

June 30, 2023

via electronic submission

Shannon Jones
Plastics Rule Lead
Washington State Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Subject: Proposed Rule: Postconsumer Recycled Content in Plastic Containers

Dear Ms. Jones:

The Household & Commercial Products Association (HCPA)¹ appreciates the opportunity to provide comments to the Washington State Department of Ecology on the proposed regulations for Chapter 173-925 of the Washington Administrative Code (WAC),² Postconsumer Recycled Content in Plastic Containers.

HCPA would like to express our appreciation to the Department of Ecology for conducting a comprehensive rule development process. While HCPA maintains certain concerns with sections of the proposed rule, we acknowledge that the stakeholder process was thorough, transparent, and indicative of the department's commitment to thoughtful public policy. HCPA is pleased to have participated in the PCR Advisory Committee alongside other diverse committee representatives.

Post-consumer recycled content (PCRC) Fees

As a general matter, HCPA remains concerned that the fee structure is punitive toward good actors seeking to comply, or more importantly, exceed the PCR standards established in law. Indeed, if a producer commits to 100% PCR in all product lines – likely adding costs to its production – they would still be subject to the same fees as any other company. This is in direct conflict with the intent of a law that seeks to increase post-consumer recycled content. HCPA believes this was a missed opportunity in Washington state and strongly encourages the

¹ The Household & Commercial Products Association (HCPA) is the premier trade association representing companies that manufacture and sell \$180 billion annually of trusted and familiar products used for cleaning, protecting, maintaining, and disinfecting homes and commercial environments. HCPA member companies employ 200,000 people in the U.S. whose work helps consumers and workers to create cleaner, healthier and more productive lives.

² Codified by SB 5022, 2021 (Chapter 70A.245 RCW)

department to revisit this approach after the program has been operational for a period of time.

Exemptions and Preemption

Reusable products are listed as exclusions under covered products and HCPA applauds the recognition of reusable packaging as an environmentally beneficial option. However, we respectfully request removing or clarifying the language "and intended to function in a system of reuse." We are concerned that this definition may hinder innovations in the household cleaning market aimed at reducing plastic usage through reusable products. For example, a growing trend involves the use of spray bottles with concentrated drop-in refill cartridges. Based on feedback during the June 15, 2023 public hearing, Ecology staff indicated the current language in the proposed regulations was intended to apply to "take back" programs. HCPA suggests removing the "system of reuse" language to ensure reusable products are not discouraged by the PCRC program.

As it relates to product exclusions, HCPA appreciates the recognition of plastic aerosols being excluded from the covered products, considering the current state of federal regulations governing these products. As you are aware, federal law strictly prohibits the use of reused materials in plastic aerosols. We also agree that all products, regardless of category, should be treated equally concerning liners, caps, and closures.

Finally, HCPA continues to maintain that federal law preempts the state from regulating packaging of products under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The reasoning behind this has been outlined in previous comments submitted to the Department, and we commend the Ecology staff for engaging in dialogue on this matter.

Household Cleaning Product Definition

Given SB 5022 never fully defined Household Cleaning Product, this definition has been the subject of many conversations through the PCR Advisory Committee. At this time, we believe the definition represents the letter of the law as adopted by the Legislature. Specifically, that the products are designed to *clean* and are associated with the *household*, and to that end we appreciate the Department's careful consideration of this key definition that directly impacts the scope of the rule. When defining and clarifying "Household" under Section 173-925-030, paragraph 10(b), we recommend removing the term – "solely" as this could capture products used predominantly or perhaps exclusively for use in settings outside of the home.

With that said, there will continue to be an issue of interpretation. Given the diversity of products in the household cleaning industry, there will inevitably be questions about what products are in scope and how they fit into this definition. To that end, it may be helpful for Department staff to publish guidance on product types that are known to be in scope and those that are known to be out of scope. For example, Ecology staff stated recently that pet shampoos are in scope in this proposal but it may not be obvious to the public that "pet cleaners" would include such products since the program is designed to capture household

cleaning products. As indicated in previous comments, we do not believe pet shampoos fit into the cleaning product category but regardless, clarity will be needed for producers.

Future Changes to the Law

The new PCRC program was the subject of follow-up legislation this past year and to the degree further amendments are of interest to Ecology, we welcome any opportunity to discuss the impact they may have on Household Cleaning Products. HCPA believes there are opportunities to streamline reporting and compliance in a way that reduces burdens on the department as well as the regulated community -- while still upholding the goals set out in SB 5022.

Once again, we extend our gratitude for the opportunity to provide comments on the Department's proposed PCRC rule. HCPA looks forward to maintaining a collaborative relationship with the department as it finalizes its process and proceeds with implementation.

Respectfully submitted,



Christopher Finarelli

Director, State Government Relations & Public Policy - Western Region