

At Least Four States Consider Battery Stewardship Legislation in 2014

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As of January 1, it appears that at least four states will consider battery stewardship legislation in 2014, with attention to future legislation and regulation underway in several more.

Primary Battery Legislation

Three states—Minnesota, Vermont, and California—are expected to consider model legislation being promoted by the National Electrical Manufacturers Association (NEMA) and the Corporation for Battery Recycling (CBR). It mandates establishment of used consumer primary battery stewardship programs. The legislation would require any entity selling primary consumer batteries into those states to provide or support a collection and recycling program.

The NEMA/CBR model is being supported by PRBA-The Rechargeable Battery Association and by Call2Recycle, Inc., because it includes (among other elements) authority for programs that collect used rechargeable batteries to recover from primary battery stewards any costs incurred by the rechargeable programs in handling used primary batteries.

Favorable action on these proposals seems more likely in Minnesota and Vermont than California, although it is still too early to be certain. In Minnesota, the Pollution Control Agency—the state agency that would be given new authority by the new bill—generally supports the bill. However, 2014 is a short legislative session in Minnesota and some interests have yet to speak up. In Vermont, the waters have been muddied by the pre-filing of a version of the NEMA/CBR model that also establishes principles to be applied to future (SB 312), yet-undefined products, which appears sure to attract opposition. In

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California, the bill would replace somewhat similar legislation from last year (AB 488) that failed to pass through the Assembly Appropriations Committee, and proponents have yet to identify members who will do the heavy lifting necessary to break the legislation free.

Lead-Acid Battery Legislation

Legislation was promoted in Wisconsin in 2013 by the Battery Council International, the Motor & Equipment Manufacturers Association (MEMA), and retailer interests to lift the state's mandatory \$5 lead-acid battery deposit cap on automotive starter-type batteries. The bill appears headed for favorable consideration early in 2014, with a compromise having been reached among affected interest groups, including the scrap industry. Under that agreement, the bill would establish a more flexible \$10 deposit. However, nothing is certain in any state legislative environment, and new hurdles could emerge as the legislature reconvenes in January.

Enactment of a Wisconsin bill would leave three states with statutory \$5 deposit mandates. However, regulatory authorities in one of them, South Carolina, have recently provided a statutory interpretation that allows retailers to voluntarily increase the cap, as long as the increase is not advertised as being state mandated. This removes much of the incentive to seek legislative reform in South Carolina. This leaves Connecticut and New York with \$5 deposits. BCI expects to initiate efforts to address the issue in New York in 2014, but the complexity of the state's political scene makes the likelihood of quick progress uncertain. Activity in Connecticut is likely to be deferred in light of the "battery summit" described immediately below.

Groundwork for 2015

Some months ago, it had been expected that Connecticut—where the headquarters of Duracell, a leading consumer primary battery supplier, is located—might be another forum for primary battery stewardship legislation in 2014. That now appears unlikely. Instead, the state's Department of Energy and Environmental Protection has engaged the Product Stewardship Council to convene a summit later this year to address the best way to proceed. While the NEMA/CBR proposal is likely to provide a focus for those discussions, what other ideas will be presented is unknown and the ultimate outcome is thus uncertain.

If even a partial consensus emerges from the PSI-organized summit, it is likely to have an impact on future proposals in at least other New England states, and perhaps nationwide. PSI attracts participation from a wide range of state regulators and activists from around the nation, and aggressively promotes concepts that emerge from its meetings. It will be particularly interesting to see what happens if Vermont enacts legislation that proves to be materially different from whatever comes out of the Connecticut summit.

If a consensus approach does emerge from that summit, it presumably will be presented to the Connecticut legislature in 2015. That same session appears likely to provide a forum for BCI to seek revisitation of the state's \$5 lead-acid battery cap.

A final, sleeper issue is how the California Department of Toxic Substances Control proceeds to implement the state's ambitious new "green chemistry" regulations. Those regulations took effect in October 2013, and call for the department to identify by Spring five products that will serve as guinea pigs for implementation of an environmental impact evaluation and potential mandatory substitution process. While that implementation date may slip until later in the year, the department already has identified 150 chemical groups on which it is focusing. They include lead, cadmium, nickel, cobalt, mercury, and numerous other metals and their compounds, thus raising the possibility that batteries of some sort may be addressed in the first wave of regulatory implementation.