

the program. Any existing federally approved or sanctioned affirmative action program shall be approved by the State Treasurer.

No subcontract bidder who has less than five employees need comply with the provisions of this section.

15. N.J.S. 11A:7-1 is amended to read as follows:

Equal employment opportunity.

11A:7-1. Equal employment opportunity. The head of each State agency shall ensure equality of opportunity for all of its employees and applicants seeking employment. Equal employment opportunity includes, but is not limited to, the following areas: recruitment, selection, hiring, training, promotion, transfer, layoff, return from layoff, compensation and fringe benefits. Equal employment opportunity further includes policies, procedures, and programs for recruitment, employment, training, promotion, and retention of minorities, women and handicapped persons. Equal employment opportunity but not affirmative action is required with respect to persons identified solely by their affectional or sexual orientation.

The head of each State agency shall explore innovative personnel policies in order to enhance these efforts and where appropriate shall implement them to the fullest extent authorized. Where the implementation of those policies is not authorized, an agency head shall recommend implementation to the appropriate State agency.

16. This act shall take effect immediately.

Approved January 19, 1992.

CHAPTER 520

AN ACT concerning the reduction in the use of certain toxic substances in packaging, and supplementing P.L.1970, c.39 (C.13:1E-1 et seq.).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*:

C.13:1E-99.44 Short title.

1. This act shall be known and may be cited as the "Toxic Packaging Reduction Act."

C.13:1E-99.45 Findings, declarations, determinations.

2. The Legislature finds that discarded packaging constitutes the largest single category of solid waste within New Jersey's waste stream and is, therefore, a necessary focus of any effort to reduce the flow of solid waste to costly disposal facilities; that the presence of heavy metals in packaging is a matter of great concern in light of their likely presence in emissions or ash when packaging is incinerated at a resource recovery facility, or in leachate when packaging is landfilled; that lead, mercury, cadmium and hexavalent chromium, on the basis of available scientific and medical evidence, are of particular concern; that it is desirable as a first step in reducing the toxicity of packaging waste to eliminate the addition of these heavy metals to packaging; and that because New Jersey is faced with a very restricted range of disposal alternatives, the reduction at the source of toxic packaging materials can make a significant contribution to the reduction of the State's overall solid waste stream.

The Legislature further finds and declares that a Statewide solid waste reduction strategy must begin with fundamental changes in manufacturing practices and packaging processes; and that the most effective and appropriate method to promote reduction is to prohibit the distribution or sale of toxic packaging in this State.

The Legislature therefore determines that it is in the public interest to achieve this reduction in toxicity without impeding or discouraging the expanded use of post-consumer waste materials in the production of packaging and its components.

C.13:1E-99.46 Definitions.

3. As used in this act:

"Commissioner" means the Commissioner of Environmental Protection and Energy;

"Department" means the Department of Environmental Protection and Energy;

"Distributor" means any person who distributes packaged products intended for retail sale in packages or packaging components;

"Package" means a container specifically manufactured for the purposes of marketing, protecting or handling a product and shall include a unit package, an intermediate package and a shipping container as defined by the American Society for Testing and Materials in ASTM D996; "package" shall also mean and include such unsealed receptacles as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags and tubs;

“Package manufacturer” means any person who manufactures packages or packaging components;

“Packaging component” means any individual assembled part of a package including, but not limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coating, closure, ink, label, dye, pigment, adhesive, stabilizer or any other additive; except that a “coating” shall not include a thin tin layer applied to base steel or sheet steel during manufacturing of the steel or package;

“Product manufacturer” means any person who purchases packages or packaging components from a package manufacturer for the purposes of marketing, protecting or handling the contents of the package or packaging component, including a product intended for retail sale;

“Retailer” means any person who engages in the sale within the State of packaged products intended for retail sale in packages or packaging components to a consumer at retail for off-premises use or consumption.

C.13:1E-99.47 Sale of certain packages, components, packaged products, restricted.

