

Complete Text of Selected Solid Waste Bills

- AB 2137 Chesbro Fertilizing material: labels
- AB 2139 Chesbro Solid Waste: product stewardship
- AB 2176 Blumenfield Hazardous waste: lighting products
- AB 2398 Perez Product stewardship: carpet
- AB 2562 Fuentes Hazardous material: landfill gas
- SB 1100 Corbett Product stewardship: household batteries

AMENDED IN ASSEMBLY APRIL 29, 2010

AMENDED IN ASSEMBLY APRIL 21, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2137

Introduced by Assembly Member Chesbro

February 18, 2010

An act to amend, repeal, and add Sections 14540 and 14542 of the Food and Agricultural Code, relating to fertilizer.

LEGISLATIVE COUNSEL'S DIGEST

AB 2137, as amended, Chesbro. Fertilizing material: labels.

Existing law generally regulates fertilizing materials, as defined, including the labeling of fertilizing materials. Existing law defines "label" and "labeling" for purposes of these provisions.

This bill would, until January 1, ~~2015~~ 2014, provide that "label" and "labeling" do not include a certified laboratory analysis, *as defined*, showing the nutrient contents of compost, cocompost, or mulch, as defined, if the laboratory analysis documentation contains a specified statement, as provided.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 14540 of the Food and Agricultural Code
- 2 is amended to read:
- 3 14540. (a) "Label" means the display of all written, printed,
- 4 or graphic matter on the immediate container of, or a statement,

1 including the guaranteed analysis, accompanying fertilizing
2 material.

3 (b) (1) Notwithstanding the registration and fee requirements
4 of Article 5 (commencing with Section 14601) and Article 6
5 (commencing with Section 14611), "label" does not include a
6 certified laboratory analysis showing the nutrient contents of
7 compost, cocompost, or mulch, as defined in subdivision (c) of
8 Section 12207 of the Public Contract Code, if the laboratory
9 analysis documentation states in 12-point boldface type, with
10 ~~underscored text, that the compost, cocompost, or mulch~~ "is
11 *underscored text, the following:*

12 *The [compost, cocompost, or mulch (as appropriate)] is*
13 *produced by a process that is inherently variable, due to variation*
14 *in feedstock and natural variation in biological processes.*
15 *Therefore, the nutrient content of the material you are buying may*
16 *vary from the data in the attached laboratory analysis. If you wish*
17 *to assess the range of variability, please ask for prior laboratory*
18 *analyses for material produced by the same process.²² analyses for*
19 *material produced by the same process.*

20 (2) *For purposes of paragraph (1), all of the following shall*
21 *apply:*

22 (A) *A "certified laboratory analysis" means an analysis*
23 *performed in accordance with the sampling requirements*
24 *established in Article 7 (commencing with Section 17868.1) of*
25 *Chapter 3.1 of Division 7 of Title 14 of the California Code of*
26 *Regulations.*

27 (B) *If all compost product being sold is represented by a single*
28 *laboratory analysis, a "certified laboratory analysis" means the*
29 *laboratory analysis performed on the batch of the compost being*
30 *sold.*

31 (C) *If the compost product being sold contains material from*
32 *more than one 5,000 cubic yard batch, a "certified laboratory*
33 *analysis" means all laboratory analyses conducted on all the*
34 *batches of compost that comprise the final compost product.*

35 (c) This section shall remain in effect only until January 1, ~~2015~~
36 *2014*, and as of that date is repealed, unless a later enacted statute,
37 that is enacted before January 1, ~~2015~~ *2014*, deletes or extends
38 that date.

39 SEC. 2. Section 14540 is added to the Food and Agricultural
40 Code, to read:

1 14540. (a) "Label" means the display of all written, printed,
2 or graphic matter on the immediate container of, or a statement,
3 including the guaranteed analysis, accompanying fertilizing
4 material.

5 (b) This section shall become operative on January 1, ~~2015~~
6 2014.

7 SEC. 3. Section 14542 of the Food and Agricultural Code is
8 amended to read:

9 14542. (a) "Labeling" means all written, printed, or graphic
10 matter on, accompanying, or used in promoting the sale of any
11 fertilizing material, including advertisements, brochures, posters,
12 and television and radio announcements.

13 (b) (1) Notwithstanding the registration and fee requirements
14 of Article 5 (commencing with Section 14601) and Article 6
15 (commencing with Section 14611), "labeling" does not include a
16 certified laboratory analysis showing the nutrient contents of
17 compost, cocompost, or mulch, as defined in subdivision (c) of
18 Section 12207 of the Public Contract Code, if the laboratory
19 analysis documentation states in 12-point boldface type, with
20 ~~underscoring text, that the compost, cocompost, or mulch "is~~
21 *underscoring text, the following:*

22 *The [compost, cocompost, or mulch (as appropriate)] is*
23 *produced by a process that is inherently variable, due to variation*
24 *in feedstock and natural variation in biological processes.*
25 *Therefore, the nutrient content of the material you are buying may*
26 *vary from the data in the attached laboratory analysis. If you wish*
27 *to assess the range of variability, please ask for prior laboratory*
28 ~~*analyses for material produced by the same process."*~~ *analyses for*
29 *material produced by the same process.*

30 (2) *For purposes of paragraph (1), all of the following shall*
31 *apply:*

32 (A) *A "certified laboratory analysis" means an analysis*
33 *performed in accordance with the sampling requirements*
34 *established in Article 7 (commencing with Section 17868.1) of*
35 *Chapter 3.1 of Division 7 of Title 14 of the California Code of*
36 *Regulations.*

37 (B) *If all compost product being sold is represented by a single*
38 *laboratory analysis, a "certified laboratory analysis" means the*
39 *laboratory analysis performed on the batch of the compost being*
40 *sold.*

1 (C) *If the compost product being sold contains material from*
2 *more than one 5,000 cubic yard batch, a “certified laboratory*
3 *analysis” means all laboratory analyses conducted on all the*
4 *batches of compost that comprise the final compost product.*

5 (c) This section shall remain in effect only until January 1, ~~2015~~
6 2014, and as of that date is repealed, unless a later enacted statute,
7 that is enacted before January 1, ~~2015~~ 2014, deletes or extends
8 that date.

9 SEC. 4. Section 14542 is added to the Food and Agricultural
10 Code, to read:

11 14542. (a) “Labeling” means all written, printed, or graphic
12 matter on, accompanying, or used in promoting the sale of any
13 fertilizing material, including advertisements, brochures, posters,
14 and television and radio announcements.

15 (b) This section shall become operative on January 1, ~~2015~~
16 2014.

AMENDED IN ASSEMBLY APRIL 6, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2139

Introduced by Assembly Member Chesbro

February 18, 2010

An act to add Chapter 5 (commencing with Section 48800) to Part 7 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2139, as amended, Chesbro. Solid waste: product stewardship.

The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, requires a pharmaceutical manufacturer that sells or distributes medication that is self-injected at home through the use of hypodermic needles and other similar devices to submit a plan to the department that describes how the manufacturer supports the safe collection and proper disposal of the waste devices.

This bill would create the California Product Stewardship Act and would define the term "covered product" as including *home-generated* medical sharps, ~~containers used to contain~~ pesticides intended for residential use, ~~small personal use propane tanks, personal butane lighters, and single-use food packaging that the department determines is a significant source of ocean and beach contamination.~~ The bill would require the department by July 1, 2011, to establish a baseline collection rate for the amount of those products that is discarded and subsequently collected. The bill would provide a procedure for determining the collection rate applicable commencing January 1, 2014 *and nonrefillable propane cylinders, as defined.*

The bill would require, by September 30, 2011, a producer or the product stewardship organization created by one or more producers of a covered product to submit a product stewardship plan to the department, which would be required to include specified elements, including performance goals, *a collection rate*, and product goals. On or before January 1, 2012, the department would be required to review and either approve or disapprove the product stewardship plan submitted to the department.

The bill would prohibit the producer of a covered product, on and after July 1, 2012, from selling a covered product unless the producer or product stewardship organization of the covered product has submitted a plan to the department that is approved by the department. *The bill would require the department, on July 1, 2012, and on January 1 and July 1 annually thereafter, to post on its Internet Web site the covered products that are not in compliance and the bill would require a wholesaler or retailer that distributes or sells covered products to monitor the department's Internet Web site to determine if a covered product is in compliance.* The act would require a producer of a covered product to collect the covered product pursuant to the product stewardship plan and to meet the performance goals included in the product stewardship plan.

Each producer or product stewardship organization implementing a product stewardship plan would be required to prepare and submit to the department an annual report describing the activities carried out pursuant to the product stewardship plan.

A producer or product stewardship organization submitting a product stewardship plan would be required to pay the department a fee of ~~\$10,000~~ *an unspecified amount* when submitting the plan for review and approval and to pay an annual administrative fee of ~~\$1,000~~ *an unspecified amount*. The bill would provide for the imposition of administrative civil penalties upon a producer who does not comply with the act's requirements. The bill would create in the existing Integrated Waste Management Fund the Product Stewardship Account and would require that the administrative fees be deposited into that account and that the penalties be deposited into the Product Stewardship Penalty Subaccount that the bill would create in that account. The bill would authorize the fees and penalties to be expended, upon appropriation by the Legislature, to cover the board's program implementation costs and as incentives to enhance recyclability and

redesign efforts and to reduce environmental and safety impacts of covered products.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 5 (commencing with Section 48800) is
2 added to Part 7 of Division 30 of the Public Resources Code, to
3 read:

4
5 CHAPTER 5. CALIFORNIA PRODUCT STEWARDSHIP PROGRAM

6
7 Article 1. Findings and Declarations

8
9 48800. The Legislature finds and declares all of the following:

10 (a) This chapter requires the Department of Resources Recycling
11 and Recovery to develop, implement, and administer the Product
12 Stewardship Program.

13 (b) Product stewardship is a mechanism to place responsibility
14 for end-of-life management issues for products on those involved
15 in the product chain in an equitable manner.

16 (c) The program established by this chapter will test the efficacy
17 of a consistent framework approach for managing products that
18 have significant end-of-life waste management impacts as well as
19 impacts on the environment and public health. This framework
20 approach provides a consistent process that includes goals and
21 oversight so that a level playing field exists among all producers,
22 while maintaining flexibility for specific products and for producers
23 to design their product stewardship programs.

24 (d) End-of-life management of solid waste has historically been
25 the responsibility of state and local governments with the primary
26 physical management and financial burden placed on local
27 government and ratepayers, who have no ability to influence the
28 design of the products or packaging to reduce waste management
29 costs.

30 (e) Prior to this program, the state addressed products with
31 end-of-life management issues through a patchwork of product
32 and material specific programs.

1 (f) Implementing product stewardship programs that are funded
2 and managed by the producers of products with significant
3 end-of-life impacts reduces the role of, and cost to, state and local
4 government and ratepayers.

5 (g) The Product Stewardship Program established by this chapter
6 will explore the feasibility and potential environmental, economic,
7 and social benefits of instituting a permanent product stewardship
8 program for an extended number of products while still providing
9 producers with the flexibility to customize individual product
10 stewardship plans toward the most effective and efficient approach
11 for a particular product or product category.

12 (h) The Product Stewardship Program established by this chapter
13 will test the applicability of extended producer responsibility and
14 may be used as a template for including additional products in
15 these programs.

16
17 Article 2. General Provisions

18
19 48800.1. This chapter shall be known and may be cited as the
20 California Product Stewardship Act.

21
22 Article 3. Definitions

23
24 48800.2. For purposes of this chapter, and unless the context
25 otherwise requires, the definitions in this article govern the
26 construction of this chapter.

27 48800.3. “Brand” means a name, symbol, word, or mark that
28 identifies a product, rather than its components, and attributes the
29 product to the owner or licensee of the brand as the producer.

30 48800.4. “Collection rate” means a quantitative measure
31 ~~established by the department pursuant to Section 48811 or~~
32 ~~determined pursuant to Section 48812, as applicable, that~~ *that*
33 establishes the amount of a covered product required to be collected
34 pursuant to a product stewardship plan.

35 48800.5. “Consumer product” means a product that is sold in
36 this state in a transaction that is a retail sale or in a transaction to
37 which a use tax applies pursuant to Part 1 (commencing with
38 Section 6001) of Division 2 of the Revenue and Taxation Code.

1 48800.6. "Covered product" means all of the following
2 consumer products that are used or discarded in this state, as
3 defined by the department:

4 (a) ~~"Covered product 1" means medical sharps, including~~
5 ~~hypodermic needles, hypodermic needles with syringes, blades,~~
6 ~~and needles, that are not subject to Article 3.3 (commencing with~~
7 ~~Section 47115) or Chapter 1 of Part 7: home-generated sharps~~
8 ~~waste, including, but not limited to, hypodermic needles, pen~~
9 ~~needles, intravenous needles, lancets, and other devices, that are~~
10 ~~used to penetrate the skin for the delivery of medications derived~~
11 ~~from a household, including from a multifamily residence or~~
12 ~~household.~~

13 (b) (1) ~~"Covered product 2" means containers used to contain~~
14 ~~pesticides intended for residential use: pesticides, as defined in~~
15 ~~Section 12753 of the Food and Agricultural Code, that are intended~~
16 ~~for residential use, including any of the following:~~

17 (A) *A spray adjuvant.*

18 (B) *A substance or mixture of substances that is intended to be*
19 *used for defoliating plants, regulating plant growth, or for*
20 *preventing, destroying, repelling, or mitigating a pest, as defined*
21 *in Section 12754.5 of the Food and Agricultural Code, that may*
22 *infest or be detrimental to vegetation, human, animal, or*
23 *household, or be present in a agricultural or nonagricultural*
24 *environment whatsoever.*

25 (2) *For purposes of this chapter, pesticides intended for*
26 *residential use shall be limited to those defined as a consumer*
27 *product, pursuant to Section 48800.5, but shall exclude those*
28 *consumer products that are intended primarily for residential*
29 *cleaning and disinfecting.*

30 (c) ~~"Covered product 3" means small personal use propane~~
31 ~~tanks.~~

32 (d) ~~"Covered product 4" means personal butane lighters.~~

33 (e) ~~"Covered product 5" means single-use food packaging that~~
34 ~~the department determines is a significant source of ocean and~~
35 ~~beach contamination: nonrefillable propane cylinders, as defined~~
36 ~~in Section 178.65 of Title 49 of the Code of Federal Regulations.~~

37 48800.7. "Department" means the Department of Resources
38 Recycling and Recovery.

