

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 1066 (Blakespear)  
Version: February 12, 2024  
Hearing Date: April 16, 2024  
Fiscal: Yes  
Urgency: No  
AM

**SUBJECT**

Hazardous waste: marine flares: producer responsibility

**DIGEST**

This bill requires producers of marine flares to establish an extended producer responsibility (EPR) or stewardship program for the collection, transportation, recycling, and the safe and proper management of marine flares in California.

**EXECUTIVE SUMMARY**

Federal regulations require vessels longer than 16 feet operating on coastal waters to carry visual distress signals that are specifically approved for day use or night use, or for use during both day and night. (33 C.F.R. § 175.110 & 175.130.) Carrying three pyrotechnic flares that are not expired per the manufacturer meet the regulation requirements. (33 C.F.R. § 175.103.) The average shelf life of pyrotechnic flares is between 36 and 42 months as the chemicals in them can break down over time. Failure to meet these federal requirements can result in a fine and pose safety hazards for boaters. Once pyrotechnic flares can no longer be used as intended, they are classified as hazardous waste by the California Department of Toxic Substances Control (DTSC) and the federal Environmental Protection Agency due to the fact they are toxic, reactive, and ignitable.<sup>1</sup> This bill seeks to enact an EPR program for the safe and proper management of marine flares in California within DTSC. The bill is sponsored by the National Stewardship Action Council and Zero Waste Sonoma. The bill is supported by numerous environmental organizations and associations representing California retailers, waste haulers, and environmental health administrators. The bill is opposed by Orion Safety Products, the leading manufacturer and distributor of marine flares, and Recreational Boaters of California. The bill passed the Senate Environmental Quality Committee on a vote of 7 to 0.

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<sup>1</sup> *Disposal of Expired Marine Flares in California*, Cal. State Parks, Div. of Boating and Waterways, [https://dbw.parks.ca.gov/?page\\_id=31166#:~:text=These%20flares%20must%20be%20in,can%20break%20down%20over%20time.](https://dbw.parks.ca.gov/?page_id=31166#:~:text=These%20flares%20must%20be%20in,can%20break%20down%20over%20time.)

## PROPOSED CHANGES TO THE LAW

Existing federal law requires any boat operating in coastal waters or bodies of water directly connected to coastal waters to be equipped with distress signals, and specifies that three in-service flares approved for daytime and nighttime use must be carried and that each signal is in serviceable condition and has not expired. (33 C.F.R. § 175.110 & 175.125.)

Existing state law:

- 1) Regulates the disposal, management, and recycling of solid waste under the California Integrated Waste Management Act (IWMA) of 1989, and establishes EPR programs for various products, including, carpet, mattresses, batteries, pharmaceutical and sharps waste, and single-use plastic and packaging. (Pub. Res. Code § 40000 et. seq.)
- 2) Regulates the management and handling of hazardous waste and hazardous materials by the Department of Toxic Substances and Control (DTSC).
  - a) Defines “household hazardous waste (HHW)” as hazardous waste generated incidental to owning or maintaining a place of residence, but does not include waste generated in the course of operating a business at a residence. (Health & Saf. Code § 25218.1(e))
- 3) Requires counties and cities to ensure HHW is collected and requires the state to provide an expedited and streamlined regulatory structure directing locals how to properly dispose of HHW. (Health & Saf. Code § 25218 et. seq.)

This bill:

- 1) Establishes the Marine Flare Producer Responsibility Act of 2024 (Act), which creates an EPR program for a covered product (marine flare), and states that the purpose of this Act is to provide for the safe and proper management of pyrotechnic marine flares, which pose significant threats to health and safety and may cause significant and costly damage to the environment when managed improperly.
- 2) Defines “covered product” to mean a pyrotechnic device that produces a brilliant light or a plume of colorful smoke as a visual distress signal on marine vessels to attract attention and pinpoint a boater’s location in an emergency.
- 3) Requires the Department of Toxic Substance Control (DTSC) to adopt regulations to implement this chapter that will be effective no earlier than January 1, 2027.
- 4) Requires all producers to register with a single producer responsibility organization (PRO) to develop and implement a producer responsibility plan for the collection,

transportation, and the safe and proper management of covered products on behalf of all producers.

- a) DTSC must review the plan and approve, disprove, or conditionally approve the plan.
  - b) Requires a producer to notify DTSC electronically it has registered with the PRO no later than 30 days after the effective date of the regulations in 3) above become effective.
  - c) Requires the PRO to retain specified documents, annually audit its accounting books, and make documents available to DTSC for review, as specified. Requires all reports and records provided to DTSC pursuant to the act to be provided under the penalty of perjury.
- 5) Requires the stewardship program to submit an annual report to the department, under penalty of perjury, and requires the department to post online a list of producers that are in compliance with the program requirements.
- 6) Prohibits a producer from selling, distributing, or importing covered products into the state unless the producer has:
- a) registered with the PRO;
  - b) the covered product is accounted for in the plan; and
  - c) DTSC has approved the PRO's plan.
- 7) Authorizes DTSC to impose an administrative civil penalty on a producer, PRO, or importer manufacturer, distributor, or retailer that does not meet the requirements of the Act. The administrative civil penalty cannot exceed \$10,000 per day, but if the violation is intentional, knowing, or reckless the penalty cannot exceed \$50,000 per day.
- 8) Specifies that the Administrative Adjudication Bill of Rights (Article 6 (commencing with Section 11425.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code) applies to hearings conducted under the Act and mandates minimum due process.
- 9) Authorizes DTSC to apply to the small claims court or superior court, depending on the jurisdictional amount and any other remedy sought, in the county where the penalties, restitution, or other remedy was imposed by the department, for a judgment to collect any unpaid civil penalties or restitution or to enforce any other remedy provided by the Act after the time for judicial review.
- 10) Authorizes the Attorney General (AG), at the request of the Director of DTSC, to bring an action in the superior court for an order enjoining the act, practice, or omission if, in the judgment of the director, a person has engaged in or is about to engage in an act, practice, or omission that constitutes, or will constitute, a violation of the Act.

- a) The order may require remedial measures and direct compliance with the Act.
- b) An action brought by the Attorney General (AG) is to have precedence in respect to the order of trial over all other civil actions not brought by or on behalf of the state, except actions regarding probate bonds.

### COMMENTS

#### 1. Stated need for the bill

The author writes:

The U.S. Coastguard requires boats operating in coastal waters to have approved visual distress signals. To meet this requirement, many boaters carry three marine flares – a pyrotechnic device that produces bright light or colorful smoke to attract attention in an emergency. These flares need to be replaced about every three years, amounting to 174,000 flares expiring each year in California.

Properly disposing of flares is extremely difficult. The California Department of Toxic Substances Control and the Environmental Protection Agency classify unwanted and/or expired marine flares as hazardous waste that cannot be disposed of in waterways or the trash. They contain toxic metals and other pollutants that can contaminate water and impair thyroid function.

