
HOUSE BILL 1444

State of Washington 63rd Legislature 2013 Regular Session

By Representatives Hunt, Tharinger, Takko, Morris, Fey, and Pollet

Read first time 01/28/13. Referred to Committee on Environment.

1 AN ACT Relating to stewardship of household mercury-containing
2 lights; amending RCW 70.275.030, 70.275.040, 70.275.050, and
3 70.275.120; reenacting and amending RCW 70.275.020; adding new sections
4 to chapter 43.131 RCW; and creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that additional
7 flexibility is needed for mercury light manufacturers to comply with
8 the requirements of chapter 70.275 RCW in order to provide a
9 sustainable funding mechanism and provide effective state protections
10 to producer-operated product stewardship programs as contemplated under
11 chapter 70.275 RCW.

12 **Sec. 2.** RCW 70.275.020 and 2010 c 130 s 2 are each reenacted and
13 amended to read as follows:

14 The definitions in this section apply throughout this chapter
15 unless the context clearly requires otherwise.

16 (1) "Brand" means a name, symbol, word, or mark that identifies a
17 product, rather than its components, and attributes the product to the
18 owner of the brand as the producer.

1 (2) "Collection" or "collect" means, except for persons involved in
2 mail-back programs:

3 (a) The activity of accumulating any amount of mercury-containing
4 lights at a location other than the location where the lights are used
5 by covered entities, and includes curbside collection activities,
6 household hazardous waste facilities, and other registered drop-off
7 locations; and

8 (b) The activity of transporting mercury-containing lights in the
9 state, where the transporter is not a generator of unwanted mercury-
10 containing lights, to a location for purposes of accumulation.

11 (3) "Covered entities" means:

12 (a) A single-family or a multifamily household generator and
13 persons that deliver no more than fifteen mercury-containing lights to
14 registered collectors for a product stewardship program during a
15 ninety-day period; and

16 (b) A single-family or a multifamily household generator and
17 persons that utilize a registered residential curbside collection
18 program or a mail-back program for collection of mercury-containing
19 lights and that discards no more than fifteen mercury-containing lights
20 into those programs during a ninety-day period.

21 (4) "Department" means the department of ecology.

22 (5) "Final disposition" means the point beyond which no further
23 processing takes place and materials from mercury-containing lights
24 have been transformed for direct use as a feedstock in producing new
25 products, or disposed of or managed in permitted facilities.

26 (6) "Hazardous substances" or "hazardous materials" means those
27 substances or materials identified by rules adopted under chapter
28 70.105 RCW.

29 (7) "Mail-back program" means the use of a prepaid postage
30 container with mercury vapor barrier packaging that is used for the
31 collection and recycling of mercury-containing lights from covered
32 entities as part of a product stewardship program and is transported by
33 the United States postal service or a common carrier.

34 (8) "Mercury-containing lights" means lamps, bulbs, tubes, or other
35 devices that contain mercury and provide functional illumination in
36 homes, businesses, and outdoor stationary fixtures.

37 (9) "Mercury vapor barrier packaging" means sealable containers
38 that are specifically designed for the storage, handling, and transport

1 of mercury-containing lights in order to prevent the escape of mercury
2 into the environment by volatilization or any other means, and that
3 meet the requirements for transporting by the United States postal
4 service or a common carrier.

5 (10) "Orphan product" means a mercury-containing light that lacks
6 a producer's brand, or for which the producer is no longer in business
7 and has no successor in interest, or that bears a brand for which the
8 department cannot identify an owner.

9 (11) "Person" means a sole proprietorship, partnership,
10 corporation, nonprofit corporation or organization, limited liability
11 company, firm, association, cooperative, or other legal entity located
12 within or outside Washington state.

13 (12) "Processing" means recovering materials from unwanted products
14 for use as feedstock in new products. Processing must occur at
15 permitted facilities.

16 (13) "Producer" means a person that:

17 (a) Has or had legal ownership of the brand, brand name, or cobrand
18 of a mercury-containing light sold in or into Washington state(~~(~~
19 ~~except for persons whose primary business is retail sales)~~);

20 (b) Imports or has imported mercury-containing lights branded by a
21 producer that meets the requirements of (a) of this subsection and
22 where that producer has no physical presence in the United States;

23 (c) If (a) and (b) of this subsection do not apply, makes or made
24 an unbranded mercury-containing light that is sold or has been sold in
25 or into Washington state; or

26 (d)(i) Sells or sold at wholesale or retail a mercury-containing
27 light; (ii) does not have legal ownership of the brand; and (iii)
28 elects to fulfill the responsibilities of the producer for that
29 product.

