S T A T E O F N E W Y O R K

5854

2009-2010 Regular Sessions

I N A S S E M B L Y

February 20, 2009

Introduced by M. of A. BRODSKY -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to the management of dry cell batteries and to repeal section 27-0719 of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings and intent. The legislature finds and declares that dry cell batteries which contain cadmium, lead, and mercury can have significant toxicological effects on humans and wildlife when improperly disposed of. The legislature also finds that the silver which is contained in silver oxide batteries is a federal and state regulated hazardous waste. The legislature also finds that the potential environmental and public health problems associated with these batteries can be minimized by requiring the reduction of battery toxicity, establishing a consumer education program on appropriate battery use and waste battery disposition, and requiring the use of a labeling system to identify battery chemistry.

The legislature further finds and declares that a statewide toxic waste source reduction strategy must begin with fundamental changes in manufacturing practices and consumer disposal habits; that the manufacturers of products containing high levels of cadmium, lead, and mercury that are discarded after serving their intended use must assume financial responsibility for their environmentally sound disposal; and that in particular, the dry cell battery industry must begin to bear a more equitable share of the environmental and social costs associated with manufacturing batteries which place a burden on the state's limited disposal options.

Therefore, it is the intent of the legislature to institute a comprehensive dry cell battery management program in New York state to reduce both the toxicity of batteries sold and the extent to which batteries of

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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toxic concern are disposed of in the state's solid waste management facilities.

S 2. Section 27-0719 of the environmental conservation law is REPEALED.

S 3. Article 27 of the environmental conservation law is amended by adding a new title 29 to read as follows:

TITLE 29

DRY CELL BATTERIES

SECTION 27-2901. SHORT TITLE.
27-2903. DEFINITIONS.
27-2905. BATTERY TOXICITY REDUCTION REQUIREMENTS.
27-2907. BATTERY CHEMISTRY IDENTIFICATION REQUIREMENTS.
27-2909. BATTERY MANAGEMENT PLANS.
27-2911. BATTERY COLLECTION PLANS.
27-2913. DISPOSAL RESTRICTIONS.

S 27-2901. SHORT TITLE.

THIS TITLE SHALL BE KNOWN AND MAY BE CITED AS THE "DRY CELL BATTERY MANAGEMENT AND MANUFACTURER RESPONSIBILITY ACT".

S 27-2903. DEFINITIONS.

FOR THE PURPOSES OF THIS TITLE:

1. "ANODE" MEANS THE NEGATIVE ELECTRODE OF AN ELECTROCHEMICAL CELL, WHERE OXIDATION TAKES PLACE DURING DISCHARGE.

2. "ALKALINE BATTERY" MEANS A BATTERY CONSTRUCTED WITH A MANGANESE DIOXIDE CATHODE, A ZINC ANODE, AND AN ALKALINE SOLUTION AS THE ELECTROLYTE.

3. "BATTERIES OF TOXIC CONCERN" MEANS NICKEL-CADMIUM, SMALL SEALED LEAD-ACID, SILVER OXIDE, AND MERCURIC OXIDE BATTERIES, OR ANY BATTERY CONTAINING AN ANODE OR CATHODE WHICH IS A LISTED HAZARDOUS WASTE UNDER REGULATIONS PROMULGATED BY THE DEPARTMENT PURSUANT TO SECTION 27-0903 OF THIS ARTICLE.

4. "BATTERY" MEANS ONE OR MORE IMMOBILIZED ELECTROCHEMICAL STORAGE CELLS THAT DELIVER ELECTRICAL ENERGY PRODUCED IN AN OXIDATION-REDUCTION REACTION TO AN EXTERNAL CIRCUIT. EACH BATTERY CONTAINS AN ANODE AND A CATHODE, WITH OR WITHOUT AN ELECTROLYTE.

5. "BATTERY COMPONENT" MEANS THE PARTS THAT CONSTITUTE A BATTERY, INCLUDING THE CATHODE, ANODE, ELECTROLYTE, CASING, INSULATOR, VENT, AND SEPARATOR.

6. "BATTERY INDUSTRY" MEANS BATTERY MANUFACTURERS, DISTRIBUTORS, AND RETAILERS.

7. "BATTERY PACK" MEANS ONE OR MORE BATTERIES ENCLOSED IN A HOUSING.

8. "BUTTON BATTERY" MEANS A BATTERY OF A BUTTON OR COIN SIZE OR SHAPE SOLD AT RETAIL OR WHOLESALE.

9. "CATHODE" MEANS THE POSITIVE ELECTRODE OF AN ELECTROCHEMICAL CELL, WHERE REDUCTION TAKES PLACE DURING DISCHARGE.

10. "CELL" MEANS THE BASIC ELECTROCHEMICAL UNIT USED TO GENERATE OR STORE ELECTRICAL ENERGY.

11. "DISTRIBUTOR" MEANS A PERSON WHO SELLS TO A RETAILER OR ANOTHER DISTRIBUTOR BATTERIES OR DEVICES THAT CONTAIN BATTERIES AT THE TIME OF SALE.

12. "EASILY REMOVED" MEANS A BATTERY OR BATTERY PACK WHICH IS EITHER DETACHABLE OR READILY REMOVABLE FROM A PRODUCT WITHOUT CUTTING OR DESOLDERING ANY WIRES.

13. "ELECTROLYTE" MEANS THE MEDIUM WHICH PROVIDES THE ION TRANSPORT MECHANISM BETWEEN THE POSITIVE AND THE NEGATIVE ELECTRODES OF THE CELL.

