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Tobacco industry responsibility for butts: a Model Tobacco Waste Act

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ABSTRACT

Cigarette butts and other postconsumer products from tobacco use are the most common waste elements picked up worldwide each year during environmental cleanups. Under the environmental principle of Extended Producer Responsibility, tobacco product manufacturers may be held responsible for collection, transport, processing and safe disposal of tobacco product waste (TPW). Legislation has been applied to other toxic and hazardous postconsumer waste products such as paints, pesticide containers and unused pharmaceuticals, to reduce, prevent and mitigate their environmental impacts. Additional product stewardship (PS) requirements may be necessary for other stakeholders and beneficiaries of tobacco product sales and use, especially suppliers, retailers and consumers, in order to ensure effective TPW reduction. This report describes how a Model Tobacco Waste Act may be adopted by national and subnational jurisdictions to address the environmental impacts of TPW. Such a law will also reduce tobacco use and its health consequences by raising attention to the environmental hazards of TPW, increasing the price of tobacco products, and reducing the number of tobacco product retailers.

INTRODUCTION

While the environmental impacts of tobacco product waste (TPW) are less known than the health effects of tobacco use, the former are cause for public concern and possible regulation through legislative action. Cigarette butts are the most commonly discarded waste product in the world, and almost 6.3 trillion cigarettes were consumed globally in 2012. Observational studies and self-reports by smokers suggest that from one to two-thirds of the butts from smoked cigarettes are tossed by smokers into the surrounding environment, buried in landfills, or dumped into storm drains.¹ These may now be considered a non-point source of toxic, hazardous waste and thus subject to regulatory control.²

There are numerous environmental concerns regarding the production and use of tobacco products throughout their lifecycle. Tobacco leaf growing and processing involves heavy pesticide and petroleum-based fertiliser use, land degradation and deforestation.³ Additional waste concerns arise from tobacco manufacturing, packaging, distribution and combustion. These concerns include the production of greenhouse gases (CO₂ and methane) released by manufacturing, transport and smoking of tobacco products; environmental toxins found in secondhand smoke; and newly described toxic residuals known as thirdhand smoke that are

found in homes and other enclosed environments where smoking has occurred.⁴

A *Tobacco Control* Supplement published in 2011 summarised multiple concerns regarding the environmental impact of TPW, and presented policy options to prevent, reduce and mitigate these impacts. As a brief review of this special supplement, there are 7000 chemicals contained in cigarettes, and many of them, such as ethyl phenol, heavy metals and nicotine, are themselves toxic. At least 50 are known human carcinogens; others have been found to be toxic to marine and freshwater organisms⁵ and poisonous to humans and animals.⁶ Aquatic systems, such as shorelines and waterways, may be the most vulnerable environments, as the majority of land-based litter ultimately is deposited into them. In addition, there are externalised costs borne by communities and local/state governments due to cleanup of TPW.⁷ The vast majority of manufactured cigarettes sold today include filters that are usually made of cellulose acetate, a non-biodegradable plastic. While ultraviolet rays may eventually break filters into smaller pieces, the source material never disappears.¹ Persisting for up to 10 years, they are the major environmental concern regarding TPW because they are a visible community nuisance and they leach out toxic chemicals. According to the 'broken windows' theory around public nuisances, researchers have found that if people see one norm or rule being violated (such as graffiti or illegal parking), they are more likely to violate others—such as butt littering.⁸

Although filtered cigarettes have been marketed by the tobacco industry for decades with the implication that they are 'safer', their main effects have been to reduce the machine-measured yields of tar and nicotine, to discourage smokers from quitting, and to make it easier for young people to become addicted. However, the 2014 US Surgeon General's *Report on the Health Consequences of Smoking* found that there is no benefit from product designs, such as the cellulose acetate filter, in reducing the individual or population risks of smoking.⁹ In fact, risks for the more aggressive type of lung cancer (adenocarcinoma) have increased since introduction of filtered cigarettes. Regardless of their health risk to smokers, filters pose a serious litter and toxic waste disposal challenge. The marketing of filtered cigarettes as 'safer' as well as the lack of recognition by smokers of the environmental impact of discarded filters represent 'information asymmetry' between the consumers and producers of tobacco products.¹⁰ Correcting this asymmetry through regulation will likely lead to both reduced tobacco consumption and less environmental contamination by TPW. Although a



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proprietary effort to establish a cigarette butt recycling programme (supported by the tobacco industry) has been made,¹¹ that effort and other cleanup campaigns address a miniscule quantity of TPW. For example, the Ocean Conservancy reports that approximately 52 million cigarettes have been picked up globally in 27 years of cleanups.¹² With trillions dumped each year, these downstream solutions will never be measurably effective in reducing TPW in the environment. It is also unlikely that there are safe options for reusing or recycling the toxic, hazardous components of TPW. Instead, the focus of managing postconsumer TPW should be directed towards reducing production, changing the product design, preventing littering, conducting cleanups as monitoring rather than abatement programmes, and developing safe disposal technologies for TPW.

