American Forest and Paper Association

On behalf of the American Forest & Paper Association, please find attached comments on the Safer Products for Washington, Cycle 2 Draft Priority Products Report.

December 31, 2024

Ms. Kim Morley
State of Washington, Department of Ecology
Hazardous Waste and Toxics Reduction Program
P.O. Box 47600
Olympia, WA 98504-7696

Re: Comments on Draft Identification of Priority Products Report to the Legislature: Safer Products for Washington Cycle 2 Implementation Phase 2

Dear Ms. Morley,

On behalf of the American Forest & Paper Association (AF&PA), thank you for the opportunity to provide feedback concerning the Department of Ecology's ("the Department" or "Ecology") proposed *Draft Identification of Priority Products Report to the Legislature: Safer Products for Washington Cycle 2 Implementation Phase 2*.

AF&PA serves to advance a sustainable U.S. pulp, paper, packaging, tissue and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA member companies make products essential for everyday life from renewable and recyclable resources and are committed to continuous improvement through the industry's sustainability initiative — *Better Practices, Better Planet 2030*. The forest products industry accounts for approximately four percent of the total U.S. manufacturing GDP, manufactures nearly $300 billion in products annually and employs approximately 950,000 people. The industry meets a payroll of approximately $55 billion annually and is among the top 10 manufacturing sector employers in 43 states.

We want to formally express our opposition to the inclusion of inks in the *Draft Identification of Priority Products Report to the Legislature: Safer Products for Washington Cycle 2 Implementation Phase 2.* As an industry stakeholder and advocate for sustainable practices, we believe that the inclusion of inks as a priority product for further regulatory scrutiny is not warranted. First and foremost, **we believe that the Department is acting outside of its statutory authority by seeking to regulate a class of chemistries that is currently regulated federally under the Toxic Substances Control Act (TSCA)**.

Secondly, should the Department continue to include polychlorinated bisphenols (PCBs) including inadvertent PCBs (iPCBs), in their rulemaking process moving forward despite the federal precedent, we would like to note several additional areas of concern regarding underlying science, methodology, and potential impact to Washingtonians.

KEY CONCERNS

1. ***TSCA Preempts Additional Regulation of iPCBs in Inks***
2. ***Inks Have Already Demonstrated Significant Safety and Environmental Improvements***
3. ***Inks Are Not a Significant Contributor to Hazardous Chemical Exposure***
4. ***Incorrect Focus on Regulating iPCBs in Inks***
5. ***Potential Economic Impact on Local & Small Businesses***

KEY CONCERNS ELABORATED

1. TSCA Preempts Additional Regulation of iPCBs in Inks

In June 2022, Ecology published its interpretation in its *Final Regulatory Determinations Report*, *Regulatory Determinations Report to the Legislature: Safer Products for Washington Cycle 1 Implementation Phase 3* (June 2022) regarding its implementation of Safer Products for Washington, that iPCBs inks and coatings could not be regulated due to preemption by TSCA. In the *Draft Identification of Priority Products Report to the Legislature: Safer Products for Washington Cycle 2 Implementation Phase 2,* Ecology reverses its previous position stating that it now believes that it is not preempted by TSCA and has the authority to regulate iPCBs in inks.

The June 2022 report states the following (page 90):

> *Reducing PCBs in these inks to a level closer to what we identified in this report would reduce a significant source of PCBs to people and the environment. However, because we believe we are preempted by federal Toxic Substances Control Act (TSCA) regulations, our regulatory determination on PCBs in printing inks is no action.*

In the 2024 report, *Draft Identification of Priority Products Report to the Legislature: Safer Products for Washington Cycle 2 Implementation Phase 2,* Ecology provides no specific analysis or legal review to support its new interpretation. **Beyond this, the Department's stance that a full prohibition of a chemistry does not violate the proscription against setting thresholds in conflict with federal standards is unsound. A full prohibition of a chemistry should not be considered as a separate action, but one that both in practice and in regulatory enforcement sets a *de facto* quantitative limit of 0.**

The issue of inadvertently generated PCBs was addressed by EPA in the definitions found in 40 CFR 761.3 in which EPA clarifies that incidental formation of PCBs during a manufacturing process or an excluded PCB product means that it is an undesired byproduct or impurity, as opposed to PCBs that were made for their commercial value (*e.g.*, aroclors).