14. "MANUFACTURER" MEANS A PERSON, FIRM, ASSOCIATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, CORPORATION, OR OTHER ENTITY ENGAGED IN THE

BUSINESS OF MAKING, INVENTING, FABRICATING, ASSEMBLING, OR PACKAGING BATTERIES.

15. "MERCURIC OXIDE BATTERY" MEANS A BATTERY MANUFACTURED WITH A MERCURIC OXIDE CATHODE, A ZINC ANODE, AND AN ALKALINE SOLUTION AS THE ELECTROLYTE.

16. "MUNICIPALITY" MEANS A LOCAL PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION, COUNTY, CITY, TOWN, OR VILLAGE.

17. "NICKEL-CADMIUM BATTERY" MEANS A BATTERY MANUFACTURED WITH A NICKEL CATHODE, A CADMIUM ANODE, AND AN ALKALINE SOLUTION FOR THE ELECTROLYTE.

18. "NO MERCURY ADDED" MEANS A BATTERY TO WHICH NO MERCURY IS INTENTIONALLY ADDED TO IMPROVE PERFORMANCE, AND MERCURY, IF PRESENT, IS LIMITED TO BEING A NATURALLY-OCCURRING TRACE ELEMENT IN A BATTERY COMPONENT.

19. "RETAILER" MEANS ANY PERSON WHO SELLS BATTERIES DIRECTLY TO THE PUBLIC AT LARGE ON A RETAIL BASIS AND IS NEITHER A MANUFACTURER NOR DISTRIBUTOR OF SUCH BATTERIES.

20. "SILVER OXIDE BATTERY" MEANS A BATTERY MANUFACTURED WITH A SILVER OXIDE CATHODE, A ZINC ANODE, AND AN ALKALINE SOLUTION AS THE ELECTROLYTE.

21. "SMALL SEALED LEAD-ACID BATTERY" MEANS A BATTERY CONSISTING OF POSITIVE AND NEGATIVE ELECTRODE MATERIALS WHICH ARE LEAD OR COMPOUNDS THEREOF, USED IN NONVEHICULAR APPLICATIONS, AND WEIGHING LESS THAN TWENTY-FIVE POUNDS.

22. "SOLID WASTE" HAS THE MEANING SET FORTH IN SECTION 27-0701 OF THIS ARTICLE.

23. "ZINC-CARBON BATTERY" MEANS A BATTERY CONSTRUCTED WITH A MANGANESE DIOXIDE CATHODE, A ZINC ANODE, AND A NON-ALKALINE SOLUTION AS THE ELECTROLYTE.

S 27-2905. BATTERY TOXICITY REDUCTION REQUIREMENTS.

1. MERCURIC OXIDE BATTERIES. ON OR AFTER SEPTEMBER FIRST, TWO THOUSAND NINE, NO PERSON MAY MANUFACTURE FOR DISTRIBUTION, SALE, OR OFFER FOR SALE IN NEW YORK STATE OR DISTRIBUTE, SELL, OR OFFER FOR SALE IN NEW YORK STATE A MERCURIC OXIDE BUTTON BATTERY INTENDED FOR USE IN A WATCH, HEARING AID, CALCULATOR, CAMERA, MICROPHONE, PAGER, OR GREETING CARD OR A PRODUCT WHICH CONTAINS SUCH A BATTERY.

2. ZINC-CARBON BATTERIES.

A. NO PERSON MAY MANUFACTURE FOR DISTRIBUTION, SALE, OR OFFER FOR SALE IN NEW YORK STATE OR DISTRIBUTE, SELL, OR OFFER FOR SALE IN NEW YORK STATE A ZINC-CARBON BATTERY WHICH CONTAINS A MERCURY CONCENTRATION LEVEL OF MORE THAN ONE PART PER MILLION BY WEIGHT OR A PRODUCT WHICH CONTAINS SUCH A BATTERY.

B. ON OR AFTER JULY FIRST, TWO THOUSAND ELEVEN, NO PERSON MAY MANUFACTURE FOR DISTRIBUTION, SALE, OR OFFER FOR SALE IN NEW YORK STATE, OR DISTRIBUTE, SELL, OR OFFER FOR SALE IN NEW YORK STATE A ZINC-CARBON BATTERY WITH ADDED MERCURY OR A PRODUCT WHICH CONTAINS SUCH A BATTERY.

3. ALKALINE BATTERIES.

A. NO PERSON MAY MANUFACTURE FOR DISTRIBUTION, SALE OR OFFER FOR SALE IN NEW YORK STATE OR DISTRIBUTE, SELL, OR OFFER FOR SALE IN NEW YORK STATE AN ALKALINE BATTERY WHICH CONTAINS A MERCURY CONCENTRATION LEVEL OF MORE THAN TWO HUNDRED FIFTY PARTS PER MILLION BY WEIGHT OF THE BATTERY OR A PRODUCT WHICH CONTAINS SUCH A BATTERY; PROVIDED, HOWEVER, THAT A MAXIMUM MERCURY CONCENTRATION LEVEL OF TWENTY-FIVE MILLIGRAMS PER BATTERY SHALL BE ALLOWED FOR ALKALINE BUTTON BATTERIES.

