

1 Introduced by Representative Klein of East Montpelier

2 Referred to Committee on

3 Date:

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

5 batteries

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

7 product stewardship program for discarded batteries.

8 An act relating to establishing a product stewardship program for primary

9 batteries

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

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

12 CHAPTER 168. PRODUCT STEWARDSHIP

13 FOR PRIMARY BATTERIES

14 § 7581. DEFINITIONS

15 As used in this chapter:

16 (1) “Agency” means the Agency of Natural Resources.

17 (2) “Brand” means a name, symbol, word, or traceable mark

18 that identifies:

19 (A) a primary battery and attributes the primary battery to the owner

20 or licensee of the brand as the producer; or

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

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

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

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

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

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

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

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

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

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

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

18 (10) “Primary battery stewardship organization” or “stewardship
19 organization” means an organization appointed by one or more producers to
20 act as an agent on behalf of a producer or producers to design, submit,

1 implement and administer a primary battery stewardship plan under
2 this chapter.

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

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

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

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

17 (iii) if subdivisions (A)(i) and (ii) of this subdivision (12) do not
18 apply, a person who imports a primary battery or a primary battery-containing
19 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 BATTERY-

3 CONTAINING PRODUCT; STEWARDSHIP ORGANIZATION

4 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 elect to include provisions in the plan for the implementation
14 of the 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 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.