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## OLR Bill Analysis

### sHB 5142 (as amended by House "A")\*

#### ***AN ACT CONCERNING EXTENDED PRODUCER RESPONSIBILITY FOR CERTAIN GAS CYLINDERS.***

#### **SUMMARY**

This bill requires the establishment of statewide stewardship programs for gas cylinders supplied to consumers for personal, family, or household use and discarded at certain locations.

Under the bill, gas cylinder producers must be part of an approved and implemented stewardship program by October 1, 2025. The bill prohibits producers who fail to participate in an approved gas cylinder stewardship plan from supplying, selling, or offering gas cylinders for sale in Connecticut, including through a sales outlet, catalog, website, or similar electronic means. Supplying also includes leasing, donating, or otherwise making available or distributing.

Under the bill, a plan for a gas stewardship program must be submitted to the Department of Energy and Environmental Protection (DEEP) for approval by July 1, 2023. Among other things, a plan must minimize public sector involvement in managing discarded gas cylinders. The bill allows the DEEP commissioner to assess a reasonable fee, based on market share, to cover program administration, but it caps the annual fee for each producer with an approved plan at \$2,000.

The bill also (1) allows the DEEP commissioner to civilly enforce program requirements, (2) establishes audit and reporting requirements, and (3) provides immunity to producers or their designees from antitrust or unfair trade practice claims under certain circumstances. It also allows for collaboration with another state with a gas cylinder recycling program.

\*House Amendment "A" (1) removes the Uniform Administrative Procedure Act (UAPA) requirement from the solicitation of public

comments on the gas cylinder plan; (2) caps the annual administrative fee for producers at \$2,000; (3) eliminates the ability of producers or their designees to deduct from the fees the costs to collect cylinders from noncompliant producers; (4) requires DEEP's report about the stewardship program to also evaluate its administrative fees; (5) adds the notice and reporting provisions about noncompliant producers; and (6) eliminates a duplicative subsection.

EFFECTIVE DATE: July 1, 2022

## **PROGRAM SCOPE**

### ***Gas Cylinders***

Under the bill, a "gas cylinder" is a nonrefillable or refillable cylinder with flammable pressurized gas, helium, or carbon dioxide, with between 0.5- and 50-pounds water capacity, that is supplied to a consumer for personal, family, or household use. It includes seamless cylinders and tubes, welded cylinders, and insulated cylinders intended to contain helium, carbon dioxide, or a flammable material such as propane, butane, or other compressed gas. It does not include (1) a cylinder, tube, or container intended to deliver a non-compressed gas product; (2) medical or industrial-grade cylinders; (3) cylinders used by medical facilities or commercial enterprises; and (4) cylinders containing oxygen, refrigerants, acetylene, hydrogen, ethylene, or foam adhesives.

The bill covers gas cylinders discarded at the following locations: political subdivisions of the state, transfer stations, material recovery facilities, drop offs or events, disposal facilities, state parks or private campgrounds, or other approved entities that are part of an approved gas cylinder stewardship plan ("eligible entities").

### ***Producers***

The bill applies to gas cylinder "producers," which are generally Connecticut cylinder suppliers under the manufacturers' brands. If there is no supplier, then the following, in order, would be considered the producer:

1. an owner or licensee of a trademark under which a cylinder is supplied in Connecticut, regardless of trademark registration;
2. an importer of a cylinder for supply to a consumer;
3. the retailer who supplies the cylinder to a consumer; or
4. anyone who facilitates supplying a cylinder by (a) owning or operating an online marketplace or forum that lists or advertises the cylinder for sale, (b) transmitting or otherwise communicating the offer to sell a cylinder, or (c) providing the physical distribution of a cylinder such as through storing, preparing, or shipping.

The bill defines a “brand” as a name, symbol, word, or mark that attributes a gas cylinder to its producer.