39 48800.8. "Performance goal" means the collection rate of a
40 covered product, and may include, but is not limited to, the reuse

1 and recycling rate established by the product stewardship plan for
2 that covered product.

3 48800.9. "Producer" shall be determined, with regard to a
4 covered product that is sold, offered for sale, or distributed in the
5 state, as meaning one of the following:

6 (a) A person who manufactures the covered product and who
7 sells, offers for sale, or distributes that covered product in the state
8 under that person's own name or brand.

9 (b) If there is no person who sells, offers for sale, or distributes
10 the covered product in the state under the person's own name or
11 brand, the producer of the covered product is the owner or licensee
12 of a trademark or brand under which the covered product is sold
13 or distributed in the state, whether or not the trademark is
14 registered.

15 (c) If there is no person who is a producer of the covered product
16 for purposes of subdivisions (a) and (b), the producer of that
17 covered product is the person who imports the product into the
18 state for sale or distribution.

19 48800.10. "Product goal" means those qualitative or
20 quantitative goals determined by the producer to measure
21 improvements that reduce the life cycle impacts of a covered
22 product.

23 48800.11. "Product stewardship" means requiring the producer
24 of a covered product, and all other entities involved in the product
25 chain, to share in the responsibility of reducing the life cycle impact
26 of the covered product and its packaging, including requiring the
27 producer who makes design and marketing decisions for the
28 covered product to bear the primary responsibility for this
29 reduction.

30 48800.12. "Product stewardship organization" means an
31 organization appointed by one or more producers to act as an agent
32 on behalf of the producer to design, submit, and administer a
33 product stewardship plan pursuant to this chapter.

34 48800.13. "Product stewardship plan" or "plan" means a plan
35 written by an individual producer or a product stewardship
36 organization, on behalf of one or more producers, that includes all
37 of the information required by Section 48813.

38 48800.14. "Recycling rate" means a quantitative measure that
39 establishes the amount of a collected covered product that is
40 recycled as compared to the total amount of the covered product

1 that is collected, including the amount of the covered product that
2 is discarded for reuse, energy recovery, or safe disposal.

3 48800.15. "Reporting period" means the period commencing
4 January 1 and ending on December 31 of the same calendar year.

5 48800.16. "Reuse rate" means a quantitative measure that
6 establishes the amount of a collected covered product that is reused
7 as compared to the total amount of the covered product that is
8 collected, including the amount of the covered product that is
9 discarded by recycling, energy recovery, or safe disposal.

10 48800.17. "Sell" or "sales" means any transfer of title of a
11 covered product for consideration, including a remote sale
12 conducted through a sale outlet, catalog, or Internet Web site or
13 similar electronic means, but does not include a lease.

14
15 Article 4. Product Stewardship Program

16
17 48810. This chapter does not limit, supersede, duplicate, or
18 otherwise conflict with the authority of the Department of Toxic
19 Substances Control under Section 25257.1 of the Health and Safety
20 Code to fully implement Article 14 (commencing with Section
21 25251) of Chapter 6.5 of Division 20 of the Health and Safety
22 Code, including the authority of the Department of Toxic
23 Substances Control to include products in its product registry.

24 ~~48811. (a) On or before July 1, 2011, the department shall~~
25 ~~establish a baseline collection rate for the amount of each covered~~
26 ~~product that is discarded and subsequently collected, based on~~
27 ~~existing collection data.~~

28 ~~(b) On and after July 1, 2011, and for the calendar years~~
29 ~~commencing January 1, 2012, and January 1, 2013, the collection~~
30 ~~rate shall be the collection rate established pursuant to this section.~~

31 ~~48812. (a) On and after January 1, 2014, the collection rate~~
32 ~~for a covered product shall be determined in the following manner:~~

33 ~~(1) For the calendar year commencing January 1, 2014, the~~
34 ~~collection rate shall be 5 percent more than the baseline collection~~
35 ~~rate determined pursuant to Section 48811.~~

36 ~~(2) On and after January 1, 2015, the collection rate for each~~
37 ~~covered product shall increase by no less than 5 percent annually~~
38 ~~until a 95 percent collection rate is reached.~~

39 ~~(b) A producer may petition the department for an adjustment~~
40 ~~to the collection rate. The department may grant an adjustment to~~

1 ~~the collection rate only if the department determines there are~~
2 ~~documented exigent circumstances that are beyond the control of~~
3 ~~the producer or product stewardship organization.~~

4 48813. (a) On or before September 30, 2011, a producer or a
5 product stewardship organization that is created by one or more
6 producers of a covered product shall submit a product stewardship
7 plan to the department. A product stewardship organization created
8 pursuant to this section shall be open for participation by all
9 producers of a covered product.

10 ~~(b) A producer, group of producers, or product stewardship~~
11 ~~organization shall consult with stakeholders during the~~
12 ~~development of the product stewardship plan, including soliciting~~
13 ~~stakeholder comments and responding to stakeholder comments~~
14 ~~prior to submitting the product stewardship plan.~~

15 (c)

16 (b) Each product stewardship plan for a covered product shall
17 address the environmental impacts of the covered product over
18 the entire life cycle of that product, including the product design,
19 manufacture, and distribution of the covered product, and the
20 collection, transportation, reuse, recycling, and final disposition
21 of the discarded covered product, in accordance with this chapter.
22 The plan shall include, at a minimum, all of the following elements:

23 (1) Contact information for all participating producers.

24 (2) A description of the covered product and associated brands
25 covered by the plan.

26 (3) Performance goals, including a detailed description of how
27 the performance goals will be achieved and how results will be
28 measured, and including ~~both~~ *all* of the following:

29 ~~(A) The collection rate~~ *A collection rate, which* shall be included
30 as a performance goal for the covered product.

31 (B) A reuse rate and a recycling rate for the covered product
32 shall be included in the performance goals.

33 *(C) If the covered product is prohibited from being disposed of*
34 *at a solid waste disposal facility, the performance goal shall*
35 *include a schedule to accomplish a 100 percent collection rate.*

36 ~~(4) An overview of the~~ *The* roles and responsibilities of key
37 players along the product chain.

38 (5) Financing methods for the product stewardship plan.

39 (6) Strategies for managing and reducing the life cycle impacts
40 of the covered product, steps that will be taken to ensure

1 environmentally sound management, and how impacts will be
2 tracked over time to show continual improvement.

3 (7) Education and outreach activities.

4 ~~(8) A description of the consultation process used to consult
5 with affected stakeholders regarding the product stewardship plan.~~

6 ~~(9)~~

7 (8) Product goals, including, but not limited to, product
8 designing and materials content, manufacturing, packaging,
9 distribution, and end-of-life management goals. The product goals
10 shall address the use of virgin material in the manufacture of the
11 covered product, the impact upon, or use of, water or energy by
12 the covered product, the use of, or generation of hazardous
13 substances by, the covered product, the carbon footprint of the
14 covered product, the covered product's longevity, the recycled
15 content of the covered product, and the covered product's
16 recyclability, where applicable.

17 48814. (a) On or before January 1, 2012, the department shall
18 review the product stewardship plan submitted to the department
19 and either approve or disapprove the plan. If the department does
20 not approve the plan, the department shall notify the producer or
21 organization that submitted the plan and the producer or
22 organization shall revise and resubmit the disapproved product
23 stewardship plan within 30 days after receiving the notification.

24 (b) All product stewardship plans submitted to the department
25 shall be available to the public on the department's Internet Web
26 site.

27 (c) A producer shall notify the department 30 days before
28 instituting a significant or material change to a product stewardship
29 plan.

30 48815. (a) On and after July 1, 2012, a producer shall not offer
31 a covered product for sale in this state or offer a covered product
32 for promotional purposes in this state unless the producer or a
33 product stewardship organization consisting of producers of the
34 covered product has submitted a product stewardship plan to the
35 department pursuant to Section ~~48816~~ 48813 and the product
36 stewardship plan is approved by the department pursuant to Section
37 ~~48817~~ 48814.

38 (b) *On July 1, 2012, and on January 1 and July 1 annually*
39 *thereafter, the department shall post on its Internet Web site*
40 *covered products that are not in compliance with this section.*

1 (c) A wholesaler or retailer that distributes or sells covered
2 products shall monitor the department's Internet Web site to
3 determine if the sale of a covered product is in compliance with
4 this section.

5 48816. A producer of a covered product shall do all of the
6 following when implementing this chapter, including an approved
7 product stewardship plan:

8 (a) Collect the individual covered product to be reused or
9 recycled pursuant to the product stewardship plan for the covered
10 product submitted by the producer or product stewardship
11 organization pursuant to Section 48813 and approved by the
12 department pursuant to Section 48814.

13 (b) Meet the performance goals included in the product
14 stewardship plan, including achieving the collection rate established
15 pursuant to Section 48812.

16 (c) Provide collection services, in accordance with Section
17 48817, for the covered product, that do not charge a fee at the time
18 when the covered product is collected for either recycling or
19 disposal.

20 (d) Pay all administrative and operational costs associated with
21 the product stewardship plan, including the costs of collection,
22 transportation, and recycling or disposal, or both, of the covered
23 product.

24 (e) Submit the annual report required by Section 48818.

25 48817. A covered product shall be handled and recycled, or if
26 not feasible to be recycled, disposed of, in accordance with all
27 state and federal laws and regulations and local ordinances and
28 regulations, including, but not limited to, any law, regulation, or
29 ordinance that regulates hazardous waste.

30

31

Article 5. Reporting

32

33 48818. (a) Beginning one year after a product stewardship
34 plan is approved or no later than January 1, 2013, whichever date
35 is earlier, and every subsequent year thereafter, each producer or
36 stewardship organization implementing a product stewardship plan
37 shall prepare and submit to the department an annual report
38 describing the activities carried out pursuant to the product
39 stewardship plan during the previous reporting period, including,
40 but not limited to, all of the following:

1 (1) Whether the producer or product stewardship organization,
2 in implementing the plan, attained the performance goals for the
3 covered product, and if the performance goals were not met, what
4 actions the producer or product stewardship organization will take
5 during the next reporting period to attain those performance goals.

6 (2) Whether the producer or product stewardship organization,
7 in implementing the plan, attained the product goals for the covered
8 product, and if the product goals were not met, what actions the
9 producer or stewardship organization will take during the next
10 reporting period to achieve those product goals.

11 (b) The department shall review a report submitted pursuant to
12 this section and shall approve the report if the department
13 determines the report contains the information required by this
14 section.

15 (c) The department shall make all reports submitted to the
16 department pursuant to this section available to the public on the
17 department's Internet Web site.

18
19 Article 6. Financial Provisions
20

21 48819. (a) The producer or product stewardship organization
22 submitting a product stewardship plan shall pay the department
23 an administrative fee in the amount of ~~ten thousand dollars~~
24 ~~(\$10,000)~~ _____ when the plan is submitted for review and approval
25 and thereafter pay an annual administrative fee of ~~one thousand~~
26 ~~dollars (\$1,000)~~ _____.

27 (b) The total amount of annual fees collected pursuant to this
28 section shall not exceed the amount necessary to recover costs
29 incurred by the department in connection with the administration
30 and enforcement of the requirements of this chapter.

31 48820. (a) The Product Stewardship Account and the Product
32 Stewardship Penalty Subaccount are hereby established in the
33 Integrated Waste Management Fund.

34 (b) All fees collected pursuant to this chapter shall be deposited
35 in the Product Stewardship Account and may be expended by the
36 department, upon appropriation by the Legislature, to cover the
37 department's costs to implement this chapter.

38 (c) All penalties collected pursuant to this chapter shall be
39 deposited in the Product Stewardship Penalty Subaccount and may
40 be expended by the department, upon appropriation by the

1 Legislature, to cover the department’s costs to implement this
2 chapter.

3 (d) All funds collected may be expended as incentives to
4 enhance reuse, recyclability, and redesign efforts and to reduce
5 environmental and safety impacts of covered products.

6

7

Article 7. Enforcement

8

9 48821. (a) If, after holding a public hearing, the department
10 finds that a producer has failed to make a good faith effort to
11 comply with this chapter, the department shall issue a compliance
12 order with a schedule for achieving compliance.

13 (b) If, after issuing an order and schedule for compliance
14 pursuant to subdivision (a), the department finds that the producer
15 has failed to make a good faith effort to comply with this chapter,
16 the department may impose an administrative civil penalty of ~~ten~~
17 ~~thousand dollars (\$10,000)~~ ____ per day until the producer achieves
18 compliance.

19 (c) For purposes of this section, “good faith effort” means all
20 reasonable and feasible efforts by a producer towards implementing
21 the requirements of this chapter, including, but not limited to,
22 meeting the performance goals specified in the plan.

23 48822. (a) The department, or its designee, may inspect, audit,
24 or require and review third-party audits of producers, product
25 stewardship organizations, and service providers, including
26 collectors and recyclers, that are utilized to fulfill the requirements
27 of a product stewardship plan.

28 (b) For purposes of this section, a “service provider” means any
29 person who is authorized to perform an action to implement the
30 product stewardship plan with regard to the collection, recycling,
31 reuse, or disposal of a covered product, but does not include the
32 consumer of the covered product.

AMENDED IN ASSEMBLY APRIL 22, 2010

AMENDED IN ASSEMBLY APRIL 14, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2176

Introduced by Assembly Member Blumenfield

February 18, 2010

An act to add Article 10.03 (commencing with Section 25210.13) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2176, as amended, Blumenfield. Hazardous waste: lighting products.