Flares are also reactive and ignitable, meaning they must be handled and transported as explosive devices. The Bureau of Alcohol, Tobacco, Firearms and Explosives requires flares be transported by a licensed hazardous waste authorized driver and stored in a Class 4 magazine. Moreover, only three facilities in the U.S. are permitted to accept and dispose of non-military explosive waste and none are in California.

Occasionally some counties will temporarily collect marine flares, but this can be expensive. Zero Waste Sonoma recently disposed of flares at a cost of \$185 each (new flares sell for about \$13). This includes transporting the flares around 2000 miles to reach a facility in Missouri. Boaters in coastal communities across California are frustrated by the lack of disposal options for flares, with some stockpiling them or illegally disposing of them in trash or waterways. SB 1066 will require producers of marine flares to create an extended producer responsibility (EPR) program that establishes a free and convenient statewide collection program to properly dispose of marine flares. This bill will solve the marine flare management crisis for boaters while protecting California's water quality.

2. This bill establishes the Marine Flare Producer Responsibility Act of 2024

This bill intends to address the difficulty and environmental and health and safety hazards of disposing of marine flares in California.

*a) Extended producer responsibility (EPR) programs*

The Senate Environmental Quality Committee's analysis of this bill provides useful background on extended producer responsibility (EPR) programs, which is at the heart of this bill:

To advance California's recycling goals, the Legislature has directed CalRecycle to establish several EPR programs. EPR is a strategy that places shared responsibility for end-of-life product management on producers and all entities involved in the product chain, instead of on the general public and local governments. EPR programs rely on industry, often via a product stewardship organization (PRO), to develop and implement approaches to create a circular economy with oversight and enforcement provided by the government. EPR programs have traditionally been used to improve the recapture and recycling rate for challenging-to-recycle materials that can pose a risk to the waste stream, like pharmaceuticals and sharps, paints, and batteries. The state also oversees EPR programs for high-volume products including mattresses, carpets, and packaging.

There are several key elements to any EPR program that should be carefully evaluated to develop a working EPR program that avoids loopholes. These elements are part of CalRecycle's "EPR checklist" and include considerations of (1) the scope of the program: what and who is captured in the covered product and PRO universe; (2) requirements for the stewardship organization; (3) funding for the program; and (4) oversight for the program.<sup>2</sup>

California currently has several statewide EPR programs for paint, carpet, mattresses, pharmaceutical and sharps waste, batteries, and single-use plastic and packaging items, though these are all overseen by CalRecycle.<sup>3</sup>

*b) Environmental and safety hazards of disposing of marine flares*

According to the Division of Boating and Waterways of the California State Parks Department (Division), "a marine flare is a type of pyrotechnic device that produces a brilliant light or a plume of colorful smoke as a visual distress signal to attract attention in an emergency, and to help pinpoint the boater's exact location. Handheld flares

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<sup>2</sup> Sen. Environmental Quality Comm. analysis of SB 1066 (2023-24 reg. sess.) as introduced Feb. 12, 2024 at p. 4.

<sup>3</sup> *Extended Producer Responsibility (EPR)*, CalRecycle, <https://calrecycle.ca.gov/epr/>.

(which operate on the ground) and rocket flares (which are fired into the air) are the two most-used visual distress signals because they can be used for daytime or nighttime.”<sup>4</sup>

The Senate Environmental Quality Committee’s analysis of this bill explores the problem of disposing of marine flares, noting that DTSC classifies pyrotechnic flares that will no longer be used as hazardous waste because they are toxic, reactive, and ignitable as defined by state and federal hazardous waste regulations.<sup>5</sup>

The analysis also states that according to the Division:

- common ingredients in various types of pyrotechnic flares include: strontium nitrate and strontium peroxide (listed on the EPA’s Toxic Substance Control Act Inventory List); potassium perchlorate and potassium nitrate (known irritants), magnesium, and black powder (a mixture of sulfur, charcoal, and potassium nitrate);
- pyrotechnic flares contain toxic metals and pollutants such as perchlorate which is recognized as a water and health pollutant that can impact our waterways and can impair thyroid function;
- an estimated 174,000 outdated flares are generated each year by recreational vessels in California;
- expired marine flares must be transported as explosives and disposed of at a hazardous waste facility permitted by the U.S. EPA to manage explosives, and that currently there are no permitted facilities in California that can accept, treat and/or dispose of non-military explosives waste streams;
- it costs approximately \$7 to \$50 per flare to be properly disposed of at an out-of-state permitted facility; however, Zero Waste Sonoma states it cost an estimated \$185 to properly dispose of one unwanted marine flare in 2023, when partnering with nearby jurisdictions to help share the cost of transportation.<sup>6</sup>

The California’s Statewide Commission on Recycling Markets and Curbside Recycling stated in its 2022 policy recommendations to the Legislature that marine flares are “a 100-year-old technology, have polluted water, and are a chronic problem for boaters to dispose of safely and expire every 3 years and have no management plan. Now that less hazardous and more reliable electronic signals are an option, these flares should be banned from sale.”<sup>7</sup>

The Senate Environmental Quality Committee analysis concluded that:

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<sup>4</sup> *Disposal of Expired Marine Flares in California*, Div. Of Boating and Waterways, Cal. Parks Dept., [https://dbw.parks.ca.gov/?page\\_id=31166](https://dbw.parks.ca.gov/?page_id=31166).

<sup>5</sup> Sen. Environmental Quality Comm. analysis of SB 1066 (2023-24 reg. sess.) as introduced Feb. 12, 2024 at p. 4.

<sup>6</sup> *Ibid.* at pp. 4-6.

<sup>7</sup> *Policy Recommendations Report 4*, Cal. Statewide Comm. on Recycling Markets and Curbside Recycling, (Jun. 30, 2022) at p. 46, <https://www2.calrecycle.ca.gov/Docs/Web/121911>.

A lack of convenient disposal options has created a significant end-of-life management problem for expired marine flares. Most HHW facilities are unable to accept flares due both to not having the necessary permits or equipment to safely handle explosives and the significant costs to properly manage them. SB 1066 establishes a well-crafted EPR program for expired or unwanted marine flares that includes considerations of all the essential elements on CalRecycle's "EPR checklist," developed and refined over the past decade through its experience with overseeing numerous other EPR programs.<sup>8</sup>

c) *The Dormant Commerce Clause*

Section 8 of Article I of the United States Constitution grants the United States Congress the power to regulate interstate commerce.<sup>9</sup> The converse proposition – that states may not usurp Congress's express power to regulate interstate commerce – is known as the Dormant Commerce Clause – "the [Commerce] Clause also contains a further, negative command, one effectively forbidding the enforcement of certain state economic regulations even when Congress has failed to legislate on the subject."<sup>10</sup> The United States Supreme Court recently affirmed that the dormant Commerce Clause generally does not prohibit a state from regulating commerce within its borders, even if the prohibition affects out-of-state sellers, unless the prohibition acts to discriminate against out-of-state interests for the benefit of in-state commerce.<sup>11</sup> The Court has held that "[s]tate laws that 'regulat[e] even-handedly [across all in-state and out-of-state businesses] to effectuate a legitimate local public interest...will be upheld unless the burden imposed upon such commerce is clearly excessive in relation to the putative local benefits.'"<sup>12</sup> This bill's provisions apply equally to producers who manufacture a covered product and who owns or is the licensee of the brand or trademark under which that covered product is sold, offered for sale, or distributed for sale in or into the state. As such, the bill does not favor in-state businesses over out-of-state businesses.

