DEPARTMENT OF ECOLOGY
State of Washington

# Concise Explanatory Statement

## Chapter 173-910 WAC

## Mercury-Containing Lights Product Stewardship Program

*Summary of rulemaking and response to comments*

August 2016
Publication no. 16-07-022

## Publication and Contact Information

This publication is available on the Department of Ecology's website at https://fortress.wa.gov/ecy/publications/SummaryPages/1607022.html

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# Concise Explanatory Statement

## Chapter 173-910 WAC
## Mercury-Containing Lights Product Stewardship Program

Waste 2 Resources Program
Washington State Department of Ecology
Olympia, Washington 98504-7600

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## Introduction

The purpose of a Concise Explanatory Statement is to:

- Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide Ecology's response to public comments.

This Concise Explanatory Statement provides information on The Washington State Department of Ecology's (Ecology) rule adoption for:

| | |
|---|---|
| Title: | Mercury-Containing Lights Product Stewardship Program |
| WAC Chapter(s): | 173-910 |
| Adopted date: | August 23, 2016 |
| Effective date: | September 24, 2016 |

To see more information related to this rulemaking or other Ecology rulemakings please visit our web site: http://www.ecy.wa.gov/laws-rules/index.html

## Reasons for Adopting the Rule

Chapter 173-910 WAC, Mercury-Containing Lights Product Stewardship Program, establishes the framework for a stewardship program to collect and properly dispose of mercury-containing lights. We amended this regulation to reflect changes in the authorizing statute (Chapter 70.275 RCW) made by the 2014 State Legislature. Revisions do not affect the way mercury-containing lights are managed because the legislative changes were made prior to the program's implementation in 2015 and we have implemented the program consistent with the statute.

Key changes include the requirement to fund the program through an environmental handling charge, revised requirements for stewardship plans and annual reports including independent financial audits, changes in the number of lights that can be recycled each day, changes in definitions, sunset provisions, and other changes as directed by the Legislature. These amendments provide consistency with the statute.

## Differences Between the Proposed Rule and Adopted Rule

RCW 34.05.325(6)(a)(ii) requires Ecology to describe the differences between the text of the proposed rule as published in the Washington State Register and the text of the rule as adopted, other than editing changes, stating the reasons for the differences.

There are some differences between the proposed rule filed on March 10, 2016 and the adopted rule filed on August 23, 2016. Ecology made these changes for all or some of the following reasons:

- In response to comments we received.

- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

The following content describes the changes and Ecology's reasons for making them.

**WAC 173-910-010 Purpose:**

Every producer of mercury-containing lights sold in or into Washington state for sale at retail must ~~fully finance and~~ participate in the product stewardship program.

Ecology deleted the text "fully finance and" for consistency with other changes in the rule to implement the new financing mechanism.

**WAC 173-910-020 Applicability:**

(7) Any retailer, electric utility, or other person that gives away, offers for sale at retail, or sells mercury-containing lights in or into Washington state at retail.

Ecology added the text "at retail" at the end of the definition to provide clarity and consistency with the statute.

**WAC 173-910-100 Definitions:**

"~~Fully finance and p~~Participate" means the obligation of each producer of mercury-containing lights sold in or into Washington to ~~fund its share of program costs and join in an~~ register with and participate in an approved product stewardship program.

Ecology deleted the words "fully finance and" as well as "fund its share of program costs and join in an" since this language reflected the original funding mechanism. This definition was moved to keep the definitions in alphabetical order.

**WAC 173-910-100 Definitions:**

~~**"Producer's cost":** means each participating producer's portion of the product stewardship program cost as determined by the stewardship organization. The program cost includes all administrative and operational costs, including the department's annual fee.~~

Ecology deleted this definition for consistency with other amendments related to the change in funding mechanism, which reflects statutory changes.

**WAC 173-910-100 Definitions:**

~~**"Independent plan"** means a plan for collecting, transporting, processing and recycling of mercury-containing lights that is approved by the department and developed and implemented by a producer, group of producers, or a stewardship organization designated by a producer or group of producers.~~

~~**"Standard Plan":** means the plan for the collection, transportation, processing and recycling of mercury-containing lights developed by a stewardship organization in response to the department's request for proposals, approved by the department, and implemented by a stewardship organization~~

Ecology deleted the “Standard Plan” definition for consistency with other amendments since it was from the former process requiring department-requested proposals for a department-contracted program. We also deleted the “Independent Plan” definition. All references to the “standard plan” and the “independent plan” were deleted from the rule.

**WAC 173-910-100 Definitions:**

**"Product stewardship plan"** or **"plan"** means a detailed plan describing the manner in which a product stewardship program will be implemented~~. A product stewardship plan can either be the standard plan or an independent plan.~~ for collecting, transporting, processing, and recycling mercury-containing lights that is approved by the department and developed and implemented by a producer, group of producers, or a stewardship organization.

With the deletion of the “Standard Plan” and “Independent Plan” definitions that were part of the former process requiring department-requested proposals for a department-contracted program, we modified the “Product Stewardship Plan or Plan” definition to include the descriptive text regarding what is required for the overall program.

**WAC 173-910-210 Producers of mercury-containing lights:**

(2) ~~Each producer must participate in a product stewardship program by: (a) Funding its producer ((share)) cost of the department-approved standard plan and program operated by the ((department-contracted)) stewardship organization; or (b) Funding its producer ((share)) cost of and operating, either individually or jointly, an independent plan and program approved by the department.~~

Ecology deleted this text since it refers to the former department-contracted program prior to the legislative changes. The remaining subsections (3 through 5) became subsections 2 through 4.

**WAC 173-910-210 Producers of mercury-containing lights:**

(~~4~~3) ~~Producers~~ <u>The stewardship organization</u> must pay all administrative and operational costs associated with the ~~standard program or the independent program~~ <u>plan</u> in which they participate, except for the collection costs associated with curbside and mail-back collection programs…….”

Ecology deleted the word “Producers” and added “The stewardship organization” to accurately reflect the way the program is funded through the Environmental Handling Charge. References to the standard program and the independent program were deleted since those were in place for the former department-contracted program.

**WAC 173-910-210 Producers of mercury-containing lights:**

(~~4~~3) …...For collection locations, including household hazardous waste facilities, charities, retailers, government recycling sites, or other suitable locations, a stewardship organization must finance the costs of collection, transportation, and processing of mercury-containing lights collected at the collection locations. <u>The stewardship organization’s administrative and operational costs are not required to include a collection location’s cost of receiving, accumulating and storing, and packaging mercury-containing lights.</u>

This language from the statute was proposed to be added under the stewardship organization requirements in WAC 173-910-310(11). In the final rule, we also added the same language at the end of WAC 173-910-210(3) for clarity.

**WAC 173-910-210 Producers of mercury-containing lights:**

(~~5~~4) The producer must satisfy the following requirements: (a) Meet its financial obligations to the plan~~, which includes the department's annual fee~~;

The reference to the department's annual fee was deleted because the product stewardship organization is responsible for paying the department's annual fee consistent with the amended statute. This subsection was renumbered to become (4) in the final rule.

**WAC 173-910-310 Stewardship organization requirements:**

(1) ~~The~~ A stewardship organization will implement ~~the~~ a department-approved ~~standard~~ plan ~~and independent stewardship organizations will implement department-approved independent plans~~.

Ecology deleted text referring to a "standard plan" and an "independent plan" and changed "the" to "a" in two places since there won't be a department-contracted plan consistent with the amended statute.

**WAC 173-910-520 Collector Requirements:**

(7)(f) Use packaging and shipping material that will minimize the release of mercury into the environment by volatilization or any other means and minimize breakage and use mercury vapor barrier packaging as defined in RCW 70.275.020(10) if mercury lights are transported by the United States Postal Service or a common carrier; and

We added language from the statute at RCW 70.275.070(1)(d) for clarity and consistency because WAC 173-910-320(1)(c) (from RCW 70.275.030(2), last sentence) cites to the subsection where mercury vapor barrier packaging was proposed to be added, and the subsection didn't include the specific requirement to use this type of packaging.

**WAC 173-910-610 Participation requirements:**

(6) Education and outreach: Retailers, wholesalers, distributors, or electric utilities that sell, offer for sale at retail or distribute mercury-containing lights at retail must work with stewardship organizations to:

Ecology added the second reference to "at retail" in the final rule language for clarity and consistency.

