

AMENDED IN ASSEMBLY JUNE 1, 2010

AMENDED IN ASSEMBLY APRIL 6, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2139

Introduced by Assembly Member Chesbro

February 18, 2010

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

This bill would create the California Product Stewardship Act and would ~~define the term "covered product" as including home-generated medical sharps, pesticides intended for residential use, and nonrefillable propane cylinders, as defined~~ *require the department, by January 1, 2012, in consultation with specified state agencies, to submit a report to the Legislature recommending that one or more consumer products be included as a covered product for purposes of the act.*

The bill would require, ~~by September 30, 2011,~~ *a producer of a covered product, one year after the effective date of a statute designating a product as a covered product,* or the product stewardship organization

created by one or more producers of ~~a~~ *that* covered product *to act as an agent on their behalf*, to submit a product stewardship plan to the department, which would be required to include specified elements, including performance goals, a collection rate, and product goals. ~~On or before January 1, 2012, the~~ *The* department would be required to review and either ~~approve or disapprove~~ *deem* the product stewardship plan submitted to the department *as complete or incomplete, within 45 days after receiving the plan.*

The bill would prohibit the producer of a covered product, ~~on and after July 1, 2012,~~ from selling a covered product *6 months after the plan is deemed complete* unless the producer or product stewardship organization of the covered product has submitted a plan to the department that is ~~approved~~ *deemed complete* by the department. The bill would require the department, ~~on July 1, 2012~~ *6 months after a plan is deemed complete*, and on January 1 and July 1 annually thereafter, to post on its Internet Web site the covered products that are not in compliance and the bill would require a wholesaler or retailer that distributes or sells covered products to monitor the department's Internet Web site to determine if a covered product is in compliance. The act would require a producer of a covered product to collect the covered product pursuant to the product stewardship plan and to meet the performance goals included in the product stewardship plan. *The bill would provide that a product stewardship program is in compliance with the act only if it achieves the collection rate specified in the product stewardship plan.*

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

A producer or product stewardship organization submitting a product stewardship plan would be required to pay the department ~~a~~ *an annual fee of an unspecified amount when submitting the plan for review and approval and to pay an annual administrative fee of an unspecified amount that would be set by the department.* The bill would provide for the imposition of administrative civil penalties upon a producer who does not comply with the act's requirements. The bill would create in the existing Integrated Waste Management Fund the Product Stewardship Account and would require that the administrative fees be deposited into that account and that the penalties be deposited into the Product Stewardship Penalty Subaccount that the bill would create in

that account. The bill would authorize the fees and penalties to be expended, upon appropriation by the Legislature, to cover the board's program implementation costs and as incentives to enhance recyclability and redesign efforts and to reduce environmental and safety impacts of covered products.

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

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

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

3 *(a) This act requires the Department of Resources Recycling*
4 *and Recovery to develop, implement, and administer the Product*
5 *Stewardship Program.*

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

9 *(c) The program established by this act will test the efficacy of*
10 *a consistent framework approach for managing products that have*
11 *significant end-of-life waste management impacts as well as*
12 *impacts on the environment and public health. This framework*
13 *approach provides a consistent process that includes goals and*
14 *oversight so that a level playing field exists among all producers,*
15 *while maintaining flexibility for specific products and for producers*
16 *to design their product stewardship programs.*

17 *(d) End-of-life management of solid waste has historically been*
18 *the responsibility of state and local governments with the primary*
19 *physical management and financial burden placed on local*
20 *government and ratepayers who have no ability to influence the*
21 *design of the products or packaging to reduce waste management*
22 *costs.*

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

26 *(f) Implementing product stewardship programs that are funded*
27 *and managed by the producers of products with significant*
28 *end-of-life impacts reduces the role of, and cost to, state and local*
29 *government and ratepayers.*

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

8 (h) *The Product Stewardship Program established by this act*
9 *will test the applicability of extended producer responsibility and*
10 *may be used as a template for including additional products in*
11 *these programs.*

12 SECTION 1.

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

15
16 CHAPTER 5. CALIFORNIA PRODUCT STEWARDSHIP PROGRAM

17
18 Article 1. Findings and Declarations

19
20 48800. ~~The Legislature finds and declares all of the following:~~

21 ~~(a) This chapter requires the Department of Resources Recycling~~
22 ~~and Recovery to develop, implement, and administer the Product~~
23 ~~Stewardship Program.~~

