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## Environmental Health Committee

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### HB 2914

**Brief Description:** Reducing the release of mercury into the environment.

**Sponsors:** Representatives Hunt, Campbell, Chase, Wood and Rolfes.

#### Brief Summary of Bill

- Establishes a producer-designed product stewardship program for the collection, recycle, and disposal of mercury-containing lights.
- Requires that producers of mercury-containing lights participate in and fully implement a product stewardship program by January 1, 2012.
- Requires that mercury-containing lights be recycled by business and government users by January 1, 2013.
- Prohibits the sale of bulk mercury by June 30, 2012.

**Hearing Date:** 1/20/10

**Staff:** Pam Madson (786-7111).

#### **Background:**

Mercury is a persistent, bioaccumulative toxin that can damage the human central nervous and cardiovascular systems and cause environmental harm.

In 2003 the Legislature prohibit mercury components in a number of consumer products. The law requires labeling of fluorescent lamps to indicate the presence of mercury and to inform purchasers on the proper disposal of the product.

The Department of Ecology's (DOE) Chemical Action Plan for mercury identified that a significant amount of mercury released into the environment comes from the disposal of products including fluorescent light tubes that are improperly discarded.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

## **Summary of Bill:**

By January 1, 2013, all government, commercial, and retail facilities must recycle their mercury-containing lights.

### Product Stewardship Program for Mercury-containing Lights.

Producers of mercury-containing lights sold in or into Washington must participate in a product stewardship program that is fully implemented by January 1, 2012. Producers may not sell mercury-containing lights in Washington unless the producer of the product is participating in a product stewardship program. A program includes financing and developing a plan to collect, transport, reuse, recycle, possess, and finally dispose of the product.

Producers of mercury-containing lights may operate a product stewardship program individually, jointly with other producers, or contract with a stewardship organization to operate one on their behalf.

A program must collect unwanted lights free of charge from Washington residents. All material from the lights collected must be recycled and the mercury retorted from the materials.

All administrative and operational costs of a product stewardship program must be paid by the producer. A program may not use federal or state prison labor for processing unwanted products.

### Product Stewardship Plan.

Each product stewardship program must develop a product stewardship plan. The plan must contain:

- information about participants;
- recovery goals for unwanted mercury-containing lights, and plans to maximize reuse and recycling of any packaging that may be collected;
- a description of the collection system used, including collection site locations, use of existing curbside waste collection, and an explanation of state-wide coverage of collection sites and their convenience to consumers;
- a process for disposing of the products collected including provisions for a third party audit of processing and disposal facilities used under the plan;
- use of businesses in the state to provide plan elements (curbside recycling);
- an explanation of the financing system to be used; and
- education and outreach efforts to make the program known and encourage its use.

Sixty days prior to submitting its plan, a product stewardship program must give public notice of the plan it intends to submit to DOE for approval. The DOE must solicit a list of stakeholders and make the list available to producers. Producers must consult with stakeholders during development of the plan and document this consultation.

A plan must be submitted to the DOE one year prior to the date on which plans must be implemented. The plan must be updated at least once every four years. Changes to the plan must be pre-approved, with some exceptions.

### Annual Report.

Once a program is in operation, it must submit an annual report by April 1 of each year indicating how the required plan elements were implemented. Elements of the report also include:

- the amount of product recovered and whether the program met the plan recovery goals; and
- the amount of product processed or disposed of using disposal facilities and the results of any third party audits of the processing and disposal facilities and any penalties or violations they received.

Producers that meet a 90 percent recovery rate or an 80 percent recycling rate are excused from certain reporting requirements.

In the fourth year of the program and for subsequent years, the recovery goals are based on the experience of the first three years of the program. If the plan fails to meet its recovery rate, the DOE must issue a warning and after 60 days may assess a penalty of \$10,000 for each violation.

### Enforcement - Producers.

Enforcement with respect to producers begins with written warnings prior to imposing any monetary penalty. Penalties include:

- *Failure to participate in a product stewardship program.* After a warning, the DOE must impose a penalty of \$1,000 per product sold.
- *Failure to implement its plan.* A producer who fails to implement its approved plan must receive a penalty, after a warning, of \$5,000. If the plan is not implemented in 30 days, the producer receives a penalty of \$10,000. Each subsequent 30-day period of non-compliance is another violation.
- *Additional violations.* Failure to submit a plan, update or change a plan when required, or submit an annual report, after a warning, will result in a \$10,000 penalty per day of violation.

Penalties are reduced by 50 percent if the producer complies within 30 days of the second violation notice. Producers may appeal penalties to the Pollution Control Hearings Board.

### Enforcement - Retailers.

Product retailers who sell products from producers who are not participating in a product stewardship program are subject to violations and penalties after a warning. Sales of used products are not subject to penalties under certain circumstances. In-state retailers may use inventory that is on hand on the date the sale of a product is restricted.

### Annual Fee.

Producers must pay \$10,000 to the DOE annually as a producer of mercury-containing lights sold in Washington. Retailers who may be considered producers must pay only \$1,000 to the

DOE annually. These funds are deposited into the Product Stewardship Programs Account and are used to pay the government agency cost of administering the program.

Rule-making and Agency Reporting.

The DOE may adopt rules and performance standards and may establish administrative penalties for failure to meet performance standards. Beginning October 1, 2012, the DOE must evaluate the impact of the program on the availability of energy efficient lighting and on the availability of non mercury-containing energy efficient lighting. The DOE must report to appropriate committees of the Legislature on the status of the programs and any recommendations for change to the laws governing product stewardship programs each year by December 31.

By June 30, 2012, the sale or purchase of bulk mercury is prohibited. This prohibition does not apply to dangerous waste recycling facilities or treatment, storage, and disposal facilities approved by the DOE.

Crematoriums are no longer exempt from laws on mercury under chapter 70.95M RCW.

**Appropriation:** None.

**Fiscal Note:** Requested on January 18, 2010.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.