SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Wieckowski, Chair
2015 - 2016 Regular

Bill No:	AB 2153		
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Version:	8/1/2016	**Hearing Date:**	8/3/2016
Urgency:	Yes	**Fiscal:**	Yes
Consultant:	Rachel Machi Wagoner		

SUBJECT: The Lead-Acid Battery Recycling Act of 2016.

ANALYSIS:

Existing law:

1) Under the federal Resource Conservation and Recovery Act (RCRA) of 1976, governs the disposal of hazardous waste:

   a) Through regulation, sets standards for the treatment, storage, transport, tracking and disposal of hazardous waste in the United States.

   b) Authorizes states to carry out many of the functions of the federal law through their own hazardous waste laws if such programs have been approved by the United States Environmental Protection Agency (US EPA).

2) Under the California Hazardous Waste Control Act (HWCA) of 1972:

   a) Establishes the Hazardous Waste Control program;

   b) Regulates the handling, transport and disposal of hazardous waste and authorizes the Department of Toxic Substances Control (DTSC) to implement and enforce HWCA and RCRA.

   c) Prohibits the disposal of a lead-acid battery at a solid waste facility, or on or in any land, surface waters, watercourses, or marine waters.

   d) Requires retailers to accept the trade-in of a spent lead-acid battery by a consumer upon purchase of a new one.

   e) Governs the management of used lead-acid batteries as a hazardous waste and provides alternative management standards for the recycling of lead-acid batteries.

f) Requires all lead-acid batteries purchased by any state agency for, and, at the next required installation of a battery in, an automobile or light truck owned or operated by the state agency, to be a recycled lead-acid battery, to the extent that all existing stock of nonrecycled batteries have been utilized.

g) A violation of the existing lead-acid battery management provisions is punishable as a misdemeanor with a fine of not more than one thousand dollars ($1,000) or by imprisonment for up to six months in a county jail or by both that fine and imprisonment for the first violation. If the conviction is for a second or subsequent violation, the person shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16, 20, or 24 months. The court shall also impose upon the person a fine of not less than five thousand dollars ($5,000) or more than twenty-five thousand dollars ($25,000).

3) Requires the Department of Resources, Recycling and Recovery (CalRecycle) to coordinate with DTSC to develop and implement a public information program to provide uniform and consistent information on the proper disposal of hazardous substances found in and around homes, and to assist the efforts of counties required to provide household hazardous collection, recycling, and disposal programs.

This bill establishes new fees on lead-acid batteries to fund contamination cleanup caused by lead-acid batteries. Specifically, **this bill**:

1) Repeals and adds Article 10.5 of Chapter 6.5 of the Health & Safety Code regarding the management of lead-acid batteries.

2) Requires a replacement lead-acid battery dealer to accept from a consumer a used lead-acid battery for recycling and caps the number of batteries that can be returned by a consumer at six lead-acid batteries per day.

3) Requires dealers to collect a refundable flat-fee deposit on the sale of new batteries that ranges from $15 to $100, depending on weight on the new lead-acid batteries sold if a used battery is not exchanged for the new battery.

4) Requires consumers to be refunded the deposit if the lead-acid battery is returned within 45 days after purchase.

5) Requires a lead-acid battery dealer to conspicuously post a written notice stating that the dealer is required by law to accept used lead-acid batteries and charge a fee on all replacement lead-acid battery sold.

6) Requires a lead-acid battery dealer to charge a non-refundable $1 California Battery Fee on each lead-acid battery sold to a person buying a replacement lead-acid battery, except as specified.

7) Requires all replacement lead-acid batteries to have a recycling symbol.

8) Requires a lead-acid battery dealer to collect the California Battery Fee at the time of sale and authorizes the dealer to retain 1.5% of the fee as reimbursement for any costs associated with the collection of the fee. Requires the remainder of the fee be remitted to the State Board of Equalization (BOE).

9) Requires each manufacturer to remit to the BOE a $1 Manufacturer Battery Fee for each lead-acid battery sold at retail to a person in California.

