

Department of Environmental Conservation

Oversight and Enforcement of the Rechargeable Battery Law

Report 2021-S-19 | June 2022

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objective

To determine whether the Department of Environmental Conservation (Department) has adequately monitored and enforced compliance with the New York State Rechargeable Battery Law to promote the proper disposal of lithium-ion and other types of rechargeable batteries. The audit covered the period from January 2020 through September 2021.

About the Program

Every year in the United States, millions of single-use and rechargeable batteries are bought, used, and recycled or disposed of in the trash. The increased demand for batteries can be traced largely to the rapid increase in the use of small portable electronics, power tools, and other everyday items, as well as the increase in “smart” products such as small and large appliances and automobiles. Batteries are manufactured using different mixtures of chemical elements designed to meet customers’ power and performance needs. Batteries can contain metals such as mercury, lead, cadmium, nickel and silver, and lithium-ion, all of which can pose a threat to the environment and human health and safety when improperly managed at the end of their service life. These metals can pollute lakes and streams when they leak chemicals into the environment from landfills, and in the case of lithium-ion batteries can ignite and start fires at various points in the waste stream.

The Department, through its Bureau of Waste Reduction and Recycling’s Product Stewardship and Waste Reduction Unit, is responsible for overseeing required recycling and waste disposal efforts in the State. Article 27, Title 18 of the Environmental Conservation Law, referred to as the Rechargeable Battery Law (Law), took effect on December 10, 2010. The Law was enacted to reduce rechargeable batteries’ impact on the environment; however, it only covers the recycling of limited rechargeable batteries weighing less than 25 pounds, including any rechargeable nickel-cadmium, sealed lead, lithium-ion, or nickel metal hydride battery as well as any such dry cell battery capable of being recharged or battery packs containing any of the aforementioned batteries (hereafter collectively referred to as rechargeable batteries). The battery must also be removable from the device prior to recycling. Call2Recycle (C2R) – an existing rechargeable battery program funded by members of the rechargeable battery and portable electronic product industry – had, prior to the Law’s implementation, already established itself as the major vehicle for recycling rechargeable batteries for retailers and manufacturers, and still carries out much of the recycling of rechargeable batteries in the State.

Different aspects of the Law apply to manufacturers, retailers, and consumers. Manufacturers are responsible for financing the collection and recycling of rechargeable batteries, and must submit a collection and recycling plan to the Department for approval. They are also required to submit an annual report to the Department identifying the number of rechargeable batteries received in the State and recycled by quantity or weight. The Department is responsible for analysis of this information and submission of a report on such analysis to the Executive and Legislature biennially.

Retailers of rechargeable batteries are required to accept used rechargeable batteries from consumers. They must also post conspicuously placed signage informing consumers that they can return their used rechargeable batteries to the retail location for recycling and that they are prohibited from knowingly disposing of such batteries as disposable waste.

Key Findings

- The Department has not effectively monitored manufacturer or retailer compliance with the Law.
 - Although C2R has provided the Department with possible non-compliant manufacturers, the Department has taken almost no action since 2014 to ensure these manufacturers are compliant with the Law.
 - While C2R has 911 retailers enrolled in its program, of the 30 we tested, 33% did not have the required signage posted.
 - Testing found that there are at least 1,248 other potentially covered retailers that were not enrolled with C2R. We tested 72 of those retailers and found 69% did not have collection bins for consumers.
- Since the Law was enacted, no fines or penalties have been issued to a manufacturer or retailer, and the Department has never submitted the required reports to the Executive or Legislature.

Key Recommendations

- Develop and implement processes and procedures to monitor and enforce, as well as promote, compliance with the Law. This may include but not be limited to leveraging data and information received from C2R.
- Prepare and submit the biennial reports to the Executive and the Legislature, as required by the Law.



