

13: 1E-99.59

LEGISLATIVE HISTORY CHECKLIST
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("Dry Cell Battery Management Act")

NJSA: 13:1E-99.59

LAWS OF: 1991 CHAPTER: 521

BILL NO: S3157

SPONSOR(S): Contillo and others

DATE INTRODUCED: December 6, 1990

COMMITTEE: ASSEMBLY: _____

SENATE: Land Use Management

AMENDED DURING PASSAGE: Yes Senate committee substitute (3R)
according to Governor's enacted
recommendations

DATE OF PASSAGE: ASSEMBLY: June 24, 1991 Re-enacted 1-9-92

SENATE: June 13, 1991 Re-enacted 12-9-91

DATE OF APPROVAL: January 18, 1992 J

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: Yes

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: Ye

s

HEARINGS: No

974.90 New Jersey. Department of Environmental Protection.
M966 Recycling in the 90's: report to the Governor...April, 1990.
1990f Trenton, 1990. [pp 18, 27-28]

See newspaper clippings attached.
KBG:pp

[THIRD REPRINT]

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 3157

STATE OF NEW JERSEY

ADOPTED FEBRUARY 4, 1991

Sponsored by Senators CONTILLO, BUBBA,
Assemblymen McEnroe, Jacobson and Albohn

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

3

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

6 1. (New section) Sections 1 through 23 of this act shall be
7 known and may be cited as the "Dry Cell Battery Management
8 Act."

9 2. (New section) The Legislature finds and declares that the
10 presence of toxic metals in certain discarded dry cell batteries is
11 a matter of great concern in light of their likely presence in
12 emissions or residual ash when used batteries are incinerated at a
13 resource recovery facility; that cadmium, lead and mercury, on
14 the basis of available scientific and medical evidence, are of
15 particular concern; that it is desirable as a first step in reducing
16 the toxicity of waste materials in the solid waste streams
17 directed to resource recovery facilities to eliminate the various
18 sources of these toxic metals; and that the removal of used dry
19 cell batteries containing high levels of cadmium, lead or mercury
20 from the solid waste stream can have a significant beneficial
21 impact on the quality of the emissions and residual ash resulting
22 from the incineration of solid waste at resource recovery
23 facilities, and on groundwater quality in those regions of the
24 State where solid waste is disposed at sanitary landfill facilities.

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

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate floor amendments adopted February 28, 1991.

² Senate floor amendments adopted May 20, 1991.

³ Senate amendments adopted in accordance with Governor's
recommendations September 26, 1991.

1 The Legislature further finds and declares that mercuric oxide
2 batteries, nickel-cadmium and sealed lead rechargeable batteries
3 are especially problematical and require separate management;
4 that the most effective and appropriate method to promote toxic
5 metal source reduction is to require manufacturers of all dry cell
6 batteries to reduce the mercury concentration in their products
7 to environmentally acceptable levels and to require
8 manufacturers to accept the financial responsibility for the
9 environmentally-sound collection, transportation, recycling or
10 proper disposal of used dry cell batteries; and that
11 environmentally-sound methods of managing used dry cell
12 batteries include county recycling or household hazardous waste
13 collection programs.

14 The Legislature therefore determines that it is in the public
15 interest to remove all used mercuric oxide batteries, and all used
16 nickel-cadmium or sealed lead rechargeable batteries from the
17 solid waste stream, and to require the manufacturers of these dry
18 cell batteries to assume the costs of, and accept the
19 responsibility for, their environmentally-sound collection,
20 transportation, recycling or proper disposal; that all battery
21 manufacturers shall be required to reduce the mercury
22 concentration in their products to environmentally acceptable
23 levels; that the manufacturers of consumer appliances containing
24 nickel-cadmium or sealed lead rechargeable batteries shall be
25 required to redesign their products so that these batteries are
26 readily removable from the product; that retailers may be
27 required to accept used rechargeable batteries from consumers if
28 a manufacturer's battery management plan includes retail
29 collection as an appropriate method to facilitate the
30 environmentally-sound recycling or proper disposal of these types
31 of used dry cell batteries; by authorizing counties to include the
32 collection of used dry cell batteries within district recycling
33 plans; and by requiring that counties include the collection of
34 used dry cell batteries within existing district household
35 hazardous waste collection programs.

36 3. (New section) As used in sections 1 through 23 of this act:

37 "Commissioner" means the Commissioner of the Department
38 of Environmental Protection;

39 "Consumer mercuric oxide battery" means any button or coin
40 shaped mercuric oxide battery which is purchased at retail by a
41 consumer for personal or household use;

42 "Department" means the Department of Environmental
43 Protection;

44 "Distributor" means a person who sells dry cell batteries at
45 wholesale to retailers in this State, including any manufacturer
46 who engages in these sales¹, except that a "distributor" shall not
47 include any wholesaler or distributor owned cooperatively by
48 retailers¹;

49 "Dry cell battery" means any type of button, coin, cylindrical,

1 rectangular or other shaped, enclosed device or sealed container
2 consisting of a combination of two or more voltaic or galvanic
3 cells, electrically connected to produce electric energy,
4 composed of lead, lithium, manganese, mercury, mercuric oxide,
5 silver oxide, cadmium, zinc, copper or other metals, or any
6 combination thereof, and designed for commercial, industrial,
7 medical, institutional or household use, including any alkaline
8 manganese, lithium, mercuric oxide, silver oxide, zinc-air or
9 zinc-carbon battery, nickel-cadmium rechargeable battery or
10 sealed lead rechargeable battery;

11 "Institutional generator" means the owner or operator of any
12 public or private, commercial or industrial establishment or
13 facility, including any establishment owned or operated by, or on
14 behalf of, a governmental agency, health care facility or hospital,
15 ³licensed or other authorized hearing aid dispenser,³ research
16 laboratory or facility, who routinely uses large quantities of
17 mercuric oxide batteries or nickel-cadmium or sealed lead
18 rechargeable batteries; or the owner or operator of any public or
19 private facility identified by the department that generates at
20 least 220 pounds of these types of used dry cell batteries per
21 month, or the owner or operator of any public or private facility
22 that accumulates 220 pounds of these types of used dry cell
23 batteries at any time;

24 "Lithium battery" means any button, coin, cylindrical,
25 rectangular or other shaped dry cell battery consisting of lithium
26 and other chemicals commonly used in pocket calculators, wrist
27 watches and other electrical appliances;

28 "Manufacturer" means a person producing dry cell batteries for
29 sale to institutional generators, distributors, retailers, small
30 quantity generators or consumers;

31 "Mercuric oxide battery" means any button, coin, cylindrical,
32 rectangular or other shaped dry cell battery consisting of zinc,
33 potassium and mercury oxide which is designed or sold for
34 commercial, industrial, medical or institutional use;

35 "Nickel-cadmium rechargeable battery" means any button,
36 coin, cylindrical, rectangular or other shaped dry cell battery
37 composed of cadmium and nickel which is designed for reuse and
38 is capable of being recharged after repeated uses, and which has
39 a useful life of at least 12 months;

40 "Rechargeable battery" means any nickel-cadmium
41 rechargeable battery or sealed lead rechargeable battery;

42 "Rechargeable consumer product" means any product,
43 including, but not limited to, a cordless electrical tool or
44 appliance, containing a nickel-cadmium rechargeable battery or a
45 sealed lead rechargeable battery, which is purchased at retail and
46 commonly used for personal or household purposes;

47 "Retailer" means a person engaged in the sale of rechargeable
48 batteries to any consumer at retail ¹[and includes any
49 manufacturer or distributor engaging in retail sales]¹;

1 "Sealed lead rechargeable battery" means any button, coin,
2 cylindrical, rectangular or other shaped dry cell battery
3 composed of lead and other chemicals which is designed for reuse
4 and is capable of being recharged after repeated uses, and which
5 has a useful life of at least 12 months;

6 "Silver oxide battery" means any button, coin, cylindrical,
7 rectangular or other shaped dry cell battery consisting of silver
8 oxide, potassium hydroxide or sodium hydroxide and zinc, and
9 mercury commonly used in wrist watches and other electrical
10 appliances;

11 "Solid waste container" means a receptacle, container or bag
12 suitable for the depositing of solid waste;

13 "Solid waste facilities" mean and include the plants, structures
14 and other real and personal property acquired, constructed or
15 operated or to be acquired, constructed or operated by any person
16 pursuant to the provisions of P.L.1970 c.39 (C.13:1E-1 et seq.),
17 P.L.1970, c.40 (C.48:13A-1 et seq.) or any other act, including
18 transfer stations, incinerators, resource recovery facilities,
19 sanitary landfill facilities or other plants for the disposal of solid
20 waste, and all vehicles, equipment and other real and personal
21 property and rights therein and appurtenances necessary or useful
22 and convenient for the collection or disposal of solid waste in a
23 sanitary manner;

24 "Small quantity generator" means the owner or operator of any
25 public or private, commercial or industrial establishment or
26 facility, including any establishment owned or operated by, or on
27 behalf of, a governmental agency, health care facility or hospital,
28 ³licensed or other authorized hearing aid dispenser,³ research
29 laboratory or facility, who routinely uses small quantities of
30 mercuric oxide batteries or nickel-cadmium or sealed lead
31 rechargeable batteries; or the owner or operator of any public or
32 private facility identified by the department that generates less
33 than 220 pounds of these types of used dry cell batteries per
34 month, or the owner or operator of any public or private facility
35 that accumulates over 20 pounds but less than 220 pounds of
36 these types of used dry cell batteries at any time;

37 "Zinc-air battery" means any button, coin, cylindrical,
38 rectangular or other shaped dry cell battery consisting of zinc,
39 potassium hydroxide and commonly used in hearing aids,
40 photographic equipment and electrical appliances.

41 4. (New section) a. No person shall sell, offer for sale, or
42 offer for promotional purposes in this State any alkaline
43 manganese battery which exceeds the following mercury
44 concentration levels:

45 (1) For alkaline manganese batteries, other than button or coin
46 shaped batteries, not more than 250 parts per million by weight
47 (0.025%) for all batteries manufactured on or after January 1,
48 1992; and

49 (2) For button or coin shaped alkaline manganese batteries, not

1 more than 25 milligrams of mercury per battery for all batteries
2 manufactured on or after January 1, 1992.

3 b. No person shall sell, offer for sale, or offer for promotional
4 purposes in this State any zinc-carbon battery which exceeds a
5 mercury concentration level of 1 part per million by weight
6 (0.0001%) for all batteries manufactured on or after January 1,
7 1992.

8 c. ¹[Any manufacturer may, in accordance with rules or
9 regulations adopted by the department pursuant to the
10 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
11 seq.), apply for a temporary exemption from the mercury
12 concentration level requirements of subsection b. of this section.

13 (1) Any manufacturer seeking a temporary exemption shall
14 submit an application, in writing, to the department for its
15 review and approval. The application shall include the following
16 information:

17 (a) A statement setting forth the specific basis upon which the
18 exemption is sought;

19 (b) The full name, business address, telephone number and
20 signature of the person seeking the exemption; and

21 (c) The full name, business address and telephone number of
22 the authorized local representative of the person seeking the
23 exemption.

24 (2) The information required pursuant to this subsection shall
25 be furnished to the department for each specified zinc-carbon
26 battery for which an exemption is sought.

27 (3) The department shall approve or deny a temporary
28 exemption upon receipt of an application therefor. Any
29 temporary exemption approved by the department shall expire on
30 July 1, 1993, and shall be based on evidence furnished to the
31 department that there is no zinc-carbon battery meeting the
32 mercury concentration level requirements of subsection b. of this
33 section that may be reasonably substituted for the zinc-carbon
34 battery for which the exemption is sought.

35 d. The department may, in accordance with a fee schedule
36 adopted as a rule or regulation pursuant to the provisions of the
37 "Administrative Procedure Act," establish and charge reasonable
38 fees for any of the services to be performed or rendered in
39 connection with this section, and for the costs of compliance
40 monitoring and administration. The fee schedule shall reasonably
41 reflect the duration or complexity of the specific service
42 performed or rendered, information reviewed, or inspection
43 conducted] No person shall sell, offer for sale, or offer for
44 promotional purposes in this State any alkaline manganese
45 battery which ³[contains any mercury] exceeds a mercury
46 concentration level of 1 part per million by weight (0.0001%)³ for
47 all batteries manufactured on or after January 1, 1996¹.

48 5. (New section) ^{3a.}³ No person shall sell, offer for sale, or
49 offer for promotional purposes in this State any consumer

1 mercuric oxide battery which exceeds a mercury concentration
2 level of more than 250 parts per million by weight (0.025%) for
3 all batteries manufactured on or after January 1, 1992.

4 ³b. Prior to January 1, 1994, the provisions of this section
5 shall not apply to consumer mercuric oxide batteries being sold
6 for use in hearing aids which require a consumer mercuric oxide
7 battery to function properly and which are sold by hearing aid
8 dispensers licensed pursuant to the provisions of P.L.1973, c.19
9 (C.45:9A-1 et seq.) or by other specialized hearing aid dispensers
10 authorized by the commissioner to sell these batteries.³

11 6. (New section) a. On or after ³[January 1, 1992] July 1,
12 1993³, no person shall sell, offer for sale, or offer for
13 promotional purposes in this State any rechargeable consumer
14 product unless:

15 (1) the rechargeable battery is readily removable from the
16 product; or the rechargeable battery is contained in a battery
17 pack which is separate from the product and the battery pack is
18 readily removable from the product;

19 (2) the rechargeable consumer product, the package containing
20 the product, or the rechargeable battery are labeled pursuant to
21 the provisions of subsection b. of this section; and

22 (3) the instruction manual for the rechargeable consumer
23 product includes information explaining methods to assure the
24 proper disposal of used nickel-cadmium or sealed lead
25 rechargeable batteries, as appropriate.

