



General Assembly

Substitute Bill No. 5142

February Session, 2022



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

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2022*) (a) For the purposes of this
2 section:

3 (1) "Brand" means any name, symbol, word or mark that attributes a
4 gas cylinder to the producer of such gas cylinder;

5 (2) "Commissioner" means the Commissioner of Energy and
6 Environmental Protection;

7 (3) "Eligible entity" means any political subdivision of the state,
8 transfer station, material recovery facility, drop off or event, disposal
9 facility, state park or private campground, or other approved entity in
10 the state that is part of an approved gas cylinder stewardship plan;

11 (4) "Department" means the Department of Energy and
12 Environmental Protection;

13 (5) "Discarded gas cylinder" means any gas cylinder supplied to a
14 consumer in the state for personal, family or household use that is
15 discarded at an eligible entity;

16 (6) "Gas cylinder" or "cylinder" means any nonrefillable or refillable
17 cylinder supplied to a consumer for personal, family or household use
18 with flammable pressurized gas, helium or carbon dioxide, of any size
19 greater than a water capacity of one-half pounds but not exceeding any
20 cylinder with a water capacity of fifty pounds, including, but not limited
21 to, seamless cylinders and tubes, welded cylinders and insulated
22 cylinders intended to contain helium, carbon dioxide or flammable
23 materials such as propane, butane or other flammable compressed
24 gases. "Gas cylinder" does not include any cylinder, tube or container
25 intended to deliver a product that is not a compressed gas, any medical
26 or industrial-grade cylinder or any cylinder that is used by any medical
27 facility or commercial enterprise or that contains oxygen, refrigerants,
28 acetylene, hydrogen, ethylene or foam adhesives;

29 (7) "Gas cylinder stewardship organization" means any organization
30 that is established by and represents producers of gas cylinders and that
31 designs, submits and implements a gas cylinder stewardship plan on
32 behalf of the producers it represents;

33 (8) "Gas cylinder stewardship program" or "program" means the
34 program implemented pursuant to an approved gas cylinder
35 stewardship plan;

36 (9) "Performance goal" means a metric proposed by the entity
37 submitting a gas cylinder stewardship plan to measure, on an annual
38 basis, the performance of the gas cylinder stewardship program, taking
39 into consideration technical and economic feasibilities, in achieving
40 continuous, meaningful improvement in the rate of gas cylinder
41 recycling in the state and any other specified goal of the program;

42 (10) "Producer" means: (A) Any person who supplies a gas cylinder
43 in the state under the brand of the manufacturer; (B) if there is no person
44 described in subparagraph (A) of this subdivision, any person who is
45 not the manufacturer of the cylinder but who is the owner or licensee of
46 a trademark under which the cylinder is supplied in the state, whether
47 or not the trademark is registered; (C) if there is no person described in

48 subparagraph (B) of this subdivision, any person who imports any
49 cylinder into the state for supply to a consumer; (D) if there is no person
50 described in subparagraph (C) of this subdivision, the retailer who
51 supplies the cylinder to a consumer; or (E) if there is no person described
52 in subparagraph (D) of this subdivision, any person who facilitates the
53 supply of a cylinder by: (i) Owning or operating an online marketplace
54 or forum in which the cylinder is listed or advertised for sale, (ii)
55 transmitting or otherwise communicating the offer to sell a cylinder, or
56 (iii) providing for the physical distribution of a cylinder to the
57 consumer, such as by the storage, preparation or shipping of products;

58 (11) "Recycling" means any process in which discarded cylinders,
59 components and by-products may lose their original identity or form as
60 they are transformed into new, usable or marketable materials.
61 "Recycling" does not include the use of incineration for energy recovery;

62 (12) "Refurbish" means to restore for the purposes of refilling a
63 cylinder;

64 (13) "Retailer" means any person who supplies, sells or offers for sale
65 gas cylinders in this state to a consumer for personal, family or
66 household use; and

67 (14) "Supply" means to sell, lease or donate, with the transfer of
68 possession or title, or to otherwise make available or distribute,
69 including, but not limited to, through the use of a sales outlet, catalog,
70 Internet web site or similar electronic means, to a consumer in the state
71 for personal, family or household use.

72 (b) On or before January 1, 2023, each producer or such producer's
73 designee, including, but not limited to, a gas cylinder stewardship
74 organization, shall notify the Commissioner of Energy and
75 Environmental Protection, in writing, that the producer will act
76 individually or jointly with other producers to submit a stewardship
77 plan to the commissioner for the establishment of a state-wide gas
78 cylinder stewardship program. Any person that is not a resident in the

79 state but that is a brand holder of a brand that is used in connection with
80 gas cylinders may volunteer to submit a gas cylinder stewardship plan
81 to the commissioner individually or may join a gas cylinder stewardship
82 organization if such person enters a written agreement with one or more
83 producers described in subparagraph (A), (B) or (C) of subdivision (10)
84 of subsection (a) of this section for the purpose of carrying out a
85 producer's responsibilities relating to gas cylinders under such plan.
86 Any such stewardship plan shall be submitted to the commissioner not
87 later than July 1, 2023.

