PCR Rule Advisory Committee

Shannon Jones, Solid Waste Management Program

April 14, 2022
Please connect your audio and join.

**Join**

- **Connect Audio & Join**
  - Try your computer audio first.
  - If you’d like, you can test your speaker and microphone before joining.

**Audio**

- **Best Option: Use computer for audio**
  - **A**
  - **B** If selecting “Phone Call”...
    - Dial: **253-215-8782** (Tacoma)
    - Enter Zoom Meeting ID 836 9470 8430, followed by “#”
    - Enter your unique Zoom Participant ID, followed by “#”
    - (If you do not enter the Participant ID, you will be prompted to enter the Passcode.)

**Participate**

- **Question? Need help?** Chat with us!

- Turn on the Chat box and Participant list from your toolbar.
Overview

Introductions & Ground Rules

PCR Law, Timeline, and Rulemaking Overview

Break

Review of Part A Draft

Public Comment Period

Wrap-up
<table>
<thead>
<tr>
<th>Name</th>
<th>Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brennan Georgianni</td>
<td>American Cleaning Institute</td>
</tr>
<tr>
<td>Christopher Finarelli</td>
<td>Household &amp; Commercial Products Association (HCPA)</td>
</tr>
<tr>
<td>Chris Cary</td>
<td>Tree Top, Inc</td>
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<tr>
<td>Megan Daum</td>
<td>American Beverage Association</td>
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<tr>
<td>Kyla Fisher</td>
<td>Ameripen</td>
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<tr>
<td>John Cook</td>
<td>Niagara Bottling</td>
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<tr>
<td>Emily Alexander</td>
<td>Darigold</td>
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<tr>
<td>Charles Knutson</td>
<td>Amazon</td>
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<tr>
<td>Heather Trim</td>
<td>Zero Waste WA</td>
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<tr>
<td>Mark Smith</td>
<td>Clorox/Glad</td>
</tr>
<tr>
<td>Kate Eagles</td>
<td>Association of Plastic Recyclers</td>
</tr>
<tr>
<td>Sally Jefferson</td>
<td>The Wine Institute</td>
</tr>
</tbody>
</table>
The department may adopt rules as necessary to administer, implement, and enforce this chapter.
Mission and Strategy

Our mission
Draft rule language by the end of 2022 that clarifies terms and requirements to comply with the PCR content law and is informed by affected stakeholder input.

Our strategy
Draft and revise rule in four parts over four meetings in 2022. Collect comments from advisory committee and the public via eComments.

Ground rules
• Articulate reasons for input
• Comment without argument
• Review draft language in advance
• Remain in-scope
• Clearly communicate to other stakeholders
• Share materials as DRAFTS
Rule vs. Guidance

**Rule**
- Limited changes
- Final and tied to law
- Mostly addresses law-outlined priorities
- Determine costs and set up payment process
- Identify areas that require clarification

**Guidance**
- Expansive scope
- Informed by FAQs and feedback
- Released in tandem with rule
- Detail-oriented
- More fluid—can be updated
PCR Law and Interim Interpretations

Alli Kingfisher
Alli.Kingfisher@ecy.wa.gov
Covered products:

1. Plastic Beverage Containers
   * Dairy & 187ml wine bottles

2. Plastic Trash Bags

3. Plastic Household Cleaning & Personal Care Products
Beverage containers

- A bottle or other rigid container
- One or multiple plastic resins
- Human or animal
- 2 oz – 1 gallon
- Water, flavored water, beer, wine, spirits, soda, etc.

