
SUBSTITUTE HOUSE BILL 2914

State of Washington 61st Legislature 2010 Regular Session

By House Environmental Health (originally sponsored by Representatives Hunt, Campbell, Chase, Wood, and Rolfes)

READ FIRST TIME 02/03/10.

1 AN ACT Relating to mercury reduction; adding a new chapter to Title
2 70 RCW; and prescribing penalties.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that:

5 (1) Convenient and environmentally sound product stewardship
6 programs for mercury-containing lights that include collecting,
7 transporting, and recycling mercury-containing lights will help protect
8 Washington's environment and the health of state residents;

9 (2) Mercury lighting is a toxic and hard to collect waste product
10 that is appropriate for product stewardship;

11 (3) The purpose of this act is to achieve a statewide goal of
12 recycling all end-of-life mercury-containing lights by 2020 through
13 expanded public education, a uniform statewide requirement to recycle
14 all mercury-containing lights, and the development of a comprehensive,
15 safe, and convenient collection system that includes use of residential
16 curbside collection programs, mail-back containers, increased support
17 for household hazardous waste facilities, and a network of additional
18 collection locations;

1 (4) Product producers must play a significant role in financing no-
2 cost collection and processing programs for household generators and
3 persons discarding up to fifteen mercury-containing lights. Product
4 producers will finance the collection, transportation, and processing
5 costs of mercury-containing lights collected at participating
6 collection locations, including participating household hazardous waste
7 facilities, charities, retailers, government recycling sites, or other
8 suitable locations. Product producers will finance the costs of
9 transporting mercury-containing lights from accumulation points and
10 processing mercury containing lights collected by curbside and mail-
11 back programs; and

12 (5) Providers of premium collection services such as residential
13 curbside and mail-back programs may charge a fee to cover the
14 collection costs for these more convenient forms of collection.

15 NEW SECTION. **Sec. 2.** The definitions in this section apply
16 throughout this chapter unless the context clearly requires otherwise.

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

20 (2) "Covered entities" means:

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

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

30 (3) "Collection" or "collect" means, except for persons involved in
31 mail-back programs:

32 (a) The activity of accumulating any amount of mercury-containing
33 lights at a location other than the location where the lights are used
34 by covered entities, and includes curbside collection activities,
35 household hazardous waste facilities, and other registered drop-off
36 locations; and

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

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

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

9 (6) "Hazardous substances" or "hazardous materials" means those
10 substances or materials identified by rules adopted under chapter
11 70.105 RCW.

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

17 (8) "Mercury vapor barrier packaging" means sealable containers
18 that are specifically designed for the storage, handling, and transport
19 of mercury-containing lights in order to prevent the escape of mercury
20 into the environment by volatilization or any other means, and that
21 meet the requirements for transporting by the United States postal
22 service or a common carrier.

23 (9) "Mercury-containing lights" means lamps, bulbs, tubes, or other
24 devices that contain mercury and provide functional illumination in
25 homes, businesses, and outdoor stationary fixtures.

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

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

34 (12) "Processing" means recovering materials from unwanted products
35 for use as feedstock in new products or disposal or management in
36 permitted facilities.

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

1 (a) Has or had legal ownership of the brand, brand name, or cobrand
2 of a mercury-containing light sold in or into Washington state;

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

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

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

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

19 (15) "Product stewardship plan" or "plan" means a detailed plan
20 describing the manner in which a product stewardship program will be
21 implemented.

22 (16) "Product stewardship program" or "program" means the methods,
23 systems, and services financed and provided by producers of mercury-
24 containing lights generated by covered entities that addresses product
25 stewardship and includes collecting, transporting, reusing, recycling,
26 processing, and final disposition of unwanted mercury-containing
27 lights, including a fair share of orphan products.

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

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

33 (b) "Recycling" does not include energy recovery or energy
34 generation by means of combusting unwanted products with or without
35 other waste.