**Office of the New York State Comptroller
Division of State Government Accountability**

June 29, 2022

Basil B. Seggos
Commissioner
Department of Environmental Conservation
625 Broadway
Albany, NY 12233-1011

Dear Commissioner Seggos:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Oversight and Enforcement of the Rechargeable Battery Law*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
C2R	Call2Recycle	<i>Program</i>
Department	Department of Environmental Conservation	<i>Auditee</i>
GIS	Geographic Information System	<i>Key Term</i>
Law	New York State's Rechargeable Battery Law	<i>Law</i>
Plan	C2R's Rechargeable Battery Collection and Recycling Plan	<i>Key Term</i>
Unit	Bureau of Waste Reduction and Recycling's Product Stewardship and Waste Reduction Unit	<i>Division</i>

Background

Every year in the United States, millions of single-use and rechargeable batteries are bought, used, and recycled or disposed of in the trash. An increased demand for batteries can be traced largely to the rapid increase in the use of small portable electronics, power tools, and other everyday items, as well as the increase in “smart” products. Batteries can contain metals such as mercury, lead, cadmium, nickel and silver, and lithium-ion, which can pose a threat to the environment and human health and safety when improperly discarded. These metals pollute lakes and streams when they leak chemicals into the environment from landfills, and in the case of lithium-ion batteries can ignite and start fires at various points in the waste stream.

Lithium-ion batteries have several desirable characteristics. From an environmental health perspective, they are preferable to other rechargeable batteries because they don’t contain toxic chemicals like lead or cadmium. Their self-discharge rates – that is, the rate at which the battery will lose a charge while not in use – are low and they have high-energy density, meaning they store a large amount of energy relative to their size and weight. Lithium-ion batteries are powerful, relatively inexpensive, and lightweight energy sources that power a wide array of electronics and portable tools. They are used in consumer electronics such as wireless headphones, cell phones, laptops, tablets, and handheld gaming devices. They are also found in electric vehicles and energy storage systems. Given their usefulness, and as reported by the U.S. Environmental Protection Agency, the number of lithium-ion batteries in circulation has increased rapidly in recent years and is projected to continue rising at a near-exponential rate.

However, the high-energy density, and the materials needed to achieve it, makes lithium-ion batteries prone to combustion or explosion when they are damaged, which can cause dangerous fires if they are inappropriately disposed of.

The Department of Environmental Conservation (Department), through its Bureau of Waste Reduction and Recycling’s Product Stewardship and Waste Reduction Unit (Unit), is responsible for overseeing required recycling and waste disposal efforts in the State. Article 27, Title 18 of the Environmental Conservation Law, referred to as the Rechargeable Battery Law (Law), took effect on December 10, 2010. The Law was enacted to reduce the impact of rechargeable batteries on the environment; however, it only covers recycling of the following rechargeable batteries: nickel-cadmium, sealed lead, lithium-ion, nickel metal hydride, any other dry cell rechargeable battery, and battery packs containing any of the aforementioned batteries (hereafter collectively referred to as rechargeable batteries). The Law currently does not cover the following: batteries weighing more than 25 pounds, batteries used as the principal source for a vehicle (e.g., car, boat, golf cart), batteries for storage of electricity generated by an alternate power source (e.g., wind, solar), and batteries for memory backup that are an integral component of an electric device. The rechargeable battery must also be able to be removed from the device prior to recycling.

Hazard Case Report

In December 2021, a fire on a New York City trash barge was caused by discarded lithium-ion batteries. It took 5 hours for 60 firefighters to extinguish the fire.

In 2021, there were roughly 100 fires or smoldering events caused by lithium-ion batteries at the Brooklyn recycling facility where the barge had been docked.

The Law established a producer responsibility, or product stewardship, model along with a disposal ban to ensure the appropriate recycling of rechargeable batteries. Product stewardship allows all participants in the manufacture, sale, and use of a product to share responsibility for that product's impacts to human health and the environment. Different aspects of the Law apply to manufacturers, retailers, and consumers. Manufacturers are responsible for financing the collection and recycling of rechargeable batteries and must submit a collection and recycling plan to the Department for approval. They are also required to submit an annual report to the Department identifying the number of rechargeable batteries received in the State and recycled by quantity or weight. The Department is responsible for analysis of this information and submission of a report on their analysis to the Executive and Legislature biennially.

Generally, retailers of rechargeable batteries are required to accept used rechargeable batteries from consumers. They must also post conspicuously placed signage informing consumers that they can return their used rechargeable batteries to the retail location for recycling and that they are prohibited from knowingly disposing of such batteries as disposable waste.

Violators of the Law are subject to civil penalties, ranging from \$50 to \$200 for consumers, \$200 to \$500 for retailers, and \$2,000 to \$5,000 for manufacturers.