A statute may also violate the dormant Commerce Clause, even if it "regulates even handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental" and the burden imposed on commerce "is clearly excessive in relation to the putative local benefits" or substantially burdens interstate commerce.<sup>13</sup> (*Pike v. Bruce Church, Inc.* (1970) 397 U.S. 137, 142.) As this bill's provisions

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<sup>8</sup> Sen. Environmental Quality Comm. analysis of SB 1066 (2023-24 reg. sess.) as introduced Feb. 12, 2024 at p. 7.

<sup>9</sup> U.S. Const., art. I, § 8, cl. 3.

<sup>10</sup> *National Pork Producers Council v. Ross* (2023) 143 S.Ct. 1142, 1152 (internal quotation marks and alterations omitted).

<sup>11</sup> *Id.* at pp. 1152-1153.

<sup>12</sup> *South Dakota v. Wayfair, Inc.* (2018) 138 S.Ct. 2080, 2091.

<sup>13</sup> *Pike v. Bruce Church, Inc.* (1970) 397 U.S. 137, 142; *National Pork Producers Council* supra at fn. 6 at pp. 1162-1163.

are intended to address the serious environmental and health concerns posed by covered products, this bill would likely not be found to substantially burden interstate commerce in violation of the Dormant Commerce Clause.

*d) Access to records*

Under the California Public Records Act (CPRA), public records are open to inspection by the public at all times during the office hours of the agency, unless exempted from disclosure. (Gov. Cod § 7922.252.) A public record is defined as any writing containing information relating to the conduct of the public's business that is prepared, owned, used, or retained by any public agency regardless of physical form or characteristics. (Gov. Code § 7920.530.) This bill expressly provides that an approved plan is a public record under the CPRA; however, it exempts from disclosure financial, production, or sales data reported to DTSC by the program operator. The bill authorizes DTSC to release this data in summary form only, so it cannot be attributable to a specific entity. Under the bill, producers and stewardship organizations are required to make their annual reports publicly available free of charge; however, the bill specifies that a producer or PRO may withhold from disclosure any confidential proprietary information (i.e. trade secrets or confidential information) as specified under existing provisions of the Evidence Code or the CPRA. As these provisions imposes a limitation on the public's right of access to a public record, the bill provides the following justification for the limitation: "In order to ensure the effective hazardous waste management of, and viable markets for, marine flares, it is necessary to protect the proprietary information of producers, retailers, wholesalers, and solid waste enterprises by keeping confidential the financial, production, and sales data reported by those entities."

*e) Antitrust immunity*

As with most of the EPR schemes provided for in California law, this bill includes express exemptions from various laws regulating anticompetitive behavior and unfair competition and practices. The bill provides that certain activities engaged in by producers and stewardship organizations, including the creation, implementation, management, cost assessments, and structuring of a stewardship plan and the establishment, administration, collection, or disbursement of a charge associated with funding the implementation of this bill are categorically exempt from being considered violations of the Cartwright Act (California's primary antitrust law), the Unfair Practices Act, or the Unfair Competition Law.

Concerns have been raised about the monopolistic possibilities inherent in stewardship programs, and strong government oversight is critical to ensure this regulatory scheme is operated in an evenhanded manner and results in the ambitious goals it sets out to accomplish. These laws are extremely important to ensuring consumers are protected and free and fair competition is fostered. Mitigating these concerns to an extent, the bill



specifically provides that the exemptions do not apply to an agreement that does the following:

- fixes a price of or for covered products, except for an agreement related to costs or charges associated with participation in a stewardship plan approved or conditionally approved by the department and otherwise in accordance with the Act;
- fixes the output or production of covered products; or
- restricts the geographic area in which, or customers to whom, covered products will be sold.

This language is also similar to that found in other EPR programs.

*f) Enforcement provisions*

The bill authorizes DTSC to impose an administrative civil penalty on a producer, PRO, or importer manufacturer, distributor, or retailer that fails meet the requirements of the Act. The administrative civil penalty cannot exceed \$10,000 per day; however, if the violation is intentional, knowing, or reckless the penalty cannot exceed \$50,000 per day. The bill specifies that DTSC may apply to the small claims court or the superior court, depending on the remedy sought, for a judgment to collect any unpaid civil penalties, restitution, or to enforce any other remedy authorized by the Act. The bill provides that the AG may, at the request of the Director of DTSC, bring an action in the superior court for an order enjoining an act, practice, or omission that constitutes, or will constitute, a violation of the Act. The court order may require remedial measures and direct compliance with the Act. Additionally, upon a showing by the director that the person has engaged in (or is about to engage in) that act, practice, or omission, the superior court may issue a permanent or temporary injunction, restraining order, or other order, as appropriate. Lastly, the bill specifies that an action brought by the AG under the Act is to have precedence in respect to the order of trial over all other civil actions not brought by or on behalf of the state, except actions regarding probate bonds.

3. Proposed amendments

In regards to the enforcement provisions in the bill, the provision granting an action by the AG under the act precedence to the order of trial is not present in any other existing EPR program and could negatively impact the already overly burdened civil dockets of state courts, which was only exacerbated by the COVID-19 pandemic.<sup>14</sup> In light of this, the Author may wish to remove this provision from the bill.

The Author may also wish to make clarifying amendments to the bill that:

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<sup>14</sup> See *COVID and the Courts: Assessing the Impact on Access to Justice, Identifying Best Practices, and Plotting the Path Forward* (Feb. 23, 2021), Joint Informational Hearing Senate Judiciary Comm. and Asm. Judiciary Comm.

- specify the AG may bring an action to enforce the Act upon their own accord, not just upon a request of the Director of DTSC; and
- clarify that a producer or PRO may request DTSC to withhold confidential proprietary information from disclosure to the public as allowed pursuant to the Evidence Code and CPRA.

The Author has also proposed the following amendments to clarify provisions in the bill:

- push the date for which regulations must be promulgated by to July 1, 2027;
- clarify that DTSC is to approve a PRO by January 1, 2027; and
- specify that a producer is required to register with a PRO no later than 90 days after DTSC approves the PRO.

A mock-up of the proposed amendments in context is attached to the analysis.<sup>15</sup> The proposed amendments also include several nonsubstantive changes.

#### 4. Statements in support

A coalition of organizations, including the sponsors of the bill, write in support stating:

There are very few, if any, disposal options for marine flares statewide, which has created significant stress for boaters and an EOL management problem. Most of the Household Hazardous Waste (HHW) facilities are unable to accept marine flares due to lack of the ability to obtain permits to handle explosives and the exorbitant costs necessary to properly manage them. Marine flares can cost up to \$185 each to properly manage and can be purchased for \$13 each.