4. a. On or after January 1, 1993, no person shall sell, offer for sale, or offer for promotional purposes in this State any package or packaging component which includes, in the package itself or in any packaging component, inks, dyes, pigments, adhesives, stabilizers or any other additives containing any lead, cadmium, mercury or hexavalent chromium which has been intentionally introduced as a chemical element during manufacturing or distribution as opposed to the incidental presence of any of these elements.

b. On or after January 1, 1993, no person shall sell, offer for sale, or offer for promotional purposes in this State any product contained in a package which includes, in the package itself or in any packaging component, inks, dyes, pigments, adhesives, stabilizers or any other additives containing any lead, cadmium, mercury or hexavalent chromium which has been intentionally introduced as a chemical element during manufacturing or distribution as opposed to the incidental presence of any of these elements.

c. The sum of the concentration levels of lead, cadmium, mercury or hexavalent chromium present in any package or packaging component, which shall constitute an incidental presence, shall not exceed the following levels:

- (1) Not more than 600 parts per million by weight (0.06%) after January 1, 1993;
- (2) Not more than 250 parts per million by weight (0.025%) after January 1, 1994;
- (3) Not more than 100 parts per million by weight (0.01%) after January 1, 1995.

C.13:1E-99.48 Exemptions, criteria.

5. a. Any package manufacturer, product manufacturer or distributor may, in accordance with rules or regulations adopted by the department pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), claim an exemption from the provisions of section 4 of this act for any package or packaging component meeting any of the following criteria:

- (1) Those packages or packaging components labeled with a code indicating a date of manufacture prior to January 1, 1993; except that the labeling requirement may be waived by the department in those instances where it is not feasible or practical to label individual packages or packaging components provided that suitable alternative evidence of date of manufacture is furnished to the department;
- (2) Those packages or packaging components used to contain alcoholic beverages, including liquor, wine, vermouth and sparkling wine, bottled prior to January 1, 1993;
- (3) Those packages or packaging components which are glass containers with ceramic labeling used to contain pharmaceutical preparations; except that the exemption provided in this paragraph shall expire on January 1, 1995;
- (4) Those packages or packaging components which are glass containers with ceramic labeling used to contain cosmetics; except that the exemption provided in this paragraph shall expire on January 1, 1995;
- (5) Those packages or packaging components to which lead, cadmium, mercury or hexavalent chromium have been added in the manufacturing, forming, printing or distribution process in order to comply with health or safety requirements of federal law;
- (6) Those packages or packaging components to which lead, cadmium, mercury or hexavalent chromium have been added in the manufacturing, forming, printing or distribution process and for the use of which there is no feasible or practical alternative or substitute; except that the exemption provided in this paragraph shall expire on January 1, 1995;

(7) Those packages or packaging components that would not exceed the maximum contaminant levels set forth in subsection c. of section 4 of this act but for the addition of post-consumer waste materials; except that the exemption provided in this paragraph shall expire on January 1, 1997;

(8) Those packages or packaging components composed of metal and commonly referred to as "tin cans" that are used to contain food or food products intended for human consumption and that may exceed the maximum contaminant levels set forth in subsection c. of section 4 of this act due to the incidental presence of lead as a naturally occurring chemical element in the metal that is unrelated to the manufacturing process; or

(9) Those packages or packaging components composed of metal and commonly referred to as "tin cans" that are used to contain paint, chemicals or other nonfood products, to which lead has been added in the manufacturing process for the purposes of forming, soldering or sealing the can, or that may exceed the maximum contaminant levels set forth in subsection c. of section 4 of this act due to the incidental presence of lead as a naturally occurring chemical element in the metal that is unrelated to the manufacturing process.

The exemption provided in paragraph (6) may be renewed by the department for periods not to exceed two years, except that any renewal granted by the department for the exemption provided in paragraph (6) shall be based on evidence furnished to the department that there is no feasible or practical alternative or substitute for the specified package or packaging component.

The exemptions provided in paragraphs (8) and (9) shall expire on January 1, 1997, except that any exemption provided in paragraphs (8) or (9) may be renewed by the department after this date for periods not to exceed two years. Any renewal granted by the department for the exemption provided in paragraphs (8) or (9) shall be based on evidence furnished to the department that there is no feasible method to reduce the concentration levels of lead for the specified package or packaging component.

For the purposes of this subsection, a use for which there is "no feasible or practical alternative or substitute" means one in which the use of lead, cadmium, mercury or hexavalent chromium is essential to the protection, safe handling, or function of the contents of the package.

b. Any package manufacturer, product manufacturer or distributor claiming an exemption pursuant to subsection a. of this section shall maintain on file a written declaration of exemption for each specified package or packaging component for which an exemption

is claimed. Copies of each declaration of exemption shall be furnished to the department upon its request and to members of the public in accordance with the provisions of section 14 of this act.

c. Any product contained in a package or packaging component for which an exemption is claimed may be sold by a retailer provided that the declaration of exemption claimed is valid and in accordance with the criteria provided in subsection a. of this section, as may be verified by the department pursuant to section 9 of this act.