30 (14) "Product stewardship" means a requirement for a producer of
31 mercury-containing lights to manage and reduce adverse safety, health,
32 and environmental impacts of the product throughout its life cycle,
33 including financing and providing for the collection, transporting,
34 reusing, recycling, processing, and final disposition of their
35 products.

36 (15) "Product stewardship plan" or "plan" means a detailed plan
37 describing the manner in which a product stewardship program will be
38 implemented.

1 (16) "Product stewardship program" or "program" means the methods,
2 systems, and services financed and provided by producers of mercury-
3 containing lights generated by covered entities that addresses product
4 stewardship and includes collecting, transporting, reusing, recycling,
5 processing, and final disposition of unwanted mercury-containing
6 lights, including a fair share of orphan products.

7 (17) "Recovery" means the collection and transportation of unwanted
8 mercury-containing lights under this chapter.

9 (18)(a) "Recycling" means transforming or remanufacturing unwanted
10 products into usable or marketable materials for use other than
11 landfill disposal or incineration.

12 (b) "Recycling" does not include energy recovery or energy
13 generation by means of combusting unwanted products with or without
14 other waste.

15 (19) "Reporting period" means the period commencing January 1st and
16 ending December 31st in the same calendar year.

17 (20) "Residuals" means nonrecyclable materials left over from
18 processing an unwanted product.

19 (21) "Retailer" means a person who offers mercury-containing lights
20 for sale at retail through any means including, but not limited to,
21 remote offerings such as sales outlets, catalogs, or the internet, but
22 does not include a sale that is a wholesale transaction with a
23 distributor or a retailer.

24 (22)(a) "Reuse" means a change in ownership of a mercury-containing
25 light or its components, parts, packaging, or shipping materials for
26 use in the same manner and purpose for which it was originally
27 purchased, or for use again, as in shipping materials, by the generator
28 of the shipping materials.

29 (b) "Reuse" does not include dismantling of products for the
30 purpose of recycling.

31 (23) "Stakeholder" means a person who may have an interest in or be
32 affected by a product stewardship program.

33 (24) "Stewardship organization" means an organization designated by
34 a producer or group of producers to act as an agent on behalf of each
35 producer to operate a product stewardship program.

36 (25) "Unwanted product" means a mercury-containing light no longer
37 wanted by its owner or that has been abandoned, discarded, or is
38 intended to be discarded by its owner.

1 **Sec. 3.** RCW 70.275.030 and 2010 c 130 s 3 are each amended to read
2 as follows:

3 (1) Every producer of mercury-containing lights sold in or into
4 Washington state for residential use must ~~((fully finance and))~~
5 individually or jointly with other producers participate in a product
6 stewardship program approved by the department for that product~~((~~
7 ~~including the department's costs for administering and enforcing this~~
8 ~~chapter))~~. Approved product stewardship plans must be financed in a
9 manner prescribed by RCW 70.275.050 and must include the department's
10 administration and enforcement costs as provided in RCW 70.275.050(1).

11 (2) ~~((Every producer must:~~

12 ~~(a) Participate in))~~ A product stewardship program ~~((approved by~~
13 ~~the department and operated by a product stewardship organization~~
14 ~~contracted by the department. All producers must finance and~~
15 ~~participate in the plan operated by the product stewardship~~
16 ~~organization, unless the producer obtains department approval for an~~
17 ~~independent plan as described in (b) of this subsection; or~~

18 ~~(b) Finance and operate, either individually or jointly with other~~
19 ~~producers, a product stewardship program approved by the department.~~

20 ~~(3) A producer, group of producers, or product stewardship~~
21 ~~organization funded by producers))~~ must pay all administrative and
22 operational costs associated with ~~((their))~~ the program ~~((or~~
23 ~~programs))~~, except for the collection costs associated with curbside
24 and mail-back collection programs. For curbside and mail-back
25 programs, a producer, group of producers, or product stewardship
26 organization shall finance the costs of transporting mercury-containing
27 lights from accumulation points and for processing mercury-containing
28 lights collected by curbside and mail-back programs. For collection
29 locations, including household hazardous waste facilities, charities,
30 retailers, government recycling sites, or other suitable locations, a
31 producer, group of producers, or product stewardship organization shall
32 finance the costs of collection, transportation, and processing of
33 mercury-containing lights collected at the collection locations.

