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**VIA ELECTRONIC MAIL**

Washington Department of Ecology  
[ChemActionPlans@ecy.wa.gov](mailto:ChemActionPlans@ecy.wa.gov)

**Re: Comments of the PFAS Regulatory Coalition on the Washington Department of Ecology's Draft PFAS Chemical Action Plan**

To the Washington Department of Ecology:

The PFAS Regulatory Coalition (Coalition) appreciates the opportunity to file comments regarding the Washington Department of Ecology's (Ecology) Draft PFAS Chemical Action Plan (CAP). The Coalition appreciates the State's comprehensive approach to this complicated set of issues. The Coalition supports implementation of the elements of the Draft CAP that further research and funding, as well as national efforts in those areas. The Coalition does not support, however, those elements of the Draft CAP that are duplicative of or counter to federal actions or that further the creation of burdensome, multiple state-specific standards.

**A. The Coalition's Interest**

The Coalition is a group of industrial companies, municipal entities, agricultural parties, and trade associations that are directly affected by the State's policies and regulations related to per- and polyfluoroalkyl substances (PFAS). Coalition membership includes entities in the automobile, coke and coal chemicals, iron and steel, municipal, paper, petroleum, and other sectors. None of the Coalition's members manufacture PFAS compounds. Coalition members, for purposes of these comments, include: Airports Council International – North America; American Coke and Coal Chemicals Institute; American Forest & Paper Association; American Fuel & Petrochemical Manufacturers; American Iron and Steel Institute; American Petroleum Institute; Gary Sanitary District (IN); Illinois Association of Wastewater Agencies; Lowell, MA; Pueblo, CO; Tempe, AZ; Toyota; Trihydro, TRS Group, and Yucaipa Valley Water District (CA).

The Coalition supports and advocates for actions that provide uniformity across the country in PFAS-related legislation, regulation and policy. Additionally, the Coalition supports and advocates for legislation and regulations that do not duplicate efforts between jurisdictions, do not regulate PFAS compounds as a singular class, and do not impose requirements that are technically unsupported or that cannot practicably be implemented.

**B. Summary of Key Issues in the Washington Department of Ecology’s Draft Chemical Action Plan**

The Draft CAP builds on the State’s previous work to develop actions to study and address PFAS in the environment. It establishes the following four broad categories of recommendations spanning multiple programs:

- The Draft CAP recommends identifying sources of funding to mitigate PFAS in drinking water, with the long-term expectation that such costs will be reimbursed by responsible parties, if PFAS are classified as a hazardous substance under state or federal law. Additionally, it recommends technical support at PFAS contamination sites and studies to research health impacts.
- The Draft CAP recommends that the Department of Ecology act pursuant to the State Model Toxics Control Act (MTCA) to develop soil and groundwater cleanup levels for PFOA and PFOS, plus additional PFAS compounds, where appropriate. Ecology will also explore methods for investigation and cleanup. Ecology currently addresses firefighting foam through the Firefighting Agents and Equipment Toxic Chemical Use law and will continue implementing that law. The CAP also includes recommendations for improved coordination with communities.
- Ecology’s “Safer Products for Washington” law requires Ecology to consider regulatory actions to reduce the use of priority chemicals in products and packaging. Carpets and carpet treatments were the first PFAS-containing product that Ecology identified for research. The Draft CAP recommends that Ecology proceed to determine by June 2022 whether safer alternatives for PFAS-containing carpet products are feasible. Additionally, it recommends that Ecology continue to identify additional sources of PFAS for a second “Safer Products for Washington” cycle.
- The Draft CAP recommends evaluating PFAS in wastewater treatment plants, which has not yet been done on a large scale in Washington. Additionally, it recommends sampling at landfills, to test for PFAS in leachate, groundwater, and air emissions. Ecology will also evaluate biosolids, focusing initial efforts on developing test methods.