88 (c) Any gas cylinder stewardship program shall, to the extent it is
89 technologically feasible and economically practical: (1) Minimize public
90 sector involvement in the management of discarded gas cylinders; (2)
91 provide for free, convenient and accessible state-wide opportunities for
92 the receipt of gas cylinders used by consumers for personal, family or
93 household use at eligible entities; (3) provide for pick-up of discarded
94 gas cylinders from eligible entities; and (4) provide for the transport and
95 management of discarded gas cylinders picked-up from eligible entities
96 in accordance with agreements between producers and eligible entities
97 which shall be consistent with any provision of the law.

98 (d) Any plan submitted pursuant to subsection (b) of this section
99 shall: (1) Provide for refilling or recycling cylinders and capturing
100 residual gases for reuse; (2) establish performance goals for the first two
101 years of the gas cylinder stewardship program; (3) identify eligible
102 entities to be used pursuant to the program; (4) detail how the program
103 will promote the collection of discarded gas cylinders supplied to
104 consumers for personal, family or household use; (5) include a
105 description of the public education program that will be used to
106 promote consumer knowledge of the program; and (6) identify
107 producers participating in the program.

108 (e) The Commissioner of Energy and Environmental Protection shall
109 approve a plan for the establishment of a gas cylinder stewardship
110 program, provided such plan meets the requirements of this section.
111 Not later than ninety days after submission of the plan, the

112 commissioner shall make a determination on whether to approve the
113 plan. Prior to making such determination, the commissioner shall post
114 the plan on the department's Internet web site and solicit public
115 comments on the plan. Such solicitation shall be conducted pursuant to
116 chapter 54 of the general statutes. In the event that the commissioner
117 disapproves the plan because it does not meet the requirements of this
118 section, the commissioner shall describe the reasons for the disapproval
119 in a notice of determination that the commissioner shall provide to the
120 producer or producer's designee that submitted the gas cylinder
121 stewardship plan. Such producer or producer's designee shall revise
122 and resubmit the plan to the commissioner not later than forty-five days
123 after receipt of the commissioner's notice of disapproval. Not later than
124 forty-five days after receipt of the revised plan, the commissioner shall
125 review and approve or disapprove the revised plan, and provide a
126 notice of determination to the producer or producer's designee that
127 submitted the revised gas cylinder plan. Such producer or producer's
128 designee may resubmit a revised plan to the commissioner for approval
129 on not more than two occasions. If the producer or producer's designee
130 fails to submit a plan that is acceptable to the commissioner because it
131 does not meet the requirements of this section, the commissioner shall
132 modify a submitted plan to make it conform to the requirements of this
133 section and approve it. Not later than October 1, 2025, each producer
134 shall be part of an approved and implemented gas cylinder stewardship
135 program.

136 (f) Not later than thirty months after the date on which an approved
137 gas cylinder stewardship program is implemented, the producer or
138 producer's designee that submitted the applicable approved gas
139 cylinder stewardship plan shall submit updated performance goals to
140 the commissioner that are based on the experience of the program
141 during the first two years of the program.

142 (g) Each producer or producer's designee with an approved gas
143 cylinder stewardship plan shall submit any proposed substantial
144 change to the program to the Commissioner of Energy and

145 Environmental Protection for approval. For the purposes of this section,
146 "substantial change" means a material change to the system for
147 collecting gas cylinders. If the commissioner does not disapprove a
148 proposed substantial change not later than ninety days after receipt of
149 notification of such proposed substantial change, such proposed
150 substantial change shall be deemed approved.

151 (h) Each entity with an approved gas cylinder stewardship plan shall
152 notify the Commissioner of Energy and Environmental Protection of
153 other material changes to the program on an ongoing basis, without
154 resubmission of the plan to the commissioner for approval. Such
155 changes shall include, but not be limited to, a change in contact
156 information of the producer or producer's designee and, if the designee
157 is a gas cylinder stewardship organization, the identity of such
158 organization's board of directors and officers.

159 (i) Each producer or producer's designee with an approved gas
160 cylinder stewardship plan shall maintain all records relating to the
161 applicable gas cylinder stewardship program for a period of not less
162 than five years.

163 (j) Not later than October fifteenth of each year, each producer or
164 producer's designee with an approved gas cylinder stewardship plan
165 shall submit an annual report to the Commissioner of Energy and
166 Environmental Protection, in a format prescribed by the commissioner.
167 The commissioner shall post such annual report on the department's
168 Internet web site. Such report shall include: (1) The producers
169 participating in the plan for the previous calendar year; (2) the number
170 of eligible entities, by type from which cylinders were picked up in the
171 previous calendar year; (3) the number and tonnage of nonrefillable gas
172 cylinders and the number of refillable gas cylinders picked up from each
173 type of eligible entity during the previous calendar year; (4) the tonnage
174 of nonrefillable gas cylinders recycled and the number of refillable gas
175 cylinders refilled and recycled during the previous calendar year; (5) a
176 summary of the public education program that supports the program;
177 (6) an evaluation of the effectiveness of methods and processes used to

178 achieve performance goals of the program; and (7) recommendations for
179 any changes to the program.