10) Authorizes a wholesaler to be deemed the manufacturer for purposes of this article, as specified.

11) Authorizes any manufacturer exempted from its obligations to pay the Manufacturer Battery Fee to voluntarily submit an additional $1 Manufacturer Battery Fee per lead-acid battery. Prohibits the manufacturer from passing along the costs to the wholesaler or consumers.

12) Requires all California Battery Fee and Manufacturer Battery Fee revenues be remitted to BOE for administration of the fee and the remainder to be deposited into the Lead-Acid Battery Cleanup Fund.

13) States that the obligation to pay the manufacturer battery fee and the board's authority to collect the fee shall immediately be terminated as to all payors if either of the following occurs:

    a) The state files suit against any person that has remitted a manufacturer battery fee to recover moneys spent for purposes identified in paragraph (1) of subdivision (b) of Section 25215.5, except for a suit against an owner or operator, or legal successor to the owner or operator, of the site at which the moneys sought to be recovered were spent.

    b) The state issues an order to any person who has remitted a manufacturer battery fee that requires the recipient to take action to address conditions at or allegedly attributable to a lead-acid battery recycling facility or its operations, except for an order issued to a person who is the owner or operator, or legal successor to the owner or operator, of the site at which the action ordered would occur.

14) Continuously appropriates all funds in the Lead-Acid Battery Cleanup Fund to DTSC to fund the following activities: investigation, site evaluation, cleanup, abatement, remedy, removal, monitoring, or other response actions at areas of the state that have been contaminated by the production, recycling, or improper disposal of lead-acid batteries, administration and repayment of General Fund loans for lead contamination cleanup.

15) Requires any funds spent by DTSC for any eligible lead-related activities to be drawn from the Lead-Acid Battery Cleanup Fund before drawing from any other fund source.

16) Requires DTSC, prior to seeking to recover any moneys spent on eligible lead-related activities from any person who has remitted any amount of Manufacturer Battery Fees, other than persons who are or were the owners or operators, or legal successors to owners or operators, of a site at which such activity occurred, to do the following:

    a) Draw from the funds in the Lead-Acid Battery Cleanup Fund.

    b) Vigorously pursue efforts to recover any moneys expended for specified activities from the owner or operator or legal successor to the owner or operator of the site at which the activity occurred, or the site that is identified as the source of release to which the activity was directed, until the earlier of either of the following:

        i) The issuance of a final unappealable legal judgment against the owner or operator or legal successor to the owner or operator.

        ii) Both of the following conditions have been met:

            (1) At least 36 months have passed since the department filed suit against the owner or operator or legal successor to the owner or operator of the site at which the activity occurred or of the site that is identified as the source of the release to which the activity was directed.

            (2) Seventy-one months have passed since the first expenditure of moneys from the Lead-Acid Battery Cleanup Fund on remedial actions at the site.

17) If a person from whom the department recovered moneys receives a favorable judgment against a second person who has remitted a manufacturer battery fee in an action relating to those response activities, requires the judgment to be

reduced by the amount the second person has already remitted to the Lead-Acid Battery Cleanup Fund that is not previously committed to other payor liabilities.

18) Requires the balance of a judgment against any manufacturer who has remitted any amount of Manufacturer Battery Fees to be reduced by the amount the manufacturer has remitted to the state.

19) States that nothing in this bill shall be construed to limit or otherwise affect any cause of action that may exist under any law that the state may bring against the owners or operators, or legal successors to owners or operators, of a site at which any described eligible lead-related activity occurred.

20) Requires any funds spent from the Lead-Acid Battery Cleanup Fund that are subsequently recovered from any person to be deposited into the Lead-Acid Battery Cleanup Fund.

21) Prohibits funds from the Lead-Acid Battery Cleanup Fund from funding Green Chemistry as it relates to lead-acid batteries.

