

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

SB 1143 (Allen)
Version: March 18, 2024
Hearing Date: April 16, 2024
Fiscal: Yes
Urgency: No
AM

SUBJECT

Household hazardous waste: producer responsibility

DIGEST

This bill establishes an extended producer responsibility (EPR) or stewardship program for the collection, transportation, recycling, and the safe and proper management of products containing household hazardous waste (HHW) in California.

EXECUTIVE SUMMARY

Many common household items contain hazardous materials that, when not disposed of properly, can cause harm to public health and the environment. Universal waste can be handled, transported, and recycled following relatively simple requirements set forth in the universal waste regulations (such as batteries), while HHW is more hazardous and must be handled and disposed of by specified local agencies (such as paint, motor oil, antifreeze, etc.) According to the California's Statewide Commission on Recycling Markets and Curbside Recycling the state's current system for managing HHW has proven inadequate and operates at a significant public expense.¹ This bill seeks to address the issue of HHW by enacting an EPR program that will provide for the proper management and disposal of HHW in the state that is overseen by the Department of Toxic Substances and Control (DTSC). The bill is sponsored by the National Stewardship Action Council. The bill is supported by numerous environmental organizations, government entities, and others. The bill is opposed by a coalition of organizations representing business and various industries. The bill passed the Senate Environmental Quality Committee on a vote of 5 to 2.

¹ *Policy Recommendations Report 4*, Cal. Statewide Comm. on Recycling Markets and Curbside Recycling, (Jun. 30, 2022) at p. 43, <https://www2.calrecycle.ca.gov/Docs/Web/121911>.

PROPOSED CHANGES TO THE LAW

Existing 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. (Public Resources Code (Pub. Res. Code § 40000 et. seq.)
- 2) Regulates the management and handling of hazardous waste and hazardous materials by 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 the HHW. (Health & Saf. Code § 25218 et. seq.)

This bill:

- 1) Establishes the Household Hazardous Waste Producer Responsibility Act of 2024 (Act), which creates an EPR program for a covered product.
 - a) States that the purpose of the Act is to provide for the safe and proper management of household hazardous waste, which poses a threat to public health and safety, is costly for California's local governments, and may cause significant damage to the environment when managed improperly.
- 2) Defines "covered product" as a product that meets all the following requirements listed below.
 - a) Is flammable, toxic, ignitable, corrosive, reactive, or pressurized.
 - b) Is one or more of the following:
 - i. aerosols, cleaners, glues, solvents, oxidizers, and adhesives;
 - ii. automotive products;
 - iii. electronics and paint products not covered under existing statutorily required programs;
 - iv. fire extinguishers with up to 50 pounds of water capacity;
 - v. degreasers, lubricants, liquid adhesives, and strippers;
 - vi. gas cylinders, including nonrefillable helium, oxygen, and flammable cylinders with up to 50 pounds of water capacity, propane cylinders with up to one pound, and spray foam insulation tanks;
 - vii. lamp kerosene and lighter fluid;

- viii. rust, tar, and bug remover;
 - ix. fertilizers, pesticides, insecticides, herbicides, fungicides, and soil fumigants;
 - x. products containing asbestos, mercury, or polychlorinated biphenyls;
 - xi. pool chemicals and photochemicals;
 - xii. concrete mix containing corrosive lime; and
 - xiii. universal waste.
- c) Satisfies either of the following criteria:
- i. meets the criteria for household hazardous waste, as defined in Section 25218.1 of the Health and Safety Code, at the time of disposal; or
 - ii. is defined by the department in regulations as household hazardous waste.
- d) Is neither of the following:
- i. a product that is subject to another statewide extended producer responsibility program pursuant to state law; or
 - ii. health and beauty products.
- 3) Requires the Department of Toxic Substance Control (DTSC) to approve a producer responsibility organization (PRO) on or before January 1, 2027, and provides that DTSC is not to adopt regulations with an effective date earlier than July 1, 2027.
- 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.
- 4) 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) Prohibits a producer, upon approval of the plan by DTSC, 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.
- 6) Authorizes the department 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.