26 b. Every rechargeable consumer product, the package
27 containing the product, or the rechargeable battery contained
28 therein shall be labeled in a manner which is visible to consumers
29 prior to purchase informing consumers that used rechargeable
30 batteries may not enter the solid waste stream, and that these
31 types of used dry cell batteries shall be collected, recycled or
32 disposed of in an environmentally sound manner. The label shall
33 contain one of the following statements, as appropriate, printed
34 in capital letters:

35 "CONTAINS NICKEL-CADMIUM BATTERY. MUST BE
36 DISPOSED OF PROPERLY"; or

37 "NICKEL-CADMIUM BATTERY. MUST BE DISPOSED OF
38 PROPERLY."

39 "CONTAINS SEALED LEAD BATTERY. MUST BE DISPOSED
40 OF PROPERLY"; or

41 "SEALED LEAD BATTERY. MUST BE DISPOSED OF
42 PROPERLY."

43 c. Any person may, in accordance with rules or regulations
44 adopted by the department pursuant to the "Administrative
45 Procedure Act," apply for a temporary exemption from the
46 requirements of paragraph (1) of subsection a. of this section for
47 any rechargeable consumer product which was sold in this State
48 ³at any time³ prior to the effective date of this act.

49 (1) Any person seeking a temporary exemption shall submit an

1 application, in writing, to the department for its review and
2 approval. The application shall include the following information:

3 (a) Documented evidence that the rechargeable consumer
4 product for which the exemption is sought was sold in this State
5 prior to the effective date of this act;

6 (b) A statement setting forth the specific basis upon which the
7 exemption is sought;

8 (c) The full name, business address, telephone number and
9 signature of the person seeking the exemption; and

10 (d) The full name, business address and telephone number of
11 the authorized local representative of the person seeking the
12 exemption.

13 (2) The information required pursuant to this subsection shall
14 be furnished to the department for each specified rechargeable
15 consumer product for which an exemption is sought.

16 (3) The department shall approve or deny a temporary
17 exemption upon receipt of an application therefor. Any
18 temporary exemption approved by the department shall ³[expire
19 on July 1, 1993, and shall]³ be based on evidence furnished to the
20 department that:

21 (a) The redesign of the rechargeable consumer product to
22 comply with the requirements of paragraph (1) of subsection a. of
23 this section would result in significant danger to public health and
24 safety; ³[or] and³

25 (b) The rechargeable consumer product cannot reasonably be
26 redesigned and manufactured to comply with the requirements of
27 paragraph (1) of subsection a. of this section ³[prior to January 1,
28 1992] during the time period for which the temporary exemption
29 would be issued or renewed³.

30 (4) The temporary exemptions provided in this subsection may
31 be ³issued or³ renewed by the department after July 1, 1993 for
32 periods not to exceed 12 months, except that any renewal granted
33 by the department shall be based on evidence furnished to the
34 department that there is no feasible or practical alternative or
35 substitute for the specified rechargeable consumer product.

36 d. The department may, in accordance with a fee schedule
37 adopted as a rule or regulation pursuant to the provisions of the
38 "Administrative Procedure Act," establish and charge reasonable
39 fees for any of the services to be performed or rendered in
40 connection with this section, and for the costs of compliance
41 monitoring and administration. The fee schedule shall reasonably
42 reflect the duration or complexity of the specific service
43 performed or rendered, information reviewed, or inspection
44 conducted.

45 7. (New section) a. ³[On or after April 1, 1992, no] No³
46 person shall sell, offer for sale, or offer for promotional purposes
47 in this State any mercuric oxide battery, or any nickel-cadmium
48 or sealed lead rechargeable battery, unless the manufacturer
49 thereof has obtained the prior written approval of the department

1 of a plan for the collection, transportation, recycling or proper
2 disposal of that used dry cell battery pursuant to the provisions of
3 section 8 of this act.

4 Any two or more manufacturers may submit a joint plan to the
5 department for any specified mercuric oxide battery or
6 rechargeable battery that they manufacture.

7 b. Every manufacturer shall be liable, at his own expense, for
8 the environmentally sound collection, transportation, recycling or
9 proper disposal of every used mercuric oxide battery, or used
10 nickel-cadmium or sealed lead rechargeable battery, as the case
11 may be, produced by him and sold or offered for promotional
12 purposes in this State.

13 c. Manufacturers may establish or utilize a trade association
14 or a consortium comprised of members of the dry cell battery
15 industry, as appropriate, in order to facilitate compliance with
16 the requirements of this act.

17 8. (New section) a. (1) ³[No later than January 1, 1992]
18 Within 9 months of the effective date of this act³, every
19 manufacturer of mercuric oxide batteries, nickel-cadmium
20 rechargeable batteries or sealed lead rechargeable batteries sold
21 or offered for promotional purposes in this State shall prepare
22 and submit a battery management plan, in writing, to the
23 department for the environmentally sound collection,
24 transportation, recycling or proper disposal of each specified used
25 dry cell battery produced by that manufacturer.

26 (2) Prior to submission to the department of a battery
27 management plan, every manufacturer of nickel-cadmium or
28 sealed lead rechargeable batteries shall consult with distributors
29 and retailers of the rechargeable batteries produced by that
30 manufacturer. ²No battery management plan shall require a
31 retail establishment where food or food products are sold or
32 offered for sale directly to the consumer for consumption off the
33 premises of the retail establishment to accept the return of used
34 rechargeable batteries.²

35 b. Each battery management plan submitted by a
36 manufacturer shall include, as appropriate, but need not be
37 limited to:

38 (1) Designation of the collector, transporter, processor or
39 collection system to be utilized by the manufacturer, or by the
40 county or municipality, institutional generator, retailer or small
41 quantity generator on behalf of the manufacturer, for the
42 collection, transportation, recycling or proper disposal of used
43 mercuric oxide batteries or used rechargeable batteries in each
44 county, including, as appropriate, evidence of contracts or
45 agreements entered into therefor;

46 (2) Designation of the funding source or mechanism to be
47 utilized by the manufacturer to defray the costs of implementing
48 the battery management plan;

49 (3) A strategy for informing consumers, on any store display

1 promoting the sale or use of the rechargeable batteries he
2 manufactures, that these types of used dry cell batteries may not
3 enter the solid waste stream, and that a convenient mechanism
4 for the collection, transportation, recycling or proper disposal of
5 used rechargeable batteries is available to the consumer;

6 (4) A statewide consumer education program to assure the
7 widespread dissemination of information concerning the
8 environmental impact of the improper disposal of used mercuric
9 oxide batteries or rechargeable batteries, and to inform
10 consumers that manufacturers of these types of dry cell batteries
11 are liable for their environmentally sound disposal; and

12 (5) A strategy for establishing and implementing, as the
13 department deems necessary, an industry-wide uniform coding
14 system for the identification and labeling of all mercuric oxide
15 batteries or rechargeable batteries by brand name, electrode
16 type, product type or shape; except that the commissioner may
17 grant a waiver from this requirement based on evidence furnished
18 to the department that it is not technologically feasible to label a
19 specified dry cell battery.

20 The commissioner shall maintain on file in the department for
21 public inspection copies of any uniform coding system
22 implemented pursuant to this paragraph. The department shall
23 provide a copy to any person upon request.

24 c. Any manufacturer seeking approval of a battery
25 management plan for the environmentally sound collection,
26 transportation, recycling or proper disposal of any specified used
27 mercuric oxide battery, used nickel-cadmium or sealed lead
28 rechargeable battery that he manufactures shall submit the plan
29 to the department for its review and approval. ³Notice of any
30 battery management plan received by the department pursuant to
31 this subsection shall be published in the New Jersey Register.

32 The commissioner shall maintain on file in the department for
33 public inspection copies of any battery management plan received
34 by the department pursuant to this subsection. The department
35 shall provide a copy to any person upon request at a cost not to
36 exceed the cost of reproduction.³

37 (1) The department shall promptly review all plans submitted
38 pursuant to this subsection. The department shall, within ³[15]
39 30³ days of receipt of a plan, request that the manufacturer
40 submit additional information to assist in its review if it deems
41 that such information is necessary. If no such request is made,
42 the plan shall be construed to be completed. In the event that
43 additional information is requested, the plan shall be construed to
44 be completed when the additional information is received by the
45 department.

46 (2) The department shall approve or deny a plan within ³[30]
47 45³ days of receipt of a completed plan. In the event that the
48 department fails to take action on a plan within the ³[30-day]
49 45-day³ period specified herein, then the plan shall be deemed to

1 have been approved.

2 (3) The department ³[may] shall³ review any battery
3 management plan submitted by a manufacturer and approved
4 pursuant to this subsection ³at least³ once every 24 months
5 following its initial approval. If the department finds, in writing,
6 that the plan is no longer a convenient or economically feasible
7 method for the collection, transportation, recycling or proper
8 disposal of these types of used dry cell batteries, the department
9 may require the manufacturer to submit a new or revised plan for
10 its review and approval; except that any previously approved plan
11 shall remain in effect until such time as a new or revised plan is
12 approved by the department.

13 d. ³[No later than July 1, 1992] Within 15 months of the
14 effective date of this act³ and at least once every 6 months
15 thereafter, every manufacturer of mercuric oxide batteries or
16 rechargeable batteries shall submit a written report to the
17 department on used dry cell battery return or recovery rates in
18 accordance with rules and regulations adopted by the department
19 therefor.

20 e. Manufacturers may establish an advisory council comprised
21 of members of the dry cell battery industry, institutional
22 generators, retailers, small quantity generators and county
23 representatives in order to facilitate the collection,
24 transportation, recycling or proper disposal of used mercuric
25 oxide batteries or used rechargeable batteries in this State.

26 9. (New section) a. ³[No later than January 1, 1992] Within
27 9 months of the effective date of this act³, every manufacturer
28 of dry cell batteries sold or offered for promotional purposes in
29 this State shall prepare and submit to the department, in writing,
30 a dry cell battery collection plan to expand or increase the
31 statewide collection, recycling or proper disposal of all used dry
32 cell batteries produced by that manufacturer.

33 b. Each dry cell battery collection plan submitted by a
34 manufacturer shall include, but need not be limited to:

35 (1) A strategy for expanding and increasing the collection,
36 recycling or proper disposal of all used dry cell batteries in each
37 county, including, but not limited to, those alkaline manganese,
38 consumer mercuric oxide or zinc-carbon batteries manufactured
39 prior to ³[January 1, 1992] the effective date of this act³; and

40 (2) A strategy for establishing and implementing, as the
41 department deems necessary, an industry-wide uniform coding
42 system for the identification and labeling of all dry cell batteries
43 by brand name, electrode type, product type or shape; except
44 that the commissioner may grant a waiver from this requirement
45 based on evidence furnished to the department that it is not
46 technologically feasible to label a specified dry cell battery.

47 The commissioner shall maintain on file in the department for
48 public inspection copies of any uniform coding system
49 implemented pursuant to this paragraph. The department shall

1 provide a copy to any person upon request.

2 c. ³[No later than July 1, 1992] Within 15 months of the
3 effective date of this act³ and at least once every 6 months
4 thereafter, every manufacturer of dry cell batteries shall submit
5 a written report to the department on used dry cell battery
6 return or recovery rates in accordance with rules and regulations
7 adopted by the department therefor.

8 10. (New section) a. ³[On or after April 1, 1992, no] No³
9 person shall knowingly dispose of used mercuric oxide batteries as
10 solid waste at any time.

11 b. Any person seeking to dispose of used mercuric oxide
12 batteries may:

13 (1) transport these types of used dry cell batteries to a
14 household hazardous waste collection site established pursuant to
15 a county household hazardous waste collection program;

16 (2) place these types of used dry cell batteries for collection in
17 the manner provided by the municipal recycling ordinance in
18 instances where the adopted district recycling plan as approved
19 by the department pursuant to section 3 of P.L.1987, c.102
20 (C.13:1E-99.13) requires the collection and disposition of used dry
21 cell batteries as a designated source separated recyclable
22 material; or

23 (3) collect, transport, recycle or dispose of these types of used
24 dry cell batteries as otherwise provided by the battery
25 management plan required pursuant to section 8 of this act.

26 11. (New section) a. ³[On or after April 1, 1992, no] No³
27 person shall knowingly dispose of used nickel-cadmium
28 rechargeable batteries or used sealed lead rechargeable batteries
29 as solid waste at any time.