22) Precludes lead-acid batteries from consideration for inclusion on a list of Priority Products under DTSC's Safer Consumer Products Program until after the completion of the fifth Priority Product Work Plan as long as the national recycling rate for lead in batteries determined by the methodology accepted by the US EPA employed in the Battery Council International's National Recycling Rate Study exceeds 90%.

23) Requires DTSC to report annually to the Governor and to the Legislature on the status of the Lead-Acid Battery Cleanup Fund and on the department's progress to implement this article.

24) Requires, if, as of October 1 of any calendar year, the balance in the Lead-Acid Battery Cleanup Fund exceeds one hundred million dollars ($100,000,000), that BOE shall notify each manufacturer to suspend remitting a manufacturer battery fee pursuant to this article commencing January 1 of the following year, until the manufacturer receives a notice from the board pursuant to subdivision (b). The board shall also provide notice to the department of the suspension of manufacturer battery fee remittal.

25) Requires if, as of October 1 of a calendar year in which manufacturers are not remitting a manufacturer battery fee and the balance of the Lead-Acid Battery Cleanup Fund is less than thirty million dollars ($30,000,000), that BOE shall, no later than October 31 of the same year, notify in writing each manufacturer that is required to remit a manufacturer battery fee to resume remitting the fee beginning on January 1 of the following year.

26) States that, ***notwithstanding any other law***, an administrative order ***shall not*** be issued or judicial relief sought to compel any person who has remitted a manufacturer battery fee to take any activity as specified at that site unless ***all*** of the following conditions are met:

a) Any activities undertaken by any party at the site have been inadequate to fully address concerns to which the activities would be directed.

b) The state has a *reasonable basis to believe*, that if the state or private funds are used to undertake the activities as specified and recovery of those funds is sought from the person against whom the administrative order was issued, that person ultimately would be held responsible for amounts in excess of the amount manufacturer battery fees the person has remitted to the Lead-Acid Battery Cleanup Fund that is not already committed to the payor's liability.

c) One of the following:

i) The state has issued an administrative order against the owner or operator or legal successor to the owner or operator of the site, and obtained a final nonappealable judgment enforcing that order against the owner or operator or legal successor to the owner or operator, and the owner or operator or legal successor to the owner or operator has not complied with the order;

or

ii) Both of the following conditions have been met:

(1) At least 36 months have passed since the department issued an administrative order against the owner or operator or legal successor to the owner or operator of the site at which the activity occurred or of the site that is identified as the source of the release to which the activity was directed.

(2) Seventy-one months have passed since the first expenditure of moneys from the Lead-Acid Battery Cleanup Fund or remedial action took place at the site.

27) Rather than providing that a violation of lead-acid batteries is a misdemeanor, authorizes DTSC to impose civil administrative penalties not to exceed $1,000

per day on any person who is in violation and does not provide for more severe fines for subsequent violations. In assessing or reviewing the amount of a civil penalty imposed for a violation of this article, requires DTSC or the court to consider all of the following:

a) The nature and extent of the violation.

b) The number and severity of the violation or violations.

c) The economic effect of the penalty on the violator.

d) Whether the violator took good faith measures to comply with this article and the period of time over which these measures were taken.

e) The willfulness of the violator's misconduct.

f) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.

g) Any other factor that justice may require.

28) Requires DTSC to provide notice of the alleged violations to any person alleged to be in violation of any provision of this article no less than 60 days before the issuance of any administrative penalty. If the person corrects the alleged violation before the issuance of an administrative penalty, DTSC shall not issue the administrative penalty.

29) Provides an unspecified General Fund loan for the initial administration of this act that is to be paid back from the proceeds of the fee.

30) Requires all penalties to be deposited into the Lead-Acid Battery Cleanup Fund.

31) Requires, on or before April 1, 2017, the Office of Environmental Health Hazard Assessment to convene a Lead Advisory Committee to review and advise regarding policies and procedures to reduce childhood lead poisoning in the state, as specified.

32) Establishes this as an urgency act in order to increase the cleanup of toxic materials and prevent additional toxic pollution at the earliest possible time.

