

1 Introduced by

2 Referred to Committee on

3 Date:

4 Subject: Conservation and development; extended producer responsibility;

5 household products containing a hazardous substance

6 Statement of purpose of bill as introduced: This bill proposes to require

7 manufacturers of household products containing hazardous substances to

8 collect and manage discarded household products containing hazardous

9 substances.

10 An act relating to collection and management of household products
11 containing hazardous substances

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

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

14 CHAPTER 164B. COLLECTION AND MANAGEMENT OF HOUSEHOLD

15 PRODUCTS CONTAINING HAZARDOUS SUBSTANCES

16 § 7181. DEFINITIONS

17 As used in this chapter:

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

19 (2) “Consumer product” means any product that is regularly used or

20 purchased to be used for personal, family, or household purposes.

1 (3) “Corrosive” means any substance that in contact with living tissue
2 will cause destruction of tissue by chemical action. “Corrosive” shall not refer
3 to action on inanimate surfaces.

4 (4) “Covered entity” means any person who presents to a collection
5 facility that is included in an approved plan any number of household products
6 containing hazardous substances.

7 (5) “Extremely flammable,” “flammable,” and “combustible” shall have
8 the same meanings as set forth in 16 C.F.R. § 1500.3(c)(6).

9 (6)(A) “Hazardous substance” means:

10 (i) Any substance or mixture of substances that is toxic, corrosive,
11 an irritant, a strong sensitizer, flammable, or combustible or that generates
12 pressure through decomposition, heat, or other means, if the substance or
13 mixture of substances may cause substantial personal injury or substantial
14 illness during or as a proximate result of any customary or reasonably
15 foreseeable handling or use, including reasonably foreseeable ingestion by
16 children.

17 (ii) Any substance that the Commission by regulation determines
18 to be a hazardous substance.

19 (iii) Any radioactive substance that the Commission determines by
20 regulation is sufficiently hazardous to require labeling to protect public health.

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1 (iv) Any article that is not itself a pesticide within the meaning of
2 the Federal Insecticide, Fungicide, and Rodenticide Act but that is a hazardous
3 substance by reason of bearing or containing the pesticide.

4 (B) “Hazardous substance” shall not mean:

5 (i) a pesticide subject to the Federal Insecticide, Fungicide, and
6 Rodenticide Act;

7 (ii) a food, drug, or cosmetic subject to the Federal Food, Drug,
8 and Cosmetic Act;

9 (iii) a substance intended for use as a fuel when stored in a 20-
10 pound cylinder or other container and used in the heating, cooking, or
11 refrigeration system of a house; or

12 (iv) any source material, special nuclear material, or by-product
13 material as defined in the Atomic Energy Act of 1954, as amended, and
14 regulations issued under that act by the Atomic Energy Commission.

15 (7) “Highly toxic” means any substance that:

16 (A) produces death within 14 days in one-half or more than one-half
17 of a group of 10 or more laboratory white rats, each weighing between 200 and
18 300 grams, at a single dose of 50 milligrams or less per kilogram of body
19 weight, when orally administered; or

20 (B) produces death within 14 days in one-half or more than one-half
21 of a group of 10 or more laboratory white rats, each weighing between 200 and

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1 300 grams, when inhaled continuously for a period of one hour or less at an
2 atmospheric concentration of 200 parts per million by volume or less of gas or
3 vapor or two milligrams per liter by volume or less of mist or dust, provided
4 that the concentration is likely to be encountered by humans when the
5 substance is used in any reasonably foreseeable manner.

6 (8) “Household hazardous waste” shall have the same meaning as in
7 section 6602 of this title.

8 (9) “Household product containing a hazardous substance” means a
9 consumer product that includes a hazardous substance or that would be a
10 household hazardous waste if discarded. “Household product containing a
11 hazardous substance” shall not mean any of the following:

12 (A) architectural paint regulated under chapter 159, subchapter 4 of
13 this title;

14 (B) covered electronic devices regulated under chapter 166 of this
15 title;

16 (C) mercury-containing lamps regulated under chapter 164A of this
17 title;

18 (D) primary batteries regulated under chapter 168 of this title; or

19 (E) propane cylinders or tanks of more than one pound.

1 (10) “Irritant” means any substance, other than a corrosive, that on
2 immediate, prolonged, or repeated contact with normal living tissue will
3 induce a local inflammatory reaction.