34 ~~((+4))~~ (3) Product stewardship programs shall collect unwanted
35 mercury-containing lights delivered from covered entities for reuse,
36 recycling, processing, or final disposition, and not charge a fee when
37 lights are dropped off or delivered into the program.

1 ~~((+5))~~ (4) Product stewardship programs shall provide, at a
2 minimum, no cost services in all cities in the state with populations
3 greater than ten thousand and all counties of the state on an ongoing,
4 year-round basis.

5 ~~((+6))~~ (5) All product stewardship programs operated under
6 approved plans must recover their fair share of unwanted covered
7 products as determined by the department.

8 ~~((+7))~~ (6) The department or its designee may inspect, audit, or
9 review audits of processing and disposal facilities used to fulfill the
10 requirements of a product stewardship program.

11 ~~((+8))~~ (7) No product stewardship program required under this
12 chapter may use federal or state prison labor for processing unwanted
13 products.

14 ~~((+9))~~ (8) Product stewardship programs for mercury-containing
15 lights must be fully implemented by January 1, ~~((2013))~~ 2014.

16 **Sec. 4.** RCW 70.275.040 and 2010 c 130 s 4 are each amended to read
17 as follows:

18 (1) A producer, group of producers, or ~~((product))~~ stewardship
19 ~~((program))~~ organization submitting a proposed product stewardship plan
20 under RCW 70.275.030~~((+2)(b))~~ must submit that plan by ~~((January))~~
21 June 1st of the year prior to the planned implementation.

22 (2) The department shall establish rules for plan content. Plans
23 must include but are not limited to:

24 (a) All necessary information to inform the department about the
25 ~~((plan operator))~~ stewardship organization and participating producers
26 and their brands;

27 (b) The management and organization of the product stewardship
28 program that will oversee the collection, transportation, and
29 processing services;

30 (c) The identity of collection, transportation, and processing
31 service providers, including a description of the consideration given
32 to existing residential curbside collection infrastructure and mail-
33 back systems as an appropriate collection mechanism;

34 (d) How the product stewardship program will seek to use businesses
35 within the state, including transportation services, retailers,
36 collection sites and services, existing curbside collection services,
37 existing mail-back services, and processing facilities;

1 (e) A description of how the public will be informed about the
2 recycling program, including provisions providing consumers with
3 information describing collection opportunities for postconsumer
4 household mercury-containing lights and information promoting waste
5 prevention and recycling. The information must also make consumers
6 aware that funding for mercury-containing light recycling programs in
7 the state has been added to the purchase price of all household
8 mercury-containing lights sold in this state;

9 (f) A description of the proposed financing system required under
10 RCW 70.275.050, including: (i) The determination of the recommended
11 environmental handling charge, taking into consideration each of the
12 factors provided in RCW 70.275.050(3) (a) through (e); and (ii) the
13 mechanism by which the environmental handling charge must be collected
14 and remitted by a stewardship organization as provided in RCW
15 70.275.050(2);

16 (g) How mercury and other hazardous substances will be handled for
17 collection through final disposition;

18 (h) A public review and comment process; and

19 (i) Any other information deemed necessary by the department to
20 ensure an effective mercury light product stewardship program that is
21 in compliance with all applicable laws and rules.

22 (3) All plans submitted to the department must be made available
23 for public review on the department's web site and at the department's
24 headquarters.

25 (4) At least two years from the start of the product stewardship
26 program and once every four years thereafter, a producer, group of
27 producers, or product stewardship organization operating a product
28 stewardship program must update its product stewardship plan and submit
29 the updated plan to the department for review and approval according to
30 rules adopted by the department.

31 (5) Each product stewardship program shall submit an annual report
32 to the department describing the results of implementing their plan for
33 the prior year. The department may adopt rules for reporting
34 requirements. All reports submitted to the department must be made
35 available for public review on the department's web site and at the
36 department's headquarters.

