SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2021 - 2022 Regular

Bill No:	AB 2440		
Author:	Irwin		
Version:	6/08/2022	**Hearing Date:**	6/22/2022
Urgency:	No	**Fiscal:**	Yes
Consultant:	Gabrielle Meindl		

SUBJECT: Responsible Battery Recycling Act of 2022

DIGEST: This bill establishes the Responsible Battery Recycling Act of 2022 (Act), which establishes a stewardship program for the collection and recycling of covered batteries and covered battery-embedded products (covered products), 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) 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 requirements of this bill.

2) Requires a producer, as defined, no later than 180 days after the effective date of the Act, to provide CalRecycle with a list of covered products that the producer sells or offers for sale in the state, as specified.

3) Authorizes producers to establish one or more stewardship organizations, as specified, to develop and implement the program established by this bill. Prohibits a producer from selling, distributing, offering for sale or importing a covered product in or into the state unless the producer is in compliance with the Act.

4) Requires, within nine 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 products in the state, as specified. Requires the plan include a contingency plan in the event the stewardship plan expires, is disapproved, or is revoked, as specified.

5) Requires CalRecycle, on or before January 1, 2025, to establish an advisory body for covered product stewardship, as specified. Requires producers or stewardship organizations to consult with the advisory body when establishing or updating a stewardship plan as well as include the recommendations of the advisory body into stewardship plans, to the extent feasible.

6) Requires, at least 90 days before submitting a plan to CalRecycle, a producer or stewardship organization to submit its proposed plan to DTSC for its review, as specified. Requires CalRecycle to review the stewardship plan for compliance with the Act and to approve, disapprove or conditionally approve the plan within 90 days of receipt of the plan. Requires, within 18 months of the effective date of the regulations adopted by CalRecycle, a producer or a stewardship organization to have a complete plan approved by CalRecycle in order to be in compliance with the Act, and within 24 months of that date, a producer or stewardship organization to fully implement its stewardship program.

7) Requires retailers with five or more locations in the state to make all locations available as collection sites for covered products smaller than an unspecified weight.

8) Requires a producer or stewardship organization to prepare and submit to CalRecycle, with the submission of a proposed plan, a proposed stewardship program budget for the subsequent five years, as specified. Requires CalRecycle, within 90 days of receipt of a stewardship program budget, to approve, disapprove or conditionally approve a stewardship program budget.

9) Establishes the Covered Battery and Covered Battery-Embedded Product Recycling Fund (Fund), to be funded by the reimbursement provided by producers and stewardship organizations and to be used by CalRecycle and DTSC to implement and enforce the bill.

10) Requires producers and stewardship organizations to arrange for an independent audit annually, and requires CalRecycle to annually review the audit for compliance. Authorizes CalRecycle to conduct an audit, as necessary.

11) Requires a producer or stewardship organization to annually submit to CalRecycle, and make publicly available on its website, an annual report containing specified information on the stewardship program for the preceding calendar year. Requires CalRecycle to approve, disapprove or conditionally approve the report.

12) Requires CalRecycle, on or before July 1, 2027, and annually thereafter, to post on its website a list of producers that are in compliance with the Act. Prohibits, 24 months after the effective date of the regulations, a retailer or distributor from selling, distributing, offering for sale or importing a covered product in or into the state unless the producer of the covered product is listed on CalRecycle's website as being in compliance for the covered product, as specified.

13) 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, covered battery-embedded products, or both covered batteries and covered battery-embedded products.

14) Authorizes CalRecycle to impose administrative civil penalties, as specified, on a producer, stewardship organization, manufacturer, distributor, retailer, importer, recycler or collection site that is in violation of the Act.

15)Authorizes CalRecycle to revoke a stewardship plan, require resubmittal of a plan or remove a producer from the list of compliant producers if it determines that the producer or stewardship organization has not met a material requirement of the program.

16) Exempts certain actions taken by a stewardship organization or producer from the Cartwright Act, Business and Professions Code Section 16700 et seq., the Unfair Practices Act, Business and Professions Code Section 17000 et seq., and the Unfair Competition Law, Business and Professions Code Section 17200 et seq.

