



Department of
Environmental
Conservation

NYS Rechargeable Battery Law

PROGRAM ANALYSIS & RESULTS FOR 2013–2022

REPORT TO THE GOVERNOR & LEGISLATURE – 2024

Kathy Hochul, Governor | Sean Mahar, Interim Commissioner



Table of Contents

- I. Legislative Charge 1**
- II. Executive Summary 1**
- III. Overview of the Law’s Regulated Entities and Their Responsibilities..... 2**
 - a. Manufacturers of Rechargeable Batteries2
 - b. Retailers of Rechargeable Batteries or Rechargeable Battery-Containing Products2
 - c. Consumers2
 - d. The New York State Department of Environmental Conservation2
- IV. Program Status and Performance Results..... 3**
 - a. Producer Responsibility Organization3
 - b. Individual Manufacturer Plan3
 - c. Retailer Collection Network3
 - d. Overall Collection Results.....4
- V. Recent Developments and Department Initiatives 5**
- VI. Program Strengths 6**
 - a. Mandatory End-of-Life Management6
 - b. Strong Convenience Standard.....7
 - c. Extensive Scope of Covered Batteries.....7
- VII. DEC Recommendations 7**

I. Legislative Charge

The New York State Department of Environmental Conservation (DEC) submits this report to the Governor and Legislature in accordance with § 27-1807(4) of the New York State Rechargeable Battery Law (Law), Environmental Conservation Law (ECL), Article 27, Title 18. That section of the Law requires DEC to analyze the information provided by battery manufacturers in their annual reports and report this information to the Governor and Legislature biennially.

II. Executive Summary

Article 27, Title 18 of the ECL was signed on December 10, 2010, and immediately went into effect. The Law requires manufacturers of covered rechargeable batteries who sell in or into New York State to provide for the collection and recycling of rechargeable batteries through a manufacturer-funded retailer collection program at no cost to consumers. The Law also makes it illegal for any person to knowingly dispose of rechargeable batteries as trash in the state, as most rechargeable batteries contain toxic metals that can be released into the environment when disposed of improperly. This report is being submitted to the Governor and the Legislature pursuant to ECL § 27-1807(4) and provides an update on the Law's implementation, an evaluation of its results for program years 2013–2022, a discussion of program strengths and challenges, and recommendations for future program improvements.

Product stewardship laws are intended to ensure that all those involved in the life cycle of a product (e.g., manufacturers, retailers, transporters, recyclers, consumers, etc.) share responsibility for reducing the health and environmental impacts that result from the production, use, and end-of-life management of the product. Extended producer responsibility (EPR) laws, like this one, take product stewardship a step further by requiring product manufacturers to bear the primary financial and managerial responsibility for collection and recycling programs for end-of-life products. Without mandatory EPR, collection and recycling programs are often unavailable, inconvenient, or managed and paid for by local governments at the expense of taxpayers.

The Law allows rechargeable battery manufacturers to work together to meet their requirements through a producer responsibility organization (PRO). This manufacturer-funded collection program allows for consumers to return end-of-life rechargeable batteries to retailers that sell rechargeable batteries or products containing rechargeable batteries for proper management and recycling at no cost to the consumer.

Rechargeable Battery Types Covered by the Law

Any and all rechargeable batteries, including, but not limited to:

- Nickel-cadmium (Ni-Cd)
- Sealed lead (SSLA)
- Lithium ion (Li-Ion)
- Nickel metal hydride (Ni-MH)
- Any other dry cell battery capable of being recharged
- Battery packs containing any of the above-mentioned batteries

The Law does not cover: any of the above-mentioned batteries/packs weighing 25 pounds or more; batteries used as the principal power source for a vehicle, such as an automobile, boat, truck, tractor, golf cart, or wheelchair; batteries for storage of electricity generated by an alternative power source, such as solar or wind-driven generators; batteries for backup that are integral components of an electronic device; or any non-rechargeable, single-use batteries such as common alkaline batteries.

