Outdoor Power
Equipment Institute

February 3, 2023

Stacey Callaway
Department of Ecology
Hazardous Waste and Toxics Reduction Program
PO Box 47600
Olympia, WA 98504-7600

RE: Draft Rule for Safer Products for Washington – Cycle 1 and flame retardants in plastic external enclosures for electric and electronic products; Reporting requirement for OFRs used in casings & enclosures for OUTDOOR EEE products

Dear Ms. Callaway:

The Outdoor Power Equipment Institute ("OPEI") submits the following comments regarding Washington Department of Ecology's ("Department" or "Ecology") Draft Rule ("Draft Rule") as part of Safer Products for Washington – Cycle 1.[1] The comments of OPEI focus on the Draft Rule regarding the use of organohalogen flame retardants (OFRs) in plastic casings and enclosures for electronic and electrical equipment, and specifically the reporting requirement for OFRs used in casings & enclosures for outdoor EEE products.

OPEI requests an exemption of industry products from this proposed regulation.

1. Background on OPEI and the Outdoor Power Equipment Industry

OPEI is an international trade association representing the manufacturers and their suppliers of:

- Non-road gasoline and diesel powered engines;
- Utility terrain vehicles / all-terrain vehicles / side-by-sides;
- Golf cars, and;
- Consumer and commercial lawn & garden equipment and outdoor power equipment (e.g., lawnmowers, garden tractors, trimmers, edgers, chain saws, snow throwers, tillers, leaf blowers, pressure washers).

Collectively industry products are classified as non-road mobile machinery ("NRMM").[2]

[1] Washington Department of Ecology, *Chapter 173-337 Washington Administrative Code (WAC): Safer Products for Restrictions and Reporting*, December 2022, https://ecology.wa.gov/DOE/files/34/34868dd6-a7ea-4944-814f-010df10dde99.pdf.

[2] European Union defines 'non-road mobile machinery' as any mobile machine, transportable equipment, or vehicle with or without bodywork or wheels, not intended for the transport of passengers or goods on roads, and includes machinery installed on the chassis of vehicles intended for the transport of passengers or goods on roads. *See* Article 3 – Definitions – of the EU Stage V emissions regulations (2016/1628). Thus, the NRMM broadly applies to off-road machinery that includes small gardening and handheld equipment (lawn mowers, chainsaws, etc.),

Some of these products have gasoline-powered engines. Others are powered by battery, AC (electric), diesel, propane and other sources. For many of these products there are hundreds if not thousands of different models. They are ubiquitous to both households and businesses alike as essential products.

These products are sold through a diverse retail network that includes "big-box" home improvement stores, hardware stores, contracted dealers, and e-commerce. These comments refer to all such products as NRMM.

Generally, OPEI members manufacture complex durable goods with tens of thousands of spare/service parts. They share common supply chains, in both substance and complexity, with the heavy non-road equipment and automotive sectors. However, unlike those sectors, OPEI members include some small-to-medium size businesses with limited resources to address many of the challenges posed by the proposed rule and compliance deadline of January 1, 2025.

The U.S. facilities of OPEI member companies employ roughly 75,000 workers and contribute $16 billion to annual U.S. GDP.

2. <u>Request for exemption of NRMM from reporting requirement for OFRs used in casings & enclosures for OUTDOOR EEE products</u>

OPEI requests exemption of non-road mobile machinery, including spare parts, from the reporting requirement for OFRs used in casings & enclosures for OUTDOOR EEE products.

The exemption of NRMM would be consistent with the existing exemption of motorized vehicles (such as cars), since the supply chains and product performance and safety requirements of these two industries are very much aligned. OPEI believes that the exemption of motorized vehicles in the absence of an exemption of NRMM will make OPEI member compliance with the proposed reporting requirement infeasible.

