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March 31, 2009

Assemblymember Jared Huffman  
California State Capitol  
P.O. Box 942849  
Sacramento, CA 94249-0006

**RE: Comment on AB 1173 California Fluorescent Lamp Toxics Reduction and Recycling Act” (as introduced February 27, 2009)**

Dear Assemblymember Huffman:

The Product Stewardship Institute, Inc. (PSI) is writing to comment on **AB 1173, entitled “California Fluorescent Lamp Toxics Reduction and Recycling Act.”** We also make suggestions for what we believe to be a more viable system to ensure the long-term recycling of mercury-containing fluorescent lamps generated by residential customers.

PSI appreciates your efforts to ensure that compact fluorescent lamps (CFLs) used in California are low-mercury, energy efficient, and long-lasting, and to address the need to recycle CFLs at the end of their life. We also recognize the difficulty in finding a solution that will be agreed to by all parties, and commend your efforts to remedy this complex environmental issue.

PSI is a national non-profit organization with membership from 45 state governments, over 75 local agencies, and over 50 businesses, environmental groups, and other organizations that have pledged to work together to reduce the health and environmental impacts from consumer products. These stakeholders work cooperatively, through PSI, to develop and implement “product stewardship” solutions that share responsibility for safely managing consumer products across their entire life cycle, from design to reuse, recycling, or disposal. A representative of the California Integrated Waste Management Board (CIWMB) was a PSI founding Board Member over eight years ago, and we continue to enjoy their participation on our Board.

In 2008, PSI convened three national stakeholder meetings, called the “National Dialogue on Fluorescent Lighting,” that included local, state, and federal government officials; the Association for Lighting and Mercury Recyclers (ALMR) and individual recycling companies; fluorescent lamp manufacturers and the National Electrical Manufacturers Association (NEMA); electric utilities and energy efficiency advocates; state and national retail associations; and environmental organizations.

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The following project goal was agreed to by consensus at the first dialogue meeting: "...to promote the use of energy efficient lighting while eliminating or reducing the amount of mercury and other toxins entering the environment during the lifecycle of fluorescent lamps." Participants also agreed to the following specific goal: "maximizing the safe collection and recycling of spent lamps from households and businesses through the development of a nationally-coordinated system that is financially sustainable." Participants in this multi-stakeholder dialogue agreed that fluorescent lamps should be promoted for their energy efficiency benefits (until a viable, less toxic alternative exists) and should be recycled. The group also agreed on the following with regard to a financing system:

- (1) **Household Lamp Recycling:** There should be some type of financing system developed that allows consumers to recycle their lamps without an end-of-life fee. State and local governments should not manage or pay for this system. Household lamp recycling should also be promoted by the passage and enforcement of disposal bans/recycling requirements, but only when convenient recycling opportunities are available.
- (2) **Commercial Lamp Recycling:** There is already a financing system and infrastructure in place for lamp recycling in the commercial sector in the form of contractual relationships between "large" consumers and recyclers or lighting service providers.

Although consensus was reached on key aspects of the fluorescent lighting issue, there were different points of view expressed in the dialogue about who should pay for the convenient recycling system for consumers. Lamp manufacturers promoted funding by utilities and retailers, while government agencies, environmental groups, and other stakeholders promoted cost internalization. After PSI supported its state and local members in their bid for manufacturers to internalize lamp recycling costs, participating manufacturers pulled out of the PSI dialogue.

PSI's *Product Stewardship Action Plan on Fluorescent Lighting* is available at <http://www.productstewardship.us/FluorescentLightingProject>. Agendas, participant lists, and meeting summaries for the three dialogue meetings are available at the links below:

- Meeting #1: <http://www.productstewardship.us/FluorescentLightMeetingSaltLakeUT>.
- Meeting #2: <http://www.productstewardship.us/FluorescentLightMeetingSeattleWA>
- Meeting #3: <http://www.productstewardship.us/FluorescentLightMeetingSeattleWA2>.

### **PSI comments on AB 1173**

#### Energy Star and "Free and Convenient" Service to End Users

We agree that CFLs subsidized by Energy Efficiency Investment Funds (EE Funds) should comply with the latest Energy Star guidelines, and that there should be "...an established system for the recycling of residential generated fluorescent lamps that is free and convenient for end users."

#### Cost Internalization as the Most Viable Financing System

Contrary to AB 1173, we believe that lamp manufacturers should internalize the cost of recycling *all* mercury-containing lamps they sell to residential customers, including linear tubes (which are also used in significant quantities by non-commercial customers) and CFLs for which EE Funds are not used. Cost internalization is a key element in PSI's *Principles of Product Stewardship*, which were developed in 2001 by PSI's founding state and local government members. All 45 PSI member states currently support these *Principles*. Lamp manufacturers, energy efficiency advocates, and a few environmental groups have expressed concern that placing the responsibility on manufacturers to recycle the lamps they

make will raise the price of CFLs to such a degree that consumers will not purchase them, thus losing the energy-saving and mercury-reducing benefits of their use. PSI strongly disagrees with this assumption.

