
Environment & Energy Committee

HB 1164

Brief Description: Providing for the responsible management of appliances containing harmful gases and other materials.

Sponsors: Representatives Doglio, Fitzgibbon, Reed, Berry, Ramel, Macri, Lekanoff, Duerr, Pollet and Kloba.

Brief Summary of Bill

- Establishes an appliance stewardship program for the end-of-life management of appliances that typically contain more than negligible volumes of refrigerants or insulating foam with a potential to release greenhouse gases.

Hearing Date: 2/16/23

Staff: Jacob Lipson (786-7196).

Background:

Extended Producer Responsibility and Product Stewardship Programs.

The Legislature has enacted laws that require the establishment of product stewardship programs for the management of five types of products: (1) electronic products; (2) light bulbs that contain mercury, such as compact fluorescent lights; (3) photovoltaic solar panels; (4) pharmaceuticals; and (5) paint.

In general, the state's product stewardship programs require producers to participate in a stewardship organization or program that is responsible for the collection, transport, and end-of-life management of covered products. The Department of Ecology (Ecology) is responsible for the oversight of the state's product stewardship programs, with the exception of the

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Pharmaceutical Stewardship Program, which is overseen by the Department of Health.

Hydrofluorocarbon and Refrigerant Regulations.

Hydrofluorocarbons (HFCs) are a category of gases used primarily as refrigerants in a variety of commercial and industrial applications. Hydrofluorocarbons are among the greenhouse gases (GHGs) identified by the United States Environmental Protection Agency (EPA) and Ecology as a result of their capacity to trap heat in the earth's atmosphere. According to the EPA, the global warming potential (GWP) of HFCs and other GHGs is measured as a function of how much of the gas is concentrated in the atmosphere, how long the gas stays in the atmosphere, and how strongly the particular gas affects global atmospheric temperatures. Under state law, the GWP of GHGs are measured in terms of their equivalence to the emission of an identical volume of carbon dioxide over a 100-year timeframe.

In recent years, the Legislature has established a number of new regulatory programs to restrict emissions of HFCs and other refrigerants. Refrigerant emission restrictions include:

- a requirement that repair or disposal services of refrigeration equipment use refrigerant extraction equipment to recover unused refrigerants;
- prohibiting the willful release of refrigerants from air conditioning, heating and refrigeration systems, and consumer appliances;
- establishing a maximum global warming potential for refrigerants in numerous categories of uses, including foam-blowing agents like polyurethane or spray foam, refrigeration equipment, and air conditioning equipment; and
- establishing a refrigerant management program to reduce refrigerant emissions from larger stationary refrigeration systems and larger commercial air conditioning systems.

As a result of legislation enacted in 2021 Ecology submitted a report to the Legislature that provided recommendations on the design of a program to address end-of-life management and disposal of refrigerants. Ecology determined in its report that a more extensive stakeholder process would be needed in order to develop recommendations for an optimal design for an end-of-life refrigerant management program. Ecology also recommended that an end-of-life refrigerant management program be based on a number of enumerated principles, including that the program address refrigerants as well as refrigerant-containing equipment and appliances.

The Responsible Appliance Disposal Program.

The United States Environmental Protection Agency has established a the responsible appliance disposal (RAD) program, a voluntary partnership program that works with utilities, retailers, manufacturers, state and local government agencies, and others to dispose of old refrigerated appliances using environmental practices that exceed minimum federal requirements related to limiting emissions of GHGs and ozone-depleting substances. Appliances covered by the RAD program include refrigerators, freezers, window air-conditioning units, and dehumidifiers. The RAD program requires voluntary partners to report annually on appliance disposal activities carried out by the partner. RAD program partners implement best practices for the recycling or disposal of old appliances, including:

- recovery and reclamation or destruction of refrigerants;

- recovery and reclamation or destruction of insulating foam;
- safe disposal of hazardous waste products;
- proper recycling of used oil; and
- recycling of all recoverable durable materials including metal, plastic, and glass, to the extent possible.

Climate Commitment Act Accounts.