30 b. Any person seeking to dispose of used nickel-cadmium or
31 sealed lead rechargeable batteries derived from household use
32 may:

33 (1) return these types of used dry cell batteries to a retailer
34 unless otherwise provided by the battery management plan
35 required pursuant to section 8 of this act;

36 (2) transport these types of used dry cell batteries to a
37 household hazardous waste collection site established pursuant to
38 a county household hazardous waste collection program;

39 (3) place these types of used dry cell batteries for collection in
40 the manner provided by the municipal recycling ordinance in
41 instances where the adopted district recycling plan as approved
42 by the department pursuant to section 3 of P.L.1987, c.102
43 (C.13:1E-99.13) requires the collection and disposition of used dry
44 cell batteries as a designated source separated recyclable
45 material; or

46 (4) collect, transport, recycle or dispose of these types of used
47 dry cell batteries as otherwise provided by the battery
48 management plan required pursuant to section 8 of this act.

49 12. (New section) a. ³[On or after April 1, 1992, no] No³ solid

1 waste collector registered pursuant to sections 4 and 5 of
2 P.L.1970, c.39 (C.13:1E-4 and 13:1E-5) shall, at any time,
3 knowingly collect used mercuric oxide batteries, used
4 nickel-cadmium rechargeable batteries or used sealed lead
5 rechargeable batteries placed for collection and disposal as solid
6 waste.

7 b. A solid waste collector may refuse to collect the contents
8 of a solid waste container containing a visible quantity of used
9 mercuric oxide batteries or used rechargeable batteries.

10 13. (New section) a. ³[On or after April 1, 1992, no] No³ solid
11 waste facility in this State shall knowingly accept for disposal
12 any truckload or roll-off container of solid waste containing a
13 visible quantity of used mercuric oxide batteries, used
14 nickel-cadmium rechargeable batteries or used sealed lead
15 rechargeable batteries at any time.

16 b. The owner or operator of a solid waste facility may refuse
17 to accept for disposal any truckload or roll-off container of solid
18 waste containing a visible quantity of used mercuric oxide
19 batteries or used rechargeable batteries.

20 14. (New section) a. Except as otherwise provided in a
21 battery management plan approved by the department pursuant
22 to the provisions of section 8 of this act, every retailer shall:

23 (1) Accept from customers at any time during business hours
24 up to three used nickel-cadmium rechargeable batteries or sealed
25 lead rechargeable batteries derived from household use, of the
26 type and size he sells or offers for sale;

27 (2) Conspicuously post and maintain, at or near the point of
28 display, a legible sign, not less than 8 1/2 inches by 11 inches in
29 size, informing customers that used rechargeable batteries of the
30 type and size sold or offered for sale by the retailer may not
31 enter the solid waste stream, and that the retail establishment is
32 a collection site for the recycling or proper disposal of these
33 types of used dry cell batteries. The sign shall contain the
34 following inscription:

35 "It is illegal to dispose of used nickel-cadmium or sealed lead
36 rechargeable batteries in this State as solid waste"; and

37 "State law requires us to accept used nickel-cadmium or sealed
38 lead rechargeable batteries for return to the manufacturer"; and

39 (3) Conspicuously provide or maintain, at a convenient location
40 within the retail establishment, collection boxes or other suitable
41 receptacles into which customers may deposit used
42 nickel-cadmium or sealed lead rechargeable batteries accepted
43 by the retailer.

44 b. Except as otherwise provided in a battery management plan
45 approved by the department pursuant to the provisions of section
46 8 of this act, a distributor or his agent shall accept the return of
47 all used nickel-cadmium or sealed lead rechargeable batteries he
48 distributes in his service area from a retailer.

49 c. Every manufacturer, at his own expense, shall accept the

1 return of all used nickel-cadmium or sealed lead rechargeable
2 batteries he manufactures from distributors or retailers as
3 provided in a battery management plan approved by the
4 department pursuant to the provisions of section 8 of this act. A
5 manufacturer shall, upon return of a used dry cell battery,
6 provide for its proper disposal or recycling.

7 2d. The provisions of this section shall not apply to any retail
8 establishment where food or food products are sold or offered for
9 sale directly to the consumer for consumption off the premises of
10 the retail establishment.²

11 15. (New section) a. Every institutional generator shall
12 provide for the on-site source separation, collection and disposal
13 of all used mercuric oxide batteries, nickel-cadmium
14 rechargeable batteries and sealed lead rechargeable batteries
15 generated at the facility.

16 b. Every small quantity generator shall provide for the on-site
17 source separation, collection and disposal of all used mercuric
18 oxide batteries, nickel-cadmium rechargeable batteries and
19 sealed lead rechargeable batteries generated at the facility.

20 c. Except as otherwise provided in rules or regulations adopted
21 by the department pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.),
22 or as otherwise prescribed under any other applicable federal or
23 State law, every institutional or small quantity generator shall
24 source-separate used mercuric oxide batteries, nickel-cadmium
25 rechargeable batteries and sealed lead rechargeable batteries for
26 collection and disposal in the manner provided in the battery
27 management plan required pursuant to section 8 of this act.

28 16. (New section) Whenever a county prepares and adopts a
29 district household hazardous waste management plan, ³the
30 commissioner may require³ the plan ³[shall] to³ be adopted as an
31 amendment to the district solid waste management plan required
32 pursuant to the "Solid Waste Management Act," P.L.1970, c.39
33 (C.13:1E-1 et seq.), and shall be subject to approval by the
34 department.

35 a. Each district household hazardous waste management plan ,
36 subject to approval by the department,³ shall identify the county
37 strategy or strategies for the collection and disposal of household
38 hazardous waste, which shall, at a minimum:

39 (1) provide for the collection and disposal of used mercuric
40 oxide batteries, nickel-cadmium rechargeable batteries and
41 sealed lead rechargeable batteries at least once every 90 days;

42 (2) be consistent with the provisions of the district recycling
43 plan required pursuant to section 3 of P.L.1987, c.102
44 (C.13:1E-99.13);

45 (3) designate, if necessary, one or more collection sites within
46 the county for household hazardous waste collection and disposal;
47 and

48 (4) include such other information as may be prescribed in
49 rules or regulations of the department.

1 b. A district household hazardous waste management plan,
2 subject to approval by the department, may provide for the
3 collection and disposal of any used dry cell batteries.

4 c. Household hazardous waste shall be collected, stored and
5 transported in accordance with all applicable standards for such
6 wastes adopted as rules or regulations by the department
7 pursuant to P.L.1970, c.39, or as prescribed under any other
8 applicable federal or State law.

9 d. The department may use a portion of the moneys available
10 in the State Recycling Fund pursuant to paragraph (2) of
11 subsection b. of section 5 of P.L.1981, c.278 (C.13:1E-96) for the
12 purposes of providing technical assistance and training to
13 counties in proper used dry cell battery management.

14 17. (New section) a. The provisions of P.L.1970, c.39
15 (C.13:1E-1 et seq.) or any rules and regulations adopted pursuant
16 thereto to the contrary notwithstanding, the department, as a
17 condition of any permit or approval required pursuant to
18 P.L.1970, c.39, may require the owner or operator of any
19 resource recovery facility, in conjunction with the governing body
20 of the county wherein the resource recovery facility is located,
21 to implement a countywide used dry cell battery source
22 separation and collection program, which program shall be
23 subject to approval by the department, to ensure that any used
24 dry cell batteries found to be of particular concern are removed
25 from the solid waste stream prior to acceptance for disposal at
26 the resource recovery facility.

27 b. As used in this section, "resource recovery facility" means
28 a solid waste facility constructed and operated for the
29 incineration of solid waste for energy production and the
30 recovery of metals and other materials for reuse.

31 18. (New section) a. In the event that the commissioner
32 makes a finding, in writing, that the continued disposal of a
33 specified used dry cell battery, including, but not limited to, any
34 used lithium battery, silver oxide battery, zinc-air battery,
35 alkaline manganese battery or zinc-carbon battery as solid waste
36 presents ³[an imminent] a³ threat to the environment or public
37 health and safety, the commissioner may issue an ³[emergency]³
38 order to every manufacturer of the specified dry cell battery,
39 which order shall include:

40 (1) The specific type of used dry cell battery which ³[present
41 an imminent] presents a³ threat to the environment or public
42 health and safety;

43 (2) A description of the specific threats to the environment or
44 public health and safety which the specified type of used dry cell
45 battery ³[present] presents³;

46 (3) The specific measures which manufacturers of the
47 specified dry cell battery are directed to undertake immediately
48 to abate or eliminate ³[the imminent] any³ threat to the
49 environment or public health and safety; and

1 (4) The actions which the department will take upon the
2 signing of the ³[emergency]³ order, or at any time thereafter,
3 which may include, but need not be limited to:

4 (a) requiring every manufacturer to prepare and submit a
5 battery management plan for the environmentally sound
6 collection, transportation, recycling or proper disposal of that
7 used dry cell battery pursuant to the provisions of section 8 of
8 this act;

9 (b) requiring the ³[immediate]³ suspension of the sale or
10 distribution of that dry cell battery in this State ³unless the
11 manufacturer prepares and submits a battery management plan
12 that is approved by the department pursuant to the provisions of
13 this section³; or

14 (c) requiring every manufacturer to reduce the cadmium, lead
15 or mercury concentration levels in the dry cell battery to
16 environmentally acceptable ³and technologically feasible³ levels
17 as a condition of sale or distribution of that dry cell battery in
18 this State.

19 b. (1) Any manufacturer required to prepare and submit a
20 battery management plan pursuant to this section shall submit
21 the plan to the department for its review and approval within
22 12 months of the effective date of the ³[emergency]³ order.

23 (2) The department is authorized to impose and enforce an
24 indefinite suspension of the sale or distribution in this State of
25 the dry cell battery specified in the ³[emergency]³ order if the
26 manufacturer thereof fails to submit a plan pursuant to the
27 provisions of this subsection.

28 c. An ³[emergency]³ order issued pursuant to this section shall
29 take effect upon the signing of the ³[emergency]³ order by the
30 commissioner, and the person to whom the ³[emergency]³ order is
31 directed shall comply with the ³[emergency]³ order immediately
32 upon receipt thereof.

33 d. Any action brought by a person seeking a temporary or
34 permanent stay of an ³[emergency]³ order issued pursuant to this
35 section shall be brought in the Superior Court. Any person
36 bringing such an action shall have the burden of demonstrating,
37 by clear and convincing evidence, that the dry cell battery
38 specified in the ³[emergency]³ order as presenting ³[an imminent]
39 a³ threat to the environment or public health and safety does not
40 present ³[an imminent] a³ threat to the environment or public
41 health and safety.

42 19. (New section) a. The commissioner shall establish a
43 means of addressing consumer complaints and a public education
44 program to assure the widespread dissemination of information
45 concerning the purpose of this act.

46 b. The department shall have the right to enter, at any time
47 during normal business hours and upon presentation of appropriate
48 credentials, any retail establishment at which consumer mercuric
49 oxide batteries, nickel-cadmium rechargeable batteries or sealed

1 lead rechargeable batteries are sold or offered for promotional
2 purposes in order to determine compliance with the provisions of
3 this act.

4 20. (New section) a. Any person convicted of a violation of
5 this act shall be subject to a penalty of not less than \$500.00 nor
6 more than \$1,000.00 for each offense, to be collected in a civil
7 action by a summary proceeding under "the penalty enforcement
8 law," (N.J.S.2A:58-1 et seq.), or in any case before a court of
9 competent jurisdiction wherein injunctive relief has been
10 requested. The Superior Court and the municipal court shall have
11 jurisdiction to enforce the provisions of "the penalty enforcement
12 law" in connection with this act.

13 If the violation is of a continuing nature, each day during which
14 it continues constitutes an additional, separate, and distinct
15 offense.

16 b. The department may institute a civil action for injunctive
17 relief of enforce this act and to prohibit and prevent a violation
18 of this act, and the court may proceed in the action in a summary
19 manner.

20 21. (New section) The commissioner shall adopt, pursuant to
21 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
22 et seq.), rules and regulations necessary to implement this act.

23 22. (New section) a. The commissioner shall prepare a report
24 to the Legislature concerning the implementation of this act,
25 including recommendations as to whether the collection,
26 transportation, recycling or disposal methods prescribed in this
27 act are the most appropriate means to ensure the
28 environmentally-sound collection, transportation, recycling or
29 proper disposal of used dry cell batteries. The report shall be
30 transmitted to the Legislature not later than two years following
31 the effective date of this act.

32 b. The report shall include, but need not be limited to,
33 recommendations concerning:

34 (1) A requirement that manufacturers further reduce the
35 cadmium, lead or mercury concentration levels in dry cell
36 batteries:

37 (a) For alkaline manganese dry cell batteries, except for
38 button or coin shaped batteries, not more than 1 part per million
39 by weight (0.0001%); and

40 (b) For button or coin shaped alkaline manganese dry cell
41 batteries, not more than 5 milligrams of mercury per battery;

42 (2) The practicability and feasibility of providing for the
43 collection of used dry cell batteries by requiring a deposit on, and
44 establishing a refund value for, any dry cell battery sold or
45 offered for promotional purposes in this State; and

46 (3) The practicability and feasibility of ensuring the proper
47 disposal of used dry cell batteries by imposing a pre-disposal
48 surcharge on the sale of dry cell batteries.

49 23. (New section) No collector or transporter utilized by a

1 manufacturer for the collection of used dry cell batteries who is
2 not otherwise required to file a disclosure statement with the
3 Attorney General and the department shall be subject to the
4 provisions of P.L.1983, c.392 (C.13:1E-126 et seq.).