First, there is no evidence that such a result will take place. Fluorescent lamps have been recycled in Europe under the Waste Electrical and Electronic Equipment Directive through a fee that is visible to the consumer. In addition, producers will soon be responsible for recycling fluorescent lamps in three Canadian provinces. Further, no evidence was presented during the one-year National Dialogue on Fluorescent Lighting to indicate that consumers were deterred from purchasing these bulbs in Europe under a producer responsibility system. PSI does not believe that consumers will be deterred from purchasing energy-efficient, cost-saving fluorescent lights if the purchase price reflects the *small increase* to manage them properly.

Second, even if consumers *were* inclined toward not buying CFLs if their price were raised by manufacturers wishing to cover their recycling cost, many bulbs are currently subsidized by energy efficiency companies, and will be for the next few years, thus offsetting any potential price increase owing to recycling. Third, these subsidies for CFLs will end when federal lighting efficiency standards are implemented in 2010-2012. At that time, there will be no need to convince consumers to choose a CFL over an incandescent bulb since *incandescents will no longer be sold*.

Finally, PSI believes that cost internalization is the most viable financing system since it will provide the greatest financial incentive for manufacturers to invest in energy saving, environmentally sound technologies. In the absence of a system that requires manufacturers to include the cost of recycling within their normal business expenses, manufacturers have less incentive to develop technologies that reduce their external impacts on the environment. Under the current regulatory environment, manufacturers have incentive to develop technologies that lower energy use but not technologies that reduce the environmental costs of lamp disposal, which currently fall on local governments, except in limited cases where utilities and retailers have assumed financial responsibility for collections. Thus, AB 1173 *would still leave significant, unacceptable financial responsibility on local governments* to collect and recycle residential fluorescent lamps that are: (a) above and beyond those subsidized by EE Funds; (b) linear fluorescent lamps used in households (that contain more mercury than CFLs), and (c) CFLs that become spent and must be recycled *after* the subsidies have ceased. As it is unlawful to dispose of mercury-containing lamps in solid waste in California, residents will no doubt turn to their local governments for lamp recycling if there are inadequate opportunities available to recycle the types of fluorescent lamps they use now and in the future.

### **Administrative Costs**

One argument against cost internalization stated in the “letter to interested parties” (dated March 2, 2009) was the following: “Allocating manufacturer responsibility based on retail sales, while desirable, has proven to be administratively challenging and expensive.” No doubt that achieving product stewardship will require a fundamental shift in the way companies do business. This may indeed include developing new administrative systems and figuring out new methods to track and share information. While this may entail some upfront cost, it should not be an insurmountable obstacle to making critical changes needed to prevent mercury releases and relieve the financial burden on local government. These multi-national companies already must track their lamp sales in Canada and Europe in order to apportion their financial responsibility for recycling. They should be allowed flexibility in creating their own reporting systems for California based on these lessons learned, just as manufacturers of electronics do under the 18 state laws mandating their responsibility for collecting and recycling their electronic products. Electronics manufacturers also import most of their products from abroad, as do lamp manufacturers, but this has not stopped state legislatures from mandating producer responsibility systems for electronics. PSI does not believe it should be an obstacle for lamps either.

## **Retail Role**

PSI believes that the appropriate role for retailers in product stewardship is to serve as a voluntary collection location, provide customer education, and sell true “green” products (in this case CFLs). Retailers should have this choice regardless of whether the lamps they sell are subsidized by EE Funds. Retailers that provide valuable space for collection, train employees, and manage the logistics of recycling should not also be required to pay for lamp recycling.

## **Performance Goals**

Performance goals are critical for ensuring program effectiveness. Without performance goals based on collection rates, it is impossible to know how well a lamp collection and recycling program is working and whether a program is capturing sufficient quantities of mercury-containing lamps to reduce risks to acceptable levels. Most government officials believe that this rate for lamps should be 80 percent or better. PSI urges you to develop clear and aggressive performance goals in the next version of AB 1173. PSI believes that lamp manufacturers should be held responsible for meeting performance goals, although all stakeholders, including government and consumers, have key roles in ensuring that these goals are met. As written, AB 1173 would allow a manufacturer to claim compliance and continue to receive utility subsidies if it operated just one collection location. This would clearly not achieve the important goal of keeping mercury out of California’s land, air, and water.

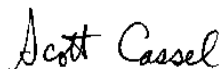
## **Conclusion**

In conclusion, PSI believes that AB 1173 will not provide a sustainable long-term solution to recycling lamps and will fail to achieve the goal the legislation sets for itself. As stated in the “letter to interested parties”...“At their end of life, these mercury containing lamps must be properly managed to contain their mercury—their disposal in the solid waste stream is prohibited.” Mercury contamination from lamps will continue unless bold action is taken...or they are inevitably replaced by the next generation of energy efficient lighting.

PSI believes it is time for states to implement a product stewardship system for household fluorescent lamps. While we are encouraged by the voluntary efforts of some national and local retailers and electric utilities/energy efficiency program administrators to implement and pay for recycling solutions, these systems are sporadic, piecemeal, and only cover a fraction of the lamps that need to be collected. Action is needed now, and we believe that the manufacturer-financing model is the most viable system to be tested.

Let me again express PSI’s appreciation for your time spent to understand this complex environmental issue, and to take action toward eliminating mercury emissions.

Sincerely,



Scott Cassel  
Executive Director/Founder