
THIRD READING

Bill No: AB 2440
Author: Irwin (D), et al.
Amended: 8/11/22 in Assembly
Vote: 21

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 5-2, 6/22/22
AYES: Allen, Eggman, Gonzalez, Skinner, Stern
NOES: Bates, Dahle

SENATE JUDICIARY COMMITTEE: 9-1, 6/28/22
AYES: Umberg, Caballero, Cortese, Durazo, Hertzberg, McGuire, Stern,
Wieckowski, Wiener
NOES: Jones
NO VOTE RECORDED: Borgeas

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/11/22
AYES: Portantino, Bradford, Laird, McGuire, Wieckowski
NOES: Bates, Jones

ASSEMBLY FLOOR: 58-7, 5/23/22 - See last page for vote

SUBJECT: Responsible Battery Recycling Act of 2022

SOURCE: Californians Against Waste
California Product Stewardship Council
RethinkWaste

DIGEST: This bill establishes the Responsible Battery Recycling Act of 2022 (Act), which establishes a stewardship program for the collection and recycling of certain batteries, as defined.

ANALYSIS:

Existing law:

- 1) Establishes the Rechargeable Battery Recycling Act, which requires every retailer to have a system in place, on or before July 1, 2006, for the acceptance and collection of used rechargeable batteries for reuse, recycling, or proper disposal. (Public Resources Code (PRC) §§42451-42456)
- 2) Establishes the Electronic Waste Recycling Act to create a program for consumers to return, recycle, and ensure the safe and environmentally-sound disposal of “covered devices” (i.e., video display devices) that are hazardous wastes when discarded. (PRC §§42460 et seq.)
- 3) Establishes the Cell Phone Recycling Act, which requires all retailers of cellular phones to have a system in place for the collection, reuse, and recycling of cell phones and requires the Department of Toxic Substances Control (DTSC) to provide information on cell phone recycling. (PRC §§42490-42499)
- 4) Establishes the Hazardous Waste Control Law (HWCL) and requires DTSC to oversee the management of hazardous waste. (Health & Safety Code (HSC) §§25100 et seq.)
- 5) Establishes the Integrated Waste Management Act and requires the Department of Resources Recycling and Recovery (CalRecycle) to oversee the management of solid waste. (PRC §§40050 et seq.)

This bill:

- 1) Enacts the Responsible Battery Recycling Act of 2022, which would require producers, as defined, either individually or through the creation of one or more stewardship organizations, to establish a stewardship program for the collection and recycling of covered batteries, as defined.
- 2) Specifies that a “covered battery” includes either of the following:
 - a) A battery that is intended to be easily removable from the product with household tools or tools provided by the manufacturer of the battery.

- b) A battery that is packed with, but not installed in, the product that the battery is intended to power, when the product is offered for sale by the producer.
- 3) Requires a producer or stewardship organization to develop, and to submit to CalRecycle and DTSC for review and approval as specified, a stewardship plan and would prescribe the standards and elements required to be contained in a stewardship plan for covered batteries.
- 4) Requires CalRecycle, on or before January 1, 2025, and in consultation with DTSC, to adopt regulations to implement the Act.
- 5) Requires a stewardship organization or producer to have a complete stewardship plan approved by CalRecycle no later than 18 months after the effective date of the regulations adopted by CalRecycle in order for the stewardship organization or producer to be in compliance with the Act.
- 6) Requires a stewardship organization or producer to be audited annually, and submit a report and budget to CalRecycle, as prescribed, and requires a stewardship organization, producer, manufacturer, distributor, retailer, importer, recycler, or collection site to, among other things, provide CalRecycle and DTSC with relevant records necessary to determine compliance with the Act.
- 7) Requires reports and records provided to CalRecycle be provided under penalty of perjury, thereby creating a state-mandated local program by expanding the crime of perjury.
- 8) Restricts public access to certain information collected for the purpose of administering a stewardship program.
- 9) Preempts all rules, regulations, codes, ordinances, or other laws adopted by a city, county, city and county, municipality, or a local agency on or after January 1, 2023, regarding stewardship programs for covered batteries.
- 10) Requires CalRecycle, on or before July 1, 2027, and each year thereafter, to post on its internet website a list of producers that are in compliance with the Act, including the reported brands and names of covered batteries of each producer.

- 11) Requires CalRecycle to remove from the list any producer, including its brands and covered batteries, that is not in compliance with the act.
- 12) Prohibits, on and after the date that a stewardship plan is approved by CalRecycle, a retailer or distributor from selling, distributing, offering for sale, or importing a covered battery in or into the state unless the producer of the covered battery is listed on that list as in compliance on the Act, except as specified.
- 13) Requires a stewardship organization or producer to reimburse CalRecycle and DTSC for their respective actual and reasonable regulatory costs that are directly related to implementing and enforcing the Act in relation to the stewardship organization's or producer's activities.
- 14) Requires CalRecycle and DTSC to deposit those moneys into the Covered Battery Recycling Fund, which the bill establishes, and authorizes CalRecycle and any other relevant state agency to expend those moneys, upon appropriation by the Legislature, to implement and enforce the Act.
- 15) Provides for enforcement of the Act, including authorizing CalRecycle to impose an administrative civil penalty on a stewardship organization, producer, manufacturer, distributor, retailer, importer, recycler, or collection site in violation of the Act not to exceed \$10,000 per day, unless the violation is intentional, knowing, or reckless, then in that case not to exceed \$50,000 per day.
- 16) Makes findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.
- 17) Makes the Rechargeable Battery Recycling Act of 2006 and the Cell Phone Recycling Act of 2004 inoperative as of September 30, 2026, and would repeal those acts as of January 1, 2027.