5 24. Section 3 of P.L.1987, c.102 (C.13:1E-99.13) is amended to
6 read as follows:

7 3. a. Each county shall, [within six months of the effective
8 date of this amendatory and supplementary act] no later than
9 October 20, 1987 and after consultation with each municipality
10 within the county, prepare and adopt a district recycling plan to
11 implement the State Recycling Plan goals. Each plan shall be
12 adopted as an amendment to the district solid waste management
13 plan required pursuant to the provisions of the "Solid Waste
14 Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.).

15 b. Each district recycling plan required pursuant to this
16 section shall include, but need not be limited to:

17 (1) Designation of a district recycling coordinator;

18 (2) Designation of the recyclable materials to be source
19 separated in each municipality which shall include, in addition to
20 leaves, at least three other recyclable materials separated from
21 the municipal solid waste stream;

22 (3) Designation of the strategy for the collection, marketing
23 and disposition of designated source separated recyclable
24 materials in each municipality; and

25 (4) Designation of recovery targets in each municipality to
26 achieve the maximum feasible recovery of recyclable materials
27 from the municipal solid waste stream which shall include, at a
28 minimum, the following schedule:

29 (a) The recycling of at least 15% of the [prior year's] total
30 municipal solid waste stream by [the end of the first full year
31 succeeding the adoption and approval by the department of the
32 district recycling plan] December 31, 1989; and

33 (b) The recycling of at least 25% of the [second preceding
34 year's] total municipal solid waste stream by [the end of the
35 second full year succeeding the adoption and approval by the
36 department of the district recycling plan] December 31, 1990.

37 For the purposes of this paragraph, "total municipal solid waste
38 stream" means the sum of the municipal solid waste stream
39 disposed of as solid waste, as measured in tons, plus the total
40 number of tons of recyclable materials recycled.

41 c. Each district recycling plan, in designating a strategy for
42 the collection, marketing and disposition of designated recyclable
43 materials in each municipality, shall accord priority consideration
44 to persons engaging in the business of recycling or otherwise
45 lawfully providing recycling services on behalf of a county or
46 municipality on January 1, 1986, if that person continues to
47 provide recycling services prior to the adoption of the plan and
48 that person has not discontinued these services for a period of
49 90 days or more between January 1, 1986, and the date on which

1 the plan is adopted.

2 [d. Notwithstanding the provisions of the "Solid Waste
3 Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), each] Each
4 district recycling plan may be modified after adoption pursuant
5 to a procedure set forth in the adopted plan as approved by the
6 department.

7 d. A district recycling plan may be modified to require that
8 each municipality within the county revise the ordinance adopted
9 pursuant to subsection b. of section 6 of P.L.1987, c.102
10 (C.13:1E-99.16) to provide for the source separation and
11 collection of used dry cell batteries as a designated recyclable
12 material.

13 (cf: P.L.1987, c.102, s.3)

14 25. This act shall take effect immediately³, except that
15 sections 7, 10, 11, 12, and 13 shall take effect one year after
16 enactment³.

17

18

19

WASTE MANAGEMENT

20

21 "Dry Cell Battery Management Act."

SENATE, No. 3157

STATE OF NEW JERSEY

INTRODUCED DECEMBER 6, 1990

By Senator CONTILLO

1 AN ACT concerning the collection and disposal of used dry cell
2 batteries, and amending and supplementing P.L.1987, c.102.

3

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

6 1. (New section) The Legislature finds and declares that the
7 presence of toxic metals in certain discarded dry cell batteries is
8 a matter of great concern in light of their likely presence in
9 emissions or residual ash when used batteries are incinerated at a
10 resource recovery facility; that cadmium, lithium and mercury,
11 on the basis of available scientific and medical evidence, are of
12 particular concern; that it is desirable as a first step in reducing
13 the toxicity of waste materials in municipal solid waste streams
14 directed to resource recovery facilities to eliminate the various
15 sources of these toxic metals; and that because New Jersey is
16 faced with a very restricted range of disposal alternatives, the
17 removal of these used dry cell batteries from the municipal waste
18 stream can have a significant beneficial impact on the quality of
19 the emissions and residual ash resulting from the incineration of
20 solid waste at resource recovery facilities, and on groundwater
21 quality in those regions of the State where solid waste is disposed
22 at sanitary landfill facilities.

23 The Legislature further finds and declares that a statewide
24 toxic waste source reduction strategy must begin with
25 fundamental changes in manufacturing practices and consumer
26 disposal habits; that the manufacturers of products containing
27 high levels of cadmium and mercury that are discarded after
28 serving their intended use must assume responsibility for their
29 environmentally-sound solid waste disposal; and that in
30 particular, the dry cell battery industry must begin to bear a
31 more equitable share of the environmental and social costs
32 associated with manufacturing batteries having little potential
33 for recycling, and which place a burden on the State's severely
34 limited disposal options.

35 The Legislature further finds and declares that lithium,
36 mercuric oxide, silver oxide, zinc-air and nickel-cadmium
37 rechargeable dry cell batteries are especially problematical and
38 require separate management; that the most effective and
39 appropriate method to promote toxic metal source reduction is to
40 encourage consumers to return, and require manufacturers to

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 accept the responsibility for, the environmentally-sound disposal
2 of used lithium, mercuric oxide, silver oxide, zinc-air and
3 nickel-cadmium rechargeable dry cell batteries; and that
4 alternative methods to manage these used dry cell batteries
5 include a county recycling program or a county household
6 hazardous waste collection program.

7 The Legislature therefore determines that it is in the public
8 interest to achieve this reduction in toxicity by removing all used
9 lithium, mercuric oxide, silver oxide, zinc-air and
10 nickel-cadmium rechargeable dry cell batteries from the
11 municipal solid waste stream, and by requiring the manufacturers
12 of these dry cell batteries to accept the liability for their
13 environmentally-sound disposal; by requiring the manufacturers
14 of alkaline manganese and zinc-carbon dry cell batteries to
15 reduce the mercury concentration in their products to
16 environmentally acceptable levels; by requiring every retailer of
17 lithium, mercuric oxide, silver oxide, zinc-air and
18 nickel-cadmium rechargeable dry cell batteries to accept used
19 dry cell batteries from consumers, and, in conjunction with
20 manufacturers of these batteries, to provide for their proper
21 disposal; and by encouraging every county which utilizes a
22 resource recovery facility for the disposal of solid waste to
23 establish a district household hazardous waste collection program
24 to provide for the collection and disposal of used dry cell
25 batteries.

26 2. (New section) As used in this act:

27 "Commissioner" means the Commissioner of the Department
28 of Environmental Protection;

29 "Department" means the Department of Environmental
30 Protection;

31 "Distributor" means a person who sells dry cell batteries at
32 wholesale to retailers in this State, including any manufacturer
33 who engages in these sales;

34 "Dry cell battery" means any type of button, coin, cylindrical,
35 rectangular or other shaped, enclosed device or sealed container
36 consisting of a combination of two or more voltaic or galvanic
37 cells, electrically connected to produce electric energy,
38 composed of lead, lithium, manganese, mercury, mercuric oxide,
39 silver oxide, cadmium, zinc, copper or other metals, or any
40 combination thereof, and designed for commercial, industrial,
41 medical, institutional or household use, including any lithium,
42 mercuric oxide, silver oxide or zinc-air cell battery, alkaline
43 manganese or zinc-carbon household battery or nickel-cadmium
44 rechargeable battery;

45 "Lithium battery" means any button, coin, cylindrical,
46 rectangular or other shaped dry cell battery consisting of lithium,
47 manganese dioxide and other chemicals commonly used in pocket
48 calculators, wrist watches and other electrical appliances;

49 "Manufacturer" means a person producing dry cell batteries for

1 sale to distributors or retailers or consumers;

2 "Mercuric oxide battery" means any button, coin, cylindrical,
3 rectangular or other shaped dry cell battery consisting of zinc,
4 potassium and mercury oxide commonly used in hearing aids,
5 photographic equipment and electrical appliances;

6 "Nickel-cadmium rechargeable battery" means any button,
7 coin, cylindrical, rectangular or other shaped dry cell battery
8 composed of cadmium and nickel which is designed for reuse and
9 is capable of being recharged after repeated uses, and which has
10 a useful life of at least 12 months;

11 "Municipal solid waste stream" means all residential,
12 commercial and institutional solid waste generated within the
13 boundaries of any municipality;

14 "Rechargeable consumer product" means any product
15 containing a nickel-cadmium rechargeable battery which is
16 purchased at retail and commonly used for personal or household
17 purposes;

18 "Resource recovery facility" means a solid waste facility
19 constructed and operated for the incineration of solid waste for
20 energy production and the recovery of metals and other materials
21 for reuse;

22 "Retailer" means a person engaged in the sale of lithium,
23 mercuric oxide, silver oxide, zinc-air or nickel-cadmium
24 rechargeable dry cell batteries to any person at retail and
25 includes any manufacturer or distributor engaging in retail sales;

26 "Silver oxide battery" means any button, coin, cylindrical,
27 rectangular or other shaped dry cell battery consisting of silver
28 oxide, potassium hydroxide or sodium hydroxide and zinc, and
29 mercury commonly used in wrist watches and other electrical
30 appliances;

31 "Solid waste container" means a receptacle, container or bag
32 suitable for the depositing of solid waste;

33 "Zinc-air battery" means any button, coin, cylindrical,
34 rectangular or other shaped dry cell battery consisting of zinc,
35 potassium, hydroxide and oxygen commonly used in hearing aids,
36 photographic equipment and electrical appliances.

37 3. (New section) a. No person shall sell, offer for sale, or offer
38 for promotional purposes in this State any alkaline manganese dry
39 cell battery which exceeds the following mercury concentration
40 levels:

41 (1) For alkaline manganese dry cell batteries, except for
42 button or coin shaped batteries, not more than 250 parts per
43 million by weight (0.025%) for all batteries manufactured on or
44 after January 1, 1992; and

45 (2) For button or coin shaped alkaline manganese dry cell
46 batteries, not more than 25 milligrams of mercury per battery for
47 all batteries manufactured on or after January 1, 1992.

48 b. No person shall sell, offer for sale, or offer for promotional
49 purposes in this State any zinc-carbon dry cell battery which

1 exceeds a mercury concentration level of 1 part per million by
2 weight (0.0001%) for all batteries manufactured on or after
3 January 1, 1992.

4 4. (New section) a. On or after January 1, 1992, no person shall
5 sell, offer for sale, or offer for promotional purposes in this State
6 any rechargeable consumer product unless:

7 (1) the nickel-cadmium rechargeable dry cell battery is readily
8 removable from the product; or the nickel-cadmium rechargeable
9 dry cell battery is contained in a battery pack which is separate
10 from the product and the battery is readily removable from the
11 battery pack; and

12 (2) the rechargeable consumer product and the nickel-cadmium
13 rechargeable dry cell battery are separately labeled pursuant to
14 the provisions of subsection b. of this section.

15 b. Every rechargeable consumer product and each
16 nickel-cadmium rechargeable dry cell battery contained therein
17 shall be labeled with a legible sign informing consumers that used
18 nickel-cadmium rechargeable dry cell batteries may not enter
19 the municipal solid waste stream, and that these used dry cell
20 batteries shall be collected, recycled or disposed of in an
21 environmentally sound manner. The sign shall contain the
22 following inscription:

23 "It is illegal to discard used nickel-cadmium rechargeable dry
24 cell batteries in New Jersey"; and

25 "State law requires any person engaged in the retail sale of
26 nickel-cadmium rechargeable dry cell batteries to accept used
27 nickel-cadmium rechargeable dry cell batteries for return to the
28 manufacturer."

29 5. (New section) a. No person shall sell, offer for sale, or offer
30 for promotional purposes in this State any lithium, mercuric
31 oxide, silver oxide, zinc-air or nickel-cadmium rechargeable dry
32 cell batteries unless the manufacturer of the specified dry cell
33 battery has obtained the prior written approval of the department
34 of a mechanism for the collection, recycling or proper disposal of
35 that used dry cell battery pursuant to the provisions of section 6
36 of this act.

37 b. Every manufacturer shall inform retailers that the used
38 lithium, mercuric oxide, silver oxide, zinc-air or nickel-cadmium
39 rechargeable dry cell batteries manufactured by him shall be
40 returned to the manufacturer in the manner approved by the
41 department for the collection, recycling or proper disposal of
42 that specified used dry cell battery pursuant to the provisions of
43 section 6 of this act.

44 c. Every retailer shall cooperate with manufacturers in
45 implementing the mechanism approved by the department for the
46 collection, recycling or proper disposal of the used lithium,
47 mercuric oxide, silver oxide, zinc-air or nickel-cadmium
48 rechargeable dry cell batteries produced by that manufacturer.

49 6. (New section) Every manufacturer shall be liable for the

1 collection, recycling or proper disposal of every used lithium,
2 mercuric oxide, silver oxide, zinc-air or nickel-cadmium
3 rechargeable dry cell battery sold or offered for promotional
4 purposes in this State by that manufacturer.