On the basis of experience involving the pesticide, paint and pharmaceutical industries, it can be argued that the tobacco industry is responsible for numerous environmental problems throughout the tobacco product life cycle.⁴ However, the industry has firmly held that 'the responsibility of cigarette waste belongs to the smoker',¹³ although, as described elsewhere, industry efforts to persuade smokers to take on that responsibility have not been successful.¹⁴ It has also been found that smokers were defensive about discarding their tobacco butts and thus not very receptive to antilittering efforts.¹¹ In fact, littering behaviour studies have found a littering rate of 17% overall, but for cigarette butt littering, this was 65%.¹⁵

With a goal of shifting responsibility for TPW to the smoker, the industry's response to the butt waste problem has been to encourage cleanup efforts through corporate social responsibility partnerships with environmental groups, the use of hand-held ashtrays for smokers, and the placement of butt waste disposal receptacles in public places. Although tobacco industry-sponsored environmental groups claim correlation between reduced butt waste and placement of receptacles,¹⁶ careful evaluation of these efforts has not been done. Moreover, these approaches should be recognised as downstream solutions to an upstream waste problem; they put the blame for TPW onto end users rather than to the manufacturers of a product that generates toxic waste once used. This is a 'blame the victim' response, not a source-based approach to waste reduction and prevention. The industry's long-standing efforts to avoid responsibility have also included attempts to develop biodegradable filters. However, it was concluded that biodegradable filters would likely encourage even more littering and, in fact, would not be marketable.¹⁷

From a tobacco control perspective, a variety of initiatives can help prevent, reduce and mitigate the environmental impacts of TPW. These measures include banning smoking in outdoor, indoor and workplace areas; applying additional litter fees on tobacco products to pay for cleanup and anti-TPW programmes; and levying fines for littering that specifically include TPW. While not yet operational, other potential initiatives include banning the sale of single-use, disposable filters; litigation for damages associated with TPW environmental impacts; product labelling regarding TPW disposal as hazardous waste; and enactment of laws that make tobacco producers and sellers responsible for cleaning up and safely disposing of TPW.¹

This *Special Communication* explores that last policy approach, which is based on the environmental principle of Extended Producer Responsibility (EPR). We have developed a *Model Tobacco Waste Act* which may be adapted at the national or subnational level to implement such an approach. First we discuss EPR and product stewardship (PS) principles that are the

foundation for such an Act. Next, we present the core provisions in the Model Act and discuss relevant potential barriers to implementation, limitations on efficacy and implications for tobacco control outcomes. The *Model Tobacco Waste Act* is presented in the online supplementary file to this paper.

ENVIRONMENTAL PRINCIPLES UNDERLYING THE MODEL TOBACCO WASTE ACT

EPR is a policy principle that promotes environmental protection by extending the responsibilities of *the producer* across the product's entire life cycle.¹⁸ As set out by Lindhqvist,¹⁹ EPR addresses three core tenets:

1. Internalise the environmental cost of products into their retail price.
2. Shift the economic burden of managing toxicity and other environmental harm associated with postconsumer waste from local governments and taxpayers, to producers.
3. Provide incentives to producers to incorporate environmental considerations into the design of their products.

For the effective application of those tenets, Lindhqvist includes four specific categories of producer responsibility:

1. Liability: The responsibility for proved environmental damages caused by the product in question; the extent of liability is determined by legislation and may embrace different parts of the product life cycle, including usage and final disposal.
2. Economic: The producer covers part or all of the expenses for the collection, recycling, or final disposal of the products manufactured; these expenses could be paid for directly by the producer or through a special fee collected by sellers.
3. Physical: Manufacturer is involved in the physical management of the product and its environmental impacts throughout its life cycle.
4. Informative: Producer must supply information on the environmental risks of the products manufactured.

Complementing EPR-based interventions, the PS principle requires that, throughout the product lifecycle, all stakeholders who participate in growing, designing, producing, distributing, selling and using products share various responsibilities to reduce the negative environmental impacts at the end of product life.¹⁶ Among these responsibilities, government agencies, citizen groups, 'green' business enterprises, or academic researchers might conduct informational activities, publish op-eds, conduct scientific research, or advocate about a given product's environmental hazards. Postconsumer waste may involve hazardous materials, and therefore, sellers of these products must inform consumers about proper disposal. PS also underlies voluntary cleanup efforts for postconsumer waste products.

Over the past two to three decades there has been some confusion regarding the roles of EPR and PS. As presented above, EPR focuses on the tobacco producer as the party mainly responsible for prevention and mitigation of TPW. PS provides for complementary responsibilities among all stakeholders, while holding the producer mainly responsible for the four categories of producer responsibility described above. Thus, the two principles may work in consort to address the environmental impacts of TPW.

Regarding TPW, EPR and PS focus on product design as well as take-back, recycling and final disposal of postconsumer waste. TPW-related EPR and PS interventions could include:

1. Mandating corporate take-back programmes for TPW, both as individual and collective activities of tobacco companies;

2. Shifting product disposal management responsibilities away from local communities and taxpayers to producers, distributors and consumers of tobacco products;
3. Enabling cost recovery schemes to fund EPR programme management, implementation and compliance through enforcement;
4. Collecting TPW from beaches, parks, campuses or neighbourhoods as a way of raising awareness about tobacco use and the impact of TPW;
5. Changing the product such that it creates less waste at the end of life. This could include eliminating sales of the cellulose acetate filter.¹

With regard to tobacco control, the application of EPR/PS principles to TPW legislation may also create important public health outcomes by: (1) further denormalising tobacco use and increasing anti-industry sentiments; (2) increasing the cost of tobacco products; (3) enacting new tobacco product regulations to make the product less marketable; (4) strengthening existing anti-litter and outdoor smoking prohibitions and (5) forging new alliances with environmental advocacy, tobacco control and regulatory groups. With these issues in mind, it is highly likely that a substantial reduction in tobacco use will result from the implementation of EPR/PS-based legislation on TPW. It is also likely that tobacco product retailers might consider the difficulties in participating in a take-back programme for TPW untenable for their continued tobacco business model. Finally, increasing public attention to TPW and how the tobacco industry is responsible for this waste may have beneficial impacts among smokers. This is essentially an anti-industry strategy that may serve to reinforce intentions to quit as part of social normative changes based on environmental concerns.²⁰

