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RE: Call2Recycle Comments to Proposed new rule to Chapter 173-905 WAC

Call2Recycle, Inc. is the leading non-profit battery stewardship organization founded in 1994 to ensure the proper end-of-life disposal of batteries throughout the U.S. Call2Recycle assists manufacturers in meeting their state's regulatory requirements and environmental responsibilities. Through our comprehensive program, we manage compliance from end to end—including regulatory reporting and customized support—to ensure adherence to battery recycling laws and advance sustainable practices across the industry.

Call2Recycle would like to thank Ecology for the opportunity to provide feedback to proposed new rule Chapter 173-905 WAC.

1) General Comment

Comment: It is not clearly stated in the law nor in the proposed new rule in Chapter 173-905 WAC that all covered battery collections shall only be collected under an approved Battery Stewardship Plan.

It is essential that all battery collections, whether at permanent collection sites or during collection events, are conducted only under an approved Battery Stewardship Plan. This requirement ensures a level playing field for all stakeholders and aligns with the intent of the "Applicability" section (4), which applies to "any person who collects covered batteries in Washington State for a battery stewardship plan approved under this chapter."

To ensure proper oversight by the department and safeguard both safety and environmental compliance, it must be clearly stated that all covered batteries are to be collected under an approved plan. This not only reinforces accountability for meeting performance goals but also guarantees fairness across all participating parties.

Furthermore, the law requires producers to fully fund the program. If other entities are allowed to collect outside of an approved plan that is not funded by producers, then the law is no longer an extended producer responsibility law as the producers are no longer responsible for funding battery collections.

Therefore, Call2Recycle proposes the following language in Section WAC 173-905-130 (addition proposed in red):

Plan for managing portable batteries. *By July 1, 2026, each battery stewardship organization shall submit to the department a plan that covers the collection, transport, and processing of portable batteries. Information on the collection, transport, and processing of medium format batteries, as required in subsection (2) of this section, may be included in the plan. Only battery stewardship organizations with approved plans may collect covered batteries in Washington state at both collection events and permanent collection sites.*

2) Section WAC 173-905-030 Definitions - “Collection site”

Comment: The definition for collection site in the draft language “means a permanent service location, operated by an entity *that is licensed to do business* in Washington state, and that accepts covered batteries under a battery stewardship plan and meets all requirements in WAC 173-905-510 and 173-905-520.”

Call2Recycle is concerned with the inclusion of the phrase “that is licensed to do business” included in this definition. Many of our collection sites across the United States – such as non-profits, Household Hazardous Waste (HHW) sites, and similar entities – may not require a formal business license in the state. Call2Recycle requests that the department reviews language to ensure all entities – non-profit and local government sites – can meet the criteria of the definition for collection site.

3) Section WAC 173-905-030 Definitions - “Recalled batteries”

Comment: In section WAC 173-905-110 (g) it states, “Providing educational materials to help facilitate transportation and processing of recalled batteries, which are not intended to be collected under the program”. However, this exclusion of recalled batteries is not included in the definitions section as it is in other states’ battery EPR legislation to ensure clarity.

Call2Recycle recommends revising the definition of Covered Battery as follows (addition proposed in red):

“Covered battery” means a portable battery that has been used in Washington state regardless of where it was purchased. Beginning January 1, 2029, “covered battery” also means a medium format battery that has been used in Washington state regardless of where it was purchased. “Covered battery” does not include:

- (a) A battery contained within a medical device that is not marketed to consumers;*
- (b) A wet cell battery, including a vehicle battery as defined in WAC 173-331-100; and*
- (c) A battery that is not intended or designed to be easily removable from a battery-containing product*
- (d) a battery recalled by the producer for safety reasons*

4) Section WAC 173-905-100 – Plan review fee and Administrative fee

Comment: Both the plan review fee and the administrative fee must be submitted to the Battery Stewardship Organizations (BSOs) in a timely manner to support budget development. Call2Recycle requests at least six months' advance notice before the payment date for both agency fees to allow sufficient time for budget planning. This ensures the organization can properly incorporate the fees into program budgets and funding allocations.

