

September 4, 2020

**Via Electronic Submission**

Solid Waste Management Program  
Department of Ecology  
300 Desmond Drive, SE  
Lacey, WA 98503

**Re: Comments on Draft Report titled *Recommendations for Managing Plastic Packaging Waste in Washington***

Department of Ecology/Cascadia Consulting Group:

The Personal Care Products Council (PCPC)<sup>1</sup> is pleased to submit the following comments on a draft report prepared for the Washington State Department of Ecology (Ecology) titled [\*Recommendations for Managing Plastic Packaging Waste in Washington\*](#), dated August 14, 2020.

PCPC supports the laudable goals of the 2019 “Plastic Packaging Evaluation and Assessment” law (Chapter 70.380 RCW), which requires producers of plastic packaging to consider the design and management of their packaging in a way that ensures minimal environmental impact. PCPC further supports Ecology’s efforts to address the problem of plastic pollution.

The personal care industry is strongly committed to advancing more sustainable packaging, and many of our member companies are leading the way in reducing plastic packaging and waste for their brands. In fact, many of our companies – both large and small – have made sweeping, voluntary public commitments to reducing the environmental impact of their products and have advanced sustainable practices throughout our industry.<sup>2</sup> Such voluntary commitments have

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<sup>1</sup> Based in Washington, D.C., the Personal Care Products Council is the leading national trade association representing global cosmetics and personal care products companies. Founded in 1894, PCPC’s approximately 600-member companies manufacture, distribute, and supply the vast majority of finished personal care products marketed in the U.S. As the makers of a diverse range of products millions of consumers rely on and trust every day – from sunscreens, toothpaste, and shampoo to moisturizer, lipstick, and fragrance – personal care products companies are global leaders committed to product safety, quality, and innovation.

<sup>2</sup> Examples include participation by many of our member companies in the U.S. Plastics Pact; the Alliance to End Plastic Waste; Closed Loop Partners; the Ellen MacArthur Foundation’s New Plastics Economy; TerraCycle; Circulate Capital; the Sustainable Packaging Initiative for Cosmetics (“SPICE”); and other multi-stakeholder, global coalitions.

allowed our industry to make real progress in the area of packaging sustainability<sup>3</sup> without the need for a government mandate. Indeed, such mandates often complicate the many competing concerns that companies must balance when addressing packaging concerns.

### **Three Goals**

As an initial matter, it is worth noting that the underlying law mandates that Ecology conduct studies of plastic packaging waste disposal and management in order to inform policy options to meet the law's three primary goals:

- 1. Plastic packaging sold into the state to be 100% recyclable, reusable, or compostable by January 1, 2025.**
- 2. Plastic packaging sold into the state to incorporate at least 20% post-consumer recycled content by January 1, 2025.**
- 3. Plastic packaging to be reduced when possible and optimized to meet the need for it.**

The application of these three objectives, however, may conflict with one another. Consider, for example, the third goal “plastic packaging to be reduced when possible, optimizing the use to meet the need” and the first goal regarding “recyclable” plastic packaging. When packaging is minimized, it may be done by shifting to a flexible or thin-film structure. Unfortunately, thin-films are not widely recyclable; and this may be true of similar materials that reduce packaging. As such, meeting the third goal may create obstacles that frustrate the first goal.

Similarly, any residue left on packaging from a personal care product (unlike food products) may adversely impact whether it can be composted. This would leave only two end-of-life options for personal care packaging then – ‘recyclable,’ which as noted above conflicts with minimal material use, or ‘reusable,’ which requires significant infrastructure (e.g., refill stations) as well as changes to consumer behavior.

If the goal is to minimize the environmental impact of packaging, then perhaps the focus should be on Life Cycle Assessment results associated with a particular packaging, and not just end-of-life.

### **Federal Framework**

PCPC was pleased that the Washington legislature recognized the importance of aligning any packaging policy with existing federal regulatory frameworks. Specifically, the *Plastic Packaging Evaluation and Assessment* law states that Ecology, in developing any policy

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<sup>3</sup> Link to PCPC's 2019 Sustainability Report of the beauty industry titled ‘*Creating a More Beautiful World*’: <https://www.personalcarecouncil.org/wp-content/uploads/2020/07/2019-PCPC-Sustainability-Report.pdf>

recommendations, must “ensure consistency with the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et. seq).”<sup>4</sup>

As you may know, the U.S. Food and Drug Administration (FDA) tightly regulates packaging for certain product categories in order to ensure the safety, quality, and/or stability of the products sold. Over-the-counter (OTC) drugs, such as sunscreens and antiperspirants, must meet the FDA’s stringent standards for safety and effectiveness before they can be introduced in the marketplace for consumer access. Any changes to packaging materials would require testing, validation, and stability studies – all of which are subject to FDA’s current Good Management Practice (GMP) regulations. Consider, for example, one of the policy recommendations in the draft report involves mandating a certain amount of post-consumer content in plastic packaging. Such a mandate could make it difficult or even impossible for companies to comply with FDA purity standards for OTC drug packaging.

