

Title: 1B Product Stewardship Framework Legislation

2009 Action Description:

- The goal is to establish a legislative framework utilizing product stewardship to minimize the environmental and health impacts of products throughout all stages of their lifecycle, including GHG emission impacts. “Product stewardship” policies require that producers take responsibility to manage and reduce the entire life-cycle impacts of their products from product design to end-of-life management.
- Product stewardship framework policy includes:
 - requirements that producers (not local or state government) finance and provide product stewardship programs that provide environmentally-sound collection, transportation, reuse, and either recycling or disposal (as appropriate) of selected products.
 - an effective approach for decreasing GHG generation.
 - language to encourage the design of products that are less toxic, more recyclable, more energy efficient, and have lower GHG emissions during the product’s lifecycle.
 - a process for building markets for the recyclable materials.
 - a process for adding products to be covered by the legislation over time.
 - a process for evaluation of performance.

Basis for Selection:

Recycling Significantly Reduces GHGs. There is a large potential to increase the recycling and diversion of products that are currently being disposed and thus to decrease GHG emissions. This proposal could reduce GHG by over 1.5 million tons CO₂e (see below). Additionally, a pending EPA report documents that 46% of US GHG production is a result products – production and provision of goods and materials and food, (EPA OSWER).

A Changing Waste Stream Requires Creative Solutions. A century ago, garbage was mostly coal ash and food waste with a small amount of simple manufactured products, like paper and glass. Now, product waste makes up 75% of per capita waste. Many of these products -- like paint, electronic products and fluorescent light bulbs -- are hard to recycle and contain toxic components. Local governments do not have adequate budgets to finance the special collection systems needed for these complicated products. And current recycling systems may be challenged to keep up with product design changes. Product stewardship links product design with disposal impacts so that producers take end-of-life impacts into account during the design phase.

Provides a Recycling Solution for Energy Efficient Products that Contain Mercury. Products such as fluorescent lights that can significantly reduce energy consumption do not currently have convenient, free, safe recycling options. This could create a disincentive for consumers to purchase and use these energy-saving products. Product stewardship programs provide a convenient and environmentally-sound management program for these products.

Provides an Incentive to Design Greener Products. There are currently few financial incentives for manufacturers to design products with smaller carbon footprints. Product stewardship links product design with end-of-life impacts so that producers take those end-of-life impacts into account during the design phase. Framework legislation would require producers to be responsible for the product throughout the

lifecycle of the product – thus providing an incentive to design products that are more environmentally benign.

Complements Collection Programs for Traditional Recyclables. Framework legislation makes producers responsible for handling products that may be toxic and difficult to handle in existing, effective programs, such as curbside collection. This cuts down on contamination and increases the recyclability of materials that continue to be collected at the curb and through other efficient methods. Some products may be most effectively collected through expanded curbside services or the creation of innovative new collection methods, which would therefore increase the economy-of-scale and efficiency of those services.

Framework Legislation in Place in Canada and Gaining Recognition in US. Framework policies exist in British Columbia and Ontario, Canada for paint, packaging, electronics, pharmaceuticals, solvents, pesticides, batteries, oil and tires. The Canadian Ministry of the Environment is currently working on a plan to harmonize framework policies across Canada. The Minnesota state legislature has passed a bill directing the state to establish a product stewardship framework policy. Framework legislation is being proposed in at least two other states in 2009.

Framework Legislation Addresses the 2007 CAT's Recommendations. *Recommendation 11: Reduce waste and Washington's emissions of GHGs through improved product choices and resource stewardship, including the specific implementation elements outlined in the strategy identified as AW-3: Significant Expansion of Source Reduction, Reuse, Recycling, and Composting, RCI 8: Consumer Education Programs, Including Labeling of Embodied Life-Cycle Energy and Carbon Content of Products and Buildings, and RCI- 10: More Stringent Appliance/Equipment/Lighting Efficiency Standards, and Appliance and Lighting Product Recycling and Design.*

Implementation Approach and Mechanisms:

Pass Legislation: Framework legislation has been drafted that could be introduced into the 2009 legislative session. If passed in 2009, the law would be effective in July 2009. Producers would fully provide recycling programs for an initial set of products by 2011, with additional products potentially added annually.

