

San Luis Obispo County
Integrated Waste Management Authority
ORDINANCE NO. 2008-2

**AN ORDINANCE ESTABLISHING A
SHARPS (HYPODERMIC NEEDLES) WASTE
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 home-generated sharps waste (hypodermic needles waste) in San Luis Obispo County in accordance with Section 118286 of the Health and Safety Code.

(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 home-generated sharps waste, and to provide a "no-cost" system for consumers for the return of home-generated sharps waste.

(c) The purpose of this Ordinance is to assure that the costs associated with the handling and disposal of home-generated sharps waste are the responsibility of the producers and retailers of home-generated sharps waste, and not local governments or their service providers, state or local government, or taxpayers.

(d) The purpose of this Ordinance is to reduce the likelihood of the illegal disposal of home-generated sharps waste, and it is the intent of this Ordinance to ensure that all costs associated with the proper management of home-generated sharps waste are internalized by the producers and consumers of home-generated sharps waste 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 sharps, 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 home-generated sharps waste management system.

(f) The purpose of this Ordinance is to provide for the safe and convenient collection and disposal of 100 percent of the home-generated sharps waste discarded in the IWMA Region at no cost to the consumer and to comply with the requirements pursuant to State Health and Safety Code prohibiting the disposal of home generated sharps waste in landfills as of September 1, 2008.

Section 2. Definitions

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

- (a) "Consumer" means an individual who has purchased sharps for personal use.
- (b) "Home-generated sharps waste" means hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications derived from a household, including a multifamily residence or household.
- (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 sharps in the IWMA Region to a consumer, including a manufacturer of sharps who sells sharps directly to a consumer.
- (e) "Distributor" means a person who sells sharps to a retailer.
- (f) "Sharps" means hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications.

Section 3. Sharps management

(a) By September 1, 2008, every retailer of sharps sold in this IWMA Region shall establish within the retail outlet a system for the acceptance and collection of home-generated sharps waste for proper disposal.

(b) Each system established by a retailer for the acceptance and collection of home-generated sharps waste during the retailer's normal hours of operation, for 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 home-generated sharps waste 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 home-generated sharps waste from consumers.

(3) An appropriate receptacle or receptacles for the collection of home-generated sharps waste within the retail establishment.

(c) A retailer who is required to accept home-generated sharps waste shall at a minimum provide the following take back services:

(1) The take-back from the consumer of home-generated sharps waste 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 home-generated sharps waste in an amount not to exceed the amount previously sold to the consumer.

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

(3) The take-back from the consumer of home-generated sharps waste 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 home-generated sharps waste in an amount not to exceed a 2 quart size sharps containers 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 sharps 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 March 12, 2008 and further reading was waived by a majority vote of those Directors present.

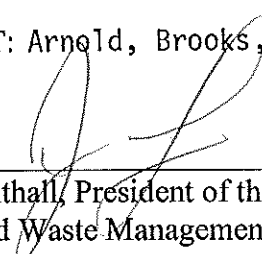
This Ordinance shall take effect and be in full force on and after thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days from the date of its passage it shall be published once with the names of the members of the Board of Directors voting for and against the same, 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 Achadjian, the foregoing Ordinance was passed and adopted by the Board of Directors of the San Luis Obispo County Integrated Waste Authority, this 5-14-08, by the following vote:

AYES: Achadjian, Ashton, Beraud, Ehring, Gibson, Hamon, Mulholland, Patterson and Lenthall

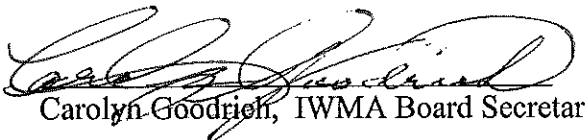
NOES: None

ABSENT: Arnold, Brooks, DeMeritt, and Ovitt



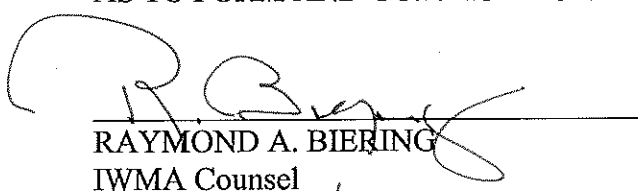
Jerry Lenthall, President of the San Luis Obispo County Integrated Waste Management Authority

ATTEST:



Carolyn Goodrich, IWMA Board Secretary

ORDINANCE CODE PROVISION APPROVED
AS TO FORM AND CODIFICATION:



RAYMOND A. BIERING
IWMA Counsel

Date: 5/17/08