5 a. Within one year of the effective date of this act and at the
6 manufacturer's expense, every manufacturer shall:

7 (1) furnish evidence to the department that a convenient and
8 economically feasible mechanism for the collection, recycling or
9 proper disposal of the used dry cell batteries sold or offered for
10 promotional purposes by that manufacturer is available to
11 consumers, retailers, counties and municipalities in this State;

12 (2) inform consumers, on any store display promoting the sale
13 or use of dry cell batteries he manufactures, that used dry cell
14 batteries may not enter the municipal solid waste stream, and
15 that a convenient and economically feasible mechanism for the
16 collection, recycling or proper disposal of used dry cell batteries
17 is available to the consumer; and

18 (3) establish and implement a statewide consumer education
19 program to assure the widespread dissemination of information
20 concerning the environmental impact of improperly disposing
21 used lithium, mercuric oxide, silver oxide, zinc-air or
22 nickel-cadmium rechargeable dry cell batteries, and to inform
23 consumers that manufacturers of these dry cell batteries are
24 liable for their environmentally sound disposal.

25 b. To ensure that a convenient and economically feasible
26 mechanism for the collection, recycling or proper disposal of used
27 dry cell batteries is available to consumers, retailers, counties
28 and municipalities in this State at the manufacturer's expense,
29 every manufacturer shall:

30 (1) identify the collector, transporter or processor to be
31 utilized by the manufacturer, or by the retailer, county or
32 municipality on behalf of the manufacturer, for the collection,
33 recycling or proper disposal of used dry cell batteries in each
34 county, including evidence of contracts or agreements entered
35 into therefor;

36 (2) accept all used dry cell batteries collected by retailers or
37 the counties and returned to the manufacturer for recycling or
38 disposal;

39 (3) establish and implement a uniform coding system for the
40 identification and labeling of lithium, mercuric oxide, silver
41 oxide, zinc-air and nickel-cadmium rechargeable dry cell
42 batteries, which system shall, at a minimum, include a chemical
43 material code indicating its type and chemical composition. The
44 chemical material code shall consist of a series of color-coded
45 acronyms, symbols, or circular-shaped configurations on the
46 battery; and

47 (4) within 6 months of the approval of a proposal pursuant to
48 subsection d. of this section and at least once every 6 months
49 thereafter, submit documented data on used dry cell battery

1 return or recovery rates to the department in accordance with
2 rules and regulations adopted by the department therefor.

3 c. The commissioner shall maintain on file in the department
4 for public inspection copies of the uniform coding system
5 provided in subsection b. of this section. The department shall
6 provide a copy to any person upon request.

7 d. Any manufacturer seeking approval for a proposed
8 mechanism for the collection, recycling or proper disposal of any
9 specified used lithium, mercuric oxide, silver oxide, zinc-air or
10 nickel-cadmium rechargeable dry cell battery that he
11 manufactures shall submit the proposal, in writing, to the
12 department for its review and approval.

13 Any two or more manufacturers may submit a joint proposal to
14 the department for any specified used dry cell batteries that they
15 manufacture.

16 (1) The department shall promptly review all proposals
17 submitted pursuant to this subsection. The department shall,
18 within 15 days of receipt of a proposal, request that the
19 manufacturer submit additional information to assist in its review
20 if it deems that such information is necessary. If no such request
21 is made, the proposal shall be construed to be completed. In the
22 event that additional information is requested, the proposal shall
23 be construed to be completed when the additional information is
24 received by the department.

25 (2) The department shall approve or deny a proposal within 30
26 days of receipt of a completed proposal. In the event that the
27 department fails to take action on a proposal within the 30-day
28 period specified herein, then the proposal shall be deemed to have
29 been approved.

30 (3) The department may review any proposal approved pursuant
31 to this subsection once every 24 months following its initial
32 approval. If the department finds, in writing, that the mechanism
33 is no longer a convenient and economically feasible method for
34 the collection, recycling or proper disposal of used dry cell
35 batteries, the department may require the manufacturer to
36 submit a new or revised proposal for its review and approval;
37 except that any previously approved mechanism shall remain in
38 effect until such time as a new or revised proposal is approved by
39 the department.

40 e. Manufacturers may establish an advisory council comprised
41 of members of the dry cell battery industry, retailers, and county
42 representatives in order to facilitate the collection, recycling or
43 proper disposal of used dry cell batteries in this State.

44 7. (New section) a. No person shall knowingly dispose of used
45 lithium, mercuric oxide, silver oxide, zinc-air or nickel-cadmium
46 rechargeable dry cell batteries as solid waste at any time.

47 Any person seeking to discard used lithium, mercuric oxide,
48 silver oxide, zinc-air or used nickel-cadmium rechargeable dry
49 cell batteries derived from household use may return the used

1 household dry cell batteries to a retailer; or

2 (1) transport the batteries to a household hazardous waste
3 collection site established pursuant to a county household
4 hazardous waste collection program; or

5 (2) place the batteries for collection in the manner provided by
6 the municipal recycling ordinance in instances where the adopted
7 district recycling plan as approved by the department pursuant to
8 section 3 of P.L.1987, c.102 (C.13:1E-99.13) requires the
9 collection and disposition of used dry cell batteries as a
10 designated source separated recyclable material.

11 b. (1) No solid waste collector registered pursuant to sections 4
12 and 5 of P.L.1970, c.39 (C.13:1E-4 and 13:1E-5) shall, at any
13 time, knowingly collect used lithium, mercuric oxide, silver
14 oxide, zinc-air or nickel-cadmium rechargeable dry cell batteries
15 placed for collection and disposal as solid waste.

16 (2) A solid waste collector may refuse to collect the contents
17 of a solid waste container containing a visible quantity of used
18 lithium, mercuric oxide, silver oxide, zinc-air or nickel-cadmium
19 rechargeable dry cell batteries.

20 8. (New section) a. No resource recovery facility in this State
21 shall knowingly accept for disposal any truckload or roll-off
22 container of solid waste containing a visible quantity of used
23 lithium, mercuric oxide, silver oxide, zinc-air or nickel-cadmium
24 rechargeable dry cell batteries at any time.

25 b. The owner or operator of a resource recovery facility may
26 refuse to accept for disposal any truckload or roll-off container
27 of solid waste containing a visible quantity of used lithium,
28 mercuric oxide, silver oxide, zinc-air or nickel-cadmium
29 rechargeable dry cell batteries.

30 9. (New section) Every retailer shall, upon presentation at any
31 time during business hours, accept from customers up to three
32 used lithium, mercuric oxide, silver oxide, zinc-air or
33 nickel-cadmium rechargeable dry cell batteries derived from
34 household use, of the type and size he sells or offers for sale.

35 a. (1) Every retailer shall conspicuously post and maintain, at
36 or near the point of display, a legible sign, not less than 8 1/2
37 inches by 11 inches in size, informing customers that used
38 lithium, mercuric oxide, silver oxide, zinc-air and
39 nickel-cadmium rechargeable dry cell batteries of the type and
40 size sold or offered for sale by the retailer may not enter the
41 municipal solid waste stream, and that the retail establishment is
42 a collection site for the environmentally sound disposal of these
43 used dry cell batteries. The sign shall contain the following
44 inscription:

45 "It is illegal to discard used lithium, mercuric oxide, silver
46 oxide, zinc-air or nickel-cadmium rechargeable dry cell batteries
47 in this State"; and

48 "State law requires us to accept used lithium, mercuric oxide,
49 silver oxide, zinc-air and nickel-cadmium rechargeable dry cell

1 batteries for return to the manufacturer."

2 (2) Every retailer shall conspicuously maintain, at or near the
3 point of display, or at a convenient location in close proximity
4 thereto, collection boxes or other suitable receptacles into which
5 customers may deposit used lithium, mercuric oxide, silver oxide,
6 zinc-air or nickel-cadmium rechargeable dry cell batteries
7 accepted by the retailer.

8 b. A distributor or his agent shall accept the return of all used
9 dry cell batteries he distributes in his service area from a retailer.

10 c. Every manufacturer shall accept for return any used dry cell
11 batteries he manufactures pursuant to the provisions of section 6
12 of this act. A manufacturer shall, upon return of a used dry cell
13 battery, provide for its proper disposal or recycling.

14 d. Whenever a retailer or group of retailers receives a shipment
15 or consignment of, or in any manner acquires, lithium, mercuric
16 oxide, silver oxide, zinc-air or nickel-cadmium rechargeable dry
17 cell batteries outside of New Jersey for sale to consumers in New
18 Jersey, the retailer or retailers shall be subject to the provisions
19 of this act as if they were distributors or manufacturers, as well
20 as retailers.

21 10. (New section) a. Every institutional generator shall provide
22 for the on-site source separation, collection and disposal of used
23 lithium, mercuric oxide, silver oxide, zinc-air or nickel-cadmium
24 rechargeable dry cell batteries generated at the facility.

25 b. As used in this section, "institutional generator" means the
26 owner or operator of any commercial industrial establishment or
27 facility, health care facility or hospital, research laboratory or
28 facility, any of which routinely use large quantities of lithium,
29 mercuric oxide, silver oxide, zinc-air or nickel-cadmium
30 rechargeable dry cell batteries; or any facility identified by the
31 department that generates at least 220 pounds of these types of
32 used dry cell batteries per month, or any facility that
33 accumulates 220 pounds of these types of used dry cell batteries
34 at any time.

35 11. (New section) Any county may prepare and adopt a district
36 household hazardous waste management plan. Each plan shall be
37 adopted as an amendment to the district solid waste management
38 plan required pursuant to the "Solid Waste Management Act,"
39 P.L.1970, c.39 (C.13:1E-1 et seq.), and shall be subject to
40 approval by the department.

41 a. Each district household hazardous waste management plan
42 shall identify the county strategy or strategies for the collection
43 and disposal of household hazardous waste, which shall, at a
44 minimum:

45 (1) provide for the collection and disposal of used lithium,
46 mercuric oxide, silver oxide, zinc-air and nickel-cadmium
47 rechargeable dry cell batteries at least once every 90 days;

48 (2) be consistent with the provisions of the district recycling
49 plan required pursuant to section 3 of P.L.1987, c.102
50 (C.13:1E-99.13);

1 (3) designate, if necessary, one or more collection sites within
2 the county for household hazardous waste collection and disposal;
3 and

4 (4) include such other information as may be prescribed in rules
5 or regulations of the department.

6 b. Household hazardous waste shall be collected, stored and
7 transported in accordance with all applicable standards for such
8 wastes adopted as rules or regulations by the department
9 pursuant to P.L.1970, c.39, or as prescribed under any other
10 applicable federal or State law.

11 c. The department may use a portion of the moneys available in
12 the State Recycling Fund pursuant to paragraph (2) of subsection
13 b. of section 5 of P.L.1981, c.278 (C.13:1E-96) for the purposes of
14 providing technical assistance and training to counties in proper
15 used dry cell battery management.

16 12. (New section) a. The commissioner shall establish a means
17 of addressing consumer complaints and a public education
18 program to assure the widespread dissemination of information
19 concerning the purpose of this act.

20 b. The department shall have the right to enter, at any time
21 during normal business hours and upon presentation of appropriate
22 credentials, any retail establishment at which lithium, mercuric
23 oxide, silver oxide, zinc-air or nickel-cadmium rechargeable dry
24 cell batteries are sold or offered for promotional purposes in
25 order to determine compliance with the provisions of this act.

26 13. (New section) The commissioner shall adopt, within 18
27 months of the effective date of this act and pursuant to the
28 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
29 seq.), rules and regulations necessary to implement this act.

30 14. (New section) a. Any person convicted of a violation of this
31 act shall be subject to a penalty of not less than \$500.00 nor more
32 than \$1,000.00 for each offense, to be collected in a civil action
33 by a summary proceeding under "the penalty enforcement law,"
34 (N.J.S.2A:58-1 et seq.), or in any case before a court of
35 competent jurisdiction wherein injunctive relief has been
36 requested. The Superior Court and the municipal court shall have
37 jurisdiction to enforce the provisions of "the penalty enforcement
38 law" in connection with this act.

39 If the violation is of a continuing nature, each day during which
40 it continues constitutes an additional, separate, and distinct
41 offense.

42 b. The department may institute a civil action for injunctive
43 relief of enforce this act and to prohibit and prevent a violation
44 of this act, and the court may proceed in the action in a summary
45 manner.

46 15. Section 3 of P.L.1987, c.102 (C.13:1E-99.13) is amended to
47 read as follows:

48 3. a. Each county shall, [within six months of the effective date
49 of this amendatory and supplementary act] no later than October

1 20, 1987 and after consultation with each municipality within the
2 county, prepare and adopt a district recycling plan to implement
3 the State Recycling Plan goals. Each plan shall be adopted as an
4 amendment to the district solid waste management plan required
5 pursuant to the provisions of the "Solid Waste Management Act,"
6 P.L.1970, c.39 (C.13:1E-1 et seq.).

7 b. Each district recycling plan required pursuant to this section
8 shall include, but need not be limited to:

9 (1) Designation of a district recycling coordinator;

10 (2) Designation of the recyclable materials to be source
11 separated in each municipality which shall include, in addition to
12 leaves, at least three other recyclable materials separated from
13 the municipal solid waste stream;

14 (3) Designation of the strategy for the collection, marketing
15 and disposition of designated source separated recyclable
16 materials in each municipality; and

17 (4) Designation of recovery targets in each municipality to
18 achieve the maximum feasible recovery of recyclable materials
19 from the municipal solid waste stream which shall include, at a
20 minimum, the following schedule:

21 (a) The recycling of at least 15% of the [prior year's] total
22 municipal solid waste stream by [the end of the first full year
23 succeeding the adoption and approval by the department of the
24 district recycling plan] December 31, 1989; and

25 (b) The recycling of at least 25% of the [second preceding
26 year's] total municipal solid waste stream by [the end of the
27 second full year succeeding the adoption and approval by the
28 department of the district recycling plan] December 31, 1990.