The 2021 Climate Commitment Act (CCA) established a cap-and-invest program that requires Ecology to implement a cap on GHGs from covered entities and a program to track, verify, and enforce compliance through the use of compliance instruments, including allowances sold at auction to regulated entities. The CCA and subsequent amendments to the CCA in 2022 established a total of eight accounts into which allowance auction proceeds and other program revenues to the state are deposited, including a Climate Commitment Account, used for 13 enumerated types of expenditures, including certain types of emission reduction activities.

The Pollution Control Hearings Board.

The Pollution Control Hearings Board (PCHB) is an appeals board with jurisdiction to hear appeals of certain decisions, orders, and penalties issued by Ecology and several other state agencies. Parties aggrieved by a PCHB decision may obtain subsequent judicial review.

Summary of Bill:

Appliance Stewardship Organization Participation and Plan Submission Requirements.

Producers selling covered appliances in or into Washington must register with the Department of Ecology (Ecology) through an appliance stewardship organization (ASO), beginning January 1, 2024. Producers must participate in an approved plan through participation in and funding of an ASO beginning July 1, 2027.

Appliance stewardship organizations are nonprofit organizations designated by a producer or group of producers to implement an appliance stewardship plan, or a producer that directly implements a plan. Appliances covered by program requirements (covered appliances) are electric or gas appliances that typically contain more than negligible volumes of refrigerants or insulating foam with a potential to release greenhouse gases at the end of the appliances life, are designed or intended for commercial, residential, or institutional purpose, and are used for cooking, food storage and conservation, clothing or dish washing, or to control the ventilation, temperature, or humidity of a room or dwelling. Covered appliances include refrigerators, freezers, wine cellars, water dispensers, heat pumps, portable or window air conditioners, dehumidifiers, dishwashers, washing machines, and dryers. Covered appliances do not include appliances weighing over 1,000 pounds, appliances and air conditioners that are an integral part of a structure such as central air conditioning systems of commercial or residential multifamily buildings, and other appliances determined by Ecology rule to be infeasible to include in ASO programs.

By January 1, 2027, or at least six months prior to plan implementation, an ASO must submit a

plan to Ecology for approval. Ecology must review and may approve a plan that includes specified components including information about covered producers, covered appliance models, implementation mechanisms for collecting covered appliances, promotion activities, a contingency plan for the continued management of the program by an entity other than the ASO if needed, management of the components of collected appliances, and methods of financing the program. Ecology may require an ASO to submit a new plan to Ecology for approval at least every five years if there are changes to the method of financing the program, significant changes to certain aspects of program implementation logistics, or if the program's performance goals have not been achieved after five years of program implementation. Plan amendments must be submitted to Ecology when changes to producer membership occur or when adding a processor or transporter used by the program.

Ecology must review new, updated, and revised ASO plans, and make them available for public comment for at least 30 days prior to making a decision whether to approve a plan. Ecology may approve plans that meet program requirements, or may disapprove of a plan. If a revised plan submitted after an Ecology disapproval does not sufficiently meet program requirements, Ecology may issue penalties or orders or amend the contents of the insufficient plan and require an ASO to implement the plan as amended by Ecology.

Retail establishments may not sell covered appliances of producers who are not members of an ASO.

Program Performance Goals, Collection and Management, and Education and Outreach Requirements.

The program must achieve specified performance goals the recovery of covered products, with distinct performance rates that must be achieved for the recovery of each of the following categories of covered products:

- residential refrigerating and freezing appliances;
- commercial or institutional refrigerating and freezing appliances;
- air conditioners, heat pumps, and humidifiers; and
- ranges, built-in ovens and cooking surfaces, dishwashers, washing machines, and dryers.

For each category of covered products, the performance rates that the ASO program must achieve increase on a year-over-year basis. Ecology must adopt guidance or rules to specify how recovery rates are to be calculated.

Appliance stewardship organizations must provide for the collection of covered appliances from any person, business, government agency, or nonprofit organization. The collection of covered appliances must be provided:

- at one or more permanent collection site in each county, unless Ecology grants an infeasibility waiver; and
- through the direct door-to-door collection of covered appliances from residences, commercial businesses, and institutions in any geographic location in Washington.

