



NEW RULES FOR MANAGEMENT OF BATTERY WASTE: A MUCH-AWAITED CHANGE

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With the mass electrification of transportation, recycling of batteries is a growing concern in India as a significant part of discarded batteries eventually end up in garbage disposals. The mechanism for the disposal and handling of batteries in India was earlier governed by the Batteries (Management and Handling) Rules, 2001 (“**Old Rules**”) which regulated the collection and recycling of used lead-acid batteries and intended to minimize the harm caused to the environment due to the disposal of such batteries. Under the Old Rules, consumers were required to return the used batteries, and manufacturers, assemblers, importers, and reconditioners were required to collect such used batteries and hand it over to registered recyclers.

However, the Old Rules had limited scope and did not cover batteries other than lead-acid batteries (such as lithium-ion batteries that are used in electric vehicles). Therefore, the Government of India (“**Gol**”) published the draft battery waste management rules in February 2020 for public comments, with the evident intent of expanding the scope and applicability of the Old Rules.

Basis inputs received from the industry stakeholders and experts, the Gol notified the Battery Waste Management Rules, 2022 (“**Rules**”) on August 22, 2022, which now covers under its scope, a wide range of batteries (as detailed in the subsequent sections). This article aims to examine the new regime along with the key features of the Rules and highlight the roles and responsibilities of various industry stakeholders.

Increased scope and applicability

As discussed above, while the Old Rules covered lead acid batteries (which used and contained lead metal as a source of electrical energy), the provisions of the Old Rules were insufficient to address the automotive industry at its current stage of evolution. The Rules now have an expanded scope to address this issue, and cover all types of batteries, viz., electric vehicle batteries, portable batteries, automotive batteries, and industrial batteries irrespective of the shape, volume, weight, material composition and use.¹ Additionally, the Rules are made applicable to entities involved in the collection, segregation, transportation, refurbishment, and recycling of waste batteries², in addition to producers, consumers etc., who were already covered under the Old Rules. Further, under the Rules new concepts like Extended Producer Responsibility (“**EPR**”), environmental compensation, centralized online portal etc., (explained in more detail below) have been introduced.

¹ The Rules are not applicable on batteries used in equipment connected with the protection of the essential security interests and equipment designed to be sent into space.

² Waste Battery includes:

- (i) Used and/or End of Life Battery and/or its components or spares or parts or consumables which may or may not be hazardous in nature;
- (ii) Pre-consumer Off-Spec Battery and its components or spares or parts or consumables;
- (iii) Battery whose date for appropriate use has expired;
- (iv) Battery which has been discarded by the user.

Various stakeholders

As stated in the previous section, the Rules deal with the roles and responsibilities of various industry stakeholders, such as the producers³ engaged in the manufacture, sale or import of batteries; consumers; public waste management authorities and entities involved in the collection, segregation, and treatment of waste batteries. The Rules provide that each of these stakeholders bear certain responsibilities for effective waste management. It is pertinent to note that the Rules have prescribed a registration process for stakeholders and prohibit engagement with any unregistered entity. The following section deals with certain roles and obligations of the various industry stakeholders as prescribed under the Rules:

(a) Producers

One of the key concepts introduced by the Rules is the EPR framework wherein the producers of batteries are responsible for the collection, recycling, or refurbishment of waste batteries, and for the use of recovered materials from waste in new batteries. EPR mandates that all waste batteries are to be collected and sent for recycling/refurbishment, and it prohibits disposal of batteries in landfills and by incineration.

Battery producers are required to attain the recycling or refurbishing targets as set out under the Rules. The producers are allowed to either achieve these targets on their own or engage or authorise any other entity for the same, however, the primary responsibility of achieving the targets lies with the producers. Further, the producers are also mandated to ensure the following in relation to the production of batteries:

- (i) safe handling of batteries and waste batteries to avoid any damage to human health and environment;
- (ii) compliance with the minimum use of domestically recycled materials thresholds provided in the Rules for the production of new batteries;
- (iii) in case of imported batteries, the producers are required to meet such minimum domestically recycled materials thresholds by utilizing the prescribed minimum quantity of recycled materials in other businesses or exporting such quantity of recycled materials; and
- (iv) compliance with the requisite labelling requirements prescribed under the Rules.

The Rules further require the producers to register themselves with the Central Pollution Control Board (“**CPCB**”) and submit an EPR plan and file returns with the CPCB and the relevant State Pollution Control Board (“**SPCB**”) on an annual basis. In case of non-compliance with EPR targets or obligations set out under the Rules, the CPCB has the power suspend or/and cancel the registration or/and impose environmental compensation (*as discussed below*).

³ Producer means an entity who engages in:

- (i) manufacture and sale of Battery including refurbished Battery, including in equipment, under its own brand; or
- (ii) sale of Battery including refurbished Battery, including in equipment, under its own brand produced by other manufacturers or suppliers; or
- (iii) import of Battery as well as equipment containing Battery.

(b) Consumers

The Rules require the consumers to discard waste battery separately from other waste streams especially from mixed waste, domestic waste streams, and to ensure waste battery are disposed of in an environment friendly manner by giving it to an entity engaged in collection or refurbishment or recycling of batteries.

