

Memorandum of Understanding to Extend the National Vehicle Mercury Switch Recovery Program

December 29, 2017

I. Preamble and Intent

The United States Environmental Protection Agency (U.S. EPA) and the Parties to this Memorandum of Understanding to Extend the National Vehicle Mercury Switch Recovery Program (Extension Agreement) share a commitment to reduce the amount of mercury in the vehicle recycling stream, thereby reducing mercury releases to the environment. Recovering mercury switches from end-of-life vehicles has been determined to be a cost-effective method of achieving this goal. To that end, the Parties to this Extension Agreement, as well as other parties, executed a Memorandum of Understanding on August 11, 2006 (2006 MOU) establishing the National Vehicle Mercury Switch Recovery Program (NVMSRP). The current NVMSRP is scheduled to expire on December 31, 2017.

The Parties to this Extension Agreement wish to extend the NVMSRP as quickly and cost effectively as possible. To that end and as detailed in this Extension Agreement, the Parties agree to maintain and be bound by essentially the same commitments that the Parties agreed to in the 2006 MOU. The only exception to these commitments are those which are no longer relevant or necessary due to changed circumstances. Sections IV and V of this Extension Agreement reference and describe the commitments that continue from the 2006 MOU and further describe the commitments that have been omitted or changed. As before, the Parties remain committed to transparency, flexibility, accountability, measurable program performance, and minimization of administrative and paperwork burdens.

This MOU sets out how the Parties intend to maintain this voluntary program. It does not impose any legally binding obligations on US EPA, nor is US EPA imposing through the MOU, any legally binding obligations on any of the Parties or any other entity.

II. Program Description

As detailed in the 2006 MOU, the NVMSRP represented a cooperative effort among the Vehicle Manufacturers, Steelmakers, dismantlers, shredders, U.S. EPA, and other stakeholders to find and remove Mercury Switches from End-of-Life Vehicles. Since the NVMSRP was started in 2006, Parties have removed and safely recycled over 6.5 million mercury convenience light switches, containing a total of over 7.1 tons of mercury. By removing these switches from scrap feedstock, the Parties effectively diverted the mercury contained in those switches from being released into the atmosphere.

The NVMSRP has five elements:

1. Education and outreach for those removing switches;
2. Removal, collection and management of switches;

3. Recordkeeping and accountability of mercury recovery;
4. Scrap selection and corroboration; and
5. Review and improvement of the NVMSRP.

The NVMSRP is implemented at the State level, in consultation with (but not dependent upon) appropriate State authorities, US EPA, and the Parties to this Extension Agreement or their designees. In States where statutory or voluntary programs currently exist, the responsibilities of the Parties described below will be carried out in support of the existing State program. In States where there is not an existing program, the Parties will implement the responsibilities described for them in this Extension Agreement.

III. Definitions

This Extension Agreement adopts and incorporates by reference the terms and definitions contained in Section IV of the 2006 MOU.

IV. Responsibilities and Commitments by the Parties

With the exception of those commitments specifically identified in the subsections below, the Parties herein agree to be bound by the same commitments that they agreed to in the 2006 MOU.

1. Vehicle Manufacturers

Under the 2006 MOU, the Vehicle Manufacturers were responsible for providing information, education and outreach regarding Mercury Switch removal from End-of-Life Vehicles. The Vehicle Manufacturers were also responsible for funding and ensuring collection of mercury switches, transportation of the Mercury Switches, and proper recycling or disposal of the switches from end of life vehicles. The Vehicle Manufacturers fulfill those responsibilities through the End of Life Vehicle Solutions Corporation (ELVS).

Pursuant to an Agreement between the Vehicle Manufacturers, the American Iron and Steel Institute (AISI), and the Steel Manufacturers Association (SMA) dated December 16, 2016, the Vehicle Manufacturers and Steelmakers agreed to jointly fund ELVS through December 31, 2021. With the exception of distributing funds from NVMSRP Implementation Fund (which were depleted in 2009) and select reporting items (items V.1.C.9, V.1.C.10.a, and V.1.C.10.b.iii in the 2006 MOU), the Vehicle Manufacturers (through ELVS) shall continue to provide all services and shall have all obligations identified in the 2006 MOU, including all data collection, recordkeeping and reporting required by U.S. EPA as necessary to maintain the NVMSRP as a nationally approved mercury switch recovery program. The Vehicle Manufacturers (through ELVS) will also retain responsibility and liability for the transportation, acceptance, and recycling of Mercury Switches (See Section V.1.C.3 through V.1.C.6).