5) Section WAC 173-905-110 (f) - noncovered products

Comment: The draft rules state the BSO will be “Distributing educational materials to the operator of each collection site detailing how noncovered products and batteries, such as recalled batteries, should be managed”

Mandating that a BSO provides instructions to manage products and batteries not included in the law goes beyond the applicability of this law. The BSO does not have the expertise nor authority to instruct collection sites regarding how to handle products and batteries that are outside of the scope of this law. If this statement is limited to how to handle recalled batteries, this concept may be applicable to this law, however as it is written, that is just one example of all non-covered products and non-covered batteries.

Therefore, we recommend this statement be revised to read (with edits in red):

“Distributing educational materials to the operator of each collection site detailing how recalled batteries, ~~such as recalled batteries~~ should be managed.

6) Section WAC 173-905-120 - noncovered products

Comment: clause (3) (i) states “A description of how collection sites will be trained to deal with receiving batteries that are not required to be collected such as batteries that are not easily removable from a product or covered electronic products under chapter 70A.500 RCW.”

As mentioned in the previous comment, this mandate goes beyond the scope of the law and the BSO does not have the expertise nor authority to instruct collection sites regarding how to handle all non-covered products and batteries. The statement must be limited to handling recalled batteries.

Therefore, we recommend this statement be revised to read (revisions in red)

“A description of how collection sites will be trained to deal with receiving recalled batteries ~~that are not required to be collected such as batteries that are not easily removable from a product or covered electronic products under chapter 70A.500 RCW~~”

Alternatively, if the department provides instruction to the BSO as to how to handle noncovered batteries “that are not easily removable from a product or covered electronic product” then the BSOs can include this provided instruction to collection sites.

7) Section WAC 173-905-120 (1) (v) and (vi)

Comment: Under the required information for “transporters” the list includes:

(v) A list of all applicable permits and licenses; and

(vi) A list of all applicable permits and licenses; and (vi) A list of all applicable hazardous waste EPA/state identification number

Transporting waste batteries does not require a US DOT license for hazardous waste as these batteries are transported as Universal Waste. Transporters do not process nor dispose of batteries. Therefore, transporters will not have applicable permits, licenses, nor applicable hazardous waste EPA/state identification numbers.

Call2Recycle recommends items (v) and (vi) removed from the list as they do not apply to a transporter.

8) Section WAC 173-905-120 (4) (a) Performance goals

Comment: The target collection rates are required to be broken down by primary and rechargeable and are not just total battery collection rates. This requirement is unique—no other state with a battery EPR law mandates separate collection rate targets. Other U.S. states and countries such as the EU and Australia require a single, unified collection rate target.

Call2Recycle seeks clarification on the department’s intent behind requiring separate collection rates for primary and rechargeable batteries. Specifically, we would like to understand what insights or decisions this data is expected to inform. Since the law applies to all batteries, and the plan—including education, outreach, and collection—is designed to address all battery types collectively, the rationale for disaggregating collection rates is unclear. Notably, there is no similar requirement to report separate collection weights for primary and rechargeable batteries.

It’s important to note that collection rates naturally vary across chemistries. However, the plan does not aim to increase collection of any specific battery type. More concerning is the potential volatility of these separate rates, which may fluctuate as devices shift between primary and rechargeable formats or as consumer preferences evolve. These fluctuations could lead to misleading interpretations and create unrealistic expectations about program performance and compliance with the law.

9) Section WAC 173-905-120 (5) (g) AND Section WAC 173-905-150 (7) (d) – Education and outreach

Comment: Both sections referenced above state the BSO provides a “schedule of planned activities for the coming year”.

Call2Recycle has operated approved battery EPR plans under state law for over a decade. Our best practice is to use a “test, learn and adjust” model for education and outreach. Call2Recycle has a summary of activities we plan to employ and test for a calendar year. However, as we implement the outreach and understand outcomes we will revise plans for upcoming quarters. The term “schedule” is interpreted as a set calendar year education and outreach program that is not changeable once set. Therefore, Call2Recycle recommends the following changes (revisions in red):

WAC 173-905-120 (5) (g)

A ~~schedule~~ summary of planned education and outreach activities.

WAC 173-905-150 (7) (d)

~~Planned Summary of~~ education and outreach activities ~~and a description of activities~~ planned for the coming year

10) Section WAC 173-905-120 – Fees

Comment: The statute, SB5144, regarding the structure of fees permits but does not require the BSO to set fees using eco-modulation. However, the rules go beyond statute and require the BSO to set fees supporting eco-modulation. The draft rule cannot change the intent of the law therefore the language in the draft rule should be reverted to the same terminology as found in statute as laid out below.