1 **Sec. 5.** RCW 70.275.050 and 2010 c 130 s 5 are each amended to read
2 as follows:

3 (1) ~~((All producers that sell mercury-containing lights in or into
4 the state of Washington are responsible for financing the mercury-
5 containing light recycling program required by RCW 70.275.030.~~

6 (2) ~~Each producer shall pay fifteen thousand dollars to the
7 department to contract for a product stewardship program to be operated
8 by a product stewardship organization. The department shall retain
9 five thousand dollars of the fifteen thousand dollars for
10 administration and enforcement costs.~~

11 (3) ~~A producer or producers participating in an independent plan,
12 as permitted under RCW 70.275.030(2)(b), must pay the full cost of
13 operation. Each producer participating in an approved independent plan
14 shall pay an annual fee of five thousand dollars to the department for
15 administration and enforcement costs.)) Each producer shall pay an
16 annual fee of up to five thousand dollars to the stewardship
17 organization for the department's administration and enforcement costs
18 as part of the financing of a product stewardship program. The
19 stewardship organization shall consult with the department as to the
20 projected amount of the department's administration and enforcement
21 costs in connection with determining the amount of the annual fee to be
22 included in the product stewardship program financing. By April 1st of
23 each year, a stewardship organization shall remit to the department the
24 aggregate amount of the annual fees paid by producers to the
25 stewardship organization for this purpose.~~

26 (2) A product stewardship program's administrative and operating
27 costs must be financed by an environmental handling charge to be paid
28 by consumers purchasing household mercury-containing lights at retail.
29 The recommended environmental handling charge to be paid by retail
30 purchasers may, but is not required to, vary by the type of mercury-
31 containing light. The stewardship organization shall consult with
32 qualified recyclers and producers in connection with the determination
33 of its recommendations. The stewardship organization shall collect the
34 environmental handling charge either: (a) Directly from producers who
35 shall add the charge to the cost of the household mercury-containing
36 light paid by their customers in the state; or (b) from retailers who
37 elect to pay the amount of the environmental handling charge collected
38 from retail purchasers of household mercury-containing lights and add

1 the charge to the retail price of the household mercury-containing
2 light. The payments must be accompanied by a return in the form as
3 provided in the approved product stewardship plan.

4 (3) No later than ninety days after the producers' or stewardship
5 organization's recommended annual fee is submitted under subsection (1)
6 of this section, the department shall determine the amount of the
7 environmental handling charge to be paid by retail purchasers of
8 household mercury-containing lights in the state for each household
9 mercury-containing light purchased from a retailer, after reviewing the
10 product stewardship plan, consulting with the producers, any
11 stewardship organization, and qualified recyclers, taking into
12 consideration: (a) The anticipated number of household mercury-
13 containing lights sold to covered entities in the state at retail
14 during the calendar year; (b) the number of spent household mercury-
15 containing lights delivered from covered entities expected to be
16 recycled during the calendar year; (c) the cost of collecting,
17 transporting, and recycling spent household mercury-containing lights
18 delivered from covered entities to collection locations identified in
19 RCW 70.275.030(2); (d) the administrative costs of the stewardship
20 organization; (e) the cost of recycling program elements described
21 under RCW 70.275.040(2)(e); and (f) a prudent reserve not to exceed
22 fifteen percent.

23 (4) By August 1, 2015, and no more frequently than once per year
24 and no less frequently than once every two years thereafter, the
25 department shall review the environmental handling charge established
26 under subsection (3) of this section and make any adjustments to the
27 environmental handling charge to ensure that there are sufficient
28 revenues to fund the cost of the program. Adjustments to the
29 environmental handling charge that are made on or before August 1st
30 apply to the calendar year beginning the following January 1st. The
31 department shall base an adjustment of the environmental handling
32 charge on both of the following factors: (a) The sufficiency, and any
33 surplus, of revenues in the product stewardship programs account
34 created in RCW 70.275.130 to fund the transportation and recycling of
35 spent household mercury-containing lights that are projected to be
36 recycled in the state; and (b) the sufficiency of revenues in the
37 product stewardship programs account for the stewardship organization

1 to administer the program, plus a prudent reserve not to exceed fifteen
2 percent of that amount.