2. The American Iron and Steel Institute (AISI) and the Steel Manufacturers Association (SMA)

AISI and SMA agree to be bound by all the commitments that AISI and SMA agreed to in Section V.2. of the 2006 MOU. In addition to re-committing to the provisions of Section V.2. of the 2006 MOU, pursuant to an Agreement between the Vehicle Manufacturers, AISI, and SMA dated December 16, 2016, the Vehicle Manufacturers, AISI, and SMA agreed that the Vehicle Manufacturers and the Steelmakers would jointly fund ELVS through December 31, 2021, according to a confidential formula negotiated with the Vehicle Manufacturers. AISI and SMA did not, and do not herein, undertake any additional obligations or commitments assigned to the Vehicle Manufacturers and/or ELVS in the 2006 MOU.

3. Steelmakers

Pursuant to an Agreement between the Vehicle Manufacturers, AISI, and SMA dated December 16, 2016, the Vehicle Manufacturers and Steelmakers agreed to jointly fund ELVS through December 31, 2021. The Steelmakers further agree to be bound by all the commitments that the Steelmakers agreed to in Section V.3. of the 2006 MOU. In the 2006 MOU, these commitments were identified as necessary actions “in anticipation of US EPA’s proposed Electric Arc Furnace NESHAP and other potential regulations (*e.g.* proposals to amend Iron and Steel MACT rule) that may include a compliance option for steelmaking facilities to reduce mercury in scrap feedstock by developing and implementing scrap work practice standards.” Subsequent to executing the 2006 MOU, U.S. EPA finalized National Emissions Standards for Hazard Air Pollutants (NESHAP) for Electric Arc Furnaces (EAFs), and codified those regulations under 40 C.F.R. § 63.10685 (Subpart YYYYYY). As such, these commitments are no longer “in anticipation” of Subpart YYYYYY. In Subpart YYYYYY, U.S. EPA approved the NVMSRP as its nationally recognized mercury switch removal program, thereby allowing participation in the NVMSRP to serve as a compliance obligation for most EAF steel mills under Subpart YYYYYY.

4. The Automotive Recyclers Association (ARA)

ARA agrees to be bound by all the commitments that ARA agreed to in Section V.4. of the 2006 MOU.

5. Participating Vehicle Dismantlers

Participating Vehicle Dismantlers will continue as voluntary participants in the NVMSRP, are expected to continue to submit mercury switches to ELVS at agreed-upon intervals, and will support the NVMSRP by assisting in outreach and education to others. Participating Vehicle Dismantlers will also continue to train their employees regarding appropriate participation in the Program and regularly publicize and reinforce participation through employee recognition, workplace posters and other means. Due to the depletion of implementation funds in 2009, Participating Vehicle Dismantlers will no longer be eligible to receive implementation compensation.

6. The Institute of Scrap Recycling Industries (ISRI)

ISRI agrees to be bound by all the commitments that ISRI agreed to in Section V.6. of the 2006 MOU.

7. Participating Vehicle Crushers, Scrap Processing Facilities, and Brokers of Shredded Auto Scrap

Participating Vehicle Crushers, Scrap Processing Facilities, and Brokers of Shredded Auto Scrap will continue as voluntary participants in the Program, are expected to continue to submit mercury switches to ELVS at agreed upon intervals, and will support the NVMSRP by assisting in outreach and education to others. Participating Vehicle Crushers, Scrap Processing Facilities, and Brokers of Shredded Auto Scrap will also continue to train their employees regarding appropriate participation in the Program and regularly publicize and reinforce participation through employee recognition, workplace posters and other means. Due to the depletion of implementation funds in 2009, Participating Vehicle Crushers, Scrap Processing Facilities, and Brokers of Shredded Auto Scrap will no longer be eligible to receive implementation compensation.

Good faith participation in the NVMSRP by a scrap processing facility or vehicle crusher is intended to satisfy any program or work practice a steelmaker may establish concerning the NVMSRP. Good faith participation is defined as the actual removal of switches or the implementation of source control programs to assure removal of switches prior to receipt.

8. U.S. EPA

US EPA approved the NVMSRP as its nationally recognized mercury switch removal program for National Emissions Standards for Hazard Air Pollutants for EAFs codified in 40 C.F.R. § 63.10685 (Subpart YYYYYY). US EPA intends to maintain this approval and to take the commitments agreed to in the 2006 MOU and herein into serious consideration in any rulemaking under Subpart YYYYYY and in proposing or revising other relevant regulations involving sources producing steel from auto scrap. US EPA further intends to take all the other steps identified in in Section V.8. of the 2006 MOU.