(c) Public waste management authorities ("PWMA")

The Rules mandate the PWMAs to hand over the collected waste batteries to the producers, or the agencies acting on behalf of the producers, or entities engaged in refurbishment or recycling with a view to refurbish or recycle those waste batteries. The Rules provide that the PWMAs may carry out the recycling or refurbishment of waste batteries themselves.

(d) Refurbishers and recyclers

As per the Rules, the refurbishers and recyclers are required to register with the relevant SPCB on the online centralised portal. They are required to ensure compliance with guidelines issued by the CPCB along with other existing laws relating to waste management like plastic waste management rules, solid waste management rules, hazardous waste management rules, etc. The Rules also require the refurbishers and recyclers to file quarterly returns in prescribed forms containing information on waste batteries collected or received from various producers or entities, refurbished/recycled quantities, quantity of hazardous, solid, plastic and/or other wastes generated after refurbishment or recycling, etc.

The Rules further require the recyclers to mandatorily meet a minimum recovery target of battery material as specified in the Rules. Such targets differ for different types of batteries, i.e., portable, automotive, industrial, or electric vehicles.

(e) Pollution control authorities

The CPCB and SPCB are the designated authorities for registering, inspecting, and auditing the registered entities. Under the Rules, these authorities have been given the power to, *inter alia*, (i) issue guidelines and procedures for the collection, storage, transportation, recycling, and refurbishing of waste batteries; (ii) issue registrations to various stakeholders; (iii) conduct inspections and periodic audits to verify compliance of the Rules by the producers, refurbishers, recyclers; and (iv) take actions against violations and non-fulfilment of obligations under the Rules (including the EPR obligations), etc.

The Rules also require the CPCB to constitute an implementation committee for the effective implementation of the Rules.

Centralised web portal and issuance of EPR Certificates

The Rules intend to set up a mechanism and a centralized online portal for the registration of producers, recyclers, refurbishers; for filing of returns by various stakeholders; and to enable exchange of EPR certificates between producers and recyclers or refurbishers. The CPCB has the obligation to set up such a portal, which may also be used SPCB. The Rules intend that this web portal will act as a single point data repository with respect to orders and guidelines related to implementation of the Rules. The Rules also state that the web portal should reflect the balance EPR obligation of the producers as well as the details of the audit of producers and entities involved in refurbishing and recycling of waste batteries.

A key role of the CPCB under the Rules is to generate EPR certificates (through such centralised online portal) based on the recycled or refurbished quantities and assign it to recyclers or refurbishers. The recyclers or refurbishers can sell the EPR certificate assigned to them to the producers in exchange for waste batteries.

The Rules provide that a producer can purchase the EPR certificates from recyclers or refurbishers to meet its EPR obligations, and the EPR certificates purchased by the producers shall get automatically adjusted against their liability, with a priority adjustment to their earlier liability. Further, the Rules mention that the producers can purchase the EPR certificates to fulfil their EPR liability for the current year as well as any leftover liability of preceding years plus 10 percent of the current year liability. It is important to note that EPR certificates used by producers to meet their EPR obligations cannot be exchanged again.

Environmental compensation

Based on the polluter pays principle, the Rules have introduced a new concept of environmental compensation and provide that a fine will be levied (i) on entities carrying out activities without registration as mandated under the Rules; (ii) for providing false information /wilful concealment of material facts by the registered entities; (iii) for submission of forged/manipulated documents by the registered entities; and (iv) for unsound handling of waste batteries by entities engaged in collection, segregation, and treatment.

Further, as stated above, the CPCB has the power to suspend and/or cancel the registration of a producer and/or impose environmental compensation in case of violation of the Rules. However, the payment of environmental compensation does not absolve the producer of its EPR obligations. The Rules also empower the SPCB to levy environmental compensation on entities involved in recycling and refurbishing and in collection, segregation, and treatment of waste batteries in cases of non-fulfilment of obligations and responsibilities mentioned under the Rules.

It is pertinent to note that the press release in respect of the Rules issued by the Gol on August 25, 2022⁴, mentions that the funds collected under environmental compensation will be utilised in the management of uncollected and non-recycled waste batteries. Further, non-fulfilment of obligations under these guidelines will attract penal actions under the provisions of section 15 of the Environment (Protection) Act, 1986.

⁴ Available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1854433>.

Conclusion

The Rules are certainly an indication of the law rising to the challenges presented by new and developing technology. With the introduction of the Rules, new avenues and entrepreneurial opportunities have opened for setting up industries in relation to collection, recycling/refurbishment, and management of waste battery. The mandatory requirement of using a minimum percentage of recovery of materials from waste batteries is expected to result in new technological advancements in this sector, attract investments in the recycling and refurbishment industry and create new business opportunities. With mandated usage of domestically recycled materials while manufacturing batteries, reliance on new materials will be reduced thereby fostering efficient use of Indian resources.

Overall, the introduction of the Rules seems to be a move in the right direction to ensure technological advancements while causing minimal environmental damage. Provisions pertaining to mandatory online registration and periodic reporting, auditing, constitution of committee for monitoring the implementation of the Rules are some of the salient features of the Rules which would ensure effective implementation and compliance. With the effective implementation of the Rules, India could prove to be a global leader in establishing a regulatory framework for the safe disposal and recycling of batteries.

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