

Substitute House Bill 443 - sections establishing requirements governing mercury.

Sec. 3734.13. (A) The director of environmental protection may issue, modify, suspend, or revoke enforcement orders in accordance with Chapter 3745. of the Revised Code to a holder of a registration certificate, permit, or license issued by the director or a board of health under this chapter, or to another person, directing the holder or person to abate a violation, or to prevent any threatened violation, of any section of this chapter other than sections 3734.90 to 3734.9013 of the Revised Code, a rule adopted thereunder, or a term or condition of a permit, license, or variance issued thereunder within a specified, reasonable time.

(B) Notwithstanding division (C) of section 3734.85 of the Revised Code, if the director determines that an emergency exists requiring immediate action to protect the public health or safety or the environment, he the director may issue an order, without notice or hearing, reciting the existence of the emergency and requiring that such action be taken as necessary to meet the emergency. The order shall take effect immediately. Any person to whom the order is directed shall comply immediately, but on application to the director shall be afforded a hearing as soon as possible and not later than thirty days after application. On the basis of the hearing, the director shall continue the order in effect, revoke it, or modify it. No emergency order shall remain in effect for more than one hundred twenty days after its issuance.

(C) If the director determines that any person is violating or has violated this chapter, a rule adopted thereunder, or a term or condition of a permit, license, variance, or order issued thereunder, the director may request in writing that the attorney general bring a civil action for appropriate relief, including a temporary restraining order, preliminary or permanent injunction, and civil penalties in any court of competent jurisdiction. Such an action shall have precedence over all other cases. Except as otherwise provided in this division with regard to a violation of the provisions of this chapter governing scrap tires, a rule adopted under those provisions, a term or condition of a permit or license issued under them, or a term or condition of an order issued pertaining to scrap tires, the court may impose upon the person a civil penalty of not more than ten thousand dollars for each day of each violation of this chapter other than a violation of section 3734.60 of the Revised Code or, a violation of sections 3734.90 to 3734.9013 of the Revised Code or a rule adopted under those sections, a rule adopted thereunder other than a rule adopted under division (B) of section 3734.122 of the Revised Code, or a term or condition of a permit, license, variance, or order issued thereunder, or a violation of sections 3734.62 to 3734.65 of the Revised Code. The court may impose upon a person who violates a rule adopted under division (B) of section 3734.122 of the Revised Code a civil penalty of not more than twenty-five thousand dollars for each day of each violation of the rule. The court may impose upon a person who violates section 3734.60 of the Revised Code a civil penalty of not more than two hundred fifty dollars for each day of violation of that section. The court may impose upon a person who violates any of the provisions of this chapter governing scrap tires, a rule adopted under those provisions, a term or condition of a permit or license issued under them, or a term or condition of an order issued pertaining to scrap tires a civil penalty of not more than

five thousand dollars for each day of each violation, except that if the violation is of a provision, rule, or term or condition that relates to the open burning or open dumping of scrap tires, or if the violation is of an emergency order of the director issued under division (B) of section 3734.13 of the Revised Code that pertains to scrap tires, the court may impose a civil penalty of not more than ten thousand dollars for each day of each violation. The court may impose upon a person who violates section 3734.62 of the Revised Code a civil penalty of not more than one hundred dollars for each violation of that section. The court may impose upon a person who violates section 3734.63, 3734.64, or 3734.65 of the Revised Code a civil penalty of not more than five thousand dollars for each day of each violation of the applicable section, but the total amount of a civil penalty imposed upon a person for a violation of the applicable section shall not exceed twenty-five thousand dollars.

Any action under this section is a civil action, governed by the Rules of Civil Procedure.

(D) No person shall violate any term or condition of any order issued under this section.

(E) Except as otherwise provided in this division, moneys resulting from civil penalties imposed under division (C) of this section shall be paid into the hazardous waste clean-up fund created in section 3734.28 of the Revised Code. Moneys resulting from civil penalties imposed under division (C) of this section for violations of any of the provisions of this chapter governing scrap tires, rules adopted under those provisions, terms or conditions of permits or licenses issued under them, or terms or conditions of orders issued pertaining to scrap tires shall be credited to the scrap tire management fund created in section 3734.82 of the Revised Code.

Sec. 3734.61. As used in sections 3734.61 to 3734.65 of the Revised Code:

(A) "Manufacturer" means any person that produces a mercury-containing thermometer or serves as an importer or domestic distributor of a mercury-containing thermometer that is produced outside the United States. In the case of a multicomponent mercury-containing thermometer, "manufacturer" means the last manufacturer to produce or assemble the thermometer unless the multicomponent mercury-containing thermometer is produced outside the United States, in which case "manufacturer" means the importer or domestic distributor.

(B) "Mercury" means elemental mercury and mercury compounds.