- 7) 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.
- 8) 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 DTSC, 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.
- 9) 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 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:

SB 1143 requires producers of the most toxic consumer products to fund and ensure convenient access to a system for the safe collection, transportation, and disposal of household hazardous waste (HHW). The bill will shift the cost burden of managing HHW disposal from local jurisdictions and ratepayers to the producers. Thousands of everyday household products are classified as HHW since they pose severe threats to residents, animals, and the environment if improperly managed at the end of life. This includes cleaning products, pesticides, pool chemicals, and fire extinguishers. Consumers struggle to understand which products are considered hazardous and how to properly dispose of those that are, especially as the list of products that can be collected at a local HHW facility varies from jurisdiction to jurisdiction and is often a function of what that jurisdiction can afford. Many communities lack convenient access to facilities permitted to accept these dangerous products altogether.

Places like Canada and Vermont have implemented Extended Producer Responsibility programs for HHW to increase access to safe collection and shift the

cost burden of managing these products from local cities and counties, and ultimately ratepayers, to the producers designing the products. SB 1143 builds on California's extensive experience with EPR programs and allows producers a degree of flexibility in meeting these goals while also saving ratepayers money and encouraging safer, sustainable household products.

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

This bill intends to address the difficulty and potential 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 product stewardship programs or extended producer responsibility (EPR), 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 the producers and all entities involved in the product chain, instead of on the general public and local governments. EPR programs rely on industry, formalized in a product stewardship organization, to develop and implement approaches to create a circular economy that makes business sense, with oversight and enforcement provided by the government. This approach provides flexibility for manufacturers, based on their expertise in designing products and the systems that bring these products to market, to design systems to capture those products at the end-of-life to meet statutory goals.²

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

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

The Senate Environmental Quality Committee's analysis of this bill explores the problem of HHW and universal waste and its effects on the environment. The analysis notes:

- Many common household items contain hazardous materials that pose a threat to the health of humans, animals, and the environment if these products are

² Sen. Environmental Quality Comm. analysis of SB 1143 (2023-24 reg. sess.) as amended Mar. 18, 2024 at p. 4.

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

incorrectly disposed of and, therefore, cannot simply be thrown out in the garbage;

- DTSC's 2023 Hazardous Waste Management Report shows approximately 65,020 tons of HHW was collected in California during the 2020-21 reporting period, with electronic devices making up roughly 29,320 tons (88%) of the universal waste portion of HHW collection and about 45 percent of the total HHW collected;
- Common HHW listed on DTSC's website includes: antifreeze, batteries, drain cleaners, electronics, glue and adhesives, household cleaners, oven cleaners, paints, pesticides, pool cleaners, solvents, used oil, waste containing asbestos, and wastes containing mercury; however, there is no statutory or regulatory definition of HHW and little data is available to evaluate the waste streams collected at HHW facilities.⁴

The California's Statewide Commission on Recycling Markets and Curbside Recycling stated in its 2022 policy recommendations to the Legislature that:

[...] the largest fraction of HHW remains in the materials disposed of. When improperly placed in recycling or organic materials recovery streams, HHWs pose chemical and explosive hazards within those streams, significantly increasing the costs of those operations. The costs to manage HHW, including costs for load checking, and the construction and operation of permanent HHW facilities across the state, though a significant continuing expense, is proving inadequate to the task of removing the increasing density and diversity of hazards in materials discarded. Continuing municipal support for the diversity of HHW programs required also takes limited local funds away from other programs such as composting. Municipalities continue HHW programs in part to reduce potential long-term liabilities but have limited resources to fund a program that is sufficiently effective. If a community under-performs in its efforts to remove hazardous materials from materials landfilled, that community becomes more vulnerable to potential future expenses associated with superfund cleanups for such a landfill. Companies selling such products have not shared these municipal expenses or liabilities. In other words, our current system for managing HHW is both a significant public expense, and also an expensive failure. If we had to grade the HHW system effectiveness, it would be an F-, not because the efforts of those providing HHW services are deficient, but because the current HHW system has proven inadequate to these challenges.⁵

⁴ Sen. Environmental Quality Comm. analysis of SB 1143 (2023-24 reg. sess.) as amended Mar. 18, 2024 at p. 5.

⁵ *Policy Recommendations Report 4*, Cal. Statewide Comm. on Recycling Markets and Curbside Recycling, (Jun. 30, 2022) at p. 43, <https://www2.calrecycle.ca.gov/Docs/Web/121911>.

