

1

H.695

2

Introduced by Representative Klein of East Montpelier

3

Referred to Committee on

4

Date:

5

Subject: Conservation and development; solid waste; product stewardship;

6

batteries

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Statement of purpose of bill as introduced: This bill proposes to establish a

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product stewardship program for discarded batteries.

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An act relating to establishing a product stewardship program for primary

10

batteries

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

12

Sec. 1. 10 V.S.A. chapter 168 is added to read:

13

CHAPTER 168. PRODUCT STEWARDSHIP

14

FOR PRIMARY BATTERIES

15

§ 7581. DEFINITIONS

16

As used in this chapter:

17

(1) "Agency" means the Agency of Natural Resources.

18

(2) "Brand" means a name, symbol, word, or traceable mark

19

that identifies:

1           (A) a primary battery and attributes the primary battery to the owner  
2 or licensee of the brand as the producer; or

3           (B) a primary battery-containing product and attributes the primary  
4 battery to the owner or licensee of the primary battery-containing product as  
5 the producer.

6           (3) “Calendar year” means the period commencing January 1 and  
7 ending December 31 of the same calendar year.

8           (4) “Collection rate” means a percentage by weight that each producer  
9 or stewardship organization collects by an established date. The collection rate  
10 shall be calculated by weight based on the percentage of primary batteries,  
11 including primary batteries taken from primary battery-containing products,  
12 that are collected during a calendar year, as compared to the average weight of  
13 primary batteries, including those in primary battery-containing products, that  
14 were estimated to have been sold in the State by participating producers during  
15 the three previous calendar years. Estimates of primary batteries sold in the  
16 State may be based on a reasonable pro rata calculation based on national  
17 sales.

18           (5) “Consumer” means any person who presents or delivers any number  
19 of primary batteries to a collection facility that is included in an approved  
20 primary battery stewardship plan.

1           (6) “Discarded primary battery” means a primary battery that is no  
2           longer used for its manufactured purpose.

3           (7) “Easily removable” means readily detachable by a person without  
4           the use of tools or with the use of common household tools.

5           (8) “Primary battery” means a nonrechargeable battery weighing two  
6           kilograms or less, including alkaline, carbon-zinc, lithium metal, and other  
7           batteries typically generated as waste.

8           (9) “Primary battery-containing product” means a primary battery  
9           contained in or packed with products such as cameras, watches, calculators,  
10           flashlights, lanterns, portable radios, toys, and clocks. “Primary  
11           battery-containing product” shall not mean any of the following:

12           (A) a primary battery that is sold in a covered electronic device, as  
13           defined in subdivision 7551(8) of this title;

14           (B) a primary battery that is not easily removable or is not intended  
15           or designed to be removed from the product, other than by the  
16           manufacturer; and

17           (C) a primary battery that is sold or used in an implanted medical  
18           device, as that term is defined in the federal Food, Drug, and Cosmetic Act,  
19           21 U.S.C. § 321(h), as amended.

20           (10) “Primary battery stewardship organization” or “stewardship  
21           organization” means an organization appointed by one or more producers to

1 act as an agent on behalf of a producer or producers to design, submit,  
2 implement and administer a primary battery stewardship plan under  
3 this chapter.

4 (11) “Primary battery stewardship plan” or “plan” means a plan  
5 submitted to the Secretary pursuant to section 7583 of this title by an  
6 individual producer or a primary battery stewardship organization.

7 (12)(A) “Producer” means one of the following with regard to a primary  
8 battery or a primary battery-containing product that is sold, offered for sale, or  
9 distributed in the State:

10 (i) a person who manufactures a primary battery, or a primary  
11 battery-containing product, and who sells, offers for sale, or distributes that  
12 primary battery, or that primary battery-containing product, in the State under  
13 the person’s own name or brand;

14 (ii) if subdivision (A)(i) of this subdivision (12) does not apply, a  
15 person who owns or licenses a trademark or brand under which a primary  
16 battery or primary battery-containing product is sold, offered for sale, or  
17 distributed in the State, whether or not the trademark is registered; or

18 (iii) if subdivisions (A)(i) and (ii) of this subdivision (12) do not  
19 apply, a person who imports a primary battery or a primary battery-containing  
20 product into the State for sale or distribution.