(C) "Mercury-added measuring device" means an instrument containing mercury that is designed to measure an amount or quantity of humidity, pressure, temperature, or vacuum or the force of wind, including, but not limited to, anemometers, barometers, flow meters, hydrometers, hygrometers, manometers, sphygmomanometers, and thermometers.

(D) "Mercury-added novelty" means a product in which mercury is present and that is intended mainly for personal or household enjoyment or adornment, including, but not

limited to, products intended for use as practical jokes, figurines, adornments, toys, games, cards, ornaments, yard statues and figures, candles, jewelry, holiday decorations, footwear, other items of apparel, or similar products. "Mercury-added novelty" does not include a product that solely includes a fluorescent light bulb.

Sec. 3734.62. On and after the effective date of this section, no school district or educational service center established under Chapter 3311. of the Revised Code, community school established under Chapter 3314. of the Revised Code, or nonpublic school for which the state board of education prescribes standards under section 3301.07 of the Revised Code and no employee of such a school district, educational service center, community school, or nonpublic school shall purchase mercury or a mercury-added measuring device for classroom use.

If a school district, educational service center, community school, or nonpublic school or an employee of a school district, educational service center, community school, or nonpublic school purchases mercury or a mercury-added measuring device for classroom use on or after the effective date of this section in violation of this section, but properly recycles or disposes of the mercury or mercury-added measuring device upon learning of or being informed of the violation and creates and implements a mercury reduction plan, the director of environmental protection shall consider the recycling or disposal of the mercury or mercury-added measuring device and the implementation of and compliance with the mercury reduction plan as mitigating circumstances for purposes of enforcement of a violation of this section.

Sec. 3734.63. (A)(1) Beginning six months after the effective date of this section, and except as otherwise provided in division (A)(2) of this section, no manufacturer shall offer a mercury-containing thermometer for sale or distribute a mercury-containing thermometer for promotional purposes in this state unless the sale or distribution of a mercury-containing thermometer is required in order to comply with federal law, a person demonstrates to the director that a mercury-containing thermometer is the only temperature measuring device that is feasible for a research, quality control, or manufacturing application, or the only component of the thermometer that contains mercury is a button cell battery.

(2) Division (A)(1) of this section does not apply to the sale of a mercury-containing thermometer to a person who purchases a mercury-containing thermometer pursuant to a valid prescription.

(B) Beginning six months after the effective date of this section, a manufacturer of a mercury-containing thermometer that lawfully offers for sale or distributes such a thermometer in this state shall do both of the following:

(1) Provide notice in a conspicuous manner on the packaging of the thermometer that the thermometer contains mercury;

(2) Provide clear instructions with the thermometer regarding careful handling of the

thermometer to avoid breakage, proper cleanup of mercury if the thermometer breaks, and proper management and disposal of the thermometer.

Sec. 3734.64. Beginning six months after the effective date of this section, no person shall offer a mercury-added novelty for sale or distribute such a novelty for promotional purposes in this state unless the only mercury in the mercury-added novelty is a removable button cell battery. Beginning January 1, 2011, no person shall offer any mercury-added novelty for sale or distribute any mercury-added novelty for promotional purposes in this state.

Sec. 3734.65. Beginning one year after the effective date of this section, no person shall offer a mercury-containing thermostat for sale in this state or install a mercury-containing thermostat in this state unless the mercury-containing thermostat is installed in the residence of a visually impaired person or the thermostat is used to sense and control temperatures as a part of a manufacturing process.

Sec. 3745.01. There is hereby created the environmental protection agency, headed by the director of environmental protection. The agency, under the supervision of the director, shall administer the laws pertaining to chemical emergency planning, community right-to-know, and toxic chemical release reporting; the cessation of chemical handling operations; the prevention, control, and abatement of air and water pollution; public water supply; comprehensive water resource management planning; products that contain mercury as defined in section 3734.61 of the Revised Code; and the disposal and treatment of solid wastes, infectious wastes, construction and demolition debris, hazardous waste, sewage, industrial waste, and other wastes. The director may do all of the following:

(A) Provide such methods of administration, appoint such personnel, make such reports, and take such other action as may be necessary to comply with the requirements of the federal laws and regulations pertaining to chemical emergency planning, community right-to-know, and toxic chemical release reporting; air and water pollution control; public water supply; water resource planning; and waste disposal and treatment;

(B) Procure by contract the temporary or intermittent services of experts or consultants, or organizations thereof, when those services are to be performed on a part-time or fee-for-service basis and do not involve the performance of administrative duties;

(C) Advise, consult, cooperate, and enter into contracts or agreements with any other agencies of the state, the federal government, other states, and interstate agencies and with affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter and Chapters 3704., 3714., 3734., 3751., 3752., 6109., and 6111. of the Revised Code;

(D) Establish advisory boards in accordance with section 121.13 of the Revised Code;

(E) Accept on behalf of the state any grant, gift, or contribution made for toxic chemical release reporting, air or water pollution control, public water supply, water resource planning, waste disposal or treatment, or related purposes, and expend it for those purposes;

(F) Make an annual report to the governor and the general assembly on activities and expenditures as well as recommendations for such additional legislation as the director considers appropriate to carry out the director's duties or accomplish the purposes of this section;

(G) Enter into environmental covenants in accordance with sections 5301.80 to 5301.92 of the Revised Code, and grant or accept easements or sell real property pursuant to section 3734.22, 3734.24, 3734.25, or 3734.26 of the Revised Code, as applicable.

