

October 1, 2024

Ms. Stacey Callaway
Department of Ecology—Hazardous Waste and Toxics Reduction Program
P. O. Box 47600
Olympia, WA 98504-7600
Phone: 360-584-5661
SaferProductsWA@ecy.wa.gov

Dear Ms. Callaway:

RE: Support for Safer Products for Washington Cycle 1.5 PFAS Preliminary Draft Rule

Public Health – Seattle & King County (PHSKC) and the King County Hazardous Waste Management Program (Haz Waste Program) thank the Washington State Department of Ecology (Ecology) for the opportunity to comment on the Preliminary Draft Rule for Washington Administrative Code (WAC) Chapter 173-337: Safer Products Restrictions and Reporting, Safer Products for Washington Cycle 1.5 Implementation Phase 4. This phase, focused solely on products containing 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 is the local public health department for the City of Seattle and King County, the 13th largest county in the US. The Haz Waste Program is a coalition of local governments comprised of King County, the City of Seattle, 38 other cities, and two tribes, all located in King County, Washington. The Haz Waste Program works to protect and enhance public health and environmental quality by reducing the threat posed by the production, use, storage, and disposal of hazardous materials, many of which are found in common household products and small businesses. PHSKC and the Haz Waste Program represent more than 2.3 million Washington State residents. PHSKC and the Haz Waste Program appreciate the work described in this report by Ecology and the Washington State Department of Health (Health) to evaluate products and processes for safer alternatives to, restrict the use of, and require reporting on PFAS in products known to significantly contribute to human and environmental exposure.

PHSKC and the Haz Waste Program thank Ecology for incorporating some of our previous comments in the phase draft rule, and we fully support the restrictions proposed on the categories of consumer products in this phase. To further enhance the effectiveness of the rule, improve source control, promote health equity, and elevate individual's capacity to identify PFAS-free products, which will ultimately prevent unnecessary PFAS exposure, PHSKC and the Haz Waste Program have the following comments:

Take immediate action to phase in restrictions for certain categories or sub-categories where any safe alternatives have been identified, or where it has been determined that PFAS are not needed.

PHSKC and the Haz Waste Program support the evaluation of safer alternatives to PFAS in consumer products. As mentioned in the previous comment letter, Ecology could accelerate transition towards PFAS-free products (either by using safer alternatives or no PFAS needed) within a large category (or a sub-category) by starting phased restrictions of PFAS on sub-categories of products in this large category (or one product in a sub-category) where enough information is available to take action.

In particular, PHSKC and the Haz Waste Program appreciate that Ecology has included non-stick cookware and cooking utensils in the draft rule. However, we recommend taking immediate action to restrict the production of PFAS-containing cookware. Cast iron, carbon steel, and stainless-steel cookware are known to be PFAS-free and are safer alternatives to the PFAS-containing cookware, and Ecology should ban the PFAS-containing cookware immediately, rather than waiting for the identification of the safer alternatives for the entire cookware category. Similarly, food-grade stainless steel and un-coated wood cooking utensils are potential safer options that Ecology should consider.

Include several additional emerging categories or sub-categories of products that are potential sources of human PFAS exposure.

The current 16 large categories of consumer products included for PFAS cover many important priority products for daily life and some occupational settings. Given the increasing demand for certain consumer products such as disposable products and electronics, PHSKC and the Haz Waste Program have the following recommendations:

- Because diapers and menstrual period wear are included in the apparel category, Ecology only included re-wearable items in the restriction. While this is a start, disposable items are by far the largest use category in WA for these items. Furthermore, these items are then sent to the landfill or flushed down the toilet and contribute to the PFAS burden already experienced by our waste treatment utilities. It is important that Ecology address these sources of PFAS to both human exposures and the environment as quickly as possible. Ecology should include an “undergarments and hygiene products” category, which would include all diapers, pull-up pants, hygiene products, and incontinence products. Given that both disposable and reusable types of these products appeal to a significant number of users, PHSKC and the Haz Waste Program recommend including both types. Considering the sensitivity of the populations using these products and the exposure time and locations of exposure, this category would be important in protecting them from the exposure and health effects of PFAS. Studies that examined PFAS content in these types of products demonstrate their extensive use in [disposable and reusable diapers](#) and in [hygiene products and undergarments](#).

- Include an “Electronic devices and accessories” category, which would include but would not be limited to desktop computer, laptop computer, tablet, smartphone, smartwatch, television, camera, charger, headphones/earbud, mouse, keyboard, external hard drive, protective case, and data cable. Given the widespread use of these electronic devices and accessories, especially during and after the pandemic with the increase in the virtual events and remote work, this category would be an effective way to reduce [PFAS exposure](#) for a broad range of individuals. Wearable devices should especially be included since they do not necessarily fall into the apparel category and are worn by users (e.g., watch bands or ocular-type devices).
- Under the “Cookware and kitchen supplies” category, PHSKC and the Haz Waste Program recommend including not only cooking utensils but also kitchen/feeding utensils (both disposable and reusable), as these may cause direct chemical (including PFAS) exposure to individuals, particularly children who are often given plastic utensils, which are more likely to contain PFAS.
- Under the “Personal protective equipment (PPE)” category, PHSKC and the Haz Waste Program recommend including not only firefighting PPE but also PPE for other occupations at potential higher risks of PFAS exposure. These populations may include, but are not limited to, chemical plant workers, textile industry workers, airport personnel, landfill workers, and wastewater treatment workers. Including these sub-categories would also contribute to equity and social justice by addressing the occupational PFAS exposures of these specific populations.