33) Establishes the effective date as January 1, 2017.

Background

1) *Lead-Acid Batteries.* Lead-acid batteries are rechargeable batteries made of lead plates situated in sulfuric acid within a plastic casing. They are used

globally for a wide range of purposes, most commonly in vehicles like automobiles, boats, trucks, and industrial vehicles. There is approximately 6 million tons of lead used worldwide annually. Three quarters of that is used for lead-acid batteries. According to the U.S. Geological Survey, the lead-acid battery industry accounted for about 90% of reported U.S. lead consumption during 2015. The average battery contains 17.5 pounds of lead and 1.5 gallons of sulfuric acid.

For example, more than 25 million motor vehicles are registered in California. Each vehicle currently still uses a lead-acid battery. According to the California Board of Equalization's estimates, based on 2012 Census data, lead-acid car battery sales in California are approximately $1.6 billion. That is based on an estimate of roughly 16 million batteries sold at an average cost of $100.

The demand for lead is high and as such lead is a highly valued commodity that makes recycling highly profitable.

Lead-acid batteries contain chemicals that have the potential to be hazardous to public health and the environment. The batteries contain lead, a highly toxic metal, and sulfuric acid, a corrosive electrolyte solution. Since both of these materials are classified as hazardous, California law requires proper handling as a hazardous waste.

Contact with the sulfuric acid solution may lead to irritation or burns to the skin, or irritation to the mucous membranes of the eyes or the upper respiratory system. Symptoms of low-level lead exposure include fatigue, impaired central nervous system functions, and impaired learning. Severe lead poisoning can result in coma, convulsions, irreversible neurological damage, seizures, and even death.

If lead-acid batteries are disposed of in a solid waste landfill or illegally dumped, the lead and sulfuric acid can seep into the soil and contaminate groundwater, potentially affecting the quality of our drinking water supply. If the batteries are disposed of near rivers, streams, lakes, or marine waters, the lead and sulfuric acid can also threaten aquatic life.

In California, lead-acid batteries are a hazardous waste unless they are recycled. California law specifies management for lead-acid batteries when entering the recycling stream.

To recover lead from a battery for recycling, the battery is broken and the components are classified. The lead containing components are processed in a furnace or smelter.

Humans have been smelting lead for thousands of years, poisoning themselves in the process. Although lead poisoning is one of the oldest known work and environmental hazards, the modern understanding of the small amount of lead necessary to cause harm did not come about until the latter half of the 20th century. According to the Centers for Disease Control and Prevention there is no safe threshold for lead exposure.

Lead smelters with little pollution controls have contributed to several environmental problems, especially raised blood lead levels in the surrounding population. The problem is particularly significant in many children who have grown up in proximity to a lead smelter.

The United States and California have increased regulations over smelting operations to decrease potential environmental and public health exposures to smelting emissions and contamination over the last several decades.

However, there are many historic smelters in California, like the Exide facility in Vernon, that have historic pollution that goes back for many decades prior to the air, soil and water regulations of today.

As of 2015, there is only one lead smelter, recycler of lead-acid batteries in California. That is Quemetco West LLC in the City of Industry.

2) *Exide Technologies.* The Exide Technologies (Exide) battery recycling facility in Vernon, California, recycled lead from used automotive batteries and other sources. The facility could process about 25,000 automotive and industrial batteries a day, providing a source of lead for new batteries. Over the course of decades of operation, the facility polluted the soil beneath it with high levels of lead, arsenic, cadmium and other toxic metals. It also has contaminated groundwater, released battery acid onto roads and contaminated homes and yards in surrounding communities with lead emissions. In March, 2015, Exide was forced to close the facility for good and, under a state agreement with DTSC, set aside $7.7 million to test homes and other structures around the facility for pollution resulting from the facility.

