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EPA's New Actions in the Battery Industry May Promote Uniformity

The United States Environmental Protection Agency (“EPA”) issued a voluntary Request for Information (“RFI”) on June 9, 2022, regarding best practices for battery recycling and labeling guidelines. 87 Fed. Reg. 35,202. The RFI invites stakeholders to submit comments or requested information on these areas by July 11, 2022.

The RFI provides a series of questions for commenters to answer regarding the following four topics:

- *Suggestions on the Scope and Prioritization of the Battery Collection Best Practices;*
- *Understanding the Battery Collection and Recycling System;*
- *Information on Battery Labeling Guidelines; and*
- *Communication Materials for Battery Producers and Consumers About the Reuse and Recycling of Critical Materials from Batteries.*

These questions present commenters with opportunities to help inform any future agency guidance or regulatory action related to these topics. For example, in discerning best practices in the collection, recycling, and labeling of batteries, EPA asks, “[w]hat problems have battery collection facilities encountered when handling and processing batteries?” and “[a]re there any evidence-based best practices for the collection of end-of-life batteries? If so, which organizations have developed them, what do commenters find useful about these practices, and what could be improved about them?” The RFI similarly poses questions regarding battery labeling, ranging from asking what consumers find confusing about battery labels and what state and local guidelines are already in existence.

The EPA has recently demonstrated its renewed interest in battery recycling, having issued reports on used lithium-ion batteries and having held waste stream workshops in October 2021. This RFI, however, is unique compared to previous EPA battery actions due to its breadth. It seeks information on virtually all batteries, regardless of use, type, or



chemistry, including single-use and rechargeable batteries, small consumer batteries, large format batteries (*i.e.*, electric vehicles and grid energy storage), industrial batteries (used in manufacturing, commercial businesses, and healthcare operations), and lithium based and nickel-metal hydride batteries. And it requests input from all stakeholders involved in the battery lifecycle from manufacture to end-of-life management, including “the public, industry, researchers, academia, state, tribal, and local governments . . . other federal agencies, community groups, non-governmental organizations, and international organizations.”

The scale of this RFI suggests that the EPA may be interested in potential future regulatory activity in the battery recycling area. This is consistent with the goals of the RFI’s authorizing legislation, the Infrastructure Investment and Jobs Act (more commonly known as the Bipartisan Infrastructure Law). Pub. L. No. 117-58 (2021). Existing federal and state regulations on battery recycling and labeling are a patchwork of requirements for different kinds of batteries. This RFI provides an opportunity for stakeholders with significant exposure to existing and potential laws and regulations governing battery recycling and labeling to help inform agency action. Commenters can highlight best practices they have experienced, can explain regulatory barriers to current voluntary recycling efforts, and can make suggestions for a more uniform, streamlined regulatory framework.

King & Spalding’s team of environmental lawyers advises stakeholders involved in multiple aspects of the battery supply chain and can advise commenters on how to best address the EPA’s questions.

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