Statute SB5144

A battery stewardship organization implementing a battery stewardship plan on behalf of producers must develop, and continually improve over the years of program implementation, a system to collect charges from participating producers to cover the costs of plan implementation in an environmentally sound and socially just manner that encourages [support but not mandate] the use of design attributes that reduce the environmental impacts of covered batteries, such as [examples but not inclusive] through the use of eco-modulated fees. Examples [examples but not inclusive] of fee structures that meet the requirements of this subsection include using eco-modulated fees to:

- (a) Encourage designs intended to facilitate reuse and recycling;
- (b) Encourage the use of recycled content;
- (c) Discourage the use of problematic materials that increase system costs of managing covered batteries; and
- (d) Encourage other design attributes that reduce the environmental impacts of covered batteries.

Draft rule

Fee structure. A description of how the stewardship organization will [mandates] structure producer fees to encourage:

- (a) Recyclability or recycling;
- (b) Use of recycled content; and
- (c) Other design attributes that reduce the environmental impacts of covered batteries.

Recommended draft rule revision (revisions in red)

Fee structure. A description of how the stewardship organization ~~will~~ *may* structure producer fees to encourage:

- (a) Recyclability or recycling;
- (b) Use of recycled content; and
- (c) Other design attributes that reduce the environmental impacts of covered batteries.

11) Section WAC 173-905-120 – Budget

Comment: There is list of nine items to be listed in the budget. Two of those are processing and disposition. Call2Recycle is unclear what is the difference between these two terms.

Therefore, Call2Recycle recommends instead of listing out processing and disposition, the language changes “disposition” to “sorting”.

12) Section WAC 173-905-140 - Implementation

Comment: The draft language states that by July 1, 2027 (within 6 months of the approved plan) the BSO shall reach the full collection convenience metric. This is the quickest implementation date Call2Recycle has seen proposed in the U.S. and we do not feel this is achievable. The common requirement is 12 months for implementation to meet the convenience metric to allow sufficient time for the BSO to conduct outreach across the state and have the proper time to safely provide collection site training and ship materials.

Call2Recycle recommends the language be changed to read (revisions in red):

(2) By July 1, 2027 (or as specified in the list below), each battery stewardship organization shall fully implement its approved plan for covered portable batteries. Full implementation is when:

(a) By January 1, 2028, collection convenience standards in WAC 173-905-500 have been met;

(b) All collection sites have received proper training, collection containers, signage and educational materials;

€ The battery stewardship organization’s website is live, providing information to producers, retailers, collection sites, and consumers about the program;

(d) A collection site locator on the battery stewardship organization’s website is operational, providing collection site address, hours, phone number, website if applicable, and any special instructions or restrictions specific to the collection site; and

€ The battery stewardship organization has paid all necessary fees to the department.

13) Section WAC 173-905-150 – Independent financial audit

Comment: For Call2Recycle to provide a financial audit at the request of the department, sufficient time is needed from when the BSO is notified so that the BSO can plan to have this task completed and included in the annual report.

Call2Recycle recommends the additional language is included in rules (revisions in red):

Independent financial audit. *When required by the department, an independent financial audit of the program, including a breakdown of the program’s expenses, such as collection, recycling, education, and overhead. The department must notify the BSO in writing by December 31 of the same calendar year for which the report is to be prepared, indicating that a financial audit will be required.*

14) Section WAC 173-905-150 – Aggregate sales

Comment: The language states that the estimated aggregate sales by weight and chemistry shall be reported to the department. However, the term “chemistry” now means the individual battery chemistry as defined by their anode and cathode. In other words, lithium ion, alkaline, etc. This will be problematic as it requires the BSO to provide a fine level of detail which could be used by third parties to determine confidential information such as market share. No other state requires this level of detail to be sent to the overseeing agency.

Call2Recycle recommends this language be changed to read (revisions in red):

*Aggregate sales. The estimated aggregate sales by weight and **by primary or rechargeable chemistry of** covered batteries and batteries contained in or with battery-containing products sold in Washington by participating producers for each of the previous three calendar years.*

15) Section WAC 173-905-150 – Battery management hierarchy

Comment: the hierarchy lists 4 items:

- (i) Waste prevention and reduction;
- (ii) Reuse;
- (iii) Recycling; and
- (iv) Other means of end-of-life management.

Call2Recycle is unclear how “waste prevention and reduction” is defined if it is not already considered one of the other three items listed below.

