

H.115

An act relating to household products containing hazardous substances

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

Sec. 1. FINDINGS

The General Assembly finds that:

- (1) Thousands of household products sold in the State contain substances designated as hazardous under State or federal law.
- (2) Vermont's hazardous waste rules establish specific requirements for the management of hazardous waste, including a prohibition on disposal in landfills.
- (3) Leftover household products, known as household hazardous waste (HHW), are regulated through a requirement that municipal solid waste management entities (SWMEs) include provisions in solid waste implementation plans for the management and diversion of unregulated hazardous waste. The State solid waste management plan also requires the SWMEs to each hold a minimum of two HHW collection events every year.
- (4) Many SWMEs already offer more than two HHW collection events, and seven of the SWMEs have established permanent facilities for the regular collection of HHW.
- (5) HHW collection events or permanent facilities are expensive to operate, and SWMEs spend approximately \$1.6 million a year to manage

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

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

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

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

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

(10) To improve diversion of HHW from landfills, reduce the financial burden on SWMEs and taxpayers, reduce the cost of the overall system of managing HHW, and lessen the environmental and public health risk posed by improperly disposed of HHW, the State shall implement a program to require the manufacturers of household products containing a hazardous substance to implement a stewardship organization to collect household products containing a hazardous substance free of charge to the public.

Sec. 2. 10 V.S.A. chapter 164B is added to read:

CHAPTER 164B. COLLECTION AND MANAGEMENT OF
HOUSEHOLD HAZARDOUS PRODUCTS

§ 7181. DEFINITIONS

As used in this chapter:

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

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

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

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

(i) The product or a component of the product is a hazardous waste under the federal Resource Conservation and Recovery Act of 1976, Pub. L. No. 94-580, as amended, including due to characteristics of ignitability, corrosivity, reactivity, or toxicity as defined in 40 C.F.R.

§§ 261.20–261.24, regardless of the status of the generator of the hazardous waste.

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

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

(iv) The product meets the criteria for hazardous waste code VT02 or VT08 as set forth in section 7-211 of the Vermont Hazardous Waste Management Regulations.

(v) The product is a nonrefillable propane cannister.

(vi) The product is a pesticide registered with the Agency of Agriculture, Food and Markets as a Class C pesticide and identified by the Secretary of Natural Resources by rule as requiring regulation under this chapter.

(B) “Covered product” does not mean any of the following:

(i) a primary battery or rechargeable battery;

(ii) a lamp that contains mercury;

(iii) a thermostat that contains mercury;

(iv) architectural paint as that term is defined in section 6672 of this chapter;

(v) a covered electronic device as that term is defined in section 7551 of this title; or

(vi) a pharmaceutical drug.

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

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

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

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

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

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

(vi) assumes the responsibilities, obligations, and liabilities of a manufacturer as defined under subdivisions (i) through (v) of this subdivision (5)(A), provided that the Secretary may enforce the requirements of this chapter against a manufacturer defined under subdivisions (i) through (v) of this subdivision (5)(A) if a person who assumes the manufacturer’s responsibilities fails to comply with the requirements of this chapter.

(B) “Manufacturer” shall not mean a person set forth under subdivisions (i) through (vi) of subdivision (5)(A) of this section if the person manufactures, sells, licenses, or imports less than \$5,000.00 of covered products in a program year.

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

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

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

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

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

§ 7182. SALE OF COVERED HOUSEHOLD HAZARDOUS PRODUCT;

STEWARDSHIP ORGANIZATION REGISTRATION

(a) Sale prohibited. Beginning on January 1, 2025, except as set forth under section 7188 of this title, a manufacturer of a covered household hazardous product shall not sell, offer for sale, or deliver to a retailer for subsequent sale a covered household hazardous product unless all the following have been met:

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

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

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

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

(b) Stewardship organization registration requirements.

(1) Beginning on January 1, 2024 and annually thereafter, a stewardship organization shall file a registration form with the Secretary. The Secretary

shall provide the registration form to a stewardship organization. The registration form shall include:

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

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

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

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

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

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

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

§ 7183. COLLECTION PLANS

(a) Collection plan required. Prior to July 1, 2024, a stewardship organization representing manufacturers of covered household hazardous products shall submit a collection plan to the Secretary for review.

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

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

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

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

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

(B) maintains the current level of convenience, including hours and days available to the public, provided by programs in operation prior to July 1, 2024.

