

**Memorandum of Understanding to Establish the  
National Vehicle Mercury Switch Recovery Program  
August 11, 2006**

**I. Preamble and Intent**

The United States Environmental Protection Agency (US EPA) and the Parties to this 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.

The Parties to this Memorandum of Understanding agree to work in good faith to establish an effective voluntary National Vehicle Mercury Switch Recovery Program (NVMSRP) as quickly and cost effectively as possible. As appropriate, the Parties, as detailed in this MOU, will share responsibilities, use innovative approaches to solve problems, harness market forces when possible, and create, share, and use data to assess and improve the program over time. The Parties are committed to transparency, flexibility, accountability, measurable program performance, and minimization of administrative and paperwork burdens.

This MOU sets out how the Parties intend to structure and implement 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. Background**

In the United States, more than 95% of motor vehicles that reach the end of their useful life are dismantled or otherwise recycled, so that the useful parts can be reused, and steel, nonferrous metals and other raw materials can be recycled. During the recycling process, the vehicles are dismantled, crushed, and shredded, and vehicle scrap is separated into the ferrous, nonferrous, and auto shredder residue fractions. Ten to 12 million vehicles are annually shredded into scrap, which is used primarily to produce steel in electric arc furnaces (EAFs), as well as in integrated steel mills and iron and steel foundries.

Prior to completion of the phase out at the end of model year 2002, several automakers installed mercury-containing switches in vehicles predominantly for convenience lighting in the hood and trunk and in anti-lock braking systems (ABS). Mercury switches from vehicles are a predominant source of mercury air emissions from EAFs, which collectively are estimated to emit 10 tons of mercury per year. The current end-of-life vehicle contribution is estimated to be 5 to 7 tons per year, an amount that is decreasing over time.

Pollution prevention in the form of mercury switch recovery from end of life vehicles is the most effective option to avoid these emissions. Those persons handling whole, uncrushed end-of-life vehicles, usually dismantlers, scrap processing facilities and vehicle crushers, have the last opportunity to recover mercury switches before shredding. The Program outlined in this MOU is designed to maximize such mercury switch recovery in a cost-effective and timely manner. It is hoped that the Program will also provide an opportunity to gain a greater understanding of the environmental and economic effects of product design choices.

### **III. Program Description**

The National Vehicle Mercury Switch Recovery Program (NVMSRP) is intended to be a cooperative effort among auto manufacturers, steelmakers, dismantlers, shredders, US EPA, States (*as set forth in the ECOS Resolution # 04-7*), representatives of the environmental community and trade associations of certain stakeholders. As detailed below, the parties agree to accept responsibilities for aspects of the design and implementation of this program. Key to the success of the program will be a commitment to share information and monitor progress. Mercury Switch removal will be increasingly successful nationwide when all parties work to create a system that encourages Mercury Switch removal and recovery at rates sufficient to reduce significantly the amount of mercury that otherwise would be emitted to the environment. To reach the objective, an aggressive goal has been established for the program [See Section VII (2) (A) (1)(b) and (c)].

This Program 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 national Program will be implemented at the State level, in consultation with (but not necessarily dependent upon) appropriate State authorities, US EPA and the Parties to this 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 agreement.

The parties agree that, in States with existing programs, the NVMSRP will not replace programs, requirements, or responsibilities that are more stringent than those assumed in this program. The parties also agree that, in States with programs that are less complete or less stringent, the parties will work together to implement the NVMSRP in a manner that makes the existing program consistent with the requirements of the Program.

### **IV. Definitions**

"Capture Rate" means removal, collection and recovery as a percentage of the projected total mercury switch population in end-of-life vehicles in a given period of time (e.g., each year of the Program).

"End-of-life Vehicle" means any vehicle that is sold, given, or otherwise conveyed to a vehicle recycler or scrap processing facility for the purpose of resale of its parts or recycling.

"Environmental Groups" refer to the environmental groups who are signatories to this agreement, Environmental Defense and the Ecology Center (Ann Arbor).

"Mercury Switch" means each mercury-containing capsule or mercury-containing switch assembly that is part of a convenience light switch assembly or part of an anti-lock braking system assembly installed in a vehicle.

