



# Hazardous Waste Management Program

GOVERNMENTS WORKING TOGETHER FOR  
A HEALTHIER AND CLEANER KING COUNTY

## 2023 LEGISLATIVE and REGULATORY AGENDA

September 2022

### The Need for Systems Change

The Hazardous Waste Management Program works to improve policies and regulations that impact the production, use, storage, and end-of-life management of hazardous products. We work with partners at the local, state, and federal levels of government, and with local, regional, and national groups to achieve change. Our understanding of racial equity, community organizing, behavior change best practices, and community and technical research all show we need to focus our efforts on systems changes that promote safer alternatives and remove exposure to hazardous products.<sup>1</sup>

By understanding the underlying causes of human and environmental exposures, we can identify key priorities and design approaches that create lasting change. We need systems changes to shift the burden of preventing exposure away from individuals back to the systems and producers that create hazardous products.

Our advocacy toward that objective is characterized by these strategies:

- [1. Protect the Right to Safety in People's Own Homes](#)
- [2. Promote the Precautionary Principle in Environmental and Public Health Law and Policy](#)
- [3. Protect the Right to a Healthy and Healthful Environment for All – Indoors and Outdoors](#)
- [4. Shift the Cost Burden of Hazardous Waste Management Back to Producers of Hazardous Products](#)
- [5. Break Down Barriers to Progress](#)

### 1. Protect the Right to Safety in People's Own Homes

#### Background

All residents have a right to be free from exposure to harmful chemicals and have a right to feel and be safe in their own homes. The ability to exercise these rights is increasingly complex and difficult, for several reasons:

- Many common household products contain harmful chemicals that are not labeled or otherwise disclosed. These include personal care and beauty products, cleaning products, food packaging, menstrual products, carpets and rugs, paints, furniture and home furnishings, stain and water-resistant sprays, home electronics, outdoor clothing, vinyl products, cookware, and children's products.
- When products are labeled, they are often unintelligible to the average person. People shouldn't need a chemist or toxicologist by their side to interpret household product labels. Instead, hazardous materials in

<sup>1</sup> Hazardous Waste Management Program, "Hazardous Waste Management Plan: 2021 Plan," published November 2021, accessed August 9, 2022, <https://www.kingcountyhazwastewa.gov/-/media/hazwaste/lhwmp-documents/program-plans/org-2022-haz-waste-program-work-plan.pdf>.

products need to be identified as hazardous so people can make informed choices. Right now, people can't protect themselves. This is especially problematic for those with limited English language proficiency.<sup>2</sup>

- Product producers often prioritize product performance over product safety. Human beings have lived happy lives for millennia without titanium dioxide in their food,<sup>3</sup> PFAS in their textiles,<sup>4,5,6</sup> xylene in their diapers and menstrual pads,<sup>7</sup> and endocrine disrupters in their flooring,<sup>8</sup> to name just a few. Innovation is useful and admirable, but not at the cost of human and environmental health.

Washington residents want safe products. A 2018 Washington State Department of Ecology (Ecology) community stakeholder group was alarmed to learn that just because a product is available to buy, that does not mean it is safe.<sup>9</sup> In a 2022 Ecology poll, 95 percent of respondents expressed concern about toxic chemicals in consumer products.<sup>10</sup>

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<sup>2</sup> Based on 2010 American Community Survey (ACS) data from the US Census Bureau, Limited English Proficient (LEP) individuals represent 9 percent of the U.S. population. The 2010 LEP population in Washington State was 512,000 and, in the Seattle-Tacoma-Bellevue Metro Area, 292,000. See Chhandasi Pandya et al., Migration Policy Institute, National Center on Immigrant Integration Policy, "Limited English Proficient Individuals in the United States: Number, Share, Growth, and Linguistic Diversity," published December 2011, accessed September 7, 2022, <https://www.migrationpolicy.org/research/limited-english-proficient-individuals-united-states-number-share-growth-and-linguistic>.

