

103^D CONGRESS
2^D SESSION

H. R. 4528

Entitled the “Mercury-Containing and Rechargeable Battery Management Act”.

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 1994

Mr. RICHARDSON (for himself, Mr. COLEMAN, Mr. EHLERS, Mr. FROST, Mr. UPTON, Ms. VELÁZQUEZ, and Mr. WASHINGTON) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

Entitled the “Mercury-Containing and Rechargeable Battery Management Act”.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Mercury-Containing
5 and Rechargeable Battery Management Act”.

6 **SEC. 2. CONGRESSIONAL FINDINGS.**

7 The Congress finds the following:

8 (1) On the basis of available scientific and med-
9 ical evidence, exposure to toxic metals including mer-

1 cury, cadmium and lead, is of concern to human
2 health and the environment.

3 (2) The presence of toxic metals in certain used
4 batteries is of concern, in light of the substantial
5 quantity of used batteries discarded annually in the
6 solid waste stream, and the potential environmental
7 and health consequences associated with land dis-
8 posal, composting or incineration.

9 (3) It is in the public interest to reduce the
10 quantity of toxic metals entering solid waste land-
11 fills, incinerators and composting facilities by phas-
12 ing-out the use of mercury in batteries and by pro-
13 viding for the efficient and cost effective collection
14 and recycling or proper disposal of used nickel cad-
15 mium, small sealed lead-acid regulated batteries and
16 any other regulated battery, and to educate the pub-
17 lic concerning the collection, recycling and proper
18 disposal of such batteries.

19 (4) Uniform national labeling requirements for
20 regulated batteries, rechargeable consumer products
21 and product packaging will significantly benefit pro-
22 grams for regulated battery collection and recycling
23 or proper disposal, and thus will benefit human
24 health and the environment.

1 (5) It is in the public interest to encourage re-
2 cycling by persons who participate in collection, stor-
3 age, transportation, and recycling of used nickel-cad-
4 mium, small sealed lead-acid or any other regulated
5 batteries, and such batteries used in consumer prod-
6 ucts.

7 (6) It is in the public interest and will create
8 economic efficiencies to allow persons who partici-
9 pate in projects or programs to collect and properly
10 manage used batteries or battery-powered products
11 to enter into agreements with other participating
12 persons to include the costs of operating such pro-
13 grams in the price of such batteries and battery
14 powered products.

15 **SEC. 3. DEFINITIONS.**

16 For the purposes of this Act:

17 (1) The term “Administrator” means the Ad-
18 ministrator of the Environmental Protection Agency.

19 (2) The term “battery pack” means any com-
20 bination of rechargeable batteries containing one or
21 more regulated batteries that commonly has wire
22 leads, terminals and dielectric housing.

23 (3) The term “easily removable” means the bat-
24 tery or battery pack is either detachable or remov-
25 able from a consumer product by a consumer with

1 the use of common household tools at the end of the
2 life of the product.

3 (4) The term “rechargeable battery” means any
4 type of enclosed device or sealed container consisting
5 of one or more voltaic or galvanic cells, electrically
6 connected to produce electric energy, that is de-
7 signed to be recharged for repeated uses. Such term
8 shall not include—

9 (A) any lead-acid battery used to start an
10 internal combustion engine or as the principal
11 electrical power source for vehicles, including
12 but not limited to automobiles, trucks, con-
13 struction equipment, motorcycles, garden trac-
14 tors, golfcarts, wheelchairs and boats;

15 (B) any lead-acid battery used for load lev-
16 eling or for storage of electricity generated by
17 alternative energy sources, such as (but not lim-
18 ited to) solar cells or wind driven generators;

19 (C) any battery used as a backup power
20 source for memory or program instruction stor-
21 age, timekeeping, or any similar purpose that
22 requires uninterrupted electrical power in order
23 to function if the primary energy supply fails or
24 fluctuates momentarily; and

25 (D) rechargeable alkaline batteries.

1 (5) The term “rechargeable consumer product”
2 means any product that when sold at retail includes
3 a regulated battery as a primary energy supply, and
4 that is primarily intended for personal or household
5 use. Such term shall not include any product that
6 only uses a battery solely as a backup power source
7 for memory or program instruction storage, time-
8 keeping, or any similar purpose that requires unin-
9 terrupted electrical power in order to function if the
10 primary energy supply fails or fluctuates momentar-
11 ily.