## Response to Comments

**Commenter identification:**

Ecology accepted comments between March 10, 2016 and May 4, 2016. This section provides comments received during the public comment period and Ecology's responses. (RCW 34.05.325(6)(a)(iii))

Comments received by Ecology on the proposed rule follow below, verbatim with Ecology's response following each comment. Please see the table on page 18 for a list of commenters and page(s) where their comments and Ecology's can be found.

## Mercury Lights Rule Public Comments and Responses

**Kyle Pitsor, Vice President, Government Relations, National Electrical Manufacturers Association (NEMA)**

**COMMENT 1**: *"There is, however, one aspect of the program's operating framework that is undergoing change but, because the change has not been incorporated into the statute, it is not reflected in the regulatory amendments. As you know, the state's operating budget agreement enacted during special session this year (effective April 18, 2016) contains a proviso that directs as follows:*

> *(17) During the 2015-17 fiscal biennium, the department shall not retain fees in excess of the estimated amount necessary to cover the agency's administrative costs related to the mercury light stewardship program under 70.275 RCW. The department shall refund any fees collected in excess of those administrative costs to any approved stewardship organization under 70.275 RCW.*
>
> *The current statute requires the mercury light stewardship program to remit $5,000 to the Department of Ecology each year for every "producer" that joins the stewardship organization. Product Stewardship Inc. (PCA) transmitted the funds in accordance with this requirement early in 2016, but the proviso requires an evaluation of the actual costs incurred to administer the program later this year to determine how much of a refund may be warranted. NEMA looks forward to working with PCA and department staff on this cost assessment. In the meantime, we appreciate your consideration of our comments on the proposed regulatory changes."*

**Response:** Comment noted. The department will be working with PCA on the cost assessment described in the budget proviso.

**COMMENT 2: *"WAC 173-910-010 Purpose: ……*** *Every producer of mercury-containing lights sold in or into Washington state for ((~~residential use~~)) <u>sale at retail</u> must fully finance and participate in the product stewardship program.*

> *This wording is inconsistent with the amended statute. Manufacturers are required to "participate" in a product stewardship program but do not "fully finance" the program.*
>
> *Suggested rewording:*
> *Every producer of mercury-containing lights sold in or into Washington state for ((~~residential use~~)) <u>sale at retail</u> must ~~fully finance and~~ <u>join and</u> participate in the product stewardship program."*

**Response:** Ecology agrees with the suggestion to delete the text "fully finance and" since it is consistent with other changes in the proposed rule to implement the new financing mechanism, and this language will be deleted in the final rule. We determined that the word "participate" is sufficient and consistent with the statute, and that adding the words "join and" is not necessary.

**Rewording:** Every producer of mercury-containing lights sold in or into Washington state for ((~~residential use~~)) sale at retail must ~~fully finance and~~ participate in the product stewardship program.

**COMMENT 3:** ***"WAC 173-910-020 Applicability.*** *(7) Any retailer, electric utility, or other person that gives away, offers for sale at retail, or sells mercury-containing lights in or into Washington state ((~~for residential use~~)).*

> *Removal of the phrase "for residential use" renders the statement open to interpretation regarding mercury-containing lights disposed by parties* ***outside of*** *the residential sector. Under the regulation, "person" means "a sole proprietorship, partnership, corporation, nonprofit corporation or organization, limited liability company, firm, association, cooperative, or other legal entity located within or outside Washington state (sic)." This section should either retain the phrase "for residential use" or add "at retail" at the end (even if it appears redundant) to make clear the program does not extend to lamps obtained through commercial sales.*
>
> *Suggested rewording:*
> *(7) Any retailer, electric utility, or other person that gives away, offers for sale at retail, or sells mercury-containing lights in or into Washington state ((~~for residential use~~)) at retail."*

**Response:** Ecology agrees that adding the text "at retail" at the end of the definition will provide clarity and is consistent with the statute.

**Rewording:** (7) Any retailer, electric utility, or other person that gives away, offers for sale at retail, or sells mercury-containing lights in or into Washington state ((~~for residential use~~)) at retail.

**COMMENT 4:** ***"WAC 173-910-100 Definitions: "Fully finance and participate"*** *means the obligation of each producer of mercury-containing lights sold in or into Washington to fund its share of program costs and join in an approved product stewardship program.*

> *See previous comment regarding "Purpose." This wording does not reflect the current statute.*
>
> *Suggested rewording:*
> *"~~Fully finance and p~~Participate" means the obligation of each producer of mercury-containing lights sold in or into Washington to register with and participate in an approved product stewardship program."*

**Response:** Ecology agrees to delete the words "fully finance and" since that language reflected the original funding mechanism. However, note that it is the obligation of the producers to make sure that revenue for the program is generated and remitted to the product stewardship organization through the environmental handling charge. Ecology agrees with the other suggested changes to make the definition more clear and consistent with other amendments. This definition will be moved since the definitions are in alphabetical order.

**Rewording:** "~~Fully finance and p~~Participate" means the obligation of each producer of mercury-containing lights sold in or into Washington to ~~fund its share of program costs and join in an~~ register with and participate in an approved product stewardship program.

**COMMENT 5:** ***"WAC 173-910-100 Definitions: "Producer's ((~~share~~)) cost":*** *means each participating producer's ((~~share~~)) portion of the product stewardship program cost as determined by the stewardship organization. The program cost includes all administrative and operational costs, including the department's annual fee.*

*Also inconsistent with amended statute. Recommend deleting entire definition."*

**Response:** Ecology agrees that this definition should be deleted for consistency with other amendments to update the rule for consistency with statutory changes.

**Rewording:** ~~**"Producer's ((share)) cost":** means each participating producer's ((share)) portion of the product stewardship program cost as determined by the stewardship organization. The program cost includes all administrative and operational costs, including the department's annual fee.~~

**COMMENT 6:** ***"WAC 173-910-100 Definitions: "Standard Plan":*** *means the plan for the collection, transportation, processing and recycling of mercury-containing lights developed by a ((~~department-contracted~~)) stewardship organization in response to the department's request for proposals, approved by the department, and implemented by a stewardship organization ((~~under contract with the department~~))*

*Recommend deleting entire definition. Definition of "Product Stewardship Plan" should suffice."*

**Response:** Ecology agrees that it is appropriate to delete the "Standard Plan" definition, as this definition was from the former process requiring department-requested proposals for a department-contracted program. Consistent with deleting the "Standard Plan" definition, we will also delete the "Independent Plan" definition and modify the "Product Stewardship Plan or Plan" definition to include the descriptive text regarding what is required for the overall program as shown below. All references to the "standard plan" and the "independent plan" will be deleted from the rule.

~~**"Standard plan"** means the plan for the collection, transportation, processing and recycling of mercury-containing lights developed by a ((department contracted)) stewardship organization in response to the department's request for proposals, approved by the department, and implemented by a stewardship organization ((under contract with the department)).~~

~~**"Independent plan"** means a plan for collecting, transporting, processing and recycling of mercury-containing lights that is approved by the department and developed and implemented by a producer, group of producers, or a stewardship organization designated by a producer or group of producers.~~

**"Product stewardship plan"** or "plan" means a detailed plan describing the manner in which a product stewardship program will be implemented. ~~A product stewardship plan can either be the standard plan or an independent plan.~~ for collecting, transporting, processing, and recycling mercury-containing lights that is approved by the department and developed and implemented by a producer, group of producers, or a stewardship organization.

**COMMENT 7: *"WAC 173-910-210 Producers of mercury-containing lights:*** *(1)* ***. . .***
***"****Producers must satisfy these participation obligations individually or may do so jointly with other producers."*

*The wording in this subsection is confusing.*

*Suggested rewording*
*(1)* ***. . . "*** *Producers ~~must~~ may satisfy these participation obligations individually or ~~may~~ do so jointly with other producers."*

**Response:** Comment noted, however we will retain the proposed wording (from RCW 70.275.030(1)) since the word "must" makes it clear that producers need to satisfy their obligations, but that they have the option to do so either individually, or they "may" do so with other producers.

