



April 4, 2014

The Honorable Sen. Robert M. Hartwell
Vermont Senate
Senate Committee on Natural Resources and Energy (Room 8)
Vermont State House
Montpelier, VT 05602

Re: H.695

Dear Chairman Hartwell:

I write to set forth the position of the rechargeable battery industry on H. 695.

We believe that H. 695, in its current form, is fundamentally sound, but that a few provisions should be reconsidered and revised. With appropriate revisions to those provisions, we will be in a position to enthusiastically support the bill.

However, we understand that the National Electric Manufacturers Association (NEMA) or some among their membership may attempt to remove H.695's current provisions that provide for reimbursement among competing primary battery stewardship programs and rechargeable battery stewardship programs. If this change does occur, the bill would be fundamentally unfair, and we would be obliged to vigorously oppose it.

We thus respectfully request an opportunity to testify and explain our position at any hearing held on the bill, and to suggest specific amendments that would make it acceptable to us, and look forward to working with you and your staff to address them. In the meantime, we explain our position below.

Background

The members of PRBA-The Rechargeable Battery Association come from several industry segments. They include manufacturers of the vast majority of portable rechargeable batteries produced in the world today, leading manufacturers of consumer, medical and defense products that incorporate those batteries, companies developing and manufacturing the batteries that will bring to market a new generation of hybrid and plug-in electric vehicles, and companies involved in research, development, distribution and sales of batteries and battery-containing products. These companies range from some of the largest corporations in the world to manufacturers and distributors who are small businesses.

Our association was founded in 1991 to address the stewardship of used rechargeable batteries produced by the burgeoning consumer electronics industry. We have set the standard for industry-sponsored product stewardship activity. Twenty years ago, our members

PRBA - The Rechargeable Battery Association

1776 K Street, NW

Washington, DC 20006

www.prba.org - prbatt@gmail.com

incorporated the not-for-profit company that runs the rechargeable battery recycling program now known as Call2Recycle, Inc. Today, the Call2Recycle® program is supported by over 200 battery and portable product manufacturers, who pay all of its costs. In addition, several of our members operate individual used battery collection programs.

Call2Recycle® is widely recognized as the most successful voluntary industry product stewardship program in the world. Last year, Call2Recycle® collected almost 12 million pounds of used batteries in the U.S. and Canada, over 39,000 pounds of which were collected from about 330 retail, governmental, industrial and institutional locations in Vermont.

PRBA has worked with NEMA for many months to try to develop model consumer battery (including primary) recycling legislation that would both foster recycling of these products and not destroy the existing, very successful, Call2Recycle® program. The model legislation would also create a seamless approach to all consumer batteries. H. 695 represents the near-culmination of this effort. Unfortunately, however, late last year NEMA chose to withdraw from the collaboration rather than proceed to a full agreement, and a few aspects of the model bill remained unresolved.

Thus, there is much in H. 695 with which PRBA is comfortable. There are a few provisions in the bill, however, which we think should be amended or removed.

Improvements PRBA Seeks to the House-Passed Version of H. 695

If your committee proceeds to consider H. 695 in its current form – most importantly, while retaining the current provisions that provide for reimbursement among competing primary battery stewardship programs and rechargeable battery stewardship programs (*e.g.*, Sections 7584(b)(7), 7589 – 7591) – we nonetheless believe the following revisions should be considered:

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.

With these revisions, we will be in a position to enthusiastically endorse this bill.

Why PRBA Must Oppose A Bill That Does Not Provide Satisfactory Reimbursement Provisions

As noted above, it is our understanding that NEMA intends to ask your Committee to delete all reimbursement provisions from the bill. We strongly oppose doing so.

There are three reasons for our position. First, passage of a bill without adequate reimbursement provisions would inundate the Call2Recycle® program with used primary batteries, without assuring funding for their collection and recycling. Second, it almost certainly would force the shrinkage of the program's existing 150-retail store collection system, thus reducing used rechargeable battery collections. Third, it would exempt a significant segment of battery suppliers from responsibility for the collection and recycling of batteries they make available in the state.

Explaining the first of these reasons requires a bit of background. The Call2Recycle® program provides collection boxes to retailers at 150 locations throughout Vermont. Already, with no mandatory nonrechargeable battery recycling, used primary batteries make up about 5.5% of the batteries collected (by weight). However, the cost of handling those primary batteries falls entirely on the rechargeable battery industry supporters of Call2Recycle® – they get no subsidy or reimbursement from primary battery producers.

This is unfair, but at the current low level it has been a cost our industry has been willing to bear. But passage of H. 695 is certain to substantially increase this burden. Used primary batteries outweigh used rechargeable batteries approximately 10:1. No effort by Call2Recycle® to discourage placement of primary batteries in its collection boxes is likely to be more than partially successful. The additional costs that would be imposed on Call2Recycle® –and its current funders – would be enormous.

As to our second concern, it is foreseeable that many retailers who now collect used rechargeable batteries with boxes and displays provided by the Call2Recycle® program will be reluctant to continue to participate in the program if they must also collect used primary batteries through a second one. Display space is one of a retailer's most valuable assets. No retailer is likely to be willing to display two used battery collection boxes – one for primaries and one for rechargeables. And, even if they did, consumers are likely to find the dual display more confusing than helpful. The inevitable result will be lower rechargeable battery collections, and frustration of the Call2Recycle® program.

In theory, both of these concerns might be mitigated if the Call2Recycle® program was expanded to include both rechargeable and primary batteries. But that assumes a willingness on the part of primary battery producers to support such an expanded program. To date, some major producers would support this approach but others have declined to do so. And, if Call2Recycle® proceeds with an expanded program with support from the suppliers of only a small fraction of the primary batteries reaching Vermont, it will be deluged with used batteries that came into the market from nonsupporters, but have no funds to handle them.

Third, the bill currently exempts a significant portion of the suppliers of batteries to Vermont consumers from paying their fair share of stewardship costs. These are the producers and distributors of products that include or come packaged with primary batteries. Used primary batteries are to be collected whether they originally reached Vermont as components in (or packaged with) consumer products or as replacement units. And the costs of handling these batteries are the same. Moreover, excluding one set of suppliers simply increases the costs borne by others.

Taken together, these considerations mean that a version of H. 695 that did not include comprehensive reimbursement provisions would have the effect of penalizing the one sector of the consumer battery industry that has long stepped up to carry its product stewardship obligations – and, in fact, has been a model for other industries – while not imposing full collection and recycling costs on primary battery suppliers. This would be unacceptable.

Conclusion

Our industry's longstanding commitment to product stewardship makes us natural supporters of legislation like H. 695. We are hopeful, therefore, that the concerns we have identified above can be addressed. To this end, we will be providing our representatives Kevin Ellis and Bryan Mills with appropriate legislative language, and look forward to working with you and your staffs to accommodate our concerns.

Sincerely,

George A. Kerchner

George A. Kerchner
Executive Director