

San Luis Obispo County
Integrated Waste Management Authority
ORDINANCE NO. 2008-1

**AN ORDINANCE ESTABLISHING A
HOUSEHOLD BATTERIES AND FLUORESCENT TUBES
MANAGEMENT PROGRAM**

The Board of Directors of the San Luis Obispo County Integrated Waste Management Authority ordains as follows:

Section 1. General Provisions

The San Luis Obispo County Integrated Waste Management Authority (IWMA) finds and declares all of the following:

(a) The purpose of this Ordinance is to have the IWMA, a joint powers agency established pursuant to Government Code Section 6500 and empowered by its member jurisdictions to exercise the members' common powers to achieve the mandates imposed by the Integrated Waste Management Act of 1989 (AB 939) on a regional basis, enact a comprehensive and innovative system for the proper and legal management of used household batteries and fluorescent tubes in San Luis Obispo County.

(b) The purpose of this Ordinance is to enact a law that establishes a program that is convenient for consumers and the public to return and ensure the safe and environmentally sound disposal of used household batteries and fluorescent tubes, and to provide a "no-cost" system for consumers for the return of used batteries and fluorescent tubes.

(c) The purpose of this Ordinance is to assure that the costs associated with the handling and disposal of used household batteries and fluorescent tubes are the responsibility of the producers and retailers of household batteries and fluorescent tubes, and not local governments or their service providers, state government, or taxpayers.

(d) The purpose of this Ordinance is to reduce the likelihood of the illegal disposal of hazardous materials, and it is the intent of this Ordinance to ensure that all costs associated with the proper management of used household batteries and fluorescent tubes are internalized by the producers and consumers of household batteries and fluorescent tubes at or before the point of purchase, and not at the point of discard.

(e) The purpose of this Ordinance is to assure that manufacturers and retailers of household batteries and fluorescent tubes, while working to achieve the goals and objectives of this Ordinance, should have the flexibility to partner with each other and with those private and nonprofit business enterprises that currently provide collection and processing services to develop and promote a safe and effective used household batteries and fluorescent tubes recycling system.

(f) The purpose of this Ordinance is to provide for the safe and convenient collection, reuse, and recycling of 100 percent of the used household batteries and fluorescent tubes discarded in the IWMA Region at no cost to the consumer.

(g) The purpose of this Ordinance is to recognize that there are significant environmental and human health impacts associated with household products that contain toxic ingredients, including mercury, lead, cadmium and other toxic chemicals, that when disposed of improperly, can contaminate the IWMA Region's environment.

Section 2. Definitions

For the purposes of this Ordinance, the following terms have the following meanings, unless the context clearly requires otherwise:

(a) "Household Batteries" means batteries used primarily for household and personal uses, including nickel-cadmium, alkaline, carbon-zinc, Li Ion, NiMH and other batteries generated as non-RCRA waste similar in size to those typically generated as household waste. "Household Batteries" does not include lead-acid batteries such as motor vehicle batteries.

(b) "Consumer" means a purchaser or owner of household batteries and fluorescent tubes. "Consumer" also includes a business, corporation, limited partnership, nonprofit organization, or governmental entity, but does not include an entity involved in a wholesale transaction between a distributor and retailer.

(c) "IWMA Region" means the geographic area that includes the unincorporated area of San Luis Obispo County, California and the seven incorporated cities within San Luis Obispo County.

(d) "Retailer" means any entity, including but not limited to, a person or business, of whatever form of organization, which sells to the general public household batteries, fluorescent tubes, or both, in the IWMA Region to a consumer, including a manufacturer of household batteries and fluorescent tubes who sells household batteries and fluorescent tubes directly to a consumer.

(e) "Distributor" means a person who sells household batteries and fluorescent tubes to a retailer.

(f) "Fluorescent tubes" (also referred to as "universal waste lamp") means the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste lamps include, but are not limited to, fluorescent tubes, compact fluorescent lamps (cfl), high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

Section 3. Household batteries and fluorescent tubes management

(a) Every retailer of household batteries, fluorescent tubes, or both, sold in this IWMA Region shall establish within the retail outlet a system for the acceptance and collection of used household batteries, fluorescent tubes, or both, for recycling or proper disposal. A retailer who sells household batteries is required to accept, collect and dispose of household batteries. A retailer who sells fluorescent tubes is required to accept, collect and dispose of fluorescent tubes.