The Senate Environmental Quality Committee analysis concluded that this bill:

replaces the current system of managing HHW with a well-crafted EPR program with appropriate oversight from DTSC. The program would be paid for by the producers and required to enhance consumer convenience and improve the collection and management of toxic household products. Producers of covered products would be required to join a PRO and develop a producer responsibility plan detailing how the industry will meet this standard. The plan's costs would be proportionally distributed to member producers based on sales volume and relative disposal costs, encouraging less toxic alternatives and ensuring producers pay their fair share.

Importantly, SB 1143 includes consideration of all the essential elements of CalRecycle's EPR framework, developed and refined over the past decade through its experience with overseeing numerous other EPR programs.⁶

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.⁷ 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.”⁸ 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.⁹ 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.’ ”¹⁰ 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.

⁶ Sen. Environmental Quality Comm. analysis of SB 1143 (2023-24 reg. sess.) as amended Mar. 18, 2024 at p. 8.

⁷ U.S. Const., art. I, § 8, cl. 3.

⁸ *National Pork Producers Council v. Ross* (2023) 143 S.Ct. 1142, 1152 (internal quotation marks and alterations omitted).

⁹ *Id.* at pp. 1152-1153.

¹⁰ *South Dakota v. Wayfair, Inc.* (2018) 138 S.Ct. 2080, 2091.

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.¹¹ (*Pike v. Bruce Church, Inc.* (1970) 397 U.S. 137, 142.) As this bill's provisions 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 solid waste management of, and viable markets for, products that contain household hazardous waste, 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

¹¹ *Pike v. Bruce Church, Inc.* (1970) 397 U.S. 137, 142; *National Pork Producers Council* supra at fn. 6 at pp. 1162-1163.

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.¹² 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:

- provide a definition for universal waste by cross referencing Section 25123.8 of the Health and Safety Code;
- 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;
- 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; and

The author has also proposed amendments to specify that there is to be only one PRO that producers are to register with.

A mock-up of the proposed amendments in context is attached to the analysis.¹³ The proposed amendments also include several nonsubstantive changes.

4. Statements in support

A coalition of numerous environmental organizations, including The National Stewardship Action Council, which is the sponsor of the bill, write in support stating:

HHW is a broad category of many common products used daily by consumers that contain hazardous materials. HHW requires special handling and disposal, as it is illegal to dispose of HHW in the garbage, down storm drains, or onto the ground. When illegally or improperly disposed of, chemicals in HHW can be released into the environment and contaminate our air, water, and food supply. Maybe most importantly, improperly disposed HHW exposes recycling and waste workers to avoidable dangers and increases insurance costs to operators.

California's HHW collection and management system is underfunded, inconvenient, and does not collect a majority of what is generated. The legislature has embraced the goal of achieving a Circular Economy and already passed laws that address some HHW products including mercury thermostats, paint, medications and needles, and batteries. Bills introduced and passed in 2024 covering HHW products would not be preempted by SB 1143, including SB 1280 (Laird) which would ban the sale of single-

¹² 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.

¹³ The amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel.

use 1 lb. propane cylinders and SB 1066 (Blakespear) which would establish EPR for pyrotechnic and explosive distress signals.

California can continue to pass legislation one product at a time, or pass SB 1143 which includes the HHW not already covered including pesticides, solvents, smoke detectors, etc. EPR for all HHW has already been done in other countries, including Canadian provinces. The California Commission on Recycling Markets and Curbside Recycling was comprised of 16 experts representing materials management companies, local governments, unions, and NGOs and unanimously recommended that the legislature, “establish EPR programs for the product categories below to reduce known fire and operational hazards”, which included HHW.

5. Statements in concern and opposition

A coalition of organizations representing business and various industries, including the California Chamber of Commerce and the California Manufacturers & Technology Association, write in opposition stating:

We appreciate your collaborative approach to solving complex environmental stewardship initiatives and are committed to being product partners. However, we request SB 1143 be tabled this year to allow additional time for all stakeholders to work together to craft solutions to improve HHW management throughout the state. [...]

While we can appreciate the recent amendments to limit the scope of products included in SB 1143, the current language will create confusion and a potentially unfair treatment of different products under the law. For example, aerosol containers are used for a variety of products, including beauty products, which are excluded under the bill. By including aerosols, but excluding beauty products, there will be inconsistency across the aerosol category. We believe methods to better define the scope of SB 1143, will be informed by DTSC’s work due in 2025. [...]