(1) Existing law, the California Lighting Efficiency and Toxics Reduction Act, administered by the Department of Toxic Substances Control, prohibits a person from manufacturing for sale or selling in the state specified general purpose lights that contain levels of hazardous substances prohibited by the European Union pursuant to the RoHS Directive. A violation of the hazardous waste control law is a crime.

This bill would enact the California Lighting Toxics Reduction and Jobs Act and would define terms, including defining a "class 1 lamp" as a lamp containing mercury and a "class 2 lamp" as a lamp that produces less than a specified amount of light per watt.

The bill would require the producer of a class 1 lamp, by September 30, 2011, to submit a product stewardship plan with regard to the collection of class 1 lamps to the department, either individually or jointly with other producers, or by entering into an agreement with a

stewardship organization. The bill would require the plan to reasonably demonstrate how the program would contribute to the recycling of all class 1 lamps, including the program's fair share of orphan lamps, on or before January 1, 2020. The department would be required to approve the plan pursuant to a specified procedure and the producer would be required to implement the approved plan by January 1, 2012. The bill would provide for the updating of the plan and would require the plan operator, by April 1, 2013, and on or before each April 1 annually thereafter, to prepare and submit to the department a report for the immediately preceding reporting period.

The bill would require an entity submitting a plan to enter into an agreement with the department to pay the costs incurred by the department associated with the review and enforcement of the plan. The bill would require the funds to be deposited in the Lighting Product Stewardship Subaccount, which the bill would establish in the Hazardous Waste Control Account, and would authorize the department to expend the funds in the Lighting Product Stewardship Subaccount, upon appropriation by the Legislature, for those costs.

The bill would require the producer of a class 2 lamp, by January 30, 2012, and on or before January 1 annually thereafter, to pay to the commission a fee in an amount established by the commission pursuant to a specified procedure. The commission would be required to deposit the fee revenues in the Energy Efficiency Research Fund, which the bill would create in the State Treasury, and the commission would be authorized to expend the funds in the Energy Efficiency Research Fund, upon appropriation by the Legislature, for specified research and projects relating to improving class 2 lamps' lighting efficiency and reducing environmental impacts from class 2 lamps.

The bill would prohibit a producer, wholesaler, or retailer from selling or offering for sale a class 1 lamp or class 2 lamp to a person in this state on and after January 1, 2012, unless, with regard to the class 1 lamp, the producer is participating in a product stewardship program, or, on or after February 1, 2012, with regard to a class 2 lamp, unless the producer has paid the required fee. The bill would also specify procedures for the enforcement of the act. Since a violation of the hazardous waste control laws is a crime, the bill would impose a state-mandated local program by creating a new crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The state's policy, including the California Lighting
4 Efficiency and Toxics Reduction Act, which added Article 10.02
5 (commencing with Section 25210.9) to Chapter 6.5 of Division
6 20 of the Health and Safety Code, has put the state on a path of
7 transition to more energy-efficient lighting, including substantially
8 increased utilization of fluorescent lighting.

9 (b) Lighting products introduce hazardous waste into the
10 environment by containing hazardous substances, such as mercury,
11 in the lighting product itself, and by the release of hazardous
12 substances from the production of energy, which the lighting
13 product utilizes.

14 (c) Electricity generation, particularly from coal, releases
15 mercury into the atmosphere, which contaminates waterways and
16 fish, causing a public health risk.

17 (d) The less efficient a lamp is, the more hazardous waste,
18 including mercury, is released into the atmosphere from the
19 electricity generation associated with its use.

20 (e) High-efficiency bulbs, such as compact fluorescent lamps,
21 contain mercury within the product but because these bulbs use
22 less energy, they are responsible for smaller hazardous emissions
23 from energy production.

24 (f) Low-efficiency bulbs, such as incandescent bulbs, contain
25 no mercury but are responsible for greater hazardous substance
26 emissions from energy production.

27 (g) Low-efficiency bulbs also cause greater emissions of
28 greenhouse gases and other harmful air pollutants. The efficiency
29 of a lamp is a reasonable indicator of its total environmental impact.

30 (h) The state prohibits the disposal of lighting products
31 containing hazardous levels of metal in the solid waste stream.

32 (i) The hazardous waste generated by waste lighting products
33 can be reduced and managed through recycling, but recycling

1 opportunities are currently inconvenient or nonexistent for most
2 consumers.

3 (j) Even though some types of fluorescent lighting products
4 deliver the same level of light at the same level of efficiency as
5 other types of these products, they may have varying levels of
6 mercury. The Department of General Services has adopted a
7 procurement preference favoring low-mercury fluorescent lamps.

8 (k) In 2007, the Legislature enacted the California Lighting
9 Efficiency and Toxics Reduction Act which directed the
10 Department of Toxic Substances Control to convene a lighting
11 task force to consider and make policy recommendations to the
12 Legislature for designing a statewide collection program for
13 end-of-life fluorescent lamps.

14 (l) On September 1, 2008, the task force submitted
15 recommendations to the Legislature on the need and options for a
16 convenient statewide system for the collection and recycling of
17 fluorescent lamps for residential generators.

18 (m) The purpose of this act is to establish a system for the
19 recycling of fluorescent lamps generated by households and small
20 businesses that is free and convenient for end users and to promote
21 the rapid development and uptake of more efficient and
22 low-toxicity lighting products to minimize the public health impacts
23 from lighting.

24 (n) The responsibility for the end-of-life management of
25 products and materials rests primarily with the producers who
26 designed and profited from the product, thereby incorporating life
27 cycle costs into the total product costs to reduce the impact on the
28 taxpayers and ratepayers of the state and reduce the impact on
29 human health and the environment.

30 (o) (1) The imposition of the fee pursuant to Section 25210.20
31 of the Health and Safety Code would not result in the imposition
32 of a tax within the meaning of Article XIII A of the California
33 Constitution because the amount and nature of the fee have a fair
34 and reasonable relationship to the environmental, public health,
35 and societal burdens imposed by the use of inefficient lamps and
36 there is a sufficient nexus between the fees imposed and the use
37 of those fees to support programs.

38 (2) There is a clear nexus between the type and the amount of
39 the fees imposed pursuant to this act and the environmental, public
40 health, and societal costs resulting from inefficient lamps.

1 (3) It is the intent of the Legislature that the fees imposed
2 pursuant to Section 25210.20 of the Health and Safety Code be
3 consistent with the California Supreme Court's decision in Sinclair
4 Paint. Co. v. State Bd. of Equalization (1997) 15 Cal.4th 866.

5 SEC. 2. Article 10.03 (commencing with Section 25210.13)
6 is added to Chapter 6.5 of Division 20 of the Health and Safety
7 Code, to read:

8
9 Article 10.03. California Lighting Toxics Reduction and Jobs
10 in Recycling Act
11

12 25210.13. For the purposes of this article, the following terms
13 have the following meanings:

14 (a) "Brand" means a name, symbol, word, or mark that identifies
15 a product, rather than its components, and attributes the product
16 to the owner of the brand as the producer.

17 (b) "Commission" means the State Energy Resources
18 Conservation and Development Commission.

19 (c) "Covered entity" means the residential end user of a class
20 1 lamp who delivers not more than 15 class 1 lamps to a collection
21 site or service operating pursuant to an approved product
22 stewardship program for class 1 lamps.

23 (d) "Covered lamp" means all lamps defined under "class 1
24 lamps" and "class 2 lamps," either individually or as an item within
25 a covered lamp category, including all materials that make up the
26 covered product.

27 (1) "Class 1 lamp" means a lamp containing mercury.

28 (2) "Class 2 lamp" means a lamp that produces fewer than 45
29 lumens per watt.

30 (3) A lamp that is both a class 1 lamp and a class 2 lamp shall
31 be subject to all of the requirements that apply to those lamps.

32 (e) "Lamp" has the same meaning as "general purpose lights,"
33 as defined in Section 25210.10.

34 (f) "Orphan lamp" means a covered lamp that meets any of the
35 following conditions:

36 (1) The covered lamp lacks a producer's brand.

37 (2) The producer of that covered lamp is no longer in business
38 and has no successor in interest.

39 (3) The covered lamp bears a brand for which the department
40 cannot identify an owner.

1 (g) “Plan operator” means a producer who either individually
2 or jointly with other producers, implement the product stewardship
3 program plan approved by the department pursuant to Section
4 25210.16, or, if the producer enters into an agreement with a
5 product stewardship organization to submit the plan, on the
6 producer’s behalf, the product stewardship program that
7 implements the plan approved by the department pursuant to
8 Section 25210.16.

9 (h) “Producer” shall be determined, with regard to a covered
10 lamp, as one of the following:

11 (1) The person who manufactures the covered lamp and who
12 sells, offers for sale, or distributes the product in the state under
13 the manufacturer’s own brand.

14 (2) If there is no person who sells, offers for sale, or distributes
15 the covered lamp in the state under the person’s own name or
16 brand, the producer of the covered lamp is the owner or licensee
17 of a trademark under which a product is sold or distributed in state,
18 whether or not the trademark is registered.

19 (3) If there is no person who is a producer of the covered lamp
20 for purposes of paragraph (1) or (2), the producer of the covered
21 lamp is the person who imports the covered lamp into the state for
22 sale or distribution.

23 (i) “Product stewardship” means the requirement imposed
24 pursuant to this article upon a producer of a class 1 lamp to manage
25 and reduce adverse safety, health, and environmental impacts of
26 the class 1 lamp throughout the life cycle of the covered lamp,
27 including financing and providing for the collection, transporting,
28 reusing, recycling, processing, and final disposition of the class 1
29 lamp.

30 (j) “Product stewardship plan” or “plan” means the detailed
31 plan prepared pursuant to Section 25210.15 describing the manner
32 in which a product stewardship program will be implemented.

33 (k) “Product stewardship program” or “program” means a
34 program established pursuant to this article pursuant to a product
35 stewardship plan that is financed and managed or provided by the
36 producer of a class 1 lamp and that includes

37 provisions for the collection, transportation, recycling, processing
38 and final disposition of class 1 lamps, including the collection and
39 recycling of the program’s fair share of orphan lamps, as specified
40 in subdivision (c) of Section 25210.15.

1 (l) "Reporting period" means the period commencing January
2 1 and ending December 31 in the same calendar year.

3 (m) "Residuals" means nonrecyclable materials left over from
4 processing an unwanted covered product.

5 (n) "Retailer" means a person who offers covered lamps for
6 retail sale, as defined in Section 6007 of the Revenue and Taxation
7 Code, through any means including, but not limited to, remote
8 offerings such as sales outlets, catalogs, or the Internet, but does
9 not include a sale that is a wholesale transaction between a
10 distributor and a retailer.

11 (o) "Stakeholder" means a person who may have an interest in
12 or be affected by a product stewardship program.

13 (p) "Stewardship organization" is an entity appointed by a
14 producer to act as an agent on behalf of the producer to administer
15 a product stewardship program.

16 (q) "Unwanted product" means a covered lamp that is no longer
17 wanted, has been abandoned or discarded, or is intended to be
18 discarded by its owner.

19 (r) "Wholesale sale" means a sale that is not a retail sale, as
20 defined in Section 6007 of the Revenue and Taxation Code.

21 (s) (1) "Wholesaler" means a person who engages in the sale
22 of covered lamps for resale, in a sale that is a wholesale sale.

23 (2) If a person is a producer of a covered lamp and also a
24 wholesaler, the person shall comply with the provisions of this
25 article that apply to producers.

26 25210.14. (a) This article shall be known, and may be cited,
27 as the California Lighting Toxics Reduction and Jobs in Recycling
28 Act.

29 (b) The Legislature hereby finds and declares that it is the intent
30 of this article to require the recycling of all unwanted class 1 lamps,
31 including orphan lamps, by January 1, 2020, through expanded
32 public education and the development of a comprehensive, safe,
33 and convenient collection system that includes use of residential
34 curbside collection programs, mail-back containers, increased
35 support for household hazardous waste facilities, and a network
36 of additional collection locations.

37 25210.15. (a) On or before September 30, 2011, a producer
38 of a class 1 lamp shall submit a product stewardship program plan
39 to the department in accordance with this section.

1 (b) A producer shall either individually or jointly with other
2 producers, submit a product stewardship program plan pursuant
3 to this section or may enter into an agreement with a stewardship
4 organization to submit, on the producer's behalf, a product
5 stewardship program pursuant to this section.

6 (c) The product stewardship *program* plan submitted to the
7 department shall meet all of the following requirements:

8 (1) Include information, including full contact information,
9 regarding all of the following:

10 (A) The organization submitting the plan.

11 (B) A list of all participating producers and their brands
12 including a trademark, if applicable.

13 (C) If the program is to be operated by a stewardship
14 organization, a description of management, administration, and
15 tasks to be performed by the stewardship organization.

16 (2) Include a collection system, including all of the following:

17 (A) Location of collection sites and other collection services to
18 be used by the program.

19 (B) How unwanted products from all covered entities will be
20 collected in all cities in the state with populations greater than
21 10,000 and in all counties of the state.

22 (C) How collected unwanted products will be transported to
23 processing facilities.

24 (3) Include educational and outreach efforts, including, but not
25 limited to, all of the following:

26 (A) A public service announcement promoting the proper
27 management for class 1 lamps, which shall include providing a
28 copy of the public service announcement to the department and
29 posting the public service announcement on the stewardship
30 organization or producer's Internet Web site.

31 (B) The establishment of a public Internet Web site, which shall
32 include the posting of templates of all educational materials on the
33 Internet Web site that is in a form and format that can be easily
34 downloaded, and providing a link to the Internet Web site to the
35 department.

36 (C) Methods to engage other stakeholders, such as waste,
37 demolition, and lighting retailers and contractors, and appropriate
38 state agencies and local governments to secure support and
39 participation to encourage the proper management of class 1 lamps
40 throughout the state.

1 (D) Strategies to work with utilities participating in energy
2 conservation programs involving the replacement of old lighting
3 technologies for new class 1 lamps and to encourage their
4 participation in the collection and proper management of class 1
5 lamps.