The California Commission on Recycling Markets and Curbside Recycling, which was comprised of 16 experts representing materials management companies, local governments, unions, and NGOs, unanimously recommended that the legislature, “establish Extended Producer Responsibility (EPR) programs for the product categories below to reduce known fire and operational hazards”, which included projectile or explosive marine flares.

Flares, when improperly disposed, can be dangerous for workers in the waste and recycling industry further increasing bodily harm, fires, and dangerous chemicals ending up in landfill leachate.

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<sup>15</sup> The amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel.

5. Statements in opposition

Orion Safety Products, the leading manufacturer and distributor of marine flares approved for use as a visual distress signal, writes in opposition to the bill. They express several concerns with the bill. One of their main concerns is that this bill could lead to less compliance with federal regulations regarding carrying distress signals, which could lead to safety concerns for California boaters. They state that electronic beacons are “demonstrably less effective, battery dependent, breakable,” three times as expensive as marine flares, and are only approved for night use under federal regulations. According to Orion, electronic beacons have limited sighting distance (to the horizon, which is roughly 3 miles) compared to aerial flares, which have sighting distances of up to 41 miles.

They also note that Orion aerial flares have never contained potassium percholate and that their handheld flares stopped being manufactured with potassium percholate in 2022. Additionally, they note that their flares are exempt from ATF storage regulations that require collected flares to be stored in a Class 4 magazine before being shipped. They also believe that the number of outdated flares generated each year is being overestimated by the Division and is closer to 41,000 not 174,000.

They feel that the bill is inequitable as the bulk of responsibility and cost of the EPR program will fall mostly on Orion. In conversations with Committee staff, they stated that their total sales in California in 2023 were about \$463,000 and that they are the largest provider of marine flares in the state selling roughly 105,000 flares annually. They acknowledge that EPR programs may make sense for products that are used ubiquitously by consumers (such as batteries) and that have numerous producers and manufactures, but note that marine flares are different. They fear that the costs alone of operating a PRO could force them to no longer distribute their marine flares in the state should this bill become law. They cite to their own past experiences with collection efforts of marine flares and state that they believe a local, community-oriented solutions is better than an expansive state-wide one.

The Recreational Boaters of California write in opposition stating that they do not believe the bill takes into account the essential safety function of marine flares. They fear that the bill will place a significant cost on producers of marine flares, which in turn will be passed on to boaters or drive marine flares out of the California marketplace. They state:

flares are mandatory [because] they may be the only way for a boater whose craft is disabled to be found by a rescue attempt. This is a health and safety issue itself. If a mayday call is made, the rescuer still must locate the craft; and often that search and rescue operation takes place over large fields of open water in the dark. Many of today's electronic beacons are barely visible in those conditions. [This] legislation is likely to cause boaters to turn to electronic alternatives due to the significant cost

increases for traditional flares, even when they are ineffective. The legislation does not address this issue.

**SUPPORT**

National Stewardship Action Council (sponsor)  
Zero Waste Sonoma (sponsor)  
5 Gyres Institute  
7th Generation Advisors  
Ban Single Use Plastic  
BoatSafe NW  
California Association of Environmental Health Administrators  
California Retailers Association  
California Waste Haulers Council  
Californians Against Waste  
Center for Biological Diversity  
Center for Environmental Health  
Clean Water Action  
County of Humboldt  
County of San Mateo  
County of Santa Barbara  
Delta Diablo  
Environmental Working Group  
Heal the Bay  
Intrepid Landing  
League of California Cities  
Marin Sanitary Service  
Maritime Institute  
Napa Recycling and Waste Services  
National Stewardship Action Council  
North American Hazardous Materials Management Association  
Plastic Pollution Coalition  
Regen Monterey  
Republic Services - Western Region  
Republic Services Inc.  
Resource Recovery Coalition of California  
ReThink waste  
San Francisco Baykeeper  
San Mateo County Harbor District  
Santa Clara County Recycling and Waste Reduction Commission  
Santa Cruz County Board of Supervisors  
Save Our Shores  
Sea Hugger  
Seabreeze Books and Charts

Sirius Signal LLC  
Somaliland Community Action Network  
Sonoma County Regional Parks Department  
The Last Plastic Straw  
Truckee; Town of  
Turtle Island Restoration Network  
Western Placer Waste Management Authority (WPWMA)  
Waste Management  
Zero Waste Marin Joint Powers Authority  
Zero Waste Sonoma  
Zero Waste USA

### **OPPOSITION**

Recreational Boaters of California  
Standard Fusee Corporation dba Orion Safety Products

### **RELATED LEGISLATION**

#### **Pending Legislation:**

SB 1143 (Allen, 2024) would establish an EPR or stewardship program for the collection, transportation, recycling, and the safe and proper management of products containing household hazardous waste in California. This bill is pending in this Committee and is set to be heard on the same day as SB 1066.

#### **Prior Legislation:**

SB 54 (Allen, Ch. 75, Stats. 2022) enacted the Plastic Pollution Prevention and Packaging Producer Responsibility Act, which established an EPR program for single-use packaging and food service ware, as specified.

SB 212 (Jackson, Ch. 1004, Stats. 2018) established an EPR program for pharmaceutical and sharps waste.

### **PRIOR VOTES**

Senate Environmental Quality Committee (7 Ayes, 0 Noes)

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**MOCK-UP OF PROPOSED AMENDMENTS:**

**SECTION 1.** Chapter 6 (commencing with Section 25000) is added to Division 20 of the Health and Safety Code, to read:

**CHAPTER 6.** Marine Flares

**Article 1.** Purpose and General Provisions

**25000.** (a) This chapter shall be known, and may be cited, as the Marine Flare Producer Responsibility Act of 2024.

(b) The purpose of this chapter is to provide for the safe and proper management of pyrotechnic marine flares, which pose significant threats to health and safety and may cause significant and costly damage to the environment when managed improperly.

**25001.** Except as provided in Section 25014, the department shall adopt, amend, or repeal, in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), regulations to implement this chapter. The department shall not adopt regulations pursuant to this section with an effective date earlier than ~~January~~ July 1, 2027.

**Article 2.** Definitions

**25005.** For purposes of this chapter, the following definitions apply:

(a) (1) "Approved plan" means a producer responsibility plan that has been approved by the department pursuant to Section 25020 and that has not been revoked by the department pursuant to Section 25052.

(2) A conditionally approved plan is an approved plan, except as used in Section 25020.

(3) A partially approved plan is not an approved plan.

(b) "Brand" means a trademark, including both a registered trademark and an unregistered trademark, a logo, a name, a symbol, a word, an identifier, or a traceable mark that identifies a covered product and identifies the owner or licensee of the brand.

(c) "Collection site" means a permanent or temporary location where a covered product is collected and prepared for transport in accordance with the requirements of this chapter.

(d) "Consumer" means a person who owns a covered product and includes the ultimate purchaser, owner, or lessee of a covered product, who is not, as to that covered product, the distributor, importer, producer, recycler, retailer, or stewardship organization.

