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**Statement of Carl E. Smith, CEO / President, Call2Recycle, Inc.
Before the Senate Committee on Natural Resources and Energy
H.695 – An Act Relating to Establishing a Product Stewardship Program for Primary Batteries
April 11, 2014**

Thank you, Mr. Chairman, and to members of the Committee for the opportunity you've given me and my organization to provide comments on this matter.

My name is Carl Smith and I head Call2Recycle, Inc., North America's oldest and arguably most successful product stewardship program. Last month, we celebrated our 20th anniversary of collecting rechargeable batteries. 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 200,000 pounds of batteries in the state since the inception of our program. Our two most active collection locations are Chittenden and Addison counties.

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 to manage the batteries they collect. Municipalities can incur significant cost in diverting household batteries from landfill and H.695 provides them a vehicle to offset some of these costs. We obviously believe in product stewardship for batteries – that's what we do. We applaud and support the committee's efforts in addressing this issue.

We have two overriding issues about this bill and other bills like it which we'd like to discuss with you. Also, 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, which I will cover after my two substantive comments.

When we view a proposed primary battery stewardship bill, our most significant 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 management. We believe that rechargeable stewardship organizations like ours should be fairly compensated if they collect primary batteries. We must ensure that the bill continues to contain provisions that allow rechargeable battery plans to seek reimbursement from primary battery stewardship

organizations when rechargeable plans receive primary batteries in their collection stream. This is THE fundamental basis for our support.

The current language does allow that although we have suggested further language later for clarification.

Second, for most of our 20 year existence, we have opposed mandatory product stewardship, believing that an inspired and diligent industry could successfully run an effective stewardship program. We certainly have. But over the last several years, it has become increasingly clear that voluntarily programs cannot survive long-term unless there is a strong mechanism to ensure that all players in the industry comply. It wasn't necessary for us in 1994; it is now. Similarly, the success of this bill depends on ensuring that a combination of the state government and industry can identify, persuade and perhaps coerce compliance of every prospective primary battery steward that conducts business in the state. Otherwise, the program will disadvantage those companies that are fulfilling their responsibilities and benefit those that avoid them.

Finally, I'd like to cover some minor wording changes. The actual legislative language will be separately provided by PRBA – the Rechargeable Battery Association.

1. Inclusion in the definition of “primary battery producer” (Section 7581(11)) of suppliers of products sold into Vermont containing or packed with primary batteries. Any primary battery stewardship program will be required to collect these batteries, and there is no reason that the companies that are the source of them should obtain a “free ride” at the expense of others. This principle already is recognized in the definition of “rechargeable battery steward” (Section 7581(16)) and is equally applicable to primary batteries.

2. The use of the word “direct costs” in the reimbursement provisions and the definition of that phrase in Section 7589(c) should be replaced with the single word “costs” and a simple definition that includes all costs of collecting, sorting and recycling or otherwise properly handling collected batteries. The concept of a “negotiated amount,” which is included in the current definition, is inconsistent with the idea of allowing an auditor or court to set

reimbursements where the parties cannot agree. And the “not to exceed 10%” limitation is wholly arbitrary. Auditors and, if necessary, courts, are fully able to apply standard accounting principles to allow reimbursement for actual overhead and other indirect costs.

3. The provisions that have the effect of making an auditor’s evaluation of a claim for reimbursement not reviewable (*e.g.*, Sections 7590(a)(4) and 7591(e)) should be removed. Fundamental due process requires that a claimant have the opportunity to challenge an auditor’s disallowance of any of its claimed costs.

4. Rechargeable battery stewardship organizations should be granted the same right to collect costs from primary producers who wholly shirk their responsibilities (Section 7591) as primary battery stewardship organizations.

5. Limitations on bringing actions directly against individual primary battery stewards who are participating in approved plans (*e.g.*, Section 7591(f)(1)) should be eliminated. Stewardship organizations may well have few assets beyond their projected current expenses, and if suit must be brought to obtain reimbursement, the plaintiff should have assurance that any judgment it obtains will be paid.

In close, we are ardent supporters of this effort and are poised to assist Vermont in becoming the first state in the country to create a primary battery product stewardship program. 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.