



MURIEL BOWSER
MAYOR

December 20, 2023

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Ave. NW
Washington, DC 20004

Dear Chairman Mendelson:

Enclosed for consideration and approval by the Council of the District of Columbia is the proposed resolution entitled the "Battery Stewardship Infractions Schedule of Fines Approval Resolution of 2023."

The proposed resolution would approve a proposed final rulemaking that would establish a schedule of fines in Title 16 (Consumers, Commercial Practices, and Infractions), Chapter 40 (DDOE Infractions) of the District of Columbia Municipal Regulations for violations of the law and rules related to the District's battery stewardship program. The rulemaking is needed to enforce the battery stewardship requirements and will help ensure batteries are kept out of the trash and safely recycled, which is critical for conserving valuable resources and diverting potentially hazardous materials from disposal facilities.

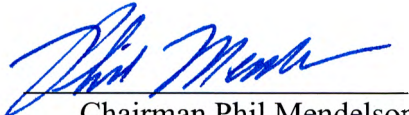
I urge the Council to take prompt and favorable action on the "Battery Stewardship Infractions Schedule of Fines Approval Resolution of 2023."

Sincerely,

A handwritten signature in black ink that reads "Muriel Bowser".

Muriel Bowser

Enclosures



Chairman Phil Mendelson
at the request of the Mayor

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A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To approve the proposed final rules to establish a schedule of civil infractions for violations of battery stewardship requirements of the Sustainable Solid Waste Management Amendment Act of 2014.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Battery Stewardship Infractions Schedule of Fines Approval Resolution of 2023”.

Sec. 2. Pursuant to section 104(a)(1) of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.04(a)(1)) and Subtitle D (Extended Producer Responsibility for Batteries) of Title I (Waste Management, Reduction, and Recovery) of the Sustainable Solid Waste Management Amendment Act of 2014, effective March 16, 2021 (D.C. Law 23-211; D.C. Official Code § 8-771.01 *et seq.*), the Council approves the proposed final rulemaking adopted by the Department of Energy and the Environment, which was published as a proposed rulemaking in the *D.C. Register* on July 7, 2023 at 70 DCR 009459, to establish a schedule of civil infractions for violations of Subtitle D (Extended Producer Responsibility for Batteries) of Title I (Waste Management, Reduction, and Recovery) of the Sustainable Solid Waste Management

34 Amendment Act of 2014, effective March 16, 2021 (D.C. Law 23-211; D.C. Official Code § 8-
35 771.01 *et seq.*) and rules related to battery stewardship in Chapter 39 (Battery Stewardship) of
36 Title 20 (Environment) of the DCMR.

37 Sec. 3. Transmittal.

38 The Secretary to the Council shall transmit a copy of this resolution, upon its adoption, to
39 the Mayor, the Director of the Department of Energy and Environment, and the Administrator of
40 the Office of Documents and Administrative Issuances.

41 Sec. 4. Fiscal impact statement.

42 The Council adopts the fiscal impact statement in the committee report as the fiscal
43 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
44 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

45 Sec. 5. Effective date.

46 This resolution shall take effect immediately.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FINAL RULEMAKING

(as submitted to the Council for its review and approval pursuant to section 104(a)(1) of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.04(a)(1))

Battery Stewardship Infractions

The Director of the Department of Energy and Environment (“DOEE”), pursuant to the authority set forth in section 104 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.04); Mayor’s Order 2006-61 dated June 14, 2006; Subtitle D (Extended Producer Responsibility for Batteries) of Title I (Waste Management, Reduction, and Recovery) of the Sustainable Solid Waste Management Amendment Act of 2014, effective March 16, 2021 (D.C. Law 23-211; D.C. Official Code § 8-771.01 *et seq.*); and Mayor’s Order 2022-028 dated February, 10, 2022, hereby gives notice of the adoption of the following amendments to Chapter 40 (Department of the Environment (DDOE) Infractions) of Title 16 (Consumers, Commercial Practices, and Civil Infractions) of the District of Columbia Municipal Regulations (“DCMR”).

This rulemaking schedules fines for violation of provisions related to battery stewardship in the Sustainable Solid Waste Management Amendment Act of 2014 and of rules related to battery stewardship in Chapter 39 (Battery Stewardship) of Title 20 (Environment) of the DCMR. The rulemaking reflects amendments incorporated into the Sustainable Solid Waste Management Amendment Act of 2014 by the Battery and Electronic Stewardship Amendment Act of 2022, effective March 10, 2023 (D.C. Law 24-320, 70 DCR 3551).

A Notice of Proposed Rulemaking was published in the *District of Columbia Register* on July 7, 2023, at 70 DCR 009459. A thirty (30) day comment period on the proposed rulemaking ended on August 7, 2023.

DOEE received one (1) set of comments during the comment period. The comments received and changes made are described below.

