

June 21, 2012

Dr. Alex Stone, Safer Chemical Alternatives Chemist
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Dear Dr. Stone:

The Association of Washington Business (AWB) appreciates the opportunity to provide comments on the Department of Ecology's (Ecology) work on its alternative assessment guidance. Product safety is a top priority for our member companies. We continue to support rational, scientific, and effective risk-based approaches to chemical management that foster the safe use of materials and chemicals in all products. While we appreciate Ecology's efforts to engage stakeholders in the development of this guidance, AWB has several concerns about the process as discussed below.

First, while this document is currently labeled as "guidance," we are concerned Ecology will use its guidance to circumvent a formal rule-making process and require manufacturers to conduct alternatives assessments. This concern comes from Ecology's continued support of attempts to expand the law to require manufacturers to conduct alternatives assessments. During the past legislative session, Ecology supported legislation to expand Washington's Children's Safe Products Act (CSPA). This legislation included, among other things, the requirement for manufacturers of children's products to conduct alternatives assessments for certain chemicals. In 2011, similar legislation requiring alternatives assessments was brought to the Legislature as Ecology's own request legislation.

Ecology's continued support of the CSPA legislation demonstrates Ecology's main objective is to expand the current law to compel industry to conduct alternatives assessments. If Ecology's intention is to require alternatives assessments, Ecology should not be developing guidance on this issue. Rather, Ecology should only go forward with a formal rule-making process under the Administrative Procedure Act (APA). A formal rule making would require Ecology to engage a wider group of stakeholders and would prevent Ecology from developing "guidance" that is later used as a de facto rule without having gone through the formal rule-making procedures required by the APA.

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Further, Ecology's invitation for stakeholders to comment on the individual modules within the alternatives assessment guidance is impractical given the multi-step alternatives analysis process. Product optimization and alternatives analysis are core elements to the development of safe products. These processes are routinely executed as a part of industry's ongoing research and development and product improvement. Asking stakeholders to comment on individual modules within the guidance document ignores the complexity and case-by-case nature of the product optimization process. Thus, stakeholders must be able to review the guidance as a comprehensive package.

Finally, we question why the alternatives assessment guidance is being developed under a grant to protect and restore the Puget Sound. According to Ecology, the U.S. Environmental Protection Agency (EPA) selected Ecology to be the "lead organization" to address toxics and nutrients prevention, reduction, and control as part of a larger effort to protect and restore Puget Sound. Specifically, Ecology responded to an EPA request for proposals related to ecosystem restoration, reduction, and control. As part of the grant process, Ecology received \$150,000 in funding to create its alternatives assessment guidance.

We believe that any effort to protect and restore the Puget Sound must be coordinated with the Puget Sound Partnership (Partnership). The Partnership, not Ecology, is charged with the responsibility to implement a program to restore the Puget Sound. To our knowledge, Ecology has not been actively engaged with the Partnership in developing its alternatives assessment guidance. This lack of coordination is likely to result in an effort that is duplicative, contradictory, and unnecessary.

AWB will continue to monitor Ecology's work on its alternatives assessment guidance and review the modules released by Ecology as they are posted to its website. However, we intend to reserve our comments until the alternatives assessment guidance is released in its entirety. We look forward to continuing to work with Ecology on this issue and thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Chandler". The signature is fluid and cursive, with the first name "Gary" and last name "Chandler" clearly distinguishable.

Gary Chandler
Vice President, Government Affairs