B. ON OR AFTER JULY FIRST, TWO THOUSAND ELEVEN, NO PERSON MAY MANUFACTURE FOR DISTRIBUTION, SALE, OR OFFER FOR SALE IN NEW YORK STATE OR

DISTRIBUTE, SELL, OR OFFER FOR SALE IN NEW YORK STATE AN ALKALINE BATTERY WHICH CONTAINS ADDED MERCURY OR A MERCURY CONCENTRATION LEVEL OF MORE THAN FIVE PARTS PER MILLION BY WEIGHT OF THE BATTERY OR A PRODUCT WHICH CONTAINS SUCH A BATTERY.

4. RECHARGEABLE BATTERIES.

A. NO PERSON MAY MANUFACTURE FOR DISTRIBUTION, SALE, OR OFFER FOR SALE IN NEW YORK STATE OR DISTRIBUTE, SELL, OR OFFER FOR SALE IN NEW YORK STATE ANY PRODUCT WHICH CONTAINS A NICKEL-CADMIUM OR SMALL SEALED LEAD-ACID BATTERY OR BATTERY PACK UNLESS:

(1) IN THE CASE OF A PRODUCT INTENDED FOR USE BY MEMBERS OF A HOUSEHOLD, THE BATTERY CAN BE EASILY REMOVED BY SUCH INDIVIDUALS OR IS CONTAINED IN A BATTERY PACK THAT IS SEPARATE FROM AND CAN BE EASILY REMOVED FROM THE PRODUCT BY SUCH MEMBERS.

(2) IN THE CASE OF OTHER PRODUCTS, THE BATTERY CAN BE EASILY REMOVED BY THE INTENDED USER OF THE PRODUCT OR IS CONTAINED IN A BATTERY PACK THAT IS SEPARATE FROM THE PRODUCT.

(3) IN ALL CASES, THE BATTERY IS CLEARLY MARKED AS TO ITS TYPE SO THAT ITS CHEMICAL CONTENT IS EASILY IDENTIFIED BY USERS, TRANSPORTERS, PROCESSORS, AND RECYCLERS.

B. THE COMMISSIONER SHALL AUTHORIZE THE MANUFACTURE FOR DISTRIBUTION, SALE, OR OFFER FOR SALE IN NEW YORK STATE AND THE DISTRIBUTION, SALE, OR OFFER FOR SALE IN NEW YORK STATE OF A PRODUCT WHICH DOES NOT COMPLY WITH PARAGRAPH A OF THIS SUBDIVISION IF THE COMMISSIONER DETERMINES THAT:

(1) THE PRODUCT WAS AVAILABLE FOR SALE ON OR BEFORE JULY FIFTEENTH, TWO THOUSAND EIGHT, AND THE PRODUCT CANNOT REASONABLY BE REDESIGNED AND MANUFACTURED PRIOR TO JULY FIRST, TWO THOUSAND NINE; PROVIDED, HOWEVER, THAT SUCH AUTHORIZATIONS SHALL NOT APPLY TO PRODUCTS MANUFACTURED ON OR AFTER JULY FIRST, TWO THOUSAND TWELVE; OR

(2) DESIGN OF THE PRODUCT TO COMPLY WITH PARAGRAPH A OF THIS SUBDIVISION WOULD RESULT IN SIGNIFICANT DANGER TO PUBLIC HEALTH AND SAFETY.

5. BATTERY TESTING. MANUFACTURERS OF ZINC-CARBON AND ALKALINE BATTERIES WHICH ARE DISTRIBUTED, SOLD, OR OFFERED FOR SALE IN NEW YORK STATE OR CONTAINED IN PRODUCTS WHICH ARE DISTRIBUTED, SOLD, OR OFFERED FOR SALE IN NEW YORK STATE SHALL, PRIOR TO THE DATES SPECIFIED IN SUBDIVISIONS TWO AND THREE OF THIS SECTION AND ANNUALLY THEREAFTER, TEST SUCH BATTERIES TO VERIFY THAT THE STANDARDS SET FORTH IN SUCH SUBDIVISIONS HAVE BEEN MET AND SHALL FILE SUCH TEST RESULTS WITH THE DEPARTMENT. NO PERSON MAY MANUFACTURE FOR DISTRIBUTION, SALE, OR OFFER FOR SALE IN NEW YORK STATE OR DISTRIBUTE, SELL, OR OFFER FOR SALE IN NEW YORK STATE ZINC-CARBON OR ALKALINE BATTERIES OR PRODUCTS CONTAINING SUCH BATTERIES UNLESS SUCH TESTING VERIFIES THAT SUCH BATTERIES COMPLY WITH SUCH STANDARDS.

S 27-2907. BATTERY CHEMISTRY IDENTIFICATION REQUIREMENTS.