Not included:

- Refillables
- Bladders or pouches for wine
- Liners, caps, corks, closures, labels
- Used with medical devices/products
- Infant formula
- Medical food, and prescription drugs, or dietary supplements as defined in RCW 82.08.0293
Plastic trash bags:

- Non-compostable plastic
- At least 0.70 mils thick
- Garbage bag, recycling bag, lawn or leaf bag, can liner bag, kitchen bag, compactor bag, similar

Not included:

- Compostable bags meeting the requirements of Chapter 70A.455 RCW
Packages of plastic trash bags sold, offered for sale, or distributed in or into Washington are labeled with:

- Name of the producer and
- City, state, and country where the producer is located, which may be designated as the location of the producer's corporate headquarters;

Or

- A uniform resource locator or quick response code to an internet website with the information
Household Cleaning & Personal Care Products

- Bottle, jug, or other rigid container with a neck or mouth narrower than the base
- Capable of maintaining its shape when empty
- 8 oz – 5 gallons
- One or multiple plastic resins

Not included:

- Refillables
- Used with medical devices/products
- Nonprescription and prescription drugs
- Dietary supplements as defined in RCW 82.08.0293
1. Definition of ‘household’
2. Definition of ‘household cleaning products’
3. What is covered under ‘nonprescription drugs’
4. Under federal law what containers or bags the state is preempted from regulating the content of

Household Cleaning & Personal Care Products

- Hair care: Shampoo, conditioner, styling sprays, gels, etc.
- Skin care: Lotion, moisturizer, facial toner, etc.
- Laundry detergents, softeners, and stain removers
- Liquid soap
- Household cleaning products
Plastic Postconsumer Recycled Content

Phase 1: 2023
- Beverage bottles
- Trash bags
- Annual Reports begin 2024

Phase 2: 2025
- Household cleaning & personal care products in plastic bottles
- Annual Reports begin 2026

Phase 3: 2028
- Beverage bottles – dairy & wine 187ml
- Annual Reports begin 2029
### Minimum recycled-content phases

<table>
<thead>
<tr>
<th>Year</th>
<th>Plastic trash bags</th>
<th>Beverage containers*</th>
<th>Household cleaner and personal care containers</th>
<th>Plastic wine container (187 milliliters)</th>
<th>Dairy milk container</th>
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<tr>
<td>2022</td>
<td></td>
<td></td>
<td></td>
<td>All producers must register by May 18, 2022</td>
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<tr>
<td>2023</td>
<td>10 percent</td>
<td>15 percent</td>
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<tr>
<td>2024</td>
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<tr>
<td>2036</td>
<td>20 percent</td>
<td>50 percent</td>
<td>25 percent</td>
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</tr>
</tbody>
</table>

*Excluding plastic wine and milk containers.
Plastic Producer Registration Break Down

118 total registrations
- 26% Not submitted
- 74% Submitted

82 submitted registrations
- 44% De minimis producers
- 56% Non de minimis producers
PCR Adjustments

- Capacity of infrastructure
- Progress towards goals
- Technical feasibility
- Recycling rates
- Availability
- Market conditions
Producers:  

(19)(a) "Producer" means the following person responsible for compliance with minimum postconsumer recycled content requirements under this chapter for a covered product sold, offered for sale, or distributed in or into this state:

(i) If the covered product is sold under the manufacturer's own brand or lacks identification of a brand, the producer is the person who manufactures the covered product;

(ii) If the covered product is manufactured by a person other than the brand owner, the producer is the person who is the licensee of a brand or trademark under which a covered product is sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state, unless the manufacturer or brand owner of the covered product has agreed to accept responsibility under this chapter; or

(iii) If there is no person described in (a)(i) and (ii) of this subsection over whom the state can constitutionally exercise jurisdiction, the producer is the person who imports or distributes the covered product in or into the state.
Producers:

(b) "Producer" does not include:

(i) Government agencies, municipalities, or other political subdivisions of the state;
(ii) Registered 501(c)(3) charitable organizations and 501(c)(4) social welfare organizations; or
(iii) De minimis producers that annually sell, offer for sale, distribute, or import in or into the country for sale in Washington:

(A) Less than one ton of a single category of plastic beverage containers, plastic household cleaning and personal care containers, or plastic trash bags each year; or
(B) A single category of a covered product that in aggregate generates less than $1,000,000 each year in revenue.
De minimis "Producer"

Annually sell, offer for sale, distribute, or import in or into the country for sale in Washington:

A single category of a covered product that in aggregate generates less than $1,000,000 each year in revenue

OR

Less than one ton of a single category of containers or plastic trash bags each year
Annual Fees:

Based on total amount of resin sold in or into the state

Prior to completion of rulemaking
Annual Fees:

Based on total amount of resin sold in or into the state

Prior to completion of rulemaking

- Overall Plastic Resin Used
- National Population

* Population of Washington
Annual Fees:

Based on total amount of resin sold in or into the state

Prior to completion of rulemaking
Workload analysis:

Table 1: FY 2023 Estimated Costs by Category

<table>
<thead>
<tr>
<th>Cost Category</th>
<th>Estimated Cost</th>
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<tbody>
<tr>
<td>Salaries</td>
<td>$312,507</td>
</tr>
<tr>
<td>Benefits</td>
<td>$114,065</td>
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<tr>
<td>Goods and Services</td>
<td>$20,303</td>
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<td>Travel</td>
<td>$9,383</td>
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<tr>
<td>Equipment</td>
<td>$5,166</td>
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<tr>
<td>Facility costs, rulemaking meetings</td>
<td>$2,000</td>
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<tr>
<td>Assistant Attorney General</td>
<td>$19,000</td>
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<tr>
<td>Agency Administrative Overhead</td>
<td>$120,720</td>
</tr>
<tr>
<td><strong>Total Costs</strong></td>
<td><strong>$603,144</strong></td>
</tr>
</tbody>
</table>

https://apps.ecology.wa.gov/publications/SummaryPages/2207004.html
Penalties:

Type 1: Failure to Register and Report

Producers in violation of the registration, reporting, or labeling requirements are subject to a civil penalty for each day of violation in an amount not to exceed $1,000.
Penalties:

Type 2: Failure to meet PCR minimums

\[
\left( (\text{Total lbs plastic used} \times \text{Minimum PCR % Target}) - (\text{Total lbs plastic used} \times \text{PCR % Used}) \right) \times \$0.20
\]

Ecology may grant a reduction of penalties based on:

a. Anomalous market conditions
b. Disruption in or lack of supply of recycled plastics
c. Other factors
Rulemaking Timeline
Rulemaking:

- Establishing rules for RCW 70A.245
  - WAC 173-925
  - Two-year process

- Scope:
  - Define technical terms
  - Establish equitable producer fees
  - Clarify
    - Report auditing procedures
    - PCR content calculation methods
    - Adjusting PCR content rates
    - Exclusions
    - Enforcement & Penalties
WAC 173-925 Rulemaking Timeline

1. November 2021 to May 2023
   - Rule Development
     CR-101

2. June 2023 to November 2023
   - Rule Proposal
     CR-102

3. December 2023
   - Rule Adoption
     CR-103

November 2021 to May 2023

June 2023 to November 2023

December 2023
Rule Development 2022-2023

- April–Sept 2022: Advisory committee meetings & Draft revisions
- Ongoing comments on draft revisions
- Dec. 2022: Complete draft rule language for economic analysis
- Jan–March 2023: Economic analysis
  - Cost vs benefit
  - Least burdensome alternatives
  - Small Business Economic Impact
Rule Proposal 2023

• Public Comment Period for 60 days:
  • July to August 2023

• Public Hearing(s):
  • August 2023

• Comment response

• Finalize rule language for adoption
Rule Adoption 2024

- Rule adoption December 2023
  - Publish responsiveness summary, updated economics

- Rule effective January 2024 (30 days after adoption)

- Related activities:
  - Publish PCR Rule Guidance
  - Ongoing technical assistance from Ecology
How can I get involved?

- Attend upcoming advisory committee meetings
  - June 9th, 2022.
  - July 28th, 2022
  - September 9, 2022
  - Anyone can attend and provide comment

- Provide eComments on draft revisions on PCR rule website
  - Updated shortly after each advisory committee meeting

- Offer public comment or attend hearings on proposed rule: May – June 2023

- Join Plastic Packaging e-mail subscriber list
Break
Part A Draft Discussion
Considerations for Discussion

1. Are changes needed to the original definition?

2. Do the draft changes clarify intent?
   • What potential challenges do draft changes create or what are the unintended consequences of the change?