When the Law was enacted in 2010, Call2Recycle (C2R) – an existing rechargeable battery program funded by members of the rechargeable battery and portable electronic product industry – had already established a program to be used as the major mechanism for recycling rechargeable batteries for retailers and manufacturers. C2R operates the rechargeable battery program but it is funded by members of the rechargeable battery and portable electronic product industry. C2R submitted its Rechargeable Battery Collection and Recycling Plan (Plan) in 2011, and it was approved by the Department in 2013.

Under the Plan, C2R provides all collection containers and materials and pays all shipping, sorting, and recycling costs, so there is no cost to the public or collection sites. The Plan details the process for turning in rechargeable batteries as well as the training for collection sites on how to safely collect and transport the batteries. Batteries are initially sent to a sorting facility according to battery chemistry and ultimately sent to the final recycling destination. C2R selects recycling facilities that follow all applicable environmental, health and safety, and transportation regulations.

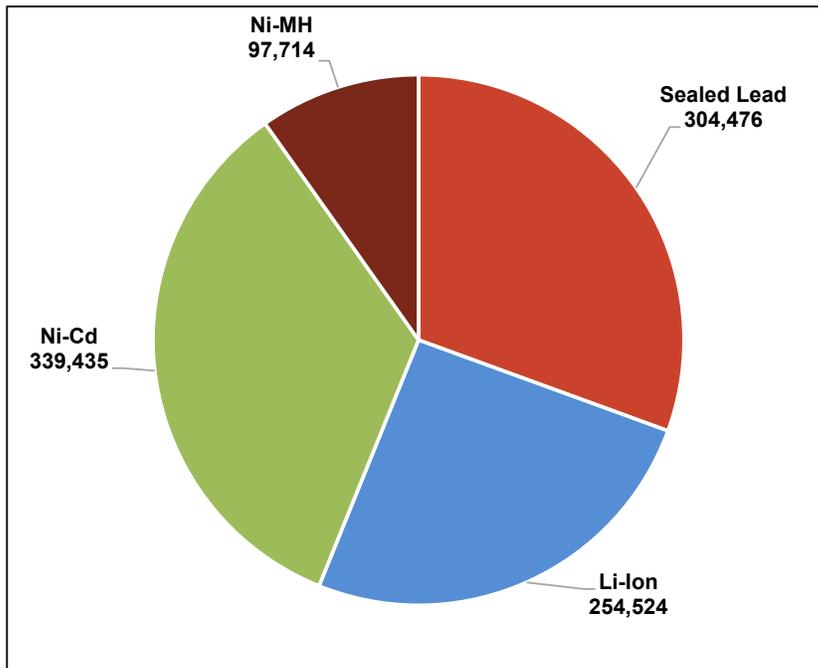
Manufacturers that choose to participate in the C2R program pay a fee and, in turn, C2R handles the collection and recycling of the rechargeable batteries on their behalf. C2R also fulfills the manufacturers' requirement to report annually to the Department.

C2R's program assists retailers in meeting their obligation under the Law by allowing them to become C2R-supported collection sites. Once enrolled, the retailer will receive collection boxes (including plastic bags in which to place the individual battery to ensure safe storage and shipping as well as prepaid boxes and postage),

required signage, and safety/handling instructions to begin their collection initiative. Retailers then send the collected batteries to a recycling facility for processing. Retailers may also be featured on C2R’s “Drop-Off Locator.”¹

According to C2R’s 2020 Annual Report, there are 189 manufacturers in the C2R program that sell rechargeable batteries within or into the State. In addition, according to a list of active retailers provided by C2R in September 2021, there are 911 retail locations that participate in C2R’s program. Between 2017 and 2020, C2R reported that their program collected a total of 996,149 pounds of rechargeable batteries – the majority being nickel-cadmium, followed by sealed lead, lithium-ion, and nickel metal hydride (see Figure 1).

Figure 1 – Total Pounds Recycled for Rechargeable Batteries, by Type, for Calendar Years 2017–2020*



*As reported by C2R.
Note: Ni-MH = nickel metal hydride; Li-Ion = lithium-ion; Ni-Cd = nickel-cadmium.

¹ C2R’s Drop-Off Locator can be found on its website at <https://www.call2recycle.org/locator/>. The Locator allows customers to enter their zip code and find retailers that accept both rechargeable and single-use batteries.