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

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

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

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

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

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

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

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

23 NEW SECTION. **Sec. 3.** (1)(a) All mercury-containing lights
24 collected in the state by product stewardship programs or other
25 collection programs must be recycled. Mercury and mercury-bearing
26 residuals that exhibit characteristics of hazardous waste from
27 recycling of mercury-containing lights must be retorted at a facility
28 that has the required permits and licenses.

29 (b) Mercury recovered from retorting must be recycled or placed in
30 a properly permitted hazardous waste landfill, or placed in a properly
31 permitted mercury repository.

32 (2) Product stewardship programs for mercury-containing lights must
33 be fully implemented by January 1, 2012.

34 NEW SECTION. **Sec. 4.** Effective January 1, 2013:

35 (1) All persons, residents, government, commercial, industrial, and

1 retail facilities and office buildings must recycle their end-of-life
2 mercury-containing lights.

3 (2) No mercury-containing lights may knowingly be placed in waste
4 containers for disposal at incinerators, waste to energy facilities, or
5 landfills.

6 (3) No mercury-containing lights may knowingly be placed in a
7 container for mixed recyclables unless there is a separate location or
8 compartment for the mercury-containing lights that complies with local
9 government collection standards or guidelines.

10 (4) No owner or operator of a solid waste facility may be found in
11 violation of this section if the facility has posted in a conspicuous
12 location a sign stating that mercury-containing lights must be recycled
13 and are not accepted for disposal.

14 (5) No solid waste collector may be found in violation of this
15 section for mercury-containing lights placed in a disposal container by
16 the generator of the mercury-containing light.

17 NEW SECTION. **Sec. 5.** (1) Except for persons involved in
18 registered mail-back programs, a person who collects unwanted mercury-
19 containing lights in the state, receives funding through a product
20 stewardship program for mercury-containing lights, and who is not a
21 generator of unwanted mercury-containing lights must:

22 (a) Register with the department as a collector of unwanted
23 mercury-containing lights. Until the department adopts rules for
24 collectors, the collector must provide to the department the legal name
25 of the person or entity owning and operating the collection location,
26 the address and phone number of the collection location, and the name,
27 address, and phone number of the individual responsible for operating
28 the collection location and update any changes in this information
29 within thirty days of the change;

30 (b) Maintain a spill and release response plan at the collection
31 location that describes the materials, equipment, and procedures that
32 will be used to respond to any release from an unwanted mercury-
33 containing light;

34 (c) Maintain a worker safety plan at the collection location that
35 describes the handling of the unwanted mercury-containing lights at the
36 collection location and measures that will be taken to protect worker
37 health and safety; and

1 (d) Use packaging and shipping material that will minimize the
2 release of mercury into the environment and minimize breakage and use
3 mercury vapor barrier packaging if mercury-containing lights are
4 transported by the United States postal service or a common carrier.

5 (2) A person who operates a curbside collection program or owns or
6 operates a mail-back business participating in a product stewardship
7 program for mercury-containing lights and uses the United States postal
8 service or a common carrier for transport must register with the
9 department and use mercury vapor barrier packaging for curbside
10 collection and mail-back containers.

11 NEW SECTION. **Sec. 6.** (1) Every producer of mercury-containing
12 lights sold in or into Washington state must participate in a product
13 stewardship program for that product.

14 (2) Every producer must:

15 (a) Operate, either individually or jointly with other producers,
16 a product stewardship program approved by the department; or

17 (b) Enter into an agreement with a stewardship organization to
18 operate, on the producer's behalf, a product stewardship program
19 approved by the department.

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

33 (4) Product stewardship programs shall collect, free of charge,
34 unwanted mercury-containing lights delivered from covered entities for
35 reuse, recycling, processing, or final disposition.

36 (5) The department or its designee may inspect, audit, or review

1 audits of processing and disposal facilities used to fulfill the
2 requirements of a product stewardship program.

3 (6) No product stewardship program required under this chapter may
4 use federal or state prison labor for processing unwanted products.

5 NEW SECTION. **Sec. 7.** (1) As of the implementation date
6 established under this chapter for mercury-containing lights, no
7 producer, wholesaler, retailer, or other person may sell or offer for
8 sale that product to any person in this state unless the producer is
9 participating in a product stewardship program under a plan approved by
10 the department.