"National Vehicle Mercury Switch Recovery Program" is the program that will be initiated by the signers of this agreement (referred to in this MOU as NVMSRP or the Program).

"Participants" mean end-of-life vehicle handlers – vehicle dismantlers, vehicle crushers, shredders, or others that are participating in the Program by removing switches and presenting them for collection and appropriate management through the NVMSRP.

"Parties" mean the organizations, trade associations, companies or State associations signing this agreement. The term does not include US EPA.

"Scrap processing facility" means a fixed location where machinery and equipment are utilized for processing and manufacturing scrap materials, into specification grade commodities including facilities where a shredder or fragmentizer is utilized for processing and manufacturing scrap automobiles and other material into shredded scrap and facilities where end-of-life vehicles may be prepared for shredding.

"Steelmakers" mean companies and facilities consuming auto shred to make new steel or new steel products, including, but not limited to EAF steel mills, integrated steel mills and iron and steel foundries.

"Vehicle crusher" means a person, who engages in the business of flattening, crushing, or otherwise processing end-of-life vehicles for recycling. Vehicle crushers include, but are not limited to, persons who use fixed or mobile equipment to flatten or crush end-of-life vehicles for a vehicle recycler or a scrap processing facility.

"Vehicle dismantler" means any individual or entity engaged in the business of acquiring, dismantling or destroying six or more end-of-life vehicles in a calendar year for the primary purpose of reselling vehicle parts, including steel. In this agreement, terms such as "vehicle recycler" and "dismantler" refer to this same type of entity.

"Vehicle Manufacturer" means a person who is the last person in the production or assembly process of a motor vehicle that used one or more mercury switches or, in the case of an imported vehicle, the importer or domestic distributor of the vehicle. "Manufacturer" does not include any person engaged in the business of selling new motor vehicles at retail or converting or modifying new motor vehicles after the production or assembly process. For this agreement, the term refers to only those vehicle manufacturers that are members of ELVS and are voluntarily participating in the NVMSRP.

## **V. Responsibilities and Commitments by the Parties**

**1. Vehicle Manufacturers** have the lead responsibility for providing information, education and outreach regarding Mercury Switch removal. They are responsible for funding and ensuring collection of mercury switches, transportation of the Mercury Switches to retorters, and proper recycling or disposal of the switches.

- A. These responsibilities will be led and coordinated for the auto companies by the End of Life Vehicle Solutions Corporation (ELVS). Members of ELVS are BMW of North America, LLC; DaimlerChrysler Corporation; Ford Motor Company; General Motors Corporation; International Truck and Engine; Mitsubishi Motors North America, Inc; Nissan North America, Inc.; Subaru of America, Inc.; Volkswagen of America, Inc.; and Volvo Truck. Other vehicle manufacturers may join ELVS in the future.
- B. ELVS will carry out these responsibilities directly, through a contractor, and with in-kind and direct contributions from ELVS members.
- C. ELVS will:
  - 1. Initiate and coordinate the identification and recruitment of vehicle dismantlers, scrap processing facilities, and vehicle crushers into the national Program utilizing information provided by ARA, ISRI, State authorities and others that can assist in identifying vehicle dismantlers, scrap processing facilities and vehicle crushers.
  - 2. Provide Program Participants with educational materials regarding mercury switch removal, guidance on which vehicles contain mercury switches (including types and locations in vehicles), instructions on how to locate, identify and remove Mercury Switches and any information unique to the particular State in which the Mercury Switch removal is taking place, including applicable State and federal regulatory requirements.
  - 3. Following applicable federal and State requirements, arrange and pay for transportation of the Mercury Switches in a timely fashion from the vehicle dismantlers, scrap processing facilities or vehicle crushers to a qualified retorter that has the RCRA permits that will allow for managing the various shipments of Mercury Switches collected through the Program.
  - 4. Accept Mercury Switches from any Participant so long as that Participant adheres to the ELVS program protocols and complies with applicable State and federal laws relative to the handling of Mercury Switches.
  - 5. Arrange and pay for the proper recycling of the Mercury Switches by a qualified retorter or when recycling is not feasible, for the proper disposal of the Mercury Switches at a permitted disposal facility.
  - 6. Assume liability for the mercury collected and provide for appropriate indemnification holding harmless participating vehicle dismantlers, scrap processing facilities, vehicle crushers and others removing switches through this Program once Mercury Switches are collected by the ELVS contractor. Such assumption of liability shall not occur in the event that the vehicle dismantlers, scrap processing facilities, vehicle crushers or other Participant fails to package the switches and/or assemblies in accordance with State law and ELVS requirements.
  - 7. Establish a process for Participants to enroll in the Program and clearly identify individual Participants in the NVMSRP and strive to minimize the paperwork required of the Participants.
  - 8. Maintain a database of Participants and others including:
    - a. clear identifying contact information, including business name(s), principal contacts, physical and email addresses, telephone and fax number(s), location and other relevant information such as websites;
    - b. documentation showing when the Participant joined the Program (or started submitting mercury switches);