CORE PROVISIONS OF THE MODEL TOBACCO WASTE ACT AND BARRIERS TO IMPLEMENTATION

The Product Stewardship Institute (PSI) is a US-based non-profit organisation (<http://www.productstewardship.us/>) that works with a variety of governmental, private sector and non-profit partners to implement some of the 89 EPR/PS-based state laws currently operative in 33 states. These laws address 12 different waste products including: appliances with refrigerants, switches, batteries, carpets, cell phones, electronics, fluorescent lighting, mattresses, mercury thermostats, paint, pesticide containers and pharmaceuticals. The *Model Tobacco Waste Act* (see online supplementary file) is based on the well-established principles underlying such laws in the USA and Europe. For example, the 'Framework Principles for (PS) Policy' was developed in 2008–2009 by five US state stewardship councils and British Columbia.²¹ In 2012, the 'PS and EPR Definitions and Principles' were adopted by the Product Policy Institute, the PSI and the California Product Stewardship Council. They were then endorsed in 2013 by a diverse mix of businesses, stewardship organisations, academia, governments, government councils, non-profit organisations and consulting groups.²²

The *Model Tobacco Waste Act's* core provisions draw heavily from the 2009/2013 Oregon PaintCare law, which established the first US paint stewardship programme in 2010.²³ It requires paint manufacturers to finance and operate a system for retrieving, transporting and processing leftover paint, which, like TPW, contains toxic substances. All programme activities are funded by the paint industry, and the responsible entity (*PaintCare Incorporated*) is managed directly by the industry. Additional features involve accountability to government for: plan approvals and amendments, goals and performance standards, education and outreach programmes, annual reports, annual

stakeholder meetings, and privacy considerations. While these and other features may be readily transferable to a TPW EPR/PS programme, the major difference between the two products is that leftover paint is significantly less toxic and far more amenable to recycling than cigarette butts. In 2012, for example, over 70% of all leftover latex paint collected by *PaintCare Incorporated* was used to make recycled-content paint.²⁴

Enforcement of an EPR/PS-based TPW regime may be challenging, given what is known about the smokers' lack of adherence to existing litter laws. To address enforcement (section 14 'Enforcement and Penalties', see online supplementary file), we reviewed section 7 of the model *Cigarette Fire Safety Standard and Firefighter Protection Act*.²⁵ The Coalition for Fire-Safe Cigarettes drafted this model law based on fire prevention regulations developed by the New York State Office of Fire Prevention and Control. After 3 years of deliberation and with input from the public and affected parties, the State of New York State passed the first 'fire-safe cigarette' law in the USA in 2004. Today, all US states and Canadian provinces have adopted laws requiring that cigarettes sold in these jurisdictions have reduced combustibility. The first five types of enforcement approaches in that Act have been adapted for inclusion in the *Model Tobacco Waste Act*, and they are applicable to tobacco producers (broadly defined), retailers and consumers. They provide for court actions for injunctive relief or to recover any costs or damages suffered by the (State) because of a violation of the Act, including enforcement costs related to the specific violation and for attorney's fees.

A potential barrier to passing EPR/PS-based TPW legislation is the fear of pre-emption of subnational actions by national governments. This fear has not been realised in practice to date. In 2009, the US Congress enacted the *Family Smoking Prevention and Tobacco Control Act* (TCA), which provided the US Food and Drug Administration (FDA) with the authority to regulate tobacco products for the benefit of public health. Tobacco product standards, including new product marketing, additives, labelling, and manufacturing standards are solely the FDA's responsibility. However, state and local authorities were expressly allowed to adopt tobacco control laws that deal with distribution, possession, sale, advertising, promotion and fire safety. In an analysis of possible national pre-emption of local TPW regulation, Freiberg²⁶ found that a state or local law making tobacco producers responsible for cleaning up and properly disposing of TPW would not be pre-empted by FDA regulatory jurisdiction. Nonetheless, specific antipre-emption language may be included in state or local laws.

Finally, with the dramatic increase in the use of e-cigarettes, specific language may be needed to cover the chemicals, batteries and detritus produced as waste by this new but largely unregulated consumer product. The small size of disposable e-cigarettes facilitate their becoming e-waste, and this waste has been shown to contain lead as well as nicotine (if not fully consumed).²⁷ Additional research is needed to identify potential toxicants, fire risks and difficult-to-recycle materials used in making the product.²⁸

FINAL COMMENTS

Given the numerous toxic chemicals found in tobacco products and TPW and the ubiquity of TPW in the environment, a strong case can be made that product alterations as well as effective prevention, clean up and safe disposal efforts are badly needed to address the TPW problem. In this context, there is much to learn from environmental policies for other toxic waste products, such as obsolete pesticides and their containers, medical

waste, and unused paints. Disposal of such substances into municipal landfills or incineration is generally recognised as unsafe. Applying these models to TPW, safely managed take-back programmes, including collection services, transportation and closed, monitored regional TPW disposal sites are needed. These and other related services should be paid for by tobacco producers according to EPR and PS principles.

While EPR is put forward as a legislative approach, it asserts that the manufacturer would be strictly liable for TPW. Several legal theories pertaining to liability are addressed in detail in a *Tulane Environmental Law Journal* article that explores several potential litigation-related causes of actions that could be applicable to TPW.²⁹ Public nuisance may be the strongest approach, although product liability and state hazardous waste laws could also successfully hold cigarette manufacturers liable for TPW.