11 (2) Each product stewardship plan must be approved by the
12 department.

13 (3) A person selling or offering for sale mercury-containing lights
14 in this state must receive from the producer of the product
15 verification that the producer is participating in an approved product
16 stewardship program prior to selling the product in or into the state.
17 A person is considered to have complied with this subsection if, on the
18 date the person ordered mercury-containing lights from a producer or
19 its agent, the producer was listed by the department as participating
20 in an approved product stewardship program or the producer provided
21 written verification on the shipping documents or billing invoice.

22 NEW SECTION. **Sec. 8.** (1) The department shall periodically
23 publish a notice on its web site, and in any other manner it deems
24 appropriate, requesting that stakeholders who are interested in product
25 stewardship programs contact the department. The department shall
26 maintain a list of interested stakeholders, including their mailing
27 address, and make it available in writing upon request.

28 (2) A producer, group of producers, or stewardship organization
29 operating or intending to operate a product stewardship program must,
30 at least sixty days prior to submitting a product stewardship plan to
31 the department under subsection (3) of this section, provide public
32 notice of the plan it is considering for submittal to the list of
33 interested stakeholders maintained by the department under subsection
34 (1) of this section. The producer, group of producers, or stewardship
35 organization must solicit stakeholder comment and input during

1 development of the plan and attempt to address any stakeholder concerns
2 regarding the plan prior to submittal. Documentation of these actions
3 must be submitted to the department at the time of plan submittal.

4 (3) A producer, group of producers, or stewardship organization
5 operating or intending to operate a product stewardship program must
6 submit a product stewardship plan to the department specifying:

7 (a) Information, including contact information, regarding:

8 (i) The organization submitting the plan;

9 (ii) A list of all participating producers and their brands,
10 including the trademark, if applicable; and

11 (iii) If the program is to be operated by a stewardship
12 organization, a description of management, administration, and tasks to
13 be performed by the stewardship organization.

14 (b) Recovery goals for unwanted mercury-containing lights,
15 including:

16 (i) Recovery goals for the first, second, and third years of the
17 program, expressed as pounds per capita, and an explanation of how
18 these goals reflect a significant percentage of unwanted mercury-
19 containing lights generated by covered entities relative to the
20 quantity of the unwanted product that may be available for reuse or
21 recycling; and

22 (ii) Plans to maximize reuse or recycling of packaging or shipping
23 materials that may be collected.

24 (c) A collection system for unwanted mercury-containing lights,
25 including:

26 (i) Location of collection sites and other collection services to
27 be used by the program;

28 (ii) A description of the consideration given to existing
29 residential curbside collection infrastructure and mail-back systems as
30 an appropriate collection mechanism. If the curbside collection
31 infrastructure and the mail-back systems are not utilized by the plan,
32 a written explanation must be provided citing the reasons that curbside
33 collection services and mail-back services are not included in the
34 plan;

35 (iii) How unwanted mercury-containing lights from all covered
36 entities will be collected for all cities in the state with populations
37 greater than ten thousand and in all counties of the state;

1 (iv) How the collection system will be convenient and adequate to
2 serve the needs of all covered entities in both urban and rural areas;
3 and

4 (v) How collected unwanted mercury-containing lights will be
5 transported to processing facilities.

6 (d) A processing and disposal system for unwanted mercury-
7 containing lights, including:

8 (i) Locations, permit status, and records of any penalties,
9 violations, or regulatory orders received in the previous three years
10 by processing and disposal facilities proposed to be used by the
11 program, including all downstream processing and disposal facilities
12 handling hazardous substances and hazardous materials through final
13 disposition;

14 (ii) A third-party audit of each processing and disposal facility
15 proposed to be used by the program for any unwanted mercury-containing
16 lights or residuals containing hazardous substances or hazardous
17 materials, documenting compliance with all applicable laws,
18 regulations, and rules;