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

27 ~~(c) The program established by this chapter will test the efficacy~~
28 ~~of a consistent framework approach for managing products that~~
29 ~~have significant end-of-life waste management impacts as well as~~
30 ~~impacts on the environment and public health. This framework~~
31 ~~approach provides a consistent process that includes goals and~~
32 ~~oversight so that a level playing field exists among all producers;~~
33 ~~while maintaining flexibility for specific products and for producers~~
34 ~~to design their product stewardship programs.~~

35 ~~(d) End-of-life management of solid waste has historically been~~
36 ~~the responsibility of state and local governments with the primary~~
37 ~~physical management and financial burden placed on local~~
38 ~~government and ratepayers, who have no ability to influence the~~
39 ~~design of the products or packaging to reduce waste management~~
40 ~~costs.~~

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

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

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

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

19
20 Article 2:1. General Provisions

21
22 48800.1.

23 48800. This chapter shall be known and may be cited as the
24 California Product Stewardship Act.

25
26 Article 3:2. Definitions

27
28 48800.2. For purposes of this chapter, and unless the context
29 otherwise requires, the definitions in this article govern the
30 construction of this chapter.

31 48800.3. “Brand” means a name, symbol, word, or mark that
32 identifies a product, rather than its components, and attributes the
33 product to the owner or licensee of the brand as the producer.

34 48800.4. “Collection rate” means a quantitative measure that
35 establishes the amount of a covered product required to be collected
36 pursuant to a product stewardship plan.

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

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

4 (a) ~~“Covered product 1” means home-generated sharps waste,~~
 5 ~~including, but not limited to, hypodermic needles, pen needles,~~
 6 ~~intravenous needles, lancets, and other devices, that are used to~~
 7 ~~penetrate the skin for the delivery of medications derived from a~~
 8 ~~household, including from a multifamily residence or household.~~

9 (b) (1) ~~“Covered product 2” means pesticides, as defined in~~
 10 ~~Section 12753 of the Food and Agricultural Code, that are intended~~
 11 ~~for residential use, including any of the following:~~

12 (A) ~~A spray adjuvant.~~

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

20 (2) ~~For purposes of this chapter, pesticides intended for~~
 21 ~~residential use shall be limited to those defined as a consumer~~
 22 ~~product, pursuant to Section 48800.5, but shall exclude those~~
 23 ~~consumer products that are intended primarily for residential~~
 24 ~~cleaning and disinfecting.~~

25 (c) ~~“Covered product 3” means nonrefillable propane cylinders,~~
 26 ~~as defined in Section 178.65 of Title 49 of the Code of Federal~~
 27 ~~Regulations.~~

28 48800.6. *“Covered product” means a consumer product that*
 29 *is used or discarded in this state and is made subject to this chapter*
 30 *pursuant to Article 3 (commencing with Section 48810).*

31 48800.7. “Department” means the Department of Resources
 32 Recycling and Recovery.

33 48800.8. “Performance goal” means the collection rate of a
 34 covered product, and may include, but is not limited to, the reuse
 35 and recycling rate established by the product stewardship plan for
 36 that covered product.

37 48800.9. “Producer” shall be determined, with regard to a
 38 covered product that is sold, offered for sale, or distributed in the
 39 state, as meaning one of the following:

1 (a) A person who manufactures the covered product and who
2 sells, offers for sale, or distributes that covered product in the state
3 under that person’s own name or brand.

4 (b) If there is no person who sells, offers for sale, or distributes
5 the covered product in the state under the person’s own name or
6 brand, the producer of the covered product is the owner or licensee
7 of a trademark or brand under which the covered product is sold
8 or distributed in the state, whether or not the trademark is
9 registered.

10 (c) If there is no person who is a producer of the covered product
11 for purposes of subdivisions (a) and (b), the producer of that
12 covered product is the person who imports the product into the
13 state for sale or distribution.

14 48800.10. “Product goal” means those qualitative or
15 quantitative goals determined by the producer to measure
16 improvements that reduce the ~~life-cycle~~ *life-cycle* impacts of a
17 covered product.

18 48800.11. “Product stewardship” means requiring the producer
19 of a covered product, and all other entities involved in the product
20 chain, to share in the responsibility of reducing the ~~life-cycle~~
21 *life-cycle* impact of the covered product and its packaging,
22 including requiring the producer who makes design and marketing
23 decisions for the covered product to bear the primary responsibility
24 for this reduction.

25 48800.12. “Product stewardship organization” means an
26 organization ~~appointed~~ *created* by one or more producers to act
27 as an agent on behalf of the producer to design, submit, and
28 administer a product stewardship plan pursuant to this chapter.

