

THOMAS P. DINAPOLI  
STATE COMPTROLLER



110 STATE STREET  
ALBANY, NEW YORK 12236

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

March 21, 2024

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

Re: Oversight and Enforcement of the  
Rechargeable Battery Law  
Report 2023-F-35

Dear Commissioner Seggos:

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 have followed up on the actions taken by officials of the Department of Environmental Conservation (DEC) to implement the recommendations contained in our initial audit report, *Oversight and Enforcement of the Rechargeable Battery Law* (Report [2021-S-19](#)).

**Background, Scope, and Objective**

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, silver, and lithium, which can pose a threat to the environment and human health and safety when improperly discarded, such as potentially polluting lakes and streams. Also, lithium-ion batteries can ignite and start fires at various points in their life cycle and in the waste stream.

DEC, through its Bureau of Waste Reduction and Recycling's Product Stewardship and Extended Producer Responsibility Waste Reduction Unit, is responsible for overseeing the implementation of laws regarding product stewardship and extended producer responsibilities 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 the collection and recycling of rechargeable batteries weighing less than 25 pounds, including any rechargeable nickel-cadmium, sealed lead, lithium-ion, nickel-metal hydride, and any other dry cell rechargeable battery as well as battery packs containing any of the aforementioned batteries (hereafter collectively referred to as rechargeable batteries). The covered rechargeable batteries must also be removable from the device prior to recycling. The Law currently does not cover 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 alternative

power source (e.g., wind, solar), and batteries for memory backup that are an integral component of an electronic device.

The Law established an extended producer responsibility 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 DEC for approval. They are also required to submit an annual report to DEC identifying the number of rechargeable batteries received in the State and recycled by quantity or weight. DEC is responsible for analyzing this information and submitting a report on its 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 solid waste. The retailer shall maintain collection boxes (bins) or other suitable receptacles for consumers to deposit used rechargeable batteries. 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 collection and recycling program funded by members of the rechargeable battery and portable electronic product industry – had already established a program used as a 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 DEC approved it 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' requirements to educate consumers about the program and report annually to DEC. C2R's program assists retailers in meeting their obligation under the Law by allowing them to become C2R-supported collection sites. Once enrolled, the retailers will receive training, 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."

According to C2R's 2022 Annual Report, there are 246 manufacturers in the C2R program that sell rechargeable batteries within or into the State and 3,401 active collection

sites that participate in C2R's program. Between 2013 and 2022, C2R reported that its program collected a total of 2,517,876 pounds of rechargeable batteries, the majority being nickel-cadmium, followed by sealed lead, lithium-ion, and nickel-metal hydride.

The objective of our initial audit, issued on June 29, 2022, was to determine whether DEC adequately monitored and enforced compliance with the Law to promote the proper disposal of lithium-ion and other types of rechargeable batteries. The audit found DEC was not effectively monitoring manufacturer or retailer compliance with the Law. We found C2R had 911 retailers enrolled in its program, but of the 30 we tested, 33% did not have the required signage. Further testing found at least 1,248 potentially covered retailers that were not enrolled with C2R; we tested 72 of those and found 69% did not have collection bins for consumers to return used rechargeable batteries. Our audit also found DEC had issued no fines or penalties to any manufacturer or retailer since the Law was passed, nor had DEC submitted a biennial report to the Executive or Legislature, as required.

The objective of our follow-up was to assess the extent of implementation, as of January 2024, of the two recommendations included in our initial audit report.

### **Summary Conclusions and Status of Audit Recommendations**

DEC officials have made significant progress in addressing the issues we identified in the initial audit report. Of the initial report's two audit recommendations, one was implemented and one was partially implemented.

### **Follow-Up Observations**

#### **Recommendation 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.*

Status – Implemented

DEC has developed and implemented processes and procedures to monitor and enforce, as well as promote, compliance with the Law. These procedures include issuing program guidance when contacted by manufacturers about new battery recycling programs and responding to manufacturers' recycling plans within 90 business days to confirm whether their plans were approved, denied, or in need of edits.

The procedures also require DEC staff to hold periodic meetings with approved recycling programs and identify and track potential manufacturers and potentially non-compliant retailers. DEC staff must also conduct inspections at retail stores and track consumer complaints. Additionally, DEC must contact non-compliant retailers and outline necessary procedures to get them into compliance.

DEC must also track enforcement and assess penalties to non-compliant retailers. As a result of these increased efforts, DEC issued \$12,600 in penalties for non-compliance since our initial audit.

## **Recommendation 2**

*Prepare and submit the biennial reports to the Executive and the Legislature, as required by the Law.*

Status – Partially Implemented

DEC has drafted a report for submission to the Executive and Legislature. We reviewed the draft report and found it contains information related to collection results and the number of drop-off sites, results of retail store inspections, and suggested legislative changes to increase compliance and penalties for non-compliance. This report is scheduled to be submitted to the Executive and Legislature during the first quarter of the calendar year 2024.

Major contributors to this report were Theresa Nellis-Matson, Jennifer Bordoni, and Usman Khan.

We thank DEC management and staff for the courtesies and cooperation extended to our auditors during this follow-up.

Very truly yours,

Amanda Eveleth, CFE  
Audit Manager

cc: Andrew B. Fischler, DEC