**C. The PFAS Regulatory Coalition’s Comments on Key Issues in the Draft CAP**

**1. Drinking Water**

**a) Funding for Drinking Water Mitigation**

The Coalition supports the Draft CAP’s procedure for gathering data on drinking water mitigation costs and potential funding sources to cover those costs. The Draft CAP notes that PFAS remediation can be addressed under the State Model Toxics Control Act (MTCA) framework once the federal government or the State officially classifies certain individual PFAS as hazardous substances. The Coalition encourages the State to support the federal government’s efforts to address PFAS threats to the general public, and urges the State to ensure that its rulemakings, including the future hazardous designation of any PFAS compounds, conform with and support those efforts.

The Draft CAP identifies funding programs that could help offset the costs necessary to improve drinking water infrastructure. The Coalition encourages the State to make sure that the process of gathering information on such programs includes all the direct and indirect costs associated with any future mandates—not just the costs for building and operating the treatment systems, but also for increased testing and environmentally sound disposal of spent treatment by-products. Ecology should also include the increased costs of private systems, as well as the increased costs for remediation projects associated with impacted groundwater.

**b) Technical Support for Drinking Water Mitigation**

The Coalition supports the Draft CAP’s process for gathering data on PFAS contamination to further develop Ecology’s expertise and provide technical assistance to drinking water systems and responsible parties. The Coalition also encourages the State to support the federal government’s efforts to develop technical assistance and ensure that its own recommendations conform with and support those of the federal government.

**c) Biomonitoring and Other Health Studies**

The Coalition supports the Draft CAP’s collaborative approach to research. As enumerated in the Draft CAP, there are multiple areas where more research is needed. In this regard, the Coalition encourages the State to collaborate with the Environmental Council of States (ECOS), the United States Geological Survey (USGS), EPA’s Office of Research and Development (ORD), and other federal agencies. This will ensure that the State’s funds are invested with an eye on efficiency and assisting in advancing the science of PFAS nationally, not overlapping with or duplicating current research efforts.

## **2. Managing PFAS Contamination**

### **a) Collaboration to Support Development of National Cleanup Standards**

The Coalition strongly encourages the State to support EPA’s efforts towards national standards for managing PFAS compounds and protecting human health and the environment. EPA is already focusing significant resources on developing appropriate regulatory mechanisms related to various PFAS compounds. EPA’s PFAS Action Plan provides a multi-media, multi-program national research and risk communication plan to address the emerging PFAS challenge. Part of EPA’s PFAS Action Plan involves expanding the scientific foundation for understanding and managing risk from individual PFAS compounds. This includes researching improved detection and measurement methods; generating additional information about PFAS presence in the environment and drinking water; improving the understanding of effective treatment and remediation methods; and developing more information regarding the potential toxicity of a broader set of PFAS. In turn, EPA expects that this information will help states and others better manage PFAS risks. The Coalition recognizes that some states have expressed frustration with the timing, processes, and procedures inherent in federal statutes and EPA’s conformity to procedures set forth in those statutes. However, significant departure from a national approach to regulation risks confusion and even further delaying progress in key areas, which could ultimately slow down critical regulatory activities.

As part of EPA’s PFAS Action Plan, the Agency is working to develop federal Maximum Contaminant Level (MCL) standards for PFOA and PFOS—two of the most well-known and prevalent PFAS chemicals. On March 10, 2020, EPA released for public comment its proposed Regulatory Determination for Contaminants on the Fourth Drinking Water Contaminant Candidate List, and on January 19, 2021, EPA released its Final Regulatory Determination (prepublication version). The Regulatory Determination states that EPA will move forward with establishing National Primary Drinking Water Standards for PFOA and PFOS under the Safe Drinking Water Act.

EPA explained in the proposed Regulatory Determination that, “[p]roposing a regulatory determination is the next step in the maximum contaminant level [] rulemaking process under the Safe Drinking Water Act; it enables the EPA to propose and solicit comment on information critical to regulatory decision-making towards protecting public health and communities across the nation.” *See* RIN: 2040-AF93 (Fall 2019 Unified Agenda for Regulatory Determinations for Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfate (PFOS)). Additionally, EPA is gathering and evaluating information to determine if similar regulations are appropriate for a broader number of PFAS compounds. The Coalition commented in support of appropriate procedures and data collection, which are needed for development of any potential MCLs.