**COMMENT 8: *"WAC 173-910-210 Producers of mercury-containing lights:*** *(2) Each producer must participate in a product stewardship program by: (a) Funding its producer ((~~share~~)) cost of the department-approved standard plan and program operated by the ((~~department-contracted~~)) stewardship organization; or (b) Funding its producer ((~~share~~)) cost of and operating, either individually or jointly, an independent plan and program approved by the department.*

*As with other subsections, this is no longer true under the amended statute. Recommend deleting entire subsection."*

**Response:** Ecology agrees with the commenter, and the text in WAC 173-910-210(2) will be deleted. The remaining subsections (3 through 5) will become subsections 2 through 4.

**Rewording: Producers of mercury-containing lights:** ~~(2) Each producer must participate in a product stewardship program by: (a) Funding its producer ((share)) cost of the department-approved standard plan and program operated by the ((department-contracted)) stewardship organization; or (b) Funding its producer ((share)) cost of and operating, either individually or jointly, an independent plan and program approved by the department.~~

**COMMENT 9: *"WAC 173-910-210 Producers of mercury-containing lights:*** *(4)*
***"****Producers must pay all administrative and operational costs associated with the standard program or the independent program in which they participate, except for the collection costs associated with curbside and mail-back collection programs. . . "*

*The first sentence is not consistent with amended statute.*

*Suggested rewording ~~Producers~~ The stewardship organization must pay all administrative and operational costs associated with the standard program ~~or the independent program in which~~ ~~they participate~~, except for the collection costs associated with curbside and mail- back collection programs……"*

**Response**: Ecology agrees with the suggested changes to more accurately reflect the way the program is funded through the EHC and will make those changes in the final rule. However it is important to note that the statute obligates the producers to be responsible for funding the program through participation with sales generated by the EHC for lights sold at retail. As noted in the previous comment, this subsection will be renumbered as (3).

**Rewording:** (3) ~~Producers~~ The stewardship organization must pay all administrative and operational costs associated with the ~~standard program or the independent program~~ plan in which they participate, except for the collection costs associated with curbside and mail-back collection programs……."

**COMMENT 10: *"WAC 173-910-210 Producers of mercury-containing lights:*** *(4) "The producer must satisfy the following requirements: (a) Meet its financial obligations to the plan, which includes the department's annual fee;*

*Not consistent with amended statute. Recommend deleting (a) entirely"*

**Response:** Ecology agrees that the product stewardship organization is responsible for paying the department's annual fee and will delete the reference to paying the department's fee. However, the producer is obligated to ensure that there is revenue for the program by registering with the product stewardship organization, and ensuring that the ECH is added to the sale of mercury-containing lights at retail. Therefore, the first part of the sentence will remain as is.

**Rewording:** The producer must satisfy the following requirements: (a) Meet its financial obligations to the plan~~, which includes the department's annual fee~~;

**COMMENT 11: *"WAC 173-910-310 Stewardship organization requirements.*** *(1) The ((~~department-contracted~~)) stewardship organization will implement the department-approved standard plan and independent stewardship organizations will implement department-approved independent plans.*

*Not reflective of amended statute. Suggested Rewording:*
*(1) The ((~~department-contracted~~)) stewardship organization will implement the department-approved standard plan and ~~independent~~ individual stewardship organizations will implement department-approved independent producer plans."*

**Response:** We agree with the commenter and will delete the text referring to a "standard plan". Consistent with Response to Comment 6 above, we will also delete the reference to an "independent plan" and will change "the" to "a" since there won't be a department contracted plan.

**Rewording:** (1) ~~*The*~~ A ((~~department-contracted~~)) stewardship organization will implement ~~the~~ a department-approved ~~standard~~ plan ~~and independent stewardship organizations will implement department-approved independent plans~~.

**COMMENT 12: *"WAC 173-910-610 Participation requirements.*** *(6) Education and outreach: Retailers, wholesalers, distributors, or electric utilities that sell, offer for sale at retail or distribute mercury-containing lights must work with stewardship organizations to:*

> *Similar to Sec. 173-910-020 (Applicability), language provides room for misinterpretation with regard to applicability to lights obtained through commercial sales.*
>
> *Suggested rewording:*
> *(6) Education and outreach: Retailers, wholesalers, distributors, or electric utilities that sell, offer for sale at retail or distribute mercury-containing lights at retail must work with stewardship organizations to:"*

**Response:** Ecology agrees with the commenter's rewording and will add the second reference to "at retail" in the final rule language.

**Rewording:** (6) Education and outreach: Retailers, wholesalers, distributors, or electric utilities that sell, offer for sale at retail or distribute mercury-containing lights at retail must work with stewardship organizations to:

**Charlie Brown, Cascade Government Affairs, Lobbyist for the National Electrical Manufacturers Association (NEMA). Testimony at April 27, 2016 Public Hearing**

**COMMENT 13: "***I am here today on behalf of the National Electrical Manufacturers Association. As all of you know, National Electrical Manufacturers include companies that manufacture mercury lights and have been engaged in the mercury light program since its inception and proposed legislation over the course of the last decade actually. Appreciate the update on the rules. Certainly the program as it was implemented back in 2015 appears to be working quite well. In fact, as I recall the latest email suggested that over 1 million lamps have been collected in the state of Washington for recycling. We believe that is a tremendous accomplishment. Congratulations to you on the structure that you have here. And I think it also speaks to the value of using the environmental handling charge as the method for funding the program overall. The comments that National Electrical Manufacturers Association have today and will be submitting in writing as well for a more detailed explanation of our comments reflect the program as it is operating today vs. what we saw at least in the proposed rule language."*

**Response**: Comment noted.

**COMMENT 14: "***In WAC 173-910-010 Purpose. It. The wording of the language when you take out residential use and say sold at retail seems inconsistent with the amended law which was amended as you know in 2014. Manufacturers do not actually "fully finance" the program, but now are required to simply "participate" in the program. We would suggest changing language into saying must join and participate in the product stewardship program. Again, the 2010 law did suggest that the manufacturers would fully finance the program. That obviously*

*that statute was changed significantly in that particular area and we think the rule should reflect that as well."*

**Response:** See Response to Comment 2 above.

**COMMENT 15:** *"So with respect to WAC 173-910-020 Applicability, we are concerned that by removing the statement of "for residential use" you have kind of left open to interpretation the idea that the program is really intended for lamps that are sold at retail for residential use. And because it refers back to the term person, which includes sole proprietorships, partnerships, corporations, non-profits corporations or organizations, limited liability corporations, firms, associations, cooperatives and other legal entities located inside or outside the state. We are worried that it might be left open to interpretation that the program is designed for more than residential purposes in terms of the recycling program. If we start seeing a lot more commercial lamps coming into the system and the environmental handling charge is not imposed on those commercial sales of those lamps which they are not since they are imposed at retail. We are worried that the number of lamps could, that are taken into the program for recycling, could exceed the available funding for the program. And so we would encourage you to maintain the references throughout the statue quite frankly or the rule for residential use. So that is really a key point in our comments."*

**Response:** See Response to Comment 3 above. That comment suggested either adding "at retail" OR deleting "for residential use".

**COMMENT 16:** *"In WAC 173.910.100 Definitions. And the next several comments will be related to that definitions section. With respect to department annual fee, it seems that this should be amended to reflect that the budget proviso recently enacted would suggest that the department would work with the product stewardship organization to make sure that the amount of money that is being sent to the department for its administrative costs would reflect only the costs of the administrative costs. And that any amount that is left remaining would be returned back to the product stewardship organization. So that they can use that money for the recycling program. We look forward to further discussions on that particular point, but we think it ought to be in the rule as well if that's possible."*

**Response:** See Response to Comment 1 above. The budget proviso wasn't an amendment to the mercury lights statute; therefore, the proviso language won't be included in this rule amendment process. If it becomes a permanent change it will be noted for a future rule process.