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

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

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

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

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

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

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

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

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

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

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

(8) Participation rate. A collection plan shall include a collection participation rate as a performance goal for covered household hazardous products based on the participation rate determined by the number of total participants in the collection plan during a program year divided by the total number of households in the State. At a minimum, the collection participation rate shall be participation by five percent of the population of each county in the State. If a stewardship organization does not meet its participation rate, the Secretary may require the stewardship organization to revise the collection plan to provide for one or more of the following: additional public education and outreach, additional collection events, or additional hours of operation for collection sites.

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

include how municipalities will be compensated for all costs associated with collection of covered household hazardous products.

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

(d) Collection plan implementation. A stewardship organization shall implement a collection plan on or before January 1, 2025.

§ 7184. STEWARDSHIP ORGANIZATIONS

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

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

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

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

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

§ 7185. ANNUAL REPORT; COLLECTION PLAN AUDIT

(a) Annual report. On or before March 1, 2026 and annually thereafter, a stewardship organization of manufacturers of covered household hazardous products shall submit a report to the Secretary that contains all of the following:

(1) A description of the collection program.

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

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

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

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

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

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

(8) Recommendations for any changes to the program.

(b) Collection plan audit. On or before March 1, 2030 and every five years thereafter, a stewardship organization of manufacturers of covered household hazardous products shall hire an independent third party to audit the collection plan and the plan's operation. The auditor shall examine the effectiveness of the program in collecting and disposing of covered household hazardous products. The auditor shall examine the cost-effectiveness of the program and compare it to that of collection programs for covered household hazardous products in other jurisdictions. The auditor shall make recommendations to the Secretary on ways to increase the program's efficacy and cost-effectiveness.

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

§ 7186. ANTITRUST; CONDUCT AUTHORIZED

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

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

§ 7187. AGENCY RESPONSIBILITIES

(a) Review and approve collection plans. The Secretary shall review and approve or deny collection plans submitted under section 7183 of this title.

The Secretary shall approve a collection plan if the Secretary finds that the collection plan:

(1) complies with the requirements of subsection 7183(b) of this title;

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

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

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

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

(c) Public input. The Secretary shall establish a process under which a collection plan for covered household hazardous products is available for public review and comment for 30 days prior to collection plan approval or

amendment. In establishing such a process, the Secretary shall consult with interested persons, including manufacturers, environmental groups, wholesalers, retailers, municipalities, and solid waste districts.

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

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

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

(g) Identification of regulated pesticides. The Secretary, annually, shall confer with the Secretary of Agriculture, Food and Markets for the purpose of identifying those pesticides that are subject to regulation under this chapter due to registration with the Agency of Agriculture, Food and Markets as Class C pesticides.

§ 7188. REIMBURSEMENT; AUTHORIZATION

(a) Reimbursement of stewardship organization.

(1) A manufacturer or stewardship organization operating an approved collection plan that collects covered household hazardous products that are not listed under its approved collection plan shall be entitled to reimbursement from the manufacturer of the covered household hazardous product of reimbursable costs per unit of weight incurred in collecting the covered household hazardous products.

(2) Reimbursement may be requested by a collecting manufacturer or stewardship organization only after the stewardship organization has achieved the collection rate performance goal approved by the Secretary under section 7183 of this title.

(b) Reimbursable costs. Reimbursement shall be allowed only for those costs incurred in collecting the covered household hazardous products subject to the reimbursement request. Reimbursable costs include:

(1) costs of collection, transport, recycling, and other methods of disposition identified in a collection plan approved under section 7187 of this title; and

(2) reasonable educational, promotional, or administrative costs.

(c) Reimbursement request.

(1) A manufacturer or stewardship organization that incurs reimbursable costs under this section shall submit a request to the manufacturer of the collected covered household hazardous product or the stewardship organization in which the manufacturer is participating.

(2) A manufacturer or stewardship organization that receives a request for reimbursement may, prior to payment and within 30 days of receipt of the request for reimbursement, request an independent audit of submitted reimbursement costs.

(3) The independent auditor shall be responsible for verifying the reasonableness of the reimbursement request, including the costs sought for reimbursement, the amount of reimbursement, and the reimbursable costs assessed by each of the two programs.

(4) If the independent audit confirms the reasonableness of the reimbursement request, the manufacturer or stewardship organization requesting the audit shall pay the cost of the audit and the amount of the reimbursement calculated by the independent auditor. If the independent audit indicates the reimbursement request was not reasonable, the manufacturer or stewardship organization that initiated the reimbursement request shall pay the cost of the audit and the amount of the reimbursement calculated by the independent auditor.

(d) Role of Agency. The Agency shall not be required to provide assistance or otherwise participate in a reimbursement request, audit, or other action under this section, unless subject to subpoena before a court of jurisdiction.