1. UNLESS THE FEDERAL GOVERNMENT ADOPTS REGULATIONS FOR THE IDENTIFICATION OF BATTERY CHEMISTRY BEFORE JANUARY FIRST, TWO THOUSAND ELEVEN, MANUFACTURERS SHALL, AFTER CONSULTATION WITH EACH OTHER, DEVELOP AND USE BY JANUARY FIRST, TWO THOUSAND THIRTEEN A UNIFORM INDUSTRY-WIDE SYSTEM OF EMBLEMS, LABELS, OR OTHER APPROPRIATE MEANS TO ENABLE USERS OF BATTERIES TO QUICKLY AND READILY ASCERTAIN THE CHEMISTRY OF EACH BATTERY DISTRIBUTED, SOLD, OR OFFERED FOR SALE IN NEW YORK STATE. SUCH MEANS OF IDENTIFICATION SHALL BE FILED BY SUCH MANUFACTURERS WITH THE DEPARTMENT NO LATER THAN SEPTEMBER FIRST, TWO THOUSAND TWELVE. ON AND AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN, NO PERSON MAY MANUFACTURE BATTERIES FOR DISTRIBUTION, SALE, OR OFFER FOR SALE IN NEW YORK STATE OR MANUFACTURE BATTERIES TO BE CONTAINED IN A PRODUCT WHICH IS DISTRIBUTED, SOLD, OR OFFERED FOR SALE IN NEW YORK STATE UNLESS SUCH BATTERIES COMPLY WITH

SUCH MEANS OF IDENTIFICATION. ON AND AFTER JULY FIRST, TWO THOUSAND THIRTEEN, NO PERSON MAY DISTRIBUTE, SELL, OR OFFER FOR SALE BATTERIES IN NEW YORK STATE OR DISTRIBUTE, SELL, OR OFFER FOR SALE A PRODUCT CONTAINING BATTERIES IN NEW YORK STATE UNLESS SUCH BATTERIES COMPLY WITH SUCH MEANS OF IDENTIFICATION.

2. THE DEPARTMENT MAY PROMULGATE REGULATIONS FOR BATTERY CHEMISTRY IDENTIFICATION REQUIREMENTS WHICH COMPLY WITH THE REQUIREMENTS OF SUBDIVISION ONE OF THIS SECTION IF MANUFACTURERS HAVE NOT ACHIEVED THE GOALS OF SUCH SECTION BY JANUARY FIRST, TWO THOUSAND THIRTEEN. COMMENCEMENT OF THE RULEMAKING PROCESS BY THE DEPARTMENT SHALL NOT BE A DEFENSE FOR FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION. THE COMMISSIONER SHALL MAINTAIN ON FILE IN THE DEPARTMENT FOR PUBLIC INSPECTION COPIES OF ANY UNIFORM INDUSTRY-WIDE SYSTEM OF EMBLEMS IMPLEMENTED PURSUANT TO THIS SECTION. THE DEPARTMENT SHALL PROVIDE A COPY TO ANY PERSON UPON REQUEST.

S 27-2909. BATTERY MANAGEMENT PLANS.

1. A. ON OR AFTER JULY FIRST, TWO THOUSAND ELEVEN, NO PERSON SHALL SELL, OFFER FOR SALE, OR OFFER FOR PROMOTIONAL PURPOSES IN THIS STATE ANY MERCURIC OXIDE BATTERY, OR ANY NICKEL-CADMIUM OR SEALED LEAD RECHARGEABLE BATTERY, UNLESS THE MANUFACTURER THEREOF HAS OBTAINED THE PRIOR WRITTEN APPROVAL OF THE DEPARTMENT OF A PLAN FOR THE COLLECTION, TRANSPORTATION, RECYCLING, OR PROPER DISPOSAL OF THAT USED DRY CELL BATTERY PURSUANT TO THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION.

ANY TWO OR MORE MANUFACTURERS MAY SUBMIT A JOINT PLAN TO THE DEPARTMENT FOR ANY SPECIFIED MERCURIC OXIDE BATTERY OR RECHARGEABLE BATTERY THAT THEY MANUFACTURE.

B. EVERY MANUFACTURER SHALL BE LIABLE, AT ITS OWN EXPENSE, FOR THE ENVIRONMENTALLY SOUND COLLECTION, TRANSPORTATION, RECYCLING, OR PROPER DISPOSAL OF EVERY USED MERCURIC OXIDE BATTERY, OR USED NICKEL-CADMIUM OR SEALED LEAD RECHARGEABLE BATTERY, AS THE CASE MAY BE, PRODUCED BY IT AND SOLD OR OFFERED FOR PROMOTIONAL PURPOSES IN THIS STATE.

C. MANUFACTURERS MAY ESTABLISH OR UTILIZE A TRADE ASSOCIATION OR A CONSORTIUM COMPRISED OF MEMBERS OF THE DRY CELL BATTERY INDUSTRY, AS APPROPRIATE, IN ORDER TO FACILITATE COMPLIANCE WITH THE REQUIREMENTS OF THIS TITLE.

2. A. (1) NO LATER THAN JANUARY FIRST, TWO THOUSAND TEN, EVERY MANUFACTURER OF MERCURIC OXIDE BATTERIES, NICKEL-CADMIUM RECHARGEABLE BATTERIES, OR SEALED LEAD RECHARGEABLE BATTERIES SOLD OR OFFERED FOR PROMOTIONAL PURPOSES IN THIS STATE SHALL PREPARE AND SUBMIT A BATTERY MANAGEMENT PLAN, IN WRITING, TO THE DEPARTMENT FOR THE ENVIRONMENTALLY SOUND COLLECTION, TRANSPORTATION, RECYCLING, OR PROPER DISPOSAL OF EACH SPECIFIED USED DRY CELL BATTERY PRODUCED BY THAT MANUFACTURER.

(2) PRIOR TO SUBMISSION TO THE DEPARTMENT OF A BATTERY MANAGEMENT PLAN, EVERY MANUFACTURER OF NICKEL-CADMIUM OR SEALED LEAD RECHARGEABLE BATTERIES SHALL CONSULT WITH DISTRIBUTORS AND RETAILERS OF THE RECHARGEABLE BATTERIES PRODUCED BY THAT MANUFACTURER.

