

ASSEMBLY THIRD READING

AB 2440 (Irwin)

As Amended April 27, 2022

Majority vote

SUMMARY

Creates the Responsible Battery Recycling Act (Act) of 2022 which requires producers of covered batteries and covered battery-embedded products, as defined, to establish a stewardship program for the collection and recycling of covered batteries and covered battery-embedded products.

Major Provisions

- 1) Requires, on or before January 1, 2025, the Department of Resources, Recycling, and Recovery (CalRecycle), in consultation with the Department of Toxic Substances Control (DTSC), to adopt regulations to implement the Act.
- 2) Authorizes producers to establish one or more stewardship organizations to develop and implement the covered battery and covered battery-embedded product recycling program established by this Act.
- 3) Requires, within six months of the effective date of the regulations adopted by CalRecycle, a producer or stewardship organization to develop and submit to CalRecycle a stewardship plan for the collection, transportation, recycling, and safe and proper management, of covered batteries and covered battery-embedded products in the state.
- 4) Requires, on or before December 31, 2025, a producer or a stewardship organization to have a complete plan approved by CalRecycle in order to be in compliance with the Act.
- 5) Requires, within 270 days of receiving approval of a plan from CalRecycle, a producer or stewardship organization to fully implement its stewardship program.

COMMENTS

Universal waste: Universal wastes are hazardous wastes that are widely produced by households and many different types of businesses. Universal wastes include televisions, computers, other electronic devices, batteries, fluorescent lamps, mercury thermostats, and other mercury containing equipment, among others.

California's Universal Waste Rule allows individuals and businesses to transport, handle, and recycle certain universal wastes, in a manner that differs from the requirements for most hazardous wastes. The more relaxed requirements for managing universal wastes were adopted to ensure that they are managed safely and are not disposed of in the trash. The universal waste requirements are also less complex and easier to comply with than those for hazardous waste, thereby increasing compliance.

Regulation of batteries: The state's hazardous waste control law prohibits the disposal of batteries in the trash or household recycling collection bins intended to receive other non-hazardous waste and/or recyclable materials. Many types of batteries, regardless of size, exhibit hazardous characteristics and are considered hazardous waste when they are discarded. These

include single use alkaline and lithium batteries and rechargeable lithium metal, nickel cadmium, and nickel metal hydride batteries of various sizes (AAA, AA, C, D, button cell, 9-Volt, and small sealed lead-acid batteries).

These batteries, sold individually, would be "covered batteries" under AB 2440. However, many batteries are sold within products, such as lithium-ion batteries, which are widely used in portable electronics like laptops, smart phones, digital cameras, game consoles, and cordless power tools. Some of these products would be considered "covered battery-embedded products" under the bill if the battery is not designed to be removed from the product by the consumer.

If batteries end up in the trash or a recycling bin, owners/operators of solid waste transfer stations, municipal landfills, and recycling centers who discover batteries in the waste or recyclable materials are required to remove and manage the batteries separately. The facility that removes the batteries from the municipal solid waste stream or recyclable materials becomes the generator of the hazardous waste batteries and must comply with hazardous waste management regulations. Facilities that do not properly manage hazardous waste may be subject to regulatory enforcement and may be liable for monetary penalties.

Product stewardship (stewardship): Product stewardship, also known as Extended Producer Responsibility (EPR), is a strategy to place a shared responsibility for end-of-life product management on the producers, and all entities involved in the product chain, instead of the general public. Product stewardship encourages product design changes that minimize the negative impact on human health and the environment at every stage of the product's lifecycle. This allows the costs of treatment and disposal to be incorporated into the total cost of a product. It places primary responsibility on the producer, or brand owner, who makes design and marketing decisions. It also creates a setting for markets to emerge that truly reflect the environmental impacts of a product, and to which producers and consumers respond. CalRecycle has developed a product stewardship framework and checklists to guide statutory proposals that would allow CalRecycle and other stakeholders to implement product stewardship programs.

Successful collection of batteries remains out of reach: Even though there are laws on the books to require the collection of some rechargeable batteries, recent information suggests that collection efforts are not succeeding. As a result, these hazardous waste batteries are ending up in the solid waste stream where they can be damaged or crushed, which can result in fires in solid waste trucks and solid waste facilities. The fact that current collection efforts are falling short does not seem to be disputed.