12 (6) The term “regulated battery” means any
13 rechargeable battery that contains a cadmium or a
14 lead electrode or any combination thereof, and such
15 other electrode chemistries as determined by the Ad-
16 ministrator pursuant to Section 103(e).

17 (7) The term “remanufactured product” means
18 a rechargeable consumer product that has been al-
19 tered by the replacement of parts, repackaged, or re-
20 paired after initial sale by the original manufacturer.

21 (8) The term “mercuric-oxide battery” means a
22 battery that uses a mercuric-oxide electrode.

23 (9) The term “button cell” means any button-
24 shaped or coin shaped battery.

1 **SEC. 4. INFORMATION DISSEMINATION.**

2 The Administrator shall, in consultation with rep-
3 resentatives of rechargeable battery manufacturers, re-
4 chargeable consumer product manufacturers and retailers,
5 establish a program to provide information to the public
6 concerning the proper handling and disposal of used regu-
7 lated batteries and rechargeable consumer products with
8 nonremovable batteries.

9 **SEC. 5. ENFORCEMENT.**

10 For the purposes of this Act:

11 (1) Whenever on the basis of any information
12 the Administrator determines that any person has
13 violated or is in violation of any requirement of this
14 Act, the Administrator may issue an order assessing
15 a civil penalty for any past or current violation, re-
16 quiring compliance immediately or within a reason-
17 able specified time period, or both, or the Adminis-
18 trator may commence a civil action in the United
19 States district court in the district in which the vio-
20 lation occurred for appropriate relief, including a
21 temporary or permanent injunction.

22 (2) Any order issued pursuant to this sub-
23 section shall state with reasonable specificity the na-
24 ture of the violation. Any penalty assessed in the
25 order shall not exceed \$10,000 for each such viola-
26 tion. In assessing such a penalty, the Administrator

1 shall take into account the seriousness of the viola-
2 tion and any good faith efforts to comply with appli-
3 cable requirements.

4 (3) Any order issued under this section shall
5 become final unless, no later than thirty days after
6 the order is served, the person or persons named
7 therein request a public hearing. Upon such request
8 the Administrator shall promptly conduct a public
9 hearing. In connection with any proceeding under
10 this section the Administrator may issue subpoenas
11 for the attendance and testimony of witnesses and
12 the production of relevant papers, books and docu-
13 ments.

14 (4) If a violator fails to take corrective action
15 within the time specified in a compliance order, the
16 Administrator may assess a civil penalty of not more
17 than \$10,000 for the continued noncompliance with
18 the order.

19 **SEC. 6. INFORMATION GATHERING AND ACCESS.**

20 For the purposes of this Act:

21 (1) Any person who is required to carry out the
22 objectives of this Act, including but not limited to
23 (1) regulated battery manufacturers, (2) recharge-
24 able consumer product manufacturers, (3) mercury
25 containing battery manufacturers, or (4) their au-

1 thorized agents shall establish and maintain such
2 records and report such information as the Adminis-
3 trator may by rulemaking reasonably require to
4 carry out the objectives of this Act.

5 (2) The Administrator or his authorized rep-
6 resentative upon presentation of his credentials may
7 at reasonable times have access to and copy any
8 such records required to be maintained under para-
9 graph (1) of this section.

10 (3) The Administrator shall maintain the con-
11 fidentiality of such documents and records that con-
12 tain proprietary information.

13 **SEC. 7. STATE AUTHORITY.**

14 Except as provided in sections 103(f) and 104, relat-
15 ing to requirements and the labeling of rechargeable bat-
16 teries, battery packs, or rechargeable consumer products
17 or packages containing such products, nothing in this Act
18 shall be construed so as to prohibit a State from enacting
19 and enforcing a standard or requirement that is more
20 stringent than a standard or requirement established or
21 promulgated under this Act.

22 **SEC. 8. AUTHORIZATION.**

23 Funds necessary to implement the requirements of
24 this Act are hereby authorized to be appropriated.

1 TITLE I—RECHARGEABLE BATTERY
2 RECYCLING ACT

3 **SEC. 101. SHORT TITLE.**

4 This Title may be cited as the “Rechargeable Battery
5 Recycling Act”.

6 **SEC. 102. PURPOSE.**

7 The purpose of this title is to:

8 (1) Reduce the quantity of cadmium and lead
9 entering solid waste landfills, incinerators and
10 composting facilities by promoting the efficient recy-
11 cling of used nickel-cadmium rechargeable batteries,
12 used small sealed lead-acid rechargeable batteries or
13 any other regulated battery, and such rechargeable
14 batteries in used consumer products, through uni-
15 form labeling requirements, streamlined regulatory
16 requirements for regulated battery collection pro-
17 grams, and by encouraging voluntary industry pro-
18 grams by eliminating barriers to funding the collec-
19 tion and recycling or proper disposal of used re-
20 chargeable batteries.