B. EACH BATTERY MANAGEMENT PLAN SUBMITTED BY A MANUFACTURER SHALL INCLUDE, AS APPROPRIATE, BUT NEED NOT BE LIMITED TO:

(1) DESIGNATION OF THE COLLECTOR, TRANSPORTER, PROCESSOR, OR COLLECTION SYSTEM TO BE UTILIZED BY THE MANUFACTURER, OR BY THE COUNTY OR MUNICIPALITY, INSTITUTIONAL GENERATOR, RETAILER, OR SMALL QUANTITY GENERATOR ON BEHALF OF THE MANUFACTURER, FOR THE COLLECTION, TRANSPORTATION, RECYCLING, OR PROPER DISPOSAL OF USED MERCURIC OXIDE BATTERIES OR USED RECHARGEABLE BATTERIES IN EACH COUNTY, INCLUDING, AS APPROPRIATE, EVIDENCE OF CONTRACTS OR AGREEMENTS ENTERED INTO THEREFOR;

(2) A STRATEGY FOR INFORMING CONSUMERS, ON ANY STORE DISPLAY PROMOTING THE SALE OR USE OF THE RECHARGEABLE BATTERIES IT MANUFACTURES, THAT THESE TYPES OF USED DRY CELL BATTERIES MAY NOT ENTER THE SOLID WASTE STREAM, AND THAT A CONVENIENT MECHANISM FOR THE COLLECTION, TRANSPORTATION, RECYCLING OR PROPER DISPOSAL OF USED RECHARGEABLE BATTERIES IS AVAILABLE TO THE CONSUMER;

(3) A STATEWIDE CONSUMER EDUCATION PROGRAM TO ASSURE THE WIDESPREAD DISSEMINATION OF INFORMATION CONCERNING THE ENVIRONMENTAL IMPACT OF THE IMPROPER DISPOSAL OF USED MERCURIC OXIDE BATTERIES OR RECHARGEABLE BATTERIES, AND TO INFORM CONSUMERS THAT MANUFACTURERS OF THESE TYPES OF DRY CELL BATTERIES ARE LIABLE FOR THEIR ENVIRONMENTALLY SOUND DISPOSAL; AND

(4) A STRATEGY FOR ESTABLISHING AND IMPLEMENTING THE UNIFORM INDUSTRY-WIDE CODING SYSTEM REQUIRED BY SECTION 27-2907 OF THIS TITLE.

C. ANY MANUFACTURER SEEKING APPROVAL OF A BATTERY MANAGEMENT PLAN FOR THE ENVIRONMENTALLY SOUND COLLECTION, TRANSPORTATION, RECYCLING, OR PROPER DISPOSAL OF ANY SPECIFIED USED MERCURIC OXIDE BATTERY, USED NICKEL-CADMIUM, OR SEALED LEAD RECHARGEABLE BATTERY THAT IT MANUFACTURES SHALL SUBMIT THE PLAN TO THE DEPARTMENT FOR ITS REVIEW AND APPROVAL. NOTICE OF ANY BATTERY MANAGEMENT PLAN RECEIVED BY THE DEPARTMENT PURSUANT TO THIS SUBDIVISION SHALL BE PUBLISHED IN THE ENVIRONMENTAL NEWS BULLETIN.

THE COMMISSIONER SHALL MAINTAIN ON FILE IN THE DEPARTMENT FOR PUBLIC INSPECTION COPIES OF ANY BATTERY MANAGEMENT PLAN RECEIVED BY THE DEPARTMENT PURSUANT TO THIS SUBDIVISION. THE DEPARTMENT SHALL PROVIDE A COPY TO ANY PERSON UPON REQUEST AT A COST NOT TO EXCEED THE COST OF REPRODUCTION.

(1) THE DEPARTMENT SHALL PROMPTLY REVIEW ALL PLANS SUBMITTED PURSUANT TO THIS SUBDIVISION. THE DEPARTMENT SHALL, WITHIN THIRTY DAYS OF RECEIPT OF A PLAN, REQUEST THAT THE MANUFACTURER SUBMIT ADDITIONAL INFORMATION TO ASSIST IN ITS REVIEW IF IT DEEMS THAT SUCH INFORMATION IS NECESSARY. IF NO SUCH REQUEST IS MADE, THE PLAN SHALL BE CONSTRUED TO BE COMPLETED. IN THE EVENT THAT ADDITIONAL INFORMATION IS REQUESTED, THE PLAN SHALL BE CONSTRUED TO BE COMPLETED WHEN THE ADDITIONAL INFORMATION IS RECEIVED BY THE DEPARTMENT.

(2) THE DEPARTMENT SHALL APPROVE OR DENY A PLAN WITHIN FORTY-FIVE DAYS OF RECEIPT OF A COMPLETED PLAN. IN THE EVENT THAT THE DEPARTMENT FAILS TO TAKE ACTION ON A PLAN WITHIN THE FORTY-FIVE DAY PERIOD SPECIFIED IN THIS PARAGRAPH, THEN THE PLAN SHALL BE DEEMED TO HAVE BEEN APPROVED.