- c. records of all submissions by the Participant including date, number of mercury switches and number of vehicles processed (as voluntarily reported by the Participants); and
  - d. confirmation that the participant has submitted mercury switches as expected, reflecting the operations of the participant
9. Aggregated information, including progress reports, summaries of the number of Program participants by state, individual Program Participants, state and national recovery totals and other information regarding the NVMSRP will be made publicly available through a website. Such information will be updated on a quarterly basis. To the extent that Parties to this agreement find that additional information is desired to assess Program progress, the Parties will identify the necessary information and determine if that information can be made publicly available. Confidential business information, such as the number of vehicles processed by a facility or company, shall only be reported to the Parties, US EPA, States, and to the public in aggregate form sufficient to prevent identification of an individual facility's or company's data and to the extent allowable under program agreements in individual states.
10. Report quarterly (every 3 months) during the first year of the Program, every six months in the second and third year of the Program and annually thereafter, to the Parties on overall program implementation progress results, including, but not limited to vehicle dismantler or others' participation.
- a. Such reporting shall include:
    - i. total number dismantlers or other potential Participants identified, compared with estimates of total number;
    - ii. total number of dismantlers or others contacted;
    - iii. total number of dismantlers or others participating; and
    - iv. number of vehicles processed by yard as voluntarily provided by Participants or Parties to this agreement. Where actual numbers are unavailable, estimates or ranges are preferable to no data.
  - b. Report annually on:
    - i. total mercury (in pounds) and number of Mercury Switches recovered nationwide;
    - ii. total pounds of mercury, number of Mercury Switches, and national capture rate, with information organized by State, compared with the expected range of mercury switch retirement rates for each State; and
    - iii. total number and identity of dismantlers or others dropped due to inactivity (15 months of inactivity) or withdrawn from Program (upon verification that the Participant is no longer in business and removed switches have been recovered or there is an inability to contact or repeated no response).
11. ELVS will take the lead in the development and implementation of appropriate and effective state level and nationwide marketing and outreach effort in consultation with the other Parties [see responsibilities described in Section VI (2)].
12. Establish and maintain a system for disbursement of funds from the Implementation Fund described in Section VII.
13. The Parties recognize that developing goodwill between the NVMSRP and those who recover switches is imperative for the Program to be successful. To that end it is agreed that payments for switch recovery will be made in a timely fashion and shall not exceed 60 days from the date of pickup by ELVS or its contractor or from the date of shipment per instructions from ELVS.

2. **The American Iron and Steel Institute (AISI), the Steel Recycling Institute (SRI) and the Steel Manufacturers Association (SMA) on behalf of their members will:**
  - A. Publicly endorse the NVMSRP and encourage their members and others to participate.
  - B. Pursue opportunities to acknowledge and recognize members who are participating in the NVMSRP.
  - C. Assist in outreach and build awareness among the “steel scrap supply chain.”
  - D. Work with ISRI to assure that any scrap work practice standards or other programs that may be implemented in accordance with this Program take into account market and technological factors and do not create unreasonable or unworkable certification requirements for scrap processors.
  
