

Mark Johnson

July 26, 2023

Dear Department of Ecology – PCR Rule Coordinator:

Washington Retail expressed our concerns with the department's interpretation of the definition of "producer" 70A.245.010 (19)(a) as was outlined in Senate Bill 5022. We submitted written comments to this effect in January 2023 and during the stakeholder process and notices to the bill's sponsors.

SB 5022's definition of "producer" was very carefully negotiated and crafted between legislators, stakeholders, and the department to ensure retailers could comply with the provisions of the legislation. Washington Retail did not oppose the final passage of the bill. With the proposed definition of "producer" we would have opposed SB 5022.

Retailers have little to often no control over how product packaging is utilized, designed, or what goes into the products. Unfortunately, the proposed rule's definition is significantly different from what was agreed to and contained in the legislation.

As discussions continue on more widespread packaging legislation, such as the Washington Recycling and Packaging Act – or WRAP Act – this misinterpretation will hinder and delay future efforts.

Our suggestion to better reflect a workable definition of "producer" is contained in the recently enacted Battery Stewardship Act – Senate Bill 5144 – copied below:

Battery EPR definition of producer in SB 5144-S2.E on p. 4, line 13:

(i) For covered batteries:

(A) If the battery is sold under the brand of the battery manufacturer, the producer is the person that manufactures the battery;

(B) If the battery is sold under a retail brand or under a brand owned by a person other than the manufacturer, the producer is the brand owner;

(C) If there is no person to which (a)(i)(A) or (B) of this subsection applies, the producer is the person that is the licensee of a brand or trademark under which the battery is used in a commercial enterprise, sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state;

(D) If there is no person described in (a)(i)(A) through (C) of this subsection within the United States, the producer is the person who is the importer of record for the battery into the United States for use in a commercial enterprise that sells, offers for sale, or distributes the battery in this

state;

(E) If there is no person described in (a)(i)(A) through (D) of this subsection with a commercial presence within the state, the producer is the person who first distributes the battery in or into this state

(ii)(b) A person is the "producer" of a covered battery or covered battery-containing product sold, offered for sale, or distributed in or into the state, as defined in (a) of this subsection, except where another party has contractually accepted responsibility as a responsible producer and has joined a registered battery stewardship program as the producer for that covered battery or battery-containing product under this chapter.

For consistency of this and future stewardship programs we recommend and encourage the department to adopt this definition of "producer" specifically with the allowance for a retailer to contract with a producer to accept responsibility.

We appreciate your consideration of our recommendations and are happy to work with you on clarifying our position.

Sincerely,

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