

August 13, 2024

Ms. Shari Franjevic
Toxic-Free Cosmetics Act Implementation Planner
Hazardous Waste and Toxics Reduction Program
Washington State Department of Ecology

SENT VIA EMAIL TO TOXICFREECOSMETICS@ECY.WA.GOV

Dear Ms. Franjevic,

RE: Informal Comments on Preliminary Rulemaking for Toxics Free Cosmetics Act

Thank you for the opportunity to provide informal comments on the Toxic-Free Cosmetic Act preliminary rule. We appreciate the thought, effort, and experience that has gone into developing this preliminary draft rule language, as well as the work the Department of Ecology has done thus far to implement the new law.

The Hazardous Waste Management Program (Haz Waste Program) is a multi-jurisdictional local government program in Washington State. The Program works to protect and enhance public health and environmental quality in King County, Washington. We do this by reducing the threat posed by the production, use, storage, and disposal of hazardous materials. With over 2 million residents, King County is the 13th most populous county in the United States. Coalition members include King County, City of Seattle, and the other cities, towns, and tribes within King County.

The Haz Waste Program testified in support of the 2023 legislation, SHB 1047, recognizing that toxic chemicals in cosmetics harm human health and the environment. We also have a deep commitment to racial equity, which directs attention to policies that disproportionately impact Black, Indigenous and People of Color (BIPOC) communities, including the Toxic-Free Cosmetics Act.

We generally support the language in the preliminary draft rule for the potential new Chapter 173-339 WAC: Cosmetic Products Restrictions, and have the following specific comments about rule language, the rule-making process, and implementation of the law:

1. 020 Acronyms and Definitions

“Intentionally added chemical” or “intentionally added” means a chemical that serves an intended function in the final product, or in the manufacturing of the product or its ingredient.

We encourage Ecology to also address unintentionally added chemicals that can be coming from packaging or natural sources (e.g., mineral makeups may have more heavy metals). Cosmetics that do not have any unintentionally added compounds currently exist in commerce, and this should be the standard. Consumers using the product could have the same health impacts no matter how that chemical found its way into the product. The term “intentionally added” should be defined to include reduction of unintentionally added chemicals that make their way into ingredients contaminated by these sources.

2. 040 Equity and Environmental Justice

(1) To strengthen the integration of equity and environmental justice considerations when implementing, administering, and enforcing chapter 70A.560 RCW, ecology will, to the extent legal and practical:

(a) Strive to collaborate and co-develop approaches to equitable and meaningful community engagement with overburdened communities, vulnerable populations, sensitive populations, Tribes and Indigenous communities, and others.

We suggest you strike “strive to” from (a), as you have already qualified the boundaries of your efforts with “to the extent legal and practical” in the preceding sentence. This strengthens the commitment to collaborate and meaningfully engage with overburdened communities most impacted by this policy.

(b) Pursue processes that facilitate and support the inclusion of overburdened communities and reduce barriers in equitable participation.

Examples of strategies to remove barriers include:

- *Covering costs related to childcare and food.*
- *Complying with requirements of the Americans with Disabilities Act (ADA).*
- *Accommodating other accessibility needs.*
- *Compensating community members for lived experience and expertise.*

Community input may inform decision-making related to:

- *Cosmetic products of interest (including product types and brands).*
- *Rule requirements.*
- *Compliance approach.*

We agree with this rule language and believe you have an opportunity in this rulemaking process to take further action to remove barriers to participation by consumers impacted by the rule, especially in relation to the list of formaldehyde releasers proposed. However, in order to get feedback from consumers of the products these chemicals are found in, we believe Ecology must find a way to better describe and identify examples of the products themselves—not just the chemical names. Only then can engagement with communities that use these products be meaningful, as there will be an understanding of who those communities might be, the frequency of use, the perceived and real costs and benefits from use of product, the types of safer alternatives available, etc.

We encourage Ecology to commit adequate staff time and resources to create a robust community engagement effort that truly reaches the users of cosmetics restricted in the law, and proposed to be restricted in this rule. We support compensating community members for sharing their expertise and lived experience and recognize it is only one of many costs to meaningful engagement. We look forward to working with Ecology to leverage our community connections from previous and current work and to amplify outreach and education efforts in King County.

