

W2R Program, Department of Ecology

Questions and Answers Regarding Sales of Mercury-Containing Lights

Updated May 27, 2015

Question 1: *What constitutes a retail sale?*

Ecology Response: Retail sale isn't defined in the law, however [RCW 70.275.050](#) (3) specifically states when the EHC is to be added to lights sold to Washington retailers for sale at retail "...each Washington retailer shall add the charge to the purchase price of all mercury-containing lights sold at retail in this state...".

EXAMPLES of a retail sale:

- Sale to a customer at a physical store location, through sales outlets, catalogs, or on the internet
- Sale purchased through a retailer, defined in [RCW 70.275.020](#) (22) as a person who offers mercury-containing lights for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer.
- Sale to a consumer by a store or other business [WAC 173-910-100](#)

EXAMPLES of sales that wouldn't be considered a retail sale:

- Wholesale sale
- Sale to a non-retail customer
- Sale to a contractor who purchases at a distributor and pays less than standard retail pricing
- Sale to someone who has a contractor's license
- Sale to someone who has a reseller permit

Question 2 – *When does sales tax apply to the retail sale of mercury-containing lights?*

Ecology response: Sales tax is applied to the total price of the mercury-containing light, which includes the EHC. The price of each mercury-containing light available for retail purchase will already *include* the EHC. For example, a bulb that costs \$1.00 plus the 25 cent EHC will cost \$1.25. Sales tax is calculated on the total product price of \$1.25.

Question 3 – *How is the EHC applied to mercury-containing lights purchased prior to January 1, 2015?*

Ecology response: The law regarding existing stock [RCW 70.275.110](#) (9) refers to the sale of lights purchased from non-participating producers. Retailers are allowed to exhaust any existing stock from non-participating producers after January 1, 2015. New purchases of mercury-containing lights beginning on January 1, 2015 must be from participating producers. The law does not exempt existing stock from the requirement to include the EHC in the purchase price sold beginning on January 1, 2015.

[RCW 70.275.050](#) (3)(a) says No sooner than January 1, 2015:

(a) The mercury-containing light environmental handling charge must be added to the purchase price of all mercury-containing lights sold to Washington retailers for sale at retail, and each Washington retailer shall add the charge to the purchase price of all mercury-containing lights sold at retail in this state.

Question 4 – Will the EHC be applied to the purchase price of a light fixture that includes a mercury-containing light?

Ecology response: No. [RCW 70.275.110](#) (7) states that “A sale or purchase of mercury-containing lights as a casual or isolated sale as defined in [RCW 82.04.040](#) is not subject to the provisions of this section”. The entity who sells the fixture is not engaged in the business of selling mercury-containing lights and therefore does not have to apply the EHC to the sale at retail.

Question 5: How will the EHC be applied in the following scenarios?

- A. Should the EHC be charged on sales to contractors for use in new construction? If so, should the manufacturer charge the EHC on sales to the distributor, despite the sale being considered a wholesale transaction, since collecting the EHC from individual contractors is impractical?

Ecology Response: No. Since the contractor is buying bulbs from a distributor, and this is a wholesale transaction, this is not considered a retail sale and the EHC is not applied.

- B. Should the EHC be charged on retail sales when bulbs are purchased from a distributor?

Ecology Response: Yes. The EHC should be applied to all retail sales that occur at a distributor’s location, including, but not limited to, remote offerings such as catalogs or internet sales. [RCW 70.275.020](#) (22).

Distributors can sell both at wholesale and retail, and the EHC should be applied to the retail sales.

- C. Should the EHC be charged on bulk sales to contractors when lights are purchased at retail?

Ecology Response: Yes. Whenever the contractor purchases bulbs at retail the EHC will be applied.

- D. Should the EHC be charged on bulk sales to contractors when lights are purchased from a distributor?

Ecology Response: No. When the contractor purchases bulbs from a distributor at a wholesale price, it is not considered a retail sale. The EHC is not applied.

- E. Should the EHC be charged on bulk sales to contractors for commercial applications (such as large public facilities)?

Ecology Response: No. Bulk sales to contractors for large-scale commercial facilities are not considered sales at retail.

- F. Would a sale from a manufacturer directly to the end user (such as sales from a Producer to a school or government facility) be considered a retail sale, and should these types of sales include the EHC?

Ecology Response: No. Producers selling directly to school or government facilities are not considered sales at retail so the EHC is not applied.