DEC initially approved two program plans for the safe collection, transportation, and recycling of rechargeable batteries collected by retailers—one from the PRO, Call2Recycle (C2R); and the other from an individual manufacturer, Interstate Batteries (IB). Most manufacturers have opted to join C2R. Manufacturers who join C2R pay to take part in its program and, in turn, C2R manages the collection and recycling of the rechargeable batteries on behalf of its manufacturers. C2R also fulfills the manufacturers' requirement to report annually to DEC. C2R's annual reports show the total weight of rechargeable batteries collected in the state each year by battery chemistry (e.g., Li-Ion, Ni-Cd, etc.). The annual reports also explain where batteries go for sorting and processing after they are dropped off at a C2R collection site, as well as the number of collection sites located in the state. IB submits a similar report each year.

The Law was intended to ensure proper end-of-life rechargeable battery management and waste stream diversion. With programs reporting more than 3.5 million pounds of rechargeable batteries collected¹ from consumers in the state for proper recycling since the Law's enactment through the end of 2022, DEC views the Law as a success. This report will discuss implementation and results of the current program, as well as propose recommendations for continued program improvement.

III. Overview of the Law's Regulated Entities and Their Responsibilities

a. Manufacturers of Rechargeable Batteries

A rechargeable battery manufacturer is defined in the Law as a person, firm, or corporation that: (i) produces rechargeable batteries sold or distributed in the state, or packages such batteries for sale in the state, except that if such production or packaging is for a distributor having the right to produce or otherwise package that same brand of battery in the state, then such distributor shall be deemed to be the battery manufacturer; or (ii) imports rechargeable batteries into the United States that are sold or distributed in the state.

The Law requires manufacturers who sell, or offer for sale, rechargeable batteries in the state to:

- Submit for approval to DEC, either individually or collectively through a PRO, a plan that identifies the methods by which rechargeable batteries will be safely collected through retailers, transported, and recycled at the expense of the battery manufacturer;
- Provide retailers with information on the safe handling and storage of rechargeable batteries;
- Submit an annual report that includes the amount of rechargeable batteries received within the state and recycled either by number or by weight, the costs of those efforts, and any other relevant information as required by DEC;
- Undertake efforts to educate New York State consumers regarding the appropriate ways to recycle rechargeable batteries.

b. Retailers of Rechargeable Batteries or Rechargeable Battery-Containing Products

The Law requires retailers who sell or offer for sale covered rechargeable batteries or rechargeable battery-containing products to:

- Accept from consumers anytime during normal business hours rechargeable batteries of a similar size and shape as the retailer offers for sale. Retailers must accept up to 10 of these batteries per day from any person, or as many batteries as a consumer purchases from the retailer;
- Conspicuously post and maintain, at or near the point of entry to the place of business, a legible sign, not less than 8 ½ by 11 inches in size, stating, "It is illegal to dispose of rechargeable batteries in the state of New York as solid waste. We accept used rechargeable batteries for return to the manufacturer";
- Conspicuously maintain, at a location within the retail establishment that is convenient for use by consumers, collection boxes or other suitable receptacles, supplied by the manufacturer, into which consumers may safely deposit used rechargeable batteries.

c. Consumers

The Law defines a "consumer" as any person who purchases one or more rechargeable batteries, or products containing such batteries at the time of sale, for personal use. The Law established a disposal ban for rechargeable batteries for all persons, which took effect Dec. 5, 2011. Consumers are expected to check for and remove rechargeable batteries contained in products for recycling prior to the disposal of rechargeable battery-containing products.

d. The New York State Department of Environmental Conservation

DEC approves or rejects rechargeable battery manufacturers' collection, transportation, and recycling plans. DEC analyzes the information provided by the rechargeable battery manufacturers annually and is required to report this information to the Governor and the Legislature every two years.

¹ Total of collected batteries reported in C2R's 2014–2022 annual reports and IB's 2017–2022 annual reports.

DEC also monitors regulated entities for compliance with the various provisions of the Law and pursues enforcement action for violations identified, when appropriate. Violators of the Law are subject to civil penalties, ranging between \$50 and \$200 for consumers, \$200 and \$500 for retailers, and \$2,000 and \$5,000 for manufacturers.

