



AmericanCoatings
ASSOCIATIONSM

December 31, 2024

Sascha Stump
Toxicologist, Hazardous Waste and Toxics Reduction Program
Washington Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Re: Department of Ecology's Cycle 2, Draft Identification of Priority Products Report to the Legislature, Washington Safer Consumer Product Program, regarding adhesives, sealants and caulks.

Submitted via online portal at:

<https://hwtr.ecology.commentinput.com/?id=9gHGTCx2EV>

Dear Dr. Stump:

American Coatings Association (ACA) appreciates Washington Department of Ecology (hereinafter "Ecology") maintaining open communication with stakeholders as it continues to develop the Safer Products for Washington Program. ACA is eager continue to work with Ecology towards implementing an effective program, based on a clear and accurate understanding of products causing contamination and their impact on health and the environment. ACA and its members appreciate the opportunity to provide comment on Ecology's *Draft Report to the Legislature* (hereinafter "Draft Report"). ACA is providing this comment related to the proposed listing of sealants, caulks and adhesives, while filing separate comment addressing the proposed listing of architectural paint.

The Association's membership represents 90% of the paint and coatings industry, including downstream users of chemicals, as well as chemical manufacturers. Our membership includes companies that manufacture a variety of formulated products including paints, coatings, sealants and adhesives and their raw materials that may be affected by requirements, due to the broad set of covered chemicals, regardless of associated hazards.

ACA and its members respectfully submit the following comment:

ACA recommends not finalizing the proposed listing for sealants, caulks and adhesives containing orthophthalates. The agency would be preempted from most regulatory activities by TSCA (the *Toxic Substances Control Act*). At page 112 of Ecology’s draft Technical Report,¹ Ecology recognizes that,

US EPA has identified adhesives and sealants used for multiple ortho-phthalates (BBP, DBP, DCHP, DEHP, DiBP, DINP, and DIDP) as part of their evaluation process under the Toxic Substances Control Act (TSCA), including both consumer and commercial uses (US EPA, 2024g).

Ecology is preempted from taking any “action to prohibit or otherwise restrict the manufacture, processing, or distribution in commerce or use of a chemical substance,” effective as of the date EPA’s TSCA risk mitigation rule takes effect for specified chemicals and uses.² Even if Ecology were to issue a final rule prior to EPA’s final rule taking effect, Ecology’s rule would be preempted as of the effective date of EPA’s rule. Ecology is also preempted from developing any related reporting or information development requirements that would replicate EPA information submission requirements under TSCA.³

The preemption section applicable to orthophthalates is different from TSCA preemption applying to inadvertent PCBs, restricting Ecology’s ability to regulate inadvertent PCBs during Cycle 1. Section 18 of TSCA specifies detailed preemption requirements for high-priority chemicals undergoing risk evaluations under TSCA §6. Congress enacted this section as part of the 2016 *Lautenberg Amendments* to TSCA, and it applies to orthophthalates undergoing EPA evaluation, whereas the section applying to PCBs dates back to 1979 when EPA finalized PCB restrictions.

ACA recommends allowing EPA to complete its risk evaluation process. EPA’s national-level regulations would largely address any concerns for exposure to orthophthalates in the State of Washington. EPA’s risk evaluation process under Section 6 includes comprehensive evaluation of exposure by product sector. Ecology’s identification of potential exposure is highly speculative, based on national sales volumes of adhesives and sealants, while relying on outdated product formulations to estimate amounts of orthophthalates.⁴ Ecology further speculates about transformation of orthophthalates into dust particles.⁵ Ecology presents no

¹ Washington Department of Ecology, *Draft Technical Supporting Documentation for Priority Products*, p. 112 (November 2024), Publication 24-04-050.

² TSCA § 18(a)(1)(B).

³ TSCA § 18(a)(1)(A).

⁴ Washington Department of Ecology, *Draft Technical Supporting Documentation for Priority Products*, p. 113 (November 2024), Publication 24-04-050.

⁵ Washington Department of Ecology, *Draft Technical Supporting Documentation for Priority Products*, p. 115 (November 2024), Publication 24-04-050.

evidence of exposure through skin, but speculates potential exposures since orthophthalates are present in the priority product, as noted in one published study.⁶

As noted in ACA's separate comment addressing the proposed listing of architectural paints containing PFAS, the potential for risk from a chemical in a formulated mixture is significantly reduced from the degree of risk of the raw chemical. Further, ACA also notes that the *Safer Products for Washington Act* requires a higher level of scrutiny when identifying priority products that are a significant source of or use of a priority chemical. As a matter of public policy, the statute is undermined when Ecology's identification of priority products is highly speculative. ACA refers to and incorporates its Sections related to these issues herein, from its comment addressing selection of architectural paints.

ACA strongly recommends that Ecology not proceed with finalizing listing of adhesives, caulks and sealants since EPA is addressing relevant orthophthalates and Ecology will be preempted.

Sincerely,
/s/
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⁶ Washington Department of Ecology, *Draft Technical Supporting Documentation for Priority Products*, p. 116 (November 2024), Publication 24-04-050.