3. **Steelmakers** participating in the Program will take steps consistent with the NVMSRP to minimize the presence of mercury in auto shred. Steelmakers will strongly encourage their suppliers and others in the supply chain to support and participate with ELVS in State mercury switch collection efforts. Each participating steelmaker will initiate the following steps when the NVMSRP goes into effect:
  - A. Issue a statement that the individual steel company is participating in the Program.
  - B. Acting independently, develop a plan demonstrating the manner through which it is participating in the Program. The plan should include facility-specific implementation elements, corporate-wide policies, and/or efforts coordinated by a trade association as appropriate for each facility.
  - C. Provide in the plan documentation of direction to appropriate staff to communicate to suppliers the need to promote this program with suppliers throughout the scrap supply chain. The steel mill should be able to provide examples of materials that it uses for outreach to suppliers, such as letters, contract language, policies for purchasing agents, scrap inspection protocols and the like.
  - D. Strongly encourage their suppliers and others in the scrap supply chain to support and participate in the NVMSRP, to the extent authorized by law (e.g., anti-trust considerations).
  - E. These steps will be taken 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. Participation in the NVMSRP may be a compliance option for steelmaking facilities to reduce mercury in scrap feedstock by developing and implementing scrap work practice standards. These steps to minimize the presence of mercury in auto shred include notifying relevant suppliers that such individual steelmakers, acting independently pursuant to the Program, intend to utilize in their respective operations, to the maximum extent possible, scrap from vehicles which do not contain mercury switches or from which mercury switches have been removed and to adapt their respective purchasing practices to that end.
  - F. Use the ELVS database or other appropriate means to demonstrate that suppliers (spot suppliers and those under continuous contracts) are participating as anticipated in the Program and periodically re-affirm their commitment to provide only reduced-mercury auto shred. Steelmakers will conduct occasional spot checks, site visits or other means of corroboration to ensure that suppliers are aware of the need and are implementing appropriate steps to minimize the presence of mercury in auto shred.

- G. Cooperate with ELVS in the development of education, training materials and outreach where appropriate.
- H. Work with ISRI to assure that any scrap work practice standards or other programs that may be implemented in accordance with this Program take into account market and technological factors and do not create unreasonable or unworkable certification requirements for scrap processors.

**4. The Automotive Recyclers Association (ARA) on behalf of their members will**

- A. Publicly endorse the NVMSRP and encourage their members and other vehicle dismantlers to participate.
- B. Pursue opportunities to acknowledge and recognize members who are participating in the NVMSRP.
- C. Assist in identifying vehicle dismantlers for ELVS to contact for Program participation
- D. Assist in outreach and build awareness among vehicle dismantlers and their supply chain.

**5. Participating Vehicle Dismantlers:**

- A. As voluntary participants in the Program, will be expected to submit mercury switches to ELVS at agreed upon intervals and support the NVMSRP by assisting in outreach and education to others.
- B. Participating in the NVMSRP will be eligible to receive implementation compensation from the Fund described in Section VII (1) of this agreement.
- C. Will train their employees regarding appropriate participation in the Program and regularly publicize and reinforce participation through employee recognition, workplace posters and other means.

**6. The Institute of Scrap Recycling Industries (ISRI) on behalf of their members will:**

- A. Publicly endorse the NVMSRP and encourage their members and other scrap recyclers to participate.
- B. Pursue opportunities to acknowledge and recognize members who are participating in the NVMSRP.
- C. Assist in identifying potential Program participants and providing names and contact information to ELVS.
- D. Assist with outreach and build awareness among scrap processing facilities and their supply chain.

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

- A. As voluntary participants in the Program, will be expected to submit mercury switches to ELVS at agreed upon intervals and will support the NVMSRP by assisting in outreach and education to others.
- B. Participating in the NVMSRP will be eligible to receive implementation compensation from the Fund as described in Section VII (1) of this agreement.
- C. The Program is being designed so that 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.

- D. Will train their employees regarding appropriate participation in the Program and regularly publicize and reinforce participation in the Program.