IV. Program Status and Performance Results

a. Producer Responsibility Organization

Only one rechargeable battery PRO, Call2Recycle (C2R), currently operates in the state. Partnering with C2R has been the most efficient way for manufacturers or retailers to come into compliance with the Law. One PRO operating in the state has allowed for streamlined compliance and performance monitoring, as well as ease in general oversight. At the end of the 2022 program year, there were 206 manufacturers partnered with C2R to fulfill their obligations under the Law in New York State.²

C2R submitted its Rechargeable Battery Collection and Recycling Plan in 2011; it was approved by DEC in 2013. Under the approved plan, C2R provides all rechargeable battery collection receptacles, retailers' required signage materials, and pays all shipping, transportation, sorting, and recycling costs, so there is no cost to the public or participating retail collection sites. The plan detailed the process for safely collecting and transporting the batteries. The rechargeable batteries are weighed, separated by battery chemistry, consolidated with similar types, and transported to a network of qualified and approved battery processors. C2R's downstream processors are selected through a transparent process that requires compliance with all applicable environmental, health and safety, and transportation regulations. Processors are expected to adhere to the standards of industry-recognized recycling certifications and submit to audits by C2R or other external audit parties.

C2R's outreach and education goals in New York State are to increase awareness among consumers and to motivate consumers into action. The methods that C2R employs to deliver outreach and education material

include, but are not limited to, a user-friendly website, educational news stories distributed via media relations, advertising via both paid and unpaid digital media, in-person engagement via conferences and events, and distribution of program resource toolkits and on-site collection materials to collection sites.

b. Individual Manufacturer Plan

While manufacturers are able to submit independent plans to DEC, Interstate Batteries (IB) was the only manufacturer to have an approved individual manufacturer plan during this reporting period. This manufacturer first began submitting annual reports for the 2017 program year.

"Interstate" and "Workaholic" branded rechargeable batteries are currently sold in the state at eight "All Battery Center" (ABC) retail stores and numerous gas stations, repair shops, auto parts stores, and car dealerships. According to its plan, the employees in each ABC store must complete training in safe handling, temporary storage, and recycling of spent rechargeable batteries. Receptacles specifically designed for safely accepting and storing up to 41 pounds of used rechargeable batteries are placed in each retail location. The receptacles are on an auto-replenishment cycle, meaning when a receptacle is received by IB's processor, the retail store will automatically have another receptacle shipped to it in return. Each reported year, IB has had a recycling rate higher than 100 percent, meaning more batteries were collected and recycled through its program than were sold in New York that year.

c. Retailer Collection Network

Retailers of covered rechargeable batteries or rechargeable battery-containing products utilize C2R's collection services to fulfill their obligations under the Law. Individual retail locations can contact C2R to request collection receptacles and have them collected when they are filled. Retail chains often manage policies and practices at a corporate level and identify in their internal policies that individual stores enlist the services of C2R. These chains may distribute to their individual stores the materials provided to them by C2R (e.g., training and guidance on safety procedures, how to handle batteries, signage rules, contact information, etc.).

C2R provides a collection site locator on its website. Consumers may enter their zip code and the locator shows a list of nearby sites where they can return their used rechargeable batteries for recycling. At the end of 2022, there were 1,112 active public collection sites

² Call2Recycle, Inc., *New York Battery Stewardship Annual Report, Reporting Period: January–December 2022*, submitted March 31, 2023, pp. 8-10.

participating in C2R’s collection program.³ A collection site is considered “active” if it meets at least one of the following criteria: joined the C2R program in the past 12 months, returned a full collection receptacle or bulk shipment of batteries during the past 12 months, or ordered a replacement collection receptacle during the past 12 months. Any collection site that does not meet any of those criteria after one year will be taken off the list of active sites. This is done to provide consumers with up-to-date information. Unfortunately, this also means that it is possible there are sites not listed in the locator that will still actively accept used rechargeable batteries from consumers.

d. Overall Collection Results

The Law delivered positive environmental results during program years 2013–2022. Rechargeable batteries can contain metals such as mercury, lead, cadmium, nickel, silver, and lithium, all of which can pose a threat to human health and the environment when improperly disposed of at end-of-life, and in the case of Li-Ion batteries, have the potential for causing fires when mismanaged at various points in their life cycle.

Information and data regarding rechargeable battery collections were provided to DEC primarily by manufacturers through their PRO, C2R, as well as independently, to a smaller extent, by IB. The total reported number of rechargeable batteries collected by C2R for recycling during the program years 2013–2022 was 2,517,876 pounds. The total weight of batteries collected by C2R in each program year, categorized by chemistry, is shown in Figure 1. It should be noted that in recent years, Li-Ion batteries have become more prevalent in C2R’s collection stream. Li-Ion batteries are substantially lighter in weight than other chemistry types and, as technology evolves, they are becoming even lighter. For this reason, weight may not be the most representative metric to observe trends for this program. It is much more cumbersome to report in units and it is not a requirement of the Law. C2R communicated to DEC that the number of batteries being collected has been increasing disproportionately compared to the weight of batteries.