Collection sites and businesses involved in the end-of-life management of covered products must adhere to safety requirements and procedures developed by the ASO. Covered appliances must be managed in a manner consistent with the voluntary Responsible Appliance Disposal standards established by the United States Environmental Protection Agency. Retail establishments and local government facilities may voluntarily serve as collection sites for covered appliances. Appliance stewardship organizations must use as a collection site any entity that meets minimum collection site criteria.

Appliance stewardship organizations must carry out promotional activities in support of the plan, including developing a websites, press releases, graphic advertisements, promotional materials, and outreach efforts targeted to certain overburdened communities and vulnerable populations. ASO program promotional materials must be provided to retailers of covered appliances. If multiple ASOs are formed, outreach activities must be coordinated between the ASOs. A public awareness survey must be carried out every five years.

Persons, residents, businesses, and facilities must dispose of unwanted covered appliances through approved collection methods under an ASO plan. Persons may not place covered appliances in waste containers for disposal at incinerators, waste-to-energy facilities, incinerators, or directly dispose of covered appliance at such locations.

Financial Provisions.

Appliance stewardship organizations must ensure adequate funding is available to fully implement its approved plan. A system of collecting charges from participating producers to fund program implementation must be developed by each ASO and continually improved over years of program implementation. The system of charges must use eco-modulated fees to encourage design attributes that reduce environmental impacts of covered appliances. Fees may not be charged at the time of appliance collection. An ASO may not reduce its funding of program activities after exceeding the performance requirements for the program.

A financial incentive must be paid to persons from whom an unwanted appliance is collected by an ASO, in a manner proposed in the plan approved by Ecology. The financial incentive must be sufficient to incentivize use of the program, to discourage illegal dumping or venting of refrigerants, and must be in addition to other incentive payments offered for covered appliances through utility rebate, energy efficiency, or other programs. The amount of financial incentive may vary depending on circumstances. Stewardship organizations may not pay financial incentives for covered appliances that no longer contains refrigerants used in the appliance.

ASOs must reimburse local governments for demonstrable costs of serving as a collection location, and must include in its stewardship plan a template of a service agreement for use in distributing reimbursements.

Producers and stewardship organizations are granted immunity from state antitrust laws in establishing the stewardship program. The state's Business and Occupation tax does not apply to the receipts of an ASO from participating producers.

Appliance stewardship organizations may not use funds collected to implement a plan for the payment of administrative penalties, administrative appeals, litigation, compensation of lobbyists, or paid advertisements related to upcoming or recently considered legislation.

Other.

Ecology may adopt rules to implement, administer, and enforce appliance stewardship program requirements. By April 1 of each year beginning in 2024, Ecology must identify its project's annual administration costs, and determine a fee payment for each ASO. A Responsible Appliance Disposal Account is created in for receipts from fees charged by Ecology for program administration costs. Ecology must also maintain a public website making available a list of registered ASOs, member producers, and covered appliances. Appliance stewardship organizations that submit information may request that information or records be kept confidential, and Ecology must grant that request consistent with existing procedures related to confidential information if the action is not detrimental to the public interest.

Appliance stewardship organizations must submit annual reports to Ecology containing specified information related to program implementation, including an independent financial audit, a summary financial statement, and key quantitative data related to program operations. Ecology must review annual reports, and may approve of annual reports after a 30 day public comment period.

Ecology may impose civil penalties of up to \$1,000 per day for initial violations, or \$10,000 per day for subsequent violations. Prior to imposing penalties, Ecology must provide a written warning and a 30 day period to come into compliance. Ecology may take actions additional to the issuance of penalties, such as the issuance of corrective action orders or the revocation of an ASO's plan approval, if an ASO fails to meet a significant requirements. Penalties and Ecology-issued orders are appealable to the Pollution Control Hearings Board. Penalties are to be deposited in the Climate commitment Account.

A severability clause is included.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.