<sup>3</sup> Elaine Watson, "Food colors: How will EFSA's decision on titanium dioxide safety impact the US market?" Food navigator-usa.com, published May 19, 2021, accessed August 8, 2022, [https://www.foodnavigator-usa.com/Article/2021/05/13/Food-colors-How-will-EFSA-s-decision-on-titanium-dioxide-safety-impact-the-US-market#:~:text=According%20to%20Thea%20Bourianne%2C%20manager,8%25\)%2C%20coated%20pretzels%20and](https://www.foodnavigator-usa.com/Article/2021/05/13/Food-colors-How-will-EFSA-s-decision-on-titanium-dioxide-safety-impact-the-US-market#:~:text=According%20to%20Thea%20Bourianne%2C%20manager,8%25)%2C%20coated%20pretzels%20and).

<sup>4</sup> Claire Bugos, Verywell Health, "Study Finds Toxic 'Forever Chemicals' in Most Stain- and Water-Resistant Textiles," published February 3, 2022, accessed August 9, 2022, <https://www.verywellhealth.com/pfas-water-stain-resistant-products-5217827#:~:text=PFAS%2DTreated%20Textiles%20Cause%20a,into%20drinking%20water%20as%20well>.

<sup>5</sup> Harvard T.H. Chan School of Public Health, "Healthier furnishings could reduce toxic dust indoors," published 2020, accessed August 9, 2022, <https://www.hsph.harvard.edu/news/hsph-in-the-news/healthier-furnishings-could-reduce-toxic-dust-indoors/>. See also, Hannah Seo, Environmental Health News, "Dust from your old furniture likely contains harmful chemicals—but there's a solution," published October 20, 2020, accessed August 9, 2022, <https://www.ehn.org/pfas-and-flame-retardants-in-house-dust-2648396264.html>.

<sup>6</sup> Green Science Policy Institute, "Study: PFAS in Carpets a Major Exposure Source for Children," published April 29, 2020, accessed August 9, 2022, <https://greensciencepolicy.org/news-events/press-releases/study-pfas-in-carpets-a-major-exposure-source-for-children>.

<sup>7</sup> Carla Burns, Environmental Working Group, "Study: Elevated Levels of Toxic Chemicals Found in Menstrual Pads and Disposable Diapers," published March 15, 2019, accessed August 9, 2022, <https://www.ewg.org/news-insights/news/study-elevated-levels-toxic-chemicals-found-menstrual-pads-and-disposable>.

<sup>8</sup> Gillian Miller et al., Safer Chemicals – Healthy Families, "Success! – Home improvement retailers follow through on commitments to remove phthalates from flooring," published June 27, 2019, accessed August 9, 2022, <https://saferchemicals.org/2019/06/27/success-home-improvement-retailers-follow-through-on-commitments-to-remove-phthalates-from-flooring/#:~:text=Driving%20phthalates%20out%20of%20flooring,of%20virgin%20vinyl%2C%20contained%20phthalates>.

<sup>9</sup> March 11, 2020 letter from the Hazardous Waste Management Program to the Washington State Department of Ecology, with attached notes documenting a February 27, 2020 community event (which was hosted by Ecology, Washington State Dept. of Health, the Haz Waste Program, and Public Health – Seattle & King County) focused on the new Safer Products for Washington law.

<sup>10</sup> Washington State Department of Ecology, "2022 Public and Community Survey Results: Safer Products for Washington Program," published April 2022, accessed August 9, 2022, <https://apps.ecology.wa.gov/publications/summarypages/2204023.html>.

The ability to identify and avoid the threat of chemical exposures in one's home is equivalent to the ability to protect oneself from bodily harm by a dangerous intruder. The ability to protect one's self and family in their own home is established in centuries of legal doctrine<sup>11</sup> and in Washington State law.<sup>12</sup> Product producers surreptitiously enter homes and threaten bodily harm every day via hazardous materials in their products. People need the ability to protect themselves.

A cynic might say, "if you don't want hazardous chemicals in your home then don't buy those products." However, since hazardous substances are rarely disclosed as product ingredients or as hazardous, people can't distinguish hazardous products from those that are not. Instead, we need to ensure that consumer products are as safe as possible and enable people to recognize hidden hazards trying to enter their homes so they can protect themselves and their families.