Between 2013 and 2022, the majority, by weight, of collected rechargeable batteries were Ni-Cd, followed by SSLA, Li-Ion, and Ni-MH (see Figure 2).

NYS Rechargeable Battery Annual Collections 2013-2022

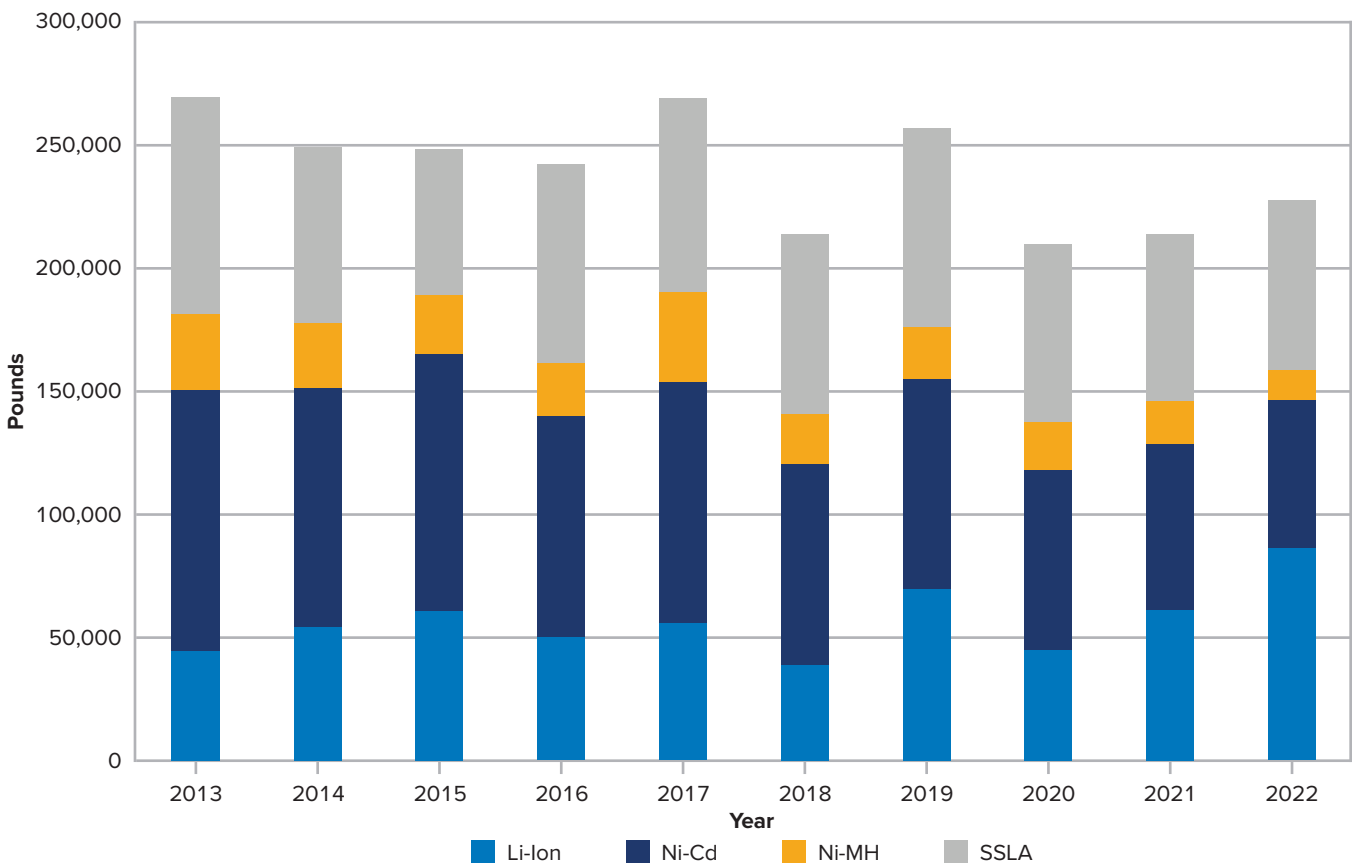


Figure 1. 2013–2022 annual collection results by chemistry type as reported by Call2Recycle.