   DTSC estimates homes between 1.3 and 1.7 miles away from the facility may potentially be affected by Exide's lead contamination – that equates to somewhere between 5,000 - 10,000 residential properties. Cleaning each home costs about $45,000, according to DTSC. If the cleanup grows to thousands of properties, it could cost hundreds of millions of dollars. Removing lead-contaminated soil from thousands of homes surrounding Exide could result in the most extensive cleanup of its kind in California and will be among the

largest cleanup ever conducted in the nation. At the end of the day, the cost of cleanup in and around the Exide facility is expected to top $500 million.

In February, 2016, Governor Jerry Brown announced a budget proposal for funding cleanup in the polluted communities surrounding the shuttered Exide facility. The proposal includes making $176.6 million available to DTSC to expedite and expand testing and cleanup of residential properties, schools, daycare centers and parks in the 1.7 mile radius around the facility and remove contaminated soil at the properties that have the highest lead levels and greatest potential to expose residents.

After the $176.6 million is expended, DTSC will need additional funds to do complete and thorough cleanup. This bill is intended to fill that gap while providing an ongoing source of funds to address future lead contamination from lead-acid batteries.

3) *Quemetco West LLC*. The facility in the City of Industry, operated by Quemetco, Inc., recycles lead-acid batteries, which involves separating lead from other components, smelting the lead and refining it to meet customer specifications. The facility has been in operation since 1959. The facility operates under several different permits and regulations including:

- Air Quality - overseen by the South Coast Air Quality Management District.
- Water Quality - overseen by the Los Angeles Regional Water Quality Control Board and the Los Angeles County Sanitation District.
- Hazardous Waste - overseen by the Department of Toxic Substances Control.

DTSC is currently overseeing an investigation to determine if past emissions of airborne lead impacted the area surrounding the facility, including sampling soil in residential and industrial neighborhoods, as well as public streets and waterways.

On July 26, 2016, DTSC ordered the Quemetco battery recycling facility in the City of Industry to correct violations related to its failure to have a functioning leak-detection system and maintain its containment building, which holds hazardous lead waste, to minimize the possibility of any release. In issuing this order, DTSC stated that it is elevating its enforcement actions against Quemetco after issuing a series of violations over the last year, including seven non-minor violations this month.

On July 15, 2016, DTSC issued a Second Addendum to Quemetco for violations stemming from a multi-day inspection. Among other corrective actions, the facility was instructed to reduce the amount of ground-up lead waste from batteries being stored in its containment building, and maintain the building to prevent any release of hazardous waste.

On July 12, 2016, DTSC issued an Addendum to Quemetco citing it for its failure to have a functioning leak detection and liquid collection system for its containment building.

On June 20, 2016, DTSC issued Quemetco another Summary of Violations after DTSC inspectors observed problems with the leak-detection system in Quemetco's containment building. Quemetco was required to take the affected portion of the containment building out of service until it could demonstrate to the Department that the facility is in compliance with required safeguards.

On August 5, 2015, DTSC issued Quemetco a Summary of Violations that notified the facility it failed to maintain an adequate groundwater and surface water monitoring system. On June 1, 2016, DTSC issued an Addendum to that Summary of Violations requiring Quemetco to develop compliant water monitoring plans that will effectively measure if operations at the facility result in contamination.

Comments

1) *Purpose of Bill.* According to the author, "AB 2153 will create a state mandated Lead-Acid (Car) Battery fee that will serve as a funding mechanism for clean-up of areas contaminated by lead-acid batteries. Consumers will be charged a $1 fee per car battery at point of sale. Manufacturers will pay a $1 fee on all batteries sold in the state. The money from the fee can go to re-pay the Governor's 176.6 million dollar loan, and will be used to clean up areas of the state that have been contaminated by the production and recycling of lead acid batteries."

   AB 2153 was amended on August 1, 2016. According to the author, "the amendments largely reflect extensive amendments from BOE, amendments that were agreed upon in Assembly ESTM committee and a large stakeholder group. The author states that the amendments set the refundable deposit to be charged, create and stop/start trigger for the fund, remove the requirement to expend the fund before suit can be filed against an arranger, and many other more technical things."