### **What we generally support**

- **Product labeling.** People have a right to make informed choices so they can identify threats. To do that they need clear, understandable information. We support product labelling by producers that discloses hazardous chemicals present in all products and clearly identifies them as hazardous.<sup>13</sup>
- **Programs such as the EPA's Safer Choice Program<sup>14</sup> and the Cradle to Cradle Certified® Products Program<sup>15</sup>.** These are voluntary product certification and labeling programs that indicate a product has undergone rigorous scientific testing and exhaustive auditing to prove compliance with stringent, third-party environmental standards. Certified products often include a logo so consumers can easily identify products that meet program standards.
- **Elimination of harmful chemicals from everyday household products.** This includes lead, mercury, polybrominated flame retardants, PCBs, PFAS chemicals, PBTs, chlorinated solvents, and phthalates.
- **Green chemistry innovations,** including research into green chemistry at our public universities, to foster development of chemical products and processes that reduce or eliminate generation of hazardous materials.<sup>16</sup>
- **The ability of states and local government to go beyond federal requirements in regulating harmful chemicals in products.** The EPA is working to evaluate chemicals and establish protective regulations under the 2016 amendments to the Toxic Substances Control Act (TSCA). These new federal regulations will apply

<sup>11</sup> See Wikipedia, "Castle Doctrine," accessed August 9, 2022, [https://en.wikipedia.org/wiki/Castle\\_doctrine](https://en.wikipedia.org/wiki/Castle_doctrine).

<sup>12</sup> "No person in the state shall be placed in legal jeopardy of any kind whatsoever for protecting by any reasonable means necessary, himself or herself, his or her family, or his or her real or personal property, or for coming to the aid of another who is in imminent danger of or the victim of assault, robbery, kidnapping, arson, burglary, rape, murder, or any other violent crime as defined in RCW 9.94A.030." WA RCW 9A.16.110, <https://apps.leg.wa.gov/rcw/default.aspx?cite=9A.16.110>.

<sup>13</sup> Terri Goldberg et al., Clean Production Action, the Northeast Waste Management Officials' Association and the Interstate Chemicals Clearinghouse, "Chemical Ingredient Transparency in Products: Review of Existing Public Policies & An Industry Standard," published April 29, 2020, accessed September 6, 2022, [https://www.theic2.org/article/download-pdf/file\\_name/IC2-CPA\\_ChemicalDisclosure\\_ReviewPaper\\_FINAL.pdf](https://www.theic2.org/article/download-pdf/file_name/IC2-CPA_ChemicalDisclosure_ReviewPaper_FINAL.pdf).

<sup>14</sup> Erich Ebel, Washington State Department of Ecology, "Safer Choice: Because you shouldn't need a PhD to know what's safe," published June 11, 2020, accessed September 7, 2022, <https://ecology.wa.gov/Blog/Posts/June-2020/Safer-Choice-Because-you-shouldn-t-need-a-PhD-to-k>.

<sup>15</sup> Cradle to Cradle Products Innovation Institute Inc., "What is Cradle to Cradle Certified®?" accessed September 7, 2022, <https://www.c2ccertified.org/get-certified/product-certification>.

<sup>16</sup> Saskia van Bergen, Washington State Department of Ecology, "Green Chemistry," accessed August 9, 2022, <https://ecology.wa.gov/Waste-Toxics/Reducing-toxic-chemicals/Green-chemistry#:~:text=Green%20chemistry%20is%20a%20science,product%2C%20from%20creation%20to%20disposal>.

across the United States. However, under TSCA preemption provisions, states and local governments are prohibited from enacting stricter regulations. While TSCA has a waiver process available to states, it remains untested.

- **Consideration of chemical and hazardous substances in recycling legislation to avoid undesirable outcomes**, such as recycling hazardous materials back into the environment, dispersing hazardous materials into otherwise safe feedstock, dispersing hazardous materials into food and medical-grade plastics, and perpetuating hazardous materials in products.

### Specific actions we support

- **Elimination of hazardous materials in cosmetics and personal care products.** This includes lead, phthalates, mercury, microplastics, and nanomaterials. (See Washington State Legislature (2021-22) HB 1853, SB 5703).<sup>17</sup>
- **The Department of Ecology’s chemical regulation work under the Safer Products for Washington Act.** Under RCW 70A.350, the Washington State Department of Ecology, in consultation with the Washington State Department of Health, must determine regulatory actions to increase transparency and to reduce the use of priority chemicals in priority consumer products. We support Ecology’s efforts to identify hazardous chemicals and products and the promotion of safer alternatives under the Safer Products for Washington law.