29 48800.13. “Product stewardship plan” or “plan” means a plan
30 written by an individual producer or a product stewardship
31 organization, on behalf of one or more producers, that includes all
32 of the information required by Section 48813.

33 48800.14. “Recycling rate” means a quantitative measure that
34 establishes the amount of a collected covered product that is
35 recycled as compared to the total amount of the covered product
36 that is collected, including the amount of the covered product that
37 is discarded for reuse, energy recovery, or safe disposal.

38 48800.15. “Reporting period” means the period commencing
39 January 1 and ending on December 31 of the same calendar year.

1 48800.16. “Reuse rate” means a quantitative measure that
 2 establishes the amount of a collected covered product that is reused
 3 as compared to the total amount of the covered product that is
 4 collected, including the amount of the covered product that is
 5 discarded by recycling, energy recovery, or safe disposal.

6 48800.17. “Sell” or “sales” means any transfer of title of a
 7 covered product for consideration, including a remote sale
 8 conducted through a ~~sale~~ sales outlet, catalog, or Internet Web site
 9 or similar electronic means, but does not include a lease.

10

11 *Article 3. Covered Product Designation*

12

13 48810. (a) *On or before January 1, 2012, the department,*
 14 *following one or more noticed public workshops and in*
 15 *consultation with the State Air Resources Board, the Department*
 16 *of Conservation, the State Department of Public Health, the*
 17 *Department of Toxic Substances Control, the State Water*
 18 *Resources Control Board, and other appropriate state agencies,*
 19 *shall submit a report to the Legislature recommending the inclusion*
 20 *of one or more consumer products as a covered product for*
 21 *purposes of this chapter.*

22 (b) *The department shall recommend a consumer product be*
 23 *included as a covered product pursuant to this section only if the*
 24 *manufacture, transport, use, or disposal of the consumer product*
 25 *poses or imposes one or more of the following environmental,*
 26 *waste management, or health impacts:*

27 (1) *The consumer product poses a significant threat to public*
 28 *health and safety when discarded.*

29 (2) *The consumer product poses a threat of increased*
 30 *greenhouse gas emissions.*

31 (3) *The consumer product imposes significant end-of-life*
 32 *management costs on state or local government.*

33 (c) *The factors the department shall consider in recommending*
 34 *a consumer product pursuant to this section shall include, but are*
 35 *not limited to, all of the following:*

36 (1) *Current impacts to local government and general ratepayers.*

37 (2) *Public health, toxicity, and significant environmental and*
 38 *safety impacts and benefits.*

39 (3) *Resource recovery and material conservation potential,*
 40 *including the potential for product redesign to achieve greater*

1 waste reduction, toxicity reduction, and water consumption
2 reduction, an increase in recycled content, and a greater capability
3 for being recycled.

4 (4) Energy use and conservation potential.

5 (5) Climate change impacts and benefits.

6 (6) Existing infrastructure capacity for material management
7 and potential for expansion.

8 (7) Success in collecting and processing similar products in
9 other programs in the United States and other countries.

10 (8) The selection of products in extended producer responsibility
11 programs in other states.

12 (9) Ocean pollution impacts.

13 (10) Stormwater runoff impacts.

14 (11) The lack of an existing product stewardship or other
15 regulatory system for the product.

16 (12) Life-cycle net environmental impacts.

17 (13) Public safety and public health uses of products.

18 (d) (1) The requirement for submitting a report imposed under
19 subdivision (a) is inoperative on January 1, 2016, pursuant to
20 Section 10231.5 of the Government Code.

21 (2) A report required to be submitted pursuant to subdivision
22 (a) shall be submitted in compliance with Section 9795 of the
23 Government Code.

24 48811. A consumer product shall become a covered product
25 pursuant to this chapter on the effective date of a statute amending
26 this chapter that designates that consumer product as a covered
27 product.

28

29 Article 4. Product Stewardship Program

30

31 ~~48810.~~

32 48812. This chapter does not limit, supersede, duplicate, or
33 otherwise conflict with the authority of the Department of Toxic
34 Substances Control under Section 25257.1 of the Health and Safety
35 Code to fully implement Article 14 (commencing with Section
36 25251) of Chapter 6.5 of Division 20 of the Health and Safety
37 Code, including the authority of the Department of Toxic
38 Substances Control to include products in its product registry.