Implementation of a Battery Stewardship Plan or Amendment

- Comment: Delete § 4014.3(a) that would establish an infraction for failure to fully implement an approved battery stewardship plan or amendment to the plan because there is no definition for “fully implemented” and it is unclear how DOEE would determine if a battery stewardship organization (BSO) meets this requirement.

Response: The infractions rulemaking establishes fines for violation of the existing battery stewardship regulations. The regulations state at 20 DCMR § 3900.1(b) that a BSO shall “fully implement the plan, and any amendments to the plan.” This requirement addresses the situation in which either the whole plan, or some portion of the plan, developed by the BSO and approved by DOEE, is not carried out. If DOEE seeks to impose a fine and there

is a disagreement about whether a plan or portion of a plan was fully implemented, a notice of infraction could be appealed to the third-party Office of Administrative Hearings. No change was made as a result of this comment.

- Comment: Delete § 4014.3(a) that would establish an infraction for failure to fully implement an approved battery stewardship plan or amendment to the plan no later than ninety (90) days after receiving DOEE approval because there are few to no actions that are implemented in the first 90 days after plan approval and that outcomes after a full year of implementation are the important aspects.

Response: The regulations at 20 DCMR § 3900.1(b) require the BSO to implement its battery stewardship plan or a plan amendment no later than ninety (90) days after DOEE approval. During the first 90 days, the BSO will need to undertake any and all actions that must be completed so that the stewardship plan is up and running as specified in its plan (the plan may provide for undertaking some actions in phases after the first ninety (90) days). No change was made as a result of this comment.

Annual Registration

- Comment: Delete § 4014.3(b) that would establish an infraction for failure to register with DOEE each year because the information required is redundant and should be submitted only once, and this infraction is not at the same level of importance as other infractions.

Response: The primary responsibilities of the BSO under the battery stewardship law are registration, battery stewardship plan development and implementation, and an annual report. D.C. Official Code § 8-771.04(b) requires annual registration and spells out the information the registration must include. Some of the information, such as the producer list, requirements for participating in the BSO, and contact information, may change over time. The BSO may copy and paste information that is unchanged between years. No change was made as a result of this comment.

Battery Collection Site Safety

- Comment: Delete § 4014.3(i) that would establish an infraction for a BSO's failure to provide a battery management safety tutorial because it does not impact the overall performance of the battery stewardship program and enforcing the requirement to provide a safety tutorial does not by itself add value to the program.

Response: DOEE believes that safety is critical to program success. Batteries contain harmful substances that can pose a risk of fire or explosion if managed unsafely. D.C. Official Code § 8-771.03(d)(1) requires that any battery collection site designated under a plan complete a safety tutorial provided by the BSO implementing the plan. The regulations at 20 DCMR § 3900.3(a) require that the BSO provide a safety tutorial and the BSO must require that collection site personnel responsible for the collection program complete the safety tutorial (1) before the site begins to operate as a collection site under the approved plan and (2) when there is a change in responsible collection site personnel.

DOEE revised the text to clarify that § 4014.3(i) applies to both the BSO's responsibility to provide a tutorial and to require that collection site personnel complete the tutorial.

End-of-Life Handling of Residual Materials

- Comment: Delete § 4014.3(j) that would establish an infraction for end-of-life handling that is not in accordance with practices set forth in an approved battery stewardship plan or amendment to the plan as it will have little impact on the overall battery stewardship program.

Response: End-of-life handling is part of the battery stewardship plan. A failure to implement the end-of-life portion of an approved plan can be addressed as an infraction under 20 DCMR § 3900.1(b). This infraction is deleted and the citations of the subsequent provisions revised accordingly.

Enforcement against Producers

- Comment: Increase the penalty in § 4014.3(k) for the failure of a producer to join a BSO from a Class 3 to Class 2 infraction because non-participating producers who place batteries on the market in the District burden the BSO while at the same time severely limiting its incoming fees, which reduces its ability to run the battery stewardship program.

Response: The lists of participating producers in the annual registration and the annual report each identify members, and those not on one or both lists can be held liable for violation(s) of the BSO membership requirement. A Class 3 infraction imposes a fine of \$500 for the first offense, and there are escalated penalties for repeat offenders if a producer has one or more additional violations within a three-year period. Further, D.C. Official Code § 8-771.07 makes a cause of action available to the BSO if a producer has not joined the BSO and other criteria are met. DOEE believes that these sanctions are sufficient. No change was made as a result of this comment.

DOEE also made the following changes:

- § 4014.3(e): Removed this provision that would have established an infraction for violation of Section 130(b-1) of the Sustainable Solid Waste Management Amendment Act of 2014, effective March 16, 2021 (D.C. Law 23-211; D.C. Official Code § 8-771.03(b-1)) (failure to submit a required amendment to a battery stewardship plan), as unnecessary, and renumbered the remaining sections accordingly.
- New § 4014.3(i) (after re-numbering): Clarified that this infraction only applies to the failure to join a battery stewardship organization in 20 DCMR § 3901.1(a).