The agency shall utilize the laboratory facilities of the department of health and other state institutions and agencies to the maximum extent that the utilization is practicable, economical, and technically satisfactory.

The director shall maintain and keep available for public inspection, at the director's principal office, a current register of all applications filed for permits, leases, licenses, variances, certificates, and approval of plans and specifications and of publicly owned treatment works pretreatment programs under the director's jurisdiction, hearings pending, the director's final action thereon, and the dates on which the filings, hearings, and final actions occur. The director shall maintain and keep available for public inspection at the director's principal office all plans, reports, and other documents required to be filed with the emergency response commission under Chapter 3750. of the Revised Code and rules adopted under it, and all reports and other documents required to be filed with the director under Chapter 3751. of the Revised Code and rules adopted under it, subject to the requirements of those chapters and rules adopted under them for the protection of trade secrets and confidential business information from disclosure to persons not authorized under those laws to receive trade secret or confidential business information.

Sec. 3745.08. (A) An officer of an agency of the state or of a political subdivision, acting in his the officer's representative capacity, or any person who is or will be aggrieved or adversely affected by a violation that has occurred, is occurring, or will occur may file a complaint, in writing and verified by the affidavit of the complainant, his the complainant's agent, or attorney, with the director of environmental protection, in accordance with the rules of the director adopted pursuant to Chapter 119. of the Revised Code, alleging that another person has violated, is violating, or will violate any law, rule, standard, or order relating to air pollution, water pollution, solid waste, infectious wastes, construction and demolition debris, public water supply, hazardous waste, products that contain mercury, or cessation of chemical handling operations, or, if the person is in possession of a valid license, permit, variance, or plan approval relating to air pollution, water pollution, solid waste, infectious wastes, construction and demolition debris, public water supply, or hazardous waste, that the person has

violated, is violating, or will violate the conditions of the license, permit, variance, or plan approval. The affidavit verifying a complaint authorized by this section may be made before any person authorized by law to administer oaths and shall be signed by the person who makes it. The person before whom it was taken shall certify that it was sworn to before him that person and signed in his that person's presence, and his that person's certificate signed officially by him that person shall be evidence that the affidavit was made, that the name of the person making the affidavit was written by himself the maker of the affidavit, and that he the maker of the affidavit was that person.

(B) Upon receipt of a complaint authorized by this section, the director shall cause a prompt investigation to be conducted such as is reasonably necessary to determine whether a violation, as alleged, has occurred, is occurring, or will occur. The investigation shall include a discussion of the complaint with the alleged violator. If, upon completion of the investigation, the director determines that a violation, as alleged, has occurred, is occurring, or will occur, he the director may enter such order as may be necessary, request the attorney general to commence appropriate legal proceedings, or, where he the director determines that prior violations have been terminated and that future violations of the same kind are unlikely to occur, he the director may dismiss the complaint. If the director does not determine that a violation, as alleged, has occurred, is occurring, or will occur, he the director shall dismiss the complaint. Before taking any action under this division, the director may commence a hearing. Twenty days prior to any hearing, the director shall cause publication of notice of the hearing in a newspaper with general circulation in the county wherein the alleged violation has occurred, is occurring, or will occur, and also shall mail written notice by certified mail, return receipt requested, to the person who filed the complaint and to the alleged violator. If the director enters an order pursuant to this division without having commenced a hearing, the director or his the director's delegate, prior to entry of the order, shall provide an opportunity to the complainant and the alleged violator to attend a conference with the director or his the director's delegate concerning the alleged violation.

(C) Any hearing commenced under this section shall be conducted before the director or a hearing examiner designated by the director. The agency and the alleged violator shall be parties. The person who filed the verified complaint may participate as a party by filing with the director, at any time prior to the hearing, a written notice of his the complainant's intent to so participate. Any other person may be permitted to intervene upon the granting by the director or hearing examiner of a motion to intervene filed in accordance with the rules of the director adopted pursuant to Chapter 119. of the Revised Code.

(D) A complaint filed under this section may be consolidated with any other complaint filed under this section, or any finding of the director, where the director determines that consolidation will facilitate enforcement of any law that the agency is charged with administering under section 3745.01 of the Revised Code and there are one or more issues of fact or law in common. Not more than one hearing under this section shall be

conducted with respect to each violation alleged.