Toxic-Free Future and Clean Production Action

See attachment for comments.

January 28, 2022

Cheryl Niemi
Hazardous Waste and Toxics Reduction Program
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7696

Dear Ms. Niemi:

Toxic-Free Future (TFF) and Clean Production Action (CPA) support the Department of Ecology (Ecology) banning harmful chemicals in products under Safer Products for Washington, including:

- Organohalogen flame retardants in electric and electronic plastic device casings and certain flame retardants in recreational polyurethane foam (organohalogen flame retardants and flame retardants identified in RCW 70A.430.01011);
- PFAS in carpet, rugs, leather and textile furnishings and in aftermarket stain- and water-resistance treatments;
- Phthalates in fragrances of beauty and personal care products and in vinyl flooring;
- Bisphenols in drink cans and thermal paper;
- Alkylphenol ethoxylates (APEs) in laundry detergent; and
- PCBs in paints and printing inks.

The agency's November 2021 report to the legislature includes draft regulatory determinations required under Phase 3 implementation of the landmark Safer Products for Washington (RCW 70.350). These determinations are a critical first step to protect sensitive populations and species in the state and establish a path toward clean and healthy materials used in homes, schools, and workplaces. We support the draft regulatory determinations. We also urge the agency to use its authority to call in data on alternatives to bisphenols in food can linings so that it can complete its work toward restricting use of these harmful chemicals from widely used food packaging.

Organohalogen flame retardants

Safer Products for Washington, RCW 70A.350, requires the agency to take regulatory action that will 1) increase transparency about the use of toxic chemicals in products and, 2) reduce the use of priority chemicals in priority consumer products. The agency's November 2021 report demonstrates that it has met the legal requirements in RCW 70A.350 to ban organohalogen flame retardants (OFRs) in plastic device casings for electric and electronic equipment. Specifically, it has identified safer, feasible, and available alternatives using criteria based on guidance in the statutory language, and determined that the proposed regulatory action will reduce a significant source or use of the priority chemical. *See* RCW

70A 350.010 (13), 350.030(2)(f). The agency's determinations meet additional statutory criteria, RCW 70A 350.030(2)(g), because they are supported by recent governmental and market policies and research that are aligned with the regulatory determinations:

- The Department of Ecology's 2009 report on safer alternatives for flame retardants in television housings concluded non-halogenated, safer substitutes were available. This new 2021 report identified the same safer alternative, and the action is long overdue.
- This action is consistent with legal requirements already adopted in Europe and most recently in New York. The New York ban goes into effect on January 1, 2024. Given that New York is the third-largest economy in the nation and the EU accounts for around 15% of the world's trade in goods, this will increase even further the availability and feasibility of OFR-free televisions.
- The Consumer Product Safety Commission (CPSC) voted in 2017 to begin a rulemaking process banning OFRs in electronics enclosures and issued guidance for manufacturers, retailers, and consumers, especially those with young children or who are pregnant, to avoid these chemicals in electronics enclosures and other product categories.
- Best Buy, one of the United States' largest retailers of consumer electronics, announced on January 21, 2022, that its Exclusive Brand (ExB) televisions will comply with Europe's ban on organohalogen flame retardants for all newly designed models. Even though Best Buy has no stores in Europe, it is eliminating the chemicals here in the United States for its private brand televisions.
- No Sony television enclosures currently manufactured, sold, or distributed within North America contain intentionally added OFRs. *(Communication to Toxic-Free Future and Mind the Store, 4/20/2020)*
- LG is also working to phase out OFRs starting in 2021 for Europe and beginning to consider a phase-out for the U.S. *(Communication to Toxic-Free Future and Mind the Store, 5/1/2020).*
- As noted in the agency's report, green certifications, such as TCO Certified, include bans on organohalogens in television enclosures, and major companies, including Samsung, Phillips and others, are certifying their products (e.g., displays).

We would like to emphasize that restricting OFRs is needed to protect the health of humans and the environment and will not impact fire safety. The Ecology report details how fire safety standards can be met with alternative materials or safer chemicals. Companies are already doing this, and fire safety won't be compromised by banning OFRs. Please also consider that the chemical industry has, for decades, made deceptive claims about fire safety, which drove the use of dangerous chemicals that now contaminate our homes, breast milk, and wildlife. Their use has also put the lives of firefighters and other first responders at risk. The International Association of Fire Fighters and the Washington State Association of Fire Fighters have been calling for bans on OFRs in products, including electronics, for years.

