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RE: Comments on Ecology Draft PFAS CAP

The Association of Washington Business (AWB) appreciates the opportunity to comment on the Department of Ecology's October 2020 Per- and Polyfluoroalkyl Substances (PFAS) Draft Chemical Action Plan (Draft PFAS CAP). AWB is the state's largest business advocacy group. We represent over 7,000 members across Washington, with the majority of those members being small and medium sized firms. Our members take seriously their role in protecting human health and the environment but are also concerned by some of the costs and unintended side effects of regulation.

AWB has the following comments on the Draft PFAS CAP. We hope these will be helpful in providing a balanced and rigorous report that identifies the most urgent and important areas where PFAS chemicals can be managed.

I. Comments on Section 2.1

Section 2.1 of the Draft PFAS CAP includes the following recommendation:

> Using existing authority under MTCA, Ecology will develop cleanup levels for PFOA and PFOS (and additional PFAS as appropriate). Ecology will use the State Board of Health's (SBOH) drinking water standards or other advisories adopted in rule to develop these cleanup levels.

(p. 53.)

AWB supports development of cleanup levels for PFOA and PFOS, and possibly other PFAS, to protect human health and the environment. However, given the different purpose of the SBOH drinking water standards, Ecology must not rely on drinking water standards or other proxies as a substitute for development of cleanup standards pursuant to the standard MTCA process and using scientific methods that are properly vetted by the scientific community for the purpose of cleanup.

AWB also requests that Ecology coordinate with other regulatory agencies and obtain input from academia and industry to ensure that any cleanup standards are developed based on the latest available information. In particular, AWB requests that Ecology use methods for determining PFAS cleanup levels that are: 1) consistent with methods used for other chemical constituents; 2) rely on toxicity data published by EPA in the IRIS database; 3) based on scientific studies that have been independently replicated with similar results; and 4) conducted in consultation with EPA's PFAS Action Plan goals and EPA's subsequent Interim Recommendations for Addressing Groundwater Contaminated with PFOA and PFOS.

In addition, AWB notes that the scientific information concerning PFAS is evolving and may need to be adjusted as more information becomes available; this fact needs to be reflected in any cleanup standards that are developed.

Finally, AWB requests that Ecology ensure that methodologies used at the Federal and State levels remain consistent.

II. Comments on Section 2.3

Section 2.3 of the Draft PFAS CAP includes the following recommendation:

> Ecology will work proactively with industry, manufacturers, and businesses to eliminate releases to the environment from the use of PFAS-containing AFFF or other manufacturing processes using PFAS.

(p. 56.)

AWB notes that, at this point in time, only a limited number of PFAS-free Class B firefighting foams are available commercially. None of the currently available PFAS-free Class B firefighting foams have been qualified for the military specification MIL-F-24385, as they do not provide equivalent flame suppressing capabilities.

Once PFAS-free Class B firefighting foams become available, it will take time for some businesses to transition from PFAS-containing AFFF to PFAS-free foam because most fixed foam fire suppression systems that use AFFF must be replaced (or at least substantially modified) in order to use PFAS-free foam. In addition, there may be uses of AFFF that are critically important from a public safety standpoint.

For these reasons, AWB supports Ecology's focus on containment and looks forward to working with Ecology plan to develop and share outreach materials and best management practices that address the proper use, storage, and disposal of PFAS-containing AFFF.

III. Comments on Section 3.1

Section 3.1 of the Draft PFAS CAP includes the following recommendation:

> Reduce PFAS exposure from carpets and rugs, water and stain resistance treatments, and leather and textile furnishings

(p. 60.)

In connection with this recommendation, the Draft PFAS CAP states that regulatory actions could include requesting that manufacturers identify products that contain PFAS, disclose their use of priority chemicals in product ingredients, release information on exposure and chemical hazard, and describe the amount and function of PFAS in products.

Manufacturers within different tiers of the supply chain have access to different levels of chemical data. Downstream users who are manufacturers often do not receive information on products or articles purchased and therefore would not be able to comply with these requirements. In the event that Ecology proceeds with one or more of the potential regulatory actions, AWB requests that Ecology include a definition of manufacturer is limited to those who produce or create PFAS chemicals or initially incorporate a PFAS chemical into a product or article, and should clearly indicate that downstream users who purchase a product or article from a supplier do not qualify as a manufacturer.

IV. Comments on Section 3.3

Section 3.3 of the Draft PFAS CAP includes the following recommendation:

> Propose a ban on the import or sale of all products in Washington containing phased-out long-chain PFAAs. Long-chain PFAAs include perfluorinated carboxylates (PFCAs) with eight or more fully fluorinated carbons (for example, PFOA) and perfluorinated sulfonates (PFSAs) with six or more fully fluorinated carbons (for example, PFHxS and PFOS), their salts, and precursor compounds capable of forming long-chain PFAAs.

(p. 64.)

The Draft PFAS CAP notes that products containing long-chain PFAS continue to be imported to the U.S. (pp. 98, 101.) Under current laws and regulations, these importers are not required to disclose in Safety Data Sheets or otherwise report the presence of long-chain PFAS in their products. This poses a challenge for downstream users and importers of products and complex articles.

There is currently no universally accepted methodology for industry to locate substances in the supply chain. Moreover, PFAS may be introduced far down the product chain (i.e., contained in articles incorporated into the imported product), such that the importer is not aware of the presence of the substance in their product. To overcome this information gap, downstream users might have to contact suppliers in multiples tiers of the supply chain to find accurate chemical data. In addition, once a user determines that an imported product or article contains a long-chain PFAS, the user would need sufficient time to identify a substitute and transition away from the regulated substance; for some industries in Washington, transitioning away from a regulated substance can take a number of years and may involve research and testing to ensure that a substitute is available that meets industry standards and technical specifications.

Given these circumstances, it is essential that any effort by the State of Washington to regulate the import of products and articles containing long-chain PFAS be done in a manner that is transparent, involves industry in the regulatory process, and allows adequate time for downstream users to prepare for possible regulatory changes.

V. Comments on Section 3.4.3

The Draft PFAS CAP cites a Swedish study that:

- […]treated synthetic carpet contains up to 15% PFAS (KEMI, 2015). That concentration would reflect a total of 14,300 metric tons of PFAS annual disposed in Washington.

(pg. 172)

This quantity would place PFAS containing carpet above the Ecology threshold for hazardous waste and would require at the very least expensive testing before any carpet can be removed. Carpet exceeding the threshold would need to be removed in accordance with hazardous waste regulations and disposed of in hazardous waste facilities. This would be extremely expensive for homeowners, small businesses, and property owners.

Before imposing this cost on consumers and the business community, we think more research is needed to justify this determination. One study is not necessarily the final or best science on a matter. A literature review of publications and studies on the impacts and migration of PFAS levels in carpeting and their migration to the environment should be performed. Any steps taken by Ecology should be informed by this review.

Thank you again for the opportunity to provide feedback. AWB appreciates the continued outreach and is particularly thankful for the flexibility shown in staff by extending the comment period to allow us to hear from our membership. We look forward to continued engagement on this important issue.

Thank you.

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