

**A PROGRAM PROVIDING FOR COLLECTION AND
RECYCLING OF MERCURY- CONTAINING LAMPS
DISPOSED BY COVERED ENTITIES IN VERMONT**

*SUBMITTED ON BEHALF OF CERTAIN
MANUFACTURERS OF MERCURY-CONTAINING LAMPS
PURSUANT TO 10 V.S.A. Chapter 164A*

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Executive Summary

This proposed program for the recycling of mercury-containing lamps (the Program) has been prepared pursuant to the requirements of “*An act relating to the collection and disposal of mercury-containing lamps,*” (the Act), signed by Vermont Governor Shumlin in May 2011. This law requires manufacturers of mercury-containing lamps, individually or collaboratively, to submit a collection plan that provides for collection of mercury-containing lamps from “covered entities,” as defined in the Act. Collection must be available at no cost to consumers at point of disposal. The required elements of the collection plan, as well as other manufacturer obligations, are codified in 10 V.S.A. Chapter 164A, enacted as Senate bill 034.

This plan describes activities for a program that will extend from July 1, 2017 through June 30, 2022. The manufacturers that have agreed to participate in the program are listed in Appendix A. These companies will fund the program collectively through the National Electrical Manufacturers Association (NEMA).¹

Section § 7154 of the Act lists four required elements of manufacturer collection programs:

(1) Free collection of mercury-containing lamps. The collection program shall provide for free collection of mercury-containing lamps from “covered entities,” which are defined in the Act as “any person who presents to a collection facility that is included in an approved plan (A) any number of compact fluorescent mercury-containing lamps; or (B) 10 or fewer mercury-containing lamps that are not compact fluorescent lamps.” According to guidance issued by the Vermont Department of Environmental Conservation (DEC) within the Agency for Natural Resources (ANR), lamps eligible for collection under this program other than CFLs include general purpose lamps that are “. . . Less than or equal to 8 foot linear fluorescent, U-tube or Circline lamps, and HID lamps used for general purpose lighting.”²

The program shall collect any mercury containing general purpose lamps from participating manufacturers. The collection program shall also provide for the payment of the costs for recycling and transportation from a collection facility

(2) Convenient collection locations. The program must provide its service to all municipal facilities and retailers that opt to be a collection facility under the terms established in the program. The program reserves the right to discontinue or refuse service to any collection facility not operating in accordance with the terms specified in the participation agreement signed by the participant.

¹ Pending discussions with the VT Department of Environmental Conservation and possible amendments to 10 V.S.A. Chapter 164A, NEMA may propose a Stewardship Organization as a vehicle for fulfilling the manufacturers’ obligations.

² DEC, Guidelines for Extended Producer Responsibility Requirements for Collection and Recycling of Mercury Containing Lamps, Dec 2011, pg. 2

(3) Public outreach. The collection plan shall include an outreach program that may include print, web, and radio advertising. At a minimum, outreach program shall notify the public that there is a free collection program for mercury-containing lamps, provide the location of collection points and how a covered entity can access the program, and provide access to the EPA's resources for appropriate handling of mercury containing lamps .

(4) Compliance with appropriate environmental standards. When implementing the plan, manufacturers must comply with all applicable laws related to the collection, transportation, and disposal of mercury-containing lamps.

This proposed Program is submitted pursuant to § 7154 of the Act for all applicable types of lamps provided by “covered entities,” as defined in § 7151. This term and others used herein are defined in Appendix B. The manufacturers on whose behalf this program is submitted will coordinate education and outreach activities to promote public awareness of the program and to inform consumers of their legal obligation to recycle waste lamps in Vermont.

This proposed program is subject to review and approval by the Vermont DEC, as outlined in § 7156 of the Act.

Introduction

In May 2011, Vermont Governor Peter Shumlin signed S.034 into law, thereby enacting “*An act relating to the collection and disposal of mercury-containing lamps.*” This new law requires manufacturers of mercury-added lamps sold or distributed in Vermont to “. . . individually or as a participant in a stewardship organization submit a collection plan to the secretary for review.” The plan must outline a program for collection and recycling of mercury-containing lamps from “covered entities” throughout the state. The Vermont Department of Environmental Conservation (DEC) must approve the program after making it available for public comment

Participating Manufacturers

This proposed program for recycling of mercury-containing lamps from households has been facilitated through the National Electrical Manufacturers Association (NEMA) Lamp Section on behalf of NEMA member companies and other, non-NEMA member lamp manufacturers that have agreed to participate. Appendix A lists the companies participating at the time this plan is submitted to the DEC either for review or in an annual report.