1           (B) “Producer” shall not mean a person who manufactures, sells,  
2           offers for sale or imports a primary battery-containing product in the State if  
3           that person:

4                   (i) affirms that it only uses primary batteries supplied by a  
5                   producer participating in an approved battery stewardship program; and

6                   (ii) reports to the Secretary the estimated number of primary  
7                   batteries in the person’s primary battery-containing products estimated to be  
8                   sold in the State. Estimates of primary batteries contained in primary  
9                   battery-containing products sold in the State may be based on a reasonable pro  
10                  rata calculation of national sales of the primary battery-containing products.

11                  (13) “Program” or “stewardship program” means the system for the  
12                  collection, transportation, recycling, and disposal of primary batteries  
13                  implemented pursuant to an approved primary battery stewardship plan.

14                  (14)(A) “Rechargeable battery” means:

15                   (i) one or more voltaic or galvanic cells, electrically connected to  
16                   produce electric energy and designed to be recharged and weighing less than  
17                   11 pounds; or

18                   (ii) a battery pack designed to be recharged that weighs less than  
19                   11 pounds and that is designed to provide less than 40 volts direct current.

1           (B) “Rechargeable battery” shall not mean:

2                   (i) a battery that is not easily removable or is not intended or  
3 designed to be removed from the covered product, other than by  
4 the manufacturer;

5                   (ii) a battery that contains electrolyte as a free liquid; or

6                   (iii) a battery or battery pack that employs lead-acid technology,  
7 unless the battery or battery pack:

8                           (I) is sealed;

9                           (II) contains no liquid electrolyte; and

10                           (III) is intended by its manufacturer to power a handheld device  
11 or to provide uninterrupted backup electrical power protection for stationary  
12 consumer products or stationary office equipment.

13           (15) “Rechargeable battery steward” means a person who:

14                   (A) manufactures a rechargeable battery or a rechargeable product  
15 that is sold, offered for sale, or distributed in the State under its own  
16 brand name;

17                   (B) owns or licenses a trademark or brand under which a  
18 rechargeable battery or rechargeable product is sold, offered for sale, or  
19 distributed in the State, whether or not the trademark is registered; or

1           (C) if subdivisions (A) and (B) of this subdivision (15) do not apply,  
2 imports a rechargeable battery or rechargeable product into the State for sale  
3 or distribution.

4           (16) “Rechargeable product” means a product that contains or is  
5 packaged with a rechargeable battery at the time the product is sold, offered for  
6 sale, or distributed in the State. “Rechargeable product” shall not mean:

7           (A) a product from which a rechargeable battery is not easily  
8 removable or is not intended or designed to be removed from the product,  
9 other than by the manufacturer; or

10           (B) an implanted medical device, as that term is defined in the federal  
11 Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(h), as amended.

12           (17) “Recycling” means any process by which discarded products,  
13 components, and by-products are transformed into new usable or marketable  
14 materials in a manner in which the original products may lose their identity,  
15 but does not include energy recovery or energy generation by means of  
16 combusting discarded products, components, and by products with or without  
17 other waste products.

18           (18) “Retailer” means a person who offers a primary battery or a  
19 primary battery-containing product for sale to any consumer or business at  
20 retail in the State through any means, including remote offerings such as sales  
21 outlets, catalogues, or an Internet website.

1           (19) “Secretary” means the Secretary of Natural Resources.