6 (E) Strategies to encourage support and participation by retailers
7 and other outlets to educate consumers on the proper management
8 of class 1 lamps.

9 (4) Include a processing and disposal system, which shall meet
10 all of the following requirements:

11 (A) All class 1 lamps collected by the system shall be recycled.

12 (B) The mercury and mercury-bearing residuals from recycling
13 of class 1 lamps collected by the system shall be ~~disposed of at a~~
14 ~~mercury repository, issued a permit pursuant to this chapter, or~~
15 ~~managed at a hazardous waste facility operating in accordance~~
16 *stored at a mercury repository or disposed or recycled at a*
17 *permitted hazardous waste treatment, storage, or disposal facility*
18 *that is operating in accordance with this chapter.*

19 (C) The plan shall include the locations, permit status, and record
20 of any penalties, violations, or regulatory orders received in the
21 previous five years by processing and disposal facilities proposed
22 to be used by the program, including all downstream processing
23 and disposal facilities handling hazardous waste generated under
24 the program and those involved in the final disposition of the
25 hazardous waste.

26 (D) The processing and disposal system shall collect, free of
27 charge, unwanted class 1 lamps from covered entities for reuse,
28 recycling, processing, and final disposition.

29 (E) The processor of the class 1 lamps subject to the plan shall
30 submit an annual report to the department in a format provided by
31 the department that includes the number and type of class 1 lamps
32 received.

33 (F) The processor of the class 1 lamps subject to the plan shall
34 agree to allow the department, or its designee, to inspect, audit, or
35 review audits of processing and disposal facilities used to fulfill
36 the requirements of a product stewardship program.

37 (G) Federal or state prison labor shall not be used for processing
38 class 1 lamps subject to the plan.

39 (5) Include a description of the financing system to cover the
40 entire product stewardship program, including how costs will be

1 apportioned among, and assessed upon, producers participating in
2 the program. The plan shall require the producer, group of
3 producers, or stewardship organization to pay all administrative
4 and operational costs associated with the program.

5 (6) Include plans for minimizing the environmental impacts of
6 the covered lamp throughout the product's life cycle.

7 (7) Include a list of collection sites and other collection services
8 to be used by the program, sorted by city and county.

9 (8) Reasonably demonstrate how the product stewardship
10 program will contribute toward achieving the goal of recycling all
11 unwanted class 1 lamps, including the collection and recycling of
12 the program's fair share of orphan lamps, on or before January 1,
13 2020.

14 (9) Comply with the regulations for managing universal waste
15 contained in Chapter 23 (commencing with Section 66273.1) of
16 Division 4.5 of Title 22 of the California Code of Regulations, as
17 applicable.

18 25210.16. (a) Within 60 days after receiving a proposed
19 product stewardship plan pursuant to Section 25210.15, the
20 department shall determine whether the plan complies with this
21 article.

22 (b) If the department approves the plan, the department shall
23 notify the applicant of its approval.

24 (c) If the department rejects a plan, the department shall notify
25 the applicant of its decision and its reasons for rejecting the plan.
26 An applicant whose plan has been rejected by the department shall
27 submit a revised plan to the department within 60 days after
28 receiving notice of the rejection to maintain compliance with this
29 article.

30 (d) On or before January 1, 2012, a producer shall either
31 individually or jointly with other producers, implement the product
32 stewardship program plan approved by the department, or, if the
33 producer enters into an agreement with a stewardship organization
34 to submit the plan, on the producer's behalf, the product
35 stewardship program shall, on or before January 1, 2012,
36 implement the plan approved by the department pursuant to this
37 section.

38 25210.17. (a) At least once every four years, the plan operator
39 shall update the product stewardship plan approved by the

1 department pursuant to Section 25205.16 and shall submit the
2 updated plan to the department for review.

3 (b) The department shall determine the status of an updated plan
4 within 60 days of its submittal. If the department rejects an updated
5 plan, the department shall notify the plan operator, who shall
6 resubmit the plan within 60 days of that notification. If the plan is
7 not resubmitted within that time period, the plan operator and the
8 producer subject to the plan shall be deemed in violation of this
9 article.

10 (c) A proposed change to a product stewardship plan shall be
11 submitted to the department for approval, except for the following:

12 (1) Additions or changes to collection locations for unwanted
13 products.

14 (2) Additions of producers to a product stewardship program.

15 (d) The plan operator shall inform the department of changes
16 specified in subdivision (c) no less than 15 days before the changes
17 occur.

18 25210.18. (a) On or before April 1, 2013, and on or before
19 each April 1 annually thereafter, the plan operator shall prepare
20 and submit to the department a report for the immediately
21 preceding reporting period describing all of the following:

22 (1) Information, including full contact information, regarding
23 all of the following:

24 (A) The organization submitting the report.

25 (B) A list of all participating producers and their brands and
26 trademarks, if applicable.

27 (2) The recovery rates of the class 1 lamps subject to the plan,
28 including all of the following:

29 (A) The amount, by weight, of unwanted class 1 lamps collected
30 from covered entities in each county in the state, including
31 documented collection and recycling or disposal of that material.

32 (B) A list of collection locations for unwanted products, sorted
33 by city and county.

34 (C) Progress toward achieving the goal of recycling all unwanted
35 class 1 lamps sold by the producer or group of producers, and the
36 program's fair share of orphan lamps pursuant to paragraph (8) of
37 subdivision (c) of Section 25210.15, and what actions the plan
38 operator will take during the next reporting period, including how
39 it will improve effective and measurable outreach and education
40 efforts.

1 (3) The processing and disposal system, including both of the
2 following:

3 (A) A list of processing and disposal facilities used and
4 locations, the weight of unwanted products processed at each
5 processing facility and disposed at each disposal facility, and a
6 description of the methods used at each processing facility.

7 (B) Any penalties, violations, or regulatory orders received
8 during the reporting period by each processing facility or disposal
9 facility that was used to implement the plan.

10 (4) Costs associated with the recovery of unwanted product and
11 total and per pound costs.

12 (b) All reports submitted to the department shall be made
13 available to the public on the department's Internet Web site and
14 at the department's headquarters.

15 25210.19. (a) A producer, a group of producers, or a
16 stewardship organization that submits a plan to the department
17 shall enter into an agreement with the department to pay the
18 department for the costs incurred by the department associated
19 with the review of the product stewardship plan, including the
20 implementation and enforcement of the plan.

21 (b) The department shall deposit the amounts paid pursuant to
22 this section into the Lighting Product Stewardship Subaccount,
23 which is hereby established in the Hazardous Waste Control
24 Account and which may be expended by the department, upon
25 appropriation by the Legislature, for the costs specified in
26 subdivision (a).

27 25210.20. (a) On or before January 30, 2012, and on or before
28 January 1 annually thereafter, a producer of a class 2 lamp shall
29 pay to the commission the fee established by the commission
30 pursuant to this section.

31 (1) On or before June 30, 2011, and on or before June 1 annually
32 thereafter, a producer of a class 2 lamp shall provide to the
33 commission a written report with the number and efficiency, in
34 lumens per watt, of each model of class 2 lamps sold in the state
35 during the previous calendar year.

36 (2) On or before December 1, 2011, the commission shall adopt
37 regulations for determining the total environmental impact of a
38 class 2 lamp according to the relative efficiency of each type of
39 class 2 lamp and for setting the amount of the fee based on the
40 total environmental impact of that type of class 2 lamp according

1 to the relative efficiency of that class 2 lamp. The regulations shall
2 require the commission to set the amount of the payment at a level
3 necessary to provide sufficient funds to implement this section,
4 including administrative costs.

5 (3) Based on the information submitted pursuant to paragraph
6 (1) and pursuant to the regulations adopted pursuant to paragraph
7 (2), the commission shall assess the total environmental impact of
8 each class 2 lamp, based on its relative efficiency.

9 (4) The commission shall assess the fee upon each producer of
10 a class 2 based on the total sales of class 2 lamps by that producer
11 in the state.

12 (b) The commission shall deposit all fee revenues collected
13 pursuant to this section in the Energy Efficiency Research Fund,
14 which is hereby created in the State Treasury.

15 (c) The funds in the Energy Efficiency Research Fund may be
16 expended by the commission, upon appropriation by the
17 Legislature, to provide grants, based on an annual competitive
18 solicitation, for all the following purposes:

19 (1) Research to improve the lighting efficiency of class 2 lamps.

20 (2) Research to reduce environmental impacts from lighting
21 technologies used by class 2 lamps.

22 (3) Projects to reduce, remediate, and mitigate the impact of
23 class 2 lamps on public health and the environment.

24 (d) The commission shall provide information on compliance
25 with this section as necessary to the department for the purpose of
26 enforcement of this article.

27 25210.21. (a) On or before January 1, 2012, the department
28 shall issue a report concerning the status of the collective product
29 stewardship programs *established pursuant to this article* and post
30 the report on the department's Internet Web site.

31 (b) On or before October 1, 2013, and on or before October 1
32 annually thereafter, the department shall invite comments from
33 local governments, communities, and citizens to report their
34 satisfaction with services provided by product stewardship
35 programs *established pursuant to this article*. The department shall
36 use this information to determine if the plan operator is meeting
37 the plan's requirements and in reviewing the proposed updates or
38 changes to product stewardship plans.

39 25210.22. (a) Except as provided in subdivision (f), on and
40 after January 1, 2012, a producer, wholesaler, or retailer shall not

1 sell or offer for sale a class 1 lamp to a person in this state unless
 2 the producer of that class 1 lamp is participating in a product
 3 stewardship program under a plan approved by the department.

4 (b) Except as provided in subdivision (f), on and after February
 5 1, 2012, a producer, wholesaler, or retailer shall not sell or offer
 6 for sale a class 2 lamp to a person in this state unless the producer
 7 of that class 2 lamp has paid the fee required by Section ~~25250.20~~
 8 ~~25210.20~~.

9 (c) The department shall provide, on its Internet Web site, lists
 10 of all of the following:

11 (1) All producers of class 1 lamps participating in an approved
 12 product stewardship program.

13 (2) All producers of class 2 lamps that have paid the fee imposed
 14 pursuant to Section ~~25201.20~~ ~~25210.20~~.

15 (3) All producers identified by the department as noncompliant
 16 with this article and the regulations adopted to implement this
 17 article.

18 (d) On May 1, 2012, and on the following January 1 and May
 19 1 annually thereafter, the department shall post on its Internet Web
 20 site producers of covered lamps that are not in compliance with
 21 this article.

22 (e) A wholesaler or a retailer that distributes covered lamps
 23 shall monitor the department's Internet Web site to determine if a
 24 producer's lamps are in compliance with this article.

25 (f) (1) A person primarily engaged in the business of reuse and
 26 resale of a used product is not subject to this article with regard to
 27 the sale of a used working covered product, for use in the same
 28 manner and purpose for which it was originally purchased.

29 (2) A covered product that is owned by a retailer on January 1,
 30 2012, is not subject to this section and the retailer may exhaust
 31 that existing stock through sales to the public.

32 25210.23. (a) The department shall send a written notification
 33 to a retailer known to be selling a product in the state from a
 34 producer or wholesaler who is not in compliance with this article.

35 (b) A retailer that removes from sale any covered lamp within
 36 90 days of discovery that it is not in compliance with this article
 37 shall not be in violation of this section.

38 25210.24. If, after holding a public hearing, the department
 39 finds that a producer has failed to make a good faith effort to
 40 comply with this article, including, but not limited to, failing to

1 submit or implement a plan pursuant to Section 25210.15, the
2 department shall issue a compliance order with a schedule for
3 achieving compliance.

4 25210.25. This article does not limit, supersede, duplicate, or
5 otherwise conflict with the authority of the department to fully
6 implement Article 14 (commencing with Section 25251), including
7 the authority of the department to include products in a product
8 registry that the department adopts pursuant to that article.
9 Notwithstanding subdivision (c) of Section 25257.1, a covered
10 lamp shall not be considered as a product category already
11 regulated or subject to pending regulation for purposes of Article
12 14 (commencing with Section 25251).

13 SEC. 3. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.

AMENDED IN ASSEMBLY APRIL 14, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2398

Introduced by Assembly Member John A. Perez

February 19, 2010

An act to add Chapter 20 (commencing with Section 42970) to Part 3 of Division 30 of the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

AB 2398, as amended, John A. Perez. Product stewardship: carpet.

The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, is required to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient cost-effective manner to conserve water, energy, and other natural resources.

~~This bill would require the department, by January 1, 2012, to establish a baseline collection rate for the amount of carpet that is discarded and subsequently collected. The bill would provide a procedure for determining the collection rate for purposes of the bill, commencing January 1, 2013.~~

The bill would require, by September 30, 2011, a producer or the ~~product~~ *carpet* stewardship organization created by one or more producers of a carpet to submit a carpet stewardship plan to the department, which would be required to include specified elements, including ~~performance~~ *product* goals ~~as to the~~ *and* a collection rate for ~~a compact the carpet subject to the plan, calculated in a specified manner.~~ *By January 1, 2012, the* *The* department would be required to review ~~and either approve or disapprove a carpet stewardship plans~~

plan submitted to the department and deem the plan either complete or incomplete within 45 days after receipt.

