

Office of the Director

401 Fifth Avenue, Suite 1140
Seattle, WA 98104

206-296-4600 Fax 206-296-0166
TTY Relay: 711

www.kingcounty.gov/health

Meredith Marshburn
Department of Ecology – HWTR
300 Desmond Dr. SE
Lacey, WA 98503

January 22, 2024

RE: Support for Safer Products for Washington Cycle 1.5 PFAS Regulatory Determinations Report

Dear Ms. Marshburn,

Public Health – Seattle & King County (PHSKC) thanks the Washington State Department of Ecology (Ecology) for the opportunity to comment on the Draft Regulatory Determinations Report to the Legislature: Safer Products for Washington Cycle 1.5 Implementation Phase 3. This phase focused solely on products that contain PFAS is important for our efforts in King County to eliminate harmful PFAS exposures to our residents and reduce sources of PFAS that enter our waste systems and, ultimately, the environment. PHSKC appreciates the work described in this report by Ecology and the Washington State Department of Health (Health) to evaluate products and processes for safer alternatives, restrict the use of and require reporting on PFAS in products known to significantly contribute to human and environmental exposures. We fully support the restrictions proposed on apparel, cleaning products, and automotive washes.

PHSKC is working with communities in King County to identify ways to prevent unnecessary exposures to PFAS when possible by identifying areas where government or individual actions can prevent or reduce exposures. However, because it is difficult to know which products have PFAS, it is challenging to avoid exposures and provide comprehensive guidance. With this goal in mind, PHSKC has the following comments:

To accelerate removal of PFAS containing products from the market, restrictions should be phased in for categories or sub-categories where any safe alternative has been identified or where it has been identified that PFAS are not needed.

- For large categories of consumer products, where some sub-categories have enough information to take action, Ecology could accelerate movement towards PFAS-free products within a category by starting phased restrictions of PFAS for sub-categories of products where such actions are possible at this time. Ecology should consider bans that have already been enforced on similar products in other states and how that may facilitate these actions during a proposed phase-out period. Phase-out periods that accompany restrictions will allow companies to acquire new technology/approaches before the ban takes effect, particularly if they are already going to need to do this in other states prior to the date of restriction in WA. Similarly, when there are examples of PFAS-free and safer alternatives for at least one product within a sub-category, the restriction should be demonstrated to be feasible and included in a phased restriction. For example, footwear examples provided in the report demonstrates that it is possible to design products for these uses without PFAS. Many are already on the market – therefore, restrictions are possible for some of the sub-categories within this group for this round. Ecology states, “We only identified one company using alternatives in footwear, so we were unable to assess the

breadth of applicability of footwear alternatives. In many cases, we determined PFAS did not serve a function, and no alternatives were needed.” If an example exists or PFAS are not needed, it demonstrates that feasible alternatives exist. A requirement that multiple brands demonstrate the use of alternatives is not a criterion for restriction. Similarly, within the cookware category, non-stick pans are an area where clear PFAS-free alternatives exist that are safe (e.g., cast iron, stainless steel, and carbon steel) and where Ecology could phase in a restriction at this time rather than wait for safer alternatives to be identified for the entire cookware category before action is taken.

PHSKC supports efforts by Ecology to improve disclosure of confidential product content information that will accelerate alternatives assessments under SPWA.

Product content disclosure is a barrier to efficient use of the staff under SPWA. PHSKC recommends that Ecology identify additional ways to engage with manufacturers that are producing potentially safer products, work closely with EPA and FDA to exercise legal authorities for shared confidential business information on products, and take actions to phase in restrictions that encourage manufacturers to switch to safer ingredients in consumer products and processes.

- Ski waxes containing certain PFAS may be in violation of the Toxic Substances Control Act (TSCA). The United States Environmental Protection Agency (EPA) TSCA program has been reviewing the PFAS used in ski wax and issued enforcement actions against companies that are using PFAS in ski wax that are not on the TSCA inventory. Therefore, TSCA likely has information that would be of use to Washington State in assessing ski waxes (and other products), and Ecology should exercise its in obtaining this information (e.g., <https://www.epa.gov/system/files/documents/2022-01/pfasskiwax.pdf>).
- Green labels should be identified that can help flag products that are PFAS-free and contain safer alternatives. We recommend that the report include a section that defines whether products with green certification labels such as “bluesign approved” and “non-fluorinated” use criteria that Ecology and SPWA would accept as safer alternatives. Does Ecology have access to the alternative chemicals used or assurance that it is a safer product? What about for other “green” labels like OEKO-TEX, etc.? (e.g., https://www.amazon.com/Toko-NF-Hot-Ski-Wax/dp/B0074OJNLM/ref=as_li_ss_tl?ie=UTF8&linkCode=sll&tag=becausehealth-20&linkId=428366134bf5bc981e4a5f58657a7366&language=en_US&th=1&psc=1)

Reporting requirements should be designed to obtain information about PFAS content as well as the safer alternatives.