Key support and barriers to implementation.

Likely Supporters:

- Residents who want convenient recycling programs for many additional products.
- Schools, charities, and small businesses who want to be able to participate in free and convenient recycling programs for the products they discard.
- Non-profit advocacy groups interested in energy efficiency, GHG reduction, and increased prevention and recycling.
- Non-profit charitable reuse organizations, such as Goodwill, who often have unwanted products dumped on them as “donations” and then incur costs to properly dispose.
- Local governments who want their residents to be provided with recycling programs but are not able to adequately finance programs for many hard-to-handle products.
- State government. Product stewardship approaches have been identified as needed in numerous processes and reports by various agencies and are consistent with Washington's electronics recycling law.

- Retailers. Product stewardship typically has greater acceptability among retailers than fees at point of purchase.
- A few specific manufacturers and industries that could move toward support of this approach.

Possible Opposition:

- Manufacturers and industries that would be required to arrange and finance recycling programs for their products, as well as from industry associations representing the general business community. This is being addressed by building relationships with industries and industry members already in a good position to implement a product stewardship system, and by listening to their concerns and input regarding program structure. Lessons are also being taken from the successes of the electronics product stewardship system in WA and other states.

Key Components of a Shared Responsibility Approach.

In the proposed product stewardship system, responsibilities and roles would be shared as described below.

Program Implementation: Producers – not state or local governments – would set up and pay for the recycling programs. The law would not prescribe specific program details, but instead allows the manufacturers flexibility in designing and providing the program. Producers would be responsible for developing stewardship plans, which the Department of Ecology would review and approve prior to implementation.

Sustainable Program Financing: Financing for the manufacturer provided recycling programs comes from the manufacturers, not from State funds. The Department of Ecology would recover its minimal costs to administratively oversee and enforce the program from the manufacturers. This producer-pays approach minimizes costs to the State and establishes sustainable financing.

Stewardship Organizations May Operate the Program: Producers are required to provide the collection, transportation and recycling programs for their products. Industry-run stewardship organizations may be contracted to operate the programs on behalf of the producers. Producers will work with processors and collectors, such as retailers, haulers, charities, and local governments

Consumer Participation: Consumers will return their unwanted products to the stewardship programs.

Enforcement and Oversight: The Department of Ecology will provide regulatory oversight and enforcement. Ecology, with accountability to the legislature, would also determine additional products to be covered by product stewardship programs through the use of an advisory committee and rulemaking process.

Education and Outreach: A number of participants, including manufacturers, collectors, retailers, local governments and state government, will share responsibility for education and outreach.

Supporting Information:

Potential GHG Emissions from Products: Initial products that could be covered by stewardship programs include carpet, rechargeable batteries, fluorescent lighting, paint, and mercury-containing thermostats. In addition, agricultural chemical containers, additional electronics, and aerosol products containing ODS (Ozone Depleting Substitutes) used by non-professionals could be considered. The next tier of targeted products could include packaging and containers, plastic products, and propane gas tanks.

Potential GHG emission reductions include:

- Carpeting can potentially reduce GHG emissions by up to 922,000 tons CO₂e (assuming 100% recycling).
- Packaging containers comprising container glass, PET bottles, aluminum cans, and tin cans has the potential to reduce GHG emissions by up to 600,000 tons CO₂e (assuming 100% recycling).
- Paper packaging in the waste stream also has the potential for significant GHG reductions, but information is currently not available on the amount of paper in the waste stream utilized for packaging.
- Data on fluorescent lighting, rechargeable batteries, additional electronics, propane gas tanks, paint, etc is not currently available because the WARM model is not set up to calculate such data.

Citizens Want Fluorescent Lamp Recycling Programs. Due to the new 2007 national appliance and equipment efficiency standards, people will need to purchase fluorescent lighting products as incandescent lamps are phased out. Washington needs a recycling program, paid for by the lamp manufacturers, that will allow our citizens to safely recycle their lamps at no charge. By requiring that manufacturers be responsible for their product at the end of life, it provides an incentive for the design of new energy-efficient lamps that don't contain mercury or other toxic components.

