

SENATE BILL REPORT

SB 5369

As Amended by House, April 14, 2023

Title: An act relating to reassessing standards for polychlorinated biphenyls in consumer products.

Brief Description: Reassessing standards for polychlorinated biphenyls in consumer products.

Sponsors: Senators Billig, Padden, Short, Shewmake, Schoesler, Lovelett, Conway, Boehnke, Salomon, Nguyen, Van De Wege, Wagoner, Dhingra, Dozier, Hasegawa, Hunt, Keiser, Randall, Torres and Valdez.

Brief History:

Committee Activity: Environment, Energy & Technology: 1/25/23, 2/07/23 [DP-WM].
Ways & Means: 2/18/23, 2/24/23 [DP].

Floor Activity: Passed Senate: 3/2/23, 49-0.
Passed House: 4/7/23, 97-0; 4/14/23, 96-0.

Brief Summary of Bill

- Directs the Department of Ecology (Ecology) to petition the United States Environmental Protection Agency to reassess its regulations on allowable inadvertent polychlorinated biphenyls (PCBs) in product manufacturing processes for the purpose of eliminating or reducing the presence of PCBs in consumer products.
- Requires Ecology to establish a restriction or prohibition on PCB-containing paints and printing inks by June 1, 2025.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Nguyen, Chair; Lovelett, Vice Chair; MacEwen, Ranking Member; Boehnke, Lovick, Short, Trudeau and Wellman.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Gregory Vogel (786-7413)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Boehnke, Braun, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Nguyen, Pedersen, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

Staff: Jed Herman (786-7346)

Background: Polychlorinated Biphenyls. Polychlorinated biphenyls (PCBs) are a class of chemical compounds that were produced for commercial uses, such as heat transfer fluids in electrical transformers and capacitors, and as plasticizers, wax and pesticide extenders, and lubricants. According to the United States Environmental Protection Agency (EPA), PCBs are probable human carcinogens and may have serious and potential effects on the immune system, reproductive system, nervous system and endocrine system.

In 1979, the United States banned the production of PCBs under the Toxic Substance Control Act (TSCA) for most uses and restricted PCB concentrations to low levels. EPA's regulations implementing TSCA for PCBs allow some inadvertent generation of PCBs to occur in excluded manufacturing processes.

Safer Products for Washington. In 2019, the Legislature established an administrative process for the regulation by the Department of Ecology (Ecology) of priority chemicals in priority consumer products. Under this process, certain chemicals were defined as priority chemicals, including perfluoroalkyl and polyfluoroalkyl substances (PFAS), PCBs, phthalates, organohalogen flame retardants and other flame retardants identified under the Children's Safe Products Act, and phenolic compounds. Ecology is also authorized to designate additional chemicals as priority chemicals every five years if they meet qualifying criteria, consistent with a schedule established in the 2019 law.

Every five years, according to a specified schedule, Ecology must also:

- identify priority consumer products that include priority chemicals, taking into consideration specified criteria; and
- determine regulatory actions for the priority chemicals in priority consumer products.

Regulatory actions may include a determination that no action is needed, may require manufacturers to provide notice of the use of a chemical, or may restrict or prohibit the manufacture, distribution, sale, or use of a priority chemical in a consumer product.

Ecology is required to make regulatory determinations for the initial round of statutorily designated priority chemicals and their associated priority consumer products by June 1, 2022, and must adopt rules to implement those regulatory determinations by June 1, 2023.

In its 2022 report, Ecology determined reporting requirements or restrictions for the use of the following priority chemicals in priority consumer products:

- PFAS in aftermarket stain- and water-resistance treatments, carpets and rugs, and leather and textile furnishings;
- ortho-phthalates in personal care products—fragrances—and vinyl flooring;
- flame retardants in electric and electronic products and recreational polyurethane foam; and
- phenolic compounds in laundry detergent, food and drink can linings, and thermal paper.

Summary of Bill: Ecology must petition EPA to reassess its regulations on allowable inadvertent PCBs in product manufacturing processes for the purpose of eliminating or reducing the presence of PCBs in consumer products.

In petitioning EPA, Ecology must include legislative findings and information on:

- health effects of PCBs;
- release and exposure of PCBs, including but not limited to concentrations of PCBs measured in consumer products and in state waters, soils, and fish tissue; and
- safer alternatives for consumer products that contain PCBs, including the availability and feasibility of alternatives.

To the extent practicable, Ecology must seek completion of the petition review by January 1, 2025.

Paints and printing inks are confirmed as priority consumer products for PCB chemicals under Safer Products for Washington.

Paints and printing inks may include, but are not limited to, building paint for indoor or outdoor use, spray paint, children's paint, road paint, and printing inks used in paper and packaging.

Ecology must:

- establish a restriction or prohibition on PCB-containing paints and printing inks by June 1, 2025; and
- adopt rules to implement the restriction or prohibition by December 1, 2026.

Ecology may not administer or enforce any restriction or prohibition on PCB-containing paints and printing inks if:

- a court of competent jurisdiction determines that federal regulations preempt the restriction or prohibition; or

- the restriction or prohibition does not align with any new regulation established by EPA.

