

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Natural Resources, Fish, and Wildlife to which was
3 referred House Bill No. 560 entitled “An act relating to household products
4 containing hazardous substances” respectfully reports that it has considered the
5 same and recommends that the bill be amended by striking out all after the
6 enacting clause and inserting in lieu thereof the following:

7 Sec. 1. FINDINGS

8 The General Assembly finds that:

9 (1) Thousands of household products sold in the State contain
10 substances designated as hazardous under State or federal law.

11 (2) Vermont’s hazardous waste regulations establish specific
12 requirements for the management of hazardous waste, including a prohibition
13 on disposal in landfills.

14 (3) Leftover household products, known as household hazardous waste
15 (HHW), are regulated through a requirement that municipal solid waste
16 management entities (SWMEs) include provisions in solid waste
17 implementation plans for the management and diversion of unregulated
18 hazardous waste. The State solid waste management plan also will require the
19 SWMEs to each hold four HHW collection events every year.

1 (4) Many SWMEs already offer more than four HHW collection events
2 each year, and five of the SWMEs have established permanent facilities for the
3 regular collection of HHW.

4 (5) HHW collection events or permanent facilities are expensive to
5 operate, and SWMEs spend approximately \$1.6 million a year to manage
6 HHW, costs that are subsequently passed on to the residents of Vermont
7 through taxes or disposal charges.

8 (6) As a result of the failure to divert HHW, it is estimated that 640 tons
9 or more per year of HHW are being disposed of in landfills.

10 (7) There is general agreement among the SWMEs and the Agency of
11 Natural Resources that additional collection sites and educational and
12 informational activities are necessary to capture more of the HHW being
13 disposed of in landfills.

14 (8) Funding constraints are a current barrier to new collection sites and
15 educational and informational activities.

16 (9) HHW released into the environment can contaminate air,
17 groundwater, and surface waters, thereby posing a significant threat to the
18 environment and public health.

19 (10) To improve diversion of HHW from landfills, reduce the financial
20 burden on SWMEs, taxpayers, and the cost of the overall system of managing
21 HHW, and lessen the environmental and public health risk posed by

1 improperly disposed of HHW, the Secretary of Natural Resources shall
2 convene the Working Group on Household Hazardous Waste to recommend
3 how best to manage and fund HHW in the State.

4 (11) If the Working Group on Household Hazardous Waste fails to
5 provide recommendations, the State shall implement a program to require the
6 manufacturers of household products containing a hazardous substance to
7 implement a stewardship organization to collect household products containing
8 a hazardous substance free of charge to the public.

9 Sec. 2. AGENCY OF NATURAL RESOURCES WORKING GROUP ON
10 HOUSEHOLD HAZARDOUS WASTE

11 (a) The Secretary of Natural Resources shall convene the Working Group
12 on Household Hazardous Waste to review alternatives for the management and
13 funding of household hazardous waste collection in the State. It is the intent of
14 the General Assembly that the Working Group will involve a representative
15 group of stakeholders with interest in the management of household hazardous
16 waste. On or before January 15, 2019, the Secretary of Natural Resources
17 shall submit to the House Committee on Natural Resources, Fish, and Wildlife
18 and the Senate Committee on Natural Resources and Energy a report on
19 agreement within the Working Group, or lack thereof, recommending how the
20 State should manage and fund household hazardous waste. If agreement is
21 reached, the report shall include:

1 (1) a review of the stewardship organization requirements of 10 V.S.A.
2 chapter 164B, as enacted in Sec. 3 of this act, and make recommendations on
3 how to efficiently and effectively implement the requirements in 10 V.S.A.
4 chapter 164B including any changes necessary to implement or improve the
5 chapter; and

6 (2) an evaluation of alternative methods for easing the financial burden
7 to municipalities and providing convenient access for collection of household
8 hazardous waste.

9 (b) As used in this section, “household hazardous waste” shall have the
10 same meaning as set forth in 10 V.S.A. § 6602, and shall include waste from
11 conditionally exempt generators.

12 Sec. 3. 10 V.S.A. chapter 164B is added to read:

13 CHAPTER 164B. COLLECTION AND MANAGEMENT OF HOUSEHOLD

14 HAZARDOUS PRODUCTS

15 § 7181. DEFINITIONS

16 As used in this chapter:

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

18 (2) “Consumer product” means any product that is regularly used or
19 purchased to be used for personal, family, or household purposes.