**8. US EPA intends to:**

- A. Take the NVMSRP into serious consideration when drafting and soliciting comments on an area source NESHAP regulation for Electric Arc Furnaces (EAFs) and in proposing or revising other relevant regulations involving sources producing steel from auto scrap ((e.g., potential revisions to Iron and Steel MACT rule).
- B. To the extent consistent with the Agency's grants policies and procedures, US EPA agrees to make known to the Parties and others available opportunities for grants and cooperative agreements and other relevant assistance.
- C. Communicate the importance of this Program to affected entities, in partnership with the States and all interested and affected parties and explore opportunities to provide recognition for performance and incentives for entities to participate.
- D. Participate, as appropriate, in the evaluation of Program effectiveness and progress through data analysis, Program assessment and review of barriers to better results (e.g., assess funding needs, regulatory issues).
- E. Explore ways in which this Program can provide opportunities to gain a greater understanding of the environmental and economic effects of product design choices.

**9. Environmental Groups participating in this agreement will:**

- A. Publicly endorse and demonstrate support for the NVMSRP.
- B. Strongly encourage local and state-based environmental groups and other entities to support the NVMSRP.
- C. Support the outreach, education and oversight activities of the Program.
- D. Participate in the collaborative development of estimates of mercury switches contained in vehicles and capture rates and in the improvement of data management, analysis, and reporting.
- E. Participate in evaluation of the Program.

**10. ECOS and the Quicksilver Caucus, on behalf of the States will:**

- A. Publicly support the NVMSRP and encourage individual states to do so also as appropriate.
- B. Review existing state programs, including State specific incentives and provide to the Parties a list of lessons learned from existing programs to consider for potential future modifications of the national Program.
- C. Provide ELVS with information regarding State programs, including State-specific requirements.
- D. Identify and provide contact information of an appropriate individual(s) in each State government who would serve as the contact person for providing or coordinating assistance in implementing the NVMSRP.
- E. Encourage their members to support implementation of the NVMSRP in States where there is no existing program and in States where there is an existing program, explore how that program can be coordinated with the NVMSRP.
- F. Encourage their members to, where possible, provide ELVS with an accurate list (regularly updated) of licensed vehicle recyclers, vehicle crushers and scrap shredding facilities handling end-of-life vehicles in the state and assist in the ongoing identification

of such facilities. Where possible, assist by providing information on the number of cars processed (see V1(C)(10)(a)(iv)).

- G. Encourage their members, as necessary and appropriate, to monitor the effectiveness of the Program in their State.
- H. Communicate the importance of this Program to affected entities, in partnership with US EPA and individual States and all interested and affected parties and explore opportunities (where appropriate) to provide recognition for performance and incentives for entities to participate.
- I. Participate in the collaborative development of estimates of mercury switches contained in vehicles and capture rates and improving data management, analysis, and reporting.
- J. Participate in evaluation of the Program.

## **VI. Joint Responsibilities**

1. The Parties acknowledge that success of the Program will be dependent upon all Parties carrying out the responsibilities detailed for them in this 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 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. In consultation with appropriate State authorities and other interests in the State, the Parties will formulate a strategy to ensure direct outreach with Program participants. This strategy will be integrated with the responsibilities of the Vehicle Manufacturers described in Section V.1 of this MOU. The Parties acknowledge that on-the-ground contact and interaction is an important element in achieving Program performance. For example, states, NGOs and associations could assist ELVS's efforts by providing additional direct outreach or industry could convene conferences or workshops where additional active outreach and information dissemination could take place.
3. The national Program will be implemented at the State level, in consultation with (but not necessarily dependent upon) appropriate state entities and the other Parties to this agreement. In States where statutory and voluntary programs currently exist, the responsibilities of the Parties 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 in this agreement.
4. With respect to State legislation that is not consistent with responsibilities as described in this agreement, all Parties to this agreement agree that no new State legislative activities will be initiated. In addition, Parties agree to support the national program 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 sole purpose of correcting statutory deficiencies, but not for the purpose of substantively altering statutes to cause fee structures to increase or otherwise encumber another party to this agreement.