A retailer who sells household batteries and fluorescent tubes is required to accept, collect and dispose of household batteries and fluorescent tubes.

(b) A system established by a retailer for the acceptance and collection of used household batteries, fluorescent tubes, or both, during the retailer's normal hours of operation, for recycling or proper disposal shall, at a minimum, include all of the following elements:

(1) A convenient location within the retail establishment for the "take-back" from the consumer of used household batteries, fluorescent tubes or both at no cost to that consumer.

(2) Appropriate signage, prominently displayed within 5 feet of any entrance to the retail establishment and easily visible to the consumer, indicating that the retail establishment accepts and collects used household batteries, fluorescent tubes, or both, from consumers. In the alternative, the retail establishment may place the recycling receptacle within 5 feet of any entrance to the retail establishment with appropriate signage indicating its location for consumer disposal of batteries and/or fluorescent tubes.

(3) An appropriate receptacle or receptacles for the collection of used household batteries, fluorescent tubes, or both, within the retail establishment.

(c) A retailer who is required to accept used household batteries shall at a minimum provide the following take back services:

(1) The take-back from the consumer of used household batteries that the retailer sold or previously sold to the consumer, at no cost to that consumer. In that event, the retailer may require proof of purchase of the prior sales. The retailer shall only be required to accept household batteries in an amount not to exceed the amount previously sold to the consumer.

(2) The take-back of used household batteries from a consumer purchasing batteries from the retailer, at no cost to the consumer. In that event, the retailer shall only be required to accept household batteries in an amount not to exceed the amount being purchased.

(3) The take-back from the consumer of used household batteries that the retailer did not sell or previously sell to the consumer, at no cost to that consumer. The retailer shall only be required to accept household batteries in an amount not to exceed 15 batteries per week per consumer from any consumer who resides in the IWMA Region.

(d) A retailer who is required to accept fluorescent tubes shall, at a minimum, provide the following take-back services.

(1) The take-back from the consumer of used fluorescent tubes that the retailer sold or previously sold to the consumer, at no cost to that consumer. The retailer may require proof of purchase. The retailer shall only be required to accept fluorescent tubes in an amount not to exceed the amount previously sold to the consumer.

(2) The take-back of used fluorescent tubes from a consumer who is purchasing new fluorescent tubes from that retailer, at no cost to that consumer. The retailer shall only be required to accept fluorescent tubes in an amount not to exceed the amount being purchased.

(3) The take-back from the consumer of used fluorescent tubes that the retailer did not sell or previously sell to the consumer, at no cost to that consumer. The retailer shall only be required to accept fluorescent tubes in an amount not to exceed 8 fluorescent tubes per week per consumer from any consumer who resides in the IWMA Region.

Section 4. Enforcement

(a) The IWMA may enforce the provisions of this Ordinance through a civil action for civil penalties in the amounts established herein, and any other civil remedy, including prohibitory and

mandatory injunctive relief, filed in the Superior Court for the County of San Luis Obispo to compel and enforce the provisions herein against any retailer within San Luis Obispo County who sells batteries, fluorescent tubes, or both, in violation of this Ordinance. In addition to any relief available to IWMA to enforce this Ordinance, the IWMA shall also be entitled to recover its reasonable attorneys' fees and costs incurred in enforcing this Ordinance.

(b) For any violation of this Ordinance, the IWMA may sue to recover civil penalties in the amount of \$1,000.00 per day for every day on which a violation exists. For purposes of calculating the civil penalties to be established hereunder, each day on which the retailer fails to comply with the requirements of this Ordinance, after having received a written notice of violation issued by the IWMA, shall constitute a separate offense.

