

Products Containing Mercury: Restrictions and Exemptions

Guidance on Wisconsin Act 44



Introduction

A ban on the sale and use of certain products that contain mercury went into effect on Nov. 1, 2010, and s. 299.49, Wis. Stats. outlines the restrictions and exemptions on the sale and use of mercury and products containing mercury, such as fever thermometers, manometers and mercury switches and relays.

Wisconsin Act 44 was signed in October 2009 and regulates the sale and use of mercury and mercury-added products.

The Department of Natural Resources (DNR) may grant exemptions for manufacturers or users to the ban on products containing mercury in certain circumstances. Exemptions may not exceed five years in length but may be renewed if the manufacturer or user complies with the original exemption conditions.

This publication provides instruction on how to meet the statutory requirements and how to apply for the exemption. It is recommended that interested parties review s. 299.49(3), Wis. Stats. prior to applying for an exemption.

Terms and Definitions

The statute defines “Mercury-added products” (referred to within this document as “products containing mercury”) as a “product to which mercury is intentionally added during formulation or manufacture, or a product containing one or more components to which mercury is intentionally added during formulation or manufacture.”

Under s. 299.49(2), Wis. Stats., no person may sell, supply or distribute the following:

- Thermometers containing mercury
- Manometers containing mercury
- Mercury-added thermostats
- Any of the following items if they contain mercury:
 - Barometer
 - Esophageal dilator, bougie tube or gastrointestinal tube
 - Flowmeter
 - Hydrometer
 - Hygrometer or psychrometer
 - Pyrometer
 - Sphygmomanometer
- Any of the following items if they contain mercury, unless the only mercury-added component in the item is a button cell battery:
 - A toy or game
 - Jewelry
 - Clothing or shoes

- An over-the-counter pharmaceutical for human use
- A cosmetic, toiletry, or fragrance product
- Mercury switches or mercury relays, either individually or as product components, though this restriction does not apply to a switch or relay used to replace a switch or relay that is a component in a larger product in use prior to Oct. 1, 2010, if either:
 - The larger product is used in manufacturing or in the generating, transmission or distributing facilities for electric energy, gas, or water; or
 - the switch or relay is integrated with, and not physically separate from, other components of the larger product.

Exemption Requirements

Per s. 299.49(3), Wis. Stats., the DNR may grant exemptions in certain circumstances. To apply for an exemption, a manufacturer or user must submit a written request to the DNR. This written request must show that the mercury product is reasonable and appropriate for a specific use based on the following criteria:

- A system exists for proper collection, transport and processing of the product at the end of its life; and
- One of the following applies:
 1. Use of the product provides a net benefit to the environment, public health or public safety when compared to available nonmercury alternatives; or
 2. Technically feasible nonmercury alternatives are not available at comparable costs.

To establish that system exists for the proper collection, transportation and processing of the product(s) at the end of its life, the facility must provide a copy of each of the following:

- A procedure or set of instructions provided to facility personnel responsible for the proper disposal of each type of product containing mercury used, sold or distributed by the facility.
- If the facility sells or distributes products containing mercury, a procedure or set of instructions for the proper disposal of each type of product provided to receiving parties (individuals and/or facilities).

To establish the net benefit of the product to the environment, public health or public safety and/or a lack of technically feasible nonmercury alternatives, **the facility must provide a written statement explaining how they meet one or both requirements.**

Exemption approval is based on product usage at the time of DNR review. The user or manufacturer must re-apply if the destination facility or facilities change or if the quantity, type or use of the product(s) is altered in any way. Submit requests for exemption renewals **at least 60 days** before the five-year expiration date of the most recent DNR approval.

A Mercury Product Exemption Documentation Template is attached to this publication. While it is not mandatory, it has been provided as an example to assist with meeting and documenting exemption requirements.

Requests for exemptions should be addressed to:
 DNR Waste and Materials Management Program
 c/o Hazardous Waste Prevention and Management Section
 P.O. Box 7921, Madison, WI 53707-7921

Additional Exemption Conditions

The DNR requires a person granted an exemption to maintain records and provide reports that characterize mercury use in all products for which the exemption was granted. Record-keeping requirements include the following:

Section 299.49(3), Wis. Stats., authorizes the DNR to include conditions in the exemption.

- Five-year **report** (see template below)
- Numbers/amounts of product(s) containing mercury **purchased**;
- Numbers/amounts of product(s) containing mercury **used, sold or distributed**.
- Numbers/amounts of product containing mercury(s) **recycled and/or disposed of**; and
- Disposal and/or recycling destination **facility** information.

Additional conditions, based on DNR review of the exemption request, may include:

- Situation-specific restrictions on how the product(s) containing mercury can be used,
- Location-specific restrictions on where the product(s) containing mercury can be used, and
- Disposal requirements.

Disposal and Spill Cleanup

Broken mercury devices must be handled as hazardous waste, and should be placed in closed, leak-proof, non-metal containers. Other mercury-containing wastes must be managed as either **hazardous waste** or **universal waste**.

Hazardous Waste Requirements

When disposed of, mercury may be a characteristic hazardous waste and therefore is subject to chs. NR 660 to 679, Wis. Adm. Code. Go to dnr.wi.gov and search “hazardous waste management” for more information on managing hazardous waste in Wisconsin.

Universal Waste Requirements

Search “universal waste management” on the DNR website for more information on disposing of mercury-containing equipment, defined in s. NR 673.09(6m), Wis. Adm. Code, as a universal waste.