Raising awareness about the environmental consequences of tobacco use and the responsibility of the tobacco industry for these consequences will require media messaging and actions by governments in order to succeed. These actions may reinforce global approaches to environmental protection, including interventions to slow climate change, and they may mobilise new partnerships between tobacco control and environmental advocates.

The *Model Tobacco Waste Act* presented in the online supplementary file to this report is a starting point from which national, subnational and local governments can begin to address the substantial and growing environmental concerns regarding tobacco products worldwide. These programmes will raise the cost of tobacco use, make it more difficult for retailers to participate in the tobacco product market, denormalise and formally recognise that tobacco use is not only deadly to humans, but hazardous to the environment as well.

What this paper adds

This Special Communications provides a novel approach to tobacco control through the environmental principle of Extended Producer Responsibility. It describes a Tobacco Waste Act to prevent, reduce and mitigate tobacco product waste. This Act will internalise the burden of tobacco waste management to the producer and consumer, thereby increasing costs of smoking, further denormalising tobacco use as offensive to the environment, and possibly reducing retail accessibility of tobacco products.

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Model Tobacco Waste Act

(for use in national and subnational jurisdictions)

Section 1 Objective

The core objective of this Act is to require producers of tobacco products to develop, finance and implement programs to collect, transport, process and safely dispose of post-consumer tobacco waste, absent persuasive evidence that source reduction, reuse, recycling and energy recovery are achievable at a substantial scale, in order to reduce, prevent and mitigate the environmental impacts of the disposal of that waste in the jurisdiction.

Those actions, among others, shall also be taken by tobacco producers in earlier stages of the life cycle to reduce environmental impacts associated with tobacco products in the [jurisdiction]; and other stakeholders, especially suppliers, retailers, users and governments, should take complementary actions throughout the life cycle chain to establish an effective, joint producer and product stewardship responsibility program.

Section 2 Definitions

As used in this Act, unless the context otherwise indicates, the below-listed terms have the following meanings:

2(a) “**Brand**” means a name, symbol, word or mark that identifies a product, rather than its components, and attributes the product to the owner of the brand;

2(b) “**Environmentally sound management practices**” means policies and practices that are to be implemented by Tobacco Waste Act, or by agents working for such an organization, to ensure compliance with all applicable laws related to environmental risks and harm throughout the life cycle of tobacco products, including but not limited to:

- (1) Adequate record keeping;
- (2) The tracking and documentation of the fate of post-consumer tobacco waste within the [jurisdiction];
- (3) Special attention directed to handling post-consumer waste; and
- (4) Adequate environmental liability coverage for professional services and for the operations of

contractors working for Tobacco Waste Act.

2(c) “**Governmental Department/Agency**” is the [jurisdictional] level entity that will oversee the creation of Tobacco Waste Act, including initial approval of its plan, pursuant to Section 4(c), and any subsequent new or updated plan or plan amendment thereto, under Section (7)(a), with respect to any and all Tobacco Waste Act-related responsibilities, actions and activities enumerated in Sections 3-16 of this Act.

2(d) “**Person**” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

2(e) “**Tobacco Producer**” means a person or company, including the manufacturer, fabricator, wholesaler, and distributor, or agents thereof, of a filtered tobacco product that is sold, offered for sale, or distributed in the [jurisdiction], which:

- (1) Has legal ownership of the brand of a tobacco product sold in or into the [jurisdiction];
- (2) Imports a tobacco product branded by a person that meets the requirements of paragraph (2)(e)(1), but has no physical presence in the [jurisdiction]; or
- (3) Sells a tobacco product in the [jurisdiction] at wholesale or retail, but does not have legal ownership of the brand of the tobacco product.

2(f) “**Tobacco Product**” means any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to filtered and un-filtered cigarettes, e-cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, and snuff.

2(g) “**Tobacco Waste**” means any component of a tobacco product that has been abandoned or discarded in the [jurisdiction] or is intended to be discarded by a covered entity.

2(h) “**Tobacco Waste Act Program**” refers to the stewardship organization/program that will manage the responsibilities, actions and other activities pursuant to the initial, approved plan under Section 4(b) and any new or updated plan or plan amendment under Section 7(a) of this Act.

2(i) “**Waste management hierarchy**” establishes preferred program priorities based on sustainability, indicating an order of waste management with preferences for preventing, reducing, and managing tobacco product waste. While source reduction, reuse, recycling and energy recovery are important elements in achieving sustainability, the toxicity associated with tobacco product waste offers few, if any, substantial opportunities for sustainable approaches other than safe disposal in specially protected areas other than general landfill or incineration. Absent persuasive evidence that higher level tiers of the waste management hierarchy are achievable, pursuant to relevant [jurisdiction] and related requirements, safe cleanup and disposal shall be adhered to as the appropriate waste management approach for tobacco product waste.

Section 3 Guiding Principles

3(a).. Tobacco Waste Care

(1) All tobacco producers with products sold in the [jurisdiction] shall participate in, and be responsible for, developing, implementing and financing the Tobacco Waste Act Program, an organization/program established at the national or subnational level, which addresses the total life cycle environmental impacts of tobacco products, with a special emphasis on post-consumer, end-of-life product waste management;

(2) They should have the flexibility to meet their responsibilities by offering their own plan or participating in a plan with others, subject to governmental oversight;

(3) Tobacco product retailers shall also participate in Tobacco Waste Act, and they shall only sell covered tobacco products from tobacco producers in compliance with Tobacco Waste Act requirements;

(4) Tobacco product consumers are responsible for using return collections systems set up and paid for by tobacco producer/s or their agents, as managed under the Tobacco Waste Act; and

(5) Tobacco product producers and retailers shall educate the public about the Tobacco Waste Act Program.