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

5 (A) manufactures or manufactured a household product containing a
6 hazardous substance under its own brand or label for sale in the State;

7 (B) sells in the State under its own brand or label a household
8 product containing a hazardous substance produced by another supplier;

9 (C) owns a brand that it licenses or licensed to another person for use
10 on a household product containing a hazardous substance sold in the State;

11 (D) imports into the United States for sale in the State a household
12 product containing a hazardous substance manufactured by a person without a
13 presence in the United States;

14 (E) manufactures a household product containing a hazardous
15 substance for sale in the State without affixing a brand name; or

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

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

2 (13) “Retailer” means a person who sells a household product
3 containing a hazardous substance in the State through any means, including a
4 sales outlet, a catalogue, the telephone, the Internet, or any electronic means.

5 (14) “Secretary” means the Secretary of Natural Resources.

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

12 (16) “Stewardship organization” means an organization, association, or
13 entity that has developed a system, method, or other mechanism that assumes
14 the responsibilities, obligations, and liabilities under this chapter of multiple
15 manufacturers of household products containing a hazardous substance.

16 (17) “Radioactive substance” means a substance that emits ionizing
17 radiation.

18 (18) “Strong sensitizer” means a substance that will cause on normal
19 living tissue through an allergic or photodynamic process a hypersensitivity
20 that becomes evident on reapplication of the same substance and that is
21 designated as a strong sensitizer by the Commission.

1 (19) “Toxic” means any substance, other than a radioactive substance,
2 that has the capacity to produce personal injury or illness to humans through
3 ingestion, inhalation, or absorption through any surface of the body.

4 § 7182. SALE OF HOUSEHOLD PRODUCT CONTAINING A

5 HAZARDOUS SUBSTANCE; STEWARDSHIP ORGANIZATION

6 REGISTRATION

7 (a) Sale prohibited. Beginning on July 1, 2019, except as set forth under
8 section 7188 of this title, a manufacturer of a household product containing a
9 hazardous substance shall not sell, offer for sale, or deliver to a retailer for
10 subsequent sale a household product containing a hazardous substance unless
11 all the following have been met:

12 (1) The manufacturer is participating in a stewardship organization
13 implementing an approved collection plan.

14 (2) The manufacturer has paid the fee under section 7189 of this title.

15 (3) The name of the manufacturer, the manufacturer’s brand, and the
16 name of the household product containing the hazardous substance are
17 submitted to the Agency of Natural Resources by a stewardship organization
18 and listed on the stewardship organization’s website as covered by an approved
19 plan.

20 (4) The stewardship organization in which the manufacturer participates
21 has submitted an annual report under section 7183 of this title.

1 (5) The stewardship organization in which the manufacturer participates
2 has conducted a plan audit consistent with the requirements of subsection
3 7183(b) of this title.

4 (b) Stewardship organization registration requirements.

5 (1) Beginning on January 1, 2019 and annually thereafter, a stewardship
6 organization shall file a registration form with the Secretary. The Secretary
7 shall provide the registration form to a stewardship organization. The
8 registration form shall include:

9 (A) a list of the manufacturers participating in the stewardship
10 organization;

11 (B) a list of the brands of each manufacturer participating in the
12 stewardship organization;

13 (C) a list of the household products containing a hazardous substance
14 of each manufacturer participating in the stewardship organization;

15 (D) the name, address, and contact information of a person
16 responsible for ensuring the manufacturer’s compliance with this chapter;

17 (E) a description of how the stewardship organization meets the
18 requirements of 10 V.S.A. § 7185(b), including any reasonable requirements
19 for participation in the stewardship organization; and

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1 (F) the name, address, and contact information of a person for a
2 nonmember manufacturer to contact regarding how to participate in the
3 stewardship organization to satisfy the requirements of this chapter.

4 (2) A renewal of a registration without changes may be accomplished
5 through notifying the Agency of Natural Resources on a form provided by the
6 Agency.

7 § 7183. ANNUAL REPORT; PLAN AUDIT

8 (a) Annual report. At the end of each program year, a stewardship
9 organization of manufacturers of a household product containing a hazardous
10 substance shall submit an annual report to the Secretary that contains the
11 following:

12 (1) a description of the collection program;

13 (2) The number and type of household products containing a hazardous
14 substance collected and the collection facility from which the household
15 products containing a hazardous substance were collected.

16 (3) an estimate of the number of household products containing a
17 hazardous substance available for collection and the methodology used to
18 develop this number. Sales data and other confidential business information
19 provided under this section shall be exempt from public inspection and
20 copying under the Public Records Act and shall be kept confidential.
21 Confidential information shall be redacted from any final public report.

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1 (b) Plan audit. Once every five years, a stewardship organization of
2 manufacturers of a household product containing a hazardous substance shall
3 hire an independent third party to audit the plan and the plan’s operation. The
4 auditor shall examine the effectiveness of the program in collecting and
5 disposing of household products containing a hazardous substance. The
6 auditor shall examine the cost-effectiveness of the program and compare it to
7 that of collection programs for household products containing a hazardous
8 substance in other jurisdictions. The auditor shall make recommendations to
9 the Secretary on ways to increase the program’s efficacy and cost-
10 effectiveness.