2           § 7582. SALE OF PRIMARY BATTERY OR PRIMARY

3                   BATTERY-CONTAINING PRODUCT; STEWARDSHIP

4                   ORGANIZATION REGISTRATION

5           (a) Sale prohibited. Beginning January 1, 2016, except as set forth under  
6           subsections (c) and (d) of this section, a producer of a primary battery or  
7           primary battery-containing product shall not sell, offer for sale, or deliver to a  
8           retailer for subsequent sale a primary battery or primary battery-containing  
9           product unless all of the following has been met:

10           (1) the producer or stewardship organization is registered under an  
11           approved and implemented primary battery stewardship plan;

12           (2) the producer or stewardship organization has paid the fee under  
13           section 7591 of this title; and

14           (3) the name of the producer and the producer’s brand are designated on  
15           the Agency website as covered by an approved primary battery  
16           stewardship plan.

17           (b) Primary battery stewardship organization registration requirements.  
18           Beginning September 1, 2015, and annually thereafter, a stewardship  
19           organization shall file a registration form with the Secretary. The Secretary  
20           shall provide the registration form to a stewardship organization. The  
21           registration form shall include:



1           (1) a list of the producers of primary batteries and primary battery  
2           containing products participating in the stewardship organization;

3           (2) a list of the brands of primary batteries and primary battery  
4           containing products of each producer participating in the stewardship  
5           organization; and

6           (3) the name, address, and contact information of a person responsible  
7           for ensuring the producer's compliance with this chapter.

8           (c) New producers. A producer who, after January 1, 2015, seeks to sell,  
9           offer for sale, or offer for promotional purposes in the State a primary battery  
10           or primary battery-containing product not previously sold in State, shall notify  
11           the Secretary prior to selling or offering a product not covered by a  
12           stewardship plan in the State. The Secretary shall list a producer who supplies  
13           notice under this subsection as a "new producer" on the Agency's website. A  
14           producer that supplies notice under this subsection shall have 90 days to either  
15           join an existing primary battery stewardship organization or to submit a  
16           primary battery stewardship plan for approval to the State.

17           (d) Exemption. A producer who annually sells, offers for sale, distributes,  
18           or imports in the State primary batteries or primary battery-containing products  
19           with a total retail value of less than \$500.00 shall be exempt from the  
20           requirements of this chapter.

1        § 7583. PRIMARY BATTERY STEWARDSHIP PLAN

2            (a) Primary battery stewardship plan required. On or before April 1, 2015,  
3        each producer selling, offering for sale, or offering for promotional purposes a  
4        primary battery or primary-containing product in the State shall individually or  
5        as part of a primary battery stewardship organization submit a primary battery  
6        stewardship plan to the Secretary for review.

7            (b) Primary battery stewardship plan; minimum requirements. Each  
8        primary battery stewardship plan shall include, at a minimum, all of the  
9        following elements:

10           (1) List of producers and brands. Each primary battery stewardship plan  
11        shall list:

12            (A) all participating producers and contact information for each of  
13        the participating producers; and

14            (B) the brands of primary batteries covered by the plan.

15           (2) Free collection. Each primary battery stewardship plan shall provide  
16        for the free collection of primary batteries from consumers. A producer shall  
17        not refuse the collection of a primary battery based on the brand or  
18        manufacturer of the primary battery.

19           (3) Collection; convenience. Each primary battery stewardship  
20        plan shall:

1           (A) allow all retailers that sell primary batteries or primary  
2 battery-containing products covered under the plan and all municipalities to  
3 opt to be collection facility;

4           (B) provide, at a minimum, no fewer than two collection facilities in  
5 each county in the State; and

6           (C) provide for the acceptance from a consumer of up to 20 batteries  
7 per visit. A collection facility may agree to accept more than 20 batteries per  
8 visit from a consumer.

9           (4) Method of disposition. Each primary battery stewardship plan shall  
10 include a description of the method that will be used to responsibly manage  
11 discarded primary batteries to ensure that the components of the discarded  
12 primary batteries, to the extent economically and technically feasible, are  
13 recycled.

14           (5) Roles and responsibilities. A primary battery stewardship plan shall  
15 list all key participants in the primary battery collection chain, including:

16           (A) the number and name of the collection facilities accepting  
17 primary batteries under the plan, including the address and contact information  
18 for each facility; and

19           (B) the name and contact information of a transporter or contractor  
20 collecting primary batteries from collection facilities.

