

Battery Stewardship Rule Advisory Meeting 4

Hosted by Ecology on October 21, 2024, 11 AM – 2 PM (Pacific Time)

Next Meeting: November 18, 2024, 11 am

Contact for questions: Chris Fredley- batterystewardship@ecy.wa.gov - 564-233-1615

Informal comment period: Oct.17-Nov. 13, 2024, 11:59 am

Comment Site: <https://wt.ecology.commentinput.com/?id=iH593UeTK>

Agenda: <https://ecology.wa.gov/10-21-24-meeting-agenda>

Read-along Document: <https://ecology.wa.gov/10-21-24-meeting-read-along-document>

Battery Rulemaking Website: <https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-905>

Introduction of new definitions—Chris Fredley

- "Ecology"
- "Approved Plan"
- "Battery related incident"
 - Danielle Spalding - There will be a wide range of frontline team members having to comply with this regulation. May need to add what a risk to public safety might entail. Incidents are almost guaranteed to occur when you are running large battery collection sites. Suggested language:
 - “Battery-related incident” means a spill, fire, release, or other hazard resulting from the collection, handling, transportation, or processing of a covered battery that poses a risk to public safety or environmental health that requires emergency services response support.”
 - Carin Stuart - Submitted public comments on this as well. The term "spill" isn't often used to describe the type of batteries covered under this law. Usually refers to a liquid or hazardous good. The larger concern is fire. Using "spill" might be more confusing than helpful.
- Megan: Excludes batteries that include electrolytes as "free liquid." **What does this mean?**
- Danielle: We can follow up with additional definition, but we would call this a "wet battery." Does not have as much protection from the actual unit of the battery itself.

Can see where the team is coming from on this comment but if we want the definition to stand the test of time, it's unclear if there would ever be a "wet" version of lithium batteries in the future.

- Rick Gilbert: "Spill" still seems appropriate if a large volume of batteries in a 55 gallon drum or other larger container releases its contents in transportation. Unless there's another, better term for it .
- "Emergency response incident"
- "Stewardship plan" or "plan"
- "Plan amendment"
 - Zero Waste WA: Suggest adding "..., or an addition, that includes reference to the plan that it is amending"
- "Geographically isolated community"
 - Adding "terrain" rather than "mountain or body of water" because there could be other barriers beyond a mountain.
 - Crystal Leatherman- "Could also add "or other significant barrier"
 - Carin Stuart - Needs to address public transportation options for navigating barriers, because barriers aren't usually impassible entirely. As written it misses a little piece of intent in terms of improving access.
- "Fiscal year"
- "Retailer"
- "Brand"
 - Should also add "ON a covered battery" rather than just "identifies"
- "Battery stewardship organization"

Producer discussion:

- Steve Ahmann - It still isn't clear who qualifies as a battery steward. They are also involved in eCycle as collectors and own 5 retail stores and 2 franchise locations. They have collected all kinds of batteries, and they are still not clear whether they are considered a "collector" or a "steward." Not clear what is meant by "producer."

A: A BSO could encompass many types of entities, including contractors. A producer is generally the person who manufactures the batteries. We will schedule a separate call to

address individual questions. "Steward" is a term used by CALL2Recycle. A Stewardship Organization is someone who *represents* producers of batteries. A retailer isn't necessarily a stewardship organization but that wouldn't prevent them from becoming a stewardship organization in the case where they also meet the definition of producer. Example would be Costco/Kirkland who produces their own batteries. Retailer is the owner of the brand and could theoretically choose to form their own stewardship organization OR could choose to join an existing stewardship organization.

Steve Ahmann: Is the committee aware that there are hundreds of brands where you won't be able to identify the actual manufacturer. The term "producer" is still ambiguous. It looks like "any person who puts their brand name on a battery could/should be a producer." Why would we not use the term manufacturer to make the distinction for those that put their own brands over the product made by another manufacturer. Brands can change manufacturer contracts multiple times within a single year.

Megan: We are not proposing to change the definition of "producer" in this rule, we are bound by statute. The definition of "producer" as the "brand owner" is typical to other laws. There are provisions for a manufacturer to take responsibility for a brand owner.

Annual Reports—Chris Fredley

Questions for committee:

- What is the difference between an independent financial assessment and a summary financial statement?
- What should be the required components of an independent financial assessment
- Under what circumstances should Ecology require an independent financial assessment?
- Other feedback on annual report components
 - Carin Stuart - Call2Recycle submitted a financial assessment for state of Vermont. Carin will look at what the difference between an "assessment" and an "audit" was in Vermont, which was how they delineated the terms in their battery stewardship law.
 - Danielle Spalding: Independent financial assessment would be for if there were a huge cost jump. Question: What are the annual reporting requirements for the

state funding? Obviously the BSO needs to help administer the program review but will there also be guidelines for administrative fees?

A: There aren't mandates in statute for Ecology's administration of the program.