C.13:1E-99.49 Request for information by department.

6. a. Any person claiming an exemption pursuant to subsection a. of section 5 of this act shall maintain on file, and shall transmit, in writing, to the department upon its request, the following information:

(1) A statement setting forth the specific basis upon which the exemption is claimed;

(2) The full name, business address, telephone number and signature of the person claiming the exemption; and

(3) The full name, business address and telephone number of the authorized local representative of the person claiming the exemption.

b. The information required pursuant to this section shall be furnished to the department for each specified package or packaging component requested by the department.

C.13:1E-99.50 Fees.

7. a. The department may, in accordance with a fee schedule adopted as a rule or regulation pursuant to the provisions of the "Administrative Procedure Act," establish and charge fees for any of the services to be performed or rendered in connection with this act, and for the costs of compliance monitoring and administration.

b. The fee schedule shall reasonably reflect the duration or complexity of the specific service performed or rendered, information reviewed, or inspection, sampling or testing conducted.

C.13:1E-99.51 Certification of compliance.

8. No later than January 1, 1993, a written certification of compliance stating that a package or packaging component is in compliance with the requirements of this act shall be furnished by the package manufacturer to the product manufacturer or distributor of the product packaged in that specified package or packaging component, which certification shall be signed by an authorized representative of the package manufacturer.

a. The product manufacturer or distributor shall retain the certification of compliance for as long as the package or packaging component is in use. A copy of the certification of compliance

shall be kept on file by the package manufacturer. Copies of each certification of compliance shall be furnished to the department upon its request and to members of the public in accordance with the provisions of section 14 of this act.

b. In the event that the package manufacturer reformulates or creates a new package or packaging component, a new or amended certification of compliance shall be furnished by the package manufacturer to the product manufacturer or distributor for the reformulated or new package or packaging component.

c. The provisions of this section shall not apply to any package or packaging component for which a declaration of exemption is kept on file pursuant to subsection b. of section 5 of this act.

C.13:1E-99.52 Determination of compliance by department.

9. a. The department shall have the right to enter the premises of a package manufacturer, product manufacturer, distributor or retailer at which packages or packaging components are manufactured or stored, or at which products packaged in packages or packaging components are sold or offered for sale or for promotional purposes, in order to determine compliance with the provisions of this act, or any rule or regulation adopted pursuant thereto. The department may, at any time during normal business hours and upon presentation of appropriate credentials, conduct inspections, including the taking of samples of products packaged in a package or packaging component, for the purpose of testing the package or packaging component. The department may be required to purchase any product packaged in a package or packaging component for which a sample is sought at a retail establishment, if requested to do so by the retailer.

b. The department may request, by certified mail, that any package manufacturer, product manufacturer or distributor transmit to the department a written certification that a specified package or packaging component is in compliance with the provisions of this act. The package manufacturer, product manufacturer or distributor, as the case may be, shall submit copies of each declaration of exemption and certification of compliance to the department within 45 days of receipt of the request. Upon receipt by the department of the information requested from the package manufacturer, product manufacturer or distributor, the department shall review this information and shall verify that all certifications of compliance are complete and

that all declarations of exemption claimed are valid and in accordance with the criteria provided in section 5 of this act.

C.13:1E-99.53 Noncompliance.

10. a. Whenever the commissioner finds that a package or packaging component fails to comply with the provisions of this act, or any rule or regulation adopted pursuant thereto, the commissioner may issue an order requiring the distributor or retailer, as the department deems appropriate, to remove or arrange for the removal of the entire allotment of the product packaged in the noncomplying package or packaging component from the premises, and directing that the distributor or retailer return the entire allotment of the product packaged in the noncomplying package or packaging component to the product manufacturer for credit or reimbursement.

b. Whenever the commissioner finds that a package manufacturer, product manufacturer or distributor has failed to respond to a request for certification made by the department pursuant to subsection b. of section 9 of this act, the commissioner may issue an order requiring the package manufacturer or product manufacturer, as the department deems appropriate, to submit a specified package or packaging component to laboratory analysis, conducted at the ordered person's expense by a laboratory certified by the department in accordance with rules or regulations adopted pursuant to the "Administrative Procedure Act," in order to certify that the package or packaging component is in compliance with the provisions of this act.

c. Whenever the commissioner finds that a package or packaging component fails to comply with the provisions of this act, or any rule or regulation adopted pursuant thereto, all samples taken from the same allotment of the noncomplying package or packaging component for the purpose of testing shall constitute a single violation.