- It is not clear from the report how the reporting requirements will be enforced and what will be required. If it is based on the reporting requirements from RCW 70A.430.060, it is not clear how this reporting will lead to the information needed to make a determination on the safer alternatives that companies have swapped for PFAS. Traditionally, reporting requirements are for specific chemicals, so Ecology would either need to request reporting on all priority chemicals of concern or require reporting of all contents used in a product. From previous reporting requests required by Ecology, reporting on alternative product content was optional (e.g., https://www.ezview.wa.gov/Portals/_1962/Documents/saferproducts/VinylFlooring_ManufacturerData.pdf)

Additional information would help improve the report:

Apparel and gear:

- The term “expert” needs to be more clearly defined under the apparel and gear category for extended-use products. It’s not clear where the line is drawn between these products and general-use apparel. Would ski wear be different between an “expert” versus a person who skis regularly or even at an expert level but not as a professional? It is not clear what criteria would place certain items in the exempt “expert” category. PHSKC recommends that the “expert” category be removed and all apparel included in the restriction.
- Page 41, note that exposure through dryer lint could be significant.

Firefighting Personal Protective Equipment:

- Page 51: “Alternative processes that avoid the use of PFAS or replacement chemicals are safer alternatives if they do not contain known carcinogens, mutagens, reproductive and developmental toxicants, or endocrine disruptors at concentrations above 100 ppm.” How was the 100ppm threshold determined? This is a high threshold, particularly for chemicals that are hormonally active at very low concentrations. We recommend setting a lower threshold and providing justification on when 100ppm would be acceptable.
- What are the alternatives that were evaluated within each category? They are not listed, just says they were not able to determine if they were safer.

Cleaning products:

- Please describe more clearly what a propellant is in the cleaning section and more information on why they are excluded. Does this mean that a cleaning product could still contain PFAS? How does the consumer know if there are propellants with PFAS in the product?

Waxes and Polishes:

- Should surfboard wax be included in the waxes and polishes category? Was it explored (assuming it has PFAS)?
- Are there car manufacturers in the state of WA? Is this a significant use that we could restrict regarding waxes and polishes used when cars are produced?

Cookware and Kitchen Supplies:

- The cookware category is very large. It seems that some restrictions would be easy to eliminate at this time. Because there are clear non-stick alternatives that exist, it seems that we could be banning non-stick pans that contain PFAS at this time and only allowing for pans that do not contain PFAS. For this sub-category of cookware, we could begin banning and move forward on some products (e.g., cast iron, stainless steel, black carbon are safe). It would likely accelerate company disclosures and movement towards safer options if action were started on this category now, especially since companies will have a phase-out period to adjust their product formulations.
- Page 82: “Particular focus was placed on the product categories for which there will be proposed restrictions on intentionally added PFAS – apparel and cleaning products.” The wording focused on “intentionally added PFAS” here is not recommended. Manufacturers are using this category as a way to include PFAS in products, and it is already demonstrated that products exist that can be PFAS-free. The existing threshold for “intentionally added” in CA and the EU are so high that they are well above a limit for contamination of a product where PFAS was not

added intentionally therefore we recommend that this language be removed and the State take a clear stance at this point to consider all sources as intentionally added. For cases where unintentionally added sources are not possible to remove, the state can assess the products and provide exemptions, but the default should be no PFAS are acceptable whether added intentionally or not. All attempts to remove them from the products should be made, especially since it is beginning to appear that for many PFAS, no safe level will exist, such as the case with PFOA and PFOS.

Market Analysis:

- Economic analysis section should also show estimated health costs of PFAS products in Washington and costs to ratepayers due to PFAS in wastewater treatment plants and solid waste facilities.

PHSKC thanks Ecology for the opportunity to comment on the proposed actions for phase 1.5 of Safer Products for Washington and for the huge amount of work that staff conducted to produce the report and these determinations. Please do not hesitate to reach out to our senior toxicologist, Dr. Shirlee Tan (shirlee.tan@kingcounty.gov), with any questions.

Respectfully,



Dr. Faisal Khan
Director
Public Health – Seattle & King County