Considering the immense scale of implementation of the landmark EPR law [SB 54 (Allen, Ch. 75, Stats. 2022)] , we strongly urge the legislature to allow existing programs to get underway before layering new, stand-alone EPR programs, regardless of the responsible agency. While EPR has become increasingly popular for waste management, we should not presume it is the best fit for HHW. We encourage the legislature to also study other states to learn about successful programs and funding mechanisms. Although EPR has the benefit of leveraging market ingenuity to help achieve stated goals, in some instances, it may be an overly complicated response to achieving the goals and needs of a given initiative.

The Animal Health Institute and CA Life Sciences write in concern stating:

Through discussions with the author, it is our understanding that SB 1143 is intended to apply only to leftover contents that can be considered household hazardous waste and not packaging. For pet parasiticides, topical treatments come in single-use tubes, and the entire contents of the tube is a single dose. The dose consists of approximately one ml of fluid or less, depending on the size of the animal being treated.

There should not be leftover product to dispose of from opened tubes. FIFRA requires pesticides to include instructions for disposal, and consumers should continue to follow them. While we are not aware of any product that would need to be diverted from the normal waste stream, some products instruct consumers to contact their local solid waste agency for instructions on disposing of partly filled tubes.

We are concerned that SB 1143 may include animal health products that may not be appropriate for inclusion in a larger hazardous waste disposal program both from a perspective of the unique packaging, federal oversight and delivery systems of these products.

SUPPORT

National Stewardship Action Council (sponsor)

5 Gyres Institute

7th Generation Advisors

Ban Single Use Plastic

California Association of Environmental Health Administrators

California Environmental Voters

California Rural Legal Assistance Foundation

California Teamsters Public Affairs Council

California Waste Recovery System

Californians Against Waste

Californians for Pesticide Reform

Center for Biological Diversity

Center for Farmworker Families

Center on Race, Poverty & the Environment

Central California Environmental Justice Network

City of Santa Barbara

Clean Water Action

Cleanearth4kids.org

Climate Reality Project, California Coalition

County of Los Angeles Board of Supervisors

Environmental Working Group

Friends of The Earth

Greenwaste Recovery
Heal the Bay
League of California Cities
Marin Sanitary Service
Napa Recycling and Waste Services
Pesticide Action Network
Physicians for Social Responsibility - Los Angeles
Product Stewardship Institute
Republic Services - Western Region
Resource Recovery Coalition of California
Rethinkwaste
Rural County Representatives of California
Sea Hugger
Sierra Club California
Story of Stuff Project
Town of Truckee
Turtle Island Restoration Foundation
Universal Service Recycling, Inc.
Valley Improvement Projects
Worthington Industries
Zero Waste Marin Joint Powers Authority
Zero Waste Sonoma
Zero Waste USA

OPPOSITION

American Chemistry Council
American Cleaning Institute
Cal CIMA
California Chamber of Commerce
California Manufacturers & Technology Association
Can Manufacturers Institute
Household and Commercial Products Association
Industrial Environmental Association
National Aerosol Association
Industry for A Sound Environment
Western Aerosol Information Bureau
Western Plant Health Association

RELATED LEGISLATION

Pending Legislation:

SB 615 (Allen, 2023) requires producers of electric vehicle (EV) batteries to be responsible for the recapture, repair, reuse, or recycling of EV batteries. SB 615 is currently pending in the Assembly Environmental Safety and Toxic Materials Committee.

SB 707 (Newman, 2023) establishes an Extended Producer Responsibility (EPR) program for textiles with oversight from CalRecycle. SB 707 is currently pending in the Assembly Natural Resources Committee.

SB 1066 (Blakespear, 2024) 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. This bill is pending before this Committee and is set to be heard on the same day as SB 1143.

SB 1280 (Laird, 2024) specifies that only reusable or refillable propane cylinders shall be sold or offered for sale in California on and after January 1, 2028.

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 (5 Ayes, 2 Noes)

MOCK-UP OF PROPOSED AMENDMENTS:

SEC. 2. Chapter 1.5 (commencing with Section 47725) is added to Part 7 of Division 30 of the Public Resources Code, to read:

CHAPTER 1.5. Household Hazardous Waste Producer Responsibility Act of 2024

Article 1. General Provisions and Definitions

47725. (a) This chapter shall be known, and may be cited, as the Household Hazardous Waste Producer Responsibility Act of 2024.