(e) "Contact information" means name, physical address, mailing address, email address, and telephone number.

(f) "Covered product" means a pyrotechnic device that produces a brilliant light or a plume of colorful smoke as a visual distress signal on marine vessels to attract attention and pinpoint a boater's location in an emergency.

(g) "Department" means the Department of Toxic Substances Control.

(h) "Distributor" means a person that has a contractual relationship with one or more producers to market and sell covered products to retailers.

(i) "Importer" means either of the following:

(1) A person qualifying as an importer of record for purposes of Section 1484(a)(2)(B) of Title 19 of the United States Code regarding the import of a covered product that is sold, distributed for sale, or offered for sale in or into the state that was manufactured or assembled by a company outside of the United States.

(2) A person importing into the state for sale, distributing for sale, or offering for sale in the state a covered product that was manufactured or assembled by a company physically located outside of the state.

(j) (1) "Producer" means a person who manufactures a covered product and who sells, offers for sale, or distributes a covered product into the state under the person's own name or brand.

(2) If there is no person in the state who is the producer for purposes of paragraph (1), the producer of the covered product is the owner or licensee of a brand under which the covered product is sold or distributed into the state. For purposes of this subdivision, an exclusive licensee is a person holding the exclusive right to use a brand in the state in connection with the manufacture, sale, or distribution for sale in or into the state of the covered product.

(3) If there is no person in the state who is the producer for purposes of paragraph (1) or (2), the producer of the covered product is the person that imports the covered product into the state for sale, distribution, or installation.

(4) If there is no person in the state who is the producer for purpose of paragraph (1), (2), or (3), the producer of the covered product is the distributor, retailer, dealer, or wholesaler who sells the product in or into the state.

(5) For purposes of this chapter, the sale of a covered product shall be deemed to occur in the state if the covered product is delivered to the consumer in the state.

(k) "Producer responsibility organization" or "PRO" means an organization that is exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code of 1986 that is appointed by one or more producers to act as an agent on behalf of all producers to design, submit, and administer a producer responsibility plan pursuant to this chapter.

(l) "Producer responsibility plan" or "plan" means the plan developed by a PRO for the collection, transportation, and the safe and proper management of covered products pursuant to Article 4 (commencing with Section 25020) and submitted to the department for approval pursuant to Section 25020.

(m) "Retailer" means a person who sells or offers for sale a covered product in or into the state to a person through any means, including, but not limited to, sales outlets, catalogs, the telephone, the internet, or any electronic means.

(n) "Stewardship program" means a program established by a program operator pursuant to this chapter for free at drop off, convenient, and safe collection, transportation, and proper management of covered products.

### **Article 3. Producer Responsibility Organization**

**25010.** (a) *On or before January 1, 2027, the department shall approve a PRO that meets the requirements of this chapter.*

(b) All producers shall register with a single PRO to develop and implement a plan on behalf of all producers. Subject to subdivision (c) of Section 25013 and Section 25055, there shall be only one PRO.

(c) *No later than 90 days after the department's approval of the PRO, pursuant to subdivision (a), a producer shall register with the PRO.*

~~(b)~~ (d) No later than 30 days after the effective date of the regulations described in Section 25001, a producer shall notify the department electronically that the producer has registered with the PRO to develop and implement a plan on its behalf and to identify the PRO.



~~(e)~~ (e) A producer shall register with the PRO in accordance with the procedures and requirements established by the PRO.

~~(d)~~ (f) A producer shall not sell, offer for sale, import, or distribute a covered product in the state unless all the following are met:

- (1) The producer has registered with the PRO.
- (2) The covered product is accounted for in the plan.
- (3) The department has approved the PRO's plan.

~~(e)~~ (g) A producer shall provide notice of its intent to comply with the requirements of this chapter to all persons through which it sells, distributes, imports, or offers for sale a covered product in or into the state. A producer shall provide this notice no later than 180 days after the effective date of this chapter.

~~(f)~~ (h) If an entity does not meet the definition of producer and is not subject to this chapter but, at any point, meets the definition of a producer, that entity shall be deemed a producer and shall register with the PRO and otherwise comply with the requirements of this chapter before beginning to sell, offer for sale, import, or distribute covered products in the state.

**25011.** (a) No later than 30 days after the effective date of the regulations described in Section 25001, a producer shall provide to the department, in a form and manner established by the department, the following:

- (1) The producer's contact information.
- (2) A list of covered products and brands of covered products that the producer sells, distributes for sale, imports for sale, or offers for sale in or into the state.

(b) A producer shall provide to the department updates to the information described in subdivision (a) on or before January 15 of each year, within 30 days of changes to the information, and upon the department's request.

**25012.** A PRO shall notify the department within 30 calendar days of any of the following:

- (a) The end of a three-month period in which the PRO unsuccessfully attempted to obtain a fee, records, or information from a producer registered with the PRO.
- (b) The date that a producer no longer participates in the PRO's approved plan.

(c) Any instance of noncompliance by a participant producer.

**25013.** (a) A PRO shall demonstrate in its plan that it has adequate financial responsibility and financial controls in place, including fraud prevention measures and an audit schedule, to ensure proper management of funds.

(b) The activities of the PRO shall be limited to carrying out the requirements of this chapter.

(c) In the event that the department determines that the PRO no longer meets the requirements of this chapter or fails to implement or administer an approved plan in a manner that effectuates the purposes of this chapter, the department may revoke its approval of the plan and may approve an alternative plan submitted by another PRO pursuant to Section 25055.

**25014.** (a) The department shall establish performance standards for the PRO.

(b) Performance standards categories shall include, but not be limited to, collection of the covered product.

(c) The performance standards shall specify dates for compliance.

(d) The department may adjust performance standards and compliance dates based on information included in the plan and annual reports, other information provided by the PRO, department waste characterization studies, economic information, and any other relevant information.

(e) Performance standards published by the department pursuant to this subdivision shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) The PRO shall meet the performance standards described in subdivision (a).

**25015.** The PRO shall implement its approved plan.

#### **Article 4.** Producer Responsibility Plans

**25020.** (a) Within nine months of the effective date of the regulations described in Section 25001, a PRO shall develop and submit a proposed plan to the department, in a form and manner determined by the department.

(b) The department shall review the plan for compliance with this chapter. Within 90 calendar days of receipt of the plan from the PRO, the department shall respond with

an approval, disapproval, conditional approval, request for additional information, or timeline for a decision on approval or disapproval.

(c) The department shall approve, approve in part, or deny a proposed plan after providing a 30-day public comment period.

(d) If the department approves a proposed plan, a revised plan, or a conditionally approved plan, then the department shall notify the PRO of the approval. The PRO shall implement the approved plan within 90 days of receipt of the notice of approval, or as otherwise agreed to by the department.

(e) If the department conditionally approves the plan, then the department shall explain, in writing, how the plan or parts of the plan does not comply with this chapter, and the PRO shall ensure the conditions are met and resubmit a revised plan within 12 months.