2) *So much more than a funding mechanism for cleanups*. This lets manufacturers off the hook by:

   a) Changing the HWCA to create a complicated system by which to hold battery manufacturers responsible as responsible parties.

   b) Changing the HWCA to remove the crime and decrease civil penalties for lead-acid battery violations.

   c) Fundamentally changing, under HWCA, the existing cleanup reimbursement, penalty and prosecution regime under which the state can pursue the owner/operator of the site and/or anyone who generated or arranged for wastes to be transported to the contaminated site. This bill instead requires the state to exhaust all of its efforts to recover reimbursement from the owner/operator of a site before it can go after anyone else who might be liable under current law.

   d) Creating a "pooled account" for liability for cleanups that is funded not just by manufacturers but by consumers that must be ***drawn down*** prior to holding a contributing manufacturer responsible for a cleanup that it is responsible for. Additionally, the manufacturer can recoup its "fee" by passing it along to the consumer by raising its prices.

   e) Shifting burden of cleanup costs from manufacturers/wholesalers to consumers and site owners/operators. By providing significant protections from liability to manufacturers and wholesalers, and requiring the state to first exhaust efforts to recover reimbursement from the site owner/operator, this bill shifts the burden of cleanup costs away from manufacturers and wholesalers. The state will only be able to pursue a manufacturer or wholesaler for reimbursement or cleanup after efforts to force the site owner/operator have failed. Even then, manufacturers and wholesalers will be insulated from liability because, as drafted, the bill sets such high obstacles prior to talking an action holding a manufacturer responsible, that it is unlikely the state would be able to meet the requirements.

   f) Hindering a responsible party's ability to recover judgments against a manufacturer or wholesaler who has paid this new "fee." This bill also reduces the amount of money that a battery manufacturer or wholesaler will have to pay to the owner/operator of a site for cleanup costs. Under existing law, the state can force the owner/operator to reimburse the state for all cleanup costs. That owner/operator can then sue any other responsible party for contribution. This means that if a court finds the owner 60% liable and

another responsible party 40% liable, the owner can recover that 40% from the other responsible party. This bill would prohibit the owner from recovering from a manufacturer or wholesaler the amount of the taxes the manufacturer or wholesaler paid into the cleanup fund thereby undercutting a responsible party's ability to seek contribution from other responsible parties.

g) Granting an exemption for lead-acid batteries from California's Safer Consumer Product Regulations. This bill exempts lead-acid batteries from regulation under the state's Green Chemistry program for five cycles of the Safer Consumer Product priorities list. While these have a high recycling rate, some may object to any statutory exemption from the program. Indeed, this conflicts with the Governor's May Revise proposal that requires DTSC to consider whether lead-acid batteries should be added to the initial list of priority products that DTSC may regulate over the next few years. Finally, it is not clear that the exemption should be predicated on a national lead-acid battery collection rate.

3) *Tax not a fee.* The bill collects a consumer "fee" and manufacturer "fee" to be collected at the purchase of a new lead-acid battery and be deposited in the Lead-Acid Battery Cleanup Fund to be used to off-set cleanup costs for former and future sites that are contaminated by the mishandling of this hazardous waste stream. Under Proposition 26 of 2010, a fee (not a tax) is defined as:

a) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the state of conferring the benefit or granting the privilege to the payor.

b) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the state of providing the service or product to the payor.

c) A charge imposed for the reasonable regulatory costs to the state incident to issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

d) A charge imposed for entrance to or use of state property, or the purchase, rental, or lease of state property.

A consumer and manufacturer fee that is pooled to cleanup contamination from mishandled lead-acid batteries does not meet these criteria to be considered a "fee" under Proposition 26.