³ Call2Recycle, Inc., *New York Battery Stewardship Annual Report, Reporting Period: January–December 2022*, submitted March 31, 2023, p. 5.

New York State Rechargeable Battery Collections by Chemistry 2013-2022

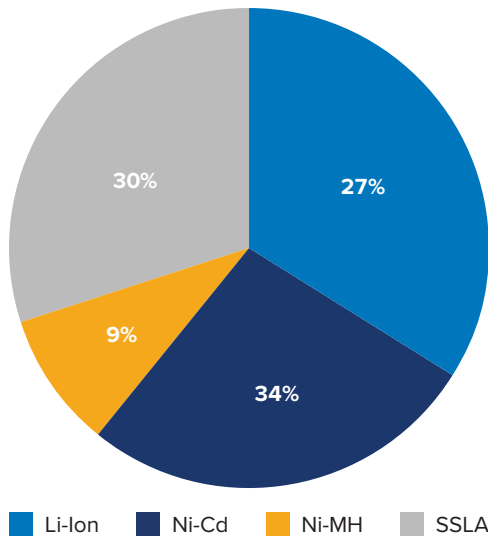


Figure 2. 2013–2022 total rechargeable battery collection results in New York State by chemistry type as reported by Call2Recycle.

While the Law’s collection results from C2R date back to program year 2014, historical records for IB are less complete, categorically inconsistent, and only go back to collection results for program year 2017. In years 2017 and 2018, IB reported only the totals of Li-Ion, Ni-Cd, and Ni-MH combined. In 2017 and 2018, IB reported their estimate of SSLA batteries collected but stopped reporting this number in 2019. IB does not distinguish between SSLA, automotive, and industrial lead-acid batteries when collecting and shipping for recycling or in its reports to DEC. Therefore, a portion of IB’s historically reported weight may be of batteries not covered by the Law and was not included in figures 1 and 2. Still, the total weight of rechargeable batteries reported to have been collected by IB during program years 2017–2022 was a significant 1,022,360 pounds.

It is important to note that there is nothing in the Law that would prevent rechargeable batteries from being recycled outside of a manufacturer’s program. Some municipal facilities and household hazardous waste (HHW) events accept covered batteries for recycling outside of C2R. The number of batteries collected for recycling through these means are, therefore, not reported through this program. In addition, some retailers may accept batteries for recycling on their own, outside of a manufacturer’s program. These retailers may collect batteries destined for recycling as a universal waste and use their own private waste

transporters and processors. It is worth noting that the number of covered batteries recycled in New York State is likely higher than what is reported by C2R and IB.

At the end of program year 2022, C2R achieved a 96.35% accessibility rate in the state. This accessibility rate measures the percent of the state’s population that lives within a 10-mile radius of an available drop-off location. C2R’s 2022 collection network consisted of 3,401 active sites (1,112 public sites and 2,289 private sites).⁴ Public sites are collection drop-off points that are accessible to the general public, such as the required retail locations. Private sites voluntarily collect and are generally not accessible to the public (e.g., universities, hospitals, and other locations that may internally generate used rechargeable batteries).

V. Recent Developments and Initiatives

In 2022, the Office of the New York State Comptroller (OSC) began an audit to determine whether DEC had adequately monitored and enforced compliance with the Law. The audit covered the period from January 2019–December 2021. OSC’s insights and recommendations helped improve DEC oversight and enforcement actions associated with this program.

The OSC report culminated in two key recommendations for DEC:

1. Develop and implement processes and procedures to monitor and enforce compliance as well as promote compliance with the Law.
2. Prepare and submit the required reports to the Executive and the Legislature as required by the Law.

To address the first OSC recommendation, DEC took significant steps to more effectively monitor compliance with the Law by regulated entities, including, but not limited to, conducting on-site inspections of rechargeable battery and rechargeable battery containing product retailers throughout the state, and increasing outreach to and requiring action from manufacturers not operating under an approved program plan.

⁴ Call2Recycle, Inc., *New York Battery Stewardship Annual Report, Reporting Period: January–December 2022*, submitted March 31, 2023, p. 5.