The bill would prohibit a producer, *wholesaler*, or retailer, on and after January 1, 2012, from selling a carpet unless the ~~producer or carpet stewardship organization of the carpet has submitted a plan to the department that is approved~~ *plan for that carpet is deemed complete* by the department. The act would require a producer of carpet *or the carpet stewardship organization* to ~~collect the carpet pursuant to implement the carpet stewardship plan and to meet the performance goals included in the carpet stewardship plan,~~ *including achieving the collection rate.*

Each producer or carpet stewardship organization implementing a carpet stewardship plan would be required to prepare and submit to the department an annual report describing the activities carried out pursuant to the carpet stewardship plan ~~and the department would be required to adopt regulations, by January 1, 2012, specifying the information required to be included in the annual carpet stewardship plan report.~~

A producer or carpet stewardship organization submitting a carpet stewardship plan would be required to pay the department an ~~unspecified administrative fee~~ when submitting the plan for review and approval and to pay an annual administrative fee, *as determined as an unspecified percentage of the costs of implementing the plan by the department.* The bill would provide for the imposition of administrative civil penalties upon a producer who does not comply with the bill's requirements or a producer, *wholesaler*, or retailer selling carpet in violation of the bill. The bill would create the Carpet Stewardship Account in the existing Integrated Waste Management Fund and would require that the administrative fees be deposited into that account and that the penalties be deposited into the Carpet Stewardship Penalty Subaccount that the bill would create in that account. The bill would authorize the fees and penalties to be expended, upon appropriation by the Legislature, to cover the department's program implementation costs and as incentives to enhance recyclability and redesign efforts and to reduce environmental and safety impacts of carpet.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Recycling carpets results in greater green house gas (GHG)
4 emission reductions than most other products.

5 (b) Carpets accounted for 3.2 percent of waste by volume
6 disposed of in California in 2008.

7 (c) Despite nationwide and California memoranda of
8 understanding to promote carpet recycling, the carpet recycling
9 rate has dropped from 4.9 percent in 2007 to 4.3 percent in 2008.

10 (d) The California carpet industry memorandum of
11 understanding targets a recycling rate of between 20 and 25 percent
12 by 2012.

13 (e) Because other types of recycling programs have proven to
14 have limited success, state and regional governments in Europe
15 and Canada have adopted producer responsibility programs to
16 redirect the responsibility for the end-of-life management of
17 discarded hazardous and hard to manage products from local
18 governments and retailers primarily to producers.

19 (f) The former California Integrated Waste Management Board
20 adopted an overall Framework for an Extended Producer
21 Responsibility (EPR) guidance document as a policy priority in
22 January 2008.

23 (g) The program established by this act is intended to reduce
24 costs to local government, to harmonize the state's producer
25 responsibility obligations with other national and international
26 programs, and to enhance the protection of public health and the
27 environment through safer product design, use, and end-of-life
28 management.

29 SEC. 2. Chapter 20 (commencing with Section 42970) is added
30 to Part 3 of Division 30 of the Public Resources Code, to read:

31

32 CHAPTER 20. PRODUCT STEWARDSHIP FOR CARPETS

33

34 42970. For purposes of this chapter, and unless the context
35 otherwise requires, the definitions in this chapter govern the
36 construction of this chapter:

1 (a) “Brand” means a name, symbol, word, or mark that identifies
2 the carpet, rather than its components, and attributes the carpet to
3 the owner or licensee of the brand as the producer.

4 ~~(b) “Carpet” means _____.~~

5 ~~(c) “Collection rate” means a quantitative measure that~~
6 ~~establishes the amount of carpet required to be collected by the~~
7 ~~carpet stewardship system for that carpet by an established date.~~
8 ~~The collection rate is included as a component of the performance~~
9 ~~goals for a carpet.~~

10 (b) (1) “Carpet” means a manufactured article that is used in
11 commercial or residential buildings affixed or placed on the floor
12 or building walking surface as a decorative or functional building
13 interior feature and that is primarily constructed of a top visible
14 surface of synthetic face fibers or yarns or tufts attached to a
15 backing system derived from synthetic or natural materials.

16 (2) “Carpet” includes, but is not limited to, a commercial or a
17 residential broadloom carpet or modular carpet tiles.

18 (3) “Carpet” does not include a rug, pad, cushion, or
19 underlayment used in conjunction with, or separately from, a
20 carpet.

21 (c) “Carpet producer stewardship” means requiring the
22 producer of a carpet, and all other entities involved in the
23 distribution chain of a carpet, to share in the responsibility of
24 reducing the life cycle impact of the carpet and its packaging,
25 including requiring the producer who makes design and marketing
26 decisions for the carpet to bear the primary responsibility for this
27 reduction.

28 (d) “Carpet stewardship organization” or “organization” means
29 an organization appointed by one or more producers to act as an
30 agent on behalf of the producer to design, submit, and administer
31 a carpet stewardship plan pursuant to this chapter.

32 (e) “Carpet stewardship plan” or “plan” means a plan written
33 by an individual producer or a carpet stewardship organization,
34 on behalf of one or more producers, that includes all of the
35 information required by Section 42971.

36 (f) “Collection rate” means a quantitative measure established
37 in the carpet stewardship plan that establishes the amount of carpet
38 required to be collected by the carpet stewardship system for that
39 carpet by an established date. The collection rate is included as
40 a component of the product goals for a carpet.

1 ~~(d)~~

2 (g) "Department" means the Department of Resources Recycling
3 and Recovery.

4 ~~(e) "Performance goal" means the collection rate of carpets and
5 may include, but is not limited to, the reuse and recycling rates
6 established by the carpet stewardship plan for that carpet.~~

7 ~~(f)~~

8 (h) "Producer" shall be determined, with regard to a carpet that
9 is sold, offered for sale, or distributed in the state, as meaning one
10 of the following:

11 (1) The person who manufactures the carpet and who sells,
12 offers for sale, or distributes that carpet in the state under that
13 person's own name or brand.

14 (2) If there is no person who sells, offers for sale, or distributes
15 the carpet in the state under the person's own name or brand, the
16 producer of the carpet is the owner or licensee of a trademark or
17 brand under which the carpet is sold or distributed in the state,
18 whether or not the trademark is registered.

19 (3) If there is no person who is a producer of the carpet for
20 purpose of paragraphs (1) and (2), the producer of that carpet is
21 the person who imports the carpet into the state for sale or
22 distribution.

23 ~~(g)~~

24 (i) "Product goal" means those qualitative or quantitative goals
25 determined by the producer to measure improvements that reduce
26 the life cycle impacts of a carpet.

27 ~~(h) "Product stewardship" means requiring the producer of a
28 carpet, and all other entities involved in the distribution chain of
29 a carpet, to share in the responsibility of reducing the life cycle
30 impact of the carpet and its packaging, including requiring the
31 producer who makes design and marketing decisions for the carpet
32 to bear the primary responsibility for this reduction.~~

33 ~~(i) "Product stewardship organization" means an organization
34 appointed by one or more producers to act as an agent on behalf
35 of the producer to design, submit, and administer a carpet
36 stewardship plan pursuant to this chapter~~

37 ~~(j) "Product stewardship plan" or "plan" means a plan written
38 by an individual producer or a carpet stewardship organization,
39 on behalf of one or more producers, that includes all of the
40 information required by Section 42973.~~

1 (j) “Program” means the system for the collection,
2 transportation, recycling, and disposal of carpets pursuant to a
3 completed carpet stewardship plan that is financed and managed
4 or provided by an individual producer or collectively by one or
5 more producers.

6 (k) “Recycling rate” means a quantitative measure that
7 establishes the amount of a collected carpet that is recycled as
8 compared to the total amount of the carpet that is collected,
9 including the amount of the carpet that is discarded for reuse,
10 energy recovery, or safe disposal.

11 (l) “Reporting period” means the period commencing January
12 1 and ending on December 31 of the same calendar year.

13 (m) “Retailer” means a person ~~that~~ who offers new carpet in a
14 retail sale, as defined in Section 6007 of the Revenue and Taxation
15 Code, including a retail sale at retail through any means, including
16 remote offerings such as sales outlets, catalogs, or an Internet Web
17 site.

18 (n) “Reuse rate” means a quantitative measure that establishes
19 the amount of a collected carpet that is reused as compared to the
20 total amount of the covered carpet that is collected, including the
21 amount of the carpet that is discarded by recycling, energy
22 recovery, or safe disposal.

23 (o) “Sell” or “sales” means ~~any~~ a transfer of title of a carpet for
24 consideration, including a remote sale conducted through a sale
25 outlet, catalog, or Internet Web site or similar electronic means,
26 but does not include a lease.

27 (p) “Wholesaler” means a person who offers new carpets for
28 sale in this state in a sale that is not a retail sale, as defined in
29 Section 6007 of the Revenue and Taxation Code, and in which the
30 carpet is intended to be resold.

31 ~~42971. On or before January 1, 2012, the department shall~~
32 ~~establish a baseline collection rate for the amount of carpets that~~
33 ~~are discarded and subsequently collected, based on existing~~
34 ~~collection data.~~

35 ~~42972. (a) The collection rate for a carpet shall be determined~~
36 ~~in the following manner:~~

37 ~~(1) For the calendar year commencing January 1, 2013, the~~
38 ~~collection rate shall be 5 percent more than the baseline collection~~
39 ~~rate determined pursuant to Section 42971.~~

1 ~~(2) On and after January 1, 2014, the collection rate for each~~
2 ~~carpet shall increase by no less than 5 percent annually until a 95~~
3 ~~percent collection rate is reached.~~

4 ~~(b) A producer may petition the department for an adjustment~~
5 ~~to the collection rate. The department may grant an adjustment to~~
6 ~~the collection rate only if the department determines there are~~
7 ~~documented exigent circumstances that are beyond the control of~~
8 ~~the producer or carpet stewardship organization.~~

9 ~~42973. (a) On or before September 30, 2011, a producer or~~
10 ~~the carpet stewardship organization of a carpet shall submit a carpet~~
11 ~~stewardship plan to the department. A carpet stewardship~~
12 ~~organization created pursuant to this section shall be open for~~
13 ~~participation by all producers of carpet.~~

14 ~~(b) A producer, group of producers, or carpet stewardship~~
15 ~~organization shall consult with stakeholders during the~~
16 ~~development of the carpet stewardship plan, including soliciting~~
17 ~~stakeholder comments and responding to stakeholder comments~~
18 ~~prior to submitting the carpet stewardship plan.~~

19 ~~(c) Each carpet stewardship plan for an identified carpet shall~~
20 ~~address the environmental impacts of a carpet over the entire life~~
21 ~~cycle of that carpet, including carpet design, manufacture, and~~
22 ~~distribution, and the collection, transportation, reuse, recycling,~~
23 ~~and final disposition of discarded carpet, in accordance with this~~
24 ~~chapter. The plan shall include, at a minimum, all of the following~~
25 ~~elements:~~

26 ~~(1) Contact information for all participating producers.~~

27 ~~(2) A description of the brands of carpet covered by the plan.~~

28 ~~(3) Performance goals, including a detailed description of how~~
29 ~~the performance goals will be achieved and how results will be~~
30 ~~measured and including both of the following:~~

31 ~~(A) The collection rate shall be included as a performance goal~~
32 ~~for a carpet.~~

33 ~~(B) The reuse rate and recycling rate for that carpet shall be~~
34 ~~included in the performance goal.~~

35 ~~(4) An overview of the roles and responsibilities of key players~~
36 ~~along the distribution chain for that carpet.~~

37 ~~(5) Financing methods for the carpet stewardship plan.~~

38 ~~(6) Strategies for managing and reducing the life cycle impacts~~
39 ~~of the carpet, steps that will be taken to ensure environmentally~~

1 sound management, and how impacts will be tracked over time to
2 show continual improvement.

3 ~~(7) Education and outreach activities.~~

4 ~~(8) A description of the consultation process used to consult
5 with affected stakeholders regarding the carpet stewardship plan.~~

6 ~~(9) A description of product goals, including, but is not limited
7 to, carpet designing and materials content, manufacturing,
8 packaging, distribution, and end-of-life management goals. The
9 product goals shall address the use of virgin material in the
10 manufacture of the carpet, the impact upon, or use of, water or
11 energy by the carpet, the use of, or generation of hazardous
12 substances, by the carpet, the carbon footprint of the carpet, the
13 carpet's longevity, the recycled content of the carpet, and
14 recyclability, where applicable.~~

15 ~~(10) Procedures for notifying all retailers engaged in the sale
16 of that carpet.~~

17 ~~42974. (a) On or before January 1, 2012, the department shall
18 review any plan submitted to the department and either approve
19 or disapprove the carpet stewardship plan submitted to the
20 department. If the department does not approve the plan, the
21 department shall notify the producer or organization that submitted
22 the plan and the producer or organization shall revise and resubmit
23 the disapproved carpet stewardship plan within 30 days after
24 receiving the notification.~~

25 ~~(b) All carpet stewardship plans submitted to the department
26 shall be available to the public on the department's Internet Web
27 site.~~

28 ~~(c) A producer shall notify the department 30 days before
29 instituting a significant or material change to a carpet stewardship
30 plan.~~

31 ~~(d) The carpet stewardship plan shall be implemented upon the
32 approval of the department by the producer or the carpet
33 stewardship organization that submitted the plan.~~

34 ~~42975. On and after January 1, 2012, a producer or retailer
35 shall not offer a carpet for sale in this state or offer a carpet for
36 promotional purposes in this state unless the producer or carpet
37 stewardship organization of the carpet has submitted a carpet
38 stewardship plan to the department pursuant to Section 42973 and
39 the carpet stewardship plan is approved by the department pursuant~~

1 to Section ~~42974~~ and being implemented pursuant to Section
2 ~~42976~~.