21 **SEC. 103. RECHARGEABLE CONSUMER PRODUCTS AND LA-
22 BELING.**

23 (a) PROHIBITION.—No person shall sell to the end
24 user for use in the United States a regulated battery or
25 rechargeable consumer product manufactured on or after

1 the date that is 12 months after the date of enactment
2 of this Act, unless—

3 (1) the regulated battery—

4 (A) is easily removable from the recharge-
5 able consumer product;

6 (B) is contained in a battery pack that is
7 easily removable from the product; or

8 (C) is sold separately; and

9 (2) the rechargeable consumer product and the
10 regulated battery are labeled in accordance with sub-
11 section (b).

12 (3) The requirements of subsection (a) do not
13 apply to the following:

14 (A) The sale of remanufactured product
15 units unless subsection (a) applied to the sale
16 of the unit when originally manufactured.

17 (B) Product units intended for export pur-
18 poses only.

19 (b) LABELING.—Each of the following items manu-
20 factured on or after the date that is 12 months after the
21 date of enactment of this Act, whether produced domesti-
22 cally or imported, shall be labeled with the three chasing
23 arrows or a comparable recycling symbol, and, on nickel-
24 cadmium batteries or battery packs, the chemical name
25 or the abbreviation “Ni-Cd”, or, on lead-acid batteries and

1 battery packs, either “Pb” or the words “LEAD” “RE-
2 TURN” “RECYCLE”, and all applicable statements list-
3 ed below:

4 (1) On each regulated battery or battery pack:
5 “NICKEL-CADMIUM BATTERY. MUST BE RE-
6 CYCLED OR DISPOSED OF PROPERLY.” or
7 “SEALED LEAD BATTERY. BATTERY MUST
8 BE RECYCLED.”.

9 (2) On each rechargeable consumer product
10 without an easily removable battery or battery pack:
11 “CONTAINS NICKEL-CADMIUM BATTERY.
12 BATTERY MUST BE RECYCLED OR DIS-
13 POSED OF PROPERLY.” or “CONTAINS
14 SEALED LEAD BATTERY. BATTERY MUST
15 BE RECYCLED.”.

16 (3) On the packaging of each rechargeable
17 consumer product, and the packaging of each regu-
18 lated battery or battery pack sold separately, unless
19 the relevant label is clearly visible through the pack-
20 aging: “CONTAINS NICKEL-CADMIUM BAT-
21 TERY. BATTERY MUST BE RECYCLED OR
22 DISPOSED OF PROPERLY.” or “CONTAINS
23 SEALED LEAD BATTERY. BATTERY MUST
24 BE RECYCLED.”.

25 (c) EXISTING LABELING.—

1 (1) For a period of twenty-four (24) months
2 after the date of enactment of this Act, regulated
3 batteries and battery packs, rechargeable consumer
4 products containing regulated batteries, and re-
5 chargeable consumer product packages that are la-
6 beled in substantial compliance with subsection (b)
7 shall be deemed to comply with the labeling require-
8 ments of subsection (b).

9 (2) Upon application by persons subject to the
10 labeling requirements of subsection 103(b) of the la-
11 beling requirements promulgated by the Adminis-
12 trator under subsection 103(e), the Administrator
13 may approve and certify that a different label meets
14 the requirements of subsections 103 (b) and (e), if
15 the different label is substantially similar to the label
16 required under subsections 103 (b) or (e) or con-
17 forms with a recognized international standard and
18 is consistent with the overall purposes of this Title.

19 (d) POINT OF SALE INFORMATION.—Any retail es-
20 tablishment that offers for sale any battery or product
21 subject to the requirements of subsection (b) or regula-
22 tions promulgated by the Administrator under subsection
23 (e), shall display in a manner visible to the consumer, a
24 written notice that informs the consumer that regulated

1 batteries, whether sold separately or in rechargeable prod-
2 ucts, must be recycled or disposed of properly.