4) *Potential for loss of jobs and innovation in California.* This bill sets up a structure for battery manufacturers that sell in California to contribute to a fund that will be used to cleanup sites contaminated by used lead-acid battery handling. Unlike other programs in California that are funded by a consumer fee, this fund is not used to help spur recycling or new research and development for better products. In fact, this bill prohibits the state from using the fund for such activities. Other than reducing the financial liability for battery manufacturers by putting a-dollar-per-battery on the table, this bill does not help California innovate better, safer, cleaner battery technology. Rather it hinders that ability while attempting to clean up the industry's past contamination in California. Additionally, because there is only one smelter in California that is currently recycling a portion of California's lead-acid battery waste, rather than create a better technology, this bill creates a system to ship our wastes to other countries where the transport and lead smelting process will harm the environment and public health elsewhere (where there is not a fee for cleanup of the contamination).

5) *Governor's Budget.* The 2016-2017 Budget Act designates two positions for DTSC to evaluate listing lead-acid batteries as "priority products" subject to DTSC's Safer Consumer Products regulations. As part of DTSC's Hazardous Waste Reduction Initiative, it will conduct research, engage with stakeholders, evaluate options, and implement recommended actions to better protect the people and environment of California from adverse impacts related to the manufacture, use, recycling, and disposal of lead-acid batteries.

   AB 2153 would preclude lead-acid batteries from consideration for inclusion in the Safer Consumer Products Regulations as long as the national recycling rate for lead in batteries determined by the methodology accepted by the US EPA employed in the BCI's National Recycling Rate Study exceeds a to-be-determined percentage.

   While the bill is mindful of the Administration's budget proposal, it is in conflict with the direction of that proposal. According to the auto care industry, 99.6% of all lead-acid core batteries are recycled in California.

   In addition, the proposed exemption for lead-acid batteries would be precedent setting. The intent of the Safer Consumer Product Program is to do a comprehensive analysis of products, chemicals, and exposure pathways, and

prioritize the most dangerous chemicals for regulation to protect public health and limit Californian's exposure to hazardous chemicals.

6) *Is this too great a sacrifice?* AB 2153 aims to create a fund to provide resources to clean up sites across California that have been contaminated by lead-acid battery manufacturing, use, recycling and disposal. This contamination has caused public health and environmental damage for not just years but decades and the health impacts are not temporary but can be for a lifetime.

   Creating a fee on lead-acid batteries to address this damage and harm is appropriate and consistent with California environmental law and policy in which the state generates revenue from a product or waste to address the damage or potential harm caused by that product or waste. For example, California collects a fee on the sale of tires to fund recycling incentive programs. There is also a state fee to facilitate the recycling of used motor oil.

   Similarly, this bill could help facilitate the cleanup of sites across the state where lead presents health and environmental risk.

   However, this bill conflicts with its own goal of reducing the harm done by lead-acid batteries by granting responsible parties immunity from administrative, civil and criminal prosecution, and by allowing exemption from both California law for the proper and safe management of hazardous waste management and California law designed to help improve products sold in the state to decrease adverse impacts to the environmental and human health.

   What is the justification for sacrificing environmental protections?

   The recent regulatory actions taken at Exide and Quemetco battery recycling facilities and the contamination found elsewhere in the state illustrate that this product and waste steam, which present complicated environmental risks not only during recycling but throughout the lifecycle and the legacy in California, is far-reaching.

   In order to best address the long-standing significant problem identified by this bill, ***AB 2153 should be amended to strike the provisions related to liability relief, exemption from HWCA enforcement provisions and the Consumer Product Safety regulations for battery manufacturers; while maintaining the fees on lead-acid battery manufacturers to clean up contaminated sites across California.***

DOUBLE REFERRAL:

This measure provides liability relief provisions and restructures the judicial review of responsibility for remediation under HWCA for lead-acid battery manufacturers.

If this measure is approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Judiciary Committee.

SOURCE: Author

SUPPORT:

California Automotive Wholesalers Association
California Communities Against Toxics
California Labor Federation
California Safe Schools
Coalition For A Safe Environment
Del Amo Action Committee
Desert Citizens Against Pollution
Healthy Homes Collaborative
Society for Positive Action

OPPOSITION:

Environmental Working Group
Quemetco, Inc.
Sierra Club, California

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