3. What are your suggestions for further changes?
Practice... Using Reactions!

Click the check mark for yes, and the x for no

Tip
“Raise Your Hand” if you have a question or comment
We will address all board member questions during the meeting, and will have time for a public comment period at the end.

Let’s Practice!

QUESTION:
Did you drink coffee this morning?
Rule Outline

Part A – General Requirements
• Purpose – legislative intent
• Applicability – who has to comply with this rule
• Definitions – terms from the law and add those needed for the rule

Part B – Producer Registration and Fees
• Registration Requirements - How do producers register (what data they submit)
• Producer Annual Fee – when fees are determined, and paid
• Reporting Requirements – annual what is required – when this replaces “registration”
• Part A is the content for Advisory Committee Meeting 1 (April 14)

Part C – PCR Content
• PCR Content and reporting requirements for covered product categories
  • Beverages that use plastic containers
  • Trash Bags
  • Household cleaning products in plastic containers
  • Personal care products in plastic containers
  • Dairy Milk in plastic containers
  • Wine in 187 ml plastic bottles
• PCR minimum adjustment petition
• Technical feasibility exclusion

Part D - Enforcement
• Penalties for registration, labeling, and reporting.
• Penalties for PCR requirements
• Reporting audits and review.
• Corrective action.
In several definitions, exclusions are listed based upon other existing laws. Listing these definitions within the rule is only for convenience and reference within Part A.

Draft Language
Add:

- RCW 82.08.093, “dietary supplement” – referenced as exclusions in “beverage container”, “household cleaning product container” and “personal care product” container.

- 21 USC Section 321 (z), “infant formula” – referenced as an exclusion in the definition of “beverage”

- 21 USC Section 360ee(b)(3), “medical food” – referenced as an exclusion in the definition of “beverage”
Original

• 70A.245.060 outlines the following exemptions to the requirements for trash bag labelling.

Draft Change to plastic trash bag definition

• Added “Plastic trash bag” does not include:
  (i) federally regulated bags required for use in hospital or medical settings;
  (ii) "Biomedical waste" as defined under RCW 70A.228.010; and
  (iii) "Dangerous waste" as defined under RCW 70A.300.010.

• Added because the trash bag labeling section exempts these – moved to definitions section/part A for easier reference and clarity.

• Separated hospital/medical setting here into its own (i) because the dangerous waste definition will apply in settings that do not occur in hospital/medical setting.
Original

- “Beverage” definition includes specifications around the volume of beverage containers subject to the law
- Repeated these specifications in “plastic beverage container” for clarity and quick reference.

Added Draft Language

- (16) "Plastic beverage container" means a bottle, other rigid container that is capable of maintaining its shape when empty, comprised solely of one or multiple plastic resins designed to contain a beverage *in a quantity more than or equal to two fluid ounces and less than or equal to one gallon.*
Adding non-dairy milks and creamers to “beverage” definition

Original Text
(1) "Beverage" means beverages identified in (a) through (f) ...
(a) Water or flavored water;
(b) Beer or other malt beverages;
(c) Wine;
(d) Distilled spirits;
(e) Mineral water, soda water, and similar carbonated soft drinks; and
(f) Any beverage other than those specified in (a) through (e) of this subsection, except...

