



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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September 8, 2011

Mr. Ken Johnson
Corporate Environmental Manager
CH 1J32
PO Box 9777
Federal Way, WA 98477-9777

Dear Mr. Johnson:

I received your letter dated August 23, 2011, identifying five questions you have and requesting further clarification of the scope and impact of the alternative assessment guidance document currently being proposed by The Department of Ecology (Ecology). I hope the information below answers the questions you have raised.

Question 1: What is the intended objective for the Guidance? Who is the target audience?

Response: The intention of the document is to provide guidance on how to conduct an alternatives assessment. The guidance document is intended to be flexible enough to be useful to a wide audience of potential users including small, medium and large businesses, local, state and federal agencies, environmental groups and other interested parties. Ecology has identified alternatives assessments as a key component of our efforts to prevent toxic threats. As we continue to identify chemicals of concern to human health and the environment, it is becoming increasingly important to make sure that we do not encourage the use of regrettable substitutes. This has happened repeatedly over the last decade or so and could be avoided if decision makers had consistent and dependable tools to assess alternatives.

Indeed, the Washington Legislature signaled its interest in alternatives assessments by requiring Ecology to conduct alternatives assessments on specific chemicals. For example, in 2007, the Legislature restricted the use of polybrominated diphenyl ether (PBDE) flame-retardants (Chapter 70.76 RCW) in certain products. Before the restriction could become effective, the legislature first required Ecology to determine that a safer alternative to one of the PBDE mixtures, decabromodiphenyl ether, was available. Ecology published its findings in a report on December 29, 2008¹. In 2010, the Legislature enacted a law related to use of copper in brake pads (Chapter 70.285 RCW) that also requires Ecology, by December 1, 2015, to conduct an alternatives assessment to make sure viable alternatives exist before restrictions can be placed on existing materials². In addition, a bill³ was proposed during the last Legislative session that would give Ecology the authority to require manufacturers of children's products to conduct alternatives assessments on

¹ Alternatives to Deca-BDE in Televisions and computers and Residential Upholstered Furniture, Publication No. 09-07-041, <http://www.ecy.wa.gov/pubs/0907041.pdf>,

² Chapter 70.285 RCW Brake friction material, <http://apps.leg.wa.gov/rcw/default.aspx?cite=70.285&full=true>.

³ Senate Bill SB 5231, Regarding the safety of certain children's products, <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=5231&year=2011>.



chemicals of high concern for children (identified in WAC 173-334) present in certain children's products. The proposed bill did not pass during the past Legislative session and may be considered during future Legislative sessions.

The increased emphasis placed upon alternatives assessments by the Legislature, as well as our own effort to provide technical assistance to Washington businesses, highlight the need for standardized guidance. This project will provide that standardized guidance and we are seeking stakeholder input during its development.

Question 2: US Environmental Protection Agency (EPA) Funding was presumably in response to a WDOE grant application. Could you provide a reference to the funding request?

Response: Ecology was selected by the EPA as a '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 Proposal (RFP) related to Ecosystem Restoration, Reduction, and Control (EPA-R10-PS-1007). More detail on the RFP can be found on the EPA website⁴. Ecology has received awards to address toxic and nutrients issues totaling \$8.6 million. As a part of the grant process, Ecology applied for \$150,000 in funding to create an alternatives assessment guidance document. The actual proposal for the alternatives assessment guidance is attached. This proposal was reviewed internally and discussed extensively with EPA before being approved. If you have more questions concerning the grant application process, please contact Andrew Kolosseus at andrew.kolosseus@ecy.wa.gov or (360) 407-7543. Andrew administers the contract for Ecology and can provide more detail about the EPA process used to approve the alternatives assessment grant proposal. If you have any further questions about the objectives of the alternative assessment guidance project, please contact me directly.

Question 3: Does Ecology intend the Guidance be referenced for use in implementing WAC 173-307 Pollution Prevention Plans, WAC 173-333 Persistent, Bioaccumulative Toxins, or other Ecology-administered regulation?

Response: As indicated in the response to Question 1, Ecology is developing this guidance for multiple purposes, including interest from the Washington Legislature. If the proposed amendment to the Children's Safe Product Act (RCW 70.240) passes, Ecology would have the authority to require a manufacturer to conduct an alternatives assessment through an administrative order. We expect that the guidance would be used to form the basis for such an order, but it is only guidance. Because this is a new and developing field, we do not anticipate adopting rules for alternatives assessments at this time. Ecology currently has no plans to adopt alternatives assessment requirements into either the PBT or Pollution Prevention Planning rules.