We specifically support Ecology’s recently issued regulatory determinations on five priority chemical classes in June 2022.<sup>18</sup> The selected priority chemical classes have entered into virtually every facet of our lives - in our food, our water, our homes, our bodies, and our built and natural environments - with disturbing effects on human and ecosystem health. From a management perspective, they represent some of the most vexing and troublesome toxics to manage due to their persistence and ubiquity.

- **The Environmental Protection Agency’s chemical regulation work under the Toxic Substances Control Act.** The Toxic Substances Control Act of 1976 provides the EPA with authority to require reporting, record-keeping and testing requirements, and restrictions relating to chemical substances and/or mixtures.<sup>19</sup> Certain substances are generally excluded from TSCA, including, among others, food, drugs, cosmetics and pesticides. We support EPA’s implementation of TSCA, including its risk evaluation and risk management process which will protect workers, families, communities - including potentially exposed or susceptible subpopulations - and our environment.<sup>20</sup>

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<sup>17</sup> HB 1853, Washington State Legislature (2021-22),

<https://app.leg.wa.gov/billsummary?BillNumber=1853&Year=2021&Initiative=false>. See also SB 5703, Washington State Legislature (2021-22), <https://app.leg.wa.gov/billsummary?BillNumber=5703&Initiative=false&Year=2021>.

<sup>18</sup> Washington State Department of Ecology, “Regulatory Determinations Report to the Legislature: Safer Products for Washington Cycle 1 Implementation Phase 3,” published June 2022, accessed August 9, 2022,

<https://apps.ecology.wa.gov/publications/summarypages/2204018.html>.

<sup>19</sup> 15 U.S.C. §2601 et seq. (1976)

<sup>20</sup> Through our work with the Local and State TSCA workgroup, in March 2022, Haz Waste joined with eight other state and local governments and organizations and submitted to the EPA a “*State and Local Government Statement on EPA Risk Evaluation and Management under the Toxic Substances Control Act.*” This statement supports EPA’s regulatory work, makes numerous technical recommendations regarding the risk evaluation process, and requests that the EPA meet regularly with state and local governments. As a result, we now meet regularly with EPA leadership and staff and provide

## 2. Promote the Precautionary Principle in Environmental and Public Health Law and Policy

### Background

DDT was first sold in 1945, banned in the U.S. due to its toxicity in 1972, and it is still found in the environment.<sup>21</sup> Manufacture of PCBs began in the 1870s. They were found to be toxic in the 1930s, banned in the U.S. in 1978, and are still found in the environment.<sup>22</sup> Manufacture of PFAS chemicals began in the 1940s and were found toxic in the mid 1950's. Despite a legacy of PFAS-related lawsuits, contaminated water supplies, cancer, birth defects, kidney and thyroid disease, endocrine disruption, and high cholesterol, PFAS chemicals are still used in a wide variety of consumer products and are found in the blood of more than 99% of Americans.<sup>23</sup>

These are just three examples of many persistent, bioaccumulative, and toxic chemicals (PBTs)<sup>24</sup> that have been developed and mass produced, only to leave a decades-long legacy of damage to human and environmental health with no prospect of rendering these chemicals harmless. Even after these chemicals are identified as hazardous, producers have little incentive to discontinue their use until they are banned by the government. In these examples, that process took over 40 years during which the American public served, and continues to serve, as involuntary human test subjects. Too many lives are destroyed or sacrificed in the process. The public continues to bear the cleanup costs of these substances.

A precautionary approach reverses that pattern; it shifts the burden of proof for the safety of chemicals from the public to proponents of a new technology or substance. The Precautionary Principle is defined as: "When an activity raises threats of harm to the environment or human health, precautionary measures should be taken even if some cause-and-effect relationships are not fully established scientifically. In this context the proponent of an activity, rather than the public, should bear the burden of proof."<sup>25</sup>

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formal comments to its regulatory dockets in order to ensure implementation of TSCA is protective of public health and the environment.