Carin Stuart:

- Would like to see an improved description or example of "best available technology"
 - Ecology: That language came directly from statute, but we are interested in clarifying suggestions.
- RER is not reported at a facility level but a sub-chemistry level "lithium ion, RER." Labeling facilities "RER" could start to threaten confidential information.
- In terms of aggregate sales, you are looking at how people use and discard their batteries (single use vs. rechargeable). Would like to see the intent of the meaning of chemistry divided into these categories (Single use vs rechargeable) since there won't be overlap by dividing by chemistries.
- Anyone submitting a plan will have performance goals-assuming there are two to three plans, you could make an educated guess as to what your goals would be based on competing plans. If multiple additional plans are approved, that would significantly change your calculation. If additional plans or amendments are approved by ecology, then other BSOs should be able to amend to respond to the change in playing field.
 - Ecology: BSOs can submit a plan amendment any time.
- Steve Ahmann: Lithium ion is a "family" of batteries (lithium ion manganese, lithium cobalt). Most are rechargeable and most are primary.
- Tricia Dutcher and Susan Bernard: Disagree-While there are different sub-chemistries, all lithium-ion is rechargeable. All lithium metal are the single use lithium batteries and are primary.
- Ecology: We do need to account for future possibilities of battery technology.

Questions for committee:

- Are "Battery related incident" and "emergency response incident" helpful as terms in determining reporting and notification thresholds in these incidents?

- What level of violation makes sense to report regarding violations of environmental or labor laws?
- Are there new definitions needed to help clarify this requirement?
 - Danielle Spalding: 14-30 days is reasonable for a response time to report.
 - Carin Stuart: We relied on the EPA's ECHO database. <https://echo.epa.gov/> to determine thresholds for reporting violations

Quarterly Updates—Kelly Boyle

- Steve Ahmann: How is this funded? These requirements are onerous.
 - Ecology: It's incumbent on the participating producers to pay the BSO.
- Scott Lancaster: What is the accountability process when reports contain negative issues or incidents that need to be corrected? How does that impact maintenance of BSO's certification. Example: If an org has a continually demonstrated unsafe operation. What is Ecology's enforcement authority?
 - Ecology: The agency has some enforcement authority, but most would fall on the stewardship organization itself. If there were continuous issues at a given collection site, the BSO would need to issue repercussions, including notifying Ecology.
- Susan Bernard (Battery Council International) - What was the rationale for adding the quarterly virtual meetings?
 - Ecology: This is a requirement in statute, though there was not a lot of detail in statute as to what that would look like. Ecology interprets it as something slightly less formal and more frequent than the annual report, so we are trying to build out what that looks like more in rule.

Marking Requirements—Dan Weston

Marking requirements in RCW:

<https://app.leg.wa.gov/RCW/default.aspx?cite=70A.555.130>

The marking requirements in the RCW generally apply to large format batteries

Statute: "Large format battery" means:

(a) A rechargeable battery that weighs more than 25 pounds or has a rating of more than 2,000 watt-hours; or

(b) A primary battery that weighs more than 25 pounds.

- Marc Miller (Volvo, manufacturer of large format batteries.) -Vehicle batteries are rated in kilowatt hours, which is the industry standard. Might want to include that standard in the definition. Would like to see this labeling standard stay as generic as possible so that they can apply the same label to all their batteries regardless of which state it goes to (There is also legislation in Hawaii, New Jersey, and California).

Questions for committee:

- In what manner and locations are any of these markings currently identified?
- What degree of chemistry detail is needed to help with collection and sorting?
- Is there an existing industry standard for chemistry labeling that could be widely adopted?
- Is there an industry standard symbol to indicate not to dispose as household waste? What other types of information are currently included in battery labels?
- Is it assumed that the primary component of the battery is represented by the elemental symbol for that component on the label?
 - Danielle Spalding: Yes, you could either use the periodic table symbol (though lithium metal vs lithium ion has to be more specific). Industry does see misspellings on the labels, particularly from non-US manufacturers.
 - Becky Northaven: California has specific requirements that manufacturers everywhere adopted. Washington also has bargaining power to being to bear.
- Is there an existing platform or system through which a certification can be made?
 - California abb240 (?) has a requirement that retailers make a statement that they have to meet the requirements. Look further into this...

- Danielle Spalding - As long as the chemistry family is indicated and/or if there is a large distinction. Primarily referring to small format batteries. Rechargeable vs non-rechargeable doesn't matter how it's processed. The recycling symbol, when possible, to be included is still helpful to the lay person--it lets them know not to throw it away, but also need to educate not to put it in recycling bin.
- Steve Ahmann- Reaching out to Energizer and Duracell for questions about industry labeling standard.

Demonstrable Cost Reimbursement—Megan Warfield

Law requires a template agreement, but some local governments say they are not allowed to use a template agreement, they must use their own contracting form.

Questions for committee, particularly local government:

- What formal agreement is needed between a local government and a BSO?
- What documentation must a local government provide to a BSO?
- How frequently should reimbursements be made?
- Potential costs:
 - Labor costs (sorting, safeguarding terminals, packing, preparing for shipment, consolidation from satellite sites, transport, loading). How will time be tracked?
 - What supplies will BSOs supply (and therefore non-reimbursable)?
 - What supplies will local governments need to purchase and be reimbursed for?
 - Storage- where will they be stored prior to shipment? Will there be accumulation and space issues?
 - How will costs be documented?
- Carin Stuart: The BSO should define for themselves how these things are calculated. Might be best left open ended but require answers when you submit a plan.

- Comment: Template agreements can be incorporated into a local government contract so long as they are also allowed to incorporate their own standard language.
- Rick Gilbert (Kitsap County) - Would much rather have the BSO supply resources (proper DOT containers and procedures) rather than reimburse for them and leave governments to figure them out.