(b) The purpose of this chapter is to provide for the safe and proper management of household hazardous waste, which poses a threat to public health and safety, is costly for California's local governments, and may cause significant damage to the environment when managed improperly.

47726. (a) Except as provided in Section 47740, 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 July 1, 2027.

(b) On or before January 1, 2026, the department shall establish and post on its internet website a list of covered products.

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

47727. 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 47740 and that has not been revoked by the department pursuant to Section 47757.

(2) A conditionally approved plan is an approved plan, except as used in Section 47740.

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

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

(c) "Consumer" means a purchaser, owner, or lessee of a covered product, including a person, business, corporation, limited partnership, nonprofit organization, or governmental entity.

(d) "Contact information" means a name, physical address, mailing address, email address, and phone number.

(e) "Covered product" means a product that meets all the following requirements:

(1) Is flammable, toxic, ignitable, corrosive, reactive, or pressurized.

(2) Is one or more of the following:

(A) Aerosols, cleaners, glues, solvents, oxidizers, and adhesives.

(B) Automotive products.

(C) Electronics and paint products not covered under existing statutorily required programs.

(D) Fire extinguishers with up to 50 pounds of water capacity.

(E) Degreasers, lubricants, liquid adhesives, and strippers.

(F) Gas cylinders, including nonrefillable helium, oxygen, and flammable cylinders with up to 50 pounds of water capacity, propane cylinders with up to one pound, and spray foam insulation tanks.

(G) Lamp kerosene and lighter fluid.

(H) Rust, tar, and bug remover.

(I) Fertilizers, pesticides, insecticides, herbicides, fungicides, and soil fumigants.

(J) Products containing asbestos, mercury, or polychlorinated biphenyls.

(K) Pool chemicals and photochemicals.

(L) Concrete mix containing corrosive lime.

(M) Universal ~~waste~~ waste, as defined in Section 25123.8 of the Health and Safety Code.

(3) Satisfies either of the following criteria:

(A) Meets the criteria for household hazardous waste, as defined in Section 25218.1 of the Health and Safety Code, at the time of disposal.

(B) Is defined by the department in regulations as household hazardous waste.

(4) Is neither of the following:

(A) A product that is subject to another statewide extended producer responsibility program pursuant to state law.

(B) Health and beauty products.

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

(g) "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 with regard to 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.

(h) "Participant producer" means a producer that is registered with the PRO.

(i) (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.

(j) “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 the producers to design, submit, and administer a producer responsibility organization pursuant to this chapter.

(k) “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 47740) and submitted to the department for approval pursuant to Section 47740.

(l) “Sell” or “sales” means a transfer of title of a covered product for consideration, including a remote sale conducted through a sales outlet, catalog, internet website, online marketplace, or similar electronic means. For purposes of this chapter, “sell” or “sales” includes a lease through which a covered product is provided to a consumer by a manufacturer, wholesaler, or retailer.

Article 2. Producers

47730. (a) No later than 90 days after the department’s approval of the PRO, pursuant to subdivision (c) of Section 47726, a producer shall register with the PRO.

(b) No later than 30 days after the effective date of the regulations described in subdivision (a) of Section 47726, a producer shall notify the department electronically that the producer has registered with the PRO.

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

(d) Upon approval of a plan pursuant to Section 47740, 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 is registered with the PRO.

(2) The covered product is accounted for in the plan.

(3) The department has approved the plan.

(e) If an entity does not meet the definition of a 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 at that point 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.

47731. (a) No later than 180 days after the effective date of the regulations described in Section 47726, a producer shall provide to the department, in a form and manner established by the department, both of 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 contact information or list, and upon the department's request.

Article 3. Producer Responsibility Organizations

47735. *A* The PRO shall have a governing board consisting of participant producers that represent the diversity of covered products.

47736. If 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 a plan submitted by another PRO.

47737. *A* The PRO shall notify the department within 30 calendar days of any the following:

(a) The end of a three-month period during which the PRO unsuccessfully attempted to obtain a fee, records, or information from a participant producer.

(b) The date that a producer no longer participates in the PRO's approved plan.

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

47738. Within 24 months of the effective date of the regulations described in Section 47726, *a* the PRO with an approved plan shall provide a free and convenient collection and management system for covered products.