(3) THE DEPARTMENT SHALL REVIEW ANY BATTERY MANAGEMENT PLAN SUBMITTED BY A MANUFACTURER AND APPROVED PURSUANT TO THIS SUBDIVISION AT LEAST ONCE EVERY TWENTY-FOUR MONTHS FOLLOWING ITS INITIAL APPROVAL. IF THE DEPARTMENT FINDS, IN WRITING, THAT THE PLAN IS NO LONGER A CONVENIENT OR ECONOMICALLY FEASIBLE METHOD FOR THE COLLECTION, TRANSPORTATION, RECYCLING, OR PROPER DISPOSAL OF THESE TYPES OF USED DRY CELL BATTERIES, THE DEPARTMENT MAY REQUIRE THE MANUFACTURER TO SUBMIT A NEW OR REVISED PLAN FOR ITS REVIEW AND APPROVAL; EXCEPT THAT ANY PREVIOUSLY APPROVED PLAN SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS A NEW OR REVISED PLAN IS APPROVED BY THE DEPARTMENT.

D. ON OR BEFORE SEPTEMBER FIRST, TWO THOUSAND TEN, AND ANNUALLY THEREAFTER, EVERY MANUFACTURER OF MERCURIC OXIDE BATTERIES OR RECHARGEABLE BATTERIES SHALL SUBMIT A WRITTEN REPORT TO THE DEPARTMENT ON USED DRY CELL BATTERY RETURN OR RECOVERY RATES IN ACCORDANCE WITH RULES AND REGULATIONS ADOPTED BY THE DEPARTMENT THEREFOR.

E. MANUFACTURERS MAY ESTABLISH AN ADVISORY COUNCIL COMPRISED OF MEMBERS OF THE DRY CELL BATTERY INDUSTRY, INSTITUTIONAL GENERATORS,

RETAILERS, SMALL QUANTITY GENERATORS, AND COUNTY REPRESENTATIVES IN ORDER TO FACILITATE THE COLLECTION, TRANSPORTATION, RECYCLING, OR PROPER DISPOSAL OF USED MERCURIC OXIDE BATTERIES OR USED RECHARGEABLE BATTERIES IN THIS STATE.

S 27-2911. BATTERY COLLECTION PLANS.

1. NO LATER THAN JANUARY FIRST, TWO THOUSAND ELEVEN, EVERY MANUFACTURER OF DRY CELL BATTERIES SOLD OR OFFERED FOR PROMOTIONAL PURPOSES IN THIS STATE SHALL PREPARE AND SUBMIT TO THE DEPARTMENT, IN WRITING, A DRY CELL BATTERY COLLECTION PLAN TO EXPAND OR INCREASE THE STATEWIDE COLLECTION, RECYCLING, OR PROPER DISPOSAL OF ALL USED DRY CELL BATTERIES PRODUCED BY THAT MANUFACTURER.

2. EACH DRY CELL BATTERY COLLECTION PLAN SUBMITTED BY A MANUFACTURER SHALL INCLUDE, BUT NEED NOT BE LIMITED TO, A STRATEGY FOR EXPANDING AND INCREASING THE COLLECTION, RECYCLING, OR PROPER DISPOSAL OF ALL USED DRY CELL BATTERIES IN EACH COUNTY, INCLUDING, BUT NOT LIMITED TO, THOSE ALKALINE MANGANESE, CONSUMER MERCURIC OXIDE, OR ZINC-CARBON BATTERIES MANUFACTURED PRIOR TO THE EFFECTIVE DATE OF THIS TITLE.

3. ON OR BEFORE JANUARY FIRST, TWO THOUSAND THIRTEEN, AND ANNUALLY THEREAFTER, EVERY MANUFACTURER OF DRY CELL BATTERIES SHALL SUBMIT A WRITTEN REPORT TO THE DEPARTMENT ON USED DRY CELL BATTERY RETURN OR RECOVERY RATES IN ACCORDANCE WITH RULES AND REGULATIONS ADOPTED BY THE DEPARTMENT THEREFOR.

S 27-2913. DISPOSAL RESTRICTIONS.

1. A. ON OR AFTER SEPTEMBER FIRST, TWO THOUSAND NINE NO PERSON SHALL KNOWINGLY DISPOSE OF USED MERCURIC OXIDE BATTERIES AS SOLID WASTE AT ANY TIME.

B. ANY PERSON SEEKING TO DISPOSE OF USED MERCURIC OXIDE BATTERIES MAY:

(1) TRANSPORT THESE TYPES OF USED DRY CELL BATTERIES TO A HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM, IF PRIOR APPROVAL IS RECEIVED FROM THE SPONSOR OF SUCH PROGRAM;

(2) PLACE THESE TYPES OF USED DRY CELL BATTERIES FOR COLLECTION IN THE MANNER PROVIDED BY A MUNICIPALITY'S SOURCE SEPARATION ORDINANCE, IF SUCH ORDINANCE REQUIRES THE COLLECTION AND DISPOSITION OF USED DRY CELL BATTERIES; OR

(3) COLLECT, TRANSPORT, RECYCLE, OR DISPOSE OF THESE TYPES OF USED DRY CELL BATTERIES AS OTHERWISE PROVIDED BY THE BATTERY MANAGEMENT PLAN REQUIRED PURSUANT TO SECTION 27-2909 OF THIS TITLE.

2. A. ON OR AFTER SEPTEMBER FIRST, TWO THOUSAND NINE, NO PERSON SHALL KNOWINGLY DISPOSE OF USED NICKEL-CADMIUM RECHARGEABLE BATTERIES OR USED SEALED LEAD RECHARGEABLE BATTERIES AS SOLID WASTE AT ANY TIME.