(Note: As a signer of the agreement, ECOs cannot formally speak for governors and legislatures)

5. The parties agree that in States with existing programs, the NVMSRP will not replace programs, requirements, or responsibilities that are more stringent than those assumed in this program. The parties also agree that, in States with programs that are less complete or less stringent, the parties will work together to determine how to integrate the NVMSRP program expectations and responsibilities in support of the existing program.

## **VII. Additional Provisions**

### **1. Implementation Fund**

A. The vehicle manufacturers and steelmakers who are Parties to this agreement will create a \$4 million dollar Implementation Fund which is expected to support the implementation of the Program over a three-year period. They each will contribute half of the funding. The Fund will support the implementation of the NVMSRP. The uses and disbursement of the monies in the Fund will be directed by an Implementation Fund Coordination Committee (IFCC) that will have four members, one each selected by ARA, ISRI, the Environmental Groups, and ECOS.

1. The IFCC will develop appropriate procedures and mechanisms regarding disbursements from the fund in accordance with the applicable terms of this agreement. Payments from the Fund will be made through the systems and process established by ELVS for disbursement of funds to Program Participants. The other Parties to this agreement that are not members of the IFCC will be provided an opportunity to provide input into this process, but the final decisions regarding disbursement of the Fund will be made by the IFCC.
2. The IFCC will report to the Parties and US EPA annually regarding how funds were expended during the previous year. An independent audit of the Fund will be performed annually.
3. Monies will be contributed to the Fund in a phased manner on a regular basis over the life of the Fund, as managed by the IFCC. Any funds remaining at the end of three years will be expended in support of the NVMSRP.
4. If additional entities wish to contribute to the Fund and if the Fund accepts such contributions, those monies will be added to the \$4 million total and will not affect the funding commitment by the vehicle manufacturers and steelmakers.
5. There will be no requirements for Program Participants to submit vehicle identification numbers (VIN numbers) of the vehicles from which Mercury Switches are being recovered and returned through the NVMSRP.
6. Three years from the effective date of this agreement, the Parties agree that as part of their periodic review of program effectiveness, they can discuss the possibility extending the life of the Fund.
7. EPA will have no role in the management of the Implementation Fund, and will not make decisions regarding the disposition of the money in the implementation fund.

### **2. Accountability and Measuring Progress**

A. The Parties acknowledge that the success of the Program will be directly related to the establishment of verifiable measurement and accountability systems and the assessment

of Program progress. All parties also agree to work together to review progress and to make adjustments as needed to improve the effectiveness of the Program over time.

1. The Parties and US EPA agree to take the following actions to assess Program performance:
  - a. Assess development and implementation of state plans and identification and participation of Program participants: At three month intervals for the first year following the effective date of this agreement, and six month intervals thereafter, the parties will collectively review by State the status of implementation and participation in the Program and make adjustments as deemed necessary. Indicators to be reviewed will include:
    - i. Status of plans for 50-state implementation;
    - ii. Number of States where Program has been initiated;
    - iii. Status of web-based information on the NVMSRP and number and source of hits;
    - iv. Status of identification of dismantlers and dismantler participation in all states, starting with those states targeted for initial implementation; and
    - v. Status of mercury recovery database and rate of information collection.
  - b. Mercury Switches Counted: Only mercury switches used for convenience lighting will be counted for purposes of measuring program performance.
  - c. Overall Goal for Mercury Recovery: The parties agree that to assist in effective program implementation it is important to have an aggressive goal for the recovery of Mercury Switches. Ideally, the NVMSRP, in conjunction with existing State programs, will achieve an overall 80 to 90 percent rate of Mercury Switch recovery.
  - d. Expected Mercury Recovery: The parties recognize that in the first three years of the Program, capture rates will be ramping up due to the realities of program implementation and will not fully achieve the 80 to 90 percent switch recovery rate goal. It is expected that a minimum of four million Mercury Switches will be recovered during the first three years of the Program in addition to the mercury being recovered by existing State programs. The Parties agree to make every effort to exceed this amount through aggressive implementation of the responsibilities detailed in this agreement.
  - e. Assess State Progress: One year following the effective date of this agreement and each year thereafter, the Parties or their designees and US EPA agree to meet to review the effectiveness of the Program at the State level based upon recovery and capture rates, as described in V(1)(C)(10). All Parties or their designees may participate in a review of the results of this assessment. The Parties agree to use the results to improve the performance of the Program and to explore implementation of a range of options in that effort.
  - f. Program Review: Two and one-half years from the inception of the program, the Parties agree to meet and review overall program effectiveness and performance. This review will include discussion of the number of switches that have been collected, what factors have contributed to program effectiveness and a review of the rate of disbursement from the Implementation Fund.

