

End-of-Life Product Management

Wiley's team is recognized for its international expertise on the attention to the end of life management of products that has come to be known as "product stewardship." We represented the original petitioners who led EPA to adopt its Resource Conservation and Recovery Act (RCRA) "universal waste" rule, have worked on federal and state recycling legislation across the country, incorporated and continue to represent two of the largest industry-operated stewardship programs in the nation, and have helped them and other clients obtain numerous approvals for product-specific plans from regulatory agencies in the United States and Canada.

In addition, Wiley assists retailers and other consumer-facing entities with often-complicated waste management and transportation issues associated with product returns and reverse distribution. Wiley has counseled a number of clients regarding their waste management and transportation obligations under the RCRA and related state laws, including issues related to waste characterization, as well as drafting and negotiating contractual arrangements for stewardship services and procedures to assure compliance with hazardous waste transportation issues arising in connection with reverse distribution supply chains.

Plastics, Recycling, and Sustainability

Reducing plastic waste is a bipartisan and international issue. Traction in 2020 included the Save our Seas 2.0 Act, which incentivizes the nation to reduce, recycle, and prevent marine debris (e.g., plastics) by establishing a Marine Debris Response Trust Fund, a Marine Debris Foundation, a Genius Prize for Save Our Seas Innovations, a strategy to improve waste management and recycling infrastructure, a Waste Management Revolving Fund for states, a Waste Management Infrastructure Grant program, a Drinking Water Infrastructure Grant program, a Wastewater Infrastructure Grant program, and a Trash-Free Water Grant program. The U.S. Department of Energy (DOE) has launched a Plastics Innovation Challenge Draft Roadmap that aims to make domestic processing of plastic waste economically viable and energy efficient, develop new and improved plastic materials lacking the same end-of-life concerns as current materials, and reduce plastic waste accumulation. It has four strategic goals to develop biological and chemical methods for deconstructing plastic wastes into useful chemicals, technologies to upcycle waste chemical streams into higher-value products, encouraging increased recycling, new, renewable plastics and bioplastics that have the properties of today's plastics, and an energy- and material-efficient domestic plastics supply chain by helping companies scale and deploy new technologies in domestic and global markets, while improving existing recycling technologies such as collection, sorting, and mechanical recycling. In 2020, plastic waste was added as a Prior Informed Consent (PIC) wastestream to the Basel Convention, with clear carve-outs for high quality recycled plastic bales. In 2021, the Canadian Government's measure under Schedule 1 of the Canada

Environmental Protection Act (CEPA) to label all "plastic manufactured items" as "toxic substances" could present a new set of challenges for U.S. suppliers. Wiley's attorneys provide strategic counsel for navigating these and other challenges.

Representative Experience:

- Serving as general counsel to companies operating rechargeable battery and electronic end-of-life management services across North America.
- Advising companies and trade associations in the pharmaceutical, floor covering, and plastic container industries on strategies to comply with product stewardship mandates and to obtain revisions to them.
- Representing companies and trade associations in their promotion of or resistance to legislative product stewardship proposals at the Federal level, in approximately two dozen U.S. states and municipalities, and in half a dozen Canadian provinces.
- Representing the trade association of U.S. lead acid battery manufacturers in developing and promoting the landmark legislation adopted in California in 2016 as AB 2153, imposing a tax on batteries but, in response, providing credits against future pollution claims.
- Filing a petition on behalf of clients that resulted in the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration's adoption in 2016 of a rule simplifying reverse distribution and recalls of potentially-hazardous products.

Contact Us

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