<sup>21</sup> See Wikipedia, "DDT", accessed August 9, 2022, <https://en.wikipedia.org/wiki/DDT> and U.S. Environmental Protection Agency, "DDT - A Brief History and Status", published April 21, 2022, accessed August 9, 2022, [https://www.epa.gov/ingredients-used-pesticide-products/ddt-brief-history-and-status#:~:text=DDT%20\(dichloro%2Ddiphenyl%2Dtrichloroethane,both%20military%20and%20civilian%20populations](https://www.epa.gov/ingredients-used-pesticide-products/ddt-brief-history-and-status#:~:text=DDT%20(dichloro%2Ddiphenyl%2Dtrichloroethane,both%20military%20and%20civilian%20populations)

<sup>22</sup> See Wikipedia, "Polychlorinated biphenyl", accessed August 9, 2022, [https://en.wikipedia.org/wiki/Polychlorinated\\_biphenyl](https://en.wikipedia.org/wiki/Polychlorinated_biphenyl) and U.S. Environmental Protection Agency, Polychlorinated Biphenyls (PCBs), "Learn about Polychlorinated Biphenyls (PCBs)", published June 5, 2022, accessed August 9, 2022, <https://www.epa.gov/pcbs/learn-about-polychlorinated-biphenyls-pcbs>

<sup>23</sup> See Wikipedia, "Per- and polyfluoroalkyl substances", accessed August 9, 2022, [https://en.wikipedia.org/wiki/Per-and\\_polyfluoroalkyl\\_substances](https://en.wikipedia.org/wiki/Per-and_polyfluoroalkyl_substances) and U.S. Environmental Protection Agency, PFOA, PFOS and Other PFAS, "Our Current Understanding of the Human Health and Environmental Risks of PFAS", published March 16, 2022, accessed August 9, 2022, <https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas>.

<sup>24</sup> See Safer Chemicals, Healthy Families, "Get the Facts: Persistent, Bioaccumulative and Toxic Chemicals (PBTs)", accessed August 9, 2022, <https://saferchemicals.org/get-the-facts/toxic-chemicals/persistent-bioaccumulative-and-toxic-chemicals-pbts/>. Also see Wikipedia, "Persistent, bioaccumulative and toxic substances", accessed August 9, 2022, [https://en.wikipedia.org/wiki/Persistent,\\_bioaccumulative\\_and\\_toxic\\_substances#cite\\_note-Calambokidis-28](https://en.wikipedia.org/wiki/Persistent,_bioaccumulative_and_toxic_substances#cite_note-Calambokidis-28) for a description of PBTs in general and for DDT and PCB presence in Puget Sound marine mammals.

<sup>25</sup> This definition of the precautionary principle was developed in a 1998 meeting of scientists, lawyers, policy makers, and environmentalists at Wingspread, headquarters of the Johnson Foundation. See CHE: Collaborative on Health and the

When it comes to the lives and health of Washington residents, and the environment that sustains them, we support such a precautionary approach.

### **What we generally support**

- **When there is credible evidence that a chemical or product may harm humans or the environment, protective measures should be taken** - even if some cause-and-effect relationships or hazard levels are not fully established.
- **A moratorium on mass production and further use of persistent, bioaccumulative and toxic chemicals (PBTs)**, until producers can prove each chemical does not present unreasonable risk to people and the environment,<sup>26</sup> and until they can be produced so they can safely and naturally biodegrade without harm to people and the environment.
- **A moratorium on the intentional use of micro-plastics and nano-plastics<sup>27</sup> in consumer products** such as cosmetics, personal care products, detergents, and cleaning products, until producers can prove each chemical does not present unreasonable risk to people and the environment,<sup>26</sup> and until they can be produced so they can safely and naturally biodegrade without harm to people and the environment.<sup>28</sup> Research into the health and environmental effects of micro and nano-plastics is an evolving field with limited conclusions. However, given emerging evidence of their impacts on the environment and human health, we recommend a precautionary approach to their production and management. Haz Waste is not alone in this approach; the Canadian Environmental Protection Act now classifies plastics as a toxic substance.<sup>29,30</sup>

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Environment, “Lessons Learned: Looking Back to Go Forward”, accessed August 9, 2022, <https://www.healthandenvironment.org/environmental-health/social-context/history/precautionary-principle-the-wingspread-statement> and Global Development Research Center, “Wingspread Statement on the Precautionary Principle”, accessed August 9, 2022, <https://www.gdrc.org/u-gov/precaution-3.html>.