B. ANY PERSON SEEKING TO DISPOSE OF USED NICKEL-CADMIUM OR SEALED LEAD RECHARGEABLE BATTERIES DERIVED FROM HOUSEHOLD USE MAY:

(1) RETURN THESE TYPES OF USED DRY CELL BATTERIES TO A RETAILER, UNLESS OTHERWISE PROVIDED BY THE BATTERY MANAGEMENT PLAN REQUIRED PURSUANT TO SECTION 27-2909 OF THIS TITLE;

(2) TRANSPORT THESE TYPES OF USED DRY CELL BATTERIES TO A HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM, IF PRIOR APPROVAL IS RECEIVED FROM THE SPONSOR OF SUCH PROGRAM;

(3) PLACE THESE TYPES OF USED DRY CELL BATTERIES FOR COLLECTION IN THE MANNER PROVIDED BY A MUNICIPALITY'S SOURCE SEPARATION ORDINANCE, IF SUCH ORDINANCE REQUIRES THE COLLECTION AND DISPOSITION OF USED DRY CELL BATTERIES; OR

(4) COLLECT, TRANSPORT, RECYCLE, OR DISPOSE OF THESE TYPES OF USED DRY CELL BATTERIES AS OTHERWISE PROVIDED BY THE BATTERY MANAGEMENT PLAN REQUIRED PURSUANT TO SECTION 27-2909 OF THIS TITLE.

3. A. NO SOLID WASTE TRANSPORTER SHALL, AT ANY TIME, KNOWINGLY COLLECT USED MERCURIC OXIDE BATTERIES, USED NICKEL CADMIUM RECHARGEABLE BATTERIES, OR USED SEALED LEAD RECHARGEABLE BATTERIES PLACED FOR COLLECTION AND DISPOSAL AS SOLID WASTE.

B. A SOLID WASTE TRANSPORTER MAY REFUSE TO COLLECT THE CONTENTS OF A SOLID WASTE CONTAINER CONTAINING A VISIBLE QUANTITY OF USED MERCURIC OXIDE BATTERIES OR USED RECHARGEABLE BATTERIES.

4. A. ON OR AFTER SEPTEMBER FIRST, TWO THOUSAND NINE, NO SOLID WASTE MANAGEMENT FACILITY IN THIS STATE SHALL KNOWINGLY ACCEPT FOR DISPOSAL ANY TRUCKLOAD OR ROLL-OFF CONTAINER OF SOLID WASTE CONTAINING A VISIBLE QUANTITY OF USED MERCURIC OXIDE BATTERIES, USED NICKEL-CADMIUM RECHARGEABLE BATTERIES, OR USED SEALED LEAD RECHARGEABLE BATTERIES AT ANY TIME.

B. THE OWNER OR OPERATOR OF A SOLID WASTE MANAGEMENT FACILITY MAY REFUSE TO ACCEPT FOR DISPOSAL ANY TRUCKLOAD OR ROLL-OFF CONTAINER OF SOLID WASTE CONTAINING A VISIBLE QUANTITY OF USED MERCURIC OXIDE BATTERIES OR USED RECHARGEABLE BATTERIES.

5. A. EXCEPT AS OTHERWISE PROVIDED IN A BATTERY MANAGEMENT PLAN APPROVED BY THE DEPARTMENT PURSUANT TO THE PROVISIONS OF SECTION 27-2909 OF THIS TITLE, EVERY RETAILER SHALL:

(1) ACCEPT FROM CUSTOMERS, AT ANY TIME DURING BUSINESS HOURS, UP TO THREE USED NICKEL-CADMIUM RECHARGEABLE BATTERIES OR SEALED LEAD RECHARGEABLE BATTERIES DERIVED FROM HOUSEHOLD USE, OF THE TYPE AND SIZE IT SELLS OR OFFERS FOR SALE;

(2) CONSPICUOUSLY POST AND MAINTAIN, AT OR NEAR THE POINT OF DISPLAY, A LEGIBLE SIGN, NOT LESS THAN EIGHT AND ONE-HALF INCHES BY ELEVEN INCHES IN SIZE, INFORMING CUSTOMERS THAT USED RECHARGEABLE BATTERIES OF THE TYPE AND SIZE SOLD OR OFFERED FOR SALE BY THE RETAILER MAY NOT ENTER THE SOLID WASTE STREAM, AND THAT THE RETAIL ESTABLISHMENT IS A COLLECTION SITE FOR THE RECYCLING OR PROPER DISPOSAL OF THESE TYPES OF USED DRY CELL BATTERIES. THE SIGN SHALL CONTAIN THE FOLLOWING INSCRIPTION:

"IT IS ILLEGAL TO DISPOSE OF USED NICKEL-CADMIUM OR SEALED LEAD RECHARGEABLE BATTERIES IN THIS STATE AS SOLID WASTE"; AND

"STATE LAW REQUIRES US TO ACCEPT USED NICKEL-CADMIUM OR SEALED LEAD RECHARGEABLE BATTERIES FOR RETURN TO THE MANUFACTURER"; AND

(3) CONSPICUOUSLY PROVIDE OR MAINTAIN, AT A CONVENIENT LOCATION WITHIN THE RETAIL ESTABLISHMENT, COLLECTION BOXES OR OTHER SUITABLE RECEPTACLES INTO WHICH CUSTOMERS MAY DEPOSIT USED NICKEL-CADMIUM OR SEALED LEAD RECHARGEABLE BATTERIES ACCEPTED BY THE RETAILER.