PHSKC and the Haz Waste Program support Ecology’s efforts to improve the disclosure of confidential product content information, which will accelerate alternatives assessments under Safer Products for Washington (SPWA).

Product content disclosure is important to phase out PFAS-containing products and introduce safer alternatives. To enhance manufacturer engagement and to promote safer product production, Ecology should work closely with EPA and FDA to exercise legal authorities for shared confidential business information on products and manufacturing process. Actions should be taken to phase in restrictions that encourage manufacturers to switch to safer ingredients in consumer products and processes.

- Green labels should be used to help identify PFAS-free products (either by using safer alternatives or no PFAS need). We recommend that the report include a section defining whether products with green certification labels, such as “bluesign approved” and “non-fluorinated,” meet criteria that Ecology and SPWA would accept as safer alternatives. Does Ecology have access to information about the alternative chemicals used or assurance that it is a safer product? What about for other [“green” labels like OEKO-TEX, etc.?](#)
- PHSKC and the Haz Waste Program recommend that Ecology phase in restrictions or to even ban the use of labels such as “PFOS-free” and “PFOA-free”, since these are often used by business to mislead consumers. For example, non-stick cookware may

claim to be “PFOA-free” and “non-toxic,” yet there are over 12,000 known types of PFAS exist and could be added to non-stick coatings, and PFOA could also be generated and released during the cooking process.

PHSKC and the Haz Waste Program recommend removing, revising, or clarifying the certain language that is unclear or raises potential concerns.

- The term “intentionally added PFAS” is not clearly defined and could potentially lead to a fluke mentality, dispute, or loophole for some manufacturers, especially when WAC 173-337-025 states: *Chemicals present from the use of recycled materials are not considered ‘intentionally added priority chemical.’* The existing thresholds 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. Thus the word “intentionally added PFAS” is not recommended and the State should 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 or to replace, the state can assess the products and provide exemptions, but the bottom line should be no PFAS are acceptable whether added intentionally or not. Every effort should be made to remove them from the products, especially given emerging evidence that for many PFAS, such as PFOA and PFOS, no safe level exists. If Ecology grants exemptions to any manufacturer their justification should be transparent and defensible. Considering that exemptions may expose Washington residents to hazardous chemicals, the costs to residents should be heavily weighted in any exemption decision (see HEAL Act comments below).
- Under the category “Apparel intended for extreme and extended use,” please describe more clearly what is the threshold for “extended periods of time” and provide more information on why this threshold was chosen.
- By excluding recycling of existing stock from actions under the restrictions of this rule, Ecology may be contributing to continued exposures to PFAS from new products in the future. [Recycling of toxics in products has been shown to concentrate toxics to harmful levels.](#) Ecology should prevent this from occurring with PFAS in WA state and should create a category that restricts recycled product content containing PFAS from use in products.
- Civil penalties imposed on manufacturers that violate restrictions or reporting requirements are not equitable to [health and environmental costs of PFAS exposures and cleanup.](#) Civil penalties should be increased to reflect the true costs of exposure and to prevent manufacturers from violating requirements imposed by this rule.

PHSKC and the Haz Waste Program recommend adopting exemption requirement that align with the mission and goals of the [Healthy Environment for All Act.](#)

It is crucial that Ecology establishes a clear default position of zero tolerance for PFAS, ensuring that manufacturers do not circumvent necessary changes by maintaining current practices.

Greater transparency is recommended regarding the criteria for exemption decisions and acceptable PFAS levels, as any exposure must be thoroughly justified given the known or potential risks. Specifically, PHSKC recommends that Ecology maintain public transparency on the following regarding exemptions from restrictions or reporting requirements:

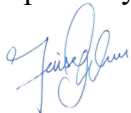
- The manufacturers, products, and the detailed reasons for exemption applications.
- The criteria or standard for exemption approvals.
- The manufacturers and products that are approved for exemptions, including how long the exemptions will last (clear start date and end date).
- A detailed description of how the manufacturers and products that are approved for exemptions meet the approval criteria or standard.
- Requirements and enforcement actions that will be imposed by Ecology to ensure the agreed upon terms of the exemption.
- Public posting of the above information and public opportunity for comment and appeals on all exemption determinations.

Exemption evaluations should consider the following points, including but not limited to:


- Potential effects of the exemption to certain communities, such as the communities that would be affected by the exemption.
- Potential climate impacts of the exemption decision.
- Potential impacts on the PFAS levels in environmental media, such as water bodies, air, local solid waste, and wastewater treatment systems.

PHSKC and the Haz Waste Program thank Ecology for the opportunity to comment on the preliminary draft rule for Cycle 1.5, Phase 4 of Safer Products for Washington, and for the huge amount of work that staff conducted to address concerns from previous comments and to include these 16 large categories of products. Please do not hesitate to reach out to our toxicology team through Dr. Shirlee Tan (shirlee.tan@kingcounty.gov) and Dr. Bai Li (bali@kingcounty.gov), with any questions.

Respectfully,



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



Maythia Airhart, Director
King County Hazardous Waste
Management Program