Article 4. Producer Responsibility Plans

47740. (a) Within 12 months of the effective date of the regulations described in Section 47726, a PRO shall develop and submit a proposed plan to the department, in a form and manner determined by the department.

(b) Within six months of receipt of a proposed plan, the department shall approve, approve in part, or disapprove the plan.

(c) 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.

(d) If the department disapproves a proposed plan or a revised plan, then the department shall notify the PRO of the disapproval and specify the reasons for disapproval. Within 30 days of receipt of notice of disapproval, the PRO shall submit a revised plan.

(e) (1) If the department approves a proposed plan or a revised plan in part, then the department shall notify the PRO of the partial approval and identify the portions of the plan that do not comply with this chapter.

(2) Within 30 days of receipt of the notice of partial approval, the PRO shall submit a revised plan to the department.

(3) The PRO shall implement the approved parts of the plan within 90 days of receipt of the notice of partial approval, or as otherwise agreed to by the department.

(f) Within 30 days of receipt of a revised plan, the department shall approve, approve in part, or disapprove the revised plan.

(g) If the department has not approved, approved in part, or disapproved a plan within one year of receipt of the plan, then the plan shall be deemed conditionally approved and the department shall notify the PRO of the conditional approval.

(h) The department may impose additional requirements for any portion of a proposed plan, a revised plan, or a conditionally approved plan that does not comply with this chapter and that has not been approved.

(i) When reviewing a proposed plan, revised plan, or a conditionally approved plan, the department may solicit information from producers, other agencies or departments, or stakeholders as the department deems appropriate.

(j) The department may review an approved plan or a conditionally approved plan at any time. If the department finds that an approved plan or a conditionally approved plan is deficient, then it may recommend modifications.

(k) Any substantial changes to an approved plan shall be submitted to the department for approval.

(l) (1) An approved plan and a conditionally approved plan shall be a public record, except that financial, production, or sales data reported by the PRO to the department is not a public record 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.

(2) ~~A~~ *The* PRO may submit to the department a redacted version of the approved plan or conditionally approved plan that removes any proprietary or confidential information.

(3) Within 90 days of approval, conditional approval, or revision of a plan, the department shall post on its internet website the plan and a list of all the participant producers covered by the plan.

(m) Within 24 months of the effective date of the regulations described in Section 47726, a PRO shall have a plan approved or conditionally approved by the department, and each producer shall be subject to an approved plan or conditionally approved plan.

47741. A plan shall do all of the following:

(a) Be designed to ensure the safe and convenient collection and management of covered products.

(b) Include the contact information of each participant producer that is covered by the plan.

(c) Include a financial section that demonstrates how the PRO will comply with Section 47745, including, but not limited to, a five-year budget that demonstrates how the PRO will comply with subdivision (b) of Section 47745.

(d) Include a section describing the PRO's 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 such time as 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.

(e) 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 both of the following:

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

(2) Include information for consumers on how to avoid improper disposal of a covered product.

47742. (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 47740. The PRO shall submit the revised plan to the department 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 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. If the department disapproves the PRO's determination, the department may indicate to the PRO which sections 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 47740. 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

47745. 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 participant producers that reflects sales volumes and the cost to manage the covered products that a 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 will cover all of the PRO's budgeted costs for each cost category. Budgeted cost categories 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 includes full personnel costs, to implement and enforce this chapter, consistent with the regulations described in Section 47726. For purposes of this paragraph, PRO implementation begins upon the department's approval of the PRO's plan, except the department's costs shall include actual regulatory development costs and other startup costs incurred before plan's submittal and approval.

(3) The reserve shall include funds to operate the PRO if there are unexpected events, losses of income, or large unbudgeted expenses. The reserve shall also protect the infrastructure that 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. When 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. If 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 (d) of Section 47741.

(c) On a schedule determined by the department, pay the department fees to cover the department's cost as described in Section 47747.

(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 and pursuant to Section 47752. 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.

(e) Have adequate financial responsibility and financial controls in place, including fraud prevention measures, to ensure proper management of funds.

47746. Each participant producer shall, through the PRO, pay all administrative and operational costs associated with establishing and implementing the PRO's approved plan, including the cost of the collection, transportation, and safe and proper management of covered products.