B. EXCEPT AS OTHERWISE PROVIDED IN A BATTERY MANAGEMENT PLAN APPROVED BY THE DEPARTMENT PURSUANT TO THE PROVISIONS OF SECTION 27-2909 OF THIS TITLE, A DISTRIBUTOR OR ITS AGENT SHALL ACCEPT THE RETURN OF ALL USED NICKEL-CADMIUM OR SEALED LEAD RECHARGEABLE BATTERIES IT DISTRIBUTES IN ITS SERVICE AREA FROM A RETAILER.

C. EVERY MANUFACTURER, AT ITS OWN EXPENSE, SHALL ACCEPT THE RETURN OF ALL USED NICKEL-CADMIUM OR SEALED LEAD RECHARGEABLE BATTERIES IT MANUFACTURES FROM DISTRIBUTORS OR RETAILERS AS PROVIDED IN A BATTERY MANAGEMENT PLAN APPROVED BY THE DEPARTMENT PURSUANT TO THE PROVISIONS OF SECTION 27-2909 OF THIS TITLE. A MANUFACTURER SHALL, UPON RETURN OF A USED DRY CELL BATTERY, PROVIDE FOR ITS PROPER DISPOSAL OR RECYCLING.

6. THE DEPARTMENT, AS A CONDITION OF ANY PERMIT OR APPROVAL REQUIRED PURSUANT TO SECTION 27-0707 OF THIS ARTICLE, MAY REQUIRE THE OWNER OR OPERATOR OF ANY RESOURCE RECOVERY FACILITY, IN CONJUNCTION WITH THE GOVERNING BODY OF THE LOCAL SOLID WASTE PLANNING UNIT WHEREIN THE RESOURCE RECOVERY FACILITY IS LOCATED, TO IMPLEMENT A USED DRY CELL BATTERY SOURCE SEPARATION AND COLLECTION PROGRAM, WHICH PROGRAM SHALL BE SUBJECT TO APPROVAL BY THE DEPARTMENT, TO ENSURE THAT ANY USED DRY CELL

BATTERIES FOUND TO BE OF PARTICULAR CONCERN ARE REMOVED FROM THE SOLID WASTE STREAM PRIOR TO ACCEPTANCE FOR DISPOSAL AT THE RESOURCE RECOVERY FACILITY.

S 4. Section 71-2727 of the environmental conservation law is amended by adding a new subdivision 4 to read as follows:

4. ENFORCEMENT OF TITLE 29 OF ARTICLE 27 OF THIS CHAPTER SHALL, IN ADDITION TO THE PROVISIONS CONTAINED IN SUBDIVISIONS ONE AND TWO OF THIS SECTION, INCLUDE:

A. CIVIL AND ADMINISTRATIVE SANCTIONS. ANY MANUFACTURER WHO VIOLATES TITLE 29 OF ARTICLE 27 OF THIS CHAPTER, OR ANY RULES OR REGULATIONS PROMULGATED PURSUANT THERETO, OR ANY FINAL ORDER OR DETERMINATION MADE PURSUANT TO THIS TITLE, SHALL BE LIABLE FOR A CIVIL OR ADMINISTRATIVE PENALTY OF NO MORE THAN FIVE THOUSAND DOLLARS FOR EACH ACTION THAT IS IN VIOLATION AND NO MORE THAN TEN THOUSAND DOLLARS FOR EACH SECOND AND SUBSEQUENT VIOLATION. ANY DISTRIBUTOR OR RETAILER WHO VIOLATES TITLE 29 OF ARTICLE 27 OF THIS CHAPTER, OR ANY RULES OR REGULATIONS PROMULGATED PURSUANT THERETO, OR ANY FINAL ORDER OR DETERMINATION MADE PURSUANT TO THIS TITLE, SHALL BE LIABLE FOR A CIVIL OR ADMINISTRATIVE PENALTY OF NO MORE THAN TWO THOUSAND DOLLARS FOR EACH ACTION THAT IS IN VIOLATION AND NO MORE THAN FIVE THOUSAND DOLLARS FOR EACH SECOND AND SUBSEQUENT VIOLATION.

IN ADDITION, SUCH MANUFACTURER, DISTRIBUTOR, RETAILER, OR INDIVIDUAL MAY BE ENJOINED FROM CONTINUING SUCH VIOLATION. FOR THE PURPOSES OF THIS SECTION, EACH BATTERY WHICH VIOLATES TITLE 29 OF ARTICLE 27 OF THIS CHAPTER SHALL CONSTITUTE A SEPARATE VIOLATION.

B. IN ADDITION TO THE COMMISSIONER, THE ATTORNEY GENERAL, THE COMMISSIONER OF AGRICULTURE AND MARKETS, AND THE COMMISSIONER OF CONSUMER AFFAIRS OF A CITY WHOSE POPULATION EXCEEDS ONE MILLION ARE HEREBY AUTHORIZED TO ENFORCE TITLE 29 OF ARTICLE 27 OF THIS CHAPTER AND REGULATIONS PROMULGATED THEREUNDER.

S 5. The department of environmental conservation shall promulgate such rules and regulations as are necessary and appropriate to carry out the purposes of this act.

S 6. The provisions of this act shall be severable, and if any portion thereof or the applicability thereof to any person or circumstance shall be held invalid, the remainder of this act and the application thereof shall not be affected thereby.

S 7. This act shall take effect immediately.