In submitting this proposed program, NEMA is not functioning as a Stewardship Organization as that term is defined and used in 10 V.S.A. Chapter 164A. Pending further discussions with the DEC and possible amendments to 10 V.S.A. Chapter 164A, the manufacturers may propose a Stewardship Organization as a vehicle for fulfilling the manufacturers’ obligations. Until that occurs, this plan describes a program that will be facilitated by NEMA for the individual participating companies. NEMA will also serve as a point of contact for the DEC for any questions the department has on the program.

Other manufacturers of mercury-containing lamps used in households are welcome to participate in the Program provided they make the requisite financial arrangements agreed to by the others. Companies wishing to participate are advised to contact NEMA, Attention: Madeleine Bugel, 1300 N. 17th Street, Suite 900, Rosslyn, VA 22209, Phone: 703-841-3222.

Following approval of the plan by the Vermont DEC, program plan implementation will begin July 1, 2017, as required by the Act. The Program will remain in effect for the 5 year period ending June 30, 2022.

Covered Products

As specified by the DEC in program guidelines, products eligible for collection under the Program include compact fluorescent lamps as well as 10 or fewer general service lamps

including linear fluorescent lamps that are less than or equal to 8 feet in length, U-tube or Circline fluorescent lamps, and high intensity discharge (HID) lamps used for general purpose lighting. Lamps used for medical, disinfection, treatment, industrial purposes, or tanning beds are NOT eligible for collection. Crushed, neon, LED, projection, germicidal, incandescent, quartz LCD TV/Monitor, specialty UV, Arc, or Ignitron Lamps are NOT eligible for collection. See § 7151 (5) of the Act.

Products Sold by Manufacturers Not Participating in this Program

§ 7152 of the Act states that manufacturers of mercury-containing lamps cannot provide mercury-containing lamps for sale in Vermont beyond July 1, 2012 unless they implement an approved collection plan and satisfy other requirements. The Vermont DEC maintains the authority and obligation to ensure that all current and past manufacturers of mercury-containing lamps sold in Vermont are in compliance with the law.

The Program will provide DEC with information on the appropriate share of costs incurred for those companies, as well as cost and fees associated with participating in the program going forward. Such information will be deemed business confidential.

Planned Program Operations

Under this program, all municipal solid waste management facilities and retailers who sell mercury-containing lamps in Vermont will have access to a designated lamp recycler who will, without charge:

- Provide containers, services, and support for the collection of each type of eligible lamp returned by covered entities,
- Arrange for the transport of eligible lamps from collection sites to the recyclers' processing facility.
- Recycle waste lamps in accordance with all applicable federal, state, and local regulations.
- Provide information on handling and practices for compliance with the universal waste rules adopted pursuant to Subchapter 9 of Vermont Hazardous Waste Management Regulations (see http://www.anr.state.vt.us/dec/wastediv/rcra/hazregs/VHWMR_Sub9.pdf) and all other applicable requirements.

The Program will compensate the designated lamp recycler(s) for these services. Alternatively, qualified collection sites that provide such services on their own may request reimbursement from the Program for eligible costs incurred for collection and recycling activities in amounts up to but not exceeding the amount established under contract with the designated lamp recycler(s).

The Program will obtain the services outlined above through a competitive bidding process wherein qualified recycling companies will be asked to submit proposals for consideration by participating manufacturers. Companies selected through this process will be retained by the Program through private contracts, which will specify the services to be provided in detail and list the terms and conditions applicable to collection sites.