<sup>26</sup> Proving something is absolutely safe or harmless is an impossibility. However, as a practical matter in daily life people simply need to know what is safe and what presents risk. For more on the 'unreasonable risk' standard, see U.S. Environmental Protection Agency, “Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act,” published July 20, 2017, accessed September 8, 2022, <https://www.federalregister.gov/documents/2017/07/20/2017-14337/procedures-for-chemical-risk-evaluation-under-the-amended-toxic-substances-control-act>.

<sup>27</sup> See Wikipedia, “Microplastics”, accessed August 9, 2022, <https://en.wikipedia.org/wiki/Microplastics#:~:text=Microplastics%20are%20fragments%20of%20any,and%20the%20European%20Chemicals%20Agency> and XiaoZhi Lim, “Microplastics are everywhere — but are they harmful?”, Nature, published May 4, 2021, accessed August 9, 2022, <https://www.nature.com/articles/d41586-021-01143-3>.

<sup>28</sup> Federal law passed in 2015 banned microplastics in “rinse-off” products like soaps and toothpaste but microplastics are still used in other products including deodorants, lotions, cosmetics, cleaning products, and industrial uses. See U.S. Food & Drug Administration, “The Microbead -Free Waters Act: FAQs”, published February 25, 2022, accessed August 9, 2022, [https://www.fda.gov/cosmetics/cosmetics-laws-regulations/microbead-free-waters-act-faqs#:~:text=The%20Microbead%2DFree%20Waters%20Act%20of%202015%20prohibits%20the%20manufacturing,\)%20drugs%2C%20such%20as%20toothpastes](https://www.fda.gov/cosmetics/cosmetics-laws-regulations/microbead-free-waters-act-faqs#:~:text=The%20Microbead%2DFree%20Waters%20Act%20of%202015%20prohibits%20the%20manufacturing,)%20drugs%2C%20such%20as%20toothpastes) and H.R. 1321, 114<sup>th</sup> Cong. (2015-17), <https://www.congress.gov/114/plaws/publ114/PLAW-114publ114.htm>.

<sup>29</sup> Marc Fawcett-Atkinson, Canada’s National Observer, “Canada officially tosses plastic in the 'toxic' bin,” published May 13, 2021, accessed September 6, 2022, <https://www.nationalobserver.com/2021/05/13/news/canada-officially-tosses-plastic-toxic-bin>.

<sup>30</sup> Talia Gordner et al., McMillan, “Plan for the Ban: Plastics Classified as “Toxic Substance” Under Canadian Environmental Protection Act,” Published July 19, 2021, accessed September 6, 2022, <https://mcmillan.ca/insights/plan-for-the-banplastics-classified-as-toxic-substanceunder-canadian-environmental-protection-act/#:~:text=Plastics%20as%20a%20E2%80%9CToxic%20Substance,came%20into%20force%20that%20day>.

- **A moratorium on the intentional use of fibrous and other engineered nanomaterials<sup>31</sup> in consumer products** including sunscreens, food, packaging, cosmetics, sporting goods, clothing, tires, and electronics, until producers can prove each chemical does not present unreasonable risk to people and the environment,<sup>26</sup> and until they can be produced so they can safely and naturally biodegrade without harm to people and the environment.

Similar to micro-plastics, research into the health and environmental effects of nanomaterials is an evolving field with limited conclusions. However, given the rapid growth of nanomaterials as an industry, and given indications of pulmonary, cardiovascular, immune system, and other human health effects, we recommend a precautionary approach.<sup>32</sup> Haz Waste is not alone in this approach; the American College of Occupational and Environmental Medicine (ACOEM) developed preventive recommendations on nanomaterial exposure monitoring, exposure controls, and medical surveillance in 2019,<sup>33</sup> and the European Food Safety Authority no longer considers titanium dioxide (a common nanomaterial in more than 11,000 U.S. food products<sup>3</sup>) safe as a food additive leading to a 2022 European Union ban.<sup>34,35</sup>

- **Local legislation and ordinances that apply the precautionary principle in environmental and public health law and policy.**<sup>36</sup>

### Specific actions we support

- **Reconvene the 2012 Washington Toxics Reduction Strategies Workgroup**, to review and update of the recommendations in its “Toxic Policy Reform for Washington State” paper.<sup>37</sup> In 2012, a group of government, business, and non-governmental leaders came together at the request of Department of Ecology’s then-director Ted Sturdevant to discuss toxic chemical management. Their goal was to transcend typical legal and political silos to look for creative new approaches to toxics that offer better human health, environmental, and economic outcomes. The group’s work resulted in a paper to the Governor and House and Senate leadership, “Toxic Policy Reform for Washington State,” which outlined current challenges, principles for actions, and ideas for moving forward. Some of the group’s recommendations resulted in action, including the enactment of Safer Products for Washington Act.