In March 2022, DEC conducted a certified mailing to 27 chain retail stores with a presence in the state, advising them of their potential obligations under the Law and requesting their self-reporting on compliance status. DEC tracked and evaluated the responses and continues to bring identified retailers potentially in violation into compliance. DEC also formed a plan for which types of retailers to target for inspection and outreach in phases, and a formal process for inspecting applicable retailers that includes the development of inspection forms and guidance material. Designated regional DEC staff have been trained on conducting inspections under the Law. Prior to 2022, the few inspections that occurred for this program were complaint-based, primarily used as an education tool, and did not include penalties for violations.

DEC conducted its first coordinated statewide inspection effort for this program in fiscal year 2022/23, completing at least five retail store inspections in each of DEC's nine regions. Inspectors identify if a location has proper signage and if there is a suitable receptacle for collection of covered rechargeable batteries. A total of 58 stores were inspected in this first round. The compliance results are presented in Figure 3. This first coordinated round of inspections resulted in 12 fully executed consent orders for a total of \$12,600 in civil penalties. DEC will continue coordinated retailer inspections and subsequent enforcement action, when appropriate.

Retailer Inspection Results for FY 2022/23

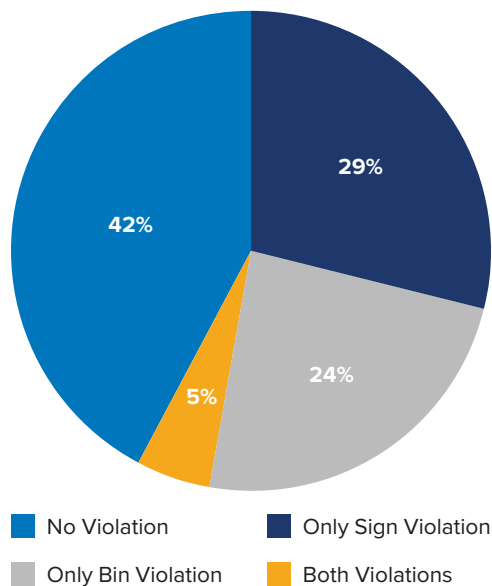


Figure 3. Fiscal Year 2022/23 retail location inspection results.

In 2022, DEC conducted a certified mailing to 31 potentially noncompliant rechargeable battery manufacturers, evaluated the responses, and continues to bring these manufacturers into compliance. Manufacturers were identified by DEC through internet research, as well as by C2R, which identified for DEC certain manufacturers as “free riders,” or manufacturers whose batteries end up in a C2R collection receptacle but who were not stewards in C2R’s program. As a result of this targeted effort, 18 manufacturers joined C2R as stewards in calendar year 2022. DEC developed documents and procedures for manufacturer compliance monitoring and enforcement, and will pursue enforcement when appropriate.

DEC also formalized guidance documents for developing a program plan and for annual reporting, which have been provided to existing approved programs as well as a new manufacturer seeking to develop its own individual program. As a result, C2R and IB both submitted and received approval of their plan updates in 2024. The guidance document for annual reporting purposes will help ensure that complete and categorically consistent annual reporting information is provided to DEC, improving DEC’s ability to report on program results more comprehensively.

To address the second OSC recommendation, DEC submitted this report to the Governor and Legislature and will continue to do so on a biennial basis.

VI. Program Strengths

a. Mandatory End-of-Life Management

Batteries often contain metals such as mercury, lead, cadmium, nickel, silver, and lithium, which can pose a threat to human health or the environment when improperly discarded. Their presence in emissions or residual ash when processed at municipal waste combustors has also generated public concerns. In the case of lithium-ion batteries, their high-energy density makes them prone to combustion or explosion when they are damaged, which can cause dangerous fires if they are inappropriately managed or discarded. They can also cause truck or facility fires when disposed of as part of the waste stream. In 2021, there were roughly 100 fires or smoldering events caused by lithium-ion batteries at one Brooklyn recycling facility, and one fire on a trash barge that took 5 hours for 60 firefighters to

extinguish.⁵ Lithium-ion batteries sparked more than 200 fires in New York City in 2022 alone, which was double the number of battery fires in 2021, killing six people and injuring nearly 150.⁶

For all these reasons, rechargeable batteries should be appropriately managed and directed for recycling. C2R has taken measures to improve the safety of their battery handling, including using fireproof boxes and supplying materials to retailers, such as tape for the battery terminals and plastic bags to contain individual batteries. These precautions, combined with extensive outreach to consumers, help ensure the safe management of batteries when brought for collection and responsible recycling, thereby reducing the potential for fires during the final phase of the battery's lifecycle.

