



Recharging the planet. Recycling your batteries.™

**Statement of Carl E. Smith, CEO / President, Call2Recycle, Inc.  
Before the House Committee on Natural Resources and Energy  
On H.695  
February 18, 2014**

My thanks to the Committee for the opportunity to testify. My name is Carl Smith and head Call2Recycle, Inc., North America's oldest and arguably most successful product stewardship program. We've been collecting rechargeable batteries for almost 20 years and recently expanded to collecting all consumer batteries throughout Canada. Last year alone, we collected 11.6 million pounds of batteries in North America. In the state of Vermont, we have over 100 participating collection sites and have collected close to almost 200,000 pounds since the inception of our program. Our two most active collection locations are Chittenden and Addison counties.

I'm here also representing PRBA – the Rechargeable Battery Association, that represents manufacturers of battery and product manufacturers that use rechargeable batteries.

I am testifying today in strong support of H.695. We understand the burden that batteries place on municipal hazardous waste organizations, many of whom we work with in this state regarding the rechargeable batteries they collect. We obviously believe in product stewardship for batteries of all types. We applaud and support the committee's efforts in addressing this issue.

Based on our experience in legislation and developing plans for states and provinces, we have some relatively minor changes in content that we'd like to suggest to the bill as recently revised. I'd like to briefly explain them now. I think you'll find that they don't in anyway affect the bill's intent – they just assist in implementation. I'll generally explain them and have provided the committee specific information [shaded in blue, which I won't read] to actually affect these changes.

We have also submitted what we think are editorial changes for clarity and consistency for consideration, none of which should directly affect content. We have provided this at the end of this document.

We believe that any bill like this is fundamentally about optimizing the collection of primary batteries even if it's collected from a rechargeable program. This bill recognizes this issue by stating that an approved rechargeable plan may seek reimbursement for costs incurred in collecting primary batteries from an approved primary battery program operator. Regarding the definition of an approved plan is where we have three substantive suggestions.

An approved rechargeable plan support any interested municipal government, certified solid waste management facilities or retailer as a collection site. Collecting rechargeable batteries and, in fact, certain primary batteries, has some inherent safety risks. Their handling and transport are regulated by the USDOT, amongst other government agencies. We monitor collection site management of these batteries very closely and occasionally, must suspend sites from our program for their lack of diligence in handling these batteries. Municipal governments and certified solid waste management facilities are generally very well trained on these issues and we rarely run into incidences with them. Retailers are more likely to have some issues. No surprise -- handling dangerous goods is not often in their job descriptions. The way this bill is currently written, we must keep a retailer in the program if they want to participate even if they have had significant safety and compliance issues. We would like the flexibility to suspend sites from a program is they do not comply with program rules. Specifically, we would like add language on page 12, line 14 at the end of the sentence "...as long as the sites follow program rules and government regulations".

Second, the bill is not always clear on what services an approved stewardship plan should be providing retailers. The same requirements seem to apply whether the retailer is a small kiosk in a mall or a large big box store. A plan should have the flexibility on what types of retailers it can best serve but still keeping in mind the accessibility aspirations that the law seeks to achieve. We would suggest some changes in this area that could be reflected in the plans that are submitted.

The bill includes inconsistent provisions relating to what services a primary battery stewardship program should be providing to retailers. Given the range of size of retailers, and the number in the state and the fact that experience has shown that some retailers are unable or unwilling to comply with necessary instructions (such as those relating to assuring safety in transportation and avoidance of inappropriate material being put into collection boxes, program operators

must be able to limit the retail locations they serve. This is not to say that all services shouldn't be free to consumers – they should. But program operators must have greater flexibility than the current draft provides to choose among and assure regulatory compliance by retailers.

To avoid confusion on this issue, the following revisions should be made:

- a. Revise Section 7585(b)(2), p. 11, line 7, to read “for the collection of primary batteries from consumers at no cost to consumers.”
- b. Revise Section 7585(b)(3)(A), page 11, line 12 to read: “All retailers who meet requirements specified in the plan that sell primary batteries ....”

Third, you might be surprised to know that there are some retailers that have formalized battery take back programs as part of their overall business strategy. Some are national chains and some are local “mom and pop” stores. We think this is great and want to encourage and not deter this type of behavior. The bill should not cause anyone to stop collecting. We'd like to recognize this phenomenon and not discourage their desire to collect. Currently, the bill limits what a rechargeable battery stewardship organization can be. We are suggesting language to recognize many types of organizations may collect batteries.

The definition of “rechargeable battery stewardship organization” (Section 7581(16), p. 6, line 1-11) is a not the definition of such an organization, but the definition of a rechargeable battery steward. The text of the definition should be designated as such, and the following text added as the definition of “rechargeable battery stewardship organization”: “an entity registered by the Secretary pursuant to Section 7590 that is either a single rechargeable battery steward operating on its own behalf; an organization appointed by one or more rechargeable battery stewards to operate that plan in which each steward is participating; or a retailer or franchisor or retailers operating a plan on behalf of itself or its franchisees.” Subsequent definitions should then be renumbered. Relatedly, Section 7591(a), page 21, lines 11-12, should be revised to refer to “the rechargeable battery steward” of the collected batteries “or, where that steward is participating in a rechargeable battery stewardship organization, that organization.”

