

Rule Advisory Committee Meeting 5

Monday, December 16, 2024, 11 AM

Retailer Requirements

Tricia Dutcher, Redwood Materials: So retailers would be able to choose to recycle with partners outside of the BSO? If all the collection site requirements are met?

Megan Warfield, Ecology: We'll discuss later during the meeting. This topic is about how a retailer knows they're selling compliant product. We'll come back to this comment after the break.

Education and Outreach Requirements

What parameters around the public awareness survey should be clarified in rule? (example: minimum number of people surveyed)

Heather Trim, Zero Waste Washington: Need more detail in public service survey. Emphasized the importance of determining the effectiveness of outreach. Determining awareness of program via effectiveness of outreach and education. It should also be specifically required for statewide and to different audiences (including overburdened and vulnerable communities). Should be a % minimum that's dynamic, perhaps based on the population.

Carin Stuart, Call2Recycle: Echoed Heather's comments in terms of the awareness piece. Interested in awareness and incidents (have you taken action?). Parameters that need fixing? Should be something mentioned about statistically significant reflecting the population of Washington. Does it statistically represent the entire population? Try to work more on outcomes than on specific directions (how often and what specifically must be done). We are interested in awareness and incidents (i.e. have you actually taken action). There should also be some mention about "statistically significant" or "scientifically significant" in terms of how many people to survey.

Preston Peck: "Statistically significant" may help to guide the sample size for the survey.

Danielle Spalding, Cirba Solutions: Design the program around outcomes, not specific actions. Often when we have done a lot of surveying, because the state can vary significantly in terms of population density, it can be helpful to focus geographically on density of retailer participation. Suggest regionalization survey approach.

Shannon Jones, Ecology: Quarterly effort to educate reasonable or is this too prescriptive?

Carin Stuart, Call2Recycle: Not unreasonable. Any BSO will have some level of ongoing outreach. It depends on what you're defining as education and outreach, but quarterly doesn't seem too burdensome.

Reimbursing Demonstrable Costs

Ecology has not yet proposed language for this portion because we want more specific feedback to identify the specific costs and to identify more process-oriented requirements. Particularly looking for feedback from local governments. The way the timing is laid out in the law, we are shooting to complete rulemaking by December 2025 and plans would be due July 2026, and the plan would be operational as of July 2027.

Preston Peck, City of Tacoma: Business service analysts will have to pull this information anyway. We will provide list from city business analysts of our expected types of costs. The costs are estimated since we haven't been required to do this previously. We would be basing this on hazardous waste currently collected and isolating down to time spent on batteries specifically. The city would dedicate time specifically to managing batteries so that the cost is clear. During contract process, flat fee per pound could work but this should be adjustable for inflation. How long it would take – given how new this is, likely 6 months to a year for contracting.

Pam Johnson, Seattle Public Utilities, Hazardous Waste Collection Program: Will provide a list of items they would like to be reimbursed for. The answers to a lot of these questions would come down to negotiation in each individual contract—so would recommend not being too prescriptive in rule. Consider language such as "Including but not limited to" to allow for flexibility. Will provide comments in writing on preferred language.

Rick Gilbert, Kitsap County: Batteries are unique and the work we currently do on batteries is already outside the scope of what they do during their operating hours. The documentation of time shouldn't be too difficult to break out and document.

Heather Trim, Zero Waste Washington: nervous about cost per pound in a way that becomes static and doesn't reflect realities of different locations. Challenging to come up with something that's fair. Needs a lot of flexibility and can't be static. Preston Peck agrees— "Agreed on Heather's comment. I was assuming the flat fee would be relative to each jurisdiction, so different fees."

Carin Stuart, Call2Recycle: There should be something in rule that dictates cost-sharing so that one BSO isn't overburdened, particularly if they have more of these local government contracts than other BSOs. Recommend that we put something in writing so they're sharing the same expense.

Megan: Would the municipality work with one or multiple BSOs?

Carin: One BSO would work with the municipality but there could be an unfair/unlevel playing field if they're required to reimburse but the other BSOs does not.

Pam Johnson, SPU Hazardous waste management program: Costs per pound also doesn't capture costs that are the same even with differing amounts of product.

How much time will it take local governments to negotiate contracts with a battery stewardship organization?

Preston Peck: Estimate 6 months to a year

How often should reimbursements happen?

Preston Peck: Some wiggle room is possible, but typically 30 days, at least for City of Tacoma.

Discussion on contracting concerns between local governments and BSO

Megan Warfield: Let's say Ecology needs 120 days to approve a plan—given the timeline, that would give the BSO only 6 months to finalize these contracts. Could they be in place before a plan is approved? How can we ensure that contracts are in place before the plan starts in 2027.

Carin Stuart: Shares this concern, depending on how many entities need to have an agreement, each one they are negotiating may be unique. Paint care agreements can sometimes take years to finalize all the agreements, depending on the size of the state.

Megan Warfield: The law requires a template contract (reimbursement agreement), but what we are hearing is that all the contracts are individually negotiated, so how much specificity do we need to include.

Richard Abramowitz seconds this point—it would be overly burdensome for a BSO to individually contract with each municipality. A flat fee per pound might make sense and be simpler. Consider making the relationship between the BSO and the municipalities a commercial arrangement rather than a services arrangement contract.

Preston Peck doesn't think that their legal team would accept this arrangement without a legal contract for services. Pam Johnson also agrees that they would need a contract. Rick Gilbert, Kitsap County: Kitsap as well. The template could be placed inside the contract, if everything looks agreeable. I think our current contract with C2R looks like that.