(f) If the department disapproves the plan, the department shall explain, in writing, how the plan does not comply with this chapter, and the PRO shall resubmit a plan to the department. If the department finds that the plan resubmitted by the PRO does not comply with the requirements of this chapter, the PRO shall not be deemed in compliance with this chapter until the organization submits a plan that the department finds complies with the requirements of this chapter.

(g) An approved plan shall be public record published on the department's internet website, except that financial, production, or sales data reported by the PRO to the department for purposes of the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code) and shall not be open to public inspection. The department may release financial or sales data in summary form only so the information cannot be attributable to a specific entity.

**25021.** A plan shall do all of the following:

(a) (1) Be developed to accept and manage all covered products at the end of their useful life. An expiration date on a covered product shall be determinative of its useful life.

(2) A plan shall include all covered products and shall not exclude covered products on the basis that the covered products are not from a producer registered with the PRO.

(b) Include the contact information of each producer registered with the PRO and covered by the plan.

(c) Demonstrate how the PRO will comply with Section 25030, including a five-year budget that demonstrates how the PRO will comply with subdivision (b) of Section 25030.

(d) Describe how collection sites will be managed, including all of the following:

(1) How the PRO will provide a free and convenient collection system for covered products, which shall include permanent collections sites and may include temporary collections sites.

(2) A description of how the PRO will provide to the collection sites, at no cost to consumers or other entities involved in the collection, the appropriate training, signage, safety guidance, educational materials, and any other items or information necessary for the safe collection and temporary storage of covered materials.

(3) An explanation of the process by which the PRO will provide for the transport of covered products from the collection sites.

(4) A list of all proposed rules, conditions, and requirements for collection sites and recyclers.

(5) A list of all proposed rules, conditions, and requirements for collection sites and recyclers, including a template proposed agreement for each of those types of entities as applicable.

(e) Describe how the PRO will meet performance standards with associated metrics, and the dates by which the performance standards will be achieved for the performance standards categories identified in Section 25014.

(f) Describe the process by which collected covered products will be handled and managed following collection, including all of the following:

(1) A description of how covered products will be handled and managed according to the waste management practices specified in Section 40051 of the Public Resources Code, including a description of how the PRO will use the best available management technologies.

(2) A description of the annual assessment the PRO will conduct and the metrics it will use to determine how collection, sorting, transportation, and management outcomes aligned with projections.

(3) A description of how the PRO will achieve an equitable and circular system that improves the collection, processing, and management operations for covered products,

including, but not limited to, pilot programs to test new processes, methods, or equipment.

(g) Include a contingency plan in the event the plan expires or is revoked. The contingency plan shall guarantee that all the contracts, financial data, and any other necessary authority and assets to operate the program shall vest in a trustee approved by the department. The trustee shall operate the most recently approved plan, subject to the direction of the department, until the time a new plan is approved. Upon plan expiration or revocation of the plan, the balance of the PRO's operating reserves collected shall be transferred to the control of the trustee within five calendar days. All documents, digital records, contracts, and files related to the operation of the plan shall be transferred to the control of the trustee within five calendar days.

**25022.** A plan shall include a section describing a comprehensive statewide education and outreach program designed to educate consumers and promote participation in the program offered by the PRO. The comprehensive statewide education and outreach program shall do all of the following:

(a) Promote the safe and proper management of covered products and shall not promote the disposal of covered products in a manner inconsistent with the services offered by the plan.

(b) Include information for consumers on how to avoid improper disposal of covered products.

(c) Include a description of the education and outreach efforts to various audiences, including, but not limited to, consumers to promote their participation in achieving the purposes of the plan. These education and outreach materials shall include, but not be limited to, all of the following:

(1) An internet website that publicizes the entire process for collection, including collection location sites in addition to any other information necessary to consumers for the safe collection and handling of covered products.

(2) Signage at point of sale and in marinas that is prominently displayed and easily visible.

(3) All signage and material required for collection sites by the PRO, and the method by which the collection sites can access replacement materials at no cost to the collection site.

(4) Promotional materials, activities, or both that explain the purpose of the PRO and the means by which it is managing covered products.

(5) A description of strategies, goals, and metrics the PRO will use to annually assess and evaluate the efficacy of the comprehensive statewide education and outreach program.

**25023.** (a) The PRO shall review its approved plan at least every five years and determine whether revisions are necessary.

(b) If the PRO determines that revisions to its approved plan are necessary, the PRO shall submit to the department a revised plan for review and approval using the procedures set forth in Section 25020. The PRO shall submit the revised plan to the department pursuant to this subdivision at least 12 months before the review deadline outlined in subdivision (a). The revised plan shall include a cover letter that summarizes the revisions to the plan.

(c) If the PRO determines that no revisions to the plan are necessary, the PRO shall send a letter to the department, 12 months before the review deadline outlined in subdivision (a) explaining that the PRO has reviewed the plan and determined that no revisions are needed. The department may, after hearing public input, disapprove the PRO's determination within 30 days of receipt of the letter if the department concludes that the PRO cannot implement the objectives of this chapter without revising the plan. In the event the department disapproves the PRO's determination, the department may indicate to the PRO which sections, at minimum, of the plan need revision, and the PRO shall submit to the department a revised plan, or plan sections, for review and approval, following the procedures set forth in Section 25020. The PRO shall submit the revised plan pursuant to this subdivision within 60 days of receipt of the department's disapproval.

(d) The department may consult with or submit the revised plan to another state agency or department if the department determines it is necessary for making its determination. The duration of time the department takes for this consultation is not included in the time allotted to the department for review pursuant to this section.

#### **Article 5. Financial Provisions**

**25030.** The PRO shall do all of the following:

(a) Establish a method for fully funding its plan in a manner that equitably distributes the plan's costs among participating producers that reflects sales volumes and the cost to manage the covered products the producer produces.

(b) (1) Operate on a budget that establishes a funding level sufficient to operate the PRO in a prudent and responsible manner. The budget shall demonstrate how the PRO's estimated revenues cover all the PRO's budgeted costs for each cost category. Budgeted

costs shall include, but not be limited to, administrative costs, capital costs, and a reserve.

(2) Administrative costs shall include the department's actual and reasonable regulatory costs, which include full personnel costs, to implement and enforce this chapter, as the criteria for all costs are defined in the regulations described in Section 25001. For purposes of this paragraph, PRO implementation begins once the department approves the PRO's plan, except the department's costs shall include actual regulatory development costs and other startup costs incurred prior to plan submittal and approval.

(3) The reserve shall include funds to operate the PRO should there be unexpected events, losses of income, or large unbudgeted expenses. It shall also protect the infrastructure the PRO relies on in its plan during any lapse in producer participation during the life of the program. The reserve cost category shall include a reserve level amount description justifying the reserve level amount indicated. The PRO shall maintain reserve funds sufficient to operate the plan for not less than six months. In the event that a new PRO is approved by the department, the PRO shall establish its reserve and maintain the required reserve fund balance by the end of the second year of plan operation. In the event the PRO's plan expires or is revoked, the reserve balance shall be transferred to a successor PRO or a trustee pursuant to the portion of the plan described in subdivision (g) of Section 25021.

