

1 S.34

2 Introduced by Senators Lyons, MacDonald and McCormack

3 Referred to Committee on

4 Date:

5 Subject: Conservation; solid waste; mercury management; mercury lamps

6 Statement of purpose: This bill proposes to require manufacturers of

7 mercury-containing lamps to implement a collection and disposal program.

8 An act relating to the collection and disposal of mercury-containing lamps

9 It is hereby enacted by the General Assembly of the State of Vermont:

10 Sec. 1. 10 V.S.A. chapter 164A is added to read:

11 CHAPTER 164A. COLLECTION AND DISPOSAL OF

12 MERCURY-CONTAINING LAMPS

13 § 7151. DEFINITIONS

14 As used in this chapter:

15 (1) “Agency” means the agency of natural resources.

16 (2) “Covered entity” means any household, charity, or school district in the  
17 state or a business in the state that employs ten or fewer individuals.

18 (3) “Lamp” means an electric lamp, including mercury-containing lamps,  
19 incandescent lamps, halogen lamps, and light-emitting diode lamps.

1           (4) “Manufacturer” means a person who:

2                   (A) Manufactures or manufactured a mercury-containing lamp under its  
3 own brand or label for sale in the state;

4                   (B) Sells in the state under its own brand or label a mercury-containing  
5 lamp produced by another supplier;

6                   (C) Owns a brand that it licenses or licensed to another person for use on  
7 a mercury-containing lamp sold in the state;

8                   (D) Imports into the United States for sale in the state a  
9 mercury-containing lamp manufactured by a person without a presence in the  
10 United States;

11                   (E) Manufactures a mercury-containing lamp for sale in the state  
12 without affixing a brand name; or

13                   (F) Assumes the responsibilities, obligations, and liabilities of a  
14 manufacturer as defined under subdivisions (A) through (E) of this subdivision  
15 (4), provided that the secretary may enforce the requirements of this chapter  
16 against a manufacturer defined under subdivisions (A) through (E) of this  
17 subdivision (4) if a person who assumes the manufacturer’s responsibilities fails to  
18 comply with the requirements of this chapter.

19           (5) “Mercury-containing lamp” means a lamp to which mercury is  
20 intentionally added during the manufacturing process, including linear  
21 fluorescent, compact fluorescent, black light, high-intensity discharge,  
22 ultraviolet, and neon lamps.

1           (6) “Program year” means the period from July 1 through June 30.

2           (7) “Retailer” means a person who sells a mercury-containing lamp to a  
3 person in the state through any means, including a sales outlet, a catalogue, the  
4 telephone, the Internet, or any electronic means.

5           (8) “Secretary” means the secretary of natural resources.

6           (9) “Sell” or “sale” means any transfer for consideration of title or of the  
7 right to use by lease or sales contract a mercury-containing lamp to a person in the  
8 state of Vermont. “Sell” or “sale” does not include the sale, resale, lease, or  
9 transfer of a used mercury-containing lamp or a manufacturer’s or a distributor’s  
10 wholesale transaction with a distributor or a retailer.

11   § 7152. SALE OF MERCURY-CONTAINING LAMPS

12           Sale prohibited. Beginning on July 1, 2012, except as set forth under  
13 section 7155 of this title, a manufacturer of a mercury-containing lamp shall  
14 not sell, offer for sale, or deliver to a retailer for subsequent sale a  
15 mercury-containing lamp unless all the following have been met:

16           (1) The manufacturer is implementing an approved collection plan;

17           (2) The manufacturer has paid its annual registration fee under section 7158  
18 of this title;

19           (3) The name of the manufacturer and the manufacturer’s brand are  
20 designated on the agency of natural resources’ website as covered by an approved  
21 plan.

1           (4) The manufacturer has submitted an annual report under section 7153 of  
2 this title;

3           (5) The manufacturer has conducted a plan audit consistent with the  
4 requirements of subsection 7153(b) of this title; and

5           (6) The manufacturer has demonstrated that no alternative non-mercury  
6 energy efficient lamp is available that provides the same or better overall  
7 performance at a cost equal to or better than the classes of lamps that the  
8 manufacturer proposes to sell.

9           § 7153. ANNUAL REPORT; PLAN AUDIT

10           (a) Annual report. At the end of each program year, a manufacturer of a  
11 mercury-containing lamp shall submit an annual report to the secretary that  
12 contains the following:

13                   (1) a description of the collection program;

14                   (2) an estimate of the number of mercury-containing lamps available for  
15 collection and the methodology used to develop this number. Sales data and other  
16 confidential business information provided under this section shall not be subject  
17 to inspection and review pursuant to subchapter 3 of chapter 5 of Title 1 (access to  
18 public records). Confidential information shall be redacted from any final public  
19 report.

20                   (3) the steps that the manufacturer has taken during the past program year  
21 to improve the collection rate and life cycle performance of mercury-containing  
22 lamps.