**COMMENT 17:** *"In the definition section with respect to fully finance and participate, again, the first comment is applicable here. We suggest changing the subsection header to read participate so that it would be fully or just participate. And amend the text to read where you would strike to fund its share program cost and join in and put into underlining. And again this will be written form for you. To register with and participate in an approved product stewardship program. Once again noting this is a different breed of cat than what was put forward in 2010. With respect to producers cost, we suggest that actually that whole section, that whole definition, actually be eliminated because you don't have a producer cost necessarily now. There is just a charge for each producer that sells into the state. And this definition may not be needed any longer."*

**Response:** See Response to Comments 4 and 5 above.

**COMMENT 18:** *"That with respect to a standard plan I don't know that there really is a standard plan as much as anything else. There's the plan that was put forward by the existing product stewardship organization. And so you don't really have a standard plan necessarily versus a product stewardship plan or stand-alone entity. Perhaps that entire definition ought to be deleted as well. To my knowledge there is no intention of creating a standard plan. We are just going forward with what we've got. And to my knowledge I don't believe there is anybody that has come forward wanting to have a separate recycling program other than what we've got at this time."*

**Response:** See Response to Comment 6 above.

**COMMENT 19:** *"In WAC 173-910-210 referencing producers of mercury lights. We believe that the current language is somewhat confusing. It says in subsection 1 into that paragraph down the line there is language of "producers must satisfy these participation obligations individually or may do so jointly with other producers". We believe the language is somewhat confusing and could be changed to producers may satisfy these participation obligations individually or do so jointly with other producers. And in that same WAC the producers of mercury lights under subsection 2 you suggest striking a couple of words in there, and in fact since it says each producer must participate in a product stewardship program by A funding it's producer cost of the department approved standard plan or B funding it's producer cost of operating either individual or jointly. Since there's again just one plan perhaps that entire subsection could be deleted or just modified to reflect the fact that we only have one plan out there. If the department is anticipating that there might be a separate plan is in the offing we would understand that but given our knowledge no separate plan is in the offing. And it would seem to me that in the overall reduction of mercury lamps being sold in this state or on the market in general anymore because of being so rapidly replaced with LED lights that I don't see any other plans coming forward at this time."*

**Response:** See Response to Comments 7 and 8 above. The department has no knowledge of anyone having interest in setting up a separate plan. We deleted references to the two types of plans (standard and independent), but as written, the regulation would still allow for more than one plan in the unlikely event that a producer or group of producers wanted to pursue one.

**COMMENT 20:** *"Also with respect to that WAC 173-910-210 Producers of Mercury Lights – the first sentence we don't believe is consistent with the amended statute. We suggest changing that, this would be in subsection 4, to strike the word producers and replace it or amend in language that says the stewardship organization must pay all administrative and operational cost with the standard program or with the program except for the collection costs associated with curbside and mail-back collection programs. We believe that's probably more consistent with the underlying 2014 statute now says."*

**Response:** See Response to Comment 9 above.

**COMMENT 21:** *"And then in WAC 173-910-210 once again producers of mercury containing lights under subsection 5 it states that the producer must satisfy the following requirements to meet its financial obligations to the plan which includes the department's annual fee. Again the stewardship organization is the one that allocates or it determines how many producers there are in the state and sends you a corresponding amount of money. So we would just suggest deleting that subsection 5 there."*

**Response:** See Response to Comment 10 above.

**COMMENT 22: "***With respect to WAC 173-910-310 Stewardship Organization Requirements. There is some diluted language in there. And we would suggest a change under that subsection 1, I believe adding the terms at the end of that subsection and individual stewardship programs will implement department approved independent producer plans. I think it is more for clarity than for anything in that subsection 310."*

**Response:** See Response to Comment 11 above.

**COMMENT 23:** *"And once again with respect to subsection 310 subsection 7 there, it talks about producers paying an annual fee to the department to cover the administrative and enforcement costs. And if that could be reflective of the recent budget proviso that suggests it would just cover the cost and any extra money would be remitted back to the producer or back to the stewardship program. That might be useful as we go forward. Now I do have to comment that I understand that a budget proviso only lasts for the two year period that a budget is in place. However we would anticipate that the relationship with the department would continue forward where the department was only charging the actual cost of the administrative and enforcement costs and that way we can retain as much money in the stewardship recycling and collection program as possible so that the environment handling charge fee is kept as low as possible over the course of time while still being able to meet the objective of recycling all those lights."*

**Response:** See Response to Comments 1 and 16 above.

**COMMENT 24:** *"And then, we noted in WAC 173-910-520 with respect to the collector requirements that there was language about using mercury vapor barrier packaging. Mercury Vapor Barrier Packaging is not defined in the rule even though it has been defined in the statute. So I don't know if you want to reference back to the definition in the statute or if there's new vapor barrier packaging that is out on the market. Perhaps we ought to go back into the statute at some point to remove that definition language there. And that would be something we would be willing to work with you on as we go forward. So that was more of a just making sure the rule is consistent with what is in the statute."*

**Response:** Comment noted. The proposed language is from the statute at RCW 70.275.070(1)(d). Ecology proposed adding this language because another section [WAC 173-910-320(1)(c) (from RCW 70.275.030(2), last sentence] cites to the subsection where mercury vapor barrier packaging was proposed to be added, and the subsection didn't include the requirement to use this type of packaging. We will add a reference to the definition in the statute for clarity. If the statutory definition is removed or changed in the future, the rule can be updated for consistency.

**Rewording:** (7)(f) Use packaging and shipping material that will minimize the release of mercury into the environment by volatilization or any other means and minimize breakage and use mercury vapor barrier packaging as defined in RCW 70.275.020(10) if mercury lights are transported by the United States Postal Service or a common carrier; and

**Suellen Mele, Program Director, Zero Waste Washington**

**COMMENT 25:** *"In WAC 173-910-100, the definition of "Standard plan" refers to "the department's request for proposals." Did (or would) the department go through a request for proposals process for the standard plan or is that language left over from when there was a department contracted stewardship organization?"*

**Response:** Yes, the "standard plan" definition was left over from when there was a department-contracted stewardship organization. And no, the department would not go through a request for proposals. For consistency with other proposed changes to bring the rule into alignment with the statute, the definition will be deleted and not appear in the final rule. See Response to Comment 6.

**COMMENT 26:** *"Identical language related to the mercury-containing light environmental handling charge appears in three sections of the rules: Producers of mercury-containing lights (WAC 173-910-210 (3)), Stewardship organization requirements (WAC 173-910-310 (5)), and Participation requirements (WAC 173-910-610 (4)). Was this intentional because that language applies to producers, stewardship organizations and retailers?"*

**Response:** Yes, it was intentional to place language regarding the environmental handling charge into three locations since this applies to producers, the stewardship organization, and retailers.

**COMMENT 27: "***WAC 173-910-210 (4) states that for collection locations, a stewardship organization must finance the costs of collection. However, the provision about collection location costs was fine-tuned in the 2014 law revision (RCW 70.275.030 (2): "The stewardship organization's administrative and operational costs are not required to include a collection location's cost of receiving, accumulating and storing, and packaging mercury-containing lights." We recommend clarifying WAC 173-910-210 (4) to include that same language."*

**Response:** This language from the statute was proposed to be added under the stewardship organization requirements in WAC 173-910-310(11). Ecology agrees that adding the same language at the end of WAC 173-910-210(4) will provide clarity. The first part of subsection 4 will be reworded in the final rule, see Response to Comment 9, and the suggested language will also be added at the end of WAC 173-910-210(4).

**Rewording:** (4) …...For collection locations, including household hazardous waste facilities, charities, retailers, government recycling sites, or other suitable locations, a stewardship organization must finance the costs of collection, transportation, and processing of mercury-containing lights collected at the collection locations. The stewardship organization's

administrative and operational costs are not required to include a collection location's cost of receiving, accumulating and storing, and packaging mercury-containing lights.

**COMMENT 28:** *"It might also be useful to include clarifying language that, as stated in RCW 70.275.030 (2), "For collection locations . . . a stewardship organization must pay the costs of packaging and shipping materials as required under RCW 70.275.070 or must compensate collectors for the costs of those materials . . ."*

**Response:** Comment noted. This language was proposed to be added in WAC 173-910-320(1)(c), Stewardship collection system. It will be retained there in the final rule.

**COMMENT 29:** *"In WAC 173-910-320 (2)(a), the description of convenient collection service should refer to services in each county rather than services for each county: "Provide collection services for mercury-containing lights ~~for~~ in each county of the state." This parallels the language in the RCW."*

**Response:** Amendments to the regulation as part of this rule process are limited to those for consistency with changes made to the statute. This suggestion will be saved for a future rule process.