V. Joint Responsibilities

1. The Parties acknowledge that success of the NVMSRP continues to be dependent upon all Parties carrying out the responsibilities detailed for them in this Extension Agreement in good faith. Should the Program fail to meet the expectations of the Parties and the US EPA, no single party will be held accountable for that circumstance. All Parties and US EPA will continue to work together to address weaknesses in the Program and will work to continuously improve the performance of the NVMSRP. The Parties define good faith NVMSRP participation by a facility handling end of life vehicles as the actual removal of switches or the implementation of source control programs to assure removal of switches prior to receipt. Program participation is voluntary for such facilities so barring violation of applicable regulations, inadvertent errors or oversights by an entity acting in good faith would not be an appropriate basis for enforcement or any punitive action.

2. The Parties will continue to direct outreach with NVMSRP participants through ELVS as described in Section V.1 of the 2006 MOU.

3. With respect to State legislation that is not consistent with responsibilities as described in this Extension Agreement or the 2006 MOU, all Parties to this Extension Agreement agree that no new State legislative activities will be initiated. In addition, Parties agree to support the NVMSRP in any new State that considers legislation and agree not to initiate legislative action to eliminate any existing State vehicle mercury recovery program. Parties can engage in legislative activity for the purpose of correcting statutory deficiencies and sunseting requirements in existing programs in 2022 or later but not for the purpose of substantively altering statutes to cause fee structures to increase or otherwise encumber another Party to this Extension Agreement.

VI. Additional Provisions

1. The Implementation Fund described in Section VII.1 of the 2006 MOU was depleted in 2009 and is no longer being funded.

2. Parties agree to maintain the measurement and accountability systems described in VII.2. of the 2006 MOU.

3. This Extension Agreement shall be effective immediately upon execution and will be implemented until December 31, 2021. If the Parties or their designees determine that the number of mercury switches is still significant after December 31, 2021, they may extend the Program. If the Program is extended, the Parties and U.S. EPA may do so through written mutual consent of U.S. EPA and all parties that wish to continue participating.

4. Limitations

A. Any party may withdraw from this Extension Agreement by providing written notice 90 days in advance to all signatories. If U.S. EPA or a Party provides notice of an intention to withdraw, the Parties agree to discuss the issues causing this decision to see if they can be resolved to the satisfaction of all Parties prior to the 90 day period expiring. This Extension Agreement may be modified or amended only with the written consent of each signatory organization.

B. Neither the Extension Agreement nor the 2006 MOU creates any right or benefit, substantive or procedural, enforceable by law or equity against U.S. EPA or the parties, their officers or employees, or any other person. Neither the Extension Agreement nor the 2006 MOU directs or applies to any person outside the signatory parties and U.S. EPA.

C. All commitments made by U.S. EPA in the 2006 MOU and this Extension Agreement are subject to the availability of appropriated funds. Additionally, the Agency will bear its own costs of participating in the Program and its ongoing participation is subject to the availability of appropriated funds. Nothing in the 2006 MOU or this Extension Agreement obligates U.S. EPA to expend appropriations or to enter into any contract, assistance agreement,

interagency agreement, or incur other financial obligations. Unless authorized by a separate agreement representing an express obligation of federal funds, the parties to the 2006 MOU and this Extension Agreement expressly agree not to submit a claim for compensation for services rendered to U.S. EPA in connection with any activities they carry out in furtherance of the 2006 MOU or this Extension Agreement.


D. The Parties acknowledge that under 5 C.F.R. Section 2653.702(c), U.S. EPA may not endorse the purchase or sale of commercial products and services provided by the parties to the 2006 MOU or this Extension Agreement. The Parties agree to ensure that promotional materials describing the 2006 MOU or this Extension Agreement do not contain statements implying that U.S. EPA endorses the purchase or sale of commercial products or services.


E. This Extension Agreement may be executed in counterparts, all of which shall be taken together and deemed one instrument. A facsimile (FAX) transmission or PDF electronic mail of any original document shall have the same effect as the original. Any signature required on an original shall be completed when a FAX or PDF copy has been signed and delivered to the other party. The parties agree that the signed FAX or PDF copies of the document shall be appended thereto, integrated therewith, and given full force and effect as if an original.


**Continued Commitment to Participate in the National Vehicle Mercury Switch
Recovery Program (NVMSRP)**

The signature below confirms that the following organizations are committing to participate in and support the National Vehicle Mercury Switch Recovery Program (NVMSRP) in accordance with the responsibilities and terms detailed in the Memorandum of Understanding to Establish the National Vehicle Mercury Switch Recovery Program dated August 11, 2006 as amended by this Extension Agreement.

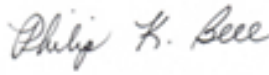
For the Vehicle Manufacturers


Daniel M. Adsit
President, ELVS


Michael E. Wilson
CEO, Automotive Recyclers
Association


Robin K. Wiener, President
Institute of Scrap Recycling
Industries

For the Steel Manufacturers,


Phillip K. Bell
President of the Steel
Manufacturers Association


Thomas J. Gibson
President and CEO, American
Iron and Steel Institute

US EPA