C.13:1E-99.54 Violations, penalties, remedies.

11. a. Whenever the commissioner finds that a person has violated any provision of this act, or any rule or regulation adopted pursuant thereto, the commissioner may:

(1) issue an order requiring the person found to be in violation to comply in accordance with subsection b. of this section;

(2) bring a civil action in accordance with subsection c. of this section;

(3) levy a civil administrative penalty in accordance with subsection d. of this section;

(4) bring an action for a civil penalty in accordance with subsection e. of this section; or

(5) petition the Attorney General to bring a criminal action in accordance with subsection g. of this section.

Pursuit of any of the remedies specified under this section shall not preclude the seeking of any other remedy specified.

b. Whenever the commissioner finds that a person has violated this act, or any rule or regulation adopted pursuant thereto, the commissioner may issue an order specifying the provision or provisions of this act, or the rule or regulation adopted pursuant thereto, of which the person is in violation, citing the action that constituted the violation, ordering abatement of the violation, and giving notice to the person of the person's right to a hearing on the matters contained in the order. The ordered person shall have 20 calendar days from receipt of the order within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order. If no hearing is requested, the order shall become final after the expiration of the 20-day period. A request for hearing shall not automatically stay the effect of the order.

c. The commissioner may institute an action or proceeding in the Superior Court for injunctive and other relief to enforce the provisions of this act and to prohibit and prevent a violation of this act, or of any rule or regulation adopted pursuant thereto, and the court may proceed in the action in a summary manner. In any such proceeding the court may grant temporary or interlocutory relief.

Such relief may include, singly or in combination:

(1) a temporary or permanent injunction;

(2) assessment of the violator for the reasonable costs of any inspection, including the costs of any sampling or testing of packages or packaging components that led to the establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subsection.

d. (1) The commissioner may assess a civil administrative penalty of not more than \$7,500.00 for a first offense, not more than \$10,000.00 for a second offense and not more than \$25,000.00 for a third and every subsequent offense. Each day that a violation continues shall constitute an additional, separate, and distinct offense.

No assessment may be levied pursuant to this section until after the violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, regulation, or order violated, a concise statement of the facts

alleged to constitute a violation, a statement of the amount of the civil administrative penalties to be imposed, and a statement of the person's right to a hearing. The ordered person shall have 20 calendar days from receipt of the notice within which to deliver to the commissioner a written request for a hearing.

After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions in this act, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. The department may compromise any civil administrative penalty assessed under this section in an amount the department determines appropriate.

(2) The commissioner may not assess a civil administrative penalty for a first offense for any violation of the provisions of this act, or of any rule or regulation adopted pursuant thereto, except in those instances where an ordered person violates an administrative order issued pursuant to subsection b. of section 10 of this act.

e. (1) A person who violates this act, or any rule or regulation adopted pursuant thereto, shall be liable for a penalty of not more than \$7,500.00 per day, to be collected in a civil action commenced by the commissioner.

(2) The commissioner may not bring an action for a civil penalty for a first offense for any violation of the provisions of this act, or of any rule or regulation adopted pursuant thereto, except in those instances where an ordered person violates an administrative order issued pursuant to subsection b. of section 10 of this act.

A person who violates an administrative order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection c. of this section, or who fails to pay an administrative assessment in full pursuant to subsection d. of this section is subject upon order of a court to a civil penalty not to exceed \$50,000.00 per day of each violation.

Any penalty imposed pursuant to this subsection may be collected, with costs, in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). The Superior Court and

the municipal court shall have jurisdiction to enforce the provisions of "the penalty enforcement law" in connection with this act.

f. Assessments and penalties under this section shall be paid to the department and deposited into the "Toxic Packaging Reduction Fund" established pursuant to section 12 of this act.

g. Any person who purposely or knowingly:

(1) sells, offers for sale, or offers for promotional purposes any package or packaging component in violation of subsection a. of section 4 of this act, or of any rule or regulation adopted pursuant thereto;

(2) sells, offers for sale, or offers for promotional purposes any product in violation of subsection b. of section 4 of this act, or of any rule or regulation adopted pursuant thereto; or

(3) sells, offers for sale, or offers for promotional purposes any package or packaging component that exceeds the maximum contaminant levels set forth in subsection c. of section 4 of this act; shall, upon conviction, be guilty of a crime of the third degree and, notwithstanding the provisions of N.J.S.2C:43-3, shall be subject to a fine of not less than \$7,500.00 for a first offense, not more than \$10,000.00 for a second offense and not more than \$25,000.00 for a third and every subsequent offense. Each day during which the violation continues constitutes an additional, separate and distinct offense.