Additionally, EPA has issued “Interim Recommendations for Addressing Groundwater Contaminated with PFOA and PFOS.” The interim recommended screening

levels followed under federal environmental statutes are risk-based values that are used to determine if levels of contamination may warrant further investigation at a site. The recommendations are intended to be used as guidance for states to evaluate state cleanup and corrective action sites.

While EPA is expeditiously working through its rulemaking procedures, Congress included in the last National Defense Authorization Act (NDAA) (P.L. 116-92) several mandates for additional federal actions to regulate and manage various risks associated with many PFAS. While not all states and stakeholders can and will agree on specific priorities or approaches to PFAS regulations, Congressional actions, in combination with EPA's efforts, are important national developments that should be supported by the states through their contribution of expertise, resources, and efforts as the nation works to respond to PFAS exposure risks. Any actions that states may take that conflict with or impede progress set forth by recent (and bipartisan) Congressional mandates would undermine the intended national approaches enacted by the Federal Government.

Notably, on January 31, 2020, the Coalition commented on Washington's Proposed Revisions to the Group A Public Water Supplies Rule, which proposed State action levels for certain PFAS compounds in drinking water. As we are doing here, the Coalition urged the State to use its resources to support the development of science upon which EPA could base its federal standards, heed the non-binding recommendations of EPA's Federal Health Advisory of 70 ppt (for PFOA and PFOS combined) and, ultimately, work to implement with State assistance any forthcoming national primary drinking water standards that EPA develops.

Conversely, a patchwork of 50 different state solutions would be unworkable and contrary to how the U.S. has previously addressed similar emerging contaminant issues. While some limited variations related to groundwater, surface water, or soil cleanup levels may be expected and appropriate, the recent wave of state-specific and highly variable regulatory health advisories, action levels, and drinking water standards currently being developed or under consideration across the country create unnecessary confusion and complexity for the public and the regulated community. We see no rational basis for highly variable standards between states, as if residents of one state are more sensitive to certain PFAS than residents of a neighboring state. We respect that certain sub-populations may be more sensitive than others, but that does not generally justify different state standards.

To avoid these problems, the Draft CAP should clearly explain how Washington will foster consistency and uniformity with neighboring states, and how it will defer to federal standards or revise standards based on future federal action based on improved scientific understanding about exposure, dose, and toxicology. Rather than expending significant resources implementing independent standards, Washington should develop an action plan under which State resources are used to support the development of science upon which EPA could base its federal standards. The Coalition urges the State to avoid expending its limited resources on developing and enforcing its own PFAS regulations that

could be inconsistent with other states and with science-based and peer-reviewed standards being developed by EPA.

**b) Collaboration with Local Organizations**

The Coalition supports the Draft CAP's described procedures for the State collaborating with local health departments and community-based organizations to address health equity-related contaminated sites in public communications. However, the Coalition cautions against the State taking actions that make risk communications more difficult. Variable and confusing state-specific requirements are hard to explain and communicate to the public and regulated entities inside and outside Washington. We encourage the State, in collaboration with local organizations, to support uniform standards and work with EPA and other organizations like ECOS on the risk communication tools currently under development.

**c) Preventing PFAS Releases from Firefighting Foam Use and Manufacturing**

The Coalition supports the State engaging in partnerships with municipal airports. The issues facing federally-regulated Part 139 municipal airports are unique. Coalition members in this sector are already engaged nationally and at the state level on issues related to PFAS and aqueous film-forming foam (AFFF). As the State works with local fire departments and other first responders to collect and safely dispose of PFAS-containing foam pursuant to Chapter 70.75A RCW and the Draft CAP, the State must acknowledge the unique circumstances facing Part 139 airports, which are governed by federal law, including in their use of AFFF. State laws, regulations, and initiatives that attempt to address these same issues risk creating conflict with federal law and imposing needless state requirements.