3 (e) ADMINISTRATOR'S RULEMAKING AUTHORITY.—If
4 the Administrator determines that other rechargeable bat-
5 teries having electrode chemistries different from regu-
6 lated batteries are toxic and may cause substantial harm
7 to human health and the environment if discarded into
8 the solid waste stream for land disposal or incineration,
9 the Administrator may, with the advice and counsel of
10 state regulatory authorities and manufacturers of re-
11 chargeable batteries and products, and after public com-
12 ment, (1) promulgate labeling requirements for such bat-
13 teries, battery backs, products without easily removable
14 batteries and their packaging, and (2) promulgate easily-
15 removable design requirements for rechargeable consumer
16 products designed to contain such batteries or battery
17 packs. The regulations promulgated pursuant to this sub-
18 section shall be substantially similar to the requirements
19 contained in subsections (a) and (b).

20 (f) UNIFORMITY.—After the effective dates of the re-
21 quirements set forth in Section 103, no federal agency,
22 State, or political subdivision may enforce any easy remov-
23 ability or environmental labeling requirement for a re-
24 chargeable battery or product that includes a rechargeable
25 battery that is not identical to the requirements contained

1 in subsections (a), (b) and (c) or the regulations promul-
2 gated by the Administrator under subsection (e).

3 (g) EXEMPTIONS.—

4 (1) IN GENERAL.—With respect to any re-
5 chargeable consumer product, any person may sub-
6 mit an application to the Administrator for an ex-
7 emption from the requirements of subsection (a) in
8 accordance with the procedures under paragraph
9 (2). The application shall include the following infor-
10 mation:

11 (A) A statement of the specific basis for
12 the request for the exemption.

13 (B) The name, business address, and tele-
14 phone number of the applicant.

15 (2) GRANTING OF EXEMPTION.—Within 60
16 days of receipt of an application under paragraph
17 (1), the Administrator shall approve or deny the ap-
18 plication. Upon approval of the application the Ad-
19 ministrator shall grant an exemption to the appli-
20 cant. The exemption shall be issued for a period of
21 time that the Administrator determines to be appro-
22 priate, except that such period shall not exceed 2
23 years. The Administrator shall grant an exemption
24 on the basis of evidence supplied to the Adminis-
25 trator that the manufacturer has been unable to

1 commence manufacturing the rechargeable consumer
2 product in compliance with the requirements of this
3 section and with an equivalent level of product per-
4 formance without the product—

5 (A) resulting in danger to human health,
6 safety, or the environment; or

7 (B) violating requirements for approvals
8 from governmental agencies or widely recog-
9 nized private standard-setting organizations (in-
10 cluding but not limited to Underwriters Labora-
11 tories).

12 (3) RENEWAL OF EXEMPTION.—A person
13 granted an exemption may apply for a renewal of
14 the exemption in accordance with the requirements
15 and procedures described in paragraph (2). The Ad-
16 ministrator may grant renewals of an exemption for
17 periods of not more than 2 years after the date of
18 granting of the renewal.

19 **SEC. 104. REQUIREMENTS.**

20 For the purposes of carrying out the collection, stor-
21 age, transportation and recycling or proper disposal of
22 used rechargeable batteries and products without easily
23 removable rechargeable batteries, persons involved in col-
24 lecting, storing, or transporting used rechargeable bat-
25 teries or products containing used rechargeable batteries

1 to a facility for recycling or proper disposal shall be regu-
2 lated in the same manner and with the same limitations
3 as if such persons were collecting, storing or transporting
4 batteries subject to 40 CFR part 266 subpart G on Janu-
5 ary 1, 1993, notwithstanding any regulations adopted pur-
6 suant to a grant of authority to a State under Section
7 3006 of the Solid Waste Disposal Act (42 U.S.C. 6926).

8 **SEC. 105. COOPERATIVE EFFORTS.**

9 If two or more persons who participate in projects
10 or programs to collect and properly manage used recharge-
11 able batteries or products powered by rechargeable bat-
12 teries advise the Administrator of their intent, they may
13 agree to develop jointly, or to share in the costs of partici-
14 pating in, such a program and to examine and rely upon
15 such cost information as is collected during the project
16 or program, notwithstanding any other provision of law.