1           (C) the name, address, and contact information of the recycling  
2           facilities that processes the collected primary batteries or primary  
3           battery-containing products.

4           (6) Education and outreach. A primary battery stewardship plan shall  
5           include an education and outreach program. The education and outreach  
6           program may include media advertising, retail displays, articles in trade and  
7           other journals and publications, and other public educational efforts. The  
8           education and outreach program shall describe the outreach procedures that  
9           will be used to provide notice of the program to businesses, municipalities,  
10           retailers, wholesalers, and haulers. At a minimum, the education and outreach  
11           program shall notify the public of the following:

12                   (A) that there is a free collection program for all primary  
13                   batteries; and

14                   (B) the location of collection points and how to access the  
15                   collection program.

16           (7) Reimbursement.

17                   (A) A primary battery stewardship plan shall include a procedure  
18                   under which the producer or stewardship organization submitting the plan shall  
19                   reimburse another primary battery producer or stewardship organization with  
20                   an approved plan for the actual direct costs per unit of weight incurred in  
21                   collecting the brands or products of the producer submitting the plan. Direct

1 costs include costs of collection, transport, recycling and other actual  
2 environmental management costs, plus an additional negotiated amount not to  
3 exceed 10 percent to reflect a reasonable contribution for indirect costs,  
4 including permitting fees, overhead, personnel costs, administration, insurance,  
5 legal or accounting costs, education and outreach, or any other costs.

6 (B) A producer or primary battery stewardship organization that  
7 receives a request for reimbursement may, prior to payment and within 30 days  
8 of receipt of the request for reimbursement, request an independent audit of  
9 submitted reimbursement costs. If the independent audit confirms the  
10 reasonableness of the reimbursement request, the producer or primary battery  
11 stewardship organization requesting the audit shall pay the cost of the audit.

12 (c) Implementation. A producer or a primary battery stewardship  
13 organization shall include provisions in the plan for the implementation of the  
14 program in conjunction with those retailers and municipalities acting as  
15 collection facilities under a program. Implementation of the program shall be  
16 at no cost to retailers or municipalities acting as collection facilities under a  
17 program. A producer or a primary battery stewardship organization shall  
18 provide retailers and municipalities acting as collection facilities products or  
19 equipment for setting up a collection point and for providing for the pickup of  
20 collected primary batteries, including arranging for the management of those  
21 primary batteries.

1     § 7584. ANNUAL REPORT; PLAN AUDIT

2           (a) Annual report. On or before April 1, 2017, and annually thereafter, a  
3     producer or a primary battery stewardship organization shall submit a report to  
4     the Secretary that contains the following:

5           (1) the weight of primary batteries collected by the producer or the  
6     stewardship organization in the prior calendar year;

7           (2) the collection rate achieved in the prior calendar year;

8           (3) specifies the collection facilities that failed in the previous calendar  
9     year to collect a minimum of 100 pounds by weight of primary batteries and  
10    whether these collection facilities will be eliminated from the producer or a  
11    primary battery stewardship organization's plan;

12          (4) the locations for all collection points set up by the producers covered  
13    by the plan and contact information for each location;

14          (5) examples and description of educational materials used to increase  
15    collection;

16          (6) the manner in which the collected primary batteries were managed;

17          (7) any material change to the primary battery stewardship plan; and

18          (8) the cost of implementation of the program, including the costs of  
19    collection, recycling, education, and outreach.

20          (b) Plan audit. Once every five years, a producer or stewardship  
21    organization shall hire an independent third party to audit the plan and plan

1 operation. The auditor shall examine the effectiveness of the program in  
2 collecting and recycling primary batteries. The independent auditor shall  
3 examine the cost-effectiveness of the program and compare it to that of  
4 collection programs for primary batteries in other jurisdictions. The  
5 independent auditor shall make recommendations to the Secretary on ways to  
6 increase program efficacy and cost-effectiveness.