Background

- 1) *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.

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.

- 2) *Battery fires.* Some batteries, particularly lithium ion, are extremely flammable and can combust or explode if they are damaged. When these batteries enter the waste stream, they are likely to be damaged during normal solid waste handling activities. When that happens, the batteries can ignite, causing fires in solid waste vehicles and facilities and posing a risk to the health and safety of solid waste workers and the public. When a battery ignites in a solid waste facility, it is surrounded by flammable materials, allowing the fire to grow quickly. Even with advanced fire suppression equipment, fires shut down operations, impact workers and affect the air quality of nearby residents.

The increasing frequency of fires has also impacted solid waste operators' ability to find insurance. Insurance premiums and deductibles rise dramatically after a fire, if the facility can find insurance at all. At the San Carlos facility, insurance premiums increased from \$180,000 per year to \$1.5 million, and the facility's deductible rose exponentially, from \$5,000 to \$1.5 million. The costs associated with the fires caused by batteries are passed on to ratepayers.

- 3) *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.

- 4) *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.

Comments

- 1) *Purpose of Bill.* 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."

Related/Prior Legislation

SB 1215 (Newman, 2022) expands the definition of a "covered electronic device" in the existing electronic waste recycling program to include covered battery-embedded products. This bill is pending in the Assembly.

SB 289 (Newman, 2021) would have enacted the Battery and Battery-Embedded Product Recycling and Fire Risk Reduction Act of 2021, which would have required the producers of batteries and battery-embedded products to establish a stewardship program for those products, with full implementation on or before June 30, 2025. This bill was held on the suspense file in the Senate Appropriations Committee.

SB 244 (Archuleta, 2021) would have required CalRecycle, in consultation with DTSC, to develop guidance for the proper handling and disposal of lithium-ion batteries and would have required the Department of Forestry and Fire Protection to develop protocols and training for the detection, safe-handling, and suppression of fires started from discarded lithium-ion batteries in the waste-handling system to be adopted by solid waste enterprises. SB 244 was vetoed by the Governor.

AB 1509 (Mullin, Berman, 2019) would have established a Lithium-Ion Battery Recycling Program within CalRecycle that required manufacturers of lithium-ion batteries to provide convenient collection, transportation, and disposal of lithium-ion batteries. AB 1509 was held in the Senate Environmental Quality Committee.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- Ongoing costs of up to approximately \$2 million annually (Covered Battery Recycling Fund) for the Department of Resources, Recycling, and Recovery (CalRecycle) to establish a new extended producer responsibility program. These costs would be reimbursable from the stewardship organization.
- Unknown ongoing costs for the Department of Toxic Substances Control to consult with CalRecycle, review stewardship plans, and provide inspection and enforcement.

SUPPORT: (Verified 8/11/22)

Californians Against Waste (co-source)
California Product Stewardship Council (co-source)
RethinkWaste (co-source)
Active San Gabriel Valley
Alameda County Supervisor, Nate Miley
California Professional Firefighters
California Resource Recovery Association
California State Association of Counties
California Waste Haulers Council
Central Contra Costa Sanitary District
City of Alameda
City of Camarillo
City of Los Angeles
City of Roseville
City of Thousand Oaks

Clean Water Action
County of San Diego
CR&R, Inc.
Del Norte Solid Waste Management Authority
Delta Diablo
Environmental Working Group
League of California Cities
Los Angeles County Sanitation Districts
Los Angeles County Solid Waste Management Committee/integrated Waste
Management Task Force
Marin Household Hazardous Waste Facility
Marin Sanitary Service
Monterey Regional Waste Management District
Napa Recycling & Waste Services
Northern California Recycling Association
Recology
Recyclesmart
Republic Services - Western Region
Republic Services Inc.
Resource Recovery Coalition of California
Rural County Representatives of California
San Francisco Department of the Environment
Santa Clara County Recycling and Waste Reduction Commission
Sea Hugger
South Bayside Waste Management Authority DbA Rethinkwaste
Stopwaste
Urban Counties of California
Western Placer Waste Management Authority
Zero Waste Company
Zero Waste Sonoma

OPPOSITION: (Verified 8/11/22)

Association of Home Appliance Manufacturers
California Retailers Association
Consumer Technology Association

ASSEMBLY FLOOR: 58-7, 5/23/22

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bloom, Boerner
Horvath, Bryan, Calderon, Carrillo, Cervantes, Cooley, Cooper, Cunningham,
Daly, Flora, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia,

Gipson, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Salas, Santiago, Stone, Ting, Villapudua, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NOES: Bigelow, Megan Dahle, Davies, Fong, Lackey, Seyarto, Smith

NO VOTE RECORDED: Berman, Mia Bonta, Chen, Choi, Gallagher, Gray, Kiley, Nguyen, O'Donnell, Patterson, Blanca Rubio, Valladares, Voepel

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