Stewardship Programs Bring Jobs. Product stewardship programs utilize and build on existing and efficient collection, transportation and processing approaches and infrastructure, as well as create new business opportunities, processing activities, market development, and green jobs.

Citizens Want Stewardship Programs. Recent surveys have demonstrated that individuals support product stewardship concepts. A SoundStats™ survey that focused on unwanted electronic products found:

- 94% of respondents agreed that corporations that make electronic products should be responsible for designing them to be easily recyclable and less toxic.
- 92% also agreed that when these products contain toxic lead and mercury, these corporations should provide a safe and convenient way to recycle them.
- 71% of respondents would prefer that pre-paid recycling costs be included in the price of the product.
- Over 61% of respondents would prefer to take their computers and electronic products back to a retailer for recycling.

Legislative Proposal Overview

Intent and Findings

- Convenient and environmentally sound product stewardship programs help protect our environment and the health of residents.
- Producers are the best entity to manage and finance product stewardship programs.
- Product stewardship programs encourage the design of products that have a lower carbon footprint and that are less toxic, less energy and material intensive, and more reusable and recyclable.

What is Product Stewardship?

“**Product stewardship**” means that producers take responsibility to manage and reduce the entire life-cycle impacts of their products and/or their packaging, from product design to end-of-life management.

“**Product stewardship program**” means a program that addresses the lifecycle impacts of a product and includes the collection, transportation, reuse, and either recycling or disposal, or both, of unwanted products, including historical products and the program’s fair share of orphan products. The product stewardship program is financed as well as managed or provided by the producers of those products.

“**Producer**” means a person that:

- (a) Has legal ownership of the brand, brand-name or cobrand of a covered product sold in or into Washington state;
- (b) Imports a covered product branded by a producer that meets (a) of this subsection and that producer has no physical presence in the United States; or
- (c) Sells at wholesale or retail a covered product and does not have legal ownership of the brand, and elects to fulfill the responsibilities of the producer for that product.

Product stewardship program required

Every producer of covered products and covered product categories sold in or into the state must participate in a product stewardship program by either:

- operating, individually or collectively with other producers, a product stewardship program approved by the department; or
- entering into an agreement with a stewardship organization to operate, on the producer’s behalf, a product stewardship program approved by the department.

Initial covered products

It is still to be determined which products, if any, would be included as initial covered products in the proposed bill.

Product selection process

At least every two years, the department will consider and evaluate through rulemaking, product categories or products to designate for product stewardship programs. The department will also determine the covered entities, the implementation date, management requirements and any labeling requirements for each additional product category. The department will also determine whether a product’s packaging is designated as a product.

Criteria for product selection:

- climate change impacts and benefits;
- energy conservation potential;
- public and environmental health and safety;
- resource recovery and material conservation potential;
- toxicity of the product;
- opportunity to achieve greater waste reduction, toxicity reduction, design for recycling, recycled content, and recycling;

- potential of a product to act as a contaminant in the materials streams collected in residential and commercial recycling programs;
- concerns about disposing of the product in the waste stream;
- the costs of management to local governments, ratepayers, and taxpayers in the absence of product stewardship programs;
- the opportunity to use existing and new businesses and infrastructure to manage products or product categories proposed for designation and to use or increase markets that utilize the recovered materials from such products or product categories;
- public demand;
- success in collecting and processing similar products in other programs in the U.S. and other countries; and
- the advice of the Advisory Committee.

Advisory committee to the department

The department will appoint and consult with an advisory committee of up to 15 members regarding new products or product categories, covered entities, implementation dates, management requirements, performance goals, labeling requirements, and other inputs requested by the department. The advisory committee shall vet the department's recommendations on new products or product categories.

The public may petition the department to consider products for inclusion in product stewardship programs required under this chapter. The department shall adopt rules describing the petition process. Public petitions will be considered during the product selection process established in section xxx of this chapter.

Involvement of the legislature

Before adoption of new products or product categories into regulations, the department must present the list of products or product categories to the appropriate standing committees of the legislature.