7 § 7585. PRIMARY BATTERY STEWARDSHIP ORGANIZATION;  
8 REQUIREMENTS; REGISTRATION

9 (a) Participation in a stewardship organization. A producer may meet the  
10 requirements of this chapter by participating in a primary battery stewardship  
11 organization that undertakes the producer's responsibilities under sections  
12 7582, 7583, and 7584 of this title.

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

15 (1) commit to assume the responsibilities, obligations, and liabilities of  
16 all producers participating in the stewardship organization;

17 (2) not create unreasonable barriers for participation by producers in the  
18 stewardship organization; and

19 (3) maintain a public website that lists all producers and producers'  
20 brands covered by the primary battery stewardship organization's approved  
21 collection plan.

1           (c) Registration requirements.

2           (1) Beginning January 1, 2015 and annually thereafter, a stewardship  
3           organization shall file a registration form with the Secretary. The Secretary  
4           shall provide the registration form to a stewardship organization. The  
5           registration form shall include:

6                   (A) a list of the producers participating in the stewardship  
7                   organization;

8                   (B) the name, address, and contact information of a person  
9                   responsible for ensuring a producer's compliance with this chapter;

10                   (C) a description of how the stewardship organization meets the  
11                   requirements of subsection (a) of this section, including any reasonable  
12                   requirements for participation in the stewardship organization; and

13                   (D) the name, address, and contact information of a person for a  
14                   nonmember manufacturer to contact on how to participate in the stewardship  
15                   organization to satisfy the requirements of this chapter.

16           (2) A renewal of a registration without changes may be accomplished  
17           through notifying the Secretary on a form provided by the Secretary.

18           (d) Primary battery-containing products; notification. Producers of a  
19           battery-containing product who choose to fulfill the requirements of this  
20           chapter by participation in a stewardship organization under subsection (a) of  
21           this section shall notify each product stewardship organization operating an



1 approved program that the primary batteries contained within or packaged with  
2 their products are covered by a primary battery producer participating in a  
3 stewardship program, and shall provide the name of the products, as well as the  
4 identity of its primary battery supplier, brand, weight, chemistry, estimated  
5 number of batteries contained in, or packaged with, the products sold in the  
6 State, and such other details as the primary battery stewardship organization  
7 may reasonably require. A primary battery stewardship organization in which  
8 the primary battery supplier is participating shall, as part of the list submitted  
9 under subsection 7583(b) of this title, include the producer of the primary  
10 battery-containing product as a participant in its program, subject to any  
11 limitations or exceptions as may be indicated by the information submitted by  
12 the primary battery-containing product producer.

13 § 7586. AGENCY RESPONSIBILITIES; APPROVAL OF PLANS

14 (a) Approval of plan. Within 90 days after receipt of a proposed  
15 stewardship plan, the Secretary shall determine whether the plan complies with  
16 the requirements of section 7583 of this title. If the Secretary approves a plan,  
17 the Secretary shall notify the applicant of the plan approval in writing. If the  
18 Secretary rejects a plan, the Secretary shall notify the applicant in writing of  
19 the reasons for rejecting the plan. An applicant whose plan is rejected by the  
20 Secretary shall submit a revised plan to the Secretary within 45 days of  
21 receiving notice of rejection.

1        (b) Plan amendment; changes. Any changes to a proposed stewardship  
2        plan shall be approved by the Secretary in writing. The Secretary, in his or her  
3        discretion or at the request of a producer, may require a producer or a primary  
4        battery stewardship organization to amend an approved plan.

5        (c) Public notice. The Secretary shall post all proposed and approved  
6        primary battery stewardship plans on the Agency's website, subject to the  
7        confidentiality provisions of section 7588 of this title.

8        (d) Public input. The Secretary shall establish a process under which a  
9        primary battery stewardship plan, prior to plan approval or amendment, is  
10       available for public review and comment.

11       (e) Registrations. The Secretary shall accept, review, and approve or deny  
12       primary battery stewardship organization registrations submitted under section  
13       7583 of this title.