Call2Recycle recommends that either or the term “Waste prevention and reduction” is defined or it is deleted.

16) Section WAC 173-905-160 (6) – Quarterly Updates

Comment: Item number 6 to be provided in a quarterly update is a list of any transporters and processors that have been added or removed from the program. This requirement is already included as a trigger to submit an amendment to the plan for review. Therefore, Call2Recycle recommends removing it from a quarterly update since it will be included in plan amendments.

17) Section WAC 173-905-310 – Marking

Comment 1: The marking requirements include the crossed-out wheeled bin beginning January 1, 2030. Call2Recycle supports this language but would like to include an alternative to use the Call2Recycle Seal for rechargeable batteries in lieu of the crossed-out wheeled bin.

The Call2Recycle program has operated for over 30 years with the program Seal as imaged below. Many manufacturers already have this mark on their battery and many consumers understand this mark means

to recycle their batteries properly. The mark also provides a means to contact the program for any questions regarding battery recycling.



Additionally, given the size of the battery, manufacturers who have used the Call2Recycle Seal for decades will not have sufficient space to also include the crossed out wheeled bin.

Comment 2: The requirement is for producers to mark their batteries with the elemental names or elemental symbol from the periodic table for the primary constituents of both the anode and cathode materials of the battery.

For many decades, producers have marked their batteries in accordance with either the ANSI C18 or IEC 60086 standards series (marking requirements are harmonized across these standards) for certain chemistry not regulated in transport or in accordance with transportation regulations such as IATA for those chemistries that are regulated for transport.

In the ANSI or IEC standards, the marking requirement indicates the producer should mark the battery with the “battery system, chemical system, or the common designation” found in those standards. The names of these battery or chemical systems are well understood by industry, consumers and, most importantly, the sorters that operate the Call2Recycle sorting systems in our network.

If a producer were to change their marking to meet the draft regulations, instead of including the term “alkaline” on the label they would include “zinc, manganese dioxide”. This would not be recognized by anyone in the current battery collection and recycling system. In fact, it would be in direct opposition to other labeling requirements in other countries.

Additionally, there is concern that by drastically changing the name of the chemistry on the label, this will impact import under transportation rules. Producers have carefully chosen the chemistry name for their battery labels to support UN designation for transport regulations so that the chemistry name on the battery matches the shipping papers for both shipment and import.

Call2Recycle strongly recommends this language be changed to read (additions in red):

*Beginning January 1, 2030, a producer shall mark their batteries **with the battery or chemical system or common designation published in standards such as the American National Standards Institute (ANSI) C18 standards or International Electrotechnical Commission (IEC) 60086 standards.** ~~elemental names or elemental symbols from the periodic table for the primary constituents of both the anode and cathode materials of the battery~~*

Additionally, the new definition for periodic table should be deleted.

18) Section WAC 173-905-400 (2) (a) – Brands List

Comment: The requirement states that the department will maintain a web page that includes a list of producers that participate in an approved plan. Call2Recycle also recommends that the department includes a list of brands that are part of an approved plan as well. Many producers place on the market multiple brands that they report on in the current Call2Recycle program for compliance. It will not be known by the department nor retailers which brands are covered if there is only a list of products.

Call2Recycle recommends the language be revised to read (revisions in red)

*(a) Beginning January 1, 2027, a list of producers and a **separate list of brands** that participate in an approved plan;*

19) Section WAC 173-905-520 – Emergency Supplies

Comment: the draft language states “Battery stewardship organizations shall provide each collection site with emergency supplies and decontamination equipment appropriate for battery collection and handling.” This statement is vague and Call2Recycle is not certain what these supplies are needed for.

Call2Recycle does not understand what emergency the collection site and approved plan are preparing for as the language is broad and unclear. For example, using the term “decontamination” in association with battery collection implies that a loose battery contaminated an area in some way. Call2Recycle requests further details on what the definition of a “battery handling contamination event” so that can prepare accordingly.

Thank you again for the opportunity to share our thoughts on the proposed new rule Chapter 173-905 WAC. Having operated a successful battery collection and recycling program across the United States for over 30 years, we are pleased to provide feedback on important aspects of the draft rules to ensure the battery collection and recycling program in Washington state continues to operate in manner that meets the needs of all stakeholders. If you would like to further discuss any comments, we would be happy to provide assistance.

Best Regards,



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