39 48813. (a) ~~On or before September 30, 2011~~ One year after
40 the effective date of a statute designating a product as a covered

1 *product*, a producer or a product stewardship organization that is
2 created by one or more producers of a covered product shall submit
3 a product stewardship plan to the department. A product
4 stewardship organization created pursuant to this section shall be
5 open for participation by all producers of a covered product. *plan*
6 *to the department.*

7 (b) Each product stewardship plan for a covered product shall
8 address the environmental impacts of the covered product over
9 the entire ~~life cycle~~ *life-cycle* of that product, including the product
10 design, manufacture, and distribution of the covered product, and
11 the collection, transportation, reuse, recycling, and final disposition
12 of the discarded covered product, in accordance with this chapter.
13 *A producer or product stewardship organization shall consult with*
14 *stakeholders during the development of the product stewardship*
15 *plan, including soliciting stakeholder comments and responding*
16 *to stakeholder comments before submitting the product stewardship*
17 *plan.* The plan shall include, at a minimum, all of the following
18 elements:

19 (1) Contact information for all participating producers.

20 (2) A description of the covered product and associated brands
21 covered by the plan.

22 (3) Performance goals, including a detailed description of how
23 the performance goals will be achieved and how results will be
24 measured, and including all of the following:

25 (A) A collection rate, which shall be included as a performance
26 goal for the covered product.

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

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

32 (4) The roles and responsibilities of key players along the
33 product chain.

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

35 (6) Strategies for managing and reducing the ~~life cycle~~ *life-cycle*
36 impacts of the covered product, steps that will be taken to ensure
37 environmentally sound management, and how impacts will be
38 tracked over time to show continual improvement.

39 (7) Education and outreach activities.

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

11 ~~48814. (a) On or before January 1, 2012, the department shall~~
12 ~~review the product stewardship plan submitted to the department~~
13 ~~and either approve or disapprove the plan. If the department does~~
14 ~~not approve the plan, the department shall notify the producer or~~
15 ~~organization that submitted the plan and the producer or~~
16 ~~organization shall revise and resubmit the disapproved product~~
17 ~~stewardship plan within 30 days after receiving the notification.~~

18 *48814. (a) No more than 45 days after receiving a product*
19 *stewardship plan pursuant to Section 48813, the department shall*
20 *review the product stewardship plan and either deem the plan*
21 *complete or incomplete. If the department does not deem the plan*
22 *complete, the department shall notify the producer or organization*
23 *that submitted the plan of the deficiencies, and the producer or*
24 *organization shall revise and resubmit the plan within 45 days of*
25 *the notification. If the department deems the plan complete, the*
26 *department shall notify the producer or organization that the plan*
27 *is complete.*

28 (b) All product stewardship plans submitted to the department
29 shall be available to the public on the department's Internet Web
30 site.

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

34 *48814.5. (a) A product stewardship program complies with*
35 *this chapter only if it achieves the collection rate specified in a*
36 *product stewardship plan that the department has deemed complete*
37 *pursuant to Section 48814.*

38 *(b) If a product stewardship program achieves a collection rate*
39 *of at least 95 percent, the producer or product stewardship*

1 *organization shall not be required to pay the annual fee imposed*
2 *pursuant to Section 48819.*

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

8 48815. ~~On and after July 1, 2012~~ *Six months after the*
9 *department deems a plan for a covered product to be complete, a*
10 *producer shall not offer a covered product for sale in this state or*
11 *offer a covered product for promotional purposes in this state*
12 *unless the producer or a product stewardship organization*
13 *consisting of producers of the covered product has submitted a*
14 *product stewardship plan to the department pursuant to Section*
15 *48813 and the product stewardship plan is ~~approved~~ deemed*
16 *complete by the department pursuant to Section 48814.*

17 ~~On July 1, 2012~~ *Six months after the department deems a*
18 *plan for a covered product to be complete, and on January 1 and*
19 *July 1 annually thereafter, the department shall post on its Internet*
20 *Web site covered products that are not in compliance with this*
21 *section.*

22 *(c) A wholesaler or retailer that distributes or sells covered*
23 *products shall monitor the department's Internet Web site to*
24 *determine if the sale of a covered product is in compliance with*
25 *this section.*

26 48816. *A producer of a covered product shall do all of the*
27 *following when implementing this chapter, including an ~~approved~~*
28 ~~*product stewardship plan:*~~ *a product stewardship plan deemed*
29 *complete by the department:*

30 *(a) Collect the individual covered product to be reused or*
31 *recycled pursuant to the product stewardship plan for the covered*
32 *product submitted by the producer or product stewardship*
33 *organization pursuant to Section 48813 and ~~approved~~ deemed*
34 *complete by the department pursuant to Section 48814.*

35 *(b) Meet the performance goals included in the product*
36 *stewardship plan.*

37 *(c) Provide collection services, in accordance with Section*
38 *48817, for the covered product, that do not charge a fee at the time*
39 *when the covered product is collected for either recycling or*
40 *disposal.*

1 (d) Pay costs associated with the product stewardship plan,
2 including the costs of collection, transportation, and recycling or
3 disposal, or both, of the covered product.