(c) On a schedule determined by the department, pay the department fees to cover the department's reasonable regulatory cost as described in Section 25032.

(d) Establish a process by which the financial activities of the PRO that are related to implementation of the plan will be subject to an independent audit consistent with generally accepted accounting principles (GAAP) and pursuant to Section 25042. Written certification by an authorized representative of the PRO that, at the time of submission to the department, all aspects of the plan are in compliance with all applicable state and federal laws and regulations.

**25031.** Each producer shall, through the PRO, pay all administrative and operation costs associated with establishing and implementing the PRO's approved plan, including the cost of collection, transportation, and the safe and proper management of covered products.

**25032.** (a) Within four months of the effective date of the regulations described in Section 25001, the department shall notify the PRO of the estimated regulatory costs and the criteria for the costs specified in the regulations. Those costs shall include the costs associated with developing the regulations and other department activities that occur before plan submittal and approval, including, but not limited to, full personnel

costs related to implementing and enforcing this chapter. The costs shall not exceed the department's reasonable regulatory costs to implement and enforce this chapter.

(b) The department shall deposit all moneys received from the PRO pursuant to this section into the Marine Flare Recovery Fund, which is hereby established in the State Treasury.

(c) Upon appropriation by the Legislature, moneys in the Marine Flare Recovery Fund shall be expended by the department to implement and enforce this chapter, as well as to reimburse any standing loans made from other funds used to finance regulation development, and startup costs of the department's activities pursuant to this chapter.

(d) The moneys in the Marine Flare Recovery Fund shall only be expended for purposes described in subdivision (c).

**25033.** (a) (1) A PRO, as part of its plan, shall set up a trust fund or an escrow account, into which it shall deposit all unexpended funds and ongoing consumer assessments, for use in accordance with this section in the event that the plan terminates or is revoked.

(2) For purposes of this subdivision, "unexpended funds" means assessment moneys in the PRO's accounts that the PRO is not already obligated to pay pursuant to a contract, claim, or similar mechanism.

(b) If a plan terminates or is revoked, the trustee or escrow agent of a trust fund or escrow account set up pursuant to subdivision (a) shall do both of the following, starting within 30 days:

(1) Accept payments directly from producers into the trust fund or escrow account that would have been made to the PRO prior to the plan's termination or revocation.

(2) Make payments from the trust fund or escrow account as the department shall direct, in writing, to implement the most recently approved plan.

(c) If a new plan has not been approved by the department within one year after termination or revocation, the department may make modifications to the previously approved plan, as it deems necessary, and continue to direct payments from the trust fund or escrow account in accordance with paragraph (2) of subdivision (b) to implement the modified plan.

(d) A trustee or escrow agent in possession of assessment funds shall, as directed by the department, transfer those funds to a successor PRO with an approved plan.



**Article 6. Records, Audits, and Reports**

**25040.** (a) The PRO shall keep board minutes, books, and records that clearly reflect the activities and transactions of the PRO. Each producer or PRO with an approved plan shall maintain all records relating to the approved plan for a period of not less than five years.

(b) The department may audit the PRO annually.

(c) The failure of the PRO, a producer, or their respective agent who holds records to produce documents or data that is requested by the department, required to be collected or generated to carry out operation of the plan in the form and manner determined by the department as part of a department audit, or review of a third-party audit, shall constitute a violation of this chapter.

**25041.** (a) A producer, PRO, manufacturer, distributor, retailer, dealer, or importer shall do both of the following:

(1) Upon request, provide the department with reasonable and timely access, as determined by the department, to its facilities and operations, as necessary to determine compliance with this chapter.

(2) Upon request, within 14 days, provide the department with relevant records, as determined by the department, necessary to determine compliance with this chapter.

(b) All reports and records provided to the department pursuant to this chapter shall be provided under penalty of perjury.

(c) The department may impose administrative civil penalties pursuant to Article 7 (commencing with Section 25050) on a producer, PRO, manufacturer, distributor, retailer, dealer, or importer that fails to provide the department with the access required pursuant to this section.

**25042.** (a) The PRO shall retain an independent public accountant, certified in the United States, to annually audit the accounting books of the PRO. The department shall review the independent certified public accountant audit for compliance with this chapter and consistency with the PRO's approved plan and the annual report required by Section 25043. After the department conducts its own audit, the department shall notify the PRO of any conduct or practice that does not comply with this chapter or of any inconsistencies identified in the audit. The PRO may obtain copies of the department's audit, including proprietary information contained in the department's audit, upon request. The producer or PRO may *request the department* withhold from disclosure confidential proprietary information to the extent allowed under Section 1040 of the Evidence Code and the California Public Records Act (Division 10

(commencing with Section 7920.000) of Title 1 of the Government Code). The items submitted to the department as part of the independent audit shall include:

(1) Financial statements audited in accordance with generally accepted accounting principles (GAAP).

(2) An audit of the PRO's compliance with this chapter.

(3) An audit of the PRO's adherence to, execution of, and consistency with its approved plan.

(b) The PRO shall include the independent audit in its annual report submitted to the department pursuant to Section 25043 commencing within 18 months of plan approval by the department. The department shall review the audit for compliance with this chapter and consistency with the PRO's approved plan.

**25043.** On or before January 1 of each year, the PRO shall submit to the department, and make publicly available, an annual report, in a format prescribed by the department, that includes, at minimum, all of the following information for the preceding calendar year, unless otherwise specified:

(a) The PRO's costs, according to the cost categories established in the plan, and revenues.

(b) A summary of any anticipated changes to allocations in cost categories for the next calendar year.

(c) Any changes to the distribution of costs to the producers registered with the PRO.

(d) The names and updated contact information for the producers registered with the PRO.

(e) An estimate of the quantity of covered products sold in or into the state by the producers registered with the PRO, as determined by the best available commercial data.

(f) The number of collection sites, listed by name, location, and type, from which the covered products were picked up.

(g) The total number of covered products collected.

(h) The number of covered products picked up from each collection site.

(i) A complete accounting of the ultimate disposition of all covered products collected by the PRO, including the total weight of materials that were disposed of.

(j) Metrics and a description of the progress towards attaining the performance standards included in the approved plan.

(k) An evaluation of the effectiveness of methods and processes used to achieve the performance goals of the program.

(l) A description of methods used to collect, transport, and manage covered products by the PRO, including a description of ~~all~~ both of the following:

(1) How the PRO handled and managed covered products according to the waste hierarchy as defined in Section 40051 of the Public Resources Code.

(2) Results of the PRO's assessment of the efficacy of the collection and transportation process pursuant to subdivision (f) of Section 25021.

(m) A description of how the PRO improved the convenience of collection and improved processing operations for covered products, including, but not limited to, pilot programs to test new processes, methods, or equipment.