(c) Use existing data and information to document potential exposure disparities when identifying formaldehyde releasers and cosmetic products. Examples of data and information include lived experience, peer-reviewed scientific studies, government reports and data, demographic information, market based research, and other sources reviewed by ecology.

We look forward to collaborating with Ecology on this important directive in the rule, especially regarding the intentionally added or at 1 part per million (ppm) restriction level for lead and lead compounds in cosmetic products. We support this because there is no safe level of lead, detection of lead below 1 ppm is achievable, and we have found consumer products that were below the restriction level.

We've tested over 100 eye cosmetics for lead and about 80 of them were traditional eyeliners. Samples were collected directly from the community via in-home investigations and community lead testing events put on in collaboration with community-based organizations and our partners at Public Health – Seattle & King County. We also purchased traditional eyeliners online via Amazon, Etsy, and eBay. We found that resettled populations in King County are using traditional eyeliners commonly referred to as kajal, kohl, or surma despite some of these products containing greater than 100,000 ppm lead, with some containing greater than 800,000 ppm.

The Haz Waste Program uses X-ray fluorescence (XRF) analysis in the field, but we also send cosmetics to NVL Laboratories for confirmatory analysis. NVL explained that graphite furnace atomic absorption (GFAA) allows them to measure lead less than 1 ppm in cosmetic samples; thus, existing laboratory analytical methods exist which allow for compliance with the Cosmetics Act.

Additionally, 17 eyeliner products had detectable lead concentrations less than 1 ppm, achieving a reporting limit below the proposed lead and lead compounds restriction level. This data demonstrates that the reporting level is achievable, and there are eyeliner products available below this restriction level.

King County has shared this data with Ecology and will continue to share future consumer product testing results.

(d) Prioritize chemicals and cosmetic products where regulatory actions may reduce disproportionate exposure in overburdened communities and among vulnerable and sensitive populations.

We support this prioritization of chemicals and cosmetic products. We also know that prioritizing cosmetic products used by overburdened communities requires understanding the history and culture of use in that community. For example, choosing to prioritize chemicals in hair relaxers because of the disproportionate health impacts to Black women must be informed by the long history and current culture of what hair styles are acceptable in white dominant social systems. Black women have had to use these toxic products to gain access to jobs, household wealth, education, and general societal acceptance. The complexity of banning a product or chemical that has been a social necessity is achievable, and we look forward to working with Ecology on moving through the implementation process with this complexity in mind.

(e) Work toward equitable access to safer cosmetic products. This includes but is not limited to considering overburdened communities' and vulnerable populations' ability to access safer consumer products.

We encourage Ecology's outreach and education efforts to be as transparent as possible about what products are considered safer alternatives, and to get feedback regarding effectiveness, cost, and other potential barriers from those who might use those products. A safer product also may work less well, cost more, be unfamiliar, or be not widely available. This information can help inform what steps need to be taken to incentivize better product manufacturing, cost management, availability, and education efforts that can explore with consumers whether or not the product is essential in the first place.

Haz Waste Program's work testing lead in traditional eyeliners (mentioned above) also required culturally relevant engagement with the impacted community to replace the products with safer alternatives, while understanding the traditional importance of the products being used.

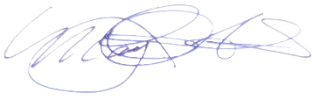
We encourage Ecology to communicate the health risks of and safer alternatives to the restricted products through trusted messengers in communities that are using the restricted products.

3. 110 Formaldehyde Releasers

The Haz Waste Program appreciates Ecology's efforts to identify and prioritize chemicals that disproportionately impact BIPOC communities in the first set of formaldehyde releasers. We also support the urgent yet reasonable compliance schedule as drafted in the preliminary draft rule language and believe it supports Ecology's commitment to racial equity in implementation of the law.

Thank you for considering these comments as you develop the draft rule and plans for implementation of the Toxic-Free Cosmetics Act. If you have any questions about the comments above, please contact Pam Johnson, Hazardous Waste Liaison & Policy Advisor, at pam.johnson@seattle.gov.

Sincerely,



Maythia Airhart, Director
King County Hazardous Waste Management Program