h. The provisions of N.J.S.2C:1-6 to the contrary notwithstanding, a prosecution for a violation of the provisions of subsection g. of this section shall be commenced within five years of the date of discovery of the violation.

i. No retailer shall be deemed to have violated the provisions of section 4 of this act, if the commissioner finds that the retailer can demonstrate that, in the purchase of a specified package or packaging component, the retailer relied in good faith on the written assurance of the product manufacturer or distributor that the package or packaging component complied with the provisions of this act. The written assurance shall state that a specified package or packaging component is in compliance with the provisions of this act, and shall be signed by an authorized representative of the package manufacturer or distributor. If an exemption is claimed for the package or packaging component pursuant to subsection b. of section 5 of this act, the written assurance shall state the specific basis upon which the exemption is claimed.

C.13:1E-99.55 "Toxic Packaging Reduction Fund" created.

12. There is created in the Department of Environmental Protection and Energy a special nonlapsing fund to be known as the "Toxic Packaging Reduction Fund." The fund shall be adminis-

tered by the department and shall be the depository for all fees collected pursuant to section 7 of this act, and all assessments and penalties received pursuant to section 11 of this act, and any interest earned thereon. Unless otherwise specifically provided by law, monies in the fund shall be utilized exclusively by the department to administer and enforce the provisions of this act, or any rule or regulation adopted pursuant thereto.

C.13:1E-99.56 Review, report.

13. The department, in consultation with the Source Reduction Council of the Coalition of Northeastern Governors (CONEG), shall review the effectiveness of this act no later than 42 months after its effective date and shall provide to the Governor and the Legislature a written report based upon that review.

a. The report shall include:

(1) a recommendation whether to continue the exemptions provided in paragraphs (7), (8) and (9) of subsection a. of section 5 of this act; and

(2) a description of the nature of the substitute elements used in lieu of lead, cadmium, mercury or hexavalent chromium during the manufacturing or distribution of a package or packaging component.

b. The report may contain recommendations to include additional toxic substances contained in packages or packaging components on the list set forth in section 4 of this act in order to further reduce the toxicity of packaging waste.

Any recommendation to include an additional toxic substance on the list set forth in section 4 of this act shall include:

(1) a determination as to whether the continued use of the proposed substance presents or will present an unreasonable risk to health or the environment, which determination shall utilize a nationally recognized risk assessment protocol taking into account the magnitude and severity of the environmental harm against the benefits of the substance to product manufacturers and the general public;

(2) a determination as to the availability of a substitute element to be used in lieu of the proposed substance; and

(3) a description of other adverse effects which the addition of the proposed substance to the list set forth in section 4 of this act may have on product manufacturers or the general public.

C.13:1E-99.57 Request for copy of declaration of exemption, certificate of compliance.

14. A member of the public may request a package manufacturer, product manufacturer or distributor for a copy of the

declaration of exemption or certification of compliance for any specified package or packaging component. The request shall be made in writing with a copy thereof provided to the department. The package manufacturer, product manufacturer or distributor shall respond, in writing, within 60 days of receipt of the request and shall provide a copy of this response to the department.

C.13:1E-99.58 Rules, regulations.

15. The department shall adopt, pursuant to the provisions of the "Administrative Procedure Act," any rules or regulations necessary to implement the provisions of this act.

16. This act shall take effect immediately.

Approved January 20, 1992.

CHAPTER 521

AN ACT concerning the management of used dry cell batteries, and amending and supplementing P.L.1987, c.102.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*:

C.13:1E-99.59 Short title.

1. Sections 1 through 23 of this act shall be known and may be cited as the "Dry Cell Battery Management Act."

C.13:1E-99.60 Findings, declarations.

2. The Legislature finds and declares that the presence of toxic metals in certain discarded dry cell batteries is a matter of great concern in light of their likely presence in emissions or residual ash when used batteries are incinerated at a resource recovery facility; that cadmium, lead and mercury, on the basis of available scientific and medical evidence, are of particular concern; that it is desirable as a first step in reducing the toxicity of waste materials in the solid waste streams directed to resource recovery facilities to eliminate the various sources of these toxic metals; and that the removal of used dry cell batteries containing high levels of cadmium, lead or mercury from the solid waste stream can have a significant beneficial impact on the quality of the emissions and residual ash