**COMMENT 30:** *"In WAC 173-910-430 (8)(b), the description of the collection system should refer to collection sites and services in each city rather than for each city: "(b) ~~For~~ In each city with a population greater than ten thousand."*

**Response:** Amendments to the regulation as part of this rule process are limited to those for consistency with changes made to the statute. This suggestion will be saved for a future rule process.

**Jerry Mingo, MRW Coordinator, Jefferson County Public Works**

**COMMENT 31:** *"Jefferson County offers the following comment from the perspective of a LightRecycle Washington collection site operator. We recognize that changing the quantity of lamps acceptable from entities that had paid an environmental handling fee has not been proposed, but feel that it should increase from 10 to 30 lights in this or a subsequent amendment.*

*The limit of 10 lamps is inconvenient and costly for companies and agencies that purchase lamps at retail, pay the environmental handling fee, but are penalized when mobilizing an employee to deliver a few lamps to a collection site.*

*Otherwise-eligible companies and agencies commonly arrive at a collection site with 12 or 15 lamps that are backfilled into a box which had previously contained new lamps. Occasionally two such boxes totaling 20 to 30 lamps are delivered. On these occasions we confirm that the lamps had been purchased at retail, and if so, explain the State's 10-lamp per person per day limit. This happens on half or more of deliveries from businesses and agencies.*

*Spent lamps that had been purchased at wholesale generally exceed 30. Such 'ineligible' lights are accepted through Jefferson County's small quantity generator hazardous waste program and LightRecycle Washington does not incur expense."*

**Response:** Comment noted. This question has come up often since the start of the program as to "why only 10 lights per day are accepted". The statute was written to allow 10 lights per day per person to be recycled as determined under the "person" definition, (WAC 173-910-100), where the "person" purchased the lights at retail only. The rule cannot be amended to allow more than 10 lights per day as the statute would have to be revised first.

## Commenter Index

The table below lists the names of organizations or individuals who submitted a comment on the rule proposal and where you can find Ecology's response to the comment(s).

| Name | Position Title | Organization | Stakeholder Comment Index | Page Numbers |
|---|---|---|---|---|
| Kyle Pitsor | Vice President, Government Relations | National Electrical Manufacturers Association (NEMA) | Comments 1 - 12 | 7 - 12 |
| Charlie Brown | Lobbyist for NEMA | Cascade Government Affairs | Comments 13 – 24, 1 – 11 and 16 | 12 - 16 |
| Suellen Mele | Program Director | Zero Waste Washington | Comments 25 – 30, and 9 | 16 - 17 |
| Jerry Mingo | MRW Coordinator | Jefferson County, WA | Comment 31 | 17 - 18 |

## Appendix A: Copies of all written comments

From: Jerry Mingo
[mailto:JMingo@co.
jefferson.wa.us] Sent: Thursday,
March 31, 2016 1:59 PM
To: ECY RE W2R Rulemaking
<w2rrulemaking@ECY.WA.GOV> Cc:
Tom Boatman <TBoatman@co.
jefferson.wa.us>
Subject: Hg Lamps rule proposal comment

Please find the attached comment concerning proposed changes to the Mercury-Containing Lights Product Stewardship Program.

Jerry Mingo
Moderate Waste Risk Coordinator
Jefferson County PW/Solid Waste
623 Sheridan St.
Port Townsend, WA 98368
360-385-9230

**Jefferson County Department of Public Works**

623 Sheridan St.
Port Townsend, WA
98368 (360) 385-9160

*Monte Reinders, P.E.*
*Public Works Director/County Engineer*

Joanne Neugebauer-Rex
Washington State Department of Ecology
Waste 2 Resource Program
PO Box 47600
Olympia, WA 98504-7600

March 31, 2016

RE: Public comment period concerning a proposed amendment to Chapter 70.95.275 RCW. Dear Ms.

Neugebauer-Rex,

Jefferson County offers the following comment from the perspective of a LightRecycle Washington collection site operator. We recognize that changing the quantity of lamps acceptable from entities that had paid an environmental handling fee has not been proposed, but feel that it should increase from 10 to 30 lights in this or a subsequent amendment.

The limit of 10 lamps is inconvenient and costly for companies and agencies that purchase lamps at retail pay the environmental handling fee, but are penalized when mobilizing an employee to deliver a few lamps to a collection site.

Otherwise-eligible companies and agencies commonly arrive at a collection site with 12 or 15 lamps that are backfilled into a box which had previously contained new lamps. Occasionally two such boxes totaling 20 to 30 lamps are delivered. On these occasions we confirm that the lamps had been purchased at retail and if so, explain the State's 10-lamp per person per day limit. This happens on half or more of deliveries from businesses and agencies.

Spent lamps that had been purchased at wholesale generally exceed 30. Such 'ineligible' lights are accepted through Jefferson County's small quantity generator hazardous waste program and LightRecycle Washington does not incur expense.

Thank-you for your consideration of this comment. A reply is not requested.

(e-mailed) JerryMingo
MRW Coordinator

**From:** Kohorst, Mark [mailto:Mar_Kohorst@nema.org]
**Sent:** Monday, May 02, 2016 1:13 PM
**To:** ECY RE W2R Rulemaking <w2rrulemaking@ECY.WA.GOV> **Cc:** Thompson, Letitia <Letitia.Thompson@Nema.org> **Subject:** NEMA Comments

Dear Ms. Neugebauer-Rex,

Attached please find comments from the National Electrical Manufacturers Association concerning the department's proposed revisions to Chapter 173-910 WAC, implementing the Mercury-Containing Lights Product Stewardship Program statute enacted in 2014.

If you have questions or comments, please don't hesitate to contact me. Thank you for your

consideration. Best regards,

Mark A. Kohorst
Senior Manager - Environment,
Health & Safety National Electrical
Manufacturers Association Suite
900
1300 N. 17th Street
Rosslyn, Va. 22209
Ph: 703-841-3249
Fax: 703-841-3349
mar_kohorst@nema.org
**www.nema.org**

The Association of Electrical Equipment
and Medical Imaging Manufacturers
www.nema.org

National Electrical Manufacturers Association

May 4, 2016

Joanne Neugebauer-Rex
Washington State Department of Ecology Waste 2
Resource Program
PO Box 47600
Olympia, WA 98504-7600

**RE: NEMA Comments regarding proposed amendments to Chapter 173-910 WAC - Mercury-Containing Lights Product Stewardship Program.**

Dear Ms. Neugebauer-Rex:

The National Electrical Manufacturers Association (NEMA) represents the leading US producers of energy efficient lighting. Our members supported the 2014 legislation that amended Chapter 70.95.275 RCW 2246 and established the foundation for LightRecycle Washington, the statewide program for collecting and recycling mercury containing lamps.

We are pleased to offer comments to the department's proposed amendments to the regulations that govern this landmark recycling program. Our comments are listed in bullet point form below.

There is, however, one aspect of the program's operating framework that is undergoing change but, because the change has not been incorporated into the statute, it is not reflected in the regulatory amendments. As you know, the state's operating budget agreement enacted during special session this year (effective April 18, 2016) contains a proviso that directs as follows:

> *(17) During the 2015-17 fiscal biennium, the department shall not retain fees in excess of the estimated amount necessary to cover the agency's administrative costs related to the mercury light stewardship program under 70.275 RCW. The department shall refund any fees collected in excess of those administrative costs to any approved stewardship organization under 70.275 RCW."*

The current statute requires the mercury light stewardship program to remit $5,000 to the Department of Ecology each year for every "producer" that joins the stewardship organization. Product Stewardship Inc. (PCA) transmitted the funds in accordance with this requirement early in 2016, but the proviso requires an evaluation of the actual costs incurred to administer the program later this year to determine how much of a refund may be warranted. NEMA looks forward to working with PCA and department staff on this cost assessment. In the meantime, we appreciate your consideration of our comments on the proposed regulatory changes.

## NEMA COMMENTS ON AMENDATORY SECTION (Amending WSR 12-23-049)

Page 1

- **WAC 173-910-010 Purpose: . . .** Every producer of mercury-containing lights sold in or into Washington state for ~~((residential use))~~ sale at retail must fully finance and participate in the product stewardship program.