Likewise, the Poison Prevention Packaging Act of 1970 is intended to prevent children from being exposed to some products, including OTC drugs and certain cosmetics. Prevention under this law often takes the form of tamper-proof packaging. Because tamper-proof packaging is almost always made of plastic, however, it may be technologically infeasible (not to mention potentially dangerous) for manufacturers to alter this packaging to comply with a state legislative mandate.

Based on the foregoing, it would be important for any proposed legislation to include an exemption for FDA-regulated products that must meet such federal standards – or to include a statement that where such a conflict exists the federal law controls – and we encourage Ecology to make such a recommendation.

### **EPR Programs**

The beauty and personal care industry recognize that plastic packaging generally is contributing to a global waste challenge and that is why, as noted above, our companies are taking action to reduce their use of plastic packaging, use more recycled plastic, and increase the recyclability of the plastic packaging they use.

This challenge, however, cannot be solved by one stakeholder alone. The circular economy model relies on each stakeholder doing its part. So, while the personal care industry can take steps to address packaging design regardless of material – making it more recyclable, compostable, or reusable – real, lasting progress on reducing packaging waste requires the participation of all stakeholders to build a system that works.

Regulatory schemes like extended producer responsibility (EPR) put all of the responsibility on a single participant, without buy-in from all responsible parties. A better approach would be to focus collaboratively with all stakeholders toward the common goal of higher recycling rates

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<sup>4</sup> Chapter 70.380.030 RCW, Sec. (2).

for all materials (i.e., material neutral), which can be achieved through improving existing infrastructure, sustainable financing models, more consumer participation and resilient and reliable end-markets for recycled material.

Waste management is a shared responsibility for all actors in the value chain. Each participant in the solid waste management system has a distinct role to play. In shared responsibility, costs are distributed to those who are closest to a given management activity and have the largest opportunity to reduce waste. A shared responsibility approach creates a more direct and transparent incentive for all stakeholders to improve how waste is managed and make it more economically efficient. For example, “Pay as You Throw” policies serve to provide a direct and transparent incentive for consumers to influence behavior and have been shown to increase waste diversion.

As a preliminary matter, and given the enormous breadth of the EPR policy recommendation, it would make sense for Ecology to assess how existing EPR programs perform in terms of reducing plastic packaging waste. If these programs are ineffective and/or overly expensive in terms of the environmental benefit delivered, then perhaps another EPR program is not warranted at this time.

### **Minimum Recycled Content Targets**

There is currently a demand for post-consumer recycled content; but unfortunately, demand significantly exceeds supply. Any government mandate at this time will further diminish supply as companies scramble to secure post-consumer materials from a limited pool. Consequently, it makes little sense to mandate recycled content requirements for consumer products until the supply of post-consumer content increases sufficiently enough to allow companies to meet such requirements.<sup>5</sup> PCPC encourages Ecology to conduct an additional analysis of the market for *higher quality* post-consumer content (lower quality materials are often unacceptable from a quality perspective) – and determine effective methods to increase demand gradually so the market can adjust – before setting any content requirement.

To truly and significantly increase supply, of course, consumer behavior must change. Ecology should therefore focus on increasing recycling rates, consumer education, and ensuring that packaging is properly collected, sorted and processed before moving ahead with any mandate.

Ecology should also consider building in exemptions for any products that must comply with potentially conflicting federal standards – e.g., FDA-regulated products that must meet purity, stability, etc., standards for products and packaging – which may limit companies from utilizing too much post-consumer recycled materials.

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<sup>5</sup> Complicating this issue is that fact that virgin plastic is less expensive than post-consumer recycled plastic, making it more practical and cost-effective for companies to utilize.

### **Producer Registry and Packaging Reporting**

The recommendation to develop and implement a product registry and packaging reporting system, while well intentioned, would create administrative burdens that outweigh any associated benefit. It is highly impractical for each company to provide producer/product data in order to meet individual state mandates. As similar state legislation spreads nationwide, as we expect it will, it becomes extremely onerous for companies to provide all of the information requested (likely similar information, but requested in a different format) to meet each state's request. Instead, PCPC recommends a multi-state coalition to develop a uniform, universal approach on such data submission.

### **Fees/Charges/Tax/Levy**

Should these policy recommendations ultimately inform state legislation, there will be a fiscal impact – meaning the state will almost certainly impose fees or levy costs on industry. While a fee can be used to support an appropriate recycling infrastructure, this only works if it is assessed on a broad range of products and materials (using plastic, metal, glass, paper, cardboard, etc.) so as to promote equity, and if it drives recycling behaviors in consumers. As such, PCPC recommends that Washington carefully assess whether any new fee would accomplish the twin goals of improving the recycling infrastructure and educating consumers.

Thank you for the opportunity to submit these comments and we look forward to continued engagement with Ecology on this very important work.

Very truly yours,



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