

H.560

An act relating to household products containing hazardous substances

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

Sec. 1. FINDINGS

The General Assembly finds that:

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

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

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

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

(5) HHW collection events or permanent facilities are expensive to operate, and SWMEs spend approximately \$1.6 million a year to manage

HHW, costs that are subsequently passed on to the residents of Vermont through taxes or disposal charges.

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

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

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

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

(10) To improve diversion of HHW from landfills, reduce the financial burden on SWMEs, taxpayers, and the cost of the overall system of managing HHW, and lessen the environmental and public health risk posed by improperly disposed of HHW, the Secretary of Natural Resources shall convene the Working Group on Household Hazardous Waste to recommend how best to manage and fund HHW in the State.

(11) If the Working Group on Household Hazardous Waste fails to provide recommendations, the State shall implement a program to require the manufacturers of household products containing a hazardous substance to

implement a stewardship organization to collect household products containing a hazardous substance free of charge to the public.

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

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

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

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

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

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

CHAPTER 164B. COLLECTION AND MANAGEMENT OF
HOUSEHOLD HAZARDOUS PRODUCTS

§ 7181. DEFINITIONS

As used in this chapter:

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

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

(3)(A) “Covered household hazardous product” means a consumer product offered for retail sale that is contained in the receptacle in which the product is offered for retail sale, if the product has any of the following characteristics:

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

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

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

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

(B) “Covered product” does not mean:

(i) A primary battery or rechargeable battery.

(ii) A lamp that contains mercury.

(iii) A thermostat that contains mercury.

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

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

(vi) A pharmaceutical drug.

(vii) A pesticide regulated by the Secretary of Agriculture, Food and Markets.

(viii) Products that are intended to be rubbed, poured, sprinkled on, sprayed on, introduced into, or otherwise applied to the human body or any

part of a human for cleansing, moisturizing, sun protection, beautifying, promoting attractiveness, or altering appearance, unless designated as a hazardous material or a hazardous waste by the Secretary of Natural Resources.

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

(5) “Manufacturer” means a person who:

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

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

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

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

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

(F) assumes the responsibilities, obligations, and liabilities of a manufacturer as defined under subdivisions (A) through (E) of this subdivision (5), provided that the Secretary may enforce the requirements of this chapter

against a manufacturer defined under subdivisions (A) through (E) of this subdivision (5) if a person who assumes the manufacturer's responsibilities fails to comply with the requirements of this chapter.

(6) "Program year" means the period from January 1 through December 31.

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

(8) "Secretary" means the Secretary of Natural Resources.

(9) "Sell" or "sale" means any transfer for consideration of title or of the right to use by lease or sales contract a covered household hazardous product to a person in the State of Vermont. "Sell" or "sale" does not include the sale, resale, lease, or transfer of a used covered household hazardous product or a manufacturer's wholesale transaction with a distributor or a retailer.

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

§ 7182. SALE OF COVERED HOUSEHOLD HAZARDOUS PRODUCT;

STEWARDSHIP ORGANIZATION REGISTRATION

(a) Sale prohibited. Beginning on January 1, 2021, except as set forth under section 7188 of this title, a manufacturer of a covered household

hazardous product shall not sell, offer for sale, or deliver to a retailer for subsequent sale a covered household hazardous product unless all the following have been met:

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

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

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

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

(b) Stewardship organization registration requirements.

(1) Beginning on January 1, 2020 and annually thereafter, a stewardship organization shall file a registration form with the Secretary. The Secretary shall provide the registration form to a stewardship organization. The registration form shall include:

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

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

(C) a list of the covered household hazardous products of each manufacturer participating in the stewardship organization;

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

(E) a description of how the stewardship organization meets the requirements of subsection 7184(b) of this title, including any reasonable requirements for participation in the stewardship organization; and

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

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

§ 7183. COLLECTION PLANS

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

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

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

(2) Free collection of covered household hazardous products. The collection program shall provide for free collection from covered entities of covered household hazardous products. A stewardship organization shall accept all covered household hazardous products collected from a covered entity and shall not refuse the collection of a covered household hazardous product based on the brand or manufacturer of the covered household hazardous product. The collection program shall also provide for the payment of collection, processing, and end-of-life management of the covered household hazardous product. Collection costs include facility and equipment costs, maintenance, and labor.

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

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

(B) at a minimum, has not less than one collection program in each county, provided that stewardship organizations shall have until July 1, 2023 to establish permanent collection programs in counties that currently lack a program. Prior to establishment of a permanent collection program in a county that currently lacks a program, the stewardship organization shall hold at least

four collection events per year for the collection of covered household hazardous products; and

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

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

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

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

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

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

(5) Compliance with appropriate environmental standards. In implementing a collection plan, a stewardship organization shall comply with all applicable laws related to the collection, transportation, and disposal of hazardous waste. A stewardship organization shall comply with any special

handling or disposal standards established by the Secretary for covered household hazardous products or for the collection plan of the manufacturer.

(6) Method of disposition. The plan shall describe how covered household hazardous products will be managed in the most environmentally and economically sound manner, including following the waste-management hierarchy. The management of covered household hazardous products under the plan shall use management activities that promote source reduction, reuse, recycling, energy recovery, and disposal. Collected covered household hazardous products shall be recycled when technically and economically feasible.