Finally, we also support the proposed restrictions and disclosure requirements for flame retardants in recreational polyurethane foam. Safer alternatives are foam products without added flame retardants. Flame retardants are not needed in this category of foam products and pose an unnecessary exposure to sensitive populations, including young people, workers, pregnant women, and women of childbearing age in facilities using recreational foam.

Per-and poly-fluoroalkyl substances (PFAS)

Rugs, carpets, textile furnishings and aftermarket treatments. The agency's November 2021 report demonstrates that it has met the legal requirements in RCW 70A.350 to ban PFAS in rugs, carpets, textile furnishing and aftermarket treatments. Specifically, it has identified safer, feasible, and available alternatives using criteria in the statutory language, and determined that the proposed regulatory action will reduce a significant source or use of the priority chemical. *See* RCW 70A 350.010 (13), 350.030(2)(f). The agency's determinations meet additional statutory criteria, RCW 70A 350.030(2)(e), because they are supported by recent governmental and market policies and research that are aligned with the regulatory determinations:

- New research conducted by Toxic-Free Future confirms the widespread use of PFAS in home furnishings including bedding, tablecloths, and napkins marketed as stain- or water-resistant. Our testing of 40 home-furnishing items found the following:
    - PFAS were detected in 9 of 13 bedding items marketed as stain- or water-resistant.
    - PFAS were detected in 10 of 14 tablecloths and napkins with stain or water resistance claims.

  These results indicate that PFAS are commonly added by manufacturers to achieve stain or water resistance, and underscore the urgency of Ecology's action to restrict PFAS in home furnishings.

  Our testing also included 20 outdoor apparel items, of which 15 contained PFAS. Ecology has not yet designated apparel as a priority product for PFAS, and we urge the agency to do so and address this significant source of PFAS exposure.

- More and more companies are making commitments to end their use of PFAS, and new alternatives are entering the market rapidly. The following additional information supplements and supports Ecology's report:
    - Leading brands such as H&M, IKEA, KEEN, and Levi's have eliminated PFAS in all of their textiles.
    - In 2019, The Home Depot and Lowe's ended the sale of all carpets and rugs containing PFAS.
    - A year later, after 3M reformulated and eliminated PFAS in its consumer Scotchgard aftermarket treatment products, Lowe's announced it was ceasing the sale of all aftermarket treatment sprays containing PFAS.
    - The popular outdoor brand Patagonia has a plan to end use of PFAS in all of its apparel by 2024.
    - In the summer of 2021, Polartec announced it was eliminating PFAS in its durable water repellent treatments across its line of performance fabrics.
    - In September 2021, Gore, the maker of GORE-TEX®, announced it will offer a PFAS-free option for the key membrane that provides waterproofing in its consumer outdoor clothing products. The first products using this new PFAS-free membrane will be available for purchase in late 2022.

Bisphenols

Ecology reached different conclusions with respect to regulating bisphenols in drink and food can linings.

Drink Cans. The agency has met the legal requirements in RCW 70A.350 to ban bisphenols (BPA) in drink cans. Specifically, it has identified safer, feasible, and available alternatives using criteria based on guidance in the statutory language, and determined that the proposed regulatory action will reduce a significant source or use of the priority chemical. *See* RCW 70A 350.010 (13), 350.030(2)(f). The agency's determinations meet additional statutory criteria, RCW 70A 350.030(2)(e), because they are supported by recent governmental and market policies and research that are aligned with the regulatory determinations.

Food Cans. The agency concluded that it was unable to identify safer can liner alternatives for use in food cans, despite the fact that data from the Can Manufacturers Institute (CMI) showed that 95% of U.S. food can production has transitioned away from BPA. At the same time Ecology acknowledged that despite this progress, the remaining 5% may still comprise as many as 125 million cans with BPA used in Washington annually, meaning a huge volume of products still contain this chemical. The continued use of BPA is especially concerning since canned foods are an important source of food for low-income communities and communities of color who already face disproportionate exposures to hazardous chemicals. Ecology must take additional action to fulfill its responsibilities under Safer Products for Washington.

In assessing BPA in food cans, Ecology found that "this is a significant source of potential exposure to bisphenols for our people and environment in our state." New action by other jurisdictions points to the need to take action now to ban BPA in food can linings. A recent regulatory action in Europe proposes to dramatically lower the "recommended daily dose" of BPA by over 100,000 to address the chemical in products coming into contact with food. Because BPA is in contact with food in can linings, thus making it impossible to avoid exposure, it is urgent that safer alternatives be identified and Ecology move forward with banning BPA in all priority products.