40 CFR 761.3's definitions of Excluded Manufacturing Process and Excluded PCB Products define inadvertently generated PCBs as being byproducts or impurities resulting from the manufacturing process. PCBs are not used in the manufacturing process of any pigment. Their presence is due to a chemical reaction that occurs during the manufacturing process, which makes them, by definition, inadvertent. The PCBs created are a byproduct and cannot be characterized as intentional.

The Frank R. Lautenberg Chemical Safety for the 21st Century Act was signed into law on June 22, 2016. The law contains a provision that expressly preempts states from taking action if EPA has started or completed an action on a chemical. Section 6(e) of TSCA, basically unchanged by the Lautenberg amendments, instructed EPA to ban the manufacture, processing, distribution, or use of PCBs by 1979, subject to activities that do not pose an unreasonable risk. In the regulations, EPA allowed for the inadvertent generation of PCBs in "excluded manufacturing processes" [40 C.F.R. § 761.1(f)(1)].

The Lautenberg amendments made dramatic changes to the preemption in Section 18 of TSCA preempting states from regulating or banning chemicals that are already subject to regulation by the EPA under TSCA, once the EPA has taken action. States are not allowed to impose more stringent requirements unless they are authorized by specific federal action or are consistent with federal regulations. While there are some exceptions to the preemption, none are applicable to Ecology's desire to regulate iPCBs in ink. The State had not regulated or passed legislation prior to EPA's regulations on PCB, which would be the most appropriate exemption. The intent behind this provision is to establish a uniform standard for chemical safety across the country, preventing a patchwork of state regulations that could create inconsistencies and barriers to commerce.

Section 18 also restricts state authority to adopt stricter chemical regulations than those established by the EPA once the Agency has acted on a chemical under TSCA. The existing ban on intentionally manufactured PCBs and limits on inadvertently created PCBs, prevents the Department from regulating iPCBs in inks that are present as a byproduct resulting from the pigment manufacturing process. The preemption by Section 18 TSCA covers both situations.

2. Inks Have Demonstrated Significant Safety and Environmental Improvements

Compliance with existing and stringent regulations along with the sustainability movement have already resulted in a wide adoption of safer formulations. The narrow and limited testing performed by Ecology in *Final Regulatory Determinations Report, Regulatory Determinations Report to the Legislature: Safer Products for Washington Cycle 1 Implementation Phase 3*, confirmed that inks comply with EPA's very stringent limit on trace concentrations of iPCBs.

The paper produces industry has long been committed to continuous improvement in terms of sustainability and chemical safety. Many companies have implemented rigorous safety protocols, including regular chemical safety assessments, third-party certifications (such as Green Seal, EcoLabel, Sustainable Green Printing Partnership, and others), and adoption of environmentally friendly processes. Furthermore, many ink manufacturers already comply with stringent environmental regulations and industry standards, such as the European Union's REACH (Registration, Evaluation, Authorization, and Restriction of Chemicals) and other U.S. regulations regarding toxic substances, especially TSCA.

Inks have undergone significant advancements in terms of both safety and environmental impact over the past several decades. Modern inks, such as digital, water-based, soy-based, and other low-volatile organic compound formulations are widely used and have resulted in substantial reductions in harmful emissions, which have benefited both the environment and public health.

EPA's regulations under TSCA, outlined in 40 CFR Part 761, address the manufacturing, handling, remediation, and disposal requirements for PCBs, including inadvertent iPCBs that are unintentionally created, during industrial processes, in products and waste. Under Section 6(e) of TSCA, iPCBs are subject to strict limits allowing 25 parts per million concentration on average, not to exceed 50 parts per million. These concentrations are considered trace amounts and are designed to minimize human and environmental exposure to PCBs.

Inks and their components are manufactured to comply with the TSCA limits set out at 40 CFR 761.1(d). iPCB's related to pigments and have been reduced over time. Manufacturers of pigments and printing inks have improved their manufacturing and selection process for pigments to ensure they are producing inks with the lowest achievable PCB concentration that meets their customers' performance requirements. The narrow and limited testing performed by Ecology in Final Regulatory Determinations

Report, Regulatory Determinations Report to the Legislature: Safer Products for Washington Cycle 1 Implementation Phase 3, confirmed that inks comply with EPA's very stringent limit on trace concentrations of iPCBs.

Compliance with existing and stringent regulations along with the sustainability movement have already resulted in a wide adoption of safer formulations. Given the progress made, further regulatory interventions may be unnecessary and could undermine the innovation already in motion.