3(b) Governance

(1) The [Governmental Department/Agency] shall set goals and performance standards following consultation with stakeholders, with all of Tobacco Waste Act’s Program within a tobacco product category being accountable to the same goals and performance standards. At the same time, the [Governmental Department/Agency] allows tobacco product producers or their agents, subject to its oversight, the flexibility to determine the most cost-effective means of achieving the goals and performance standards.

(2) The [Governmental Department/Agency] is responsible for

(i) ensuring that all tobacco producers and retailers, as a condition for selling tobacco products in the [jurisdiction], shall join and participate in the Tobacco Waste Program, as established by this Act;

(ii) ensuring transparency and accountability of Tobacco Waste Act; and

(3) Tobacco product producers are accountable to both the [Governmental Department/Agency] and consumers for disclosing environmental risks, impacts, and related outcomes.

3(c) Environmental Protections

(1) Tobacco Waste Act producers or agents thereof shall address environmental issues in permitting the sale of specific tobacco products, and toward that end, permitted products should contribute to source reduction and reduced toxicity of tobacco products sold in the State;

(2) Tobacco producers shall ensure that all products covered through Tobacco Waste Act are managed in an environmentally sound manner, consistent with relevant [jurisdictional] sustainability laws, including those that address greenhouse gas reductions, water quality, and waste management hierarchy; and

(3) The Tobacco Waste Act Program shall include reporting on source reduction and the cleanup and final disposition of tobacco waste products, including any tobacco products or materials exported for processing.

Section 4 Core Obligations Involving Tobacco Waste Act Program

4(a) Tobacco producers or retailers shall not sell or offer for sale tobacco products to any person in the [jurisdiction] unless they join and are participating in an approved Tobacco Waste Act Program. A retailer is in compliance with this section if, on the date the tobacco product/s were ordered from the producers or their agents, the website maintained by the [Governmental Agency/Department] lists the producers, along with the producer's product brand, as participants in an approved Tobacco Waste Act Program, with such website listing harmonized with the existing Tobacco Directory website maintained by the [jurisdiction].

4(b) Tobacco Waste Act representatives shall provide retailers selling or offering for sale tobacco products with information about the Tobacco Waste Act Program, generally, and on available collection opportunities for post-consumer tobacco product waste offered through Tobacco Waste Act. All retailers that sell or offer for sale tobacco products shall provide that information to its consumers at the time of sale.

4(c) Tobacco Waste Act producers, or agents thereof, shall submit a plan for its tobacco waste control program to the Director of the [Governmental Department/Agency] for approval under this Section of the Act. The plan shall:

(1) Specify educational and outreach activities and materials that promote and increase awareness of Tobacco Waste Act's Program. In addition to creating a website that provides information about the Tobacco Waste Act Program, staff, participants, relevant documents (including this Act) and information, news, contact information, etc., that website and other educational and outreach materials shall also include, but are not limited to, signage, written materials, templates and reproduction of materials for retailers to disseminate to all purchasers of tobacco products at the time of sale, and shall:

(i) identify opportunities and activities involving the establishment and maintenance of an effective collection system for post-consumer tobacco product waste;

(ii) promote a reduction in the generation of post-consumer tobacco control waste, reuse, recycling, and energy recovery, and if those options are not achievable, safe disposal of the tobacco product waste;

(iii) identify each producer participating in Tobacco Waste Act's Program;

(iv) identify participating brands of tobacco product waste sold in the jurisdiction covered; and

(v) identify the processors that manage the post-consumer tobacco product waste that is collected under the program, as well as the transporters of post-consumer tobacco product waste that is collected under the Tobacco Waste Act.

(2) Establish and provide for the development and implementation of goals to reduce the generation of post-consumer tobacco product waste, including waste management hierarchy goals for:

(i) reducing the amount of post-consumer tobacco product waste generated in the jurisdiction;

(ii) increasing source reduction, safe reuse, recycling, or energy recovery, if those options are achievable, and to the extent they are not, properly disposing of the tobacco product waste; and

(iii) increasing public awareness of the Tobacco Waste Act Program;

(3) Undertake the responsibility of negotiating and executing contracts to collect, transport and process post-consumer tobacco product waste for end-of-life management through safe reuse, recycling and energy recovery, if those options are achievable, or otherwise through safe and proper cleanup and disposal.

(4) Describe how the end-of-product management of post-consumer tobacco product waste that is collected under the Program will use environmentally sound management practices that are consistent with the [jurisdiction] and other relevant environmental regulations and practices for ultimate disposal;

(5) Establish the terms of reference for carrying out an annual assessment of the effectiveness of Program actions taken under this Section and other Sections of this Act, with such assessment carried out as part of the annual report, pursuant to Section 9(a). The core criteria for carrying out the annual assessment shall be based on the quality and relevance of the design, effectiveness, efficiency of implementation, impact, and potential for sustainability of the Tobacco Waste Act's Program; and

(6) Include an anticipated annual operating budget for the program paid for by the participating tobacco producers or their agents for the next five years, beginning with the year in which the plan is submitted to the Director of the [Governmental Departments/Budget]. The budget shall include, but not be limited to, budget line items related to:

(i) the development and implementation of the educational and outreach activities materials required under subsection 4(c)(1) of this Section and the provision of information to retailers required under subsection 4(a) and (b) of this Section;

(ii) the collection, transportation and processing of post-consumer tobacco product waste as part of the Program;

(iii) the administrative costs of Tobacco Waste Act's Program;

(iv) the costs of any approved pilot Program prior to the operative date of this Act;

(v) the anticipated amount of money that the Tobacco Waste Act will hold in un-allocated reserve funds for the Program;

(vi) the administrative fees paid to the [Governmental Department/Agency]; and

(vii) any additional budgetary information requested by the Director of the [Governmental Department/Agency] that is necessary for the Director to approve the plan.