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<sup>31</sup> U.S. Environmental Protection Agency, “Research on Nanomaterials”, published June 1, 2022, accessed August 9, 2022, <https://www.epa.gov/chemical-research/research-nanomaterials>.

<sup>32</sup> For a summary of potential effects, see Ian Illuminato, Friends of the Earth, “Tiny Ingredients Big Risks – Nanomaterials Rapidly entering Food and Farming”, published June 13, 2014, accessed August 8, 2022, [https://1bps6437gg8c169i0y1drtgz-wpengine.netdna-ssl.com/wp-content/uploads/2017/legacy/2014\\_Tiny\\_Ingredients\\_Big\\_Risks\\_Web.pdf](https://1bps6437gg8c169i0y1drtgz-wpengine.netdna-ssl.com/wp-content/uploads/2017/legacy/2014_Tiny_Ingredients_Big_Risks_Web.pdf).

<sup>33</sup> Fischman, M. et al., Nanotechnology and Health, <https://pubmed.ncbi.nlm.nih.gov/21293303/>.

<sup>34</sup> European Food Safety Authority, “Titanium dioxide: E171 no longer considered safe when used as a food additive”, published May 6, 2021, accessed August 8, 2022, <https://www.efsa.europa.eu/en/news/titanium-dioxide-e171-no-longer-considered-safe-when-used-food-additive>.

<sup>35</sup> U.S. Mission to the European Union, U.S. Department of Agriculture Foreign Agricultural Service, “European Union: Titanium Dioxide Banned as a Food Additive in the EU”, published March 3, 2022, accessed August 8, 2022, <https://www.fas.usda.gov/data/european-union-titanium-dioxide-banned-food-additive-eu>.

<sup>36</sup> For example, see Edmonds City Council [Ordinance 4013](#) which defines and supports the precautionary principle at <https://weblink.edmondswa.gov/WebLink/DocView.aspx?dbid=0&id=812022&page=3&cr=1>

<sup>37</sup> Martin Baker et al., Washington Toxics Reduction Strategies Workgroup, “Toxic Policy Reform for Washington State”, January 16, 2013, <https://www.seattle.gov/Documents/Departments/SPU/WAToxicsReductionStrategiesWorkgroup.pdf>.

### 3. Protect the Right to a Healthy and Healthful Environment for All – Indoors and Outdoors

#### Background

We believe each person has an inherent right to clean air and water, a healthy outdoor natural environment, and a healthful indoor living environment. While adoption of the precautionary principle in law is an important step to protecting our environment and public health, we also support clear policies and law that support a right to a clean environment.

In July 2022, the United Nations General Assembly passed a resolution affirming the human right to a clean, healthy and sustainable environment.<sup>38</sup> Over one-hundred countries around the world include the right to a healthy environment in their constitutions; the U.S. has no such provision.<sup>39</sup>

Montana<sup>40</sup>, New York<sup>41</sup>, and Pennsylvania<sup>42</sup> have adopted environmental rights into their constitutions. Last year, nine additional states, including Washington, considered such an amendment.<sup>43</sup>

Clean air, clean water, safe food, and a healthful environment are essential to life. These are a human right at the most fundamental level. Formal recognition of this right is at the heart of environmental justice and racial equity. Clearly all people, regardless of race, culture, or social status need these things. When they are threatened, we repeatedly see disproportionate impacts to historically marginalized people. King County declared racism a public health crisis in 2020.<sup>44</sup> Formal recognition of this right is a significant step toward implementing a racially equitable response to this crisis. (See Washington State Legislature (2021-22) HJR 4209<sup>45</sup>, SJR 8210<sup>46</sup>)

Protecting that right includes reducing waste, reducing hazardous materials, better managing resources, enabling residents to make informed choices, and placing responsibility for reckless decisions like producing

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<sup>38</sup> U.N. Environment Programme, “In historic move, UN declares healthy environment a human right,” published July 28, 2022, accessed August 18, 2022, <https://www.unep.org/news-and-stories/story/historic-move-un-declares-healthy-environment-human-right>.