#### **PROGRAM PURPOSES AND ESTABLISHMENT**

By January 1, 2023, the bill requires gas cylinder producers or their designees (including a gas cylinder stewardship organization) to notify the DEEP commissioner in writing that they will submit a plan (see below) to establish a statewide gas cylinder stewardship program, either on their own or jointly with other producers. A gas cylinder stewardship organization, created by and representing producers, designs, submits, and implements a gas cylinder stewardship plan on their behalf.

The bill also allows a person who is not a Connecticut resident, but is a brand holder of a brand used in connection with gas cylinders, to submit a stewardship plan (individually or by joining a stewardship organization) to fulfill a producer’s responsibilities. The person must enter a written agreement with the producer (but not a retailer or supply facilitator who is a producer) and submit the plan by July 1, 2023.

Under the bill, a program must, to the extent it is technologically feasible and economically practical, minimize public sector involvement in managing discarded gas cylinders and provide the following:

1. free, convenient, and accessible statewide opportunities to receive gas cylinders used by consumers at eligible entities;
2. cylinder pick-up from eligible entities; and
3. cylinder transport and management after pick-up, according to agreements between producers and eligible entities.

Under the bill, once a stewardship plan is implemented, eligible entities participating in the plan cannot charge for receiving discarded gas cylinders.

### **PLAN COMPONENTS**

Under the bill, a plan for a gas cylinder stewardship program must provide for refilling or recycling cylinders and capturing residual gases for reuse. It must also do the following:

1. describe how the program will promote collecting discarded cylinders supplied to consumers for personal, family, or household use;
2. identify the participating producers and eligible entities to be used;
3. establish performance goals for the program's first two years; and
4. describe its public education program.

A "performance goal" is a metric, proposed by the entity submitting the plan, to annually measure program performance. It must consider the technical and economic feasibility of achieving continuous and meaningful improvement in (1) the state's recycling rate for gas cylinders and (2) any other specified goal.

### **PLAN APPROVAL AND IMPLEMENTATION**

#### ***Process***

The bill requires the DEEP commissioner to determine whether to approve a plan for establishing a gas cylinder stewardship program

under the following timeline: within 90 days after its submission but after posting the plan on DEEP's website and soliciting public comments. The bill specifies that the comment solicitation is not conducted under the UAPA.

She must approve a plan if it meets the bill's program and plan requirements. If she rejects a plan, the commissioner must provide a notice of determination describing the reasons for disapproval to the producer or its designee that submitted the plan. The plan submitter must revise and resubmit the plan to DEEP within 45 days after receiving the disapproval notice. The commissioner must review and either approve or disapprove a revised plan within 45 days after receiving it and provide a notice of determination to the plan's submitter. The bill limits revised plan resubmissions to no more than two occasions. It requires the commissioner to modify and approve a submitted plan to make it conform with the program and plan requirements if the submitter fails to provide an acceptable plan.

### ***Producer Participation***

Under the bill, the DEEP commissioner must publish a list of producers that comply with the bill's requirements on DEEP's website. It requires the commissioner to issue non-compliance notices to those who fail to participate in an approved program.

### **CHANGES TO A PLAN**

The bill requires producers or their designees with an approved stewardship plan to submit proposed substantial program changes to the DEEP commissioner for approval. Under the bill, a "substantial change" is a material change to the cylinder collection system. A proposed substantial change is deemed approved unless the commissioner disapproves it within 90 days after receiving notice of the change.

The bill also requires that the DEEP commissioner be notified on an ongoing basis about other material changes to the program but without resubmitting the plan for approval. These changes include such things as (1) a change in the producer's or its designee's contact information

and (2) if the designee is a stewardship organization, the identity of its board of directors and officers.

Within 30 months after an approved program's implementation, the plan submitter must submit to the commissioner updated performance goals, which must be based on the program's experience during its first two years.