29 For the purposes of this paragraph, "total municipal solid waste
30 stream" means the sum of the municipal solid waste stream
31 disposed of as solid waste, as measured in tons, plus the total
32 number of tons of recyclable materials recycled.

33 c. Each district recycling plan, in designating a strategy for the
34 collection, marketing and disposition of designated recyclable
35 materials in each municipality, shall accord priority consideration
36 to persons engaging in the business of recycling or otherwise
37 lawfully providing recycling services on behalf of a county or
38 municipality on January 1, 1986, if that person continues to
39 provide recycling services prior to the adoption of the plan and
40 that person has not discontinued these services for a period of 90
41 days or more between January 1, 1986, and the date on which the
42 plan is adopted.

43 [d. Notwithstanding the provisions of the "Solid Waste
44 Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), each] Each
45 district recycling plan may be modified after adoption pursuant
46 to a procedure set forth in the adopted plan as approved by the
47 department.

48 d. A district recycling plan may be modified to require that
49 each municipality within the county revise the ordinance adopted

1 pursuant to subsection b. of section 6 of P.L.1987, c.102
2 (C.13:1E-99.16) to provide for the source separation and
3 collection of used dry cell batteries as a designated recyclable
4 material.

5 (cf: P.L.1987, c.102, s.3)

6 16. (New section) a. The provisions of P.L.1970, c.39
7 (C.13:1E-1 et seq.) or any rules and regulations adopted pursuant
8 thereto to the contrary notwithstanding, the department, as a
9 condition of any permit or approval required pursuant to
10 P.L.1970, c.39, may require the owner or operator of any solid
11 waste facility, in conjunction with the governing body of the host
12 county, to implement a countywide used dry cell battery source
13 separation and collection program, which program shall be
14 subject to approval by the department, to ensure that any used
15 dry cell batteries found to be of particular concern are removed
16 from the municipal solid waste stream prior to acceptance for
17 disposal at the solid waste facility.

18 b. The provisions of this section shall not impose any additional
19 liability on manufacturers of lithium, mercuric oxide, silver
20 oxide, zinc-air or nickel-cadmium rechargeable dry cell
21 batteries, except that nothing herein shall be construed to relieve
22 any manufacturer of the liability imposed on manufacturers
23 pursuant to the provisions of section 6 of this act.

24 17. (New section) a. The Commissioner of Environmental
25 Protection shall prepare a report to the Legislature concerning
26 the implementation of this amendatory and supplementary act,
27 including recommendations as to whether the collection,
28 recycling or disposal methods prescribed in this amendatory and
29 supplementary act are the most appropriate means to ensure the
30 environmentally-sound disposal of used lithium, mercuric oxide,
31 silver oxide, zinc-air or nickel-cadmium rechargeable dry cell
32 batteries. The report shall be transmitted to the Legislature not
33 later than two years following the effective date of this act.

34 b. The report shall include, but need not be limited to,
35 recommendations concerning:

36 (1) a requirement that manufacturers further reduce the
37 mercury concentration levels in dry cell batteries:

38 (a) For alkaline manganese dry cell batteries, except for button
39 or coin shaped batteries, not more than 1 part per million by
40 weight (0.0001%); and

41 (b) For button or coin shaped alkaline manganese dry cell
42 batteries, not more than 5 milligrams of mercury per battery;

43 (2) the practicability and feasibility of providing for the
44 collection of used dry cell batteries by requiring a deposit on, and
45 establishing a refund value for, any lithium, mercuric oxide,
46 silver oxide, zinc-air or nickel-cadmium rechargeable dry cell
47 battery; and

48 (3) the practicability and feasibility of ensuring the proper
49 disposal of used dry cell batteries by imposing a pre-disposal

1 surcharge on the sale of dry cell batteries.

2 18. (New section) No collector or transporter utilized by a
3 manufacturer for the collection of used dry cell batteries who is
4 not otherwise required to file a disclosure statement with the
5 Attorney General and the department shall be subject to the
6 provisions of P.L.1983, c.392 (C.13:1E-126 et seq.).

7 19. This act shall take effect immediately.

8

9

10 STATEMENT

11

12 This bill would prohibit the disposal of any used lithium,
13 mercuric oxide, silver oxide, zinc-air or nickel-cadmium
14 rechargeable dry cell batteries as solid waste at any time. Any
15 person seeking to discard these types of batteries derived from
16 household use may return up to three used batteries to a retailer.

17 Alternatively, used dry cell batteries: (1) may be transported to
18 a household hazardous waste collection site established under to a
19 county household hazardous waste collection program, whenever
20 a county has established such a program; or (2) may be placed for
21 collection as part of a county recycling program, if the county
22 has mandated the source separation and recycling of used dry cell
23 batteries.

24 The bill prohibits the sale of any alkaline manganese dry cell
25 battery which exceeds the following mercury concentration levels:

26 (1) For alkaline manganese dry cell batteries, except for
27 button or coin shaped batteries, not more than 250 parts per
28 million by weight (0.025%) for all batteries manufactured on or
29 after January 1, 1992;

30 (2) For button or coin shaped alkaline manganese dry cell
31 batteries, not more than 25 milligrams of mercury per battery for
32 all batteries manufactured on or after January 1, 1992.

33 The bill prohibits the sale of any zinc-carbon dry cell battery
34 which exceeds a mercury concentration level of 1 part per million
35 by weight (0.0001%) for all batteries manufactured on or after
36 January 1, 1992.

37 The bill also prohibits the sale of any rechargeable consumer
38 product after January 1, 1992, unless:

39 (1) the nickel-cadmium rechargeable dry cell battery is readily
40 removable from the product; or the nickel-cadmium rechargeable
41 dry cell battery is contained in a battery pack which is separate
42 from the product and the battery is readily removable from the
43 battery pack; and

44 (2) the rechargeable consumer product and the nickel-cadmium
45 rechargeable dry cell battery are separately labeled with a sign
46 informing consumers that used nickel-cadmium rechargeable dry
47 cell batteries may not enter the municipal solid waste stream,
48 and that these used dry cell batteries must be collected, recycled
49 or disposed of in an environmentally sound manner. The sign must

1 also inform consumers that State law requires any person engaged
2 in the retail sale of nickel-cadmium rechargeable dry cell
3 batteries to accept used nickel-cadmium rechargeable dry cell
4 batteries for return to the manufacturer.

5 The bill provides that every manufacturer shall be liable, at the
6 manufacturer's expense, for the collection, recycling or proper
7 disposal of every used lithium, mercuric oxide, silver oxide,
8 zinc-air or nickel-cadmium rechargeable dry cell battery sold or
9 offered for promotional purposes in this State by that
10 manufacturer. Accordingly, the bill prohibits the sale of any of
11 these batteries in New Jersey unless the manufacturer thereof
12 has obtained the prior written approval of the Department of
13 Environmental Protection of a mechanism for the collection,
14 recycling or proper disposal of that used dry cell battery.

15 Specifically, within one year of the bill's effective date, every
16 manufacturer must comply with the following requirements:

17 (1) furnish evidence to the department that a convenient and
18 economically feasible mechanism for the collection, recycling or
19 proper disposal of the used dry cell batteries manufactured by
20 him is available to consumers, retailers, counties and
21 municipalities;

22 (2) inform consumers, on any store display promoting the sale
23 or use of dry cell batteries he manufactures, that used dry cell
24 batteries may not enter the municipal solid waste stream, and
25 that a convenient and economically feasible mechanism for the
26 collection, recycling or proper disposal of used dry cell batteries
27 is available to the consumer; and

28 (3) establish and implement a statewide consumer education
29 program to assure the widespread dissemination of information
30 concerning the environmental impact of improperly disposing
31 used lithium, mercuric oxide, silver oxide, zinc-air or
32 nickel-cadmium rechargeable dry cell batteries, and to inform
33 consumers that manufacturers of these dry cell batteries are
34 liable for their environmentally sound disposal.

35 In addition, every manufacturer is required to:

36 (1) identify the collector, transporter or processor to be
37 utilized by the manufacturer, or by the retailer, county or
38 municipality on behalf of the manufacturer, for the collection,
39 recycling or proper disposal of used dry cell batteries in each
40 county, including evidence of contracts or agreements entered
41 into therefor;

42 (2) accept all used dry cell batteries collected by retailers or
43 the counties and returned to the manufacturer for recycling or
44 disposal; and

45 (3) establish and implement a uniform coding system for the
46 identification and labeling of lithium, mercuric oxide, silver
47 oxide, zinc-air and nickel-cadmium rechargeable dry cell
48 batteries, consisting of a series of color-coded acronyms,
49 symbols, or circular-shaped configurations on the battery; and

1 (4) within 6 months of the approval of a proposed mechanism
2 and at least once every 6 months thereafter, submit documented
3 data on used dry cell battery return or recovery rates to the
4 department in accordance with rules and regulations adopted by
5 the department therefor.

6 The bill provides for a specified timeframe within which the
7 DEP must review and approve proposed mechanisms submitted by
8 a manufacturer for the collection, recycling or proper disposal of
9 any specified used dry cell battery. Any two or more
10 manufacturers may submit a joint proposal to the department for
11 any specified used dry cell batteries that they manufacture.

12 Specifically, the department shall, within 15 days of receipt of
13 a proposal, request that the manufacturer submit additional
14 information to assist in its review if it deems that such
15 information is necessary. If no such request is made, the proposal
16 shall be construed to be completed. In the event that additional
17 information is requested, the proposal shall be construed to be
18 completed when the additional information is received by the
19 department.

20 The department must approve or deny a proposal within 30 days
21 of receipt of a completed proposal. In the event that the
22 department fails to take action on a proposal within the 30-day
23 period specified herein, then the proposal shall be deemed to have
24 been approved.

25 The department may review any approved mechanism every 24
26 months following initial approval. If the department finds, in
27 writing, that the previously approved mechanism is no longer a
28 convenient and economically feasible method for the collection,
29 recycling or proper disposal of used dry cell batteries, the
30 department may require the manufacturer to submit a new or
31 revised proposal for its review and approval. Any previously
32 approved mechanism would remain in effect until such time as a
33 new or revised proposal is approved by the department.

34 Manufacturers may establish an advisory council comprised of
35 members of the dry cell battery industry, retailers, and county
36 representatives in order to facilitate the collection, recycling or
37 proper disposal of used dry cell batteries.

38 The bill also prohibits any licensed solid waste collector from
39 knowingly collecting used lithium, mercuric oxide, silver oxide,
40 zinc-air or nickel-cadmium rechargeable dry cell batteries
41 placed for collection and disposal as municipal solid waste or
42 otherwise collect solid waste containers placed for collection
43 containing a visible quantity of these batteries.

44 The bill further prohibits any operational resource recovery
45 facility in this State to accept for disposal truckloads containing
46 a visible quantity of used lithium, mercuric oxide, silver oxide,
47 zinc-air or nickel-cadmium rechargeable dry cell batteries at any
48 time. The owner or operator of a resource recovery facility may
49 refuse to accept for disposal any truckload or roll-off container

1 of solid waste containing a visible quantity of these batteries.

2 The bill provides that retailers of lithium, mercuric oxide,
3 silver oxide, zinc-air or nickel-cadmium rechargeable dry cell
4 batteries are obligated to accept the return during business hours
5 of up to three of these types of used household dry cell batteries
6 from customers. A distributor or his agent must accept the return
7 of all used dry cell batteries he distributes in his service area
8 from a retailer. A manufacturer must accept for return, at the
9 manufacturer's expense and pursuant to the approved mechanism
10 therefor, any used dry cell battery he manufactures, and provide
11 for the proper disposal or recycling of these batteries.

12 The bill provides that retailers must conspicuously post and
13 maintain, at or near the point of display, a legible sign informing
14 customers that used lithium, mercuric oxide, silver oxide,
15 zinc-air and nickel-cadmium rechargeable dry cell batteries may
16 not enter the municipal solid waste stream, and that the retailer
17 must accept these used dry cell batteries for return to the
18 manufacturer.

19 The bill provides further that every retailer must conspicuously
20 maintain, at or near the point of display or at a convenient
21 location in close proximity thereto, collection boxes or other
22 suitable receptacles into which customers may deposit used dry
23 cell batteries accepted by the retailer for return to the
24 manufacturer.

25 The bill would require every institutional generator to provide
26 for the on-site source separation, collection and disposal of used
27 lithium, mercuric oxide, silver oxide, zinc-air or nickel-cadmium
28 rechargeable dry cell batteries generated at the facility.

29 An institutional generator means the owner or operator of any
30 commercial industrial establishment or facility, health care
31 facility or hospital, research laboratory or facility, any of which
32 routinely use large quantities of lithium, mercuric oxide, silver
33 oxide, zinc-air or nickel-cadmium rechargeable dry cell
34 batteries; or any facility identified by the department that
35 generates at least 220 pounds of these types of used dry cell
36 batteries per month, or any facility that accumulates 220 pounds
37 of these types of used dry cell batteries at any time.

