the person is a party to a plan approved by MDE; or (2) a retailer or seller has provided for the collection, recycling, or proper disposal of used mercuric oxide batteries through the sale to a refiner and the retailer or seller has complied with specified requirements. A person may not dispose of a mercuric oxide battery except in a manner that MDE approves under regulations.

In general, a manufacturer or distributor cannot sell, or offer for promotional purposes, any package or packaging component to which mercury was intentionally added.

Background: Mercury is a naturally occurring element that is found in air, water, and soil. In small quantities, it can conduct electricity, measure temperature and pressure, and act as a catalyst in industrial processes. However, it does not degrade and is not destroyed by combustion; rather, it is a persistent and toxic pollutant that bioaccumulates in the environment. Accordingly, mercury can reach dangerous levels in fish, even when released in small quantities. Consumption of mercury-contaminated fish poses a significant health threat.

Some of the mercury in the environment comes from natural sources such as marine and aquatic environments as well as volcanic and geothermal activity. However, recent studies suggest that anthropogenic sources, such as atmospheric deposition, the combustion of municipal and other solid waste, incineration, manufacturing processes, and accidental spills, account for the majority of mercury releases into the environment.

Federal and state agencies across the nation are exploring efforts to curtail the use of mercury in order to focus on prevention opportunities. According to MDE, several states in the northeast region are in the process of enacting or have enacted legislation to restrict or limit certain products containing mercury or mercury compounds. Several states are members of the Northeast Waste Management Officials' Association (NEWMOA), a nonprofit, nonpartisan interstate association established to coordinate interstate hazardous and solid waste activities, coordinate pollution prevention activities, and support state waste programs.

MDE's regulatory programs govern the management and disposal of wastes containing heavy metals such as mercury as both hazardous waste and nonhazardous solid waste. Other MDE permit programs restrict or limit the release of mercury into the environment through water and atmospheric discharges. Chapter 639 of 2001 expanded MDE's efforts relating to mercury by requiring that MDE provide outreach assistance to schools and implement a public education, outreach, and assistance program relating to mercury in the environment.

State Expenditures: General fund expenditures could increase by an estimated \$39,600 in fiscal 2004, which reflects a January 1, 2004 implementation date. This estimate reflects the cost of hiring one natural resource planner to develop regulations, administer the regulatory program, and provide public outreach and training to affected entities. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses, including costs for MDE to join NEWMOA so that it can effectively implement the regulatory program established by the bill.

Salary and Fringe Benefits	\$23,000
NEWMOA Membership	10,000
Public Outreach and Education	3,200
Equipment and Operating Expenses	<u>3,400</u>
Total FY 2004 State Expenditures	\$39,600

Future year expenditures are annualized and reflect: (1) full salaries with 4.5% annual increases and 3% employee turnover; (2) continued membership with NEWMOA; (3) more extensive public outreach and education in all counties and Baltimore City; and (4) 1% annual increases in other ongoing operating expenses.

Because the number and types of entities that would be subject to regulation as a result of this bill cannot be determined at this time, Legislative Services advises that total costs for MDE related to public outreach and education could be higher than the estimated amount.

The State is a user of products affected by the bill. Pursuant to Chapter 639 of 2001, however, beginning October 1, 2003, all State agencies must give preference to products and equipment that are mercury free or contain the least amount of mercury necessary to meet performance standards. Accordingly, it is assumed that any increase in costs for the State to purchase mercury-added products or mercury-free alternatives as a result of the bill would not be significant. However, the State could incur increased costs relating to the recycling and disposal of mercury-added products.

Local Expenditures: As operators of refuse disposal systems, local governments will incur increased expenditures to post signs by October 1, 2005 regarding the bill's disposal prohibition. Any such increase cannot be reliably estimated at this time but is not anticipated to be significant. As a user of products affected by the bill, local governments could incur increased costs related to the recycling and disposal of mercury-added products and, to the extent the bill results in an increase in price for mercury-added products or for mercury-free alternatives developed as a result of the bill, for the purchase of those products.

Small Business Effect: By requiring the labeling of mercury-added products beginning April 1, 2005, the bill will result in an increase in costs for manufacturers of such products. In addition, some manufacturers might respond by developing mercury-free alternatives; in some cases, alternatives could be more expensive than mercury-added products. It is assumed that any increase in costs for manufacturers would be passed on to wholesalers, retailers, and ultimately, consumers of mercury-added products in the

form of higher prices. Any small businesses involved with the labeling of mercury-added products could benefit from an increase in the demand for their services.

The bill's requirements and prohibitions relating to disposal also would have an impact on small businesses. First, small businesses that hold a refuse disposal system permit would incur costs to post signs in accordance with the bill. Second, the bill could also have an impact on small businesses involved with the removal and recycling of mercury from mercury-added products. According to MDE, currently there are no mercury recycling companies in Maryland. If the bill increases the demand for mercury recycling in the State, it is possible that the bill could attract such businesses to Maryland. Third, as a user of products affected by the bill, small businesses could incur increased costs related to the recycling and disposal of mercury-added products.

Additional Information

Prior Introductions: A similar bill was introduced during the 2002 session as HB 473. The bill received an unfavorable report from the House Environmental Matters Committee.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Caroline County, Northeast Maryland Waste Disposal Authority, U.S. Environmental Protection Agency, Department of Legislative Services

Fiscal Note History: First Reader - January 30, 2003
ncs/jr

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