If handled as universal waste, the following requirements must be met:

- **Training:** Employees who handle universal waste require training, and the training should be documented.
- **Containerize and keep closed:** All waste mercury devices must be kept in closed, non-metal containers that will not leak or spill under normal conditions.
- **Label:** All containers must be correctly labeled as “Used Mercury-Containing Equipment” or “Waste Mercury-Containing Equipment.”
- **Date:** Containers must be labeled with the date when the first mercury-containing equipment was placed in the container.
- **Remove:** Mercury-containing equipment must be removed from the facility for recycling within one year of the date on the container.

Mercury Spills

Quick response to any mercury spill, however small, is important to prevent unhealthy exposure to mercury vapor. Certain spills may need to be reported to the department and should be cleaned up by a professional contractor, particularly if the spill has drained into a floor drain, storm drain or outside the building on the ground or parking lot. **The DNR Spills Hotline number is 1-800-943-0003.** For information on what type of spills must be reported, visit dnr.wi.gov and search “spills.”

Safety Recommendations: What NOT to Do After a Mercury Spill

DO NOT use a vacuum to clean up mercury. The filters in household and even high efficiency vacuums will not remove mercury vapors. In fact, the vacuum exhaust will result in even more mercury vapor released to the air.

DO NOT use a broom to clean up mercury.

DO NOT allow people whose shoes or clothing have contacted mercury to take contaminated items beyond the spill area.

DO NOT put mercury or products containing mercury in the trash or a burn barrel.

DO NOT pour or allow mercury to go down a drain.

DO NOT wash mercury-contaminated items in a washing machine.

From Wisconsin Department of Health Services guidance, What to do if a Mercury Thermometer Breaks. For more information, go to dhs.wi.gov and search, “Mercury: Cleaning Up Small Spills.”

The U.S. Environmental Protection Agency website provides guidance on storing, transporting and disposing of mercury. Go to epa.gov and search, “storing, transporting and disposing of mercury.”

DNR Contact Information

For more information including [publications, inspection forms, and administrative codes and statutes](#), go to dnr.wi.gov and search “hazardous waste resources.” Use the *Additional Resources* menu to navigate to specific topics. For staff contact information, go to the [staff directory](#) and enter “hazardous waste requirements” in the subject field, and choose the appropriate county contact.

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Mailing address: DNR Waste & Materials Management Program, PO Box 7921, Madison, WI 53707

Email: DNRWasteMaterials@wisconsin.gov

***Disclaimer:** This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.*

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Products Containing Mercury Exemption Documentation Template

<p>1. FACILITY INFORMATION Facility name and address:</p>	<p>3. FACILITY ACTIVITIES Check all that apply to products containing mercury:</p>
<p>2. WDNR FACILITY ID (FID) # (if applicable)</p>	<p><input type="checkbox"/> Use</p> <p><input type="checkbox"/> Sale</p> <p><input type="checkbox"/> Distribution</p>
<p>4. REASON FOR REPORT</p> <p><input type="checkbox"/> Initial Exemption Request <input type="checkbox"/> Five-Year Renewal <input type="checkbox"/> Alterations to product usage and/or destination facilities</p>	
<p>5. MANAGEMENT OF PRODUCTS CONTAINING MERCURY</p> <p>To qualify for the mercury exemption a system must exist for the proper collection, transportation and processing of the product at the end of its life. To demonstrate this requirement is met a facility must provide a copy of the following:</p> <ol style="list-style-type: none"> 1. A procedure or set of instructions provided to facility personnel responsible for the proper and safe disposal of each type of product containing mercury used, sold, or distributed by the facility. 2. If the facility sells or distributes mercury-added products, a procedure or set of instructions for the proper and safe disposal of each type of mercury-added product provided to receiving parties (individuals and/or facilities). <p>Information on the proper and safe disposal of products containing mercury is located here: WA1004.</p>	
<p>6. EXEMPTION REQUIREMENTS</p> <p>Provide an explanation of how one or both of the following requirements are met for each product containing mercury:</p> <ol style="list-style-type: none"> 1. Use of the product(s) provides a net benefit to the environment, public health, or public safety when compared to available non-mercury alternatives. 	

2. Technically feasible nonmercury alternatives are not available at comparable costs.

7. DISPOSAL AND RECYCLING DESTINATION FACILITIES

List the name and address of all disposal and recycling destination facilities receiving products containing mercury from your facility. Continue list on a separate page, if necessary.

Name	Address	City	State	Zip Code

8. IDENTIFY MERCURY-ADDED PRODUCTS

Identify the mercury-added products for which you are applying for an exemption. Under Section 299.49, Wis. Stats., mercury-added products are defined as a product to which mercury is intentionally added during formulation or manufacture, or a product containing one or more components to which mercury is intentionally added during formulation or manufacture. Continue list on a separate page, if necessary.

Report Year:

Product(s) Containing Mercury	Number/amount purchased in report year	Number/amount used, sold, or distributed in report year	Number/amount recycled or disposed of

Report Year:

Product(s) Containing Mercury	Number/amount purchased in report year	Number/amount used, sold, or distributed in report year	Number/amount recycled or disposed of

Report Year:

Product(s) Containing Mercury	Number/amount purchased in report year	Number/amount used, sold, or distributed in report year	Number/amount recycled or disposed of

Report Year:

Product(s) Containing Mercury	Number/amount purchased in report year	Number/amount used, sold, or distributed in report year	Number/amount recycled or disposed of

Report Year:			
Product(s) Containing Mercury	Number/amount purchased in report year	Number/amount used, sold, or distributed in report year	Number/amount recycled or disposed of
9. VERIFICATION			
List the name and title of the person who completed this form.			
Name	Title	Date	
Phone number		Email address	

Note: This example documentation template is provided for general use by the Wisconsin DNR. It is not a required template.