Heather Trim, Zero Waste Washington: Each municipality will need to have their own individual contract because that's how they do business (that's also how it works for paint care and other stewardship programs). The template is only meant to establish parameters, but the BSO and each jurisdiction will still need to negotiate so that jurisdictions can adhere to their own legal contracting requirements.

Preston Peck- Tacoma will need contract. Monetary and service exchange. Ultimately someone needs to be responsible.

Carin Stuart: What are the most critical considerations for such a contract template (indemnity clauses, etc.)?

Pam Johnson: I think the best use of the template is on the service agreement language and not necessarily the boilerplate contract language we need for our local government. We will need a contract.

Megan Warfield (Ecology) How do counties plan to track labor hours to be documented as part of the reimbursement request?

Preston Peck (City of Tacoma) – Estimated cost. Haven't been required to do this. Looking at total time, but then looking at specifically battery safety and collection. We'd want to be tracking this time. They could establish dedicated times to process batteries rather than 5 minutes here, 10 minutes there.

Rick Gilbert (Kitsap County Solid Waste) – Batteries are unique waste stream. Battery management is easily segregated to document labor requirements. Majority of time spent at satellite facilities. Transporting, sorting, packaging by hand. Documentation shouldn't be too difficult.

Collection Outside of Program

Carin Stuart, Call2Recycle: From a BSO perspective, best practice would be to limit who can collect batteries outside the program. Because the intent of the law is to ensure that batteries are ending up in places that are actually recycling them and to maintain oversight over that. Divert from disposal or sending overseas, However, we understand that large quantity generators probably already have systems in place for responsible collection and recycling, and we wouldn't want to disrupt that. Plans become less and less effective and accurate the more batteries we allow to be collected outside of it. There should be as few exceptions as possible.

Tricia Dutcher, Redwood Materials: Can you explain a "regulated generator"? Is that based on weight of batteries generated? This is referring to business to business as opposed to collecting from the public?

Danielle Spalding, Cirba Solutions: This is about safety and successfully demonstrating that collection and diversion of these batteries is increasing across the board. Anyone that collects within the state should be held responsible for reporting using consistent standards, no matter what program or who is executing that support.

Tricia Dutcher, Redwood Materials: should outside collection program demonstrate a relationship with the BSO? If business is a regulated generator, would they also be able to accept batteries from the public under their current agreements? If an E-bike shop has warranty program to take back batteries, can they accept all chemistries across the board? Can a universal waste handler accept batteries from the public and manage as their own?

Carin Stuart, Call2Recycle: If there are many loopholes to have batteries collected outside of the approved plan, then we might lose sight. BSO might not collect pounds they said they'd collect. How effective is the plan if a large volume of batteries are collected outside of it? Have as few exceptions as possible.

Danielle Spalding, Cirba Solutions: This is about the safety, demonstrating that collection is increasing, diverting materials from MRFs that could cause thermal events. Here to clarify not add anything new. Will add clarification in written responses. Collection should be responsible for reporting no matter what program.

Jess Fischberg, Clark County: A frequent comment from businesses is that collecting the batteries is expensive. Very cost prohibitive. Most are unlikely to have an issue diverting that collection to the BSO. Exception might be Columbia Resource Company (owned by Waste Connections), a corporate entity that might have difficulty coming to an agreement with the BSO due to potential competing interests (they also took a long time/had difficulties contracting with Paint Care).

Tricia Dutcher, Redwood Materials, If it's not something mandated to be a part of stewardship organization, can the retailer choose who to contract with? Assuming everything is met under the stewardship program.

Jess Fischberg: Consider including "anyone operating outside of stewardship program must operate in accordance with XXX laws?"

Pam Johnson: Local government to opt out is very specific. Not a lot of loopholes for local governments to not participate in the program.

Tricia Dutcher: Can you explain a "regulated generator"? Is that based on weight of batteries generated? This is referring to business to business as opposed to collecting from the public? Is a business generator allowed to accept batteries from the public and include them in their operations/their own universal waste (like for a warranty program a producer of a battery containing product might offer)? Assuming all the standards are met, do local governments have the option to contract for collection with a retailer outside the stewardship organization (understanding that its unlikely a single business would be able to compete in this arena)?

Megan: Not totally clear, but there are state dangerous waste regulations that dictate who falls in this category. Not all necessarily large quantity generators. Generally speaking, it

refers to business waste as opposed to household waste. **We will confer with our haz waste regulators on the question of scenarios where business generators may be accepting batteries from the public to include in their universal waste.**

Carin Stuart: going back to the intent of the law. Then what happens to the batteries? Where do they go? Is it safe?

Jess Fischberg: Wouldn't they already be required to report to Ecology? Why report to a BSO also?

Megan: Yes, required to report to Ecology. Especially when it comes to local governments such as MRWs.

Jess Fischberg: Battery recycling rules already exist. This might be duplicating what these existing rules already say. Rules already exist that specify where batteries can go for recycling.

Tricia Dutcher, Redwood Materials: We have been talking about collection sites; would collection events be allowed outside the BSO?

Richard Abramowitz: There a significant number of entities that operate mail-in programs for materials including batteries like Terracycle. Where does this leave them?

There are other scenarios that Ecology may need to consider – mail-back, collection events, etc.

Danielle Spalding, Cirba Solutions: There are weight thresholds for this status specific to haz material.

Tricia Dutcher, Redwood Materials: Next meeting will address medium format batteries and producers?