While we recognize the environmental risks associated with using AFFF that contains PFAS, there may be situations, in addition to airports, in which the risk to the public associated with possible significant petroleum or chemical fires outweighs what could be short-term environmental risks from AFFF. Non-fluorinated AFFF is improving in its effectiveness at suppressing fires; however, these products do not yet perform at the same level as fluorinated AFFF. The State should allow for waivers for situations where balancing the risks may favor using existing AFFF.

In addition, many localities and industries have mutual aid agreements, including with airports, under which AFFF must be used off airport property in certain instances. Therefore, any restrictions on the use of AFFF must include appropriate waivers for required use, where the risk of not using AFFF outweighs the risk to the public, or when mutual aid agreements are in place.

Additionally, Congress has required FAA to authorize a fluorine-free AFFF by October 2021 and the Department of Defense to modify its Military Specification by

October 2024. The State should not presume that those dates are set in stone. The pandemic has put FAA at a significant disadvantage in its research and testing of non-fluorinated foam; considering this, the State should not assign firm dates for converting from existing fluorinated AFFF to non-fluorinated AFFF. In fact, all states need to recognize the numerous complexities and challenges of approving new foams, producing them, distributing them, updating existing equipment, and collecting old AFFF for appropriate disposal.

### **3. Reducing PFAS in Products**

#### **a) Reducing PFAS Exposure from Carpets and Rugs, Water Stain-Resistance Treatments and Leather and Textile Furnishings**

If the State proceeds with pursuing product substitution strategies, it must clearly identify and announce in advance precisely which specific PFAS compounds and product usages are being targeted. The Draft CAP does not specify which PFAS compounds or which products using those compounds would be targeted for regulation. Given that different PFAS compounds result in wide variations in possible human toxicities, environmental threats, and other characteristics, sound scientific decision-making counsels that the State should not group all PFAS together for purposes of risk assessment, and should not assume that exposures to mixtures of PFAS necessarily bioaccumulate in one's body in interchangeable 1:1 ratios.

From a toxicological perspective, regulatory agencies must have adequate science for determining health-based values before promulgating standards, limits, and related regulations for individual compounds. The most prevalent and available science regarding the incidence and potential health effects of PFAS is based on PFOA and PFOS. Indeed, there have already been voluntary phase-outs of these two compounds in food packaging beginning at least ten years ago and, recently, manufacturers have begun voluntarily taking steps to remove other PFAS compounds.

There is significant research ongoing on a wide variety of PFAS compounds, and new information is being released on a regular basis. As more is being learned about the multitude of individual compounds in this class and their variability in potential toxicities, there must be flexibility to allow use of those compounds that pose either a scientifically-acceptable risk or no risk. This is particularly important because the Draft CAP makes recommendations for implementing purchasing preference for "PFAS-free" products, yet determining when a product is "PFAS-free" is not achievable, especially without more specificity as 1) to what levels constitute "PFAS-free" and 2) which PFAS compounds are included in that broad description. Additionally, there are products on the market containing PFAS that pose little-to-no risk or are important to society (for example, for medical devices or procedures), confounding any preference for "PFAS free."

**b) Identifying Additional Sources and Uses of PFAS**

The Draft CAP identifies certain products that the State intends to target that are already regulated by the U.S. Food and Drug Administration (FDA), including through the food contact notification (FCN) process. Subverting federal legislative and regulatory authority to create state restrictions, and even bans on otherwise-approved uses, creates uncertainty and confusion - not just for packaging manufacturers, but also for consumers. If the State develops restrictions for additional sources of PFAS in consumer products, then it should only address those specific PFAS compounds that are not otherwise already approved under federal statutory authority.

**c) Implementing Other Reduction Actions**

The Draft CAP identifies a number of other regulatory actions the State could take to reduce PFAS exposure in consumer products. As discussed above, the Coalition urges the State to 1) ensure that safe alternatives are feasible and available prior to restricting any PFAS-containing product, to avoid regrettable substitutions; 2) ensure that any restriction or regulation clearly specifies the PFAS compound that is being restricted or regulated; and 3) ensure that any State restrictions or regulations do not contradict federal law (e.g., restricting the use of an FDA-approved product).