19 (iii) Policies and procedures to be followed by persons collecting,
20 transporting, processing, and disposing of unwanted mercury-containing
21 lights, including how the program will ensure compliance with all
22 applicable laws, regulations, and rules;

23 (iv) A description of how unwanted mercury-containing lights will
24 be processed at each processing facility;

25 (v) How all residuals will be disposed of or managed in permitted
26 facilities, including disposal or management of all hazardous
27 substances and hazardous materials in permitted hazardous waste
28 facilities;

29 (vi) How hazardous substances and hazardous materials will be
30 safely and securely tracked and handled from collection to final
31 disposition in compliance with this chapter, any rules adopted by the
32 department to implement this chapter, and all other applicable laws and
33 rules; and

34 (vii) Management practices that will be used by first processors
35 and their downstream vendors to ensure that hazardous substances and
36 hazardous materials are not released into the environment and will not
37 adversely impact human health.

1 (e) How the program will seek to use businesses within the state,
2 including transportation services, retailers, collection sites and
3 services, existing curbside collection services, existing mail-back
4 services, and processing facilities.

5 (f) A financing system for the recovery and recycling of unwanted
6 mercury-containing lights, including:

7 (i) How the entire product stewardship program will be financed,
8 that may include how costs will be apportioned among and assessed upon
9 producers participating in the program;

10 (ii) How those providing services for the collection,
11 transportation, and processing systems will be fairly compensated for
12 their services; and

13 (iii) How operators of residential curbside collection programs and
14 mail-back programs will be compensated for the cost of transporting and
15 processing mercury-containing lights collected from covered entities.

16 (g) Education and outreach activities, including:

17 (i) An effective advertising campaign promoting the use of the
18 program to all covered entities that includes a toll-free telephone
19 number and web site, with market saturation sufficient to ensure
20 meeting recovery goals;

21 (ii) A description of how and when information about the program
22 will be provided to retailers, wholesalers, collectors, and other
23 interested parties to disseminate to covered entities; and

24 (iii) The methodology for determining how the effectiveness of the
25 outreach activities will be measured.

26 (h) The stakeholder process described under subsection (2) of this
27 section, including:

28 (i) A description of the process used to solicit stakeholder input
29 during development of the plan; and

30 (ii) A summary of stakeholder comments and how any stakeholder
31 concerns were addressed.

32 (4) All plans submitted to the department must be made available
33 for public review on the department's web site and at the department's
34 headquarters.

35 NEW SECTION. **Sec. 9.** (1) A producer, group of producers, or
36 stewardship organization must submit a proposed product stewardship

1 plan for mercury-containing lights from covered entities to the
2 department by January 1, 2011.

3 (2) Within ninety days after receiving a proposed product
4 stewardship plan, the department shall determine whether the plan
5 complies with this chapter and any rules adopted to implement this
6 chapter. If it approves a plan, the department shall notify the
7 applicant of its approval. If it rejects a plan, the department shall
8 notify the applicant of its decision and its reasons for rejecting the
9 plan. An applicant whose plan has been rejected by the department may
10 submit a revised plan to the department within sixty days after
11 receiving notice of the rejection to maintain compliance with this
12 chapter or may join another plan within sixty days after receiving
13 notice of rejection.

14 (3) At least two years from the start of the product stewardship
15 program and once every four years thereafter, a producer, group of
16 producers, or stewardship organization operating a product stewardship
17 program must update its product stewardship plan and submit the updated
18 plan to the department for review. The department must determine the
19 status of an updated plan within ninety days of its submittal. If the
20 department rejects an updated plan, the department shall provide the
21 reasons it rejected the updated plan. The producer or producers of
22 mercury-containing lights participating in the product stewardship
23 program shall continue to operate under the prior approved plan for not
24 more than ninety days or another time period approved by the department
25 and shall submit a revised updated plan for approval within that time
26 period. The prior approved plan remains in effect until the department
27 approves or rejects the revised plan. Failure of a product stewardship
28 program to submit an updated plan within the time period provided under
29 this subsection is deemed to be out of compliance with this chapter,
30 unless the producers in the product stewardship program notify the
31 department of their intention to disband the plan and join an alternate
32 approved plan.