180 (k) Two years after the implementation of a gas cylinder stewardship
181 program and every three years thereafter, or upon the request of the
182 Commissioner of Energy and Environmental Protection but not more
183 frequently than annually, each producer or producer's designee with an
184 approved gas cylinder stewardship plan shall cause an audit of the
185 information submitted pursuant to subdivisions (2) to (4), inclusive, of
186 subsection (j) of this section by an auditor selected by the commissioner.
187 Such audit shall review the accuracy of the producer or producer's
188 designee's submitted information concerning the program and provide
189 any other information requested by the commissioner that is consistent
190 with the requirements of this section, provided such request shall not
191 require the disclosure of any proprietary information or trade or
192 business secrets. Such audit shall be paid for by the producer or
193 producer's designee with the approved gas cylinder stewardship plan.

194 (l) Each producer or producer's designee with an approved gas
195 cylinder stewardship plan shall maintain all records relating to the gas
196 cylinder stewardship program for not less than five years.

197 (m) Upon implementation of an approved gas cylinder stewardship
198 plan, any eligible entity that participates in such plan shall not charge
199 for the receipt of discarded gas cylinders used by consumers for
200 personal, family or household use.

201 (n) Not later than three years after the approval of a gas cylinder
202 stewardship plan, the Commissioner of Energy and Environmental
203 Protection shall submit a report, in accordance with the provisions of
204 section 11-4a of the general statutes, to the joint standing committee of
205 the General Assembly having cognizance of matters relating to the
206 environment. Such report shall provide an evaluation of the applicable
207 gas cylinder stewardship program and establish a goal for the amount
208 of discarded cylinders to be picked up under each program and a
209 separate goal for the recycling of gas cylinders, taking into consideration

210 technical and economic feasibilities.

211 (o) Each producer or producer's designee, including any gas cylinder
212 stewardship organization, shall be immune from liability for any claim
213 of a violation of antitrust law or unfair trade practice, if such conduct is
214 a violation of antitrust law, to the extent such producer, producer's
215 designee or gas cylinder stewardship organization exercises authority
216 pursuant to the provisions of this section.

217 (p) The Commissioner of Energy and Environmental Protection may
218 seek civil enforcement of the provisions of this section pursuant to
219 chapter 439 of the general statutes.

220 (q) Whenever, in the judgment of the Commissioner of Energy and
221 Environmental Protection, any person has engaged in or is about to
222 engage in any act, practice or omission that constitutes, or will
223 constitute, a violation of any provision of this section, the Attorney
224 General may, at the request of the commissioner, bring an action in the
225 superior court for the judicial district of New Britain for an order
226 enjoining such act, practice or omission. Such order may require
227 remedial measures and direct compliance with the provisions of this
228 section. Upon a showing by the commissioner that such person has
229 engaged in or is about to engage in any such act, practice or omission,
230 the court may issue a permanent or temporary injunction, restraining
231 order or other order, as appropriate.

232 (r) Any action brought by the Attorney General pursuant to this
233 section shall have precedence in the order of trial, as provided in section
234 52-191 of the general statutes.

235 (s) In the event that another state implements a gas cylinder recycling
236 program, a producer or producer's designee with an approved gas
237 cylinder stewardship plan may collaborate with such state to conserve
238 efforts and resources used in carrying out the applicable gas cylinder
239 stewardship program, provided such collaboration is consistent with
240 the requirements of this section.

241 (t) The Commissioner of Energy and Environmental Protection may
242 assess a reasonable fee to each producer or producer's designee with an
243 approved gas cylinder stewardship plan for administration of the
244 applicable gas cylinder stewardship program. The Commissioner of
245 Energy and Environmental Protection shall determine the share to be
246 paid by each producer or producer's designee based on the share of the
247 gas cylinder market represented by the producer or producer's
248 designee. The total fees assessed on each producer or producer's
249 designee with an approved gas cylinder stewardship plan shall not
250 exceed ten per cent of total costs incurred by the producer or producer's
251 designee to implement the approved gas cylinder stewardship plan. The
252 Commissioner of Energy and Environmental Protection shall annually
253 publish documentation on the department's use of such fees. Any
254 producer or producer's designee may deduct from the fees due to the
255 Commissioner of Energy and Environmental Protection, pursuant to
256 this subsection, the costs to collect and manage gas cylinders supplied
257 by producers that do not have an approved gas cylinder stewardship
258 plan.

259 (u) Any producer who fails to participate in an approved gas cylinder
260 stewardship plan shall not supply, sell or offer for sale gas cylinders in
261 this state.

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| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | July 1, 2022 | New section |

ENV Joint Favorable Subst.