Requirements for Collection Sites

Participating retailers, towns, and solid waste management districts will be required to certify to the Program that collection location(s) meet the following criteria:

1. Accepts mercury-containing lamps from covered entities in Vermont and has a system in place that segregates lamps from parties that do not meet the definition of covered entities provided in § 7151. Costs incurred at the site for accepting, storing, and processing lamps, including but not limited to salaries and overhead, that fall outside of this definition are not eligible for reimbursement under this Program.
2. Utilizes staff trained in the proper handling and storage of universal waste and emergency procedures in the event of a spill for tasks of accepting and processing waste lamps through this program.³
3. Complies with all applicable requirements of Vermont's universal waste law and regulations, including maintaining documentation of the training in accordance with state and/or federal universal waste rule.
4. Maintains a permanent storage facility for waste that is secure, weather tight and complies with all additional local, state, or federal regulations.
5. Ensures that collection containers are located in an area inaccessible to the general public and ensures that all mercury-containing lamps from covered entities will be accepted by staff to avoid improper handling and packaging for shipment.
6. Takes reasonable steps to guard against incidental breakage of lamps.

Locations will also be required to identify a point of contact for the program, provide contact information, and agree to standard terms and conditions provided by the designated lamp recycler(s), and to a provision that will indemnify the Program and lamp manufacturers, individually and collectively, against liability in the event of violations of CERCLA, RCRA, or other applicable laws and any regulations or requirements enacted under their authority. The designated lamp recyclers' standard terms and conditions are attached as Appendix C. They are provided with each container, and acceptance of the container is acceptance of the terms and conditions.

When certifications are received by the Program, the designated lamp recycler(s) will be notified to communicate directly with the collection location.

³ The Program or the designated lamp recycler will provide training materials on the proper management and storage of waste lamps on the program's website. Collection locations may use these materials to train staff.

Should an application to participate be denied by the Program for any reason, the Program will notify the Vermont DEC *via* electronic or physical mail within 7 days. The notification will include the contact information of the relevant applicant and the justification for the denial of services. The Program will consider and respond to any concerns the Department may express concerning the denial and seek to resolve any outstanding disagreements.

The program will remain open to additional retail or municipal locations

Obtaining Services Provided by the Program

As noted earlier, the Program will secure one or more contracts with qualified lamp recycling companies to arrange for lamp collection services to be made available to all eligible municipal SWMDs and retail locations participating in the Program. The designated lamp recycling company(ies) will transport and process all mercury added lamps collected from covered entities through this program. The contactor(s) will be the sole provider of services offered through this program, unless amended. Collection locations will be able to arrange services via website or toll free number.

Retailers

Retail locations will be able to choose from a menu of containers designed to hold varying numbers and types of general service, mercury-containing lamps. Initial orders may be restricted to a designated number of each container type per participating retailer. The Program and its designated lamp recycler(s) will review this limit periodically and will adjust according to demand/shipment volume. Larger orders will be accommodated on a case-by-case basis.

Container orders to the designated lamp recycler(s) may be placed either through the internet or by calling a designated lamp recycler toll-free. There will be a custom secured web site that will be accessible from NEMA's existing lamprecycle.org web site. It will be a single-source site for ordering and tracking orders from collection locations in Vermont.

When containers are ready to be shipped, retail collection locations can simply call toll-free to request return shipment. The designated lamp recycler will send prepaid shipping labels or arrange for a pickup using LTL ("less than truckload") services, in accordance with numbers of lamps requiring collection. Locations at which shipping containers are used will be placed on automatic reorder so empty replacement containers will be shipped to the location with any order for transportation service.

Solid Waste Management Districts

Collection of lamps from municipal SWMDs or individual towns will be facilitated by the Program through either prepaid storage and shipping containers or periodic pick-up using trucks operated by a designated lamp recycler. Scheduling of pick-ups will vary by location and be arranged individually with the designated lamp recycler with the intent of

maximizing efficiency and limiting costs.

Processing of Waste Lamps

Upon receipt of container(s) or truck-borne quantities of waste lamps, the designated lamp recycler(s) will record the materials by lamp type received by container or truck. Materials will be de-manufactured and the mercury will be reclaimed either on site or at facilities designated and approved within the contract. In-state facilities must operate under a Commercial Recycling Permit, issued by the Vermont State permitting authority. Permit information can be forwarded upon request.

Consumer Awareness

The Vermont statute requires that manufacturers provide education and outreach to consumers about the Program. Education and outreach activities must be designed to achieve the following.