33 NEW SECTION. **Sec. 10.** (1) Any proposed change to a product
34 stewardship plan must have prior approval of the department except for
35 the following:

36 (a) Additions or changes to collection locations for unwanted
37 mercury-containing lights; or

1 (b) Additions of producers to a product stewardship program.

2 (2) The product stewardship program must inform the department of
3 changes in subsection (1)(a) and (b) of this section fifteen days prior
4 to the changes occurring.

5 NEW SECTION. **Sec. 11.** (1) On or before April 1st of each year,
6 every producer, group of producers, or stewardship organization
7 operating a product stewardship program for mercury-containing lights
8 must prepare and submit to the department a report in a format provided
9 by the department for the immediately preceding reporting period
10 describing:

11 (a) Information, including contact information, regarding:

12 (i) The organization submitting the report; and

13 (ii) A list of all participating producers and their brands and
14 trademarks, if applicable;

15 (b) Recovery rates, including:

16 (i) The amount, by weight, of unwanted mercury-containing lights
17 collected from covered entities in each county in the state, including
18 documented collection and recycling or disposal of that material; and

19 (ii) How the program attained recovery rates established in the
20 product stewardship plan or set by the department, and, if the program
21 did not attain those recovery rates, what actions the program will take
22 during the next reporting period to do so, including how the program
23 will increase and improve effective, measurable outreach and education
24 efforts;

25 (c) The collection system, including collection locations and
26 services provided for all cities in the state with populations greater
27 than ten thousand and in all counties in the state;

28 (d) The processing and disposal system, including:

29 (i) A list of processing and disposal facilities used and their
30 locations, the weight of unwanted mercury-containing lights processed
31 at each processing facility and disposed at each disposal facility, and
32 a description of the methods used at each processing facility;

33 (ii) A list of subcontractors used through final disposition that
34 processed or disposed of unwanted mercury-containing lights containing
35 hazardous substances or hazardous materials, and subcontractor facility
36 locations;

1 (iii) Documentation and summary results of annual third-party
2 audits conducted on each processing facility and disposal facility as
3 required in section 8 of this act;

4 (iv) Final disposition of residuals;

5 (v) Any penalties, violations, or regulatory orders received during
6 the reporting period by each processing facility or disposal facility
7 that was used; and

8 (vi) Whether policies and procedures in the product stewardship
9 plan for collecting, transporting, processing, and final disposition of
10 unwanted mercury-containing lights were followed during the reporting
11 period, and a description of any noncompliance;

12 (e) The financing system, including a description of how the system
13 met the requirements in section 8 of this act;

14 (f) The education and outreach activities implemented during the
15 reporting period, including an analysis of the effectiveness of the
16 education and outreach activities;

17 (g) How the product stewardship program complied with any other
18 elements in the plan; and

19 (h) Any other information that the department may require.

20 (2) A producer, group of producers, or stewardship organization
21 operating a product stewardship program under this chapter that attains
22 a ninety percent recovery rate and a recycling rate of eighty percent
23 is only required to report to the department information specified in
24 subsection (1)(a) through (d), (g), and (h) of this section.

25 (3) All reports submitted to the department must be made available
26 to the public on the department's web site and at the department's
27 headquarters.

28 NEW SECTION. **Sec. 12.** By June of the third program year, the plan
29 operators shall establish required recovery rates for the fourth and
30 subsequent program years, based on information gained in the first
31 through third years, sales data, anticipated product obsolescence, and
32 anticipated sales growth. Annual planned recovery rates must be
33 submitted to the department for approval by September 1st prior to the
34 program year for which the rates are established. The submittal must
35 include documentation of the calculations and data used to determine
36 the recovery rate. The department shall approve, disapprove, or
37 adjust, in consultation with the plan's operator, the submitted

1 recovery rates based upon its assessment of prior years' data, sales
2 data, and other available information that supports the decision.
3 Sixty days after delivering a written warning, the department shall
4 assess a penalty of up to ten thousand dollars for each violation on
5 each plan operator.