4(d) With regard to funding of the overall Tobacco Waste Act Program, all participating tobacco producers or their agents shall establish an effective and efficient funding mechanism that enables them to pay for all the costs and expenses associated with the Tobacco Waste Act's Program and budget, including but not limited to those programs listed in Section 4(b) and 4(c), above.

Section 5: Collection Services

5(a) An effective, convenient system for the collection of post-consumer tobacco product waste required by Section 4(c)(1)(i) shall ensure that:

(1) One permanent collection site exists, at minimum, for every [number based on population/size of persons and smokers in the [jurisdiction]];

(2) Ninety-five percent of the estimated smokers in [jurisdiction] are within [number of miles based on population/size of jurisdiction] of a permanent collection site; and

(3) For those geographically underserved areas where the smoker population is not within [number of miles based on population/size of the [jurisdiction]] of a permanent collection site, at least one collection event is held per year in each geographically underserved area.

5(b) The Tobacco Waste Act producers or their agents shall enter into contracts with the [jurisdiction], collection service franchise holder, retailer or any person who provides a collection service, as required in order to

implement a Program under this subsection. In negotiating a contract with the [jurisdiction], collection service franchise holder or person who provides collections services, terms of contract may include, but are not limited to:

- (1) The total costs associated with accepting post-consumer tobacco product waste into the Program through permanent collections sites and collection events;
- (2) The safe processing of post-consumer tobacco product waste at the permanent collection site; and
- (3) The safe transportation, recovery and disposal of post-consumer tobacco product waste.

5(c) The Tobacco Waste producers or agents thereof shall identify and pay for the appropriate [jurisdiction], collection service franchise holder, or person who provides collection service for a collection event under Section 5((b) (1). If, after a good faith effort, producers or their agents are unable to coordinate with the appropriate [jurisdiction], collections service franchise holder, or person to provide the collection service, Tobacco Waste producers or their agents thereof shall promote, coordinate and manage the collection event, unless the Director of the [Governmental Department/Agency] agrees that holding a collection event in that area will not be practicable or effective.

5(d) For purposes of this Section, the tobacco waste producers or their agents thereof shall renew or renegotiate a contract for permanent collection sites once every two years unless another time frame is agreed by the contracting parties.

Section 6 Amendments to Tobacco Waste Act Program

6(a) The Tobacco Waste Act producers or agents thereof shall submit to the Director of the [Governmental Department/Agency] for approval of an amendment to a plan or updated plan that has been approved by the Director under Section 7 of this Act, below, if at any time:

- (1) The Tobacco Waste Act Program makes a change to the post-consumer, tobacco product waste assessment that was approved by the Director as part of the plan;
- (2) The Tobacco Waste Act Program makes a change to the types of post-consumer tobacco product waste that will be collected by the organization under the plan;
- (3) The Tobacco Waste Act Program makes a change to the goals that were approved by the Director as part of the plan; or
- (4) The Director requests an amendment to the plan to address a specific finding by the director that:
 - (i) the administrative costs to the Tobacco Waste Act's Program (except for the first year) equaled [20 percent] or more of the organization's total annual budget for the Program during the prior calendar year;
 - (ii) the cost per pound of the Program during the prior calendar year were [10 percent] or more higher than the preceding calendar year;
 - iii) the unallocated reserve funds held by the Tobacco Waste Act for the Program during the prior calendar year equaled [35 percent] or more of the total annual budget for the Program during the year; and
 - iv) the total volume, in weight, of collected post-consumer tobacco product waste as part of the program during the prior calendar year was [10 per cent] or lower than the preceding calendar year.
- (5) Tobacco Waste producers or their agents shall submit an amendment under this Section within [60] days after the date of the change by the organization, or the date of the request by the Director.

Section 7 Approval of a New or Updated Tobacco Waste Act Program or Amendment

7(a) The Director of the [Governmental Department/Agency] shall approve, deny or request additional information on a new or updated Program plan or plan amendment no later than 60 days after the date the Director receives the plan or amendment from Tobacco Waste Act's Program. If no action is taken within 60 days, the new or updated plan or amendment shall be deemed to have been denied.

7(b) If the Director rejects, or requests additional information for, the new Program, updated plan or amendment, the Director must provide Tobacco Waste Act producers or their agents with the reasons in writing. Tobacco Waste Act producers or their agents shall have 60 days from the date that the rejection or request for additional information is received to submit to the Director any additional information necessary for the approval of the new plan, updated plan or amendment.

7(c) The Director's rejection of, or request for additional information for, an updated plan or amendment submitted under this section does not relieve Tobacco Waste Act producers or their agents from continuing to implement the tobacco product waste Program in compliance with the approved plan pending a final action by the Director on the updated plan or amendment.

7(d) Beginning no later than two months after a new Program or plan, updated plan or amended plan is approved under this Section, Tobacco Waste Act producers or their agents shall implement the tobacco product waste Program as described in the new, updated or amended plan.