Product stewardship plan requirements

Plans describing the product stewardship program must be submitted to the department for approval. The plans must include the following:

- Contact information and participating producers;
- Performance and recovery goals for the first three years of the program;
- Description of the collection system(s) that will be used, including how unwanted products will be collected in all counties in the state and for all cities with populations greater than 10,000;
- Description of the handling systems and processing or disposal systems that will be used;
- How hazardous substances will be tracked through to final disposition;
- Best management practices that will be used by first processors and their downstream vendors to assure that hazardous substances and wastes are not released into the environment or impact human health;
- Description of how the program will seek to use businesses within the state, including retailers, processors, and collection and transportation services, in the implementation of the plan.
- Amount of green house gas reductions anticipated from implementation of the collection, transportation and recycling program;
- Financing mechanisms that will be used;
- Strategies to manage and reduce life-cycle impacts of the products and packaging, from product design to end-of-life management;
- Description of how producers participating in the plan will communicate and work with processors and recyclers used by that plan to encourage sustainable design of products and packaging;
- Education and outreach strategy, including how the program will measure the effectiveness of education and outreach; and
- A description of the process used to consult with affected stakeholders about the contents of the plan.

Required reuse or recycling

All products that have been collected by a product stewardship program must be reused or recycled, except if the department determines the products are not recyclable.

No fee to covered entity

Product stewardship programs shall be provided to covered entities without charging any fee at the time the unwanted products are delivered or collected for recycling or disposal.

Producers shall pay all the administrative costs, education and outreach costs, and operational costs associated with their product stewardship program, including the costs of collection, transportation, and recycling or disposal, or both, of the products covered by the program.

Education and outreach

Product stewardship programs must conduct effective and measurable education and outreach efforts promoting their use. Programs must provide pertinent information, including a toll free telephone number and website where collection options are listed, to covered entities, wholesalers, retailers, collectors, and other interested parties.

Education and outreach efforts must be sufficient to meet required recovery rates and to ensure that collection options are widely understood by covered entities.

If the program does not attain the required recovery rate, it must describe in its annual report what actions it will take during the next reporting period to do so, including how it will increase and improve its outreach and education.

Prison labor prohibited

No product stewardship program may include the use of federal or state prison labor for processing.

Encouraging collaboration

Producers are encouraged to collaborate with product retailers, certificated waste haulers, processors, recyclers, charities, and local governments within the state in the development and implementation of their plans.

Annual report

Annual reports describing the activities of the product stewardship program during the previous year must be submitted to the department.

Recovery rates

By June of the third program year for each product or product category, the department shall establish required recovery rates for the fourth and subsequent program years, and must establish a fine system for those producers and product stewardship programs that do not attain the mandated goals and rates.

The department will establish the fine system through rulemaking. Ecology will also establish through rulemaking a process for setting the recovery rates for the fourth and subsequent years and for adjusting recovery rates as needed.

Sale of covered products prohibited

As of the implementation date established by the department for each product, no producer, retailer or other person may sell or offer for sale that product to any person in this state unless the producer of the product is participating in an approved product stewardship plan.

Enforcement

Producers who are not participating in an approved product stewardship program and whose products continue to be sold in or into the state 60 days after receipt of a written warning, and retailers who sell products from producers who are not participating in an approved product stewardship program 60 days after receipt of the written warning, shall pay a fine of \$10,000 per day of noncompliance, beginning 60 days after receipt of the written warning.

Agency administrative costs paid by producers

The department may establish fees for administering this statute that are charged to the producers.

Anticompetitive conduct

A producer or stewardship organization that organizes product stewardship programs is authorized to engage in anticompetitive conduct to the extent necessary to plan and implement its chosen organized product stewardship program and is immune from liability under state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce for this purpose.

No changes to WUTC authority

Nothing in this statute changes or limits the authority of the Washington utilities and transportation commission to regulate collection of solid waste in the state of Washington, including curbside collection of residential recyclable materials, nor does this statute change or limit the authority of a city or town to provide such service itself or by contract under RCW 81.77.020. (Note: consider additional reference to RCW 81.80 regarding commercial carriers.)