20 (3)(A) “Covered household hazardous product” means a consumer
21 product offered for retail sale that is contained in the receptacle in which the

1 product is offered for retail sale, if the product has any of the following
2 characteristics:

3 (i) The physical properties of the product meet the criteria for
4 characteristic wastes under the federal Resource Conservation and Recovery
5 Act of 1976, Pub. L. No. 94-580, as amended, including ignitability,
6 corrosivity, reactivity, or toxicity as defined in 40 C.F.R. §§ 261.20-261.24.

7 (ii) The physical properties of the product meet the criteria for
8 designation as a class 2, 3, 4, 5, 6, or 8 hazardous material, as defined in
9 49 C.F.R. part 173, by the U.S. Department of Transportation under the
10 Hazardous Materials Transportation Act of 1975, 49 U.S.C. §§ 5101-5128, as
11 amended.

12 (iii) The product is a marine pollutant as defined in 49 C.F.R.
13 § 171.8.

14 (iv) The product is a hazardous waste under chapter 159 of this
15 title or rules adopted under that chapter.

16 (B) “Covered product” does not mean:

17 (i) A primary battery or rechargeable battery.

18 (ii) A lamp that contains mercury.

19 (iii) A thermostat that contains mercury.

20 (iv) Architectural paint as that term is defined in section 6672 of
21 this chapter.

1 (v) Covered electronic devices as that term is defined in section
2 7551 of this title.

3 (iv) A pharmaceutical drug.

4 (v) A pesticide regulated by the Secretary of Agriculture, Food
5 and Markets.

6 (vi) Products that are intended to be rubbed, poured, sprinkled on,
7 sprayed on, introduced into, or otherwise applied to the human body or any
8 part of a human for cleansing, moisturizing, sun protection, beautifying,
9 promoting attractiveness, or altering appearance, unless designated as a
10 hazardous material or a hazardous waste by the Secretary of Natural
11 Resources.

12 (4) “Covered entity” means any person who presents to a collection
13 facility that is included in an approved plan any number of covered household
14 hazardous products.

15 (5) “Manufacturer” means a person who:

16 (A) manufactures or manufactured a covered household hazardous
17 product under its own brand or label for sale in the State;

18 (B) sells in the State under its own brand or label a covered
19 household hazardous product produced by another supplier;

20 (C) owns a brand that it licenses or licensed to another person for use
21 on a covered household hazardous product sold in the State;

1 (D) imports into the United States for sale in the State a covered
2 household hazardous product manufactured by a person without a presence in
3 the United States;

4 (E) manufactures a covered household hazardous product for sale in
5 the State without affixing a brand name; or

6 (F) assumes the responsibilities, obligations, and liabilities of a
7 manufacturer as defined under subdivisions (A) through (E) of this subdivision
8 (5), provided that the Secretary may enforce the requirements of this chapter
9 against a manufacturer defined under subdivisions (A) through (E) of this
10 subdivision (5) if a person who assumes the manufacturer’s responsibilities
11 fails to comply with the requirements of this chapter.

12 (6) “Program year” means the period from January 1 through December
13 31.

14 (7) “Retailer” means a person who sells a covered household hazardous
15 product in the State through any means, including a sales outlet, a catalogue,
16 the telephone, the Internet, or any electronic means.

17 (8) “Secretary” means the Secretary of Natural Resources.

18 (9) “Sell” or “sale” means any transfer for consideration of title or of the
19 right to use by lease or sales contract a covered household hazardous product
20 to a person in the State of Vermont. “Sell” or “sale” does not include the sale,

1 resale, lease, or transfer of a used covered household hazardous product or a
2 manufacturer’s wholesale transaction with a distributor or a retailer.

3 (10) “Stewardship organization” means an organization, association, or
4 entity that has developed a system, method, or other mechanism that assumes
5 the responsibilities, obligations, and liabilities under this chapter of multiple
6 manufacturers of covered household hazardous products.