§ 7189. PRIVATE RIGHT OF ACTION

(a) Action against manufacturer with no collection plan. A manufacturer or stewardship organization in compliance with the requirements of this chapter may bring a civil action against another manufacturer or stewardship organization when:

(1) the plaintiff manufacturer or stewardship organization incurs more than \$1,000.00 in actual reimbursable costs collecting, handling, recycling, or properly disposing of covered household hazardous products sold or offered for sale in the State by the other manufacturer; and

(2) the manufacturer from whom damages are sought:

(A) can be identified as the manufacturer of the collected covered household hazardous products from a brand or marking on the discarded covered household hazardous products or from other information available to the plaintiff manufacturer or stewardship organization; and

(B) does not operate or participate in an approved stewardship organization in the State or is not otherwise in compliance with the requirements of this chapter.

(b) Action against manufacturer participating in an approved stewardship organization. A manufacturer or stewardship organization in compliance with the requirements of this chapter may bring a civil action for damages against a manufacturer or stewardship organization in the State that is in compliance with the requirements of this chapter, provided that the conditions of subsection (c) of this section have been met.

(c) Condition precedent to cause of action. Except as authorized under subsection (a) of this section, a cause of action under this section shall be allowed only if:

(1) a plaintiff manufacturer or stewardship organization submitted a reimbursement request to another manufacturer or stewardship organization under section 7188 of this title; and

(2) the manufacturer or stewardship organization does not receive reimbursement within:

(A) 90 days of the reimbursement request, if no independent audit is requested under section 7188 of this title; or

(B) 60 days after completion of an audit if an independent audit is requested under section 7188 of this title, and the audit confirms the validity of the reimbursement request.

(d) Action against individual manufacturer.

(1) A civil action under this section may be brought against an individual manufacturer only if the manufacturer is implementing its own collection plan and the manufacturer has failed to register to participate in a stewardship organization.

(2) A manufacturer participating in an approved stewardship organization covering multiple manufacturers shall not be sued individually for reimbursement.

(3) An action against a manufacturer participating in a stewardship organization covering multiple manufacturers shall be brought against the stewardship organization implementing the collection plan.

(e) Role of Agency. The Agency shall not be a party to or be required to provide assistance or otherwise participate in a civil action authorized under this section solely due to its regulatory requirements under this chapter, unless subject to subpoena before a court of jurisdiction.

(f) Damages; definition. As used in this section, “damages” means the actual, reimbursable costs a plaintiff manufacturer or stewardship organization incurs in collecting, handling, recycling, or properly disposing of covered household hazardous products identified as having originated from another manufacturer.

§ 7190. OTHER DISPOSAL PROGRAMS

A municipality or other public agency shall not require covered entities to use public facilities to dispose of covered household hazardous products to the exclusion of other lawful programs available. A municipality and other public agencies are encouraged to work with manufacturers to assist them in meeting their collection and disposal obligations under this chapter. Nothing in this chapter prohibits or restricts the operation of any program collecting and disposing of covered household hazardous products in addition to those provided by manufacturers or prohibits or restricts any persons from receiving, collecting, transporting, or disposing of covered household hazardous products, provided that all other applicable laws are met.

§ 7191. RULEMAKING

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

Sec. 3. AGENCY OF NATURAL RESOURCES RECOMMENDATION OF
REGISTRATION FEE FOR COVERED HOUSEHOLD
HAZARDOUS PRODUCTS

On or before January 15, 2025, the Secretary of Natural Resources shall submit to the House Committees on Ways and Means and on Natural Resources, Fish, and Wildlife and the Senate Committees on Finance and on Natural Resources and Energy a recommended fee for the registration of

stewardship organizations under the covered household hazardous product program under 10 V.S.A. chapter 164B.

Sec. 4. 10 V.S.A. § 6621a(a) is amended to read:

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

* * *

(12) Covered household hazardous products after January 1, 2025.

Sec. 5. 10 V.S.A. § 8003 is amended to read:

§ 8003. APPLICABILITY

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

* * *

(30) 3 V.S.A. § 2810, relating to interim environmental media standards; ~~and~~

(31) 10 V.S.A. chapter 124, relating to the trade in covered animal parts or products; and

(32) 10 V.S.A. chapter 164B, relating to collection and management of covered household hazardous products.

* * *

Sec. 6. 10 V.S.A. § 8503 is amended to read:

§ 8503. APPLICABILITY

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

(1) The following provisions of this title:

* * *

(V) chapter 124 (trade in covered animal parts or products);

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

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

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

(4) 3 V.S.A. § 2810 (interim environmental media standards).

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Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.