Draft Language
(1) "Beverage" means beverages identified in (a) through (f)...
(a) Water or flavored water;
(b) Beer or other malt beverages;
(c) Wine;
(d) Distilled spirits;
(e) Non-dairy milks and creamers
(f) Mineral water, soda water, and similar carbonated soft drinks; and
(g) Any beverage other than those specified in (a) through (g) of this subsection, except..
(19)(a) "Producer" means the following person responsible for compliance with minimum postconsumer recycled content requirements under this chapter for a covered product sold, offered for sale, or distributed in or into this state:

(i) If the covered product is sold under the manufacturer's own brand or lacks identification of a brand, the producer is the person who manufactures the covered product;

(ii) If the covered product is manufactured by a person other than the brand owner, the producer is the person who is the licensee of a brand or trademark under which a covered product is sold, offered for sale, or distributed in or into this state, unless the manufacturer or brand owner of the covered product has agreed to accept responsibility under this chapter; or

(iii) If there is no person described in (a)(i) and (ii) of this subsection over whom the state can constitutionally exercise jurisdiction, the producer is the person who imports or distributes the covered product in or into the state.

(21) "Producer" means the following person responsible for compliance with minimum postconsumer recycled content, registration, fee payment, and reporting requirements under this chapter for a covered product sold, offered for sale, or distributed in or into this state.

(i) If the covered product is sold under the manufacturer's own brand or lacks identification of a brand, the producer is the person who manufactures the covered product;

(ii) If the covered product lacks identification of a brand, the producer is the person who manufactures the covered product.

(iii) If the covered product is sold by a person who is the licensee of a brand or trademark, the producer is the person who manufactures the covered product; brand owner;

(iv) If there is no person described in (a)(i) and (ii) of this subsection over whom the state can constitutionally exercise jurisdiction, the producer is the person who imports or distributes the covered product in or into the state.
Current Interpretation

- **Brand owner = Producer**
  - Covered product manufactured by brand owner (in the manufacturer’s facility OR in a 3rd party facility contracted by the brand owner)

- **Licensee = Producer**
  - Covered product manufactured by licensee of brand owner (in the licensee’s manufacturing facility OR a 3rd party facility contracted by licensee)

- **Brand owner = Producer**
  - Brand owner has agreed to accept responsibility for the covered product

- **Manufacturer = Producer**
  - Covered product has no identified brand owner or licensee

- **Importer/Distributor into WA = Producer**
  - Ecology cannot constitutionally exercise jurisdiction of any entity above
Original

(4)(a) "Covered product" means an item in one of the following categories subject to minimum postconsumer recycled content requirements:

(i) Plastic trash bags;
(ii) Household cleaning and personal care products that use plastic household cleaning and personal care product containers; and
(iii) Beverages that use plastic beverage containers.

Draft Change

(4) "Covered product" means an item in one of the following categories subject to minimum postconsumer recycled content requirements:

(i) Plastic trash bags;
(ii) Plastic containers containing household cleaning products;
(iii) Plastic containers containing personal care products; and
(iv) Plastic containers containing beverages.
Context:

• The law combines “personal care products” and “household cleaning” products in the same definition.

Draft change:

• Separated “PCP” definition from “HHCP” definition for clarity
• Left them together in the definition of “household cleaning product and personal care product container”

Additional Considerations:

• Add clarifying language for inclusion of personal care products in institutional or professional settings
• Add clarifying language for inclusion of cosmetics as personal care products
Addition of definition for “drug”

**Context**

- Not in original language
- Referenced in:
  - “plastic beverage container”
  - "Plastic beverage container" does not include...(b)Rigid plastic containers that are or are used for...non-prescription and prescription drugs”
  - “plastic household cleaning container and plastic personal care product container”
  - "Plastic household cleaning and personal care product container" does not include...(ii) Rigid plastic containers that are or are used for...non-prescription ...non-prescription and prescription drugs”
  - Important to interpretation of covered “personal care products”

**Draft Change**

(8) “Drug” means the definition provided by the Washington State Department of Health, which states:
(a) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;
(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals;
(c) Substances other than food, minerals, or vitamins that are intended to affect the structure or any function of the body of human beings or animals; and
(d) Substances intended for use as a component of any article specified in (a), (b), or (c) of this subsection.
(2) "Drug" does not include:
Substances listed in “Personal care product”.
Cosmetics Containing Drug Ingredients