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

5 48817. A covered product shall be handled and recycled, or if
6 not feasible to be recycled, disposed of, in accordance with all
7 state and federal laws and regulations and local ordinances and
8 regulations, including, but not limited to, any law, regulation, or
9 ordinance that regulates hazardous waste.

10
11 Article 5. Reporting
12

13 48818. (a) Beginning one year after a product stewardship
14 ~~plan is approved or no later than January 1, 2013, whichever date~~
15 ~~is earlier, and every subsequent year thereafter, each producer or~~
16 ~~plan is deemed complete, and every January 1 for each subsequent~~
17 ~~year thereafter, each producer or~~ stewardship organization
18 implementing a product stewardship plan shall prepare and submit
19 to the department an annual report describing the activities carried
20 out pursuant to the product stewardship plan during the previous
21 reporting period, including, but not limited to, all of the following:

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

27 (2) Whether the producer or product stewardship organization,
28 in implementing the plan, attained the product goals for the covered
29 product, and if the product goals were not met, what actions the
30 producer or stewardship organization will take during the next
31 reporting period to achieve those product goals.

32 (b) The department shall review a report submitted pursuant to
33 this section and shall ~~approve the report~~ *deem the report to be*
34 *competent* if the department determines the report contains the
35 information required by this section.

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

Article 6. Financial Provisions

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~~48819. (a) The producer or product stewardship organization submitting a product stewardship plan shall pay the department an administrative fee in the amount of _____ when the plan is submitted for review and approval and thereafter pay an annual administrative fee of _____.~~

48819. (a) A producer or product stewardship organization that submits a product stewardship plan to the department shall pay an annual fee to the department pursuant to this section.

(b) The department shall set the annual fee in an amount that is adequate to cover the department’s full costs of reviewing and acting upon product stewardship plans and annual reports. The department may establish a variable annual fee based on relevant factors, including, but not limited to, the proportion of a covered product produced by the feepayer compared to the total amount of the covered product produced by all producers or product stewardship organizations.

~~(b)~~

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

(d) If a product stewardship program achieves the collection rate specified in subdivision (b) of Section 48814.5, the producer or the product stewardship organization shall not be required to pay the annual fee.

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

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

(c) All penalties collected pursuant to this chapter shall be deposited in the Product Stewardship Penalty Subaccount and may be expended by the department, upon appropriation by the Legislature, to cover the department’s costs to implement this chapter.

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

4
5 Article 7. Enforcement
6

7 48821. (a) If, after holding a public hearing, the department
8 finds that a producer has failed to make a good faith effort to
9 comply with this chapter, the department shall issue a compliance
10 order with a schedule for achieving compliance.

11 (b) If, after issuing an order and schedule for compliance
12 pursuant to subdivision (a), the department finds that the producer
13 has failed to make a good faith effort to comply with this chapter,
14 the department may impose an administrative civil penalty of ~~_____~~
15 *five thousands dollars (\$5,000)* per day until the producer achieves
16 compliance.

17 (c) For purposes of this section, “good faith effort” means all
18 reasonable and feasible efforts by a producer ~~towards implementing~~
19 ~~the requirements of this chapter, including, but not limited to,~~
20 ~~meeting the performance goals specified in the plan., or the~~
21 ~~program implementing a product stewardship plan deemed~~
22 ~~complete by the department, toward implementing the requirements~~
23 ~~of this chapter, including, but not limited to, meeting the collection~~
24 ~~rate specified in the plan.~~

25 (d) *If a product stewardship organization submits a plan, on*
26 *behalf of a producer, that has been deemed complete by the*
27 *department and the department finds that the program established*
28 *by the plan has made a good faith effort to implement this chapter,*
29 *the department shall not deem the producer to have failed to make*
30 *a good faith effort to implement this chapter.*

31 48822. (a) The department, or its designee, may inspect, audit,
32 or require and review third-party audits of producers, product
33 stewardship organizations, and service providers, including
34 collectors and recyclers, that are utilized to fulfill the requirements
35 of a product stewardship plan.

36 (b) For purposes of this section, a “service provider” means any
37 person who is authorized to perform an action to implement the
38 product stewardship plan with regard to the collection, recycling,

- 1 reuse, or disposal of a covered product, but does not include the
- 2 consumer of the covered product.

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