38 Any county may prepare and adopt a district household
39 hazardous waste management plan as an amendment to the
40 county's solid waste management plan required pursuant to the
41 "Solid Waste Manangement Act," subject to approval by the
42 DEP. Any such plan must provide for the collection and disposal
43 of used lithium, mercuric oxide, silver oxide, zinc-air and
44 nickel-cadmium rechargeable dry cell batteries at least once
45 every 90 days. The bill expressly provides that household
46 hazardous waste must be collected, stored and transported in
47 accordance with all applicable standards for such wastes adopted
48 as rules or regulations by the DEP, or as prescribed under any
49 other applicable federal or State law.

1 The Commissioner of DEP must establish a means of addressing
2 consumer complaints and a public education program to assure
3 the widespread dissemination of information concerning the
4 purpose of this bill.

5 The department would have the right to enter, at any time
6 during normal business hours and upon presentation of appropriate
7 credentials, any retail establishment at which lithium, mercuric
8 oxide, silver oxide, zinc-air or nickel-cadmium rechargeable dry
9 cell batteries are sold in order to determine compliance with the
10 provisions of the bill.

11 The bill also provides that the DEP may require the owner or
12 operator of any solid waste facility, in conjunction with the
13 governing body of the host county, to implement a countywide
14 used dry cell battery source separation and collection program to
15 ensure that any used dry cell batteries that are of particular
16 concern are removed from the municipal solid waste stream prior
17 to acceptance for disposal at the solid waste facility.

18 The Commissioner of Environmental Protection must prepare a
19 report to the Legislature concerning the implementation of this
20 bill, including recommendations as to whether the collection,
21 recycling or disposal methods prescribed in the bill are the most
22 appropriate means to ensure the environmentally-sound disposal
23 of used lithium, mercuric oxide, silver oxide, zinc-air or
24 nickel-cadmium rechargeable dry cell batteries. The report would
25 be transmitted to the Legislature not later than two years
26 following the bill's effective date.

27 The report must include recommendations concerning:

28 (1) a proposed requirement that manufacturers further reduce
29 the mercury concentration levels in dry cell batteries:

30 (a) For alkaline manganese dry cell batteries, except for button
31 or coin shaped batteries, not more than 1 part per million by
32 weight (0.0001%); and

33 (b) For button or coin shaped alkaline manganese dry cell
34 batteries, not more than 5 milligrams of mercury per battery;

35 (2) the practicability and feasibility of providing for the
36 collection of used dry cell batteries by requiring a deposit on, and
37 establishing a refund value for, any lithium, mercuric oxide,
38 silver oxide, zinc-air or nickel-cadmium rechargeable dry cell
39 battery; and

40 (3) the practicability and feasibility of ensuring the proper
41 disposal of used dry cell batteries by imposing a pre-disposal
42 surcharge on the sale of dry cell batteries.

43 This bill is identical to the Assembly Committee Substitute for
44 Assembly Bill Nos. 3400, 136, 142 and 883 of 1990.

45
46
47 WASTE MANAGEMENT

48
49 Regulates the collection and disposal of used dry cell batteries.

SENATE LAND USE MANAGEMENT
AND REGIONAL AFFAIRS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 3157

STATE OF NEW JERSEY

DATED: FEBRUARY 4, 1991

The Senate Land Use Management and Regional Affairs Committee favorably reports a Senate Committee Substitute for Senate Bill No. 3157.

The substitute bill provides for the management of used dry cell batteries in this State. The bill requires battery manufacturers to reduce the mercury concentration levels in their products and prohibits the disposal of any used mercuric oxide batteries or nickel-cadmium or sealed lead rechargeable batteries as solid waste at any time.

The bill prohibits the sale of any alkaline manganese dry cell battery which exceeds the following mercury concentration levels:

(1) For alkaline manganese dry cell batteries, except for button or coin shaped batteries, not more than 250 parts per million by weight (0.025%) for all batteries manufactured on or after January 1, 1992;

(2) For button or coin shaped alkaline manganese dry cell batteries, not more than 25 milligrams of mercury per battery for all batteries manufactured on or after January 1, 1992.

The bill prohibits the sale of any zinc-carbon dry cell battery which exceeds a mercury concentration level of 1 part per million by weight (0.0001%) for all batteries manufactured on or after January 1, 1992.

The bill prohibits the sale of any consumer mercuric oxide battery which exceeds a mercury concentration level of more than 250 parts per million by weight (0.025%) for all batteries manufactured on or after January 1, 1992. A consumer mercuric oxide battery is defined as any button or coin shaped mercuric oxide battery which is purchased at retail by a consumer for personal or household use.

The bill also prohibits the sale of any rechargeable consumer product after January 1, 1992, unless:

(1) the nickel-cadmium or sealed lead rechargeable dry cell battery is readily removable from the product; or the battery is contained in a battery pack which is separate from the product and the battery pack is readily removable from the product;

(2) the product, the product packaging or the rechargeable dry cell battery are labeled to inform consumers that used rechargeable batteries may not enter the solid waste stream, and that these used

dry cell batteries must be collected, recycled or disposed of in an environmentally sound manner; and

(3) the product's instruction manual includes information explaining methods to assure the proper disposal of used rechargeable batteries.

The bill provides procedures for temporary exemptions in certain cases. Any zinc-carbon dry cell battery manufacturer may apply to the Department of Environmental Protection for a temporary exemption from the mercury concentration level requirements of the bill. Any temporary exemption approved by the department would expire on July 1, 1993, and must be based on evidence furnished to the department that there is no zinc-carbon battery meeting the mercury concentration level requirements that may be reasonably substituted for the dry cell battery for which the exemption is sought.

Any person may apply for a temporary exemption from the removable battery or battery pack requirements of the bill for any rechargeable consumer product which was sold in this State prior to the bill's effective date. Any temporary exemption approved by the department would expire on July 1, 1993, and must be based on evidence furnished to the department that: (1) the redesign of the rechargeable consumer product to comply with the bill's requirements would result in significant danger to public health and safety; or (2) the product cannot reasonably be redesigned and manufactured to comply with the removable battery or battery pack requirements prior to January 1, 1992. These temporary exemption may be renewed by the department for periods up to 12 months, and must be based on evidence furnished to the department that there is no feasible or practical alternative or substitute for the specified rechargeable consumer product.

The DEP is authorized to establish and charge reasonable fees for the processing of exemption applications, and for the costs of compliance monitoring and administration.

The bill provides that every manufacturer shall be liable, at his own expense, for the collection, transportation, recycling or proper disposal of every used mercuric oxide battery and every used nickel-cadmium or sealed lead rechargeable battery sold or offered for promotional purposes in this State by that manufacturer.

The bill prohibits the sale of any mercuric oxide battery, or any nickel-cadmium or sealed lead rechargeable battery in New Jersey after April 1, 1992 unless the manufacturer thereof has obtained the prior written approval of the DEP of a battery management plan. In addition, manufacturers of nickel-cadmium and sealed lead rechargeable batteries must consult with distributors and retailers of these batteries prior to submitting a plan.

By January 1, 1992, every manufacturer must prepare and submit a battery management plan to the department for each specified battery. Any two or more manufacturers may submit a joint plan for any specified used mercuric oxide batteries or

rechargeable batteries that they manufacture. Further, manufacturers may establish or utilize a trade association or a consortium to facilitate compliance with these requirements.

Every battery management plan must include the following components:

(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) Designation of the funding source or mechanism to be utilized by the manufacturer to defray the costs of implementing the battery management plan;

(3) A strategy for informing consumers, on any store display promoting the sale or use of the rechargeable batteries he 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;

(4) A statewide consumer education program to assure the widespread dissemination of information concerning the environmental impact of improperly disposing 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

(5) A strategy for establishing and implementing, as the department deems necessary, an industry-wide uniform coding system for the identification and labeling of all mercuric oxide batteries or rechargeable batteries by brand name, electrode type, product type or shape. The Commissioner of DEP may grant a waiver from the labeling requirement based on evidence furnished to the department that it is not technologically feasible to label a specified dry cell battery. The commissioner would maintain on file in the department for public inspection copies of any uniform coding system implemented by a battery manufacturer.

No later than July 1, 1992 and at least once every 6 months thereafter, every mercuric oxide battery or rechargeable battery manufacturer must 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.

The bill provides for a specified timeframe within which the DEP must review and approve a battery management plan submitted by a manufacturer. Specifically, the department shall, within 15 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.

The department must approve or deny a plan within 30 days of receipt of a completed plan. In the event that the department fails to take action on a plan within the 30-day period specified herein, then the plan shall be deemed to have been approved.

The department may review any approved plan every 24 months following initial approval. If the department finds, in writing, that the previously approved plan is no longer a convenient and economically feasible method for the collection, transportation, recycling or proper disposal of used mercuric oxide batteries or nickel-cadmium or sealed lead rechargeable batteries, the department may require the manufacturer to submit a new or revised plan for its review and approval. Any previously approved plan would remain in effect until such time as a new or revised plan is approved by the department.

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 rechargeable batteries.

The bill requires every manufacturer of dry cell batteries sold in New Jersey to prepare and submit to the DEP by January 1, 1992 a dry cell battery collection plan. The plan would consist of the manufacturer's proposed method to expand or increase the statewide collection, recycling or proper disposal of all used dry cell batteries produced by that manufacturer. Each plan must include: (1) 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 January 1, 1992; and (2) a strategy for establishing and implementing, as the department deems necessary, an industry-wide uniform coding system for the identification and labeling of all dry cell batteries by brand name, electrode type, product type or shape.

The commissioner may grant a waiver from the labeling requirement based on evidence that it is not technologically feasible to label a specified dry cell battery. The commissioner would maintain on file in the department for public inspection copies of any uniform coding system implemented by a manufacturer.

No later than July 1, 1992 and at least once every 6 months thereafter, every manufacturer of dry cell batteries must submit a written report to the department on used dry cell battery return or recovery rates pursuant to rules and regulations adopted by the department therefor.

After April 1, 1992, no person shall knowingly dispose of used mercuric oxide batteries, used nickel-cadmium rechargeable batteries or used sealed lead rechargeable batteries as solid waste at any time.

Any person seeking to dispose of used mercuric oxide batteries may: (1) transport these batteries to a household hazardous waste collection site established under a county household hazardous waste collection program; (2) place these types of used batteries for collection in the manner provided by the municipal recycling ordinance in instances where the adopted district recycling plan as approved by the department pursuant to section 3 of P.L.1987, c.102 (C.13:1E-99.13) requires the collection and disposition of used dry cell batteries as a designated source separated recyclable material; or (3) collect, transport, recycle or dispose of these types of used dry cell batteries as otherwise provided by the battery management plan approved by the department.

Any person seeking to dispose of used nickel-cadmium or sealed lead rechargeable batteries derived from household use may: (1) return up to three of these types of batteries to a retailer if retail collection is designated by the manufacturer in the battery management plan approved by the department; (2) transport the batteries to a household hazardous waste collection site established under a county household hazardous waste collection program; (3) place the batteries for collection in the manner provided by the municipal recycling ordinance in instances where the adopted district recycling plan requires the collection and disposition of used dry cell batteries as a designated source separated recyclable material; or (4) collect, transport, recycle or dispose of these types of batteries as otherwise provided in the battery management plan.

After April 1, 1992, no licensed solid waste collector 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.

After April 1, 1992, no solid waste 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. The owner or operator of a solid waste facility may refuse to accept for disposal any truckload or roll-off container of solid waste containing a visible quantity of these batteries.

Unless otherwise provided in a battery management plan submitted by a manufacturer and approved by the department, every retailer would be required to:

(1) Accept from customers at any time during business hours up to three used nickel-cadmium or sealed lead rechargeable batteries derived from household use, of the type and size he sells or offers for sale;

(2) Conspicuously post and maintain, at or near the point of display, a legible sign, not less than 8 1/2 inches by 11 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; 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 rechargeable batteries accepted by the retailer.

Except as otherwise provided in a battery management plan approved by the department, a distributor or his agent must accept the return of all used nickel-cadmium or sealed lead rechargeable batteries he distributes in his service area from a retailer. Thereupon, every manufacturer, at his own expense, must accept for return any used nickel-cadmium or sealed lead rechargeable batteries he manufactures from distributors or retailers as provided in the battery management plan approved by the department.

The bill requires every institutional generator and small quantity generator to provide for the on-site source separation, collection and disposal of used mercuric oxide batteries, nickel-cadmium or sealed lead rechargeable batteries generated at the facility.

An institutional generator means the owner or operator of any public or private, commercial or industrial establishment or facility, including facilities owned or operated by, or on behalf of governmental agencies, or health care facility or hospital, research laboratory or facility, any of which routinely use large quantities of mercuric oxide batteries or nickel-cadmium or sealed lead rechargeable batteries; or any public or private facility identified by the department that generates at least 220 pounds of these types of used dry cell batteries per month, or any public or private facility that accumulates 220 pounds of these types of used dry cell batteries at any time.

A small quantity generator is defined as the owner or operator of any public or private, commercial or industrial establishment or facility which routinely uses small quantities of mercuric oxide batteries or nickel-cadmium or sealed lead rechargeable batteries; or any public or private facility identified by the department that generates less than 220 pounds of these types of used batteries per month, or that accumulates over 20 pounds but less than 220 pounds of these types of used batteries at any time.