- A suntan product is a cosmetic, but a sunscreen product is a drug.
- A deodorant is a cosmetic, but an antiperspirant is a drug.
- A shampoo is a cosmetic, but an antidandruff shampoo is a drug.
- A toothpaste is a cosmetic, but an anti-cavity toothpaste is a drug.
- A skin exfoliant is a cosmetic, but a skin peel is a drug.
- A mouthwash is a cosmetic, but an anti-gingivitis mouthwash is a drug.
- A hair bulking product is a cosmetic, but a hair growth product is a drug.
- A skin product to hide acne is a cosmetic, but an anti-acne product is a drug.
- An antibacterial deodorant soap is a cosmetic, but an antibacterial anti-infective soap is a drug.
- A skin moisturizer is a cosmetic, but a wrinkle remover is a drug.
- A lip softener is a cosmetic, but a product for chapped lips is a drug.
Definition of “household cleaning product”

Original Language

• (10) "Household cleaning and personal care product" means any of the following:
  
  (a) Laundry detergents, softeners, and stain removers;
  
  (b) Household cleaning products;
  
  (c) Liquid soap;
  
  (d) Shampoo, conditioner, styling sprays and gels, and other hair care products; or
  
  (e) Lotion, moisturizer, facial toner, and other skin care products.

Draft Change

• Separated from the definition of “personal care product” for clarity
• Expanded listed items in (a)
• In the interim, using CA’s definition of household cleaning product:
  • "Household cleaning product" means any of the following:
    
    (a) laundry soaps, detergents, softeners, surface polishes, air cleaners, and stain removers; or
    
    (b) other chemically formulated domestic consumer products labeled to indicate that the purpose of the product is to clean, or otherwise care for fabric, dishes, or other wares, surfaces including, floors, furniture, countertops, showers, and baths; or other hard surfaces, such as stovetops, microwaves, and other appliances.
Definition of “household cleaning product”

Draft Definition:

"Household cleaning product" means any of the following:
(a) laundry soaps, detergents, softeners, surface polishes, air cleaners, and stain removers; or
(b) other chemically formulated domestic consumer products labeled to indicate that the purpose of the product is to clean, or otherwise care for fabric, dishes, or other wares, surfaces including, floors, furniture, countertops, showers, and baths; or other hard surfaces, such as stovetops, microwaves, and other appliances.

Considerations

What is the definition of “household” for the purpose of covered products under “household cleaning products”?

- Pet products
- Automotive
- Gardening products
- Exterior cleaning
Language:

• 70A.245.010(4)(b): (b) "Covered product" does not include any type of container or bag for which the state is preempted from regulating content of the container material or bag material under federal law.

Considerations:

• Pesticides (FIFRA)
• Plastic aerosols
• Child resistant packaging
“Plastic household cleaning and personal care product container”

Original language

• (15)(a) "Plastic household cleaning and personal care product container" means a bottle, jug, or other rigid container with a neck or mouth narrower than the base, and:

• (b)"Plastic household cleaning and personal care product container” does not include:

Draft change

- Added “tube” and “tub” to (15)(a)
- Added to those items not included in the definition requirements in (b):
  - “(d) Liners, caps, corks, closures, sprayers, triggers, labels, and other items added externally or internally but otherwise separate from the structure of the bottle or container.”
Final Input
Public Comments
Next Steps

Coming Up
• Ongoing input from advisory committee
• Meeting agenda, notes, and revised draft to be posted online
• eComments open to everyone
• Draft Part B sent to committee for review 5/26
• 2nd Committee Meeting 6/9, 9:00 – 12:00 PST

Homework
• Share info with stakeholders and partners
• Send in written questions, revisions, and feedback
Thank you!

Next meeting: June 9th, 9:00 – 12:00 (PST)
Rulemaking Questions: Shannon.jones@ecy.wa.gov
PCR Content Questions: Recycledcontent@ecy.wa.gov
Join the PCR content e-mail subscriber list

Ecology PCR Rulemaking Website
Ecology Recycled Content Minimums Website
Ecology PCR Registration & Reporting Website