17) Repeals, on January 1, 2027, the Rechargeable Battery Recycling Act of 2006 and the Cell Phone Recycling Act of 2004.

Background

1) *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.

2) *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.

3) *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. While determining the exact cause of solid waste facility fires is extremely difficult, it appears that fires have become more frequent as embedded lithium-ion batteries have become more common.

   One materials recovery facility located in Richmond experienced six fires over just two years in 2020 and 2021. Another facility in San Carlos experienced 10 or more fires almost every year since 2017; a stark contrast to 2013, when the facility experienced two fires. The suspected causes for these fires included a drone containing a lithium ion battery, a lawnmower battery, a Prius battery, a lithium ion battery pack, and a cell phone. 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.

4) *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.

5) *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."

6) *State of Play*. AB 2440 establishes a product stewardship program for covered products in order to improve the collection and recycling of these batteries in hopes of keeping them out of the solid waste stream. Proper collection and management of covered products 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 the collected covered products are managed in accordance with hazardous waste laws and regulations.

This committee heard and passed out SB 1215 (Newman), the Senate companion to this proposal, on April 20, 2022. At that time, the committee staff report acknowledged that the bill was a work in progress and directed the author to continue to work with stakeholders and committee staff on a number of outstanding issues. Recent amendments address some of those concerns, including establishing a minimum number of collection sites per county to ensure consumer convenience and incorporating flexibility to the program that would allow for the inclusion of evolving technology. Additionally, the proposal now contains contingency planning language, anti-trust provisions, extended compliance timeframes, and preempts local stewardship programs for covered batteries.

According to the author's office, discussions with stakeholders are continuing on a number of fronts, including establishing equity between brick-and-mortar and online retailers and setting limits on the size of battery embedded products retailers are required to take back.

DOUBLE REFERRAL:

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.

Related/Prior Legislation

SB 1215 (Newman, 2022) is substantially similar to this bill and is awaiting hearing in the Assembly Natural Resources Committee.

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.

SOURCE: Californians Against Waste, California Product Stewardship Council, RethinkWaste,

SUPPORT:

Active San Gabriel Valley
California Product Stewardship Council
California Professional Firefighters
California Resource Recovery Association
California State Association of Counties (CSAC)
California Waste Haulers Council
Californians Against Waste
Central Contra Costa Sanitary District
City of Roseville
City of Thousand Oaks
Clean Water Action
Cr&r, INC.
Delta Diablo
Environmental Working Group
Los Angeles County Sanitation Districts
Los Angeles County Solid Waste Management Committee/integrated Waste Management Task Force
Marin Household Hazardous Waste Facility
Monterey Regional Waste Management District
Napa Recycling & Waste Services
Recyclesmart
Republic Services - Western Region
Republic Services INC.
Resource Recovery Coalition of California
Rural County Representatives of California (RCRC)
San Diego; County of
Santa Clara County Recycling and Waste Reduction Commission
Sea Hugger
South Bayside Waste Management Authority (sbwma) Dba Rethinkwaste
Stopwaste
Western Placer Waste Management Authority (WPWMA)

Zero Waste Company
Zero Waste Sonoma

OPPOSITION:

Association of Home Appliance Manufacturers
California Retailers Association
Consumer Technology Association

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."

ARGUMENTS IN OPPOSITION: According to Consumer Technology Association (CTA), "CTA encourages the Committee to amend the bill to expand the state e-waste program to cover products that typically include embedded batteries. This would provide the financing and would quickly incentivize collection without creating a new large, complex and in some ways competing system. CTA also has concerns about take back mandates on retailers in California. Retailers should not be required to take back battery-embedded products they do not sell.

"CTA understands and shares the author's concerns regarding the risks associated with mishandling of lithium-ion batteries. CTA's members, as demonstrated through our support of the Avoid the SparkTM campaign, are committed to

addressing safety concerns related to lithium-ion batteries. However, the amended language of AB 2440 is not the right solution to those challenges, and we respectfully oppose the bill unless amended as suggested above."

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