### **ADMINISTRATIVE FEE**

The bill allows the DEEP commissioner to assess a reasonable program administration fee to each producer or its designee with an approved gas cylinder stewardship plan. She must determine the share that each producer or designee must pay based on the gas cylinder market that it represents, but the total annual fees for each producer with an approved plan cannot exceed \$2,000. The bill requires the commissioner to annually publish documentation of DEEP's use of the fees.

### **REPORTING REQUIREMENTS**

#### ***Producers***

Annually by October 15, the bill requires a producer or its designee with an approved stewardship plan to submit a report to the DEEP commissioner in a format she prescribes. The report must then be posted on DEEP's website. Under the bill, the report must include the following information for the prior calendar year:

1. producers participating in the plan;
2. number of eligible entities, by type, from which cylinders were picked up;
3. number and tonnage of nonrefillable gas cylinders and number of refillable gas cylinders picked up from each eligible entity type; and
4. tonnage of nonrefillable gas cylinders recycled and number of refillable gas cylinders refilled and recycled.

The report must also include (1) a summary of the public education program that supports the gas cylinder stewardship program, (2) an evaluation of the effectiveness of methods and processes used to achieve program performance goals, and (3) recommendations for any program changes.

### **DEEP**

**Program Evaluation.** Within three years after a plan's approval, the DEEP commissioner must submit a report to the Environment Committee that evaluates the applicable gas cylinder stewardship program, including DEEP's administrative fees for it. The report must also establish goals for (1) the amount of discarded cylinders to be picked up under each program and (2) recycling cylinders, considering technical and economic feasibility.

**Non-compliant Producers.** By January first each year after the program begins, the DEEP commissioner must submit a report to the Environment Committee with (1) her steps taken to address non-compliance with the bill's provisions and (2) a list of non-compliant producers that received a non-compliance notice and are not in compliance as of the report date.

### **AUDIT REQUIREMENTS**

#### **Program Audit**

Two years after a program's implementation, and then every three years after, a producer or its designee with an approved stewardship plan must pay for a program audit by a commissioner-selected auditor. The bill also allows the commissioner to request this audit not more than once per year.

The bill specifies that the audit must include the previous year's number of entities and the number and tonnage of gas cylinders picked up and recycled or refilled under the program. The audit must also review the accuracy of the submitted program information (e.g., annual report) and provide any other information the commissioner requests that is consistent with the bill's requirements, but not any proprietary information or trade or business secrets.

The bill requires a producer or its designee with an approved stewardship plan to maintain all program records for at least five years.

### ***Audited Financial Statements***

Existing law requires any product stewardship organization operating in the state to submit to DEEP, annually by May 1, certified audited financial statements and the name of any contractor or organization that has a contract with it valued at \$2,000 or more. DEEP must post and maintain the information on its website (CGS § 22a-905g). This requirement applies to a gas cylinder stewardship organization established to fulfill the bill's requirements.

### **CIVIL PENALTIES**

The bill authorizes the DEEP commissioner to enforce the program's requirements under her existing authority.

It allows the commissioner to ask the attorney general to bring an action for injunctive relief in New Britain Superior Court if the commissioner believes that a person has engaged in, or is about to engage in, an act, practice, or omission that violates the program's requirements. It permits the court to issue a permanent or temporary injunction, restraining order, or other appropriate order, including taking remedial measures and directing compliance. The bill requires that these actions by the attorney general take precedence over other actions in the order of trial.

### **LIABILITY PROTECTION**

Under the bill, to the extent a producer or its designee (including a stewardship organization) is exercising authority according to the bill's provisions, it is immune from liability for an antitrust or unfair trade practice claim based on an antitrust law violation.

### **INTERSTATE COLLABORATION**

The bill allows a producer or its designee with an approved stewardship plan to collaborate with another state that has a gas cylinder recycling program to conserve efforts and resources; however, the collaboration must be consistent with the bill's requirements.



**COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute

Yea 31 Nay 0 (03/04/2022)