6 NEW SECTION. **Sec. 13.** (1) The department shall send a written
7 warning and a copy of this chapter and any rules adopted to implement
8 this chapter to a producer who is not participating in a product
9 stewardship program approved by the department and whose mercury-
10 containing lights are being sold in or into the state.

11 (2) A producer not participating in a product stewardship program
12 approved by the department whose mercury-containing lights continue to
13 be sold in or into the state sixty days after receiving a written
14 warning from the department shall be assessed a penalty of one thousand
15 dollars for each violation. A violation is the sale of one mercury-
16 containing light.

17 (3) If any producer fails to implement its approved plan, the
18 department shall assess a penalty of up to five thousand dollars for
19 the first violation along with notification that the producer must
20 implement its plan within thirty days of the violation. After thirty
21 days, any producer failing to implement their approved plan must be
22 assessed a penalty of up to ten thousand dollars for the second and
23 each subsequent violation. A subsequent violation occurs each thirty-
24 day period that the producer fails to implement the approved plan.

25 (4) The department shall send a written warning to a producer that
26 fails to submit a product stewardship plan, update or change the plan
27 when required, or submit an annual report as required under this
28 chapter. The written warning must include compliance requirements and
29 notification that the requirements must be met within sixty days. If
30 requirements are not met within sixty days, the producer will be
31 assessed a ten thousand dollar penalty per day of noncompliance
32 starting with the first day of notice of noncompliance.

33 (5) Penalties prescribed under this section must be reduced by
34 fifty percent if the producer complies within thirty days of the second
35 violation notice.

36 (6) A producer may appeal penalties prescribed under this section

1 to the pollution control hearings board created under chapter 43.21B
2 RCW.

3 NEW SECTION. **Sec. 14.** (1) The department shall provide on its web
4 site a list of all producers participating in product stewardship
5 programs that the department has approved and a list of all producers
6 the department has identified as noncompliant with this chapter and any
7 rules adopted to implement this chapter.

8 (2) Product retailers must check the department's web site or
9 producer-provided written verification to determine if producers of
10 products they are selling in or into the state are in compliance with
11 this chapter. If the retailer is unsure of the status of the producer
12 or believes the producer is not in compliance with this chapter, the
13 retailer shall contact the department to determine the producer's
14 status.

15 (3) The department shall personally serve, or send with delivery
16 confirmation, a written warning explaining the violation along with a
17 copy of this chapter and any rules adopted to implement this chapter to
18 a product retailer known to be selling mercury-containing lights in or
19 into the state from producers who are not participating in a product
20 stewardship program or who are not in compliance with this chapter and
21 rules adopted under this chapter.

22 (4) A product retailer who continues to sell mercury-containing
23 lights from a producer who is not participating in an approved product
24 stewardship program sixty days after receiving a written warning from
25 the department may be assessed a penalty two times the value of the
26 products sold in violation of this chapter or five hundred dollars,
27 whichever is greater. This penalty must be waived if the retailer
28 verifies that it has discontinued sale of the mercury-containing lights
29 within thirty days of the date of the penalty assessment. A retailer
30 may appeal penalties assessed under this section to the pollution
31 control hearings board.

32 (5) A sale or purchase of mercury-containing lights as a casual or
33 isolated sale as defined in RCW 82.04.040 is not subject to the
34 provisions of this section.

35 (6) A person primarily engaged in the business of reuse and resale
36 of a used mercury-containing light is not subject to the provisions of

1 this section when selling used working mercury-containing lights, for
2 use in the same manner and purpose for which it was originally
3 purchased.

4 (7) In-state retailers in possession of mercury-containing lights
5 on the date that restrictions on the sale of the product become
6 effective may exhaust their existing stock through sales to the public.

7 NEW SECTION. **Sec. 15.** The department shall establish fees to be
8 charged to and paid annually by producers for administering this
9 chapter. All fees charged must be based on factors relating to
10 administering this chapter and be based on a sliding scale. Fees must
11 be established in amounts to fully recover expenses incurred by the
12 department to implement this chapter. The initial fee schedule must be
13 established by rule. Producers solely engaged in the retail sales of
14 mercury-containing lights are exempt from paying this fee.