(n) A summary of the public education used to promote consumer knowledge of the program, including the PRO's evaluation of the efficacy of the comprehensive statewide education and outreach program pursuant to Section 25022.

(o) Recommendations for any future proposed substantial changes to the program that may be submitted for the department's approval pursuant to Section 25020, if applicable.

(p) Any other information required by regulations adopted pursuant to Section 25001.

**25044.** (a) No later than 90 days of receipt of an annual report, the department shall start a 30-day public comment period regarding an annual report.

(b) No later than 120 days after receipt of an annual report, and after completion of the public comment period required by subdivision (a), the department shall notify the PRO if the annual report is compliant or noncompliant.

(c) If the department determines that the annual report is noncompliant due to failure to meet the requirements of this chapter, the department may require the resubmittal of the annual report and take enforcement action.

(d) The department may consult with or submit the annual report to a state agency or department if it determines it is necessary for making a determination of compliance or

noncompliance of an annual report. The duration of time the department takes for this consultation shall not be included in the time allotted to the department for review pursuant to subdivision (a).

#### **Article 7. Enforcement**

**25050.** A retailer, dealer, importer, or distributor shall not sell, distribute, offer for sale, or import a covered product in or into the state unless the producer of the covered product is listed as a compliant producer pursuant to Section 25051 or received a certification letter described in subdivision (e) of Section 25051.

**25051.** (a) Within 12 months of the effective date of the regulations described in Section 25001, and on or before July 1 of each year thereafter, the department shall publish on the department's internet website, a list of the names of producers that are compliant with this chapter. The department shall list, as appropriate, the reported brands of covered products for each producer.

(b) A retailer, importer, or distributor shall monitor the department's internet website to determine if a producer, brand, or covered product is in compliance with this chapter for that brand.

(c) Notwithstanding any other provision of this chapter, upon identification of a producer that is not registered with the PRO with an approved plan, the department shall issue a notice of noncompliance to the producer.

(d) If the department determines a producer is not in compliance with this chapter, the department shall remove the producer, along with its brands of covered products, from the compliance list.

(e) A producer that is not listed on the department's internet website pursuant to subdivision (b) that demonstrates compliance with this chapter before the next list is posted by the department may either be added to the internet website or be provided a certification letter from the department stating that the producer of a covered product is in compliance with this chapter.

**25052.** (a) A civil penalty up to the following amounts may be administratively imposed by the department on any person who is in violation of any provision of this chapter:

(1) Ten thousand dollars (\$10,000) per day.

(2) Fifty thousand dollars (\$50,000) per day if the violation is intentional or knowing.

(b) In assessing or reviewing the amount of a civil penalty imposed pursuant to subdivision (a) or (b) for a violation of this chapter, the department or the court shall consider all of the following:

- (1) The nature and extent of the violation.
- (2) The number and severity of the violation or violations.
- (3) The economic effect of the penalty on the violator.
- (4) Whether the violation took good faith measures to comply with this chapter and the period of time over which these measures were taken.
- (5) The willfulness of the ~~violators~~ *violator's* misconduct.
- (6) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.
- (7) Any other factor that justice may require.

(c) Upon written finding that a PRO, producer, importer, distributor, or any other party regulated has not met a material requirement of this chapter, in addition to any other penalties authorized under this chapter, the department may take one or both of the following actions to ensure compliance with the requirements of this chapter, after affording the PRO, producer, importer, distributor, or any other party regulated, an opportunity to respond to or rebut the finding:

- (1) Revoke the PRO's plan approval or require the PRO to resubmit the plan or plan section.
- (2) Require additional reporting relating to compliance with the material requirements of this chapter that were not met.

(d) The department shall deposit all penalties collected pursuant to this section into the Marine Flare Recovery Penalty Account, which is hereby created in the Marine Flare Recovery Fund. Upon appropriation by the Legislature, moneys in the Marine Flare Recovery Penalty Account shall be available for expenditure by the department on activities related to the ~~collection, reuse, reuse~~ and safe and proper management of covered products, grants for related purposes, and the administration and enforcement of this chapter.

(e) The Administrative Adjudication Bill of Rights as set forth in Article 6 (commencing with Section 11425.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government

Code, applies to hearings conducted under this chapter and mandates minimum due process.

**25053.** (a) After the time for judicial review under Section 11523 of the Government Code has expired, the department may apply to the small claims court or superior court, depending on the jurisdictional amount and any other remedy sought, in the county where the penalties, restitution, or other remedy was imposed by the department, for a judgment to collect any unpaid civil penalties or restitution or to enforce any other remedy provided by this chapter. The application, which shall include a certified copy of the final agency order or decision, shall constitute a sufficient showing to warrant the issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment so entered shall have the same force and effect as and shall be subject to all the provisions of law relating to a judgment in a civil action and may be enforced in the same manner as any other judgment of the court. The court shall make enforcement of the judgment a priority.

~~(b) If, in the judgment of the Director of Toxic Substances Control,~~ If a person has engaged in or is about to engage in an act, practice, or omission that constitutes, or will constitute, a violation of this chapter, the Attorney General may, at the request of the director, *or upon the Attorney General's own determination*, bring an action in the superior court for an order enjoining the act, practice, or omission. The order may require remedial measures and direct compliance with this chapter. Upon a showing ~~by the director~~ that the person has engaged in or is about to engage in that act, practice, or omission, the superior court may issue a permanent or temporary injunction, restraining order, or other order, as appropriate.

~~(c) An action brought by the Attorney General pursuant to this section shall have precedence in respect to the order of trial over all other civil actions not brought by or on behalf of the state, except actions regarding probate bonds.~~

**25054.** A producer shall not be subject to penalties pursuant to this article for noncompliance with subdivision ~~(d)~~ (f) of Section 25010 until two years from the effective date of the regulations described in Section 25001.

**25055.** (a) A PRO that violates this chapter three or more times shall be ineligible to act as an agent on behalf of a manufacturer to design, submit, and administer a plan pursuant to this chapter.

(b) If a PRO becomes ineligible pursuant to subdivision (a) to operate as a PRO under this chapter, the successor provisions in subdivisions (b), (c), and (d) of Section 25033 shall apply.

**Article 8. Antitrust Immunity**

**25060.** (a) Except as provided in subdivision (b), an action that is taken by a producer or producer responsibility organization, is not a violation of the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code), or the Unfair Competition Law (Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code) to the extent the producer or producer responsibility organization, is exercising authority pursuant to this chapter.

(b) Subdivision (a) applies to all of the following actions taken by the PRO:

(1) The creation, implementation, or management of a plan approved or conditionally approved by the department pursuant to this chapter and the determination of the types or quantities of covered products recycled or otherwise managed pursuant to a plan.

(2) The determination of the cost and structure of an approved plan.

(3) The establishment, administration, collection, or disbursement of a charge associated with funding the implementation of this chapter.

(c) Subdivision (a) does not apply to an agreement that does any of the following:

(1) Fixes a price of or for covered products.

(2) Fixes the output or production of covered products.

(3) Restricts the geographic area in which, or customers to whom, covered products will be sold.