7 § 7182. SALE OF COVERED HOUSEHOLD HAZARDOUS PRODUCT;
8 STEWARDSHIP ORGANIZATION REGISTRATION

9 (a) Sale prohibited. Beginning on January 1, 2021, except as set forth
10 under section 7188 of this title, a manufacturer of a covered household
11 hazardous product shall not sell, offer for sale, or deliver to a retailer for
12 subsequent sale a covered household hazardous product unless all the
13 following have been met:

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

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

20 (3) The stewardship organization in which the manufacturer participates
21 has submitted an annual report under section 7185 of this title.

1 (4) The stewardship organization in which the manufacturer participates
2 has conducted a plan audit consistent with the requirements of subsection
3 7185(b) of this title.

4 (b) Stewardship organization registration requirements.

5 (1) Beginning on January 1, 2020 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 covered household hazardous products of each
14 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 subsection 7184(b) of this title, including any reasonable
19 requirements for participation in the stewardship organization; and

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. COLLECTION PLANS

8 (a) Collection plan required. Prior to July 1, 2020, a stewardship
9 organization representing manufacturers of covered household hazardous
10 products shall submit a collection plan to the Secretary for review.

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

13 (1) A list of the manufacturers, brands, and products participating in
14 the plan and a methodology for adding and removing manufacturers and
15 notifying the Agency of new participants.

16 (2) Free collection of covered household hazardous products. The
17 collection program shall provide for free collection from covered entities of
18 covered household hazardous products. A stewardship organization shall
19 accept all covered household hazardous products collected from a covered
20 entity and shall not refuse the collection of a covered household hazardous
21 product based on the brand or manufacturer of the covered household

1 hazardous product. The collection program shall also provide for the payment
2 of collection, processing, and end-of-life management of the covered
3 household hazardous product. Collection costs include facility and equipment
4 costs, maintenance, and labor.

5 (3) Convenient collection location. The stewardship organization shall
6 develop a collection program that:

7 (A) allows all municipal collection programs and facilities to opt to
8 be part of a collection plan;

9 (B) at a minimum, has not less than one collection program in each
10 county, provided that stewardship organizations shall have until July 1, 2023 to
11 establish permanent collection programs in counties that currently lack a
12 program. Prior to establishment of a permanent collection program in a county
13 that currently lacks a program, the stewardship organization shall hold at least
14 four collection events per year for the collection of covered household
15 hazardous products; and.

16 (C) maintains the current level of convenience provided by programs
17 in operation prior to July 1, 2020 that are identified as collection programs
18 under the plan.

19 (4) Public education and outreach. The collection plan shall include an
20 education and outreach program that may include media advertising, retail
21 displays, articles in trade and other journals and publications, and other public

1 educational efforts. The education and outreach program shall include a
2 website to notify the public of the following:

3 (A) that there is a free collection program for covered household
4 hazardous products;

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

7 (C) the special handling considerations associated with covered
8 household hazardous products; and

9 (D) source reduction information for consumers to reduce leftover
10 covered household products.

11 (5) Compliance with appropriate environmental standards. In
12 implementing a collection plan, a stewardship organization shall comply with
13 all applicable laws related to the collection, transportation, and disposal of
14 hazardous waste. A stewardship organization shall comply with any special
15 handling or disposal standards established by the Secretary for covered
16 household hazardous products or for the collection plan of the manufacturer.

17 (6) Method of disposition. The plan shall describe how covered
18 household hazardous products will be managed in the most environmentally
19 and economically sound manner, including following the waste-management
20 hierarchy. The management of covered household hazardous products under
21 the plan shall use management activities that promote source reduction, reuse,

1 recycling, energy recovery, and disposal. Collected covered household
2 hazardous products shall be recycled when technically and economically
3 feasible.

4 (7) Roles and responsibilities. A stewardship plan shall list all key
5 participants in the covered household hazardous products collection chain,
6 including:

7 (A) the name and location of the collection facilities accepting
8 covered household hazardous products under the plan and the address and
9 contact information for each facility;

10 (B) the name and contact information of the contractor responsible
11 for transporting the covered household hazardous products; and

12 (C) the name and address of the recycling and disposal facilities
13 where the covered household hazardous products collected are deposited.