COMMENT: This wording is inconsistent with the amended statute. Manufacturers are required to "participate" in a product stewardship program but do not "fully finance" the program.

Suggested rewording:
Every producer of mercury-containing lights sold in or into Washington state for ~~((residential use))~~ sale at retail must ~~fully finance and~~ join and participate in the product stewardship program."

- **WAC 173-910-020 Applicability.** (7) Any retailer, electric utility, or other person that gives away, offers for sale at retail, or sells mercury-containing lights in or into Washington state ((~~for residential use~~)).

COMMENT: Removal of the phrase "for residential use" renders the statement open to interpretation regarding mercury-containing lights disposed by parties ***outside of*** the residential sector. Under the regulation, "person" means "*a sole proprietorship, partnership, corporation, nonprofit corporation or organization, limited liability company, firm, association, cooperative, or other legal entity located within or outside Washington state (sic)*." This section should either retain the phrase "for residential use" or add "at retail" at the end (even if it appears redundant) to make clear the program does not extend to lamps obtained through commercial sales.

Suggested rewording:
(7) Any retailer, electric utility, or other person that gives away, offers for sale at retail, or sells mercury-containing lights in or into Washington state ((~~for residential use~~)) at retail.

Page 3

- **WAC 173-910-100 Definitions: "Fully finance and participate"** means the obligation of each producer of mercury-containing lights sold in or into Washington to fund its share of program costs and join in an approved product stewardship program.

  COMMENT: See previous comment regarding "Purpose." This wording does not reflect the current statute.

  Suggested rewording:
  **"~~Fully finance and~~ Pparticipate"** means the obligation of each producer of mercury-containing lights sold in or into Washington to ~~fund its share of program costs~~ register with and participate in an approved product stewardship program.

Page 4

- **WAC 173-910-100 Definitions: "Producer's ((share)) cost":** means each participating producer's ((share)) portion of the product stewardship program cost as determined by the stewardship organization. The program cost includes all administrative and operational costs, including the department's annual fee.

  COMMENT: Also inconsistent with amended statute. Recommend deleting entire definition

- **WAC 173-910-100 Definitions: "Standard Plan":** means the plan for the collection, transportation, processing and recycling of mercury-containing lights developed by a ((~~department-contracted)) ~~stewardship organization in response to the department's request for proposals, approved by the department, and implemented by a stewardship organization ((~~under contract with the department~~))

  COMMENT: Recommend deleting entire definition. Definition of "Product Stewardship Plan" should suffice.

Page 5

- **WAC 173-910-210 Producers of mercury-containing lights:** (1) **. . . "**Producers must satisfy these participation obligations individually or may do so jointly with other producers."

  COMMENT: The wording in this subsection is confusing.

  Suggested rewording
  (1) **. . . "** Producers ~~must~~ may satisfy these participation obligations individually or ~~may~~ do so jointly with other producers.

- **WAC 173-910-210 Producers of mercury-containing lights:** (2) Each producer must participate in a product stewardship program by: (a) Funding its producer ((~~share~~)) cost of the department-approved standard plan and program operated by the ((~~department-contracted~~)) stewardship organization; or (b) Funding its producer ((~~share)~~) cost of and operating, either individually or jointly, an independent plan and program approved by the department.

  COMMENT: As with other subsections, this is no longer true under the amended statute. Recommend deleting entire subsection

Page 6

- **WAC 173-910-210 Producers of mercury-containing lights:** (4) **"**Producers must pay all administrative and operational costs associated with the standard program or the independent program in which they participate, except for the collection costs associated with curbside and mail-back collection programs. . . . "

  COMMENT: The first sentence is not consistent with amended statute.

  Suggested rewording:

~~*Producers*~~ The stewardship organization must pay all administrative and operational costs associated with the standard program ~~or the independent program in which they participate~~, except for the collection costs associated with curbside and mail-back collection programs . . . ."

- **WAC 173-910-210 Producers of mercury-containing lights:** (5) **"**The producer must satisfy the following requirements: (a) Meet its financial obligations to the plan, which includes the department's annual fee;

  COMMENT: Not consistent with amended statute. Recommend deleting (a) entirely

Page 8

- **WAC 173-910-310 Stewardship organization requirements.** (1) The ((~~department- contracted~~)) stewardship organization will implement the department-approved standard plan and independent stewardship organizations will implement department- approved independent plans.

  COMMENT: Not reflective of amended statute.

  Suggested rewording:
  (1) The ((~~department-contracted~~)) stewardship organization will implement the department-approved standard plan and ~~independent~~ individual stewardship organizations will implement department-approved independent producer plans.

Page 22

- **WAC 173-910-610 Participation requirements.** (6) Education and outreach: Retailers, wholesalers, distributors, or electric utilities that sell, offer for sale at retail or distribute mercury-containing lights must work with stewardship organizations to:

  COMMENT: Similar to Sec. 173-910-020 (Applicability), language provides room for misinterpretation with regard to applicability to lights obtained through commercial sales.

  Suggested rewording:
  (6) Education and outreach: Retailers, wholesalers, distributors, or electric utilities that sell, offer for sale at retail or distribute mercury-containing lights at retail must work with stewardship organizations to:

If you have questions about any of these comments, feel free to reach out to Mark Kohorst at NEMA (mar_kohorst@nema.org; 703-841-3249) or speak to NEMA's Washington State representative, Charlie Brown of Cascade Government Affairs.

Very truly yours,

Kyle Pitsor
Vice President, Government Relations

**April 27, 2016 – Public Hearing Comments from Charlie Brown.**

I am here today on behalf of the National Electrical Manufacturers Association. As all of you know, National Electrical Manufacturers include companies that manufacture mercury lights and have been engaged in the mercury light program since its inception and proposed legislation over the course of the last decade actually. Appreciate the update on the rules. Certainly the program as it was implemented back in 2015 appears to be working quite well. In fact, as I recall the latest email suggested that over 1 million lamps have been collected in the state of Washington for recycling. We believe that is a tremendous accomplishment. Congratulations to you on the structure that you have here. And I think it also speaks to the value of using the environmental handling charge as the method for funding the program overall. The comments that NEMA have today and will be submitting in writing as well for a more detailed explanation of our comments reflect the program as it is operating today vs. what we saw at least in the proposed rule language.

So with respect to WAC 173-910-020 Applicability, we are concerned that by removing the statement of "for residential use" you have kind of left open to interpretation the idea that the program is really intended for lamps that are sold at retail for residential use. And because it refers back to the term person, which includes sole proprietorships, partnerships, corporations, non-profits corporations or organizations, limited liability corporations, firms, associations, cooperatives and other legal entities located inside or outside the state. We are worried that it might be left open to interpretation that the program is designed for more than residential purposes in terms of the recycling program. If we start seeing a lot more commercial lamps coming into the system and the environmental handling charge is not imposed on those commercial sales of those lamps which they are not since they are imposed at retail. We are worried that the number of lamps could, that are taken into the program for recycling, could exceed the available funding for the program. And so we would encourage you to maintain the references throughout the statue quite frankly or the rule for residential use. So that is really a key point in our comments.

In WAC 173-910-010 Purpose. It. The wording of the language when you take out residential use and say sold at retail seems inconsistent with the amended law which was amended as you know in 2014. Manufacturers do not actually "fully finance" the program, but now are required to simply "participate" in the program. We would suggest changing language into saying must join and participate in the product stewardship program. Again, the 2010 law did suggest that the manufacturers would manufacturers would fully finance the program. That obviously that statute was changed significantly in that particular area and we think the rule should reflect that as well.

In WAC 173-910-100 Definitions. And the next several comments will be related to that definitions section. With respect to department annual fee, it seems that this should be amended to reflect that the budget proviso recently enacted would suggest that the department would work with the product stewardship organization to make sure that the amount of money that is being sent to the department for its administrative costs would reflect only the costs of the administrative costs. And that any amount that is left remaining would be returned back to the product

stewardship organization. So that they can use that money for the recycling program. We look forward to further discussions on that particular point, but we think it ought to be in the rule as well if that's possible.