In accordance with Section 104(a)(1) of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.04(a)(1)), the Mayor transmitted the proposed final rules to the Council for its review and approval on **MONTH DATE**, 2023, pursuant to the Battery Stewardship Infractions Schedule of

Fines Approval Resolution of 2023 (Prop. Res. **XX-XXXX**). The proposed final rulemaking was passively approved by the Council.

The Acting Director of DOEE took final action to adopt this rulemaking on **MONTH DATE**, 2023, and the rules will become effective upon publication of this notice in the *district of Columbia Register*.

Chapter 40, DEPARTMENT OF ENVIRONMENT (DDEE) INFRACTIONS, of Title 16 DCMR, CONSUMERS, COMMERCIAL PRACTICES, AND CIVIL INFRACTIONS, is amended as follows:

A new Section 4014, BATTERY STEWARDSHIP PROGRAM INFRACTIONS, is added to read as follows:

4014 BATTERY STEWARDSHIP PROGRAM INFRACTIONS

4014.1 [Reserved]

4014.2 [Reserved]

4014.3 Violation of any of the following provisions shall be a Class 3 infraction:

- (a) 20 DCMR § 3900.1(b) (failure to fully implement an approved battery stewardship plan or amendment to the plan no later than ninety (90) days after receiving DOEE approval);
- (b) 20 DCMR § 3900.1(e) (failure to register with DOEE using an agency prepared registration form on or before January 1 of each year);
- (c) 20 DCMR § 3900.1(f) (failure to submit an annual report with the required elements to DOEE on or before June 1 of each year);
- (d) 20 DCMR § 3900.1(g) (failure to submit a proposed amendment to a battery stewardship plan);
- (e) 20 DCMR § 3900.1(h) (failure to submit amended performance goals as required on the anniversary of the approval of the initial battery stewardship plan);
- (f) 20 DCMR § 3900.1(i) (failure to submit the results of an independent assessment of the battery stewardship plan and recommendations to improve the plan);
- (g) 20 DCMR § 3900.2 (failure to submit an amended plan with required corrections or revisions within forty-five (45) days of DOEE notice of rejection or required revision);

- (h) 20 DCMR § 3900.3(a) (failure to provide a safety tutorial as required for a battery collection site designated under an approved plan and require that collection site personnel responsible for the collection program complete the safety tutorial);
- (i) 20 DCMR § 3901.1(a) (failure of a producer to join a battery stewardship organization); or
- (j) 20 DCMR § 3907 (failure of a battery stewardship organization to pay the administrative fee).

4014.4 Violation of the following provisions shall be a Class 4 infraction:

- (a) Section 137(a) of the Sustainable Solid Waste Management Amendment Act of 2014, effective March 16, 2021 (D.C. Law 23-211; D.C. Official Code § 8-771.09(a)) (disposal of primary or rechargeable batteries in the District through means other than battery recycling programs or other methods approved by the Mayor by a producer). The disposal of each increment of one (1) to ten (10) batteries shall be a separate violation; or
- (b) Section 137(b) of the Sustainable Solid Waste Management Amendment Act of 2014, effective March 16, 2021 (D.C. Law 23-211; D.C. Official Code § 8-771.09(b)) (knowing disposal of primary or rechargeable batteries in the District through means other than battery recycling programs or other methods approved by the Mayor by any person). The disposal of each increment of one (1) to ten (10) batteries shall be a separate violation.

4014.5 Violation of any provision of Subtitle D (Extended Producer Responsibility for Batteries) of Title I (Waste Management, Reduction, and Recovery) of the Sustainable Solid Waste Management Amendment Act of 2014, effective March 16, 2021 (D.C. Law 23-211; D.C. Official Code § 8-771.01 *et seq.*), or the implementing rules in 20 DCMR Chapter 39, that is not cited elsewhere in this section shall be a Class 5 infraction.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

BRIAN L. SCHWALB
ATTORNEY GENERAL



PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

LEGAL COUNSEL DIVISION

MEMORANDUM

TO: Sarina Loy
Deputy Director
Office of Policy and Legislative Affairs

FROM: Megan D. Browder
Deputy Attorney General
Legal Counsel Division

DATE: December 20, 2023

SUBJECT: Legal Sufficiency Review – Draft “Battery Stewardship Infractions Schedule of Fines Approval Resolution of 2023”
(AE-22-272 E)

This is to Certify that this Office has reviewed the above-referenced draft legislation and found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at (202) 724-5524.

A handwritten signature in black ink that reads "Megan D. Browder".

Megan D. Browder