1. Inform retailers of their obligations under the law. [Note: Retailers of mercury-containing lamps covered by the law are prohibited from selling or offering for sale any mercury-containing lamps from a manufacturer not covered by an approved collection plan. Exceptions to this prohibition include any mercury-containing lamps purchased by the retailer prior to July 1, 2012, and any lamps purchased by a retailer for which a manufacturer's collection plan has expired or was revoked after such purchase.]
2. Educate the public on the free collection Program and the location of collection sites.
3. Educate participating collection locations about procedures for properly collecting and storing mercury-containing lamps and managing broken lamps.

Communication Methods

Manufacturers submitting this proposed Program currently promote recycling mercury-containing lamps through a variety of mechanisms, such as labels on all packaging, maintaining a website that is featured on lamp packages (www.lamprecycle.org), and providing retail collateral to retailers. In Vermont, activities will include:

- I. Website – The Program will maintain a Vermont-specific page on the www.lamprecycle.org web site that will feature information on how to identify mercury-added lamps and the legal obligation to properly dispose waste lamps in Vermont. The site will also enable the consumer to identify no-cost collection sites in Vermont participating in the Program, updated regularly. Links to other recycling options will also be included in the web page.
- II. Retail collateral -- The Program has developed signage to spread awareness of the program. These signs are available at no cost to the retailers, and can be order from the lamp recycler along with boxes.

III. PSA – The Program will develop an audio Public Service Announcement tailored specifically for Vermont and will seek assistance from DEC on a campaign to promote airing of the PSA on radio stations throughout the state.

IV. Advertising – The Program will undertake a cost-effective advertising campaign that targets Vermont residents through a variety of channels that may include advertisements in local and/or large market media outlets such as newspapers, weekly circulars, etc. The Program’s advertising campaign will target various regions on the state to encourage a broad awareness of the program throughout the state. The advertising may be timed in a way that allows for the advertisements to span over a large part of the year, in order to maximize residents’ exposure to the advertisements.

V. Collaborative efforts – Representatives of the Program will evaluate and consider engaging with existing New England-based organizations (for-profit, non-profit, or governmental) on collaborative ventures aimed at promoting lamp recycling behavior and increasing collections (*e.g.*, collaborating with Efficiency Vermont to prepare materials to be transmitted with utility bills). The Program maintains discretion on the number and extent of collaborations it will undertake.

Annual Report

The Program will submit an annual report to the Vermont DEC no later than September 1st of the year following the relevant plan year. Thus the initial report will be provided by September 1, 2017. As required in the DEC program guidelines, each annual report will provide:

- A description of the collection program
- The number and type of mercury-containing lamps collected and the collection facility from which the lamps were collected.
- An estimate of the number of mercury-containing lamps available for collection and the methodology used to develop this number.
- The steps the Program has under consideration, if any, to improve the collection rate of mercury-containing lamps

As required by §7153(a)(3) the report must contain an “estimate of the number of mercury-containing lamps available for collection and the methodology used to develop this number.” Manufacturers are concerned, based on prior experience with estimation attempts, that this number is impossible to determine with a reasonable degree of confidence. Aside from the usual uncertainty factors that affect the outcome of the estimation, Vermont’s law provides additional challenges. Under the Act in Vermont, the Program must accept any number of CFLs from covered entities and up to ten non- CFL general purpose lights. This creates the possibility that small businesses and institutions such as schools or government facilities will bring their CFLs and other non CFL mercury-containing lamps to Program collection sites.

Lamps for those uses typically are not acquired through retail channels, but through

wholesale electrical distribution outlets that supply lamps to commercial users of all sizes on a multi-state or regional basis. There is no practical way for manufacturers to determine the number of lamps sold into this channel that ultimately go into service in a particular state, and there is no way to determine how many of these end up being recycled through the Program by either covered or non-covered entities. Any estimate

would therefore be a poorly substantiated guess and an inadequate basis for estimating collection rates.

Plan Audit

§ 7153 of the Act requires that once every five years the Program hires an independent third party to audit the plan and its operation. The purpose of the audit is to examine the effectiveness of the program in collecting and disposing of mercury-containing lamps, evaluate the cost-effectiveness of the program, and compare it lamp collection programs in other jurisdictions. The auditor is required to make recommendations to the Secretary on measures to increase program efficacy and cost- effectiveness.