Section 8 Process for Handling Changes in Approved Plans

8(a) If Tobacco Waste Act producers or their agents makes any of the changes described in this Section to a Tobacco Waste Act Program, the organization shall notify the Director in writing, within 30 days, of the date of the change to the program, including:

(1) A change equal to [20 percent] or more in the location or number of permanent collection sites identified in the plan;

(2) A change equal to [20 percent] or more in the producers or brands of tobacco products sold in in this State that are participating in the program;

(3) A change equal to [20 percent] or more in the processors that manage the post-consumer tobacco product waste collected by Tobacco Waste Act under the program; or

(4) A change equal to [20 percent] or more in the transporters of the post-consumer tobacco product waste collected by Tobacco Waste Act producers or their agents under the Program.

Section 9 Annual Report, Follow Up Meetings, and Related Actions

9(a) No later than April 1 of each year (except for the first year), Tobacco Waste Act producers or their agents shall submit an annual report to the Director of the [Governmental Department/Agency] describing the operation during the prior calendar year of a tobacco product waste Program approved by the Director under Section 4 or Section 7 of this Act. At a minimum, the report shall contain:

(1) The total volume, in weight, of post-consumer tobacco product waste collected by the Program, as well as the total volume, in weight for each permanent collection site and collection event under the Program;

((2) The total volume, in weight, of post-consumer tobacco product waste collected under the Program, categorized by method of disposition, including reuse, recycling, energy recovery, and disposal;

(3) An independent financial audit of Tobacco Waste Act's Program and operations, and an evaluation of the Tobacco Waste Act Program's funding mechanism;

(4) A description of Program revenues and costs for the prior year, (except for the first year, other than a pilot program), that follows the budget requirements contained in Section 4(c)(6);

(5) If requested by the Director, any additional budgetary information necessary for the Director to determine whether Tobacco Waste Act producers or their agents must amend the plan or budget under subsection 4(c)6;

(6) An updated budget for the next calendar year that follows the budget requirements provided in Section4(c)(6);

(7) Samples of educational and outreach materials provided to consumer of post-consumer tobacco product waste, and evaluation of methods used to disseminate those materials, and a review of the effectiveness of the education and outreach, including levels of waste prevention, reuse, recycling, energy recovery and disposal, and an analysis of the environmental costs and benefits associated with each of the waste management choices;

(8) Documentation of compliance with collection requirements of Section 4 and 5 of this Act;

(9) A description of the activities undertaken to achieve, and the progress made toward achieving Tobacco Waste Act's Program goals as provided for in the Program plan, pursuant to the terms of reference for an assessment of the Program, in Section 4;

(10) Notification to the Director of any additional proposed changes to the operation of Tobacco Waste Act's Program for the following calendar year under Section 6(a), or a statement that the organization intends to continue to implement the Program in the manner approved by the Director under Section 4(b); and

(11) No later than June 15 of each year (except for the first year), the Director shall meet with interested stakeholders to review the prior year's annual report submitted to the Director under this Section. No later than 45 days prior to meeting, a notice shall be posted on the Tobacco Waste Act Program website and [Governmental Department/Agency] website about the meeting. Emails and flier announcements of the meeting shall be sent to state and local government agencies, voluntary groups, private sector (including retailer participants in Tobacco Waste Act) for posting, local communities, academics and others who have expressed an interest in the Program. The Director shall post to the website/s maintained by the Tobacco Waste Act Program and the [Governmental Department/Agency] a copy of the minutes of the meeting within 30 days thereafter.

Section 10 Tobacco Waste Act Pilot Programs Prior to Act's Enactment

If a potential participant in Tobacco Waste Act submits a plan for a [jurisdiction] Tobacco Waste Act pilot program to the Director of the [Governmental Department/Agency] before the effective date of this Act for approval as a pilot, pre-enactment Program, the submittal shall provide information no later than [x date] a report for the period beginning [y date], and ending [z date] during which time the Program would be operational, if approved by the Director. The submittal shall fulfill all the requirements of Sections 4 and/or 7 for new or modified plans, including those that would result in the Director's approval, denial or request for additional information, as well as any other information, including Programs that will be part of the Act once in effect, if requested by the Director.

Section 11 Fees Charged/Collected by [Governmental Department/Agency]

11(a) The [Governmental Department/Agency] shall establish a schedule of fees, recalculated periodically during the fiscal year, to be paid by the Tobacco Waste Act Program for administering and enforcing this Act, based on relevant information derived from the following sources:

(1) The average of the results of the financial audits described in Section 9(a)(3) of this Act, except for the first fiscal year, when the fees shall not exceed [X percent] of the average Tobacco Waste Act's pilot Program costs reported in their financial audits;

(2) [Y amount] when the initial plan specified in Section 4 or updated plan specified in Section 7 of this Act is submitted to the Director of the [Governmental Department/Agency]; and

(3) [Z amount] each year that an approved Tobacco Waste Act Program is implemented for administrative costs related to the Program.

11(b) Fees collected by the [Governmental Department/Agency] under this Section shall be deposited in the Tobacco Waste Act Fund hereby established and administered by the Director. Terms of reference for the receipt, disbursement, and management of such funds shall be prepared and publicly posted on the [Governmental Department/Agency] website no later than [60 days] prior to the effective date of the Act.

Section 12 Privacy/Non-Disclosure Considerations

12(a) Except for the financial cost, production or sales data and records specified in subsection 12(b) of this Section, the [Governmental Department/Agency], shall not disclose any financial, cost, production or sales data and records of a Tobacco Waste Act organization, any financial cost, data and records that are already protected by other [jurisdictional] law, or of a specific tobacco producer, obtained by the [Department/Agency] as part of the approval of a plan, or updated plan, pursuant to Section 4(c) or Section 7(a) for a tobacco product waste program, or as part of the annual report submitted pursuant to Section 8 of this Act.