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

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

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

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

(8) Participation rate. A stewardship plan shall include a collection participation rate as a performance goal for covered household hazardous

products based on the participation rate determined by the number of total participants in the collection plan during a program year divided by the total number of households in the State. If a stewardship organization does not meet its participation rate, the Secretary may require the stewardship organization to revise the collection plan to provide for one or more of the following: additional public education and outreach, additional collection events, or additional hours of operation for collection sites.

(9) Plan funding. The plan shall describe how the stewardship organization will fund the implementation of the plan and collection under the plan including the costs for education and outreach, collection, processing, and end-of-life management of the covered household hazardous product. Collection costs include facility and equipment costs, maintenance, and labor. The plan must include how municipalities will be compensated for all costs associated with collection of covered household hazardous products.

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

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

§ 7184. STEWARDSHIP ORGANIZATIONS

(a) Participation in a stewardship organization. A manufacturer shall meet the requirements of this chapter by participating in a stewardship organization that undertakes the responsibilities under sections 7182, 7183, and 7185 of this title.

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

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

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

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

§ 7185. ANNUAL REPORT; PLAN AUDIT

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

(1) A description of the collection program.

(2) The volume or weight by hazard category of covered household hazardous products collected, the disposition of the collected covered

household hazardous products, and the number of covered entities participating at each collection facility or collection event from which the covered household hazardous products were collected.

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

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

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

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

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

(8) Recommendations for any changes to the program.

(b) Plan audit. On or before March 1, 2026 and every five years thereafter, a stewardship organization of manufacturers of covered household hazardous products shall hire an independent third party to audit the plan and the plan's operation. The auditor shall examine the effectiveness of the program in collecting and disposing of covered household hazardous products. The auditor shall examine the cost-effectiveness of the program and compare it to that of collection programs for covered household hazardous products in other jurisdictions. The auditor shall make recommendations to the Secretary on ways to increase the program's efficacy and cost-effectiveness.

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

§ 7186. ANTITRUST; CONDUCT AUTHORIZED

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

(b) Limitations on antitrust activity. Subsection (a) of this section shall not apply to an agreement among producers, groups of manufacturers, retailers, wholesalers, or stewardship organizations affecting the price of covered household hazardous product or any agreement restricting the geographic area in which or customers to whom covered household hazardous product shall be sold.

§ 7187. AGENCY RESPONSIBILITIES

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

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

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

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

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

(b) Plan amendment. The Secretary, in his or her discretion or at the request of a manufacturer or a stewardship organization, may require a

stewardship organization to amend an approved plan. Plan amendments shall be subject to the public input provisions of subsection (c) of this section.

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

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

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

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

§ 7188. RETAILER OBLIGATIONS

(a) Sale prohibited. Except as set forth under subsection (b) of this section, beginning on January 1, 2021, no retailer shall sell or offer for sale a covered household hazardous product unless the retailer has reviewed the stewardship organization website required in subsection 7184(b) of this title to determine that the manufacturer of the covered household hazardous product is implementing an approved collection plan or is a member of a stewardship organization.

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

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

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

§ 7189. OTHER DISPOSAL PROGRAMS

A municipality or other public agency shall not require covered entities to use public facilities to dispose of covered household hazardous products to the exclusion of other lawful programs available. A municipality and other public agencies are encouraged to work with manufacturers to assist them in meeting

their collection and disposal obligations under this chapter. Nothing in this chapter prohibits or restricts the operation of any program collecting and disposing of covered household hazardous products in addition to those provided by manufacturers or prohibits or restricts any persons from receiving, collecting, transporting, or disposing of covered household hazardous products, provided that all other applicable laws are met.

§ 7190. RULEMAKING

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

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

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

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

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

* * *

(5) Paint (, whether ~~water-based~~ water-based or ~~oil-based~~), oil-based; paint thinner; paint remover; stains; and varnishes. This prohibition shall not apply to solidified ~~water-based~~ water-based paint in quantities of less than one gallon, nor shall this prohibition apply to solidified ~~water-based~~ water-based paint in quantities greater than one gallon if those larger quantities are from a waste stream that has been subject to an effective paint reuse program, as determined by the Secretary.

(6) Nickel-cadmium batteries, small sealed lead acid batteries, nonconsumer mercuric oxide batteries, and any other battery added by the Secretary by rule.

* * *

(8) Banned electronic devices. After January 1, 2011; computers; peripherals; computer monitors; cathode ray tubes; televisions; printers; personal electronics such as personal digital assistants and personal music players; electronic game consoles; printers; fax machines; wireless telephones; telephones; answering machines; videocassette recorders; digital versatile disc players; digital converter boxes; stereo equipment; and power supply cords (, as used to charge electronic devices).

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(12) Covered household hazardous products after January 1, 2021.

Sec. 6. 10 V.S.A. § 8003 is amended to read:

§ 8003. APPLICABILITY

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

* * *

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

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

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

* * *

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

§ 8503. APPLICABILITY

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

(1) The following provisions of this title:

* * *

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

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

(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).

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Sec. 8. EFFECTIVE DATE

This act shall take effect on passage.