In the definition section with respect to fully finance and participate, again, the first comment is applicable here. We suggest changing the subsection header to read participate so that it would be fully or just participate. And amend the text to read where you would strike to fund age share program cost and join in and put into underlining. And again this will be written form for you. To register with and participate in an approved product stewardship program. Once again noting this is a different breed of cat then what was put forward in 2010. With respect to producers cost, we suggest that actually that whole section, that whole definition, actually be eliminated because you don't have a producer cost necessarily now. There is just a charge for each producer that sells into the state. And this definition may not be needed any longer. That with respect to a standard plan I don't know that there really is a standard plan as much as anything else. There's the plan that was put forward by the existing product stewardship organization. And so since we, you don't really have a standard plan necessarily versus a product stewardship plan a standalone entity. Perhaps that entire definition ought to be deleted as well. To my knowledge there is no intention of creating a standard plan. We are just going forward with what we've got. And to my knowledge I don't believe there is anybody that has come forward wanting to have a separate recycling program other than what we've got at this time.

In WAC 173-910-210 referencing producers of mercury lights. We believe that the current language is somewhat confusing. It says in subsection 1 into that paragraph down the line there is language of "producers must satisfy these participation obligations individually or may do so jointly with other producers". We believe the language is somewhat confusing and could be changed to producers may satisfy these participation obligations individually or do so jointly with other producers. And in that same WAC the producers of mercury lights under subsection 2 you suggest striking a couple of words in there, and in fact since it says each producer must participate in a product stewardship program by A funding it's producer cost of the department approved standard plan or B funding it's producer cost of operating either individual or jointly. Since there's again just one plan perhaps that entire subsection could be deleted or just modified to reflect the fact that we only have one plan out there. If the department is anticipating that there might be a separate plan is in the offing. We would understand that but give to our knowledge no separate plan is in the offing. And it would seem to me that in the overall reduction of mercury lamps being sold in this state or on the market in general anymore because of being so rapidly replaced with LED lights that I don't see any other plans coming forward at this time.

Also with respect to that WAC 173-910-210 Producers of Mercury Lights – the first sentence we don't believe is consistent with the amended statute. We suggest changing that, this would be in subsection 4 to strike the word producers and replace it or amend in language that says the stewardship organization must pay all administrative and operational cost with the standard program or with the program except for the collection costs associated with curbside and mail-

back collection programs. We believe that's probably more consistent with the underlying 2014 statute now says.

And then in WAC 173-910-210 once again producers of mercury containing lights under subsection 5 it states that the producer must satisfy the following requirements meet its financial obligations to the plan which includes the department's annual fee. Again the stewardship organization is the one that allocates or it determines how many producers there are in the state and sends you a corresponding amount of money. So we would just suggest deleting that subsection 5 there.

With respect to WAC 173-910-310 Stewardship Organization Requirements. There is some diluted language in there. And we would suggest a change under that subsection 1, I believe adding the terms at the end of the, of that subsection and individual stewardship programs will implement department approved independent producer plans. I think it is more for clarity than for anything in that subsection 310. And once again with respect to subsection 310 subsection 7 there, it talks about producers paying an annual fee to the department to cover the administrative and enforcement costs. And if that could be reflective of the recent budget proviso that suggests it would just cover the cost and any extra money would be remitted back to the producer or back to the stewardship program. That might be useful as we go forward. Now I do have to comment that I understand that a budget proviso only lasts for the two year period that a budget is in place. However we would anticipate that the relationship with the department would continue forward where the department was only charging the actual cost of the administrative and enforcement costs and that way we can retain as much money in the stewardship recycling and collection program as possible so that the environment handling charge fee is kept as low as possible over the course of time while still being able to meet the objective of recycling all those lights.

And then, we noted in WAC 173-910-520 with respect to the collector requirements that there was language about using mercury vapor barrier packaging. Mercury Vapor Barrier Packaging is not defined in the rule even though it has been defined in the statute. So I don't know if you want to reference back to the definition in the statute or if there's new vapor barrier packaging that is out on the market. Perhaps we ought to go back into the statute at some point to remove that definition language there. And that would be something we would be willing to work with you on as we go forward. So that was more of a just making sure the rule is consistent with what is in the statute. So with that, those are my public comments. And once again, we will be submitting a letter to you with the exact language that we can, for your benefit. You don't have to re-listen to this ten times over with the number of comments so thank you very much. I appreciate the opportunity for comment.

**From:** Suellen Mele [mailto:suellen@zerowastewashington.org]
**Sent:** Wednesday, May 04, 2016 11:59 PM
**To:** ECY RE W2R Rulemaking <w2rrulemaking@ECY.WA.GOV>
**Cc:** Neugebauer-Rex, Joanne (ECY) <jneu461@ECY.WA.GOV>
**Subject:** Comments on mercury-containing lights rules

Thank you for this opportunity to provide comments on the proposed amendments to Chapter 173-910 WAC, Mercury-Containing Lights Product Stewardship Program. Zero Waste Washington appreciates the Department of Ecology's work to revise these rules to incorporate changes made to the underlying statute by the 2014 State Legislature.

Zero Waste Washington offers the following questions and technical comments on the proposed amendments.

In WAC 173-910-100, the definition of "Standard plan" refers to "the department's request for proposals." Did (or would) the department go through a request for proposals process for the standard plan or is that language left over from when there was a department contracted stewardship organization?

Identical language related to the mercury-containing light environmental handling charge appears in three sections of the rules: Producers of mercury-containing lights (WAC 173-910-210 (3)), Stewardship organization requirements (WAC 173-910-310 (5)), and Participation requirements (WAC 173-910-610 (4)). Was this intentional because that language applies to producers, stewardship organizations and retailers?

WAC 173-910-210 (4) states that for collection locations, a stewardship organization must finance the costs of collection. However, the provision about collection location costs was fine-tuned in the 2014 law revision (RCW 70.275.030 (2)): "The stewardship organization's administrative and operational costs are not required to include a collection location's cost of receiving, accumulating and storing, and packaging mercury-containing lights." We recommend clarifying WAC 173-910-210 (4) to include that same language. It might also be useful to include clarifying language that, as stated in RCW 70.275.030 (2), "For collection locations . . . a stewardship organization must pay the costs of packaging and shipping materials as required under RCW 70.275.070 or must compensate collectors for the costs of those materials . . ."

In WAC 173-910-320 (2)(a), the description of convenient collection service should refer to services in each county rather than services for each county: "Provide collection services for mercury-containing lights ~~for~~ in each county of the state." This parallels the language in the RCW.

In WAC 173-910-430 (8)(b), the description of the collection system should refer to collection sites and services in each city rather than for each city: "(b) ~~For~~ In each city with a population greater than ten thousand."

Feel free to contact me with any questions or to further discuss any of these comments. Thank you again for this opportunity to provide input on the proposed amendments to the rule.

Sincerely,

Suellen Mele,
Program Director
Zero Waste Washington
206-441-1790

## Appendix B: Transcripts from public hearings.

**Lacey, Washington – April 27, 2016**

***WAC 173.910***

***Rule Hearing Transcript 4/27/2016***

I am Bari Schreiner, hearing's officer for this hearing. This morning we are to conduct a hearing on the proposed amendments for Chapter 173.910 Washington Administrative Code Mercury Containing Lights Product Stewardship Program. Let the record show that it is 2:14 PM on April 27, 2016 and this hearing is being held at:

Ecology Headquarters, Room R0A-36
300 Desmond Dr. SE
Lacey, WA 98504

Legal notices of this hearing were published in the ***Washington State Register***:

April 6, 2016
Washington State Register Number: 1607035

In addition, notices of the hearing were:

Mailed to about 35 interested people,

And email notices were sent to about 53,000 interested people

Okay, at this time we are going to be calling people up to testify. So far I have one person signed in. Charlie Brown if you'll come to the front; I have your contact information so you don't need to read that into the record today. If you will sit here so that we can get the recording. Thank you.

**Charlie Brown.** Thank you, I am Charlie Brown. I am here today on behalf of the National Electrical Manufacturers Association. As all of you know, National Electrical Manufacturers include companies that manufacture mercury lights and have been engaged in the mercury light program since its inception and proposed legislation over the course of the last decade actually. Appreciate the update on the rules. Certainly the program as it was implemented back in 2015 appears to be working quite well. In fact, as I recall the latest email suggested that over 1 million lamps have been collected in the state of Washington for recycling. We believe that is a tremendous accomplishment. Congratulations to you on the structure that you have here. And I think it also speaks to the value of using the environmental handling charge as the method for funding the program overall. The comments that National Electrical Manufacturers Association have today and will be submitting in writing as well for a more detailed explanation of our comments reflect the program as it is operating today vs. what we saw at least in the proposed rule language.