11 § 7184. COLLECTION PLANS

12 (a) Collection plan required. Prior to February 1, 2019, a stewardship
13 organization representing manufacturers of household products containing a
14 hazardous substance shall submit a collection plan to the Secretary for review.

15 (b) Collection plan; minimum requirements. Each stewardship plan shall
16 include, at a minimum, all of the following requirements:

17 (1) A list of the manufacturers, brands, and products participating in the
18 plan.

19 (2) Free collection of household products containing a hazardous
20 substance. The collection program shall provide for free collection from
21 covered entities of household products containing a hazardous substance.

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1 A stewardship organization shall accept all household products containing a
2 hazardous substance collected from a covered entity and shall not refuse the
3 collection of a household product containing a hazardous substance based on
4 the brand or manufacturer of the household product containing a hazardous
5 substance. The collection program shall also provide for the payment of
6 collection, processing, and end-of-life management of the household product
7 containing a hazardous substance. Collection costs include facility and
8 equipment costs, maintenance, and labor.

9 (3) Convenient collection location. The manufacturer shall develop a
10 collection program that:

11 (A) allows all municipal collection locations to opt to be a collection
12 facility; and

13 (B) at a minimum, has not less than one collection facility in each
14 county.

15 (3) Public education and outreach. The collection plan shall include an
16 education and outreach program that may include media advertising, retail
17 displays, articles in trade and other journals and publications, and other public
18 educational efforts. The education and outreach program shall include a
19 website to notify the public of the following:

20 (A) that there is a free collection program for household products
21 containing a hazardous substance;

1 (B) the location and hours of operation of collection points and how a
2 covered entity can access this collection program; and

3 (C) the special handling considerations associated with household
4 products containing a hazardous substance.

5 (4) Compliance with appropriate environmental standards. In
6 implementing a collection plan, a stewardship organization shall comply with
7 all applicable laws related to the collection, transportation, and disposal of
8 hazardous waste. A stewardship organization shall comply with any special
9 handling or disposal standards established by the Secretary for household
10 products containing a hazardous substance or for the collection plan of the
11 manufacturer.

12 (b) Term of collection plan. A collection plan approved by the Secretary
13 under section 7187 of this title shall have a term not to exceed five years,
14 provided that the manufacturer remains in compliance with the requirements of
15 this chapter and the terms of the approved plan.

16 § 7185. STEWARDSHIP ORGANIZATIONS

17 (a) Participation in a stewardship organization. A manufacturer shall meet
18 the requirements of this chapter by participating in a stewardship organization
19 that undertakes the manufacturer's responsibilities under sections 7182, 7183,
20 and 7184 of this title.

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

3 (1) commit to assume the responsibilities, obligations, and liabilities of
4 all manufacturers participating in the stewardship organization;

5 (2) not create unreasonable barriers for participation in the stewardship
6 organization; and

7 (3) maintain a public website that lists all manufacturers and
8 manufacturers' brands and products covered by the stewardship organization's
9 approved collection plan.

10 § 7186. ANTITRUST; CONDUCT AUTHORIZED

11 (a) Activity authorized. A manufacturer, group of manufacturers, or
12 stewardship organization implementing or participating in an approved
13 stewardship plan under this chapter for the collection, transport, processing,
14 and end-of-life management of household products containing a hazardous
15 substance is individually or jointly immune from liability for conduct under
16 State laws relating to antitrust, restraint of trade, unfair trade practices, and
17 other regulation of trade or commerce under 9 V.S.A. chapter 63, subchapter 1,
18 to the extent that the conduct is reasonably necessary to plan, implement, and
19 comply with the manufacturer's, group of manufacturers', or stewardship
20 organization's chosen system for managing discarded household products
21 containing a hazardous substance. This subsection shall also apply to conduct

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1 of a retailer or wholesaler participating in a manufacturer's or stewardship
2 organization's approved stewardship plan when the conduct is necessary to
3 plan and implement the manufacturer's or stewardship organization's
4 organized collection or recycling system for discarded household products
5 containing a hazardous substance.

6 (b) Limitations on anti-trust activity. Subsection (a) of this section shall
7 not apply to an agreement among producers, groups of manufacturers, retailers,
8 wholesalers, or stewardship organizations affecting the price of household
9 products containing a hazardous substance or any agreement restricting the
10 geographic area in which or customers to whom household products containing
11 a hazardous substance shall be sold.

