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May 19, 2017

The Honorable Steve Englebright, Chair, Environmental Conservation Committee
New York State Assembly

The Honorable Tony Avella, Vice Chair, Environmental Conservation Committee
New York State Senate

RE: Recommendations for A6280/S1448; Battery Stewardship

Dear Assemblyman Englebright and Senator Avella:

As outlined in our previous letter to Senator Avella, dated May 3, 2017, the NY Product Stewardship Council supports the intent of A6280/S1448, but respectfully suggests certain revisions to improve the overall success and sustainability of the resulting program. To that, below, please find suggested language for each point of consideration described in the original letter:

- **Eliminate “Carve Outs”:** “Carve outs” are exemptions in the bill for certain types of batteries (i.e., medical device batteries, business to business batteries) that allow the manufacturers of those batteries to be sold in the state, but not “finance” a collection and recycling program. As obligated, those batteries are ultimately collected by the stewardship organization, which incurs the cost to collect and recycle those batteries. These “carve outs” place undue financial burden on those companies mandated to participate. Removing such “carve outs” from the bill is needed to establish a level playing field so that these battery manufacturers do not incur costs of recycling batteries from products whose manufacturers do not contribute to covering that recycling cost. We believe eliminating these “carve outs” will produce a fair and equitable law that yields a sustainable battery recycling program for New Yorkers.

To achieve this, we recommend the following:

1. Remove: Section 27-1601 7.(A), which exempts “batteries intended for industrial, business to business, warranty or maintenance services, or nonpersonal use” from the definition of “Primary Battery;”
2. Replace Section 27-1602 7.(C), which exempts “A battery that is sold or used in a medical device regulated by the United States Food and Drug Administration” from the definition of “Primary Battery” with the following language instead “A battery contained within a medical device, as specified in Section 360c of Title 21 of the United States Code, if, when the device or battery is discarded, the device or battery must be treated as infectious waste.”
3. Including with the definition of “Producer” (Section 27-1601 9.) that “A producer does not include any person who manufactures, sells,

offers for sale, distributes or imports into the country for sale in the state a primary-battery-containing product if such product uses only primary batteries supplied by a producer participating in an approved battery stewardship plan.”

- **Include a Private Right of Action:** To support the enforcement measures of the NYS Department of Environmental Conservation, a “private right of action” provision would allow stewardship organizations the ability to recoup costs incurred from handling and recycling batteries from non-compliant manufacturers by filing a civil suit. This provision would allow the stewardship organization to recover its cost for handling non-compliant batteries without burdening the Department of Environmental Conservation with less significant enforcement measures. Attached please find the “private right of action” section from the state of Vermont’s primary battery stewardship law. We believe this section provides the detail to ensure the resulting law is enforced and followed.
- **Increase the Minimum Number of Drop-Off Locations per County:** NYPSC estimates that 7 million pounds of unwanted alkaline batteries could potentially be collected annually for recovery and recycling; this will simply not occur without a sufficient number of convenient drop off locations for residents. We recommend replacing Section 27-1605. 2. C.(II) with the following language: “Provide, at a minimum, two drop off locations for all counties of less than 50,000 people; three drop off locations for counties between 50,000 and 100,000 population and, for all counties above 100,000 in population, one collection location per each 50,000 in population.”
- **Ensure the Administrative Fee Goes to NYSDEC to Oversee and Enforce the Law:** We recommend the following language be added to Section 27-1613. Administrative Fee as a new sub-section 3: “The fees paid by producers shall be used to cover the department's actual costs for program plan and annual report review, administration and enforcement.”
- **Ensure that Button/Coin Batteries are Included:** We recommend revising the “Primary Battery” definition in Section 27-1601. 7. to read “‘Primary Battery’ means all non-rechargeable batteries weighing two kilograms or less, including, but not limited to, alkaline, carbon-zinc, lithium metal, and button/coin batteries (including hearing aid batteries).”
- **Disposal Ban:** We recommend including the following language: “No person shall knowingly dispose of primary batteries as solid waste at any time in the state.”
- **Add a Performance Goal as Part of Plan Requirements:** We recommend adding the following to Section 27-1605 2. (Primary Battery Stewardship Plan; Minimum Requirements.), a new sub-section “G.” that includes the following language: “The establishment of performance goals to measure the success of the program and a description of how the program will be designed to meet or exceed those goals.”

We are prepared and willing to assist in any way. Thank you for your consideration and continued strong leadership on this important issue.

Respectfully,



Andrew J. Radin
Board Chair
New York Product Stewardship Council