(c) In addition to the civil relief available to the IWMA set forth above, any violation of this Ordinance shall also constitute a misdemeanor punishable under the laws of the State of California. The District Attorney, the County Counsel, or any City Attorney shall be authorized to enforce the provisions of this Ordinance within their respective jurisdictions. In the event of such criminal enforcement, the following criminal penalties apply to violations of this Ordinance:

(1) Violation as Misdemeanor. Violations of the provisions of this Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor.

(2) The San Luis Obispo County Sheriff's Department and/or any other police department or law enforcement agencies located within the IWMA's jurisdiction may issue a Notice to Appear Citation for any misdemeanor pursuant to California Penal Code Section 853.6 for any violation of this Ordinance.

(3) Penalty for Misdemeanor. Any retailer found to be in violation of any provision of this Ordinance, or who fails to comply with any of its requirements, shall upon conviction thereof be punished by imprisonment in the county jail for not more than six months, or be fined not more than one thousand dollars (\$1,000.00), or by both. Each day such violation continues shall be considered a separate offense.

(d) To the extent that the County of San Luis Obispo, the incorporated cities, and the districts within said County have adopted code enforcement ordinances applicable to their jurisdictions, this Ordinance shall be enforceable by said governmental entities under said ordinances as land-use or code-enforcement violations consistent with said ordinances.

Section 5. CEQA Findings

The Board of Directors of the IWMA finds that this Ordinance is exempt from the California Environmental Quality Act pursuant to CEQA Guidelines § 15061(b)(3) because "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." In addition, the Ordinance is subject to a Class 1 categorical exemption pursuant to CEQA Guidelines § 15301 in that the activities mandated by the ordinance will occur at existing retail establishments and, therefore, consist "of the operation, repair, maintenance, permitting, leasing, licensing or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.... The key consideration is whether the project involves negligible or no expansion of an existing use." The IWMA Manager is directed to prepare and file an appropriate notice of exemption.

Section 6. Severance Clause

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, ineffective or in any manner in conflict with the laws of the United States, or the State of California, such decision shall not affect the validity of the remaining portions of this Ordinance. The Governing Board of the IWMA hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsection, sentence, clause or phrase be declared unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the State of California.

Section 7. Effect of Headings in Ordinance.

Title, division, part, chapter, article, and section headings contained herein do not in any manner affect the scope, meaning, or intent of the provisions of this Ordinance.

This Ordinance was introduced and the title thereof read at the regular meeting of the IWMA Board of Directors on January 9, 2008 and further reading was waived by a majority vote of those Directors present.

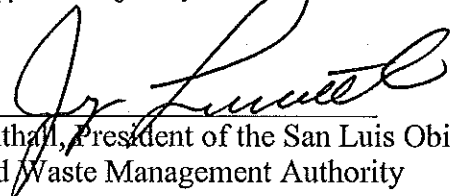
This Ordinance shall take effect and be in full force on and after thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days from the date of its passage it shall be published once with the names of the members of the Board of Directors voting for and against the same, said publication to be made in a newspaper of general circulation published in the County of San Luis Obispo.

On a motion by Director Gibson, seconded by Director Mulholland, the foregoing Ordinance was passed and adopted by the Board of Directors of the San Luis Obispo County Integrated Waste Authority, this 3-12-08, by the following vote:

AYES: Arnold, Ashton, Beraud, Brooks, DeMeritt, Ehring, Gibson, Hamon, Mulholland, Ovitt, Lenthall


NOES: None

ABSENT: Achadjian, Patterson

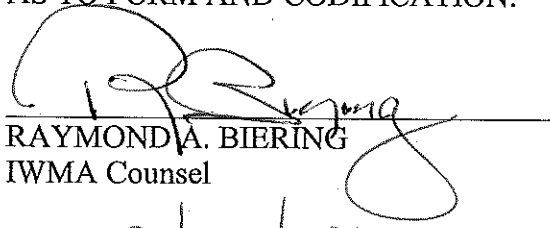


Jerry Lenthall, President of the San Luis Obispo County
Integrated Waste Management Authority

ATTEST:


Carolyn Goodrich, IWMA Board Secretary

ORDINANCE CODE PROVISION APPROVED
AS TO FORM AND CODIFICATION:


RAYMOND A. BIERING
IWMA Counsel

Date: 3/12/08