12 § 7187 AGENCY RESPONSIBILITIES

13 (a) Review and approve collection plans. The Secretary shall review and
14 approve or deny collection plans submitted under section 7184 of this title.
15 The Secretary shall approve a collection plan if the Secretary finds that the
16 plan:

17 (1) complies with the requirements of subsection 7184(a) of this title.

18 (2) provides adequate notice to the public of the collection opportunities
19 available for household products containing a hazardous substance.

20 (3) ensures that collection of household products containing a hazardous
21 substance will occur in an environmentally sound fashion that is consistent

1 with the law or with any special handling requirements adopted by the
2 Secretary.

3 (4) promotes the collection and disposal of household products
4 containing a hazardous substance.

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

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

16 (d) Registrations. The Secretary shall accept, review, and approve or deny
17 registrations required by this chapter. The Secretary may revoke a registration
18 of a stewardship organization for actions that are unreasonable, unnecessary, or
19 contrary to the requirements or the policy of this chapter.

20 (e) Supervisory capacity. The Secretary shall act in a supervisory capacity
21 over the actions of a stewardship organization registered under this section. In

1 acting in this capacity, the Secretary shall review the actions of the stewardship
2 organization to ensure that they are reasonable, necessary, and limited to
3 carrying out requirements of and policy established by this chapter.

4 (f) Special handling requirements. The Secretary may adopt, by rule,
5 special handling requirements for the collection, transport, and disposal of
6 household products containing a hazardous substance.

7 § 7188. RETAILER OBLIGATIONS

8 (a) Sale prohibited. Except as set forth under subsection (b) of this section,
9 beginning July 1, 2019, no retailer shall sell or offer for sale a household
10 product containing a hazardous substance unless the retailer has reviewed the
11 stewardship organization website required in subsection 7185(b) of this title to
12 determine that the manufacturer of the household product containing a
13 hazardous substance is implementing an approved collection plan or is a
14 member of a stewardship organization.

15 (b) Inventory exception; expiration or revocation of manufacturer
16 registration. A retailer shall not be responsible for an unlawful sale of a
17 household product containing a hazardous substance under this subsection if:

18 (1) the retailer purchased the household product containing the
19 hazardous substance prior to July 1, 2019; or

20 (2) the manufacturer's collection plan expired or was revoked, and the
21 retailer took possession of the in-store inventory of household products

1 containing a hazardous substance prior to the expiration or revocation of the
2 manufacturer's collection plan.

3 § 7189. FEES; DISPOSITION

4 (a) A stewardship organization shall pay a fee of \$80,000.00 annually for
5 purposes of allowing manufacturers within the stewardship organization to
6 operate under a collection plan approved by the Secretary under section 7187
7 of this title.

8 (b) The fees collected under subsection (a) of this section shall be deposited
9 in the Environmental Permit Fund established under 3 V.S.A. § 2805.

10 § 7190. OTHER DISPOSAL PROGRAMS

11 A municipality or other public agency shall not require covered entities to
12 use public facilities to dispose of household products containing a hazardous
13 substance to the exclusion of other lawful programs available. A municipality
14 and other public agencies are encouraged to work with manufacturers to assist
15 them in meeting their collection and disposal obligations under this chapter.

16 Nothing in this chapter prohibits or restricts the operation of any program
17 collecting and disposing of household products containing a hazardous
18 substance in addition to those provided by manufacturers or prohibits or
19 restricts any persons from receiving, collecting, transporting, or disposing of
20 household products containing a hazardous substance, provided that all other
21 applicable laws are met.

1 Sec. 3. 10 V.S.A. § 8003 is amended to read:

2 § 8003. APPLICABILITY

3 (a) The Secretary may take action under this chapter to enforce the
4 following statutes and rules, permits, assurances, or orders implementing the
5 following statutes, and the Board may take such action with respect to
6 subdivision (10) of this subsection:

7 * * *

8 (27) 10 V.S.A. chapter 123, relating to threatened and endangered
9 species; ~~and~~

10 (28) 30 V.S.A. § 255, relating to regional coordination to reduce
11 greenhouse gases; and

12 (29) 10 V.S.A. chapter 164B, relating to collection and management of
13 household products containing a hazardous substance.

14 * * *

15 Sec. 4. 10 V.S.A. § 8503 is amended to read:

16 § 8503. APPLICABILITY

17 (a) This chapter shall govern all appeals of an act or decision of the
18 Secretary, excluding enforcement actions under chapters 201 and 211 of this
19 title and rulemaking, under the following authorities and under the rules
20 adopted under those authorities:

21 (1) The following provisions of this title:

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* * *

(U) chapter 168 (product stewardship for primary batteries and rechargeable batteries);

(V) chapter 164B (collection and management of household products containing a hazardous substance).

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

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

* * *

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.