15 NEW SECTION. **Sec. 16.** The product stewardship programs account is
16 created in the custody of the state treasurer. All funds received from
17 producers under section 15 of this act and penalties collected under
18 this chapter must be deposited in the account. Expenditures from the
19 account may be used only for administering this chapter. Only the
20 director of the department or the director's designee may authorize
21 expenditures from the account. The account is subject to the allotment
22 procedures under chapter 43.88 RCW, but an appropriation is not
23 required for expenditures.

24 NEW SECTION. **Sec. 17.** (1) The department may adopt rules
25 necessary to implement, administer, and enforce this chapter.

26 (2) The department may adopt rules to establish performance
27 standards for product stewardship programs and may establish
28 administrative penalties for failure to meet the standards.

29 (3) By December 31, 2012, the department shall report to the
30 appropriate committees of the legislature concerning the status of the
31 product stewardship program and recommendations for changes to the
32 provisions of this chapter.

33 (4) Beginning October 1, 2012, the department shall annually invite
34 comments from local governments, communities, and citizens to report
35 their satisfaction with services provided by product stewardship

1 programs. This information must be used by the department to determine
2 if the plan operator is meeting convenience requirements and in
3 reviewing proposed updates or changes to product stewardship plans.

4 (5) Beginning October 1, 2012, the department shall annually invite
5 comments from retailers, consumer groups, electric utilities, the
6 Northwest power and conservation council, and other interested parties
7 regarding the impacts of the requirements of this chapter on the
8 availability or purchase of energy efficient lighting within the state.
9 If the department determines that evidence shows the requirements of
10 this chapter have resulted in negative impacts on the availability or
11 purchase of energy efficient lighting in the state, the department
12 shall report this information by December 31st of each year to the
13 appropriate committees of the legislature with recommendations for
14 changes to the provisions of this chapter.

15 (6) Beginning October 1, 2012, the department shall annually invite
16 comments from retailers, consumer groups, electric utilities, the
17 Northwest power and conservation council, and other interested parties
18 regarding the availability of energy efficient nonmercury lighting to
19 replace mercury-containing lighting within the state. If the
20 department determines that evidence shows that energy efficient
21 nonmercury-containing lighting is available and achieves similar energy
22 savings as mercury lighting at similar cost, the department shall
23 report this information by December 31st of each year to the
24 appropriate committees of the legislature with recommendations for
25 legislative changes to reduce mercury use in lighting.

26 (7) Beginning October 1, 2012, the department shall annually
27 estimate the overall statewide recycling rate for mercury-containing
28 lights and calculate that portion of the recycling rate attributable to
29 the product stewardship program.

30 (8) The department may require submission of independent
31 performance evaluations and report evaluations documenting the
32 effectiveness of mercury vapor barrier packaging in preventing the
33 escape of mercury into the environment. The department may restrict
34 the use of packaging for which adequate documentation has not been
35 provided. Any program using restricted mercury vapor barrier packaging
36 is not eligible for participation in the product stewardship program
37 for mercury-containing lights.

1 NEW SECTION. **Sec. 18.** Nothing in this chapter changes or limits
2 the authority of the Washington utilities and transportation commission
3 to regulate collection of solid waste, including curbside collection of
4 residential recyclable materials, nor does this chapter change or limit
5 the authority of a city or town to provide such service itself or by
6 contract under RCW 81.77.020.

7 NEW SECTION. **Sec. 19.** Nothing in this chapter changes the
8 requirements of any entity regulated under chapter 70.105 RCW to comply
9 with the requirements under that chapter.

10 NEW SECTION. **Sec. 20.** This chapter must be liberally construed to
11 carry out its purposes and objectives.

12 NEW SECTION. **Sec. 21.** Sections 1 through 20 and 22 of this act
13 constitute a new chapter in Title 70 RCW.

14 NEW SECTION. **Sec. 22.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

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