In this same regard, an individual organization, like one of the aforementioned retailer, should be able to submit a plan to operate as a stewardship organization. There are retail chains that collect batteries as part of their business models and should be able to submit a plan as long as they collect any such batteries returned to their retail locations.

As they now appear, the registration requirements for rechargeable battery stewardship organizations (Section 7584(b) (3), page 11, lines 10-16 and Section 7590, pages 20-21) work only for multiparty plans. The requirement of Subsections 7584(b) (3) and 7590 (b) (2) should

be limited only to multiparty plans, and should be added requiring that plans operated by a single rechargeable battery steward on its own behalf collect used rechargeable batteries at all locations at which the steward's batteries are sold, and that plans operated by a retailer or a franchisor on behalf of its franchisees collect used rechargeable batteries at all of the retailer or franchisor's retail locations in Vermont. Most logically, this would become a new subsection 7584(b) (4), on page 11, with subsequent subsections renumbered, and limitation of subsection 7590(b) (2) to apply only to multiparty plans.

When we view a primary battery stewardship bill, our overriding concern is to ensure that our existing rechargeable collection footprint isn't overwhelmed by primary batteries for which we have no revenue stream to finance their collection and recycling. We believe that rechargeable organizations should be fairly compensated if they coincidentally collect primary batteries. For instance, we would like the bill to allow rechargeable battery plans to be able to seek reimbursement from producers of primary battery products as operators of primary battery plans are afforded.

Section 7589(b), page 20, lines 2-6, authorizes primary battery producers or stewardship organizations to seek reimbursement from producers of primary-battery containing products, but the same authority is not granted rechargeable battery stewards. To correct this, Section 7591(b), page 21, line 21, should be amended by adding, after the word "producer," the phrase ", producer of a primary-battery containing product".

In a similar regard, the reimbursement to plan for costs should be fair and reflect the costs incurred in collecting, transporting, sorting and processing batteries. However, there is language in the bill that attempts to reimburse for something less than actual costs. We think that this should be corrected.

Section 7592(a) (3), p. 23, lines 5-9, limits reimbursement to the costs of the lower of the programs at issue. This makes no sense: reimbursement should be for the actual cost incurred by the program that collects used batteries for which another steward or program is responsible. The reasonableness of the request will be assured by other elements of the reimbursement scheme, including the opportunity to obtain an independent verification and, ultimately, judicial review.

Again, we have some other minor editorial suggestions that we have submitted to you at the end of this. We'd also like to answer any questions you may have on our feedback or on battery product stewardship in general.

In close, we are ardent support of this bill and are poised to assist Vermont in becoming the first state in the country to adopt a primary battery product stewardship policy. This precedent setting legislation will clearly establish the mechanism by which this waste stream should be handled and, more importantly, financed. We stand by to support your efforts as the bill progresses through the legislative process.

Thank you for listening to our input.

#### **GENERAL LANGUAGE CHANGES:**

1. To avoid confusion over who is “participating” in a particular program (which is relevant, for example, to Section 7583(a), p. 9, lines 3-6), a definition should be added to Section 7581. Assuming continued alphabetical organization of that section, it would be a new definition (9), at page 3, line 3, and all subsequent definitions would be renumbered. The definition should read:

(9) “Participate” means to appoint a stewardship program or rechargeable battery stewardship organization to operate on behalf of oneself and to have that appointment accepted by the stewardship program or organization.

2. Requirements for registration forms (Section 7583(c)(1), p. 9, line 20 and Section 7588(a), page 18, line 11) both say the form from the should include information, but the form should only require the entity filling out the form to provide it. To clarify, in both sections the words “shall include” should be replaced by “shall require provision of the following information”.

3. Section 7585(a) (6), page 14, line 17, requires that an annual report identify any material change in a plan. But Section 7586(b), page 16, lines 1-4, requires that the Secretary approve any changes. To avoid confusion, Section 7585(a) (6) should be revised by adding after the word “plan” the phrase “approved by the Secretary pursuant to Section 7586(b)”.

4. The retailer obligation in section 7587(a) (p. 17), lines 6 – 11, is only that the retailer looks at the website, not that the retailer not sell product from producers not identified on the website. The following language should be added at the end of that subsection (line 11) “, and shall not sell or offer to sell any primary battery unless the producer is identified on that site as implementing an approved plan or is a member of a stewardship organization that is implementing a plan approved under Section 7586.”

5. Section 7591(a)(2), p. 21, line 18, authorizes reimbursement of “authorized costs,” but that term is not defined. The phrase “authorized costs” should be replaced with “direct costs.”

6. Section 7591(c), p. 22, line7, defines “direct costs” with a reference to “other methods of approved disposition,” but that phrase is not defined anywhere. It seems likely that what is

meant are the methods described in an approved plan (see Section 7584 ((b)(4), pp. 11, line 20 to p.12, line 3). This ambiguity can be corrected by replacing the phrase “and other methods of approved disposition” in line 7 with the phrase “and other methods of disposition identified in a plan approved pursuant to Section 7586.”

7 The reference to “another producer” in Section 7593(a)(1), p. 24, line 14, should be to “that other producer,” not to any other producer.

8. The word “primary battery” should be deleted from Section 7593(d)(1), p. 27, line 8, since the term “producer” is limited to primary battery-related entities.