3 **Sec. 6.** RCW 70.275.120 and 2010 c 130 s 12 are each amended to
4 read as follows:

5 ~~((All producers shall pay the department annual fees to cover the~~
6 ~~cost of administering and enforcing this chapter. The department may~~
7 ~~prioritize the work to implement this chapter if fees are not adequate~~
8 ~~to fund all costs of the program.)) (1) It is the intent of the
9 legislature that a producer, group of producers, or a stewardship
10 organization preparing, submitting, and implementing a spent household
11 mercury-containing light cost-reimbursement program pursuant to this
12 chapter, as well as distributors or retailers, are granted immunity,
13 individually and jointly, from federal and state antitrust laws for the
14 limited purpose of establishing, implementing, and complying with the
15 requirements of this chapter. It is further the intent of the
16 legislature that the activities of the producer, group of producers,
17 stewardship organization, and the distributors or retailers that
18 implement and comply with the provisions of this chapter may not be
19 considered to be in restraint of trade, a conspiracy, or combination
20 thereof, or any other unlawful activity in violation of any provisions
21 of federal or state antitrust laws.~~

22 (2) The department shall actively supervise the conduct of the
23 stewardship organization, the producers of mercury-containing lights,
24 distributors, and retailers in connection with their conduct authorized
25 by this chapter. The department may require the producers, the
26 stewardship organization, distributors, or retailers to take those
27 actions that the department considers necessary to ensure that the
28 stewardship organization is not engaging in conduct that is not
29 authorized under this chapter.

30 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.131 RCW
31 to read as follows:

32 The product stewardship program for the disposal of mercury-
33 containing lights under chapter 70.275 RCW is terminated on January 1,
34 2024, as provided in section 8 of this act.

1 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.131 RCW
2 to read as follows:

3 The following acts or parts of acts are each repealed, effective
4 January 1, 2025:

5 (1) RCW 70.275.010 (Findings--Purpose) and 2010 c 130 s 1;

6 (2) RCW 70.275.020 (Definitions) and 2013 c ... s 2 (section 2 of
7 this act) and 2010 c 130 s 2;

8 (3) RCW 70.275.030 (Product stewardship program) and 2013 c ... s
9 3 (section 3 of this act) & 2010 c 130 s 3;

10 (4) RCW 70.275.040 (Submission of proposed product stewardship
11 plans--Department to establish rules--Public review--Plan update--
12 Annual report) and 2013 c ... s 4 (section 4 of this act) & 2010 c 130
13 s 4;

14 (5) RCW 70.275.050 (Financing the mercury-containing light
15 recycling program) and 2013 c ... s 5 (section 5 of this act) & 2010 c
16 130 s 5;

17 (6) RCW 70.275.060 (Collection and management of mercury) and 2010
18 c 130 s 6;

19 (7) RCW 70.275.070 (Collectors of unwanted mercury-containing
20 lights--Duties) and 2010 c 130 s 7;

21 (8) RCW 70.275.080 (Requirement to recycle end-of-life mercury-
22 containing lights) and 2010 c 130 s 8;

23 (9) RCW 70.275.090 (Producers must participate in an approved
24 product stewardship program) and 2010 c 130 s 9;

25 (10) RCW 70.275.100 (Written warning--Penalty--Appeal) and 2010 c
26 130 s 10;

27 (11) RCW 70.275.110 (Department's web site to list producers
28 participating in product stewardship plan--Required participation in a
29 product stewardship plan--Written warning--Penalty--Rules--Exemptions)
30 and 2010 c 130 s 11;

31 (12) RCW 70.275.120 (Producers must pay annual fees) and 2013 c ...
32 s 6 (section 6 of this act) & 2010 c 130 s 12;

33 (13) RCW 70.275.130 (Product stewardship programs account) and 2010
34 c 130 s 13;

35 (14) RCW 70.275.140 (Adoption of rules--Report to the legislature--
36 Invitation to entities to comment on issues--Estimate of statewide
37 recycling rate for mercury-containing lights--Mercury vapor barrier
38 packaging) and 2010 c 130 s 14;

1 (15) RCW 70.275.150 (Application of chapter to the Washington
2 utilities and transportation commission) and 2010 c 130 s 15;

3 (16) RCW 70.275.160 (Application of chapter to entities regulated
4 under chapter 70.105 RCW) and 2010 c 130 s 16;

5 (17) RCW 70.275.900 (Chapter liberally construed) and 2010 c 130 s
6 17; and

7 (18) RCW 70.275.901 (Severability--2010 c 130) and 2010 c 130 s 21.

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