**4. Managing PFAS in Wastewater Treatment, Landfills, and Biosolids**

The Coalition supports the State's efforts to evaluate PFAS in wastewater, landfill leachate, and biosolids and identify potential sources of funding for potential monitoring and sampling. The Coalition recognizes that other states, such as Michigan, have undertaken efforts to identify and differentiate PFAS sources and PFAS compounds that may be impacting municipal wastewater treatment plants (WWTPs). Any similar effort included in the final CAP must include a plan for funding the effort, as well as understanding the specific processes and PFAS compounds that possibly could be causing contamination.

Additionally, as discussed above, the final CAP should specify which PFAS compounds will be evaluated and potentially monitored. Importantly, the State should consider monitoring and sampling only for those PFAS compounds for which there are validated analytical test methods. EPA's main validated test methods for PFAS, Methods 537 and 537.1, apply only to 18 PFAS compounds in samples derived from drinking water. EPA recently issued Method 533 that can be used to measure an additional 11 "short-chain" PFAS compounds (and, only 14 of the 18 PFAS covered by Method 537.1); but, as with Methods 537 and 537.1, this method is only for use in testing drinking water. Therefore, the entire scope of EPA's approved test methods can measure no more than 29 different PFAS compounds in drinking water, and it would be necessary to use multiple methods to obtain results for all 29 compounds.



EPA has not promulgated any validated test methods for testing PFAS compounds in any environmental media other than drinking water. EPA has received comments on a draft non-potable water test method (SW-846 Method 8327), but that method is only considered “guidance” at this time. Additionally, EPA is working with the Department of Defense’s Naval Seas Systems Command Laboratory Quality and Accreditation Office to validate a solid-phase extraction/isotope dilution method to include solid matrices (*i.e.*, for soil, sediment, fish tissue, biosolids), as well as non-potable water sources, but that effort may not be completed until 2021. See PFAS Methods Technical Brief at [https://www.epa.gov/sites/production/files/2020-01/documents/pfas\\_methods-sampling\\_tech\\_brief\\_7jan2020-update.pdf](https://www.epa.gov/sites/production/files/2020-01/documents/pfas_methods-sampling_tech_brief_7jan2020-update.pdf).

Limitations of test methods, and the lack of any validated method from EPA for any matrix except drinking water, create major challenges for the State’s efforts to regulate non-potable water or other matrices in advance of federal regulatory actions. In view of this, any monitoring or sampling programs finalized by the State must recognize the limits of the available EPA validated test methods. And, the State must clearly validate any specific test methods for any standards that are adopted.

Further, EPA recently issued a guidance document relevant to PFAS: “Interim Guidance on the Destruction and Disposal of Perfluoroalkyl and Polyfluoroalkyl Substances and Materials Containing Perfluoroalkyl and Polyfluoroalkyl Substances” (Interim PFAS Destruction and Disposal Guidance, 85 Fed. Reg. 83554, December 22, 2020). This guidance document provides information on commercially-available technologies that may be feasible and effective in meeting the goals of PFAS destruction or control of PFAS released into the environment. However, while instructive, this guidance document highlights how much is still unknown about ways to effectively remove PFAS materials from the environment. The guidance demonstrates the breadth of federal action on PFAS issues, including issues addressed in the Draft CAP, and also the need for further research and funding to fully develop sound federal law and policy on PFAS. In light of the federal governments’ ongoing action on PFAS, the Coalition reiterates the importance of ensuring that state actions relating to PFAS are consistent with, and support, national PFAS law and policy developments.

**D. Conclusion**

The Coalition appreciates the opportunity to submit these comments concerning the Draft CAP. We look forward to working closely with the State regarding the objectives outlined in the Draft CAP. Please feel free to call or e-mail if you have any questions, or if you would like any additional information concerning the issues raised in these comments.

A handwritten signature in blue ink, appearing to read "Jeffrey Longworth" or "Tammy Helminski", written in a cursive style.

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