So with respect to WAC 173.910.020 Applicability, we are concerned that by removing the statement of "for residential use" you have kind of left open to interpretation the idea that the program is really intended for lamps that are sold at retail for residential use. And because it refers back to the term person, which includes sole proprietorships, partnerships, corporations, non-profits corporations or organizations, limited liability corporations, firms, associations, cooperatives and other legal entities located inside or outside the state. We are worried that it might be left open to interpretation that the program is designed for more than residential purposes in terms of the recycling program. If we start seeing a lot more commercial lamps coming into the system and the environmental handling charge is not imposed on those commercial sales of those lamps which they are not since they are imposed at retail. We are worried that the number of lamps could, that are taken into the program for recycling, could exceed the available funding for the program. And so we would encourage you to maintain the references throughout the statue quite frankly or the rule for residential use. So that is really a key point in our comments.

In WAC 173.910.010 Purpose. It. The wording of the language when you take out residential use and say sold at retail seems inconsistent with the amended law which was amended as you know in 2014. Manufacturers do not actually "fully finance" the program, but now are required to simply "participate" in the program. We would suggest changing language into saying must join and participate in the product stewardship program. Again, the 2010 law did suggest that the manufacturers would manufacturers would fully finance the program. That obviously that statute was changed significantly in that particular area and we think the rule should reflect that as well.

In WAC 173.910.100 Definitions. And the next several comments will be related to that definitions section. With respect to department annual fee, it seems that this should be amended to reflect that the budget proviso recently enacted would suggest that the department would work with the product stewardship organization to make sure that the amount of money that is being sent to the department for its administrative costs would reflect only the costs of the administrative costs. And that any amount that is left remaining would be returned back to the product stewardship organization. So that they can use that money for the recycling program. We look forward to further discussions on that particular point, but we think it ought to be in the rule as well if that's possible. In the definition section with respect to fully finance and participate, again, the first comment is applicable here. We suggest changing the subsection header to read participate so that it would be fully or just participate. And amend the text to read where you would strike to fund age share program cost and join in and put into underlining. And again this will be written form for you. To register with and participate in an approved product stewardship program. Once again noting this is a different breed of cat then what was put forward in 2010. With respect to producers cost, we suggest that actually that whole section, that whole definition, actually be eliminated because you don't have a producer cost necessarily now. There is just a charge for each producer that sells into the state. And this definition may not be needed any longer. That with respect to a standard plan I don't know that there really is a standard plan as much as anything else. There's the plan that was put forward by the existing product stewardship organization. And so since we, you don't really have a standard plan necessarily versus a product stewardship plan a standalone entity. Perhaps that entire definition ought to be deleted as well. To my knowledge there is no intention of creating a standard plan. We are just going forward with what we've got. And to my knowledge I don't believe there is anybody that has come forward wanting to have a separate recycling program other than what we've got at this time.

In WAC 173.910.210 referencing producers of mercury lights. We believe that the current language is somewhat confusing. It says in subsection 1 into that paragraph down the line there is language of "producers must satisfy these participation obligations individually or may do so

jointly with other producers". We believe the language is somewhat confusing and could be changed to producers may satisfy these participation obligations individually or do so jointly with other producers. And in that same WAC the producers of mercury lights under subsection 2 you suggest striking a couple of words in there, and in fact since it says each producer must participate in a product stewardship program by A funding it's producer cost of the department approved standard plan or B funding it's producer cost of operating either individual or jointly. Since there's again just one plan perhaps that entire subsection could be deleted or just modified to reflect the fact that we only have one plan out there. If the department is anticipating that there might be a separate plan is in the offing. We would understand that but give to our knowledge no separate plan is in the offing. And it would seem to me that in the overall reduction of mercury lamps being sold in this state or on the market in general anymore because of being so rapidly replaced with LED lights that I don't see any other plans coming forward at this time.

Also with respect to that WAC 173.910.210 Producers of Mercury Lights – the first sentence we don't believe is consistent with the amended statute. We suggest changing that, this would be in subsection 4, to strike the word producers and replace it or amend in language that says the stewardship organization must pay all administrative and operational cost with the standard program or with the program except for the collection costs associated with curbside and mail-back collection programs. We believe that's probably more consistent with the underlying 2014 statute now says.

And then in WAC 173.910.210 once again producers of mercury containing lights under subsection 5 it states that the producer must satisfy the following requirements meet its financial obligations to the plan which includes the department's annual fee. Again the stewardship organization is the one that allocates or it determines how many producers there are in the state and sends you a corresponding amount of money. So we would just suggest deleting that subsection 5 there.

With respect to WAC 173.910.310 Stewardship Organization Requirements. There is some diluted language in there. And we would suggest a change under that subsection 1, I believe adding the terms at the end of the, of that subsection and individual stewardship programs will implement department approved independent producer plans. I think it is more for clarity than for anything in that subsection 310. And once again with respect to subsection 310 subsection 7 there, it talks about producers paying an annual fee to the department to cover the administrative and enforcement costs. And if that could be reflective of the recent budget proviso that suggests it would just cover the cost and any extra money would be remitted back to the producer or back to the stewardship program. That might be useful as we go forward. Now I do have to comment that I understand that a budget proviso only lasts for the two year period that a budget is in place. However we would anticipate that the relationship with the department would continue forward where the department was only charging the actual cost of the administrative and enforcement costs and that way we can retain as much money in the stewardship recycling and collection program as possible so that the environment handling charge fee is kept as low as possible over the course of time while still being able to meet the objective of recycling all those lights.

And then, we noted in WAC 173.910.520 with respect to the collector requirements that there was language about using mercury vapor barrier packaging. Mercury Vapor Barrier Packaging is not defined in the rule even though it has been defined in the statute. So I don't know if you want to reference back to the definition in the statute or if there's new vapor barrier packaging that is out on the market. Perhaps we ought to go back into the statute at some point to remove that definition language there. And that would be something we would be willing to work with you on as we go forward. So that was more of a just making sure the rule is consistent with what is in the statute.

So with that, those are my public comments. And once again, we will be submitting a letter to you with the exact language that we can, for your benefit, you don't have to re-listen to this ten times over with the number of comments so thank you very much. I appreciate the opportunity for comment.

**Bari Schreiner:** Thank you. At this time is there anyone else who would like to provide testimony today. Okay, I have a few more, some more information to read into the record and to provide. So I will check again in a minute in case anyone has changed their mind. Okay.

> If you would like to send Ecology written comments, please remember they are due by May 4, 2016.
>
> Send them to:
> Joanne Neugebauer-Rex
> Department of Ecology
> Waste 2 Resources Program
> 300 Desmond Dr SE
> Lacey, WA 98503
> w2rrulemaking@ecy.wa.gov
> (F) 360-407-6102
>
> All testimony received at this hearing along with all written comments received by May 4, 2016 will be part of the official hearing will be a part of the official record for this proposal.
>
> Ecology will send notice about the **Concise Explanatory Statement or CES** to everyone that provided written comments or oral testimony on the rule proposal and submitted contact information, everyone that signed in for today's hearing that provided an email address, and other interested parties on the agency's mailing list for this rule.
>
> The CES will among other things contain the agency's response to questions and issues of concerns that were submitted during the public comment period. If you would like to receive a copy but you did not give us your contact information, p-lease let one of the staff at the hearing know and we will get you added to those lists.
>
> The next step is to review the comments and make a determination whether to adopt this rule. Ecology director Maia Bellon will consider the rule documentation and staff recommendations and will make a decision on whether or not to adopt the proposal.
>
> Adoption is currently scheduled for May 25, 2016. If the proposed rule should be adopted that day and filed with the code reviser it will go into effect 31 days later.
>
> So if we can be of any further help to you today, please let us know.
>
> Thank you all very much for coming.
>
> Let the record show that this hearing is adjourned at 2:34 PM.