How to improve collection of batteries?: Some state programs for collecting waste, such as those for electronic waste management, enact a fee on the product and have the state set up a program for the collection of that waste. Other programs, such as EPR programs, place the requirements on those that produce the environmentally harmful waste. AB 2440 establishes an EPR program for batteries and battery-embedded products in order to improve the collection and recycling of these batteries. While the bill does create a new program, some collection and recycling infrastructure for batteries already exists, such as plastic tubes for batteries at retail or other locations.) It is likely that the EPR program will work to greatly improve and expand that existing infrastructure.

According to the Author

"Many Californians don't realize that all batteries are hazardous waste; and that throwing batteries, and products embedded with batteries, in curbside waste bins poses a threat to recycling facilities and human life. With more of our everyday items running off of batteries, it is imperative that we take swift action to stamp out the risk of devastating fires at our waste facilities and safely allow recovery of the valuable minerals inside batteries. AB 2440 will establish a comprehensive program to address this crisis and protect our communities from battery fires."

Arguments in Support

According to RethinkWaste, California Product Stewardship Council, and Californians Against Waste,

"Unfortunately, California currently lacks a streamlined and convenient collection and recycling system for batteries and batteries embedded in products. Because of a combination of increased consumption and a lack of convenient disposal options, higher levels of toxic batteries and products are entering the waste stream. When improperly discarded, lithium-ion (Li-ion) batteries in particular pose serious fire, health, and safety hazards. The influx of improperly disposed of Li-ion batteries into the waste stream has resulted in an alarming number of materials recovery facilities (MRFs), waste collection trucks, and landfills experiencing fires.

For the average consumer, it can often be difficult to distinguish between chemistries of batteries, such as alkaline, nickel cadmium, and Li-ion. Therefore, to ensure the proper disposal of all battery chemistries and reduce the fire and safety risk, AB 2440 would require free collection for most loose and product-embedded batteries at convenient locations across the state. AB 2440 would also encourage manufacturers to be more responsible for the life cycle of their products by creating a producer-run program. Lastly, AB 2440 would support a circular economy by battery recycling to the extent that is economically and technically feasible.

Manufacturers must be more responsible for the products they create – both loose batteries and ones embedded in other products – if we are going to protect our workers, communities, and waste management infrastructure from battery-related fires."

Arguments in Opposition

According to the Toy Association,

While we understand the important of battery recycling, we believe the recycling structure created by this bill is overly burdensome, if not unworkable.

While the goal of extended producer responsibility is to place mandates on the producer AB 2440 defines non-battery producers, as producers. Manufacturers of consumer products would be mandated to fund a new state stewardship program for batteries - products our companies do not manufacture. And no exclusions are provided for consumer product manufacturers who purchase covered batteries from a battery manufacturer who is already paying into a stewardship program. In sum, we believe that the definition of producer needs to capture the actual manufacturer of the battery as the primary responsible entity.

We believe the structure of this extended producer responsibility program needs further vetting and we urge you to oppose moving the bill forward.

FISCAL COMMENTS

According to the Assembly Appropriations Committee, enactment of this bill could result in costs of approximately \$970,000 to CalRecycle in the first year of implementation and annual costs of approximately \$2.4 million (the bill provides for reimbursement of CalRecycle's costs from the stewardship organizations). Additionally, there are minor and absorbable costs to DTSC in the first three years of implementation to consult with CalRecycle.

VOTES**ASM ENVIRONMENTAL SAFETY AND TOXIC MATERIALS: 7-1-1**

YES: Quirk, Arambula, Bauer-Kahan, Cristina Garcia, Holden, Muratsuchi, Waldron

NO: Smith

ABS, ABST OR NV: Mathis

ASM NATURAL RESOURCES: 9-0-2

YES: Flora, Friedman, Cristina Garcia, Mathis, Reyes, Muratsuchi, Stone, Wood, Boerner Horvath

ABS, ABST OR NV: Luz Rivas, Seyarto

ASM APPROPRIATIONS: 12-4-0

YES: Holden, Bryan, Calderon, Carrillo, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

NO: Bigelow, Megan Dahle, Davies, Fong

UPDATED

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