Audit Findings and Recommendations

Since the Law was passed in 2010, the Department has not adequately monitored manufacturers' and retailers' compliance with, or enforced, the Law to promote proper disposal of lithium-ion and other types of rechargeable batteries. As a result, there are limited assurances that rechargeable batteries are being recycled properly rather than finding their way into the waste stream, potentially causing hazardous environmental consequences as well as threats to human health and safety, such as in the case of fires caused by lithium-ion batteries.

Short of the efforts taken by C2R, the Department cannot verify or quantify the volume of rechargeable batteries recycled in the State. Officials also have limited information on the population of covered manufacturers or retailers subject to the Law that they are responsible for monitoring. Furthermore, although C2R has provided the Department with possible non-compliant manufacturers, the Department has taken almost no action since 2014 to ensure these manufacturers are compliant with the Law. Further, we found:

- While C2R has 911 retailers enrolled in their program, of the 30 we tested, 33% did not have required signage posted and 10% did not provide collection bins for consumers.
- At least 1,248 other retailers are potentially subject to the Law but are not enrolled with C2R. We tested 72 of those retailers and found 69% did not have collection bins for consumers.
- The Department has issued no fines or penalties to any manufacturer or retailer since the Law was passed, nor has it ever submitted a biennial report to the Executive or Legislature, as required.

The Department attributes its absence of monitoring and enforcement of the Law largely to a lack of resources. Officials stated the total number of employees in the Unit, as well as the percentage of their time dedicated to compliance with the Law, has decreased over the past several years. Officials reported that, in 2018, there were seven employees spending about 7% of their time on oversight of rechargeable battery recycling. In 2020, this decreased to three employees at 5%, and as of August 2021, it stands at five employees allocating 2% of their time. Further, they noted that the Unit is also responsible for ensuring compliance with the proper disposal of electronic waste, managing mercury products, and overseeing toxins in packaging. Despite staffing shortfalls, we conclude the Department could increase its presence – and in so doing promote compliance among manufacturers and retailers – by leveraging existing relationships and data with C2R.

Department officials stated they believe the volume of rechargeable batteries manufactured is increasing, although they cannot specifically quantify by how much. Statewide, rechargeable battery usage will likely continue to grow as more products use rechargeable batteries – including those not currently covered by the Law. For example, the State passed a law in September 2021 requiring that, by 2035, all new passenger cars and trucks sold in the State must have zero emissions. While the Law doesn't currently cover electronic vehicle batteries, they are manufactured using

the same materials and pose the same threats to human and environmental health. As the agency with the broadest authority to protect and enhance New York State's environment, the Department is likely to have some future role in the oversight of the disposal of all rechargeable batteries, regardless of size or type. Therefore, it is of paramount importance that the Department establish strong oversight controls to be able to meet its obligations now and in the future.

Manufacturer Compliance

The Department performs almost no monitoring or enforcement of manufacturers to promote compliance with the Law. Therefore, it does not have assurance that rechargeable batteries are recycled properly rather than finding their way into the waste stream, potentially causing hazardous environmental consequences and risks to human health and safety.

According to Department officials, manufacturers generally rely on C2R's rechargeable battery recycling program to ensure their compliance with the Law. While Department and C2R officials indicated that many of the manufacturers in the State have opted in to the C2R program, the Department does not have adequate data to determine the percentage of manufacturers overall.

Further, there are manufacturers that don't participate in the C2R program and have not implemented a collection and recycling program that includes a plan approved by the Department. C2R does not have the authority to enforce non-compliance with the Law – this rests with the Department; however, C2R does work to identify potentially non-compliant manufacturers by auditing their recycling bins and sorting battery brands. They then notify the Department of these manufacturers on an ad hoc basis as they are identified.

In 2014, C2R provided the Department with a list of roughly 75 non-participating manufacturers for whom they collected rechargeable batteries in their recycling bins. The Department sent out letters informing the manufacturers of the Law and its requirements, which resulted in 25 of them joining the C2R program. The Department has not initiated any follow-up action on the remaining 50 manufacturers to determine whether they have their own collection/recycling program. Therefore, they may not be in compliance with the Law. According to Department officials, some of the 50 non-participating manufacturers were determined to be outside the scope of the Law because they were manufacturers of embedded batteries or for various other reasons. However, the Department could not provide details as to why this determination was made and maintained no documentation to support the decision that these battery manufacturers were exempt.