Vermont DEC guidelines specify that the plan audit is to be submitted to the department on or before September 1. Every fifth year of program operation, on or before March 1st, manufacturers will notify the Vermont DEC of its plan to undertake an audit and provide information concerning possible third party candidates for conducting the audit, the proposed schedule, and other factors. The manufacturers have begun audits to secure an auditor and define a scope for the 2017 audit. Formal plans will be submitted to the department on or before March 1, 2017.

Amendment

Manufacturers reserve the right to submit an amended program to the DEC.

APPENDICES

Appendix A – Current List of Participating Manufacturers

- Ace Hardware corp.
- Bulbrite Industries, Inc.
- Coleman Cable Inc.
- Earth Tronics, Inc.
- EiKo, Ltd
- Elong International USA, Inc.
- EYE Lighting International of NA, Inc.
- Fanlight Corp.
- FEIT Electronic Co, Inc.
- GE Lighting
- Greenlite Lighting Corp.
- Halco Lighting Technologies
- Kinney Drugs, Inc.
- Litetronics International, Inc.
- Lucidity Lights, Inc.
- MaxLite
- OSRAM SYLVANIA, Inc., now LEDVANCE
- OttLite Technologies Inc.
- Panasonic Energy Corp of America
- Philips Lighting
- Rite Aid Corporation
- Ruud Lighting Inc.--Cree Co.
- Satco Products, Inc.
- Supervalu, Inc.
- Technical Consumer Products, Inc.
- Ushio America, Inc.
- Venture Lighting International
- Veriflux, Inc.
- Westinghouse Lighting

Appendix B - Definitions and Abbreviations

The Act: means “An act relating to the collection and disposal of mercury-containing lamps,” published at 10 V.S.A. Chapter 164A (2011).

Covered Entity: means any person who presents to a collection facility that is included in an approved plan: (A) any number of compact fluorescent mercury-containing lamps; or
(B) 10 or fewer mercury-containing lamps that are not compact fluorescent lamps.

Retailer: means a person who sells a mercury-containing lamp to a person in the state through any means, including a sales outlet, a catalogue, the telephone, the internet, or any electronic means.

Manufacturer: means a person who:

- (A) Manufactures or manufactured a mercury-containing lamp under its own brand or label for sale in the state;
- (B) Sells in the state under its own brand or label a mercury-containing lamp produced by another supplier;
- (C) Owns a brand that it licenses or licensed to another person for use on a mercury-containing lamp sold in the state;
- (D) Imports into the United States for sale in the state a mercury-containing lamp manufactured by a person without a presence in the United States;
- (E) Manufactures a mercury-containing lamp for sale in the state without affixing a brand name; or
- (F) Assumes the responsibilities, obligations, and liabilities of a manufacturer as defined under (A) through (E), provided that the secretary may enforce the requirements of this chapter against a manufacturer defined under (A) through (E) if a person who assumes the manufacturer’s responsibilities fails to comply with the requirements of this chapter.

Mercury-containing Lamp: means a general purpose lamp to which mercury is intentionally added during the manufacturing process. “Mercury-containing lamp” does not mean a lamp used for medical, disinfection, treatment, or industrial purposes.

Stewardship organization: means an organization, association, or entity that has developed a system, method, or other mechanism which assumes the responsibilities, obligations, and liabilities under this chapter of multiple manufacturers of mercury-containing lamps.

Appendix C- Recycler's Standard Terms and Conditions

ATTACHED

RECYCLEPAK® TERMS AND CONDITIONS

USE OF THE RECYCLEPAK® CONTAINER OR SERVICE IS CONSIDERED ACCEPTANCE OF THE TERMS AND CONDITIONS.

Thank you for choosing the RecyclePak® service for the proper handling and recycling of your materials. (The word “MATERIALS” is used herein to describe the wastes). In order to serve you better, we have prepared these Terms and Conditions to set forth your and our rights and obligations. Please understand that, by using RecyclePak® containers, you are agreeing to these Terms and Conditions.

Refunds- If you purchased your RecyclePak® online on this site or any of our manufacturing partner web sites and do not agree with these Terms and Conditions please call us, within 15 days, toll-free at 1-888-669-9725 for return instructions. We will make every effort to send you a refund following receipt of the unused RecyclePak® containers. To be eligible for a refund, you must provide a proof of purchase, so please retain your receipt showing the purchase price and date. If you purchased your RecyclePak® from a distributor or third-party, please contact the distributor or third-party directly to request a refund.