3 ~~42976. A producer of a carpet shall do all of the following~~
4 ~~when implementing this chapter, including when implementing~~
5 ~~an approved carpet stewardship plan:~~

6 ~~(a) Collect the individual carpets to be reused or recycled~~
7 ~~pursuant to the carpet stewardship plan for that carpet submitted~~
8 ~~by the producer or carpet organization pursuant to Section 42973~~
9 ~~and approved by the department pursuant to Section 42974.~~

10 ~~(b) Meet the performance goals included in the carpet~~
11 ~~stewardship plan, including achieving the collection rate established~~
12 ~~pursuant to Section 42973.~~

13 ~~(c) Provide collection services, in accordance with Section~~
14 ~~42977, for the carpet that does not charge a fee at the time when~~
15 ~~the carpet is collected for either recycling or disposal.~~

16 ~~(d) Pay all administrative and operational costs associated with~~
17 ~~the carpet stewardship plan, including the costs of collection,~~
18 ~~transportation, and recycling or disposal, or both, of the carpet,~~
19 ~~including the amount determined pursuant to Section 42979.~~

20 ~~(e) Submit the annual report required by Section 42978.~~

21 ~~42977. A carpet shall be handled and recycled, or, if not~~
22 ~~feasible to be recycled, disposed of, in accordance with all state~~
23 ~~and federal laws and regulations and local ordinances and~~
24 ~~regulations, including, but not limited to, any law, regulation, or~~
25 ~~ordinance that regulates hazardous waste.~~

26 ~~42978. (a) On or before January 1, 2012, the department shall~~
27 ~~adopt regulations specifying the information required to be included~~
28 ~~in annual carpet stewardship plan reports. Notwithstanding~~
29 ~~subdivision (b), the department may include, in those regulations,~~
30 ~~alternative reporting requirements for purposes of those annual~~
31 ~~reports.~~

32 ~~(b) Beginning one year after a carpet stewardship plan is~~
33 ~~approved or no later than January 1, 2013, whichever date is earlier,~~
34 ~~and every subsequent year thereafter, each producer or stewardship~~
35 ~~organization implementing a carpet stewardship plan shall prepare~~
36 ~~and submit to the department an annual report describing the~~
37 ~~activities carried out pursuant to the carpet stewardship plan during~~
38 ~~the previous reporting period. The report, unless required otherwise~~
39 ~~by the department pursuant to the regulations adopted pursuant to~~

1 ~~subdivision (a), shall include, but is not limited to, all of the~~
2 ~~following:~~

3 ~~(1) Whether the producer or carpet stewardship organization,~~
4 ~~in implementing the plan, attained the performance goals for the~~
5 ~~carpet, and if the performance goals were not met, what actions~~
6 ~~the producer or carpet stewardship organization will take during~~
7 ~~the next reporting period to attain those performance goals:~~

8 ~~(2) Whether the producer or carpet stewardship organization,~~
9 ~~in implementing the plan, attained the carpet goals for the carpet,~~
10 ~~and if the carpet goals were not met, what actions the producer or~~
11 ~~stewardship organization will take during the next reporting period~~
12 ~~to achieve those carpet goals:~~

13 ~~(3) A description of the outreach and education activities~~
14 ~~undertaken during the reporting period to inform consumers and~~
15 ~~other stakeholders of the collection opportunities and safe carpet~~
16 ~~handling described in the carpet stewardship plan:~~

17 ~~(4) A description of those areas in the state that have been served~~
18 ~~by the carpet stewardship plan and any barriers to, or opportunities~~
19 ~~for, increased coverage in the future:~~

20 ~~(5) A description of the actions undertaken to manage and reduce~~
21 ~~the life cycle impacts of the carpet:~~

22 ~~(6) The total cost to implement the carpet stewardship plan and~~
23 ~~a description of any economic or job impacts to stakeholders:~~

24 ~~(c) The department shall review a report submitted pursuant to~~
25 ~~this section and shall approve the report if the department~~
26 ~~determines the report contains the information required by this~~
27 ~~section:~~

28 ~~(d) The department shall make all reports submitted to the~~
29 ~~department pursuant to this section available to the public on the~~
30 ~~department's Internet Web site:~~

31 ~~42979. (a) The producer or carpet stewardship organization~~
32 ~~submitting a carpet stewardship plan shall pay the department an~~
33 ~~administrative fee in the amount of _____ dollars (\$_____) when the~~
34 ~~plan is submitted for review and approval and thereafter pay an~~
35 ~~annual administrative fee of _____ percent of the carpet stewardship~~
36 ~~program costs as reported under paragraph (6) of subdivision (b)~~
37 ~~of Section 42978:~~

38 ~~42971. (a) On or before September 30, 2011, a producer or~~
39 ~~the carpet stewardship organization of a carpet shall submit a~~
40 ~~carpet stewardship plan to the department.~~

1 (b) A producer, group of producers, or carpet stewardship
2 organization shall consult with stakeholders during the
3 development of the carpet stewardship plan, including soliciting
4 stakeholder comments and responding to stakeholder comments
5 prior to submitting the carpet stewardship plan.

6 (c) Each carpet stewardship plan shall include, at a minimum,
7 all of the following elements:

8 (1) Contact information for all participating producers.

9 (2) The collection rate for the carpets subject to the plan, which
10 shall be calculated in the following manner, except as provided
11 in Section 42973:

12 (A) For the calendar year commencing January 1, 2014, the
13 collection rate shall be 50 percent of the carpets sold by the
14 producers subject to the plan during the previous calendar year.

15 (B) On and after January 1, 2017, the collection rate shall be
16 70 percent of the carpets sold by the producers subject to the plan
17 during the previous calendar year.

18 (C) The plan shall have a target of achieving a 95 percent
19 collection rate.

20 (3) A description containing all of the following elements:

21 (A) Brands of the carpets covered by the plan.

22 (B) How the product goals will be achieved.

23 (C) The annual schedule for achievement of the collection rate.

24 (D) Convenient collection opportunities for consumers in all
25 counties of the state.

26 (E) Reuse rate and recycling rate for carpets.

27 (F) Roles and responsibilities of key players along the
28 distribution chain.

29 (G) Procedures to be used for notifying retailers and
30 wholesalers of the program.

31 (4) Financing method selected to sustainably fund the
32 implementation of the plan.

33 (5) Education and outreach activities to maximize collection
34 rates.

35 (d) A producer or carpet stewardship organization shall contact
36 cities, counties, districts, and regional agencies, in whose
37 jurisdictions the program will be implemented, to do either, or
38 both, of the following:

39 (1) Enter into an agreement to reimburse the local public agency
40 for the cost of collecting carpets.

1 (2) Provide the local public agency with the location, hours,
2 and contact information for the convenient collection points for
3 carpets that are located within the county where the local agency
4 is located and are consistent with the plan.

5 42972. (a) A carpet stewardship program shall be considered
6 in compliance with this article only if it achieves the collection
7 rate specified in a plan that has been deemed complete by the
8 department pursuant to Section 42974.

9 (b) If a program achieves a collection rate of 95 percent, the
10 producer or carpet stewardship organization shall not be required
11 to pay the annual fee imposed pursuant to subdivision (a) of Section
12 42979.

13 42973. A producer may petition the department for an
14 adjustment to the collection rate. The department may grant an
15 adjustment to the collection rate only if the department determines
16 there are documented exigent circumstances that are beyond the
17 control of the producer or carpet stewardship organization.

18 42974. (a) The department shall review a plan within 45 days
19 after the date the plan is received and either deem the plan
20 complete or incomplete. If the department does not deem the plan
21 complete, the department shall notify the producer or organization
22 that submitted the plan of the deficiencies and the producer or
23 organization shall revise and resubmit the plan within 45 days
24 after receiving the notification. If the department deems the plan
25 complete, the department shall, within 45 days after receipt, notify
26 the producer or organization that the submitted plan is complete.

27 (b) The department shall make all carpet stewardship plans
28 submitted to the department available to the public on the
29 department's Internet Web site.

30 (c) A producer shall notify the department 30 days before
31 instituting a significant or material change to a carpet stewardship
32 plan.

33 (d) On or before July 1, 2012, and on or before July 1 annually
34 thereafter, the department shall post on its Internet Web site a
35 listing of the brands of carpets for which the producer is in
36 compliance with this article.

37 42975. On and after January 1, 2012, a producer, wholesaler,
38 or retailer shall not offer a carpet for sale in this state or offer a
39 carpet for promotional purposes in this state unless the plan
40 submitted by the producer or carpet stewardship organization of

1 *that carpet has been deemed complete by the department pursuant*
2 *to Section 42974.*

3 *42976. Upon receiving notification from the department*
4 *pursuant to Section 42974 that a plan is complete, the producer*
5 *or the carpet stewardship organization shall do all of the following:*

6 *(a) Implement the plan, including, but not limited to, achieving*
7 *the collection rate specified in the plan.*

8 *(b) Pay the administrative fees imposed pursuant to subdivision*
9 *(a) of Section 42979.*

10 *(c) Submit the annual report required by Section 42978.*

11 *42977. A wholesaler or a retailer that distributes or sells*
12 *carpets shall monitor the department's Internet Web site to*
13 *determine if the sale of a producer's carpets is in compliance with*
14 *this article.*

15 *42978. (a) On or before April 1, 2013, and every subsequent*
16 *year thereafter, each producer or carpet stewardship organization*
17 *implementing a plan shall prepare and submit to the department*
18 *an annual report describing the activities carried out pursuant to*
19 *the plan during the previous calendar year. The annual report*
20 *shall include, but is not limited to, all of the following:*

21 *(1) The extent to which each element of the plan specified in*
22 *subdivision (c) of Section 42971 is attained, including, but not*
23 *limited to, achieving the collection rate specified in the plan.*

24 *(2) The actions that the producer will take during the next*
25 *reporting period to meet the product goals specified in the plan*
26 *that have not been met.*

27 *(3) A report of the total sales data for carpets sold in the state*
28 *for the previous calendar year.*

29 *(b) The department shall review an annual report submitted*
30 *pursuant to this section and shall deem it complete if the*
31 *department determines the report contains the information required*
32 *by this section.*

33 *(c) If the department does not act on a report within 45 days of*
34 *receipt, the report shall be deemed to be complete.*

35 *(d) The department shall make all reports submitted to the*
36 *department pursuant to this section available to the public on the*
37 *department's Internet Web site.*

38 *(e) If the collection rate for the carpets subject to the plan meets*
39 *the collection rate specified in subdivision (b) of Section 42972,*
40 *the report shall be submitted once every two years.*

1 42979. (a) *The producer or carpet stewardship organization*
2 *submitting a carpet stewardship plan shall pay the department an*
3 *annual administrative fee. The department shall set the fee at an*
4 *amount that, when paid by every producer and carpet stewardship*
5 *program that submits a carpet stewardship plan, is adequate to*
6 *cover the department's full costs of administering and enforcing*
7 *this chapter. The department may establish a variable fee based*
8 *on relevant factors including, but not limited to, the portion of*
9 *carpets produced by the fee payer compared to the total amount*
10 *of carpet produced by all producers or stewardship organizations*
11 *submitting a carpet stewardship plan.*

12 (b) The total amount of annual fees collected pursuant to this
13 section shall not exceed the amount necessary to recover costs
14 incurred by the department in connection with the administration
15 and enforcement of the requirements of this chapter.

16 42980. (a) The Carpet Stewardship Account and the Carpet
17 Stewardship Penalty Subaccount are hereby established in the
18 Integrated Waste Management Fund.

19 (b) All fees collected pursuant to this chapter shall be deposited
20 in the Carpet Stewardship Account and may be expended by the
21 department, upon appropriation by the Legislature, to cover the
22 department's costs to implement this chapter.

23 (c) All penalties collected pursuant to this chapter shall be
24 deposited in the Carpet Stewardship Penalty Subaccount and may
25 be expended by the department, upon appropriation by the
26 Legislature, to cover the department's costs to implement this
27 article.

28 (d) All funds collected may be expended as incentives to
29 enhance reuse, recyclability, and redesign efforts and to reduce
30 environmental and safety impacts of carpet.

31 42981. (a) If, after holding a public hearing, the department
32 finds that a producer has failed to make a good faith effort to
33 comply with this chapter, including, but not limited to, failing to
34 submit a plan pursuant to Section ~~42973~~ 42971 or failing to submit
35 an annual report pursuant to Section 42978, the department shall
36 issue a compliance order with a schedule for achieving compliance.

37 (b) If, after issuing an order and schedule for compliance
38 pursuant to subdivision ~~(e)~~ (a), the department finds that the
39 producer has failed to make a good faith effort to comply with this
40 chapter, the department may impose an administrative civil penalty

1 ~~of ten thousand dollars (\$10,000)~~ *five thousand dollars (\$5,000)*
2 per day until the producer achieves compliance.

3 (c) For purposes of this section, “good faith effort” means all
4 reasonable and feasible efforts by a producer towards implementing
5 the requirements of this chapter, including, but not limited to,
6 meeting the performance goals specified in the plan.

7 42982. (a) In addition to the penalty specified in Section
8 42981, the department may impose an administrative civil penalty
9 ~~of ten thousand dollars (\$10,000) per day against a producer or of~~
10 *five thousand dollars (\$5,000) per day against a producer,*
11 *wholesaler, or retailer who violates Section 42975.*

12 (b) *A producer, wholesaler, or retailer that removes from sale*
13 *any carpet within 90 days of discovery that it is not in compliance*
14 *with this chapter shall not be deemed to be in violation of Section*
15 *42975.*

16 ~~(b) Prior to enforcing a penalty pursuant to this section, the~~

17 ~~(c) Prior to enforcing any penalty pursuant to this section, the~~
18 department shall issue a compliance order to the producer or retailer
19 selling the carpet allowing 30 days from the date of the compliance
20 order to cease sales of the carpet.

21 ~~42983. (a) The department, or its designee, may inspect, audit,~~
22 ~~or require and review third-party audits of producers, carpet~~
23 ~~stewardship organizations, and service providers, including~~
24 ~~collectors and recyclers, that are utilized to fulfill the requirements~~
25 ~~of a carpet stewardship plan.~~

26 ~~(b) For purposes of this section, a “service provider” means a~~
27 ~~person who is authorized to perform an action to implement the~~
28 ~~carpet stewardship plan with regard to the collection, recycling,~~
29 ~~reuse, or disposal of a carpet, but does not include the consumer~~
30 ~~of the carpet.~~

31 ~~42984. The department shall adopt regulations for the~~
32 ~~imposition of administrative civil penalties pursuant to this chapter.~~

33 ~~42985.~~

34 42983. This article does not limit, supersede, duplicate, or
35 otherwise conflict with the authority of the Department of Toxic
36 Substances Control under Section 25257.1 of the Health and Safety
37 Code to fully implement Article 14 (commencing with Section
38 25251) of Chapter 6.5 of Division 20 of the Health and Safety

- 1 Code, including the authority of the department to include a carpet
- 2 in its product registry.