14       (f) Agency website. The Secretary shall maintain a website that includes  
15       the names of producers with approved plans or participation in approved plans.  
16       The website shall list all of an approved producer's brands covered by the  
17       stewardship plan filed with the Secretary. The Secretary shall update  
18       information on the website within 10 days of receipt of notice of any change to  
19       the listed information.

20       (g) Term of stewardship plan. A primary battery stewardship plan  
21       approved by the Secretary under this section shall have a term not to exceed

1 five years, provided that the producer remains in compliance with the  
2 requirements of this chapter and the terms of the approved plan.

3 § 7587. RETAILER OBLIGATIONS

4 (a) Sale prohibited. Except as set forth under subsection (b) of this section,  
5 beginning January 1, 2016, no retailer shall sell or offer for sale a primary  
6 battery or primary battery-containing product unless the retailer has reviewed  
7 the Agency website required in subsection 7586(f) of this title to determine  
8 that the producer of the primary battery or primary battery-containing product  
9 is implementing an approved collection plan or is a member of a  
10 stewardship organization.

11 (b) Inventory exception; expiration or revocation of manufacturer  
12 registration. A retailer shall not be responsible for an unlawful sale of a  
13 primary battery or primary battery-containing product under this subsection if:

14 (1) the retailer purchased the primary battery or primary  
15 battery-containing product prior to January 1, 2016 and sells the battery or  
16 product on or before January 1, 2017; or

17 (2) the producer's stewardship plan expired or was revoked, and the  
18 retailer took possession of the in-store inventory of primary batteries or  
19 primary battery-containing products prior to the expiration or revocation of the  
20 producer's stewardship plan.

1     § 7588. CONFIDENTIALITY OF SUBMITTED DATA

2         (a) Confidentiality of submitted reports and data. Reports and data  
3     submitted under this chapter shall be available for public inspection and  
4     copying, provided that:

5             (1) Information protected under the Uniform Trade Secrets Act, as  
6     codified under 9 V.S.A. chapter 143, or under the trade secret exemption under  
7     1 V.S.A. § 317(c)(9) shall not be available for public inspection and copying.

8             (2) The Secretary may publish information confidential under  
9     subdivision (1) of this section in a summary or aggregated form that does not  
10    directly or indirectly identify individual producers, distributors, or retailers.

11         (b) Omission of trade secret information. The Secretary may require, as a  
12    part of a report submitted under this chapter, that the producer or stewardship  
13    organization submit a report that does not contain trade secret information and  
14    is available for public inspection and review.

15         (c) Total weight of batteries. The total weight of batteries collected under  
16    an approved primary battery stewardship plan is not confidential business  
17    information under the Uniform Trade Secrets Act, as codified under 9 V.S.A.  
18    chapter 143, and shall be subject to inspection and review under the Public  
19    Records Act, 1 V.S.A chapter 5, subchapter 3.

1     § 7589. ANTITRUST; CONDUCT AUTHORIZED

2           (a) Activity authorized. A producer, group of producers, or stewardship  
3     organization implementing or participating in an approved stewardship plan  
4     under this chapter for the collection, transport, processing, and end-of-life  
5     management of primary batteries are individually or jointly immune from  
6     liability for the conduct under State laws relating to antitrust, restraint of trade,  
7     unfair trade practices, and other regulation of trade or commerce under  
8     9 V.S.A. chapter 63, subchapter 1, to the extent that the conduct is reasonably  
9     necessary to plan, implement, and comply with the producer's, group of  
10    producers', or stewardship organization's chosen system for managing  
11    discarded primary batteries. This subsection shall also apply to conduct of a  
12    retailer or wholesaler participating in a producer or stewardship organization's  
13    approved plan when the conduct is necessary to plan and implement the  
14    producer's or stewardship organization's organized collection or recycling  
15    system for discarded batteries

16           (b) Limitations on anti-trust activity. Subsection (a) of this section shall  
17    not apply to an agreement among producers, groups of producers, retailers,  
18    wholesalers, or stewardship organizations affecting the price of primary  
19    batteries or primary battery containing products or any agreement restricting  
20    the geographic area in which, or customers to whom, primary batteries or  
21    primary battery-containing products shall be sold.