12(b) If the [Governmental Department/Agency] determines that disclosure is necessary for the public to adequately understand the origin of the tobacco product waste assessment described in Section 4(b)(1), or the services or associated costs that are delivered under the assessment, the Department may disclose, in aggregate form, information contained in the financial, cost, production or sales data and records related to the level of service and associated costs for the following services offered by the [jurisdictional] Tobacco Waste Act Program:

- (1) Collection, reuse, transportation, recycling, energy recover, disposal and other processing of tobacco product waste;
- (2) Waste reduction efforts;
- (3) Education and promotion;
- (4) Enforcement responsibilities and efforts; and
- (5) Administration

12(c) The [Governmental Department/Agency] shall not disclose the names of brands by specific producers obtained by the Department as part of the submission of a plan for a [jurisdictional] Tobacco Waste Act program pursuant to Section 4(c) or Section 7(a). However, the Department may disclose separate lists indicating participating producers and participating brands of in the Tobacco Waste Act Program.

12(d)..Nothing in this Section shall impose additional reporting obligations on Tobacco Waste Act Programs beyond those specified in all the preceding Sections of this Act.

Section 13 Prior Year Collections Review by the [Governmental Department/Agency] Director

13(a) No later than June 1 of each year (except for the first year), the Director of the [Governmental Department/Agency] shall publish an estimate of the total weight of post-consumer tobacco product waste collected in each watershed or metropolitan service district as part of a tobacco product waste program during the prior calendar year. For each county or city (or watershed or metropolitan service district), the Director shall also publish, stated as a percentage, the total weight, of tobacco product waste under Tobacco Waste Act's Program at each of the following:

- (1) Permanent collection sites at retailers;
- (2) Permanent collection sites and collection events for Tobacco Waste Act's Program located within the local solid waste collection infrastructure; and
- (3) Collection events promoted and paid for by Tobacco Waste Act's Program.

Sections 14 Enforcement and Penalties

14(a) Enforcement actions to promote and help ensure compliance with the provisions of the Tobacco Waste Act shall be carried out by the [Governmental Department/Agency], under the direction and approval of its Director. In an effort to reduce and prevent evasive and illegal actions, the following penalties shall apply with respect to violations of the Tobacco Waste Act:

- (1) A tobacco producer, as defined in Section (2)(c) who knowingly sells or offers to sell cigarettes or other tobacco products, other than through retail sale, in violation of Section 4 or Section 7 of this Act, shall be

subject to a civil penalty not to exceed [one hundred (\$100)] dollars each day for each pack of cigarettes or other tobacco products sold or offered for sale provided that in no case shall the penalty against any such person or entity exceed [one hundred thousand (\$100,000)] dollars during any thirty-day period;

(2) A retail dealer who knowingly sells or offers to sell cigarettes or other tobacco products in violation of Section 4 or Section 7 of this Act shall be subject to a civil penalty not to exceed [one hundred (\$100)] dollars for each day and each pack of such cigarettes or other tobacco products sold or offered for sale, provided that in no case shall the penalty against any retail dealer exceed [twenty-five thousand (\$25,000)] dollars for sales or offers to sell during any thirty-day period;

(3) In addition to any penalty prescribed by law, any producer, as defined in Section 2(e) engaged in the manufacture of cigarettes or other tobacco products that knowingly makes a false statement or assertion pursuant to Sections 4, 6 or 7 of this Act shall be subject to a civil penalty of at least [seventy-five thousand (\$75,000)] dollars and not to exceed [two-hundred fifty thousand (\$250,000)] dollars for each such false statement or assertion;

(4) Any person violating any other provision of this Act shall be subject to a civil penalty for a first offense not to exceed [one thousand (\$1,000)] dollars, and for a subsequent offense subject to a civil penalty not to exceed [five thousand (\$5,000)] dollars for each such violation; and

(5) In addition to any remedy provided by law, the [Governmental Department/Agency] or Attorney General may file an action in [name of court] for a violation of this Act, including petitioning for injunctive relief or to recover any costs or damages suffered by the [jurisdiction] because of a violation of this Act, including enforcement costs relating to the specific violation and attorney's fees. Each violation of this Act or of rules or regulations adopted under this Act constitutes a separate civil violation for which the [Governmental Department/Agency] responsible for administering the provisions of the Act or [Legal Department] may obtain relief.

Section 15 Severability

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Act, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Act, or its application to any other person or circumstance. The [State] hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences clauses or phrases hereof be declared invalid or unenforceable.

Section 16 Operative Date

This Act shall take effect [12 months] after enactment.

March 11, 2016

Tobacco Waste Act: a summary

Tobacco Producers

Develop, finance, and implement programs to safely dispose of tobacco product waste

Producer means person or company, including manufacturer, fabricator, wholesaler, and distributor

Ensure that all programs are managed in an environmentally sound manner, and disclose all environmental risks and impacts

Tobacco Retailers

Only sell tobacco products that are **compliant** with the program

Promote awareness of educational activities, information, materials, and collection services

Optional: provide tobacco waste collection facilities inside or adjacent to point of sale

Tobacco Consumers

Use collection facilities to help ensure safe disposal of tobacco product waste

Urge the Tobacco Waste Act program to manage all its tobacco products in an environmentally sound manner

Urge retailers to be well stocked with education and awareness information and materials

State/Local Government

Approve plans and set goals and performance standard for the program

Ensure that "Enforcement and Penalties" provisions in the Tobacco Waste Act are effectively carried out

Urge website and other public awareness of annual reports, independent financial audits, meetings, and other activities