Ecology continues to emphasize that the best management practice for toxic chemicals of concern is not to conduct expensive cleanup programs under the Model Toxics Control Act (MTCA) or to continue to manage dangerous waste but to remove or reduce the use of such toxic chemicals of concern from manufacturing processes and products by replacing them with safer alternatives. I have discussed alternatives assessments extensively with Ecology's Pollution Prevention Staff who work with companies submitting Pollution Prevention Plans as required by WAC 173-307. Ecology Pollution Prevention staff are working with companies to find safer alternatives to toxic chemicals currently in use and will be able to take advantage of the alternatives assessment guidance document

⁴ Puget Sound Ecosystem Restoration and Protection Request for Proposals, http://yosemite.epa.gov/R10/ECOCOMM.NSF/puget+sound/psaaerp_rfp_2010.

to pursue these objectives on a voluntary basis. I have been working to create tools to help with this process and some of these may be included in the alternatives assessment guidance document.

Question 4: Will the Guidance impart any regulatory requirements?

Response: The alternatives assessment guidance document is solely guidance and will not impart any regulatory requirements.

Question 5: The August 22, 2011, Inside EPA news service reports that EPA is embarking on an effort to prioritize chemicals for assessment and possible regulatory action under the Toxics Substances Control Act (article enclosed). Further, in this reported \$16 million effort for fiscal 2012, EPA will consider several factors for prioritization including:

"Chemicals identified as potentially of concern for children's health (e.g., chemicals with reproductive or developmental effects). Chemicals identified as persistent, bioaccumulative, and toxic. Chemicals identified as probably or known carcinogens. Chemicals used in children's products. Chemicals used in consumer products. Chemicals detected in biomonitoring programs."

Will the guidance be duplicative of EPA's effort?

Response: No, Ecology's efforts will not be duplicative of the work being done by EPA. EPA is developing a process to identify chemicals of concern, something that Ecology has already completed relative to the requirements of the CSPA (Chapter 70.76 RCW). Ecology's list of chemicals of high concern for children is identified in WAC 173-334. The results of Ecology's work on the CSPA are included as one of the sources of information EPA will use in their prioritization effort as identified on EPA's webpage 'Discussion Guide: Background and Discussion Questions for Identifying Priority Chemicals for Review and Assessment.'⁵

In addition to chemicals of high concern for children, Ecology's various programs have identified chemicals of concern for air, water, sediment (including Puget Sound) and our PBT rule identifies 75 chemicals that exhibit characteristics of persistence, bioaccumulation and toxicity.

As Ecology identifies chemicals of concern for various purposes, the next step is to evaluate how we can reduce or eliminate uses and releases of these chemicals. Actions to eliminate chemicals of concern may need to be accompanied by an assessment of what the replacement would be.

Finally, Ecology is working closely with EPA to both coordinate our actions and contribute to their work. For example, I participated in a Workshop conducted on April 6-7, 2010 in Raleigh, North Carolina on prioritization of toxic chemicals and made a presentation during the workshop on Washington's efforts to identify chemicals of high concern to children (CHCC) as required by the Children's Safe Product Act (CSPA). Our guidance document is meant to help both Ecology and the business community take the step toward understanding when and how chemicals of concern should be replaced with safer alternatives.

EPA has done a number of alternatives assessments through its Design for the Environment (DfE) program⁶. Ecology representatives are actively working with DfE on several of their alternatives

⁵ EPA website, <http://www.epa.gov/opptintr/existingchemicals/pubs/chempridiscguide.html>, Table 1, Children's Product Use, Washington State Children's Safe Product Act, WA: Listed in the Children's Safe Products – Reporting Rule, accessed 8/29/2011.

⁶ EPA Design for the Environment, Alternative Assessments, http://www.epa.gov/dfe/alternative_assessments.html.

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assessment projects, specifically the phthalates, decabromodiphenyl ether and hexabromocyclododecane alternative assessments are currently underway. DfE representatives will be providing technical support during the development of the alternatives assessment guidance document and it is Ecology's hope the alternatives assessment guidance document will continue to coordinate with EPA's programs in the area of alternatives assessments. The DfE approach is very thorough but is impossible for many small and medium sized businesses. One purpose of our guidance is to make it more scalable in order for businesses of any size and resource level can apply the tools and benefit from what DfE and others have learned.

I believe the information above answers your questions. For further clarification or you have additional questions, please contact me at (360) 407-6758 or alex.stone@ecy.wa.gov. I am happy to discuss these issues with you further. Should Weyerhaeuser be interested in participating in the stakeholder process for the guidance document, please let me know the name and contact information of the person or persons from your organization who will participate in our discussions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Alex Stone", written in a cursive style.

Alex Stone, Sc. D.

Safer Chemical Alternative Chemist

Washington State Department of Ecology