b. Strong Convenience Standard

The breadth of retail locations required to collect rechargeable batteries under the Law continues to be of great value to consumers. Each retail location that sells any type of covered rechargeable battery or battery-containing product must accept used rechargeable batteries of the same type from consumers. This covers a wide range of locations, including most, if not all, “big box” stores, thereby making it convenient and easy for consumers to return their used rechargeable batteries for recycling. New York is the only state with this type of retailer requirement in its rechargeable battery EPR law. While DEC notes convenience as a strength, there is still room for improvement, as outlined in the DEC Recommendations section.

c. Extensive Scope of Covered Batteries

Compared to other states, New York State's Law has also benefited from the widest scope of covered batteries, including those weighing up to 25 pounds. Other states with battery EPR laws commonly limit required acceptance to batteries weighing either 4.4 or 11 pounds or based on a low watt-hour rating.

VII. DEC Recommendations

DEC has made significant adjustments to improve the implementation of the program since the Law passed in 2010. However, there are several challenges to be addressed that require legislative amendment. DEC recommends the following updates to the Law for the Governor's and Legislature's consideration:

- 1. Expand the covered battery definition in the Law to include e-mobility rechargeable batteries.** E-mobility batteries have a high risk for ignitability. Currently, the Law exempts most “vehicle” batteries, which excludes consumers with e-mobility batteries (e.g., those from electric scooters, bikes, hoverboards, etc.) from access to free and convenient collection at end-of-life, as these batteries were not prevalent at the time the Law was drafted. Fires caused by improper management of these batteries are an increasing problem, especially in concentrated urban areas like New York City. Safe and convenient end-of-life acceptance would reduce the potential for some of these fires if these batteries were no longer disposed of in the waste stream.
- 2. Clarify what is meant by mandatory retailer type acceptance.** Potentially dangerous large format e-mobility batteries should not be returned to common retailers. In the event e-mobility rechargeable batteries are added to the scope of covered batteries, as recommended, explicit language stating that e-mobility type batteries are to be brought only to participating e-mobility retail collection sites is critical. Existing language stating, “shape, size, and function as the retailer offers for sale” is subjective and insufficient to discourage commingling these batteries with less dangerous rechargeable batteries in common retail collection receptacles.

⁵ Dunn, D.M. (2022, Feb. 21) “How a floating trash fire in New York exposes a threat to national recycling efforts.” Politico. <https://www.politico.com/news/2022/02/21/fire-batteries-new-york-recycling-efforts-00008600>

⁶ New York City Office of the Mayor. (2023, March 20) “Mayor Adams Announces Plan to Combat Lithium-Ion Battery Fires, Promote Safe Electric Micromobility Usage.” The Official Website of the City of New York. <https://www.nyc.gov/office-of-the-mayor/news/195-23/mayor-adams-plan-combat-lithium-ion-battery-fires-promote-safe-electric-micromobility>

3. Require manufacturer-funded acceptance of damaged and defective (DD) batteries.

Expressly state that DD batteries should not be returned to retail collection sites. Authorized HHW collection events and facilities properly trained in managing DD batteries are the most appropriate for accepting potentially dangerous batteries. A mechanism should be added for HHW collection events and facilities to seek reimbursement from the PRO for costs incurred. The PRO, in its plan submitted to DEC for approval, should also describe what collection methods for DD batteries will be made available to underserved areas of the state without access to HHW collection events or facilities.

4. Require all manufacturers to join one PRO.

Multiple acceptance programs operating in a retailer takeback system is not efficient. A retailer should not be required to house more than one collection receptacle for the same product in a store with potentially limited space, nor should it be a consumer's responsibility to brand-sort batteries into multiple receptacles. One PRO also improves regulatory agency oversight efficiency, as well as consistent consumer messaging and education.

5. Add a sales prohibition for noncompliant manufacturers.

Manufacturers of rechargeable batteries who are found to be noncompliant (i.e., not participating under an approved plan), should be prohibited from offering products for sale in New York State. Sales prohibitions are a common deterrent of noncompliance in effective EPR legislation.