O

ASSEMBLY BILL

No. 2562

Introduced by Assembly Member Fuentes

February 19, 2010

An act to amend Sections 25420 and 25421 of the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

AB 2562, as introduced, Fuentes. Hazardous material: landfill gas.

Existing law requires the Public Utilities Commission to specify the maximum amount of vinyl chloride that may be found in landfill gas. Existing law prohibits a gas producer from knowingly selling, supplying, or transporting to a gas corporation, and a gas corporation from knowingly purchasing, landfill gas containing vinyl chloride in a concentration exceeding the maximum amount determined by the commission. Existing law requires a person who produces, sells, supplies, or releases landfill gas for sale offsite to a gas corporation to sample and test, bimonthly, the gas at the point of distribution for chemicals known to the state to cause cancer or reproductive toxicity.

This bill would, on and after January 1, 2011, restrict the above provisions to gas collected at a Class I landfill.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 25420 of the Health and Safety Code is
- 2 amended to read:

1 25420. For purposes of this chapter, the following definitions
 2 apply:

3 (a) *“Class I landfill” means a Class I waste management unit*
 4 *classified pursuant to Section 13172 of the Water Code and Article*
 5 *2 (commencing with Section 2520) of Chapter 15 of Division 3 of*
 6 *Title 23 of the California Code of Regulations.*

7 ~~(a)–~~

8 (b) *“Department” means the Department of Toxic Substances*
 9 *Control.*

10 ~~(b)–~~

11 (c) *“Gas corporation” has the same meaning as defined in*
 12 *Section 222 of the Public Utilities Code and is subject to rate*
 13 *regulation by the Public Utilities Commission.*

14 ~~(c)–~~

15 (d) *“Person” means an individual, trust, firm, joint stock*
 16 *company, partnership, association, business concern, limited*
 17 *liability company, or corporation. “Person” also includes any city,*
 18 *county, district, and the state or any department or agency thereof,*
 19 *or the federal government or any department or agency thereof to*
 20 *the extent permitted by law.*

21 SEC. 2. Section 25421 of the Health and Safety Code is
 22 amended to read:

23 25421. (a) Until the rule or order specified in subdivision (b)
 24 is adopted, ~~no~~ a gas producer shall *not* knowingly sell, supply, or
 25 transport landfill gas to a gas corporation, and ~~no~~ a gas corporation
 26 shall *not* knowingly purchase landfill gas, ~~collected at a Class I~~
 27 ~~landfill~~ if that gas contains vinyl chloride in a concentration that
 28 exceeds the operative no significant risk level set forth in ~~Article~~
 29 ~~7 (commencing with Section 12701) of Chapter 3 of Division 2~~
 30 *Section 25705 of Title 22 27 of the California Code of Regulations.*

31 (b) On or before January 1, 1990, the Public Utilities
 32 Commission shall, by rule or order, specify the maximum amount
 33 of vinyl chloride that may be found in landfill gas pursuant to the
 34 requirements of subdivision (a).

35 (c) ~~No~~ *On or after January 1, 2011, a gas corporation shall not*
 36 *knowingly and intentionally expose any customer, employee, or*
 37 *other person to gas from collected at a Class I landfill if that gas*
 38 *contains any chemical known to the state to cause cancer or*
 39 *reproductive toxicity without first giving clear and reasonable*
 40 *warning to that individual, except as provided by Section 25249.10.*

1 (d) Every person who produces, sells, supplies, or releases
2 landfill gas collected at a Class I landfill for sale offsite to a gas
3 corporation shall, twice each month, sample and test the gas at the
4 point of distribution for the presence of chemicals known to the
5 state to cause cancer or reproductive toxicity in accordance with
6 the test guidelines prepared under Section 41805.5. The air
7 pollution control district or air quality management district within
8 which the landfill is situated shall review the testing procedures
9 for compliance with the guidelines and require the correction of
10 any deficiencies. The district shall require, among other things,
11 that the gas collected at a Class I landfill be analyzed by a
12 laboratory certified by the department and shall transmit the results
13 of the analysis to the department for its determination of
14 compliance or noncompliance with subdivisions (a) and (b). The
15 department shall fix and impose upon the gas producer a fee to
16 cover its costs under this subdivision. The results of each sample
17 and test shall be reported promptly to the gas corporation to which
18 the landfill gas collected at a Class I landfill is sold, and any person
19 or public agency requesting a copy of the report.

20 (e) ~~Nothing in this~~ This section ~~prohibits~~ does not prohibit the
21 direct delivery of landfill gas for the generation of electricity, the
22 production of steam, or other industrial application.

23 (f) The gas corporation shall obtain the results of the test
24 conducted pursuant to subdivision (d) and shall not purchase ~~no~~
25 gas ~~which~~ collected at a Class I landfill that the test shows ~~to~~
26 ~~contain~~ contains vinyl chloride that exceeds the amount permitted
27 in subdivision (a), or if the rule or order has been adopted, as
28 specified in subdivision (b).

29 (g) ~~This~~ On and after January 1, 2011, this section applies only
30 to ~~landfill~~ gas collected at a Class I landfill and delivered to the
31 pipeline of a gas corporation.

AMENDED IN SENATE APRIL 22, 2010
AMENDED IN SENATE MARCH 25, 2010

SENATE BILL

No. 1100

Introduced by Senator Corbett

February 17, 2010

An act to add Article 3 (commencing with Section 42450.1) to Chapter 8 of Part 3 of Division 30 of the Public Resources Code, relating to product stewardship.

LEGISLATIVE COUNSEL'S DIGEST

SB 1100, as amended, Corbett. Product stewardship: household batteries.

The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, is required to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient cost-effective manner to conserve water, energy, and other natural resources.

The bill would require, by September 30, 2011, a producer or the ~~product~~ household battery stewardship organization created by one or more producers of a ~~covered product~~ household battery to submit a ~~product~~ household battery stewardship plan to the department, which would be required to include specified elements, including product goals and a collection rate for the household batteries subject to the plan, calculated in a specified ~~following~~ manner. *The bill would allow a registered hazardous waste transporter to elect to submit a household battery stewardship plan to the department on behalf of one or more producers and would require a hazardous waste transporter making that election to comply with the provisions of the bill applicable to a household battery stewardship organization.* The department would be

required to review a ~~product household battery~~ stewardship plan submitted to the department and deem the plan either complete or incomplete within 45 days after receipt.

The bill would prohibit a producer, wholesaler, or retailer, on and after January 1, 2012, from selling a household battery unless the plan for that battery is deemed ~~completed~~ *complete* by the department. The act would require a producer ~~of a~~ *or the* household battery *stewardship organization* to implement the household battery program pursuant to the ~~product household battery~~ stewardship plan, including achieving the collection rate.

Each producer or ~~product household battery~~ stewardship organization implementing a ~~product household battery~~ stewardship plan would be required to prepare and submit to the department an annual report describing the activities carried out pursuant to the ~~product household battery~~ stewardship plan.

A producer or ~~product household battery~~ stewardship organization submitting a ~~product household battery~~ stewardship plan would be required to pay the department ~~an unspecified fee~~ *a plan review fee, as determined by the department*, when submitting the plan ~~for review and approval to the department~~ and to pay an ~~annual unspecified~~ administrative fee, *as determined by the department, when submitting the annual report*. The bill would provide for the imposition of administrative civil penalties upon a producer that does not comply with the bill's requirements or a ~~producer~~, wholesaler, or retailer selling household batteries in violation of the bill. The bill would create the Household Battery Stewardship Account in the existing Integrated Waste Management Fund and would require that the ~~administrative~~ fees be deposited into that account and that the penalties be deposited into the Household Battery Stewardship Penalty Subaccount that the bill would create in that account. The bill would authorize the fees and penalties to be expended, upon appropriation by the Legislature, to cover the department's program implementation costs and *would authorize all funds collected or received by the department under the program, except for the fees, to be expended as incentives to enhance recyclability and redesign efforts and to reduce environmental and safety impacts of household batteries.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) In early 2006, all household batteries were classified by the
4 state as universal waste and prohibited from being disposed of in
5 solid waste landfills. Under state law, "household batteries" means
6 batteries made of mercury, alkaline, carbon-zinc, nickel-cadmium,
7 and other batteries typically generated as household waste,
8 including, but not limited to, batteries used in hearing aids,
9 cameras, watches, computers, calculators, flashlights, lanterns,
10 standby and emergency lighting, portable radio and television sets,
11 meters, toys, and clocks, but excluding lead-acid batteries *and*
12 *batteries that are sold in a "covered electronic device," as defined*
13 *in Section 42463 of the Public Resources Code.*

14 (b) Effective July 1, 2006, state law prohibited most retailers
15 from selling rechargeable batteries in the state unless they have a
16 system in place for collecting used rechargeable batteries from
17 consumers.

18 (c) Approximately 80 percent of batteries sold in this state are
19 alkaline batteries, and are not covered under the retail take-back
20 requirements.

21 (d) Local governments throughout the state are responsible for
22 the collection and management of household batteries, and to
23 manage this hazardous waste, these local governments and
24 ~~taxpayers pay an average of eight hundred dollars (\$800) per ton,~~
25 *taxpayers pay a range of between eight hundred dollars (\$800)*
26 *per ton to two thousand seven hundred dollars (\$2,700) per ton,*
27 or tens of millions of dollars each year.

28 (e) Because other types of recycling programs have proven to
29 have limited success, state and regional governments in Europe
30 and Canada have adopted producer responsibility programs to
31 redirect the responsibility for the end-of-life management of
32 discarded hazardous and ~~hard-to-manage~~ *hard-to-manage* products
33 from local governments and retailers primarily to producers.

34 (f) After many public hearings and discussions, the former
35 California Integrated Waste Management Board adopted an overall
36 Framework for an Extended Producer Responsibility (EPR)
37 guidance document as a policy priority in January 2008.

1 (g) The program established by this act is intended to reduce
2 costs to local government, to harmonize the state's producer
3 responsibility obligations with other national and international
4 programs, and to enhance the protection of public health and
5 environment through safer product design, use, and end-of-life
6 management.

7 SEC. 2. Article 3 (commencing with Section 42450.1) is added
8 to Chapter 8 of Part 3 of Division 30 of the Public Resources Code,
9 to read:

10

11 Article 3. Product Stewardship for Household Batteries

12

13 42450.1. For purposes of this article, and unless the context
14 otherwise requires, the definitions in this article govern the
15 construction of this article.

16 (a) "Brand" means a name, symbol, word, or mark that identifies
17 a household battery, rather than its components, and attributes the
18 household battery to the owner or licensee of the brand as the
19 producer.

20 (b) "Collection rate" means a quantitative measure established
21 in each household battery stewardship plan that establishes the
22 amount of household batteries required to be collected by the
23 household battery stewardship system for that household battery
24 by an established date. The collection rate is included as a
25 component of the product goals for a household battery. *The*
26 *collection rate shall be calculated by weight.*

27 (c) "Department" means the Department of Resources Recycling
28 and Recovery.

29 (d) "Household battery" has the same meaning as defined in
30 subdivision (c) of Section 42450, *but shall not include a battery*
31 *that is sold in a "covered electronic device," as defined in Section*
32 *42463.*

33 (e) "Household battery stewardship organization" means an
34 organization appointed by one or more producers to act as an agent
35 on behalf of the producer to design, submit, and administer a
36 household battery stewardship plan pursuant to this article.

37 (f) "Household battery stewardship plan" or "plan" means a
38 plan written by an individual producer ~~or~~, a household battery
39 stewardship organization, *or a hazardous waste transporter*
40 *registered pursuant to Section 25163 of the Health and Safety*

1 *Code*, on behalf of one or more producers, that includes all of the
2 information required by Section 42450.2.

3 (g) “Producer” shall be determined, with regard to a household
4 battery that is sold, offered for sale, or distributed in the state, as
5 meaning one of the following:

6 (1) The person who manufactures the household battery and
7 who sells, offers for sale, or distributes that household battery in
8 the state under that person’s own name or brand.

9 (2) If there is no person who sells, offers for sale, or distributes
10 the household battery in the state under the person’s own name or
11 brand, the producer of the household battery is the owner or
12 licensee of a trademark or brand under which the household battery
13 is sold or distributed in the state, whether or not the trademark is
14 registered.

15 (3) If there is no person who is a producer of the household
16 battery for ~~purpose~~ *purposes* of paragraphs (1) and (2), the producer
17 of that household battery is the person who imports the household
18 battery into the state for sale or distribution.

19 (h) “Product stewardship” means requiring the producer of a
20 household battery, and all other entities involved in the distribution
21 chain of a household battery, to share in the responsibility of
22 reducing the life-cycle impact of the household battery and its
23 packaging, including requiring the producer who makes design
24 and marketing decisions for the household battery to bear the
25 primary responsibility for this reduction.

26 (i) “Product goal” means those qualitative or quantitative goals
27 determined by the producer to address and measure source
28 reduction, ~~design~~, material content, packaging, and end-of-life
29 management.

30 (j) “Program” means the system for the collection,
31 transportation, recycling, and disposal of household batteries
32 pursuant to a completed household battery stewardship plan that
33 is financed and managed or provided by an individual producer,
34 ~~or~~ collectively by one or more producers *or by a hazardous waste*
35 *transporter pursuant to paragraph (2) of subdivision (a) of Section*
36 *42450.2.*

37 (k) “Recycling rate” means a quantitative measure that
38 establishes the amount of collected household batteries that is
39 recycled as compared to the total amount of household batteries

1 that is collected, including the amount of the household batteries
2 that is discarded for reuse, energy recovery, or safe disposal.

3 (l) “Reuse rate” means a quantitative measure that establishes
4 the amount of collected household batteries that is reused as
5 compared to the total amount of household batteries that is
6 collected, including the amount of household batteries that is
7 discarded by recycling, energy recovery, or safe disposal.

