



**Jim Verburg**

Senior Director, NW and SW Climate and Fuels

March 3, 2023

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Mr. Mark Gordon  
Department of Ecology  
Toxics Cleanup Program  
P.O. Box 47600  
Olympia, WA 98504-7600

Re: *Draft PFAS guidance for investigating & remediating PFAS contamination in Washington State, December 2022*, WDOE Publication No. 22-09-058

Dear Mr. Gordon,

Western States Petroleum Association (WSPA) appreciates the opportunity to comment on the Washington State Department of Ecology Draft Guidance for Investigating and Remediating PFAS Contamination in Washington State. WSPA is a trade association that represents companies which provide diverse sources of transportation energy throughout the west, including Washington. This includes the refining, transporting, and marketing of petroleum, petroleum products, natural gas, and other energy supplies.

In December of 2022, Ecology published draft guidance for remediation and cleanup of per- and polyfluoroalkyl substances (PFAS) in Washington State. The Draft Guidance is a substantial document, presenting data compilations, science assessments, the state of governmental regulatory development, policy preferences, remediation approaches, and more, all relating to the family of PFAS chemicals entering the ambient environment. In addition to the complexity of this information, the developing, but unsettled, regulatory schemes addressing PFAS chemicals have created a special challenge to the review of this Guidance document. The document is dense and its relationship to coming EPA actions is unclear. That said, WSPA's comments and questions regarding the Guidance are below.

### **General Comments**

**Historical Considerations and Uses of PFAS.** Petroleum refineries have a history with the use of PFAS-containing aqueous film-forming foams for fire suppression. In an emergency and under certain conditions, these foams are most effective for the protection of the facility workforce, the public, and for physical asset protection. With some conditions, these foams are legal for use in Washington (RCW 70A.400). As Ecology considers regulatory responses to legacy contributions of PFAS chemicals to the environment, the most prudent approach is a careful balancing of benefits and effects. Establishing groundwater or soil cleanup standards which directionally discourage the use of the most effective fire suppression foams and techniques, has the potential for larger public health risks and should not become an unintended consequence of standards development. For example, science- and toxicology-based requirements which mitigate against direct exposure, e.g. drinking water MCLs, are certainly appropriate. However, extremely stringent soil or groundwater cleanup standards based on industrial site theoretical exposures, (e.g., potable water withdrawal or incidental soil ingestion or contact) could simply implicate legal practices and trigger costly investigations and remedial cleanups that provide limited benefit to public health. These measures could be significant which re-enforces the need for a detailed cost-benefit (and operability) analysis.

**Nexus and Potential Inconsistency with Current EPA Actions.** Ecology's PFAS Guidance seems out-of-sync with a similar effort underway by the Environmental Protection Agency. The EPA presented its "PFAS Strategic Roadmap: EPA's Commitment to Action 2021-2024," in October 2021, in which it commits to a comprehensive multi-media, multi-program national research and risk communication response to the PFAS challenge. Ecology's PFAS Guidance covers much of the same ground. By jumping ahead, Washington creates a risk there will be inconsistencies, confusion and then shifting requirements from the eventual federal programs. Rather than expending significant resources implementing independent standards, it seems a better approach would favor patience to await EPA actions based on the most complete scientific understanding on exposure, dose, and toxicology. The EPA programs then serve as the basis for state adoption of regulatory requirements that would include consideration of state law requirements, physical conditions and state development history, sensitive sub-populations, and more.

**Regulatory Considerations and Uncertainty Around the Use of Guidance Documents.** An early example of uncertainty associated with this PFAS Guidance comes with the presentation of "recommended" requirements or "guidance" on necessary actions, or even the regulatory classification of PFAS-containing wastes. For example, it is unclear how an owner/operator or agency staff should apply the "recommended/guidance" verbiage as investigatory data is assessed or possible remedial action considered. Without additional clarity, WSPA is concerned Ecology's Guidance constitutes a de facto rulemaking without adherence to the required Administrative Procedure Act requirements for a rulemaking. The Guidance would have material impacts on the regulated community, which could potentially conflict with EPA developments, if Ecology considers PFAS wastes to be WAC 173-303 Dangerous Waste (for the criteria of persistence). The ramifications of such a determination for the compliant use of PFAS-containing AFFF or the disposal of PFAS-containing consumer products, is unquestionably important.

WSPA fully supports the important efforts by the Safer Products for Washington team (RCW 70A-350) to identify and encourage substitution for PFAS-containing products, along with the earlier Persistent Bioaccumulative Toxins work (WAC 173-333). These regulatory efforts directly influence the routine exposure of humans to PFAS chemicals and thus offer the most tangible path to the avoidance of adverse health impacts.

WSPA appreciates the opportunity to provide comments on the PFAS Cleanup Guidance document. If you have any questions regarding this submittal, please contact me at (360) 296-0692 or via email at [jverburg@wspa.org](mailto:jverburg@wspa.org).

Sincerely,



James Verburg  
Senior Director, NW and SW Climate and Fuels