17 **SEC. 106. REPORT TO THE CONGRESS.**

18 (a) REPORT DEADLINES IN GENERAL.—Not later
19 than 36 months after the date of enactment of this Act,
20 the Administrator, after consultation with and obtaining
21 relevant industrywide data from the States, environmental
22 and consumer groups, and organizations representing re-
23 chargeable battery manufacturers, rechargeable consumer
24 product manufacturers and retailers, and after public
25 hearing and comment, shall submit to Congress a report

1 that provides the information specified in Subsection (b).
2 In collecting information for said report, the Adminis-
3 trator shall coordinate with the aforementioned States, en-
4 vironmental and consumer groups, and organizations to
5 minimize the frequency and scope of any reporting re-
6 quirements associated with the manufacture, sale, or col-
7 lection of regulated batteries.

8 (b) CONTENT OF REPORT.—The report described in
9 Subsection (a) shall consider and discuss each of the fol-
10 lowing:

11 (1) A review of the activities carried out by the
12 entities listed in subsection (a) with respect to the
13 labeling and collection, transportation, and recycling
14 or disposal of regulated batteries.

15 (2) An estimate, for the period beginning on the
16 date of enactment of this section and ending on the
17 date of preparation of the report, of the number of
18 regulated batteries entering the solid waste stream
19 for disposal in incinerators, landfills and municipal
20 solid waste facilities.

21 (3) A review of the recycling and reclamation
22 rates for regulated batteries.

23 (4) A review of the availability of permitted fa-
24 cilities sufficient to handle the current and projected
25 volume of used regulated batteries, along with a

1 complete evaluation of potential regulatory impedi-
2 ments to management options.

3 (5) A list of entities involved in the production
4 and distribution of regulated batteries or recharge-
5 able consumer products participating in programs
6 for the collection of regulated batteries.

7 (6) A list of entities involved in the production
8 and distribution of regulated batteries or recharge-
9 able consumer products, excluding retailers, that are
10 not participating in regulated battery collection pro-
11 grams. In formulating such list, the Administrator
12 shall not require any participant to report the name
13 of any non-participant. Prior to listing any entity as
14 a nonparticipant, the Administrator must determine
15 that the entity should be a participant, and inde-
16 pendently verify with the entity that it is not a par-
17 ticipant.

18 (c) FREQUENCY OF REPORT.—24 months after publi-
19 cation of the report required in subsection (a), and bienni-
20 ally thereafter, the Administrator shall issue a report that
21 provides an update of the information specified in sub-
22 section (b).

1 TITLE II—MERCURY CONTAINING BATTERY
2 MANAGEMENT ACT

3 **SEC. 201. SHORT TITLE.**

4 This title may be cited as the “Mercury-Containing
5 Battery Management Act”.

6 **SEC. 202. PURPOSE.**

7 The purpose of this Title is to eliminate the quantity
8 of mercury entering solid waste landfills, incinerators and
9 composting facilities by phasing out the use of mercury
10 in batteries containing mercury.

11 **SEC. 203. LIMITATIONS ON THE SALE OF ALKALINE-MAN-**
12 **GANESE BATTERIES CONTAINING MERCURY.**

13 No person shall sell, offer for sale, or offer for pro-
14 motional purposes any alkaline-manganese battery manu-
15 factured on or after January 1, 1996, with a mercury con-
16 tent that was intentionally introduced (as distinguished
17 from mercury which may be incidentally present in other
18 materials), except that the limitation on mercury content
19 in alkaline-manganese button cells shall be 25 milligrams
20 of mercury per button cell.

21 **SEC. 204. LIMITATIONS ON THE SALE OF ZINC CARBON**
22 **BATTERIES CONTAINING MERCURY.**

23 No person shall sell, offer for sale, or offer for pro-
24 motional purposes any zinc carbon battery manufactured

1 on or after January 1, 1995, that contains any mercury
2 that was intentionally introduced.

3 **SEC. 205. LIMITATIONS ON THE SALE OF BUTTON CELL**
4 **MERCURIC-OXIDE BATTERIES.**

5 No person shall sell, offer for sale, or offer for pro-
6 motional purposes any button cell mercuric-oxide battery
7 on or after January 1, 1995.

8 **SEC. 206. LIMITATIONS ON THE SALE OF MERCURIC-OXIDE**
9 **BATTERIES.**

10 No person shall sell, offer for sale, or offer for pro-
11 motional purposes, any mercuric-oxide battery on or after
12 January 1, 1997.

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