6. Allow a mechanism for DEC to adjust the Law's convenience standard as necessary.

Currently, each retailer that sells any amount of rechargeable batteries or products that contain them, with the exception of small food stores, is required to act as an acceptance location under the Law. Today, there are countless products that contain rechargeable batteries, and many stores sell only a few products that contain them. Expecting each of these stores to collect batteries can be burdensome to DEC from an oversight perspective and to the PRO from a management perspective. The retail collection requirement, as written, has resulted in an unusually high number of collection sites for an EPR program, especially in highly concentrated areas such as New York City. Many of these sites are underutilized. Since the PRO still provides collection receptacles and services to these sites, this results in money being spent for little to no return. One possible solution is to include additional exemptions

based on retailer type or by square footage. At a minimum, the Law should be amended to allow for cities with a population of 1 million or more to develop their own convenience standard.

7. Modify the producer definition to promote product manufacturer accountability.

Currently, the Law only holds the manufacturer of a rechargeable battery responsible for its proper management at end-of-life. For embedded battery products or products for which batteries are not easily removable, it is often difficult to determine the battery's manufacturer. Furthermore, many batteries contained within products sold in the state are produced overseas, where the manufacturers are often unaware of their responsibilities under the Law. Product manufacturers using rechargeable batteries have a greater ability to communicate with battery manufacturers and would be more likely to use batteries from compliant battery manufacturers in their products if the product manufacturers were responsible for collection and recovery in the event their products use rechargeable batteries from non-compliant battery manufacturers. The producer definition should be expanded to include a hierarchy, where DEC is able to hold the manufacturer of a product containing a rechargeable battery responsible if the manufacturer of the brand of rechargeable battery is not participating under an approved PRO plan. DEC suggests adding an additional provision to the "rechargeable battery manufacturer" definition, such as in a new paragraph (iii), indicating "where if (i) and (ii) of the subdivision do not take responsibility for the requirements of this title, the manufacturer of the product that comes with, or contains, the rechargeable battery at the time the product is sold, shall be considered the 'battery manufacturer'."

8. Require approved plans be updated at set intervals or when material changes are made to programs being implemented.

The Law only requires a plan be submitted once, which is inadequate for a law that is to operate indefinitely, and for which applicable technology is continually changing and new processors routinely join a program's downstream network. In addition, the Law did not establish a due date for annual reporting. A required reporting date should be included for manufacturers and their representatives to enable adequate DEC enforcement. Furthermore, language granting DEC the ability to rescind a plan for just cause should be added to the Law.

- 9. Allow retailers the discretion regarding receptacle placement.** For example, allow for receptacles to be placed behind a checkout or customer service counter for safety reasons. The Law currently requires consumers to have physical access to receptacles, which is not necessary if retailers have proper signage about receptacle location and staff are adequately trained on the availability of the program so that they can properly direct consumer inquiries.
- 10. Require additional information be provided at the time of annual reporting with respect to performance metrics.** It would be beneficial to have sales data provided for the PRO's participating manufacturers to allow DEC to calculate recycling rates, observe trends, and more meaningfully evaluate the program's overall performance. At a minimum, PROs should be required to self-report recycling rates if sales data is not provided to DEC.
- 11. Establish a funding mechanism, whereby DEC receives reimbursement for actual oversight expenses.** DEC does not receive any funding for the administration of the Law from manufacturers.
- 12. Adjust retailer penalty language to increase penalty amounts.** It has been shown that \$200 per violation is not a significant deterrent for noncompliance. In addition, allowing for the citation of a violation for not accepting consumer rechargeable batteries for recycling separately from a signage violation would be a helpful adjustment, as these were apparently inadvertently combined in §27-1807(1)(a) of the statute.
- 13. Modify the required retailer signage language to more accurately reflect how the program functions.** Currently, retailer signage must state, "It is illegal to dispose of rechargeable batteries in the state of New York as solid waste. We accept used rechargeable batteries for return to the manufacturer." Collected rechargeable batteries are generally not returned to the manufacturer. DEC suggests changing the term "return to the manufacturer" to "recycling."

CONTACT INFORMATION

Product Stewardship and Extended Producer Responsibility Section

Division of Materials Management, Bureau of Waste Reduction and Recycling

New York State Department of Environmental Conservation

625 Broadway, Albany, NY 12233-7253

P: (518) 402-8706 | F: (518) 402-9024 | pswr@dec.ny.gov

www.dec.ny.gov



Department of
Environmental
Conservation