1     § 7590. ADMINISTRATIVE FEE

2         (a) Fee assessed. A producer or stewardship organization shall pay a fee of  
3     \$15,000.00 annually for operation under a stewardship plan approved by the  
4     Secretary under section 7586 of this title.

5         (b) Disposition of fee. The fees collected under subsection (a) of this  
6     section shall be deposited in the environmental permit fund under  
7     3 V.S.A. § 2805.

8     § 7591. PRIVATE RIGHT OF ACTION

9         (a) A producer or a primary battery stewardship organization implementing  
10     an approved plan in compliance with the requirements of this chapter may  
11     bring a civil action against another producer or stewardship organization for  
12     damages when:

13             (1) the plaintiff producer or stewardship organization incurs more than  
14     \$3,000.00 in actual direct costs collecting, handling, recycling, or properly  
15     disposing of primary batteries sold or offered for sale in the State by  
16     another producer;

17             (2) the producer from whom damages are sought:

18                 (A) can be identified as the producer of the collected batteries from a  
19     brand or marking on the discarded battery or from other information available  
20     to the plaintiff producer or stewardship organization; and

1           (B) does not operate an approved battery stewardship program in the  
2     State.

3           (b)(1) A producer or primary battery stewardship organization  
4     implementing an approved plan in compliance with the requirements of this  
5     chapter may bring a civil action for damages against another producer or  
6     stewardship organization that is implementing an approved plan in the  
7     State when:

8           (A) the plaintiff producer or stewardship organization submitted a  
9     reimbursement request to another producer or stewardship organization under  
10    the procedure approved under subdivision 7583(b)(8) of this title;

11          (B) the plaintiff producer does not receive reimbursement within:

12           (i) 60 days of the request, if no independent audit is requested  
13    under the procedure approved under subdivision 7583(b)(8) of this title; or

14           (ii) 30 days after completion of an audit if an independent audit is  
15    requested under the procedure approved under subdivision 7583(b)(8) of this  
16    title and the audit confirms the validity of the reimbursement request.

17          (2) A civil action under this subsection may be brought against an  
18    individual producer only if the producer is implementing its own primary  
19    battery stewardship plan. A producer participating in an approved primary  
20    battery stewardship plan covering multiple producers shall not be sued  
21    individually for reimbursement. An action against a producer participating in a

1 stewardship plan covering multiple producers shall be brought against the  
2 stewardship organization implementing the plan.

3 (c) As used in this section, “damages” means:

4 (1) the actual, direct costs a plaintiff producer incurs in collecting,  
5 handling, recycling, or properly disposing of primary batteries reasonably  
6 identified as having originated from a noncompliant producer;

7 (2) exemplary damages not exceeding three times the costs incurred  
8 under subdivision (1) of this subsection; and

9 (3) the prevailing plaintiff producer’s attorney’s fees and costs of  
10 bringing the action.

11 § 7592. REIMBURSEMENT OF RECHARGEABLE BATTERY

12 STEWARDS

13 (a) Reimbursement of rechargeable battery stewards. A primary battery  
14 producer or primary battery stewardship organization shall reimburse operators  
15 of a bona fide rechargeable battery stewardship organization, or other person  
16 operating a bona fide rechargeable battery stewardship program, for actual  
17 direct costs per unit of weight incurred by the bona fide rechargeable battery  
18 stewardship organization in the collection of primary batteries supplied by  
19 producers participating in an approved primary battery stewardship program in  
20 the State. Direct costs include costs of collection, transport, recycling and  
21 other actual environmental management costs, plus an additional negotiated



1 amount not to exceed 10 percent to reflect a reasonable contribution for  
2 indirect costs, including permitting fees, overhead, personnel costs,  
3 administration, insurance, legal or accounting costs, education and outreach, or  
4 any other costs.

