
THIRD READING

Bill No: AB 2440
Author: Irwin (D), et al.
Amended: 8/25/22 in Senate
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.

Senate Floor Amendments of 8/25/22 update the definition of “covered battery” and clarify that producers of products are not responsible for loose batteries that

are a part of an existing stewardship organization; establish the definition of a “program operator” to be a producer, or a stewardship organization on behalf of a group of producers, that is responsible for implementing a stewardship program; update the definition of “producer”; clarify that the bill only applies to batteries sold in California; extend the timeline for the adoption of regulations and provides additional time for program operators to respond; strike the requirement that damaged, defective, or recalled batteries be collected by program operators; adjust the number of collection sites required in counties with a population smaller than 100,000 people; add a minimum recycling efficiency rate for rechargeable and primary batteries; provide anti-trust provisions; and makes numerous technical, clarifying, and non substantive changes.

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 any of the following:
 - a) A loose battery that is either sold separately from a product or that is designed to be easily removed from the product with no more than common household tools.
 - 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) Provides that “covered battery” does not include, a medical device (as defined), a battery that has been recalled, a battery contained in a motor vehicle, a lead-acid battery (as defined), and certain rechargeable batteries.
- 4) Requires individual producers, no later than 180 days after the effective date of the Act, to provide CalRecycle a list of covered batteries and brands of covered batteries that the producer sells, distributes for sale, imports for sale, or offers for sale in or into the state and update the list annually thereafter.
- 5) Requires a program operator (i.e., a producer or a stewardship organization) to develop and submit to CalRecycle for review and approval as specified, a stewardship plan for the collection, transportation, and recycling of covered batteries, as prescribed.
- 6) Requires CalRecycle, in consultation with DTSC, to adopt regulations to implement the Act with an effective date no earlier than April 1, 2025.
- 7) Requires a program operator to have a complete stewardship plan approved by CalRecycle no later than 24 months after the effective date of the regulations adopted by CalRecycle and requires each producer be subject to an approved stewardship plan, in order to be in compliance with the Act.
- 8) Prohibits, on and after the date that a stewardship plan is approved by CalRecycle, a retailer, importer or distributor from selling, distributing,

offering for sale, or importing a covered battery in or into the state for sale in the state unless the producer of the covered battery is listed as in compliance with the Act, except as specified.

- 9) Requires a program operator to be audited annually, and submit a report and budget to CalRecycle, as prescribed, and requires a program operator to provide CalRecycle and DTSC with relevant records necessary to determine compliance with the Act.
- 10) 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.
- 11) Restricts public access to certain information collected for the purpose of administering a stewardship program.
- 12) 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.
- 13) Requires CalRecycle, within 24 months of the effective date of regulations, 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.
- 14) Requires CalRecycle to remove from the list any producer, including its noncompliant brands and covered batteries, that is not in compliance with the Act.
- 15) Requires a program operator to reimburse CalRecycle and DTSC for their respective actual and reasonable regulatory costs that are directly related to implementing and enforcing the Act.
- 16) Requires CalRecycle and DTSC to deposit those moneys into the Covered Battery Recycling Fund, which the bill establishes, and authorizes CalRecycle and DTSC to expend those moneys, upon appropriation by the Legislature, to implement and enforce the Act.

- 17) Provides for enforcement of the Act, including authorizing CalRecycle to impose an administrative civil penalty on a program operator, 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.
- 18) 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.
- 19) Makes the Rechargeable Battery Recycling Act of 2006 and the Cell Phone Recycling Act of 2004 inoperative as of September 30, 2027, and would repeal those acts as of January 1, 2028.

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.
- 5) *This bill*. AB 2440 establishes a product stewardship program for loose batteries in order to improve the collection and recycling of these batteries and keep them out of the solid waste stream. Proper collection and management of batteries will reduce the number of fires at solid waste handling operations,

which will protect the health and safety of solid waste facility employees and the public and reduce air emissions associated with solid waste facility fires, and ensure that these collected batteries are managed in accordance with hazardous waste laws and regulations.

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.

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 8/25/22)

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 8/25/22)

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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