47747. (a) Within four months of the effective date of the regulations described in Section 47726, 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's 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 Household Hazardous Waste Producer Responsibility Fund, which is hereby established in the State Treasury.

(c) Upon appropriation by the Legislature, moneys in the Household Hazardous Waste Producer Responsibility Fund shall be expended by the department to implement and enforce this chapter and to reimburse any outstanding loans made from other funds used to finance the development of the regulations and the startup costs of the department's activities pursuant to this chapter.

(d) The moneys in the Household Hazardous Waste Producer Responsibility Fund shall only be expended for purposes described in subdivision (c).

47748. (a) If the plan relies on a local jurisdiction to collect or manage a covered product, or to otherwise comply with Section 47738, then the PRO shall reimburse the local jurisdiction for costs associated with the collection and management of the covered product.

(b) Reimbursement costs shall be limited to the actual costs of transportation and management of a covered product.

Article 6. Records, Audits, and Reports

47750. (a) The PRO shall keep board minutes, books, and records that clearly reflect the activities and transactions of the PRO for a period of not less than five years.

(b) The department may audit the PRO annually.

(c) The failure of the PRO, a participant 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.

47751. (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) Within 14 days of a request from the department, 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 47755) on a producer, PRO, manufacturer, distributor, retailer, dealer, or importer that fails to provide the department with the access required pursuant to this section.

47752. (a) The PRO shall retain an independent certified 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's audit for compliance with this chapter and consistency with the PRO's approved plan and the annual report required by Section 47753. 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).

(b) The items submitted to the department as part of the independent audit shall include all of the following:

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

- (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.

(c) The PRO shall include the independent audit in its annual report submitted to the department pursuant to Section 47753 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.

47753. 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) Updated contact information for participant producers.
- (e) An estimate of the quantity of covered products sold in or into the state by participant producers, as determined by the best available commercial data.
- (f) A summary of efforts made as part of the comprehensive statewide education and outreach program, as required by subdivision (e) of Section 47741, including the PRO's evaluation of the effectiveness of the program.
- (g) Recommendations for any future proposed substantial changes to the plan.
- (h) Any other information required by the regulations adopted pursuant to Section 47726.

47754. (a) No later than 120 days after the date the department receives an annual report, the department shall notify the PRO if the annual report is compliant or noncompliant.

(b) 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.

(c) The department may consult with or submit the annual report to a state agency or department if it determines it is necessary to determine the annual report's compliance or noncompliance. 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

47755. 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 47756 or received a certification letter described in subdivision (e) of Section 47756.

47756. (a) Within 12 months of the effective date of the regulations described in Section 47726, 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.

(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, and its brands of covered products, from the compliance list on its internet website.

(e) The department shall provide a certification letter to a producer that is not listed on the department's internet website as a compliant producer, but that has demonstrated compliance with this chapter to the department. The certification letter shall state that the producer of a covered product is in compliance with this chapter. The department may update the compliance list on its website.

47757. (a) The department may administratively impose on any person who is in violation of this chapter a civil penalty of up to the following amounts:

(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) 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 violator took good faith measures to comply with this chapter and the period of time over which these noncompliant actions were taken.
- (5) The willfulness of the 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 a written finding that a PRO, producer, importer, distributor, or any other party regulated pursuant to this chapter has not met a material requirement of this chapter, in addition to any other penalties authorized pursuant to 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 pursuant to this chapter, 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 Household Hazardous Products Penalty Account, which is hereby created in the Household Hazardous Waste Producer Responsibility Fund. Upon appropriation by the Legislature, moneys in the Household Hazardous Products Penalty Account shall be available for expenditure by the department on activities related to the collection, reuse, and recycling of covered products, grants for related purposes, and the administration and enforcement of this chapter.

(e) 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 pursuant to this chapter and mandates minimum due process requirements.

47758. (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.~~

47759. A producer shall not be subject to penalties pursuant to this article for noncompliance with subdivision (d) of Section 47730 until two years after the effective date of the regulations described in Section 47726.

Article 8. Antitrust Immunity

47760. (a) Except as provided in subdivision (b), an action that is taken by a producer or PRO 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 PRO is exercising authority pursuant to this chapter.

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

(1) The creation, implementation, or management of a plan approved or conditionally approved by the department pursuant to Article 4 (commencing with Section 47740) 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.