5 (b) Request for audit. A producer or primary battery stewardship  
6 organization that receives a request for reimbursement from a rechargeable  
7 battery steward may, prior to payment and within 30 days of the request for  
8 reimbursement, request an independent audit of the requested reimbursement  
9 costs. If the independent audit confirms the reasonableness of the  
10 reimbursement request, the producer or primary battery stewardship  
11 organization requesting the audit shall pay the cost of the audit.

12 (c)(1) Civil action for failure to reimburse. A rechargeable battery steward  
13 or other person operating a bona fide program to collect used rechargeable  
14 batteries for recycling in the State may bring a civil action for damages against  
15 a primary battery producer or primary battery stewardship organization that is  
16 implementing an approved plan in the State when:

17 (A) the rechargeable battery steward submitted a reimbursement  
18 request to another producer or stewardship organization under subsection (b)  
19 of this section;

20 (B) the rechargeable battery steward does not receive  
21 reimbursement within:

1                   (i) 60 days of the request, if no independent audit is requested  
2                   under subsection (b) of this section; or

3                   (ii) 30 days after completion of an audit if an independent audit is  
4                   requested under subsection (b) of this section and the audit confirms the  
5                   validity of the reimbursement request.

6                   (2) A civil action under this subsection may be brought against an  
7                   individual primary battery producer only if the producer is implementing its  
8                   own primary battery stewardship plan or the producer has failed to register to  
9                   participate in a plan. A primary battery producer participating in an approved  
10                  primary battery stewardship plan covering multiple producers shall not be sued  
11                  individually for reimbursement. An action against a primary battery producer  
12                  participating in a stewardship plan covering multiple producers shall be  
13                  brought against the stewardship organization implementing the plan.

14                  (d) Procedure; bona fide rechargeable battery stewardship program.

15                  (1) The Secretary may require a primary battery producer or a primary  
16                  battery stewardship organization to submit the procedure for reimbursement  
17                  under this section to the Secretary for approval.

18                  (2) The Secretary, in his or her discretion, shall approve a rechargeable  
19                  battery stewardship program as bona fide under this section.

1     § 7593. PENALTIES

2             A producer who violates the requirements of this chapter shall be subject to  
3     a civil penalty not to exceed \$1,000.00 per day for each day of noncompliance.

4     § 7594. RULEMAKING; PROCEDURE

5             The Secretary may adopt rules or procedures to implement the requirements  
6     of this chapter.

7     Sec. 2. 10 V.S.A. § 8003(a) is amended to read:

8             (a) The Secretary may take action under this chapter to enforce the  
9     following statutes and rules, permits, assurances, or orders implementing the  
10    following statutes:

11   \* \* \*

12             (22) 10 V.S.A. chapter 164A, collection and disposal of  
13     mercury-containing lamps; ~~and~~

14             (23) 24 V.S.A. § 2202a, relating to a municipality’s adoption and  
15     implementation of a solid waste implementation plan that is consistent with the  
16     State Solid Waste Plan; and

17             (24) 10 V.S.A. chapter 168, relating to the collection and disposal of  
18     primary batteries.

19     Sec. 3. 10 V.S.A. § 8503(a) is amended to read:

20             (a) This chapter shall govern all appeals of an act or decision of the  
21     Secretary, excluding enforcement actions under chapters 201 and 211 of this

1 title and rulemaking, under the following authorities and under the rules  
2 adopted under those authorities:

3 (1) The following provisions of this title:

4 \* \* \*

5 (Q) chapter 164A (collection and disposal of mercury-containing  
6 lamps).

7 (R) chapter 32 (flood hazard areas).

8 (S) chapter 168 (collection and disposal of primary batteries).

9 (2) 29 V.S.A. chapter 11 (management of lakes and ponds).

10 (3) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).

11 Sec. 4. EFFECTIVE DATE

12 This act shall take effect on passage.