If any restriction or prohibition on PCB-containing paints and printing inks is determined to be preempted, Ecology must:

- establish a reporting requirement for priority chemicals or processes that generate priority chemicals within 180 days from the determination of preemption; and
- adopt rules to implement the reporting requirement within 18 months from the date the reporting requirement is established.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony (Environment, Energy & Technology): PRO: This bill takes a small but meaningful step forward in keeping Spokane river and waterways across the state clean. Spokane River is the lifeblood of Spokane, and vital for all life there. One of the most persistent concerns are the cancer-causing PCBs. It's difficult work to get PCBs out of the river. The PCBs come from road paint and inks in newspaper and magazines that are recycled at the paper plant.

Although we have the most modern water technology treatment, we can't meet our permit requirements if we have PCBs in our effluent. This bill provides a possible solution by asking the federal government to fix this discrepancy. We know there are alternatives to PCB-containing paints and inks.

We are spending hundred of millions of dollars cleaning up PCBs in the Duwamish river and other superfund sites, and have this issue of PCBs making it into our waterways and wildlife. Detectable levels of PCBs were found in a certain cereal brand, yellow foam, and sidewalk chalk. We have to do source control. It's a lot cheaper to get it out of products before it gets out into the environment.

CON: This bill seems to require Ecology to undertake a process that it determined is preempted, which would result in unnecessary litigation costs. We should put forth a study to research products leading to contamination. Without further analysis of products, this bill will not reduce PCB contamination within the state.

OTHER: Ecology supports efforts to eliminate PCBs in the environment. Although use of PCBs in products was banned in the 70's, it can still be present as a byproduct of manufacturing processes, especially manufacture of yellow and green pigments. While the

petition process is unlikely to provide a quick answer, it may provide an opportunity for Washington to coordinate with other states to ask EPA for a more protective standard.

We would like to see alignment with TSCA and EPA water standards at the federal level. We have light concerns about this product bumped up in the safer products process. There is an existing process that takes five years to move through. If regulation is revisited, we should go through that process again.

Persons Testifying (Environment, Energy & Technology): PRO: Senator Andy Billig, Prime Sponsor; Melissa Gombosky, Inland Empire Paper Company; Doug Krapas, Inland Empire Paper Company; Heather Trim, Zero Waste Washington; Council President Breean Beggs, City of Spokane; Rob Lindsay, Spokane County Environmental Services; Arthur West; Jerry White Jr., Spokane Riverkeeper.

CON: Zaman Riaz, American Coatings Association.

OTHER: Katrina Lassiter, Department of Ecology; Peter Godlewski, Association of Washington Business; Holly Davies, AVAILABLE FOR QUESTIONS Washington State Department of Health; Tim Shestek, American Chemistry Council.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology): No one.

Staff Summary of Public Testimony (Ways & Means): PRO: This bill takes meaningful step forward in keeping Spokane river and waterways across the state clean. One of the most persistent concerns are the cancer-causing PCBs. It's difficult work to get PCBs out of the river. The PCBs come from road paint and inks in newspaper and magazines that are recycled at the paper plant.

We have found PCBs in waterways due to the allowed federal law exceptions. That is why we need the petition. We also know that paint and printer ink can be made without the use of PCBs.

Persons Testifying (Ways & Means): PRO: Senator Andy Billig, Prime Sponsor; Melissa Gombosky, Inland Empire Paper Company.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.

EFFECT OF HOUSE AMENDMENT(S):

- Eliminates the requirement that Ecology adopt a rule under the safer products for Washington law establishing a restriction or prohibition for PCBs in paints and printing inks.
- Establishes a prohibition on the manufacture, sale, and distribution of paints, inks, and certain products that contain chlorine-based pigments.

- Authorizes Ecology to adopt rules to identify pigment-containing products that contain PCBs that were inadvertently generated in the making of the pigment, that would be subject to the restrictions.
- Exempts paint manufactured from paint collected under the state's paint stewardship law, previously owned products, and products sold in casual and isolated sales from the prohibition on chlorine-based pigments.
- Authorizes Ecology to exempt a product or category of product from chlorine-based pigment prohibitions if a product is not capable of being manufactured without chlorine-based pigments and the continued manufacture of the product will not result in meaningful impacts to the environment, human health, or the ability of entities whose water discharges are regulated under state water quality laws to comply with water quality standards.
- Authorizes Ecology to annually temporarily exclude a product or category of product from chlorine-based pigment prohibitions if a person demonstrates it is not technically feasible for a person to comply with chlorine-based pigment restrictions.
- Directs Ecology to adopt a rule requiring reporting of information related to chlorine-based pigments, within 18 months of a determination by a court that the prohibition on chlorine-containing pigments is preempted.
- Authorizes Ecology to adopt rules to implement, administer, and enforce chlorine-based pigment requirements, and establishes penalties for violations that are appealable to the Pollution Control Hearings Board.
- Amends reference to paints and printing inks to products that Ecology may identify through rule making under retailer obligation provisions.