Whenever a county prepares and adopts a district household hazardous waste management plan as an amendment to the county's solid waste management plan required pursuant to the "Solid Waste management Act," the plan must provide for the collection and disposal of used mercuric oxide batteries, and nickel-cadmium or sealed lead rechargeable batteries at least once every 90 days.

The bill expressly provides that household hazardous waste must be collected, stored and transported in accordance with all applicable standards for such wastes adopted as rules or regulations by the DEP, or as prescribed under any other applicable federal or State law.

The Commissioner of DEP must establish a means of addressing consumer complaints and a public education program to assure

the widespread dissemination of information concerning the purpose of this bill.

The department would have the right to enter, at any time during normal business hours and upon presentation of appropriate credentials, any retail establishment at which consumer mercuric oxide batteries, nickel-cadmium or sealed lead rechargeable batteries are sold in order to determine compliance with the provisions of the bill.

The bill also provides that the DEP may require the owner or operator of any resource recovery incineration facility, in conjunction with the governing body of the host county, to implement a countywide used dry cell battery source separation and collection program to ensure that any used dry cell batteries that are of particular concern are removed from the solid waste stream prior to acceptance for disposal at the solid waste facility.

Further, the bill provides that if the Commissioner of DEP makes a finding, in writing, that the continued disposal of any used lithium battery, silver oxide battery, zinc-air battery, alkaline manganese battery or zinc-carbon battery as solid waste presents an imminent threat to the environment or public health and safety, the commissioner may issue an emergency order to the manufacturer of the specified dry cell battery requiring the manufacturer to: (1) prepare and submit a battery management plan for the environmentally sound collection, recycling or proper disposal of that used dry cell battery within 12 months of the effective date of the emergency order; (2) suspend the sale or distribution of that dry cell battery; or (3) reduce the cadmium, lead or mercury concentration levels of the specified battery as a condition of sale or distribution of that battery in this State.

Any action brought by a person seeking a temporary or permanent stay of an emergency order must be brought in the Superior Court. Any person bringing such an action would have the burden of demonstrating, by clear and convincing evidence, that the dry cell battery specified in the emergency order as presenting an imminent threat to the environment or public health and safety does not present an imminent threat to the environment or public health and safety.

Any manufacturer required to prepare and submit a battery management plan pursuant to an emergency order must submit the department for its review and approval within 12 months of the effective date of the emergency order. The department is authorized to impose and enforce an indefinite suspension of the sale or distribution of the dry cell battery specified in the emergency order if the manufacturer fails to submit a plan.

The bill also requires the Commissioner of DEP to prepare a report to the Legislature concerning the implementation of this bill, including recommendations as to whether the collection, recycling or disposal methods prescribed in the bill are the most appropriate means to ensure the environmentally-sound disposal of used mercuric

oxide batteries or nickel-cadmium or sealed lead rechargeable batteries. The report would be transmitted to the Legislature not later than two years following the bill's effective date.

The report must include recommendations concerning:

(1) a proposed requirement that manufacturers further reduce the cadmium, lead or mercury concentration levels in dry cell batteries:

(a) For alkaline manganese batteries, except for button or coin shaped batteries, not more than 1 part per million by weight (0.0001%); and

(b) For button or coin shaped alkaline manganese batteries, not more than 5 milligrams of mercury per battery;

(2) the practicability and feasibility of providing for the collection of used dry cell batteries by requiring a deposit on, and establishing a refund value for, any dry cell battery; and

(3) the practicability and feasibility of ensuring the proper disposal of used dry cell batteries by imposing a pre-disposal surcharge on the sale of dry cell batteries.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

September 23, 1991

SENATE BILL NO. 3157
(Second Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14, of the New Jersey Constitution, I am returning Senate Bill No. 3157 (Second Reprint) with my objections for reconsideration.

This bill provides a comprehensive framework for the environmentally-sound management of dry cell batteries sold or distributed in New Jersey. The innovative measures contained in this bill would provide our State environmental officials with important, new tools needed to clean up the solid waste stream and oversee the safe operation of landfills, incinerators and composting operations in New Jersey.

To prevent mercury from entering the solid waste stream in the first place, the bill mandates a series of source reduction steps to reduce the mercury content of specific battery products, such as zinc-carbon and alkaline-manganese dry cells. I strongly support these measures since they are consistent with a "pollution prevention" approach that aims to reduce the generation of toxic waste at its source in the manufacture of these battery products.

The bill also prohibits the solid waste disposal of those battery products made principally from mercury, cadmium or lead, since these toxic metals are most likely to cause serious environmental problems at our solid waste management facilities. To ensure the availability of alternate collection systems for these products, battery manufacturers are required to assume "cradle-to-grave" responsibility for the management of batteries discarded by New Jersey households and institutional generators such as police departments and hospitals.

While I strongly support most of the provisions of this bill, I believe this bill has several technical problems that must be resolved to ensure the smooth implementation of these innovative battery management programs.

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One provision of the bill would effectively ban the sale of mercury-based consumer "button-cell" batteries beginning January 1, 1992. New technical information gathered by our State agencies indicates that some hearing aid devices currently utilized by New Jersey citizens can only accept mercury-based batteries. As a result, if consumer mercury batteries are banned in the near future, these individuals will be required to purchase costly, new hearing aid devices that can utilize substitute products such as silver oxide or zinc-air batteries.

To address this narrow technical concern and provide greater flexibility to affected hearing aid users, I am recommending that the absolute ban on consumer mercury battery sales be amended to allow for a "closed-loop" battery recycling program administered by New Jersey hearing aid dispensers and other distributors approved by the Commissioner of the Department of Environmental Protection and Energy (DEPE). This exemption would be phased out after 3 years.

This narrow exemption would provide needed batteries to hearing aid users, while continuing to prohibit the sale of these toxics-laden products for all other consumer uses.

Another bill provision requires manufacturers to remove all mercury from alkaline-manganese batteries by January 1, 1996, effectively setting a zero mercury standard for this class of products. While possessing the substitute technologies needed to remove all mercury additives, which account for most mercury present in alkaline-manganese cells, manufacturers presently lack the technologies needed to eliminate mercury that is a naturally-occurring trace constituent of manganese, which serves as a battery electrode.

As an alternative to a zero mercury standard, which could result in a ban on the sale of these commonly-used consumer products, I am recommending an amendment that would set a mercury content standard of 1 part per million (ppm) by weight for alkaline-manganese

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batteries. This amendment would continue to allow minute amounts of mercury in the manganese electrodes of these batteries, but would still require the elimination of virtually all mercury from these products.

I am also recommending an amendment to bill provisions that require the redesign of household appliances to allow for battery removal. Currently, this bill would require manufacturers of rechargeable consumer products such as "Dustbusters" and electric shavers to redesign these products by January 1, 1992. At the same time, the bill would authorize the DEPE to grant an initial temporary waiver from redesign requirements through July 1, 1993, and subsequent temporary exemptions for up to one year.

The January 1, 1992 product redesign deadline in this bill is inconsistent with redesign deadlines adopted by other jurisdictions, including the States of Connecticut and Minnesota, and the European Community, which have opted for a later deadline of July 1, 1993. Until now, most product manufacturers have been undertaking extensive, complex product redesign activities as needed to meet the July 1, 1993 deadline already adopted by other jurisdictions.

Due to the long lead-time typically required to redesign a consumer product, many product manufacturers would be unable to meet the earlier New Jersey deadline and would have to file with the DEPE for temporary exemptions. For this reason, I am recommending an amendment that would postpone the initial product redesign deadline until July 1, 1993, while continuing to authorize temporary exemptions beyond this date for only a very limited number of products that cannot be safely redesigned by manufacturers.

This bill currently contains fixed deadlines for the submittal of battery collection plans by manufacturers and the implementation of battery disposal bans, sales bans and mandatory retail takeback provisions. Under existing deadlines, manufacturers would have to submit their plans by January 1, 1992, while other key provisions

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- Page 5, Section 4, Line 40: After "which" delete "contains any mercury" insert "exceeds a mercury concentration level of 1 part per million by weight (0.0001%)"
- Page 5, Section 5, Line 42: After "(New section)" insert "a."
- Page 5, Section 5, Line 46: After "January 1, 1992." insert "b. Prior to January 1, 1994, the provisions of this section shall not apply to consumer mercuric oxide batteries being sold for use in hearing aids which require a consumer mercuric oxide battery to function properly and which are sold by hearing aid dispensers licensed pursuant to the provisions of P.L.1973, c.19 (C.45:9A-1 et seq.) or by other specialized hearing aid dispensers authorized by the commissioner to sell these batteries."
- Page 5, Section 6, Line 47: After "after" delete "January 1, 1992" insert "July 1, 1993"
- Page 6, Section 6, Line 33: After "State" insert "at any time"
- Page 7, Section 6, Line 4: After "shall" delete "expire on July 1, 1993, and shall"
- Page 7, Section 6, Line 10: After "safety;" delete "or" insert "and"
- Page 7, Section 6, Line 13: After "section" delete "prior to January 1, 1992" insert "during the time period for which the temporary exemption would be issued or renewed"
- Page 7, Section 6, Line 16: After "be" insert "issued or"
- Page 7, Section 7, Line 30: After "a." delete "On or after April 1, 1992, no" insert "No"
- Page 8, Section 8, Line 2: After "a. (1)" delete "No later than January 1, 1992" insert "Within 9 months of the effective date of this act"

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- Page 9, Section 8, Line 13: After "approval." insert "Notice of any battery management plan received by the department pursuant to this subsection shall be published in the New Jersey Register and subject to public comment. 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 subsection. The department shall provide a copy to any person upon request at a cost not to exceed the cost of reproduction."
- Page 9, Section 8, Line 15: After "within" delete "15" insert "30"
- Page 9, Section 8, Line 23: After "within" delete "30" insert "45"
- Page 9, Section 8, Line 25: After "within the" delete "30-day" insert "45-day"
- Page 9, Section 8, Line 27: After "department" delete "may" insert "shall"
- Page 9, Section 8, Line 29: After "subsection" insert "at least"
- Page 9, Section 8, Line 38: After "d." delete "No later than July 1, 1992" insert "Within 15 months of the effective date of this act"
- Page 10, Section 9, Line 1: After "a." delete "No later than January 1, 1992" insert "Within 9 months of the effective date of this act"
- Page 10, Section 9, Line 13: After "prior to" delete "January 1, 1992" insert "the effective date of this act"
- Page 10, Section 9, Line 25: After "c." delete "No later than July 1, 1992" insert "Within 15 months of the effective date of this act"
- Page 10, Section 10, Line 30: After "a." delete "On or after April 1, 1992, no" insert "No"
- Page 10, Section 11, Line 48: After "a." delete "On or after April 1, 1992, no" insert "No"

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| <u>Page 11, Section 12, Line 22:</u> | After "a." delete "On or after April 1, 1992, no" insert "No" |
| <u>Page 11, Section 13, Line 31:</u> | After "a." delete "On or after April 1, 1992, no" insert "No" |
| <u>Page 13, Section 16, Line 1:</u> | After "management plan," insert "the commissioner may require" |
| <u>Page 13, Section 16, Line 2:</u> | Before "be adopted" delete "shall" insert "to" |
| <u>Page 13, Section 16, Line 6:</u> | After "management plan" insert ", subject to approval by the department," |
| <u>Page 14, Section 18, Line 7:</u> | Before "threat" delete "an imminent" insert "a" |
| <u>Page 14, Section 18, Line 8:</u> | After "issue an" delete "emergency" |
| <u>Page 14, Section 18, Line 11:</u> | After "which" delete "present an imminent" insert "presents a" |
| <u>Page 14, Section 18, Line 15:</u> | After "battery" delete "present" insert "presents" |
| <u>Page 14, Section 18, Line 18:</u> | After "eliminate" delete "the imminent" insert "any" |
| <u>Page 14, Section 18, Line 21:</u> | After "of the" delete "emergency" |
| <u>Page 14, Section 18, Line 28:</u> | After "requiring the" delete "immediate" |
| <u>Page 14, Section 18, Line 29:</u> | After "State" insert "unless the manufacturer prepares and submits a battery management plan that is approved by the department pursuant to the provisions of this section" |
| <u>Page 14, Section 18, Line 32:</u> | After "acceptable" insert "and technologically feasible" |
| <u>Page 14, Section 18, Line 37:</u> | After "of the" delete "emergency" |
| <u>Page 14, Section 18, Line 40:</u> | After "in the" delete "emergency" |
| <u>Page 14, Section 18, Line 43:</u> | After "An" delete "emergency" |
| <u>Page 14, Section 18, Line 44:</u> | After "of the" delete "emergency" |

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Page 14, Section 18, Line 45: After "whom the" delete "emergency"

Page 14, Section 18, Line 46: After "with the" delete "emergency"

Page 14, Section 18, Line 49: After "of an" delete "emergency"

Page 15, Section 18, Line 4: After "in the" delete "emergency"

Page 15, Section 18, Line 4: After "presenting" delete "an imminent" insert "a"

Page 15, Section 18, Line 6: After "present" delete "an imminent" insert "a"

Page 17, Section 25, Line 29: After "immediately" insert ", except that sections 7, 10, 11, 12, and 13 shall take effect one year after enactment"

Respectfully,

/s/ Jim Florio

GOVERNOR

[seal]

Attest:

/s/ Andrew Weber

Counsel to the Governor