Department officials stated that, since 2014, they have not conducted any outreach or tried to enforce the requirements for non-compliant manufacturers. The Department does not have procedures in place to identify non-compliant manufacturers, nor does it actively investigate C2R's lists of non-compliant manufacturers. Most recently, according to C2R, it sent a list to the Department in

2021 but the Department has taken no further action based on the information. The Department also has never issued any fines or penalties permitted by the Law.

In September 2021, C2R provided us with a list of 10 potentially non-participating manufacturers. We were able to contact seven of the 10, and all seven indicated that they do not have their own recycling program and do not participate in the C2R program. Two of the 10 potentially non-participating battery manufacturers identified in 2021 by C2R that we reviewed are large companies – each employing over 14,000 people and each having more than \$5 billion in revenues. These companies are potentially manufacturing a significant number of rechargeable batteries (or using batteries manufactured by others). However, it is unknown whether these companies have a recycling program that is compliant with the Law’s requirements or any program at all.

In addition to limited or no monitoring or enforcement of potentially non-compliant manufacturers, we found that the Department conducts limited monitoring of C2R’s efforts. C2R’s Plan was submitted in 2011 and approved by the Department in 2013 but has not been reviewed or updated since. Further, while C2R does submit annual reports to the Department on the number and weight of rechargeable batteries collected and recycled each year, the Department does little with the reports. The Department does not analyze the information from C2R and receives no other information from any other manufacturers.

While we recognize that staffing limitations may affect the Department’s ability to monitor and enforce compliance, it could, at a minimum, capitalize on the information and efforts from C2R to ensure compliance by those manufacturers already identified as possibly non-compliant and take enforcement action as necessary. If the Department established processes to identify these manufacturers and review and analyze the information C2R provides, it would further promote greater compliance with the Law.

The Department has also never submitted the required biennial reports to the Executive or Legislature since the Law was enacted. Therefore, decision makers, such as the Executive and the Legislature, do not have information available to them to assess whether the Law is achieving its desired outcomes and whether additional actions, including any legislative changes, are needed.

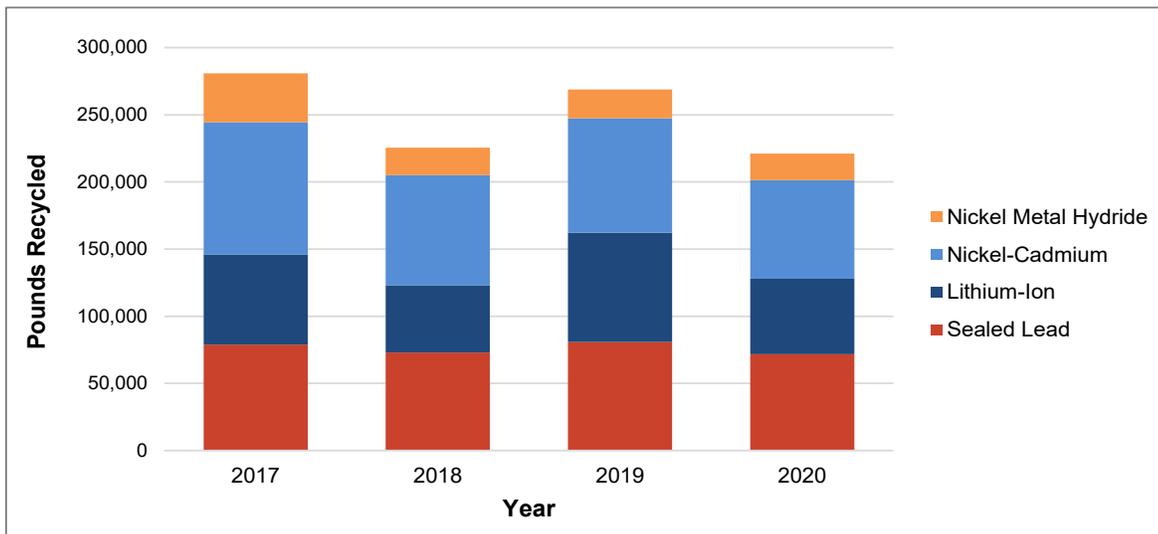
Retailer Compliance

Similar to its oversight efforts of rechargeable battery manufacturers, the Department conducts limited to no monitoring or enforcement of retailers for compliance with the Law and has limited information on the scope of retailers that are covered under the Law. Most of the retail collection and recycling of rechargeable batteries that the Department is aware of is handled through the C2R program.