OPEI suggests that this change be effected by adding a new subsection WAC 173-337-112(2)(a)(ii)(E): "*Non-road mobile machinery*." The following definition of "non-road mobile machinery" could be added to WAC 173-337-025: "*any mobile machine, transportable equipment or vehicle with or without bodywork or wheels, not intended for the transport of passengers or goods on roads, and includes machinery installed on the chassis of vehicles intended for the transport of passengers or goods on roads*." This is the same definition for this term as found in the EU regulations linked in Footnote 2.

The non-road mobile machinery industry faces many of the same safety, design, manufacturing, and purchasing issues that other adjacent industries face. This means OPEI member supply chains often overlap with much larger industries, such as the automotive and aerospace sectors. An Association of Equipment Manufacturers' survey of their members' supply chain, including input from OPEI members, found that 61% of the surveyed suppliers also provided parts and materials to the automotive industry.

OPEI understands that many of the articles processed and distributed by member companies incorporate the same types of flame retardants commonly used in the heavy non-road equipment, automotive, and power tool sectors. Examples of shared components with common performance and

construction machinery (such as excavators, loaders, bulldozers, and others), agricultural & farming machinery (including harvesters, cultivators, and others), and to railcars, locomotives and inland waterway vessels.

safety characteristics include body panels, wiring, lubricants, seats, lights, headlamps, foam, gaskets, seals, coatings, and windshield wipers.

For example, power harnesses used for automobiles are also used in the non-road mobile machinery that OPEI members assemble (process) and distribute (including engines), such as recreational off-highway vehicles (ROVs), multipurpose off-highway utility vehicles (MOHUVs), golf cars, and other non-road mobile machinery.[3] But because the suppliers of automotive parts are covered by the exemption, they have no incentive to assist OPEI members in complying with the proposed reporting requirement for those parts, or from technically similar parts manufactured by the same suppliers, even though the outdoor power equipment industry also relies on those parts.

Neither OPEI members nor members of the auto industry manufacture power harnesses, electronic control modules, or electrical emission control components. Instead, specialized manufacturers, often outside the United States, manufacture these components. These manufacturers respond to market conditions. Since the vast majority of their products go into automobile manufacturing, and only a small percentage go into outdoor power equipment, these manufacturers respond more readily to their automotive customers than to OPEI members.

Because of the motor vehicle exemption, automobile manufacturers have no incentive to push their suppliers of power harnesses and other critical components to assist with compliance to the proposed reporting requirement. This leaves OPEI members in a dilemma. They have limited market power to influence these suppliers, and they have no ability to source these parts from other suppliers.

3. Conclusion

The Draft Rule covers an extremely broad range of products and product categories. Moreover, performance and design considerations for electronic and electrical equipment encompasses a variety of factors. It is therefore reasonable for the Department to work in a timely but deliberate manner to help ensure that any regulations for flame retardants in enclosures for electric and electronic products is supported by the best available information.

Unfortunately, the regulatory proposal lacks definitions that would provide valuable information to the electric and electronic product supply chain and help companies better understand their compliance obligations as part of any new regulations. Moreover, the Department's continued insistence on NOT specifying individual products or flame retardants to be regulated could create confusion for downstream users seeking to comply with any regulations. It is also important that any regulations not create unnecessary trade barriers.

Implementation of any regulations for flame retardants in enclosures for electric and electronic products should also better align with existing regulations at the state, federal, and international levels for such products. The state of the science does not support the Department's current regulatory approach. The NAS does not recommend assessing OFRs as a single class as the Department has done.

[3] A power harness, often referred to as a cable harness, wire harness, or wiring assembly, is a systematic and integrated arrangement of cables within an insulated material. The purpose of the assembly is to transmit signal or electrical power. Cables are bound together with straps, cable ties, cable lacing, sleeves, electrical tape, conduit, or a combination thereof. The power harness simplifies the connection to larger components by integrating the wiring into a single unit for "drop-in" installation.

OPEI requests exemption of non-road mobile machinery, including spare parts, from the reporting requirement for OFRs used in casings & enclosures for OUTDOOR EEE products in alignment with the existing exemption of motor vehicles.

Thank you for consideration of these comments and I am happy to address any questions you may have.

Best regards,

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