The CMI basket research revealed that some of the prominent can lining materials used in Washington appear to be polyester and acrylic. Since Ecology was unable to evaluate the hazards of these alternatives due to lack of ingredient information, Ecology should now take the next step and require manufacturers to fully disclose the ingredients used in polyester and acrylic can linings, using its authority in RCW 70A.350.030 and 350.040. This is important so that Ecology can complete its work in making regulatory determinations for BPA in accordance with the framework set forth in statute.

In conclusion, we believe that requesting this data for polyester and acrylic can linings, and possibly others if needed, is critically important for Ecology to finish its work to protect the people and environment in Washington from exposure to bisphenols in food cans. After receiving this information, Ecology should update and complete its analysis of feasible and available alternatives to bisphenols in can linings and complete its work toward restricting use of these harmful chemicals from widely used food packaging.

Thermal Paper. The agency has met the legal requirements in RCW 70A.350 to ban bisphenols in thermal paper. It has identified safer, feasible and available alternatives and the regulatory action will reduce a significant source or use of the priority chemical.

Phthalates

Fragrances and Personal Care Products and Vinyl Flooring. The agency has met the legal requirements in RCW 70A.350 to ban phthalates in fragrances and personal care products and in vinyl flooring. Specifically, it has identified safer, feasible, and available alternatives using criteria based on guidance in the statutory language, and determined that the proposed regulatory action will reduce a significant source or use of the priority chemical. *See* RCW 70A 350.010 (13), 350.030(2)(f). The agency's determinations meet additional statutory criteria, RCW 70A 350.030(2)(e), because they are supported by recent governmental and market policies and research that are aligned with the regulatory determinations:

- A recent study led by New York University's Grossman School of Medicine estimated exposure to phthalates may contribute to about 100,000 premature deaths in Americans aged 55-64.
- In recent years, leading retailers including Amazon.com, CVS Health, Rite Aid, Sephora, Target, and Walmart have set restrictions on key phthalates in beauty and personal care products. And major manufacturers of personal care products, such as P&G and Johnson & Johnson have also restricted key phthalates.
- As noted in the report, most major home improvement and flooring chains have already banned ortho-phthalates as a class in flooring, including The Home Depot, Lowe's, Lumber Liquidators, Ace Hardware, Floor & Decor, and Menards.

Alkylphenol Ethoxylates in Laundry Detergents

The agency has met the legal requirements in RCW 70A.350 to ban alkylphenol ethoxylates in laundry detergent. Specifically, it has identified safer, feasible, and available alternatives using criteria based on guidance in the statutory language, and determined that the proposed regulatory action will reduce a significant source or use of the priority chemical. *See* RCW 70A 350.010 (13), 350.030(2)(f). The agency's determinations meet additional statutory criteria, RCW 70A 350.030(2)(e), because they are supported by recent governmental and market policies and research that are aligned with the regulatory determinations.

PCBs in Inks and Paints

The agency has met the legal requirements in RCW 70A.350 to restrict PCBs in inks and paints. Specifically, it has concluded that inks and paints with lower levels of PCBs are safer, feasible and available, and determined that the proposed regulatory action will reduce a significant source or use of the priority chemical. RCW 70A 350.010 (13), 350.030(2)(f). The agency's determinations meet additional statutory criteria, RCW 70A 350.030(2)(e), because they are supported by recent governmental and market policies and research that are aligned with the regulatory determinations.

We support restrictions on PCBs in household paints (indoor and outdoor); spray paints, children's paints and road paints. We also support restrictions on PCBS in printing inks cyan, magenta, yellow and black.

Most people believe that PCBs are no longer being circulated in our indoor and outdoor environments because their manufacture was banned in 1979. However, due to the persistence, bioaccumulation and toxicity of PCBs as well as their generation during certain manufacturing processes, they continue to contaminate our environment, homes, wildlife and people.

The agency found that in both cases through testing, that paints and printing inks with lower concentrations of PCBs are feasible and available in Washington state. Reducing PCBs through restrictions will prevent contamination, particularly of sensitive populations and species, including endangered Southern resident orcas, which are heavily contaminated with PCBs.

TFF and CPA congratulate Ecology staff on a thorough, well-researched report and support all of its recommendations for bans on priority chemicals in priority products. The agency has clearly demonstrated with every recommended ban that safer, feasible products are available. We urge Ecology to take a final step to complete this work, using its authority to obtain ingredient information on alternative food can linings from manufacturers, enabling hazard assessments and opening the possibility for a ban on BPA in this important application. Eliminating the sale of unnecessary toxic products will be an important step toward the protection of both Washington's environment and its people, especially those who are most vulnerable.

Sincerely,

Laurie Valeriano,
Executive Director
Toxic-Free Future

Mark Rossi
Executive Director
Clean Production