### **3. Program Initiation**

- A. The NVMSRP will be formally initiated 30 days following the signing of this MOU by the Parties.

- B. Responsibilities by Parties to this agreement will be carried out as described in this agreement in each State in which the Program is implemented.
- C. Within 120 days of the signing of this MOU, the Parties will finalize the development of an overall implementation plan that will delineate specific quarterly goals for initiating the Program nationally. It is anticipated the Program will be initiated nationally within one year of the effective date of this agreement. Initiation of the Program in a State will involve direct contact with Program Participants as determined through consultation with appropriate State officials. ELVS will take responsibility for the developing the initial version of this “roll-out” plan which will be further refined through input and discussion by the Parties. This plan will be available for review and discussion at the first meeting of the Parties to discuss implementation of the Program.
- D. The Parties will establish a process to guide the implementation of the Program in each State. In States with existing programs this may involve discussion of ways to supplement any existing program. In States without existing programs, a specific implementation plan for each State will be established by the Parties to this agreement or their representatives in each State. This plan should include, but not be limited to:
  - 1. Establishment of milestones for Program implementation.
  - 2. Establishment of Program assessment and review milestones where the Parties assess progress and make adjustments and enhancements in a particular State Program as needed.
- E. As it becomes available, information regarding plans for state implementation should be made available on the publicly accessible portion of the ELVS website.

#### **4. Program Duration**

- A. The NVMSRP will be implemented until December 31, 2017 based on estimates that 90% of the vehicles containing mercury switches would be retired by that time. If, before that date, based on Program data and other information, the Parties or their designees determine that the number of remaining Mercury Switches no longer constitutes a significant source of mercury, they may determine that the program should end. In such a case, the Parties may terminate this MOU through written notice to all signatories and Participants. If the Parties or their designees determine that the number of mercury switches is still significant after that date, they may extend the Program. If the Program is extended, the Parties and US EPA may continue this MOU through written mutual consent of all parties and US EPA.

#### **5. Limitations**

- A. Any party may withdraw from this agreement by providing written notice 90 days in advance to all signatories. If US 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 MOU may be modified or amended only with the written consent of each signatory organization.
- B. This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity against USEPA or the parties, their officers or employees, or any other person. This MOU does not direct or apply to any person outside the signatory parties and USEPA.
- C. All commitments made by US EPA in this MOU 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 this MOU, in and of itself, obligates US 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 this MOU expressly agree not to submit a claim for compensation for services rendered to US EPA in connection with any activities they carry out in furtherance of this MOU.

- D. The Parties acknowledge that under 5 C.F.R. Section 2653.702(c), US EPA may not endorse the purchase or sale of commercial products and services provided by the parties to this MOU. The parties agree to ensure that promotional materials describing this MOU do not contain statements implying that US EPA endorses the purchase or sale of commercial products or services.
- E. All commitments made by ECOS/QSC/States in this MOU are subject to the availability of funds. Nothing in this MOU, in and of itself, obligates ECOS/QSC/States 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 State funds, the parties to this MOU expressly agree not to submit a claim for compensation for services rendered to ECOS/QSC/states in connection with any activities carried out in furtherance of this MOU.
- F. ECOS/QSC/States may not endorse the purchase or sale of commercial products and services provided by the Parties to this MOU. The Parties agree to ensure that promotional materials describing this MOU do not contain statements implying that ECOS/QSC/States endorses the purchase or sale of commercial products or services.