1       (b) Plan audit. Two years after the initial plan approval and every two years  
2       thereafter, the manufacturer shall hire an independent third party to audit the plan  
3       and plan implementation. The auditor shall examine the effectiveness of the  
4       program in collecting and disposing of mercury-containing lamps. The auditor  
5       shall examine the cost-effectiveness of the program and compare it to that of  
6       collection programs for mercury-containing lamps in other jurisdictions. The  
7       auditor shall make recommendations to the secretary on ways to increase program  
8       efficacy and cost-effectiveness.

9       § 7154. COLLECTION PLANS

10       (a) Collection plan required. Prior to February 1, 2012, a manufacturer  
11       shall submit a collection plan to the secretary for review. At a minimum, the  
12       collection plan shall meet the following requirements:

13               (1) Collection of mercury-containing lamps. The collection plan shall  
14               provide for free collection and transportation of mercury-containing lamps  
15               from any municipal collection program and from a retailer that, as of July 1,  
16               2011, sells a brand of the manufacturer's mercury-containing lamps, provided  
17               that:

18                       (A) The manufacturer identifies in the collection plan:

19                               (i) all municipal sites and retailers serving as collection points for  
20                               the manufacturer's brands; and

21                               (ii) at least two municipal sites or retailers per county where  
22                               collection shall occur. If a manufacturer fails to identify two collection sites in

1 a county, the manufacturer shall identify two additional collection activities in  
2 that county. Additional collection activities may include reverse distribution  
3 and collection of a product and collection events.

4 (B) A manufacturer shall accept all mercury-containing lamps  
5 collected by municipal sites and retailers and shall not refuse the collection of a  
6 mercury-containing lamp based on the brand or manufacturer of the  
7 mercury-containing lamp.

8 (C) The collection and disposal of mercury-containing lamps shall be  
9 free of cost to the consumer at the time of collection.

10 (2) Public education and outreach. The collection plan shall include an  
11 education and outreach program that may include media advertising, retail  
12 displays, articles in trade and other journals and publications, and other public  
13 educational efforts. At a minimum, the education and outreach program shall  
14 notify the public of the following:

15 (A) that there is a free collection program for mercury-containing  
16 lamps;

17 (B) the location of collection points and how a covered entity can  
18 access this collection program; and

19 (C) the special handling considerations associated with  
20 mercury-containing lamps.

1           (3) Compliance with appropriate environmental standards. In  
2           implementing a collection plan, a manufacturer shall comply with all  
3           applicable laws related to the collection, transportation, and disposal of  
4           mercury-containing lamps. A manufacturer shall comply with any special  
5           handling or disposal standards established by the secretary for a  
6           mercury-containing lamp or for the collection plan of the manufacturer.

7           (b) Term of collection plan. A collection plan approved by the secretary  
8           under section 7156 of this title shall have a term of five years, provided that the  
9           manufacturer remains in compliance with the requirements of this chapter and  
10          the terms of the approved plan.

11          § 7155. STEWARDSHIP ORGANIZATIONS

12          (a) Participation in a stewardship organization. A manufacturer may meet the  
13          requirements of this chapter by participating in a stewardship organization that  
14          undertakes the manufacturer's responsibilities under sections 7152, 7153, and  
15          7154 of this title.

16          (b) Qualifications for a stewardship organization. To qualify as a  
17          stewardship organization under this chapter, an organization shall:

18                 (1) Commit to assume the responsibilities, obligations, and liabilities of  
19                 all manufacturers participating in the stewardship organization;

20                 (2) Represent at least 45 percent of the market share of  
21                 mercury-containing lamps sold in the state;

1           (3) Not create unreasonable barriers for participation in the stewardship  
2           organization; and

3           (4) Maintain a public website that lists all manufacturers and  
4           manufacturers' brands covered by the stewardship organization's approved  
5           collection plan.

6           (c) Exemption from antitrust provisions. A stewardship organization and  
7           manufacturers participating in a stewardship organization subject to the  
8           requirements of this chapter may engage in anticompetitive conduct to the  
9           extent necessary to develop and implement the collection plan required by this  
10          chapter. A stewardship organization or a manufacturer participating within a  
11          stewardship organization that is engaged in anticompetitive conduct under this  
12          subsection shall be immune from liability for conduct under state laws relating  
13          to antitrust, restraint of trade, unfair trade practices, and other regulation of  
14          trade or commerce if the stewardship organization is exercising due diligence  
15          to comply with the requirements of this chapter.

16          § 7156. AGENCY RESPONSIBILITIES

17          (a) Review and approve collection plans. The secretary shall review and  
18          approve or deny collection plans submitted under section 7154 of this title.  
19          The secretary shall approve a collection plan if the secretary finds that the plan:

20               (1) complies with the requirements of subsection 7154(a) of this title.



1           (2) provides adequate notice to the public of the collection opportunities  
2           available for mercury-containing lamps.