According to C2R, there are 911 retail locations participating as collection sites as of September 2021. Between 2017 and 2020, C2R collected 996,149 pounds

of rechargeable batteries from retailers in New York State, with 221,039 pounds collected in 2020 (see Figure 2).

Figure 2 – Rechargeable Battery Pounds Collected and Recycled for Calendar Years 2017–2020*



*As reported by C2R.

C2R does not monitor retailers' compliance with the Law, such as ensuring collection boxes and signage are conspicuously placed and that boxes are in a location convenient for the customer. This is the responsibility of the Department; however, the Department has not established a process to monitor retail compliance. It does not perform routine inspections of known rechargeable battery retailers unless there is a complaint. Further, the Department does not record or otherwise track the number of complaints or any outcomes from complaint-based inspections and has never issued any fines or penalties to retailers for non-compliance with the Law.

Although the Department does not maintain information on the total population of retailers covered under the Law, we selected a sample of those retailers enrolled with C2R to determine if they were in compliance with the Law. We further used Geographic Information System (GIS) data to identify retailers who were not enrolled with C2R and selected an additional sample to determine if they were in compliance with the Law.

We selected 30 of the 911 active retail collection sites enrolled with C2R for testing to determine if they had collection bins and signage placed conspicuously in the store for consumers to recycle rechargeable batteries. We found:

- 3 (10%) did not have a collection bin.
- 10 (33%) had a collection bin but did not have signage.
- 5 (17%) had a collection bin, but it was not placed conspicuously in the store.

-
- 5 (17%) were unaware they were enrolled with C2R to collect and recycle rechargeable batteries.

We further identified 1,248 retailers potentially selling rechargeable batteries and/or items containing rechargeable batteries covered under the Law that were not included on C2R's list of participating retailers. We selected a sample of 72 of these 1,248 retailers and performed similar testing. We found:

- 50 (69%) did not have a collection bin.
- 5 (7%) had a collection bin, but it was not placed conspicuously in the store.
- 65 (90%) did not have signage.
- 3 (4%) did not sell rechargeable batteries and are, therefore, not covered under the Law.
- 7 (9.7%) had the appropriate bins and signage.

Note that the total number in this list exceeds 72, indicating that some retailers had more than one area of non-compliance.

Retailers are the main point of contact for consumers recycling rechargeable batteries. Given the significant non-compliance we found from those retailers not enrolled with C2R, there is increased likelihood that consumers are not recycling rechargeable batteries and that the batteries will end up in the waste stream. The Department does not provide educational materials or guidance to consumers, furthering the need for retailers to provide required signage and have it posted conspicuously to engage consumers. As with its oversight of manufacturers, if the Department leveraged information from C2R along with its own resources, it could increase its presence in promoting compliance through enforcement and education and reduce the likelihood that rechargeable batteries are inappropriately disposed of.

Recommendations

1. Develop and implement processes and procedures to monitor and enforce, as well as promote, compliance with the Law. This may include but not be limited to leveraging data and information received from C2R.
2. Prepare and submit the biennial reports to the Executive and the Legislature, as required by the Law.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine whether the Department adequately monitored and enforced compliance with the Law to promote the proper disposal of lithium-ion and other types of rechargeable batteries. The audit covered the period from January 2020 through September 2021.

To accomplish our objective, we reviewed the Law, interviewed Department and C2R officials, and reviewed their websites as related to the recycling and disposal of rechargeable batteries. We also became familiar with and assessed the Department's internal controls as they relate to our audit objective. We obtained a list of manufacturers participating in C2R's program pursuant to C2R's 2020 Annual Report as well as a list of manufacturers identified by C2R as non-participating as of September 2021.