8 (m) “Reporting period” means the period commencing January
9 1 and ending on December 31 of the same calendar year.

10 (n) “Retailer” means a person that offers new household batteries
11 in a retail sale, as defined in Section 6007 of the Revenue and
12 Taxation Code, including a retail sale at retail through any means,
13 including remote offerings such as sales outlets, catalogs, or an
14 Internet Web site.

15 (o) “Sell” or “sales” means any transfer of title of a household
16 battery for consideration, including a remote sale conducted
17 through a sale outlet, catalog, or Internet Web site or similar
18 electronic means, but does not include a lease.

19 (p) “Wholesaler” means a person that offers new household
20 batteries for sale in this state in a sale that is not a retail sale, as
21 defined in Section 6007 of the Revenue and Taxation Code, and
22 for which the household battery is intended to be resold.

23 42450.2. (a) (1) On or before September 30, 2011, a producer
24 or the household battery stewardship organization of a household
25 battery shall submit a household battery stewardship plan to the
26 department.

27 (2) *A hazardous waste transporter registered pursuant to Section*
28 *25163 of the Health and Safety Code may elect to submit a*
29 *household battery stewardship plan to the department on behalf*
30 *of one or more producers, and, if so, the hazardous waste*
31 *transporter shall submit the household battery stewardship plan*
32 *to the department on or before September 30, 2011, and shall*
33 *comply with the provisions of this article that apply to a household*
34 *battery stewardship organization, including, but not limited to,*
35 *payment of the fees specified in Section 42450.10.*

36 (b) A producer, group of producers, or household battery
37 stewardship organization shall consult with stakeholders during
38 the development of the household battery stewardship plan,
39 including soliciting stakeholder comments and responding to

1 stakeholder comments prior to submitting the household battery
2 stewardship plan.

3 (c) Each household battery stewardship plan shall include, at a
4 minimum, all of the following elements:

5 (1) Contact information for all participating producers.

6 (2) The collection rate for the household batteries subject to the
7 plan, which shall be calculated in the following manner, except as
8 provided in Section 42450.4:

9 (A) For the calendar year commencing January 1, 2014, the
10 collection rate shall be 50 percent of the household batteries sold
11 by the producers subject to the plan during the previous calendar
12 year.

13 (B) On and after January 1, 2017, the collection rate shall be
14 70 percent of the household batteries sold by the producers subject
15 to the plan during the previous calendar year.

16 (C) The plan shall have a target of achieving a ~~95~~-percent
17 *95-percent* collection rate.

18 (3) A description containing all of the following elements:

19 (A) Brands of the household batteries covered by the plan.

20 (B) How the product goals will be achieved.

21 (C) The annual schedule for achievement of the collection rate.

22 (D) Convenient collection opportunities for consumers in all
23 counties of the state.

24 (E) Reuse rate and recycling rate for household batteries.

25 (F) Roles and responsibilities of key players along the
26 distribution chain.

27 (G) Procedures to be used for notifying retailers and wholesalers
28 of the program.

29 (H) *How existing collection points and programs can be*
30 *identified and maximized to achieve the required collection rates.*

31 (4) Financing method selected to sustainably fund the
32 implementation of the plan.

33 (5) Education and outreach activities to maximize collection
34 rates.

35 (6) A producer or ~~product~~ *household battery* stewardship
36 organization shall contact cities, counties, districts, and regional
37 agencies, in whose jurisdictions the program will be implemented,
38 to do either, or both, of the following:

39 ~~(A) Enter into an agreement to reimburse the local public agency~~
40 ~~for the cost of collecting household batteries.~~

1 (A) Reimburse the local public agency for the mutually agreed
2 upon cost of collecting household batteries.

3 (B) Provide the local public agency with the location, hours,
4 and contact information for the convenient collection points for
5 household batteries that are located within the county where the
6 local agency is located and are consistent with the plan.

7 42450.3. (a) A household battery stewardship program shall
8 be considered in compliance with this article only if it achieves
9 the collection rate specified in a plan that has been deemed
10 complete by the department pursuant to Section 42450.5.

11 (b) If a program achieves a collection rate of 95 percent, the
12 producer or household battery stewardship organization shall not
13 be required to pay the annual fee imposed pursuant to subdivision
14 (a) (b) of Section 42450.10.

15 42450.4. A producer may petition the department for an
16 adjustment to the collection rate. The department may grant an
17 adjustment to the collection rate only if the department determines
18 there are documented exigent circumstances that are beyond the
19 control of the producer or household battery stewardship
20 organization.

21 42450.5. (a) The department shall review a plan within 45
22 days after the date the plan is received and either deem the plan
23 complete or incomplete. If the department does not deem the plan
24 complete, the department shall notify the producer or organization
25 that submitted the plan of the deficiencies and the producer or
26 organization shall revise and resubmit the plan within 45 days after
27 receiving the notification. If the department deems the plan
28 complete, the department shall, within 45 days after receipt, notify
29 the producer or organization that the submitted plan is complete.

30 (b) The department shall make all household battery stewardship
31 plans submitted to the department available to the public on the
32 department's Internet Web site.

33 (c) A producer shall notify the department 30 days before
34 instituting a significant or material change to a household battery
35 stewardship plan.

36 (d) On or before July 1, 2012, and on or before July 1 annually
37 thereafter, the department shall post on its Internet Web site a
38 listing of the brands of household batteries for which the producer
39 is in compliance with this article.

1 42450.6. On and after January 1, 2012, a producer, wholesaler,
2 or retailer shall not offer a household battery for sale in this state
3 or offer a household battery for promotional purposes in this state
4 unless ~~the~~ *one of the following applies:*

5 (a) *The plan submitted by the producer or household battery*
6 *stewardship organization of that household battery has been*
7 *deemed complete by the department pursuant to Section 42450.5.*

8 (b) *A plan submitted by a hazardous waste transporter on behalf*
9 *of the producer of that household battery pursuant to paragraph*
10 *(2) of subdivision (a) of Section 42450.2 is deemed complete by*
11 *the department.*

12 42450.7. Upon receiving notification from the department
13 pursuant to Section 42450.5 that a plan is complete, the producer
14 or the household battery stewardship organization shall do all of
15 the following:

16 (a) Implement the plan, including, but not limited to, achieving
17 the collection rate specified in the plan.

18 (b) Pay the administrative fees imposed pursuant to subdivision
19 ~~(a)~~ (b) of Section 42450.10.

20 (c) Submit the annual report required by Section 42450.9.

21 42450.8. A wholesaler or a retailer that distributes or sells
22 household batteries shall monitor the department's Internet Web
23 site to determine if the sale of a producer's household batteries is
24 in compliance with this article.

25 42450.9. (a) On or before April 1, 2013, and every subsequent
26 year thereafter, each producer or *household battery* stewardship
27 organization implementing a plan shall prepare and submit to the
28 department an annual report describing the activities carried out
29 pursuant to the plan during the previous calendar year. The annual
30 report shall include, but is not limited to, all of the following:

31 (1) The extent to which each element of the plan specified in
32 subdivision (c) of Section 42450.2 is attained, including, but not
33 limited to, achieving the collection rate specified in the plan.

34 (2) The actions that the producer will take during the next
35 reporting period to meet the product goals specified in the plan
36 that have not been met.

37 (3) A report of the total sales data for household batteries sold
38 in the state for the previous calendar year.

39 (b) The department shall review an annual report submitted
40 pursuant to this section and shall deem it complete if the

1 department determines the report contains the information required
2 by this section.

3 (c) If the department does not act on a report within 45 days of
4 receipt, the report shall be deemed to be complete.

5 (d) The department shall make all reports submitted to the
6 department pursuant to this section available to the public on the
7 department's Internet Web site.

8 (e) If the collection rate for the household batteries subject to
9 the plan meets the collection rate specified in subdivision (b) of
10 Section 42450.3, the report shall be submitted once every two
11 years.

12 ~~42450.10. (a) The producer or household battery stewardship~~
13 ~~organization submitting a household battery stewardship plan shall~~
14 ~~pay the department an administrative fee in the amount of~~
15 ~~_____dollars (\$_____) when the plan is submitted for review and~~
16 ~~approval and thereafter pay an annual administrative fee of~~
17 ~~_____dollars (\$_____). The department shall adjust the amount of~~
18 ~~these fees every two years to reflect increases or decreases in the~~
19 ~~cost of living during the prior two calendar years, as measured by~~
20 ~~the Consumer Price Index issued by the Department of Industrial~~
21 ~~Relations or by a successor agency. If~~

22 *42450.10. (a) (1) A producer or household battery stewardship*
23 *organization that submits a battery stewardship plan to the*
24 *department shall pay a plan review fee to the department pursuant*
25 *to this subdivision.*

26 *(2) The department shall set the plan review fee at an amount*
27 *so that the total amount of plan review fees received by the*
28 *department is adequate to cover the department's full costs of*
29 *reviewing and acting upon the plan. The department may establish*
30 *a variable plan review fee based on relevant factors, including,*
31 *but not limited to, the proportion of household batteries produced*
32 *by the feepayer as compared to the total amount of batteries*
33 *produced by all producers or household battery stewardship*
34 *organizations submitting a household battery stewardship plan.*

35 *(3) The fee shall be due to the department upon submittal of the*
36 *plan.*

37 *(b) (1) Except as provided in paragraph (4), a producer or*
38 *household battery stewardship organization required to submit*
39 *an annual report pursuant to this article shall pay an annual*
40 *administrative fee to the department pursuant to this subdivision.*

1 (2) *The department shall set the annual administrative fee in*
2 *an amount that is sufficient to pay for the department's cost of*
3 *reviewing annual reports and enforcing this article. The*
4 *department may establish a variable annual administrative fee*
5 *based on relevant factors, including, but not limited to, the*
6 *proportion of household batteries produced by the feepayer, as*
7 *compared to the total amount of household batteries produced by*
8 *all producers or household battery stewardship organizations*
9 *submitting an annual report.*

10 (3) *The fee shall be due to the department upon submittal of the*
11 *annual report.*

12 (4) *If the program implementing the plan submitted by the*
13 *producer meets the collection rate specified in subdivision (b) of*
14 *Section 42450.3, the producer or household battery stewardship*
15 *organization is not required to pay the fees imposed pursuant to*
16 *this subdivision.*

17 ~~(b)~~

18 (c) *The total amount of annual fees collected pursuant to this*
19 *section shall not exceed the amount necessary to recover costs*
20 *incurred by the department in connection with the administration*
21 *and enforcement of the requirements of this article.*

22 42450.11. (a) *The Household Battery Stewardship Account*
23 *and the Household Battery Stewardship Penalty Subaccount are*
24 *hereby established in the Integrated Waste Management Fund.*

25 (b) *All fees collected pursuant to this article shall be deposited*
26 *in the Household Battery Stewardship Account and may be*
27 *expended by the department, upon appropriation by the Legislature,*
28 *to cover the department's costs to implement this article.*

29 (c) *All penalties collected pursuant to this article shall be*
30 *deposited in the Household Battery Stewardship Penalty*
31 *Subaccount and may be expended by the department, upon*
32 *appropriation by the Legislature, to cover the department's costs*
33 *to implement this article.*

34 (d) *All funds collected that are collected or received by the*
35 *department pursuant to this article, other than the fees specified*
36 *in subdivision (b), may be expended as incentives to enhance reuse,*
37 *recyclability, and redesign efforts and to reduce environmental*
38 *and safety impacts of household batteries.*

39 42450.12. (a) *If, after holding a public hearing, the department*
40 *finds that a producer has failed to make a good faith effort to*

1 comply with this article, including, but not limited to, failing to
2 submit a plan pursuant to Section 42450.2 or failing to submit an
3 annual report pursuant to Section 42450.9, the department shall
4 issue a compliance order with a schedule for achieving compliance.

5 (b) If, after issuing an order and schedule for compliance
6 pursuant to subdivision (a), the department finds that the producer
7 has failed to make a good faith effort to comply with this article,
8 the department may impose an administrative civil penalty of five
9 thousand dollars (\$5,000) per day until the producer achieves
10 compliance.

11 (c) For purposes of this section, “good faith effort” means all
12 reasonable and feasible efforts by a producer *or the program*
13 *implementing a plan deemed complete by the department* towards
14 implementing the requirements of this article, including, but not
15 limited to, meeting the ~~performance goals~~ *collection rate* specified
16 in the plan.

17 (d) *If a household battery stewardship organization or*
18 *hazardous waste transporter submits a plan on behalf of a producer*
19 *pursuant to Section 42450.2, which plan is deemed complete by*
20 *the department, and the department finds the program established*
21 *by the plan has made a good faith effort to implement this article,*
22 *the department shall not deem the producer to have failed to make*
23 *a good faith effort to implement this article.*

24 ~~42450.13. (a) In addition to the penalty specified in Section~~
25 ~~42450.12, the~~

26 *42450.13. (a) The department may impose an administrative*
27 *civil penalty not to exceed one thousand dollars (\$1,000) per day*
28 *against a producer, wholesaler, wholesaler or retailer that violates*
29 *Section 42450.6.*

30 (b) ~~A producer, wholesaler, wholesaler or retailer that removes~~
31 ~~from sale any household battery within 90 days of discovery that~~
32 ~~it is not in compliance with this article shall not be deemed to be~~
33 ~~in violation of Section 42450.6.~~

34 (c) Prior to enforcing any penalty pursuant to this section, the
35 department shall issue a compliance order to the ~~producer,~~
36 ~~wholesaler, wholesaler or retailer~~ selling the household battery
37 allowing 30 days from the date of the compliance order to cease
38 sales of the household battery.

39 42450.16. This article does not limit, supersede, duplicate, or
40 otherwise conflict with the authority of the Department of Toxic

- 1 Substances Control under Section 25257.1 of the Health and Safety
- 2 Code to fully implement Article 14 (commencing with Section
- 3 25251) of Chapter 6.5 of Division 20 of the Health and Safety
- 4 Code, including the authority of the department to include
- 5 household batteries in its household battery registry.

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