3           (3) ensures that collection of mercury-containing lamps will occur in an  
4           environmentally sound fashion that is consistent with the law or with any  
5           special handling requirements adopted by the secretary.

6           (4) promotes the collection and disposal of mercury-containing lamps.

7           (b) Plan amendment. The secretary, in his or her discretion or at the  
8           request of a manufacturer or a stewardship organization, may require a  
9           manufacturer or a stewardship organization to amend an approved plan. Plan  
10           amendments shall be subject to the public input provisions of subsection (c) of  
11           this section.

12           (c) Public input. The agency shall establish a process under which a  
13           collection plan for a mercury-containing lamp is, prior to plan approval or  
14           amendment, available for public review and comment for 30 days. In  
15           establishing such a process, the agency shall consult with interested persons,  
16           including manufacturers, environmental groups, wholesalers, retailers,  
17           municipalities, and solid waste districts.

18           (d) Special handling requirements. The secretary may adopt, by rule,  
19           special handling requirements for the collection, transport, and disposal of  
20           mercury-containing lamps.

1       (e) Approved plans; Internet posting. The secretary shall post on the  
2       agency website all manufacturers and manufacturers' brands that are covered  
3       under an approved plan. For stewardship organizations, the agency may link  
4       to the list of manufacturers and manufacturers' brands on the stewardship  
5       organization's website.

6       § 7157. RETAILER OBLIGATIONS

7       (a) Sale prohibited. No retailer shall sell or offer for sale a  
8       mercury-containing lamp unless the retailer has reviewed the agency website  
9       required in subsection 7156(e) of this title to determine that the manufacturer  
10       of the mercury-containing lamp is implementing an approved collection plan  
11       or is a member of a stewardship organization.

12       (b) Expiration or revocation of manufacturer registration. A retailer shall  
13       not be responsible for an unlawful sale of a mercury-containing lamp under  
14       this subsection if:

15               (1) the manufacturer's collection plan expired or was revoked; and

16               (2) the retailer took possession of the mercury-containing lamp prior to  
17       the expiration or revocation of the manufacturer's collection plan, and the  
18       unlawful sale occurred within six months of the expiration or revocation of the  
19       collection plan.

1     § 7158. FEES

2         A manufacturer or stewardship organization shall pay \$10,000.00 for each  
3     collection plan submitted to the agency for review under section 7154 of this  
4     title.

5     § 7159. RULEMAKING; MERCURY AND LEAD CONTENT

6             STANDARDS

7         (a) Mercury and lead content standards for lamps. The secretary shall adopt  
8     rules to implement the requirements of this chapter, including requirements  
9     establishing mercury and lead content standards for lamps. Rules governing  
10    mercury and lead content in lamps under this section shall rely upon content  
11    standards established by the states of California and Maine. If one or more  
12    categories of lamps are not covered by the mercury or lead content standards  
13    adopted by the states of California and Maine, the secretary may adopt rules  
14    minimizing the mercury or lead content of lamps within such categories, including  
15    adoption of mercury-free or lead-free standards when mercury-free or lead-free  
16    alternatives are available at comparable cost and with comparable performance.

17         (b) Certificate of compliance.

18             (1) Within 90 days of adoption of rules under subsection (a) of this section,  
19    the secretary may request a manufacturer of lamps to submit a certification,  
20    supported by technical information, that the manufacturer's lamps that are sold or  
21    offered for sale in the state comply with rules adopted under subsection (a) of this  
22    section. A manufacturer shall submit a certificate of compliance within 28 days of

1 the secretary's request. If a manufacturer fails to provide a requested certification  
2 within 28 days of the request, the manufacturer shall be prohibited from selling  
3 lamps or offering lamps for sale in the state.

4 (2) Upon request of a retailer or other person selling a manufacturer's  
5 lamps, a manufacturer shall provide a certification that the manufacturer's lamps  
6 comply with the rules adopted under subsection (a) of this section. A  
7 manufacturer shall provide a certificate of compliance within 28 days of the  
8 retailer's request. The certification must specify that the lamps are not prohibited  
9 from sale in the state. If a manufacturer fails to provide a certification under this  
10 subdivision (b)(2), the manufacturer shall be prohibited from selling lamps or  
11 offering lamps for sale in the state.

12 § 7160. OTHER DISPOSAL PROGRAMS

13 A municipality or other public agency may not require covered entities to  
14 use public facilities to dispose of mercury-containing lamps to the exclusion of  
15 other lawful programs available. A municipality and other public agencies are  
16 encouraged to work with manufacturers to assist them in meeting their  
17 collection and disposal obligations under this chapter. Nothing in this chapter  
18 prohibits or restricts the operation of any program collecting and disposing of  
19 mercury-containing lamps in addition to those provided by manufacturers or  
20 prohibits or restricts any persons from receiving, collecting, transporting, or  
21 disposing mercury-containing lamps, provided that all other applicable laws  
22 are met.

1       Sec. 2. EFFECTIVE DATE

2       This act shall take effect on July 1, 2011.