3. Inks Are Not a Significant Contributor to Hazardous Chemical Exposure

When printing inks were identified for Safer Products in 2020, Ecology concluded that "colored pigments contained in inks are the largest source of inadvertent PCB contamination in consumer goods". However, to the best of our knowledge and research, Ecology's conclusion was not supported by any specific references, studies, or other supporting documentation. Additionally, the Department has not ascertained if the presence of the iPCBs in inks poses a threat to human health or the environment.

EPA's response to Ecology's January 4, 2024, petition concurs that Ecology failed to establish a compelling argument and presented only limited justification for choosing inks as a significant source of iPCBs. In the denial of the petition, published on April 9, 2024 (89 FR 24824) in the Federal Register, EPA concluded that Ecology failed to identify specific deficiencies in EPA's previous rulemaking when it set the TSCA PCB limits and did not meet the burden of establishing the necessity to amend the existing rule. EPA did acknowledge the concerns regarding PCBs but will continue to gather information and assess the risks associated with inadvertently generated PCBs:

> *"…the petition failed to point with any specificity to deficiencies in the Agency's promulgation of the 1984 final rule and determination of no unreasonable risk under TSCA section 6(e). As a result, the petitioner has not provided adequate justification – based on the rulemaking process and record for the 1984 final rule, as well as information provided or otherwise available to the Agency – for the requested actions. Thus, the EPA finds that the petition is insufficiently specific and that the petitioner did not meet their burden under TSCA section 21(b)(1) of establishing that it is necessary to amend the 1984 final rule under TSCA section 6(e). Therefore, after careful consideration, the EPA has denied the petition for the reasons set forth in this notice."*

A critical missing component of Ecology's assessment of inks is the presentation of a comprehensive review of all iPCB containing products and sources. To clearly identify sources of PCB levels in waterways, Ecology needs to conduct a source-to-receptor assessment. Absent an assessment, major sources, including legacy sources, are not addressed as part of the Safer Consumer Products regulatory process.

4. Incorrect Focus on Regulating iPCBs in Inks

PCBs are not used in the manufacturing of any pigment. While a pigment may contain a chlorine atom in its chemical structure, it cannot be assumed that it contains iPCBs because they are different chemical entities. iPCBs are created as a byproduct during the manufacturing of certain pigments that contain chlorine. Consequently, the Safer Products for Washington program incorrectly assumes that any pigment used in an ink formulation that contains a chlorine atom is equivalent to one that contains iPCBs.

Furthermore, the Department appears to be concerned about a potentially theoretical concentration of PCB-11, a known PCB congener which can be found in some diarylide yellow pigments The *Draft*

Identification of Priority Products Report to the Legislature: Safer Products for Washington Cycle 2 Implementation Phase 2 report (page 30) states:

> *These water quality standard levels are extremely low compared to EPA's 25 ppm annual and 50 ppm maximum limits on PCBs in pigments used in inks. Based on the definition of PCBs by EPA, a dichlorinated PCB found in yellow pigments, PCB-11, is allowable at up to 250 ppm in pigments if it is the only PCB present.*

In all cases wherein the Department believes it has identified a chemical of concern, AF&PA believes that regulation should be narrowly tailored to the chemical in question, rather than broad classes of chemicals. As such, we encourage the Department to narrow its scope of focus.

5. Potential Economic Impact on Local & Small Businesses

Banning approximately 150 pigments that contain chlorine based on unproven assumptions would have significant impacts to the printing industry and, as a result, paper products. The total impact on the State's economy is likely to be significant given the complexity of established supply chains within the printing and paper industries. This potential impact is unnecessary given that many manufacturers have already made the transition to safer, more environmentally friendly inks voluntarily. Introducing further mandatory regulations will undoubtedly create additional financial and operational burden without a clear public health benefit.

Conclusion

AF&PA supports efforts to improve the safety and environmental footprint of products in the State of Washington. However, we respectfully oppose the continued inclusion of inks as a priority product under the *Safer Products for Washington Cycle 2 Implementation Phase 2*. Currently, there is insufficient data that directly supports the categorization of inks as a priority product for increased regulatory action.

Thank you for your consideration of our comments. We appreciate the ongoing collaboration between AF&PA and the Department. We remain available to discuss the feedback herein in greater detail and look forward to your response. Please contact Erin Hall, Manager, Government Affairs, at erin_hall@afandpa.org if you have any further questions.

Sincerely,
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