To determine if retailers that sell applicable rechargeable batteries are in compliance with the Law, we selected multiple samples of retailers to visit, including a judgmental sample of retailers identified by C2R as collection sites and, within each Department region, random samples of retailers that were not participating in the C2R program. We obtained a file from C2R of 911 retailer locations that were actively participating in the C2R program as a collection site in the State as of September 13, 2021. From those 911 retailers, we selected a judgmental sample of 30 local retailers based on their location in and around Albany. We visited all 30 locations to determine if the retailers were in compliance with the Law by confirming if they had a collection bin, if it was placed conspicuously in the store, and if they had proper signage. At these visits, we spoke to store managers or the individual(s) in charge that day. We also verified whether each retailer is part of the C2R program.

To identify retailers not participating in the C2R program, we used GIS data and software, including statewide tax parcel information with property tax classifications,² and identified 1,413 properties that may potentially sell covered rechargeable batteries and/or items containing covered rechargeable batteries as of November 9, 2021. We cross-referenced the initial list of 1,413 locations/addresses to the list of participating C2R retailers and removed 165 that were identified on C2R's list of participating retailers. We selected random samples within nine geographic regions. In total, we selected 75 of 1,248 retailers across the State. We were unable to visit three of the 75 retailers, resulting in a sample of 72 that we were able to test. The Department did not maintain any data related to its oversight of the Law. All data on the type and amount of rechargeable batteries recycled and collected was provided by an external source (C2R); therefore, we were unable to test and cannot conclude on the data's reliability. We limited our reliance on this data when forming our audit conclusions, instead relying on other sources such as site visits or hard copy documentation where applicable. The results from our samples cannot be and were not intended to be projected to the entire population as a whole.

² Statewide parcel data included data from Suffolk County, Suffolk County Real Property Tax Service Agency 'AREIS and Tax Map' Copyright 2020. County of Suffolk, NY.

Statutory Requirements

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. These duties could be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent performance audit of the Department's oversight and enforcement of the Rechargeable Battery Law.

Reporting Requirements

A draft copy of the report was provided to Department officials for their review and formal comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of it. In general, officials agreed with our recommendations and noted steps they will take to implement them.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Environmental Conservation shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Agency Comments

OFFICE OF THE COMMISSIONER

New York State Department of Environmental Conservation
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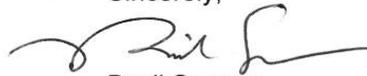
APR 18 2022

Mrs. Nadine Morrell
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, New York 12236-0001

Dear Mrs. Morrell:

The Department of Environmental Conservation (DEC) has reviewed the Office of the State Comptroller's Draft Audit Report entitled *Oversight and Enforcement of the Rechargeable Battery Law*. DEC's comments with respect to this report are contained in the enclosed document. Please contact Andrew Fischler, Director of Internal Audit, at (518) 402-9761 if you have any questions.

Sincerely,



Basil Seggos
Commissioner



Department of Environmental Conservation
Oversight and Enforcement of the NYS Rechargeable Battery Law
2021-S-19
Response to OSC Draft Report

The New York State (NYS) Department of Environmental Conservation (DEC) has reviewed the Office of the State Comptroller's (OSC) March 2022 draft audit report of DEC's oversight and enforcement of the NYS Rechargeable Battery Law (Law).

The Law's enactment has resulted in the development of a successful extended producer responsibility program, with over 2.8 million pounds of rechargeable batteries collected and recycled since its inception. In addition, the rechargeable battery recycling program (Program) boasts a robust network of over 1,000 active rechargeable battery collection sites that are funded by over 220 individual manufacturers of rechargeable batteries.

DEC generally agrees with OSC's findings and will take appropriate action to implement recommendations cited in the report. The following is our response to the report's findings and recommendations.

Findings

1. The Department performs almost no monitoring or enforcement of manufacturers to promote compliance with the Law. Department officials stated that, since 2014, they have not conducted any outreach or tried to enforce the requirements for non-compliant manufacturers.

DEC Response:

- DEC staff are currently undertaking measures to improve rechargeable battery manufacturer monitoring and enforcement. Examples include, but are not limited to:
 - hiring additional staff to aid in programmatic oversight;
 - communicating with rechargeable battery manufacturers regarding the Law's requirements and compliance reporting;
 - developing enforcement documents; and
 - coordinating with Call2Recycle, Inc. (C2R) to address incidences of manufacturers utilizing Program collection services without funding the producer responsibility organization that supports them.