Our Promise- We promise that our RecyclePak® containers provided they have not been damaged and have been properly packed and sealed in accordance with our instructions, with contents limited to only the MATERIALS described above, are suitable for shipping those MATERIALS. (If a prepaid shipping label was provided to you with the containers, please use it to ship your MATERIALS to us. If you did not receive a prepaid shipping label, you are located in a state or jurisdiction that does not allow their use. In this case, please contact Veolia toll-free at 1-888-669-9725 to arrange for shipping). In accordance with 40 CFR 264.12(b), 273.18(d) and 273.38(d), we have the appropriate permits and agree to receive the MATERIALS, as described on the RecyclePak® label and packaging instructions. We also promise that we will properly manage, recycle and dispose of the enclosed MATERIALS in accordance with the law, provided that we receive the RecyclePak® container within 18 months of purchase date. If you abide by your promise as stated below, we agree to take title to, and all other incidents of ownership, to your MATERIALS at the time that the RecyclePak® container(s) is received by our transporter. If, for any reason, our carrier as identified on the prepaid return label will not ship the RecyclePak® container, we will work with you to identify alternative shipping. We will refund the actual shipping charges received by us from you if similarly priced alternative shipping cannot be located.

Your Promise- You promise that you will send us only the MATERIALS described above, in undamaged RecyclePak® containers packaged in accordance with our instructions, in a quantity that does not exceed the stated capacity of the containers. If included, you promise to properly fill out the prepaid shipping label (Name, address, city, state or province, zip or postal code) and affix where stated to the container. Furthermore, you promise not to place the prepaid shipping label on any pail, box or drum other than RecyclePak® provided.

Please understand that your failure to keep your promise may result in bodily injuries (including death), property damage, contamination of or adverse effects on the environment and/or violation of applicable laws or regulations and may also result in our seeking indemnification from you under the Indemnification section below. Legal action, suits, claims, costs and expenses incidental thereto, in addition to government assessed fines and penalties could occur in connection with your failure to keep your promise.

Additional Charges and Return of Materials- So we can serve you better please be sure to use RecyclePak® containers for sending us only the MATERIALS described above and to use them in accordance with our instructions. If you exceed the stated capacity of a RecyclePak® container, we can charge you an additional fee to compensate us for the extra MATERIALS. **DO NOT EXCEED THE STATED WEIGHT CAPACITY FOR ANY CONTAINER. AN ADDITIONAL \$50 SERVICE FEE WILL APPLY FOR ALL ITEMS RECEIVED THAT EXCEED THE STATED WEIGHT CAPACITY.** If you send us wastes that are not MATERIALS as described above, we will try to manage these wastes, if possible, but we can charge you for any extra costs and, if we cannot accept the wastes, you agree we can return the wastes to you at your expense and that you will reimburse us for the extra costs we incur.

DISCLAIMER- IN NO EVENT SHALL WE BE RESPONSIBLE TO YOU FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES IN CONNECTION WITH THESE TERMS AND CONDITIONS OR YOUR USE OF RECYCLEPAK® CONTAINERS, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY, STATUTE OR OTHERWISE.

Indemnification

A. We promise to indemnify you (which includes your employees, officers and directors) from any and all liability and claims (including costs of defense, settlement and reasonable attorneys' fees) which you may incur as the result of bodily injuries (including death), property, contamination of the environment or any violation of law to the extent caused by (1) our breach of these Terms and Conditions (including, but not limited to, the Our Promise section above) or (2) our or our employees', officers' or directors' negligence or willfulness which occurs during our providing services to you, as long as you have sent us wastes that are MATERIALS as described above.

B. You promise to indemnify us (which includes our employees, officers and directors) from any and all liability and claims (including costs of defense, settlement, and reasonable attorneys' fees) which we may incur as the result of bodily injury (including death), property damage, contamination of the environment or any violation of law to the extent caused by (1) your breach of these Terms and Conditions (including, but



not limited to, the Your Promise section above) or (2) you or your employees', officers' or directors' negligence or willfulness which occurs during your seeking or obtaining services from us.

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