14 (8) Participation rate. A stewardship plan shall include a collection
15 participation rate as a performance goal for covered household hazardous
16 products based on the participation rate determined by the number of total
17 participants in the collection plan during a program year divided by the total
18 number of households in the State. If a stewardship organization does not
19 meet its participation rate, the Secretary may require the stewardship
20 organization to revise the collection plan to provide for one or more of the

1 following additional public education and outreach, additional collection
2 events, or additional hours of operation for collection sites.

3 (9) Plan funding. The plan shall describe how the stewardship
4 organization will fund the implementation of the plan and collection under the
5 plan including the costs for education and outreach, collection, processing, and
6 end-of-life management of the covered household hazardous product.

7 Collection costs include facility and equipment costs, maintenance, and labor.

8 The plan must include how municipalities will be compensated for all costs
9 associated with collection of covered household hazardous products.

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

14 (d) Plan implementation. A stewardship organization shall implement a
15 collection plan by no later than January 1, 2021.

16 § 7184. 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 responsibilities under sections 7182, 7183, and 7185 of this
20 title.

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 § 7185. ANNUAL REPORT; PLAN AUDIT

11 (a) Annual report. On or before March 1, 2022, and annually thereafter, a
12 stewardship organization of manufacturers of covered household hazardous
13 products shall submit a report to the Secretary that contains all of the
14 following:

15 (1) A description of the collection program.

16 (2) The volume or weight by hazard category of covered household
17 hazardous products collected, the disposition of the collected covered
18 household hazardous products, and the number of covered entities participating
19 at each collection facility or collection event from which the covered
20 household hazardous products were collected.

1 (3) An estimate of the weight or volume by hazard category of covered
2 household hazardous products sold in the State in the previous calendar year
3 by manufacturer participating in stewardship organization’s collection plan.
4 Sales data and other confidential business information provided under this
5 section shall be exempt from public inspection and copying under the Public
6 Records Act and shall be kept confidential. Confidential information shall be
7 redacted from any final public report.

8 (4) A comparison of the plan’s participation rate compared to actual
9 participation rate and how the program will be improved if the participation
10 rate goal was not met.

11 (5) A description of the methods used to reduce, reuse, collect, transport,
12 recycle, and process the covered household hazardous products.

13 (6) The cost of implementing the stewardship plan including the costs of
14 administration, collection, transportation, recycling, disposal, and education
15 and outreach.

16 (7) A description and evaluation of the success of the education and
17 outreach materials.

18 (8) Recommendations for any changes to the program.

19 (b) Plan audit. On or before March 1, 2026 and every five years thereafter,
20 a stewardship organization of manufacturers of covered household hazardous
21 products shall hire an independent third party to audit the plan and the plan’s

1 operation. The auditor shall examine the effectiveness of the program in
2 collecting and disposing of covered household hazardous products. The
3 auditor shall examine the cost-effectiveness of the program and compare it to
4 that of collection programs for covered household hazardous products in other
5 jurisdictions. The auditor shall make recommendations to the Secretary on
6 ways to increase the program’s efficacy and cost-effectiveness.

7 (c) Public posting. A stewardship organizations shall post a report or audit
8 required under this section to the website of the stewardship organization.

9 § 7186. ANTITRUST; CONDUCT AUTHORIZED

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

20 (b) Limitations on antitrust activity. Subsection (a) of this section shall not
21 apply to an agreement among producers, groups of manufacturers, retailers,

1 wholesalers, or stewardship organizations affecting the price of covered
2 household hazardous product or any agreement restricting the geographic area
3 in which or customers to whom covered household hazardous product shall
4 be sold.

5 § 7187. AGENCY RESPONSIBILITIES

6 (a) Review and approve collection plans. The Secretary shall review and
7 approve or deny collection plans submitted under section 7183 of this title.
8 The Secretary shall approve a collection plan if the Secretary finds that
9 the plan:

10 (1) complies with the requirements of subsection 7183(a) of this title.

11 (2) provides adequate notice to the public of the collection opportunities
12 available for covered household hazardous products.

13 (3) ensures that collection of covered household hazardous products will
14 occur in an environmentally sound fashion that is consistent with the law or
15 with any special handling requirements adopted by the Secretary.

16 (4) promotes the collection and disposal of covered household
17 hazardous products.