2. The Department conducts limited to no monitoring or enforcement of retailers for compliance with the Law and has limited information on the scope of retailers that are covered under the Law.

DEC Response:

- DEC has conducted targeted rechargeable battery retailer inspections and issued notices of violation to two large chain retailers for programmatic non-compliance.
- DEC staff are currently undertaking measures to improve retailer compliance with the Law and Program enforcement. Examples include, but are not limited to:
 - hiring additional staff to aid in programmatic oversight;

-
- communicating the Law’s requirements to retailers of rechargeable batteries and products containing rechargeable batteries;
 - developing enforcement documents;
 - refreshing complaint tracking;
 - updating the Rechargeable Battery Law Retailer Inspection Form; and
 - performing regional staff trainings in advance of upcoming retailer inspections.
3. The Department cannot verify or quantify the volume of rechargeable batteries recycled in the State.

DEC Response:

- Through data submitted in manufacturer and producer responsibility organization annual reports, DEC staff have quantified the collection and recycling of over 2.8 million pounds of rechargeable batteries since the Program’s inception. However, a significant number of rechargeable batteries are recycled via state and regional electronic waste recycling facilities that are not a part of the Program’s purview. Therefore, verifying and/or quantifying the volume of all rechargeable batteries recycled within the State is not feasible because DEC cannot track the amount of battery weight recycled by facilities operating outside the Program.
4. Although C2R has provided the Department with possible non-compliant manufacturers, the Department has taken almost no action since 2014 to ensure these manufacturers are compliant with the Law.

DEC Response:

- DEC staff are working more closely with C2R to address incidences of manufacturers utilizing Program collection services without funding the producer responsibility organization that supports them. In addition, periodic meetings have been planned with the producer responsibility organization to discuss manufacturer compliance, among other ongoing concerns.
5. The Department has issued no fines or penalties to any manufacturer or retailer since the Law was passed.

DEC Response:

- DEC staff are developing enforcement documents and will perform outreach to rechargeable battery manufacturers regarding the Law’s requirements and compliance reporting. In addition, DEC staff are preparing to conduct rechargeable battery retailer inspections. Appropriate penalties for non-compliance will be issued based upon the response to manufacturer outreach efforts and findings from rechargeable battery retailer inspections.
6. The Department conducts limited monitoring of C2R’s efforts. C2R’s Plan was submitted in 2011 and approved by the Department in 2013 but has not been reviewed or updated since.

DEC Response:

- Once approved, there is no statutory requirement for manufacturers or producer responsibility organizations to update their Plans. In addition, C2R submits annual reports to DEC that contain information on outreach and education; participating manufacturers; the collection,

sorting, and processing flow of materials; and a listing of its downstream vendors by battery chemistry.

7. The Department does not provide educational materials or guidance to consumers, furthering the need for retailers to provide required signage and have it posted conspicuously to engage consumers.

DEC Response:

- The Department provides outreach and education to consumers; examples include, but are not limited to:
 - a web page offering rechargeable battery recycling information to consumers, as well as compliance guidance for retailers and manufacturers;
 - e-mails via DEC Delivers (Solid Waste and Recycling Newsletter) and the NYS Department of Homeland Security's Gov Delivery service encouraging consumer purchasing of rechargeable batteries over single-use batteries, as well as proper end-of-life recycling instructions;
 - consumer recycling guidance posted on the Recycle Right NY website; and
 - Facebook and Twitter posts warning of the potential fire hazards associated with improper rechargeable battery disposal as well as directing consumers to properly recycle their end-of-life rechargeable batteries.
- The Law requires rechargeable battery manufacturers to meet public education and outreach requirements.

Recommendations

1. Develop and implement processes and procedures to monitor and enforce compliance as well as promote compliance with the Law. This may include but not be limited to leveraging data and information received from C2R.

DEC Response:

- DEC staff are working to improve the process for monitoring and enforcing compliance with the Law and communicating with rechargeable battery manufacturers and retailers regarding compliance with the Law. In addition, DEC is in the process of hiring additional staff to aid in programmatic oversight.
2. Prepare and submit the required reports to the Executive and the Legislature as required by the Law.

DEC Response:

- DEC will report on its analysis of information provided by battery manufacturers to the Governor and Legislature as required by the Law.

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