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

1 (c) Public input. The Secretary shall establish a process under which a
2 collection plan for covered household hazardous products is available for
3 public review and comment for 30 days prior to plan approval or amendment.
4 In establishing such a process, the Secretary shall consult with interested
5 persons, including manufacturers, environmental groups, wholesalers, retailers,
6 municipalities, and solid waste districts.

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

11 (e) Supervisory capacity. The Secretary shall act in a supervisory capacity
12 over the actions of a stewardship organization registered under this section. In
13 acting in this capacity, the Secretary shall review the actions of the stewardship
14 organization to ensure that they are reasonable, necessary, and limited to
15 carrying out requirements of and policy established by this chapter.

16 (f) Special handling requirements. The Secretary may adopt, by rule,
17 special handling requirements for the collection, transport, and disposal of
18 covered household hazardous products.

19 § 7188. RETAILER OBLIGATIONS

20 (a) Sale prohibited. Except as set forth under subsection (b) of this section,
21 beginning on January 1, 2021, no retailer shall sell or offer for sale a covered

1 household hazardous product unless the retailer has reviewed the stewardship
2 organization website required in subsection 7184(b) of this title to determine
3 that the manufacturer of the covered household hazardous product is
4 implementing an approved collection plan or is a member of a stewardship
5 organization.

6 (b) Inventory exception; expiration or revocation of manufacturer
7 registration. A retailer shall not be responsible for an unlawful sale of a
8 covered household hazardous product under this subsection if:

9 (1) the retailer purchased the covered household hazardous product prior
10 to January 1, 2021; or

11 (2) the manufacturer’s collection plan expired or was revoked, and the
12 retailer took possession of the in-store inventory of covered household
13 hazardous product prior to the expiration or revocation of the manufacturer’s
14 collection plan.

15 § 7189. OTHER DISPOSAL PROGRAMS

16 A municipality or other public agency shall not require covered entities to
17 use public facilities to dispose of covered household hazardous products to the
18 exclusion of other lawful programs available. A municipality and other public
19 agencies are encouraged to work with manufacturers to assist them in meeting
20 their collection and disposal obligations under this chapter. Nothing in this
21 chapter prohibits or restricts the operation of any program collecting and

1 disposing of covered household hazardous products in addition to those
2 provided by manufacturers or prohibits or restricts any persons from receiving,
3 collecting, transporting, or disposing of covered household hazardous products,
4 provided that all other applicable laws are met.

5 § 7190. RULEMAKING

6 The Secretary of Natural Resources may adopt rules to implement the
7 requirements of this chapter.

8 Sec. 4. AGENCY OF NATURAL RESOURCES RECOMMENDATION OF
9 REGISTRATION FEE FOR COVERED HOUSEHOLD
10 HAZARDOUS PRODUCTS

11 On or before January 15, 2021, the Secretary of Natural Resources shall
12 submit to the House Committees on Ways and Means and on Natural
13 Resources, Fish, and Wildlife and the Senate Committees on Finance and on
14 Natural Resources and Energy a recommended fee for the registration of
15 stewardship organizations under the covered household hazardous product
16 program under 10 V.S.A. chapter 164B.

17 Sec. 5. 10 V.S.A. § 6621a(a) is amended to read:

18 (a) In accordance with the following schedule, no person shall knowingly
19 dispose of the following materials in solid waste or in landfills:

20 * * *

1 § 8003. APPLICABILITY

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

6 * * *

7 (27) 10 V.S.A. chapter 123, relating to threatened and endangered
8 species; ~~and~~

9 (28) 30 V.S.A. § 255, relating to regional coordination to reduce
10 greenhouse gases; and

11 (29) 10 V.S.A. chapter 164B, relating to collection and management of
12 covered household hazardous products.

13 * * *

14 Sec. 7. 10 V.S.A. § 8503 is amended to read:

15 § 8503. APPLICABILITY

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

20 (1) The following provisions of this title:

21 * * *

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

3 (V) chapter 164B (collection and management of covered household
4 hazardous products).

5 (2) 29 V.S.A. chapter 11 (management of lakes and ponds).

6 (3) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).

7 * * *

8 Sec. 8. EFFECTIVE DATE

9 This act shall take effect on passage.

10

11

12 (Committee vote: _____)

13

14

Representative _____

15

FOR THE COMMITTEE