<sup>39</sup> David R. Boyd, David Suzuki Foundation, “The Status of Constitutional Protection for the Environment in Other Nations,” published November 2013, accessed August 18, 2022, <https://david Suzuki.org/wp-content/uploads/2013/11/status-constitutional-protection-environment-other-nations.pdf>.

<sup>40</sup> Mont. Const. art. IX, §1, <https://courts.mt.gov/External/library/docs/72constit.pdf>.

<sup>41</sup> N.Y. Const. art. 1, §19, <https://dos.ny.gov/system/files/documents/2022/01/Constitution-January-1-2022.pdf>.

<sup>42</sup> Penn. Const. art. 1, §27, <https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/00/00.HTM>.

<sup>43</sup> HJR 4209, Washington State Legislature (2021-22),

<https://app.leg.wa.gov/bills/summary?BillNumber=4209&Year=2021&Initiative=false> and SJR 8210,

<https://app.leg.wa.gov/bills/summary?BillNumber=8210&Initiative=false&Year=2021>

<sup>44</sup> Dow Constantine and Patty Hayes, Public Health – Seattle & King County, Public Health Insider, published June 11, 2020, accessed August 8, 2022,

<https://web.archive.org/web/20211009162217/https://publichealthinsider.com/2020/06/11/racism-is-a-public-health-crisis/>.

<sup>45</sup> HJR 4209, Washington State Legislature (2021-22),

<https://app.leg.wa.gov/bills/summary?BillNumber=4209&Year=2021&Initiative=false>.

<sup>46</sup> SJR 8210, Washington State Legislature (2021-22),

<https://app.leg.wa.gov/bills/summary?BillNumber=8210&Initiative=false&Year=2021>.

products that contain hazardous materials, cannot be repaired, or waste resources, on the producers of those products.

### What we generally support

- **Environmentally preferred purchasing practices at the state and local level.**
- **Prohibit the supply, sale, and use of single-use gas cylinders.** This includes pressurized containers that cannot be refilled for propane, butane, and other compressed gasses. This does not include refillable gas and propane cylinders, reservoir tanks for air compressors, aerosol containers, or cylinders that use gas only as a propellant for another product.
- **Rethink the way we address liability of public managers of landfills and wastewater treatment facilities** as it pertains to accumulation and consolidation of persistent toxic materials. The EPA proposes to designate PFOS and PFOA as hazardous substances under CERCLA, a move we support. Depending how those rules are written, however, that move has the potential of shifting liability to municipal operators of landfills and wastewater treatment facilities, an illogical approach since safely operated landfills are currently the best option we have to consolidate these materials and get them out of circulation until better disposal options are found. Done wrong, it would place liability not on producers, but on the public entities that are trying to clean-up persistent chemical waste.<sup>47,48</sup>
- **Prohibit the use of tires and derivative products containing 6PPD**, including crumb rubber, mulch, driving and walking surfaces, and sports surfaces, where they may be subject to stormwater contact. 6PPD is an anti-oxidant ingredient in vehicle tires. When it reacts with ozone, it produces a separate compound, 6PPD-Q, which has been identified as the compound responsible for pre-spawn mortality in some species of Pacific salmon, especially coho salmon.<sup>49</sup> Also prohibit these products in playgrounds, recreational environments, and work environments where people may be exposed to airborne dust or particles from those products. Chemicals in crumb rubber from recycled tires are a suspected cause of cancers in athletes who play on artificial turf. There are ongoing studies regarding human health impacts from crumb rubber infill in artificial turf. Until those studies are complete, the precautionary principal should apply.

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<sup>47</sup> The Solid Waste Association of North America and the National Waste & Recycling Association have taken similar positions in support of PFAS regulation, distinguishing *producers* and *users* of PFAS from *receivers* of PFAS, such as municipal solid waste landfills and wastewater treatment facilities, regarding liability. See SWANA and NWRA, “CERCLA Relief on PFAS Letter to Congress May 23, 2022”, accessed September 2, 2022, [https://swana.org/docs/default-source/resources-documents/pfas-resources/cerla\\_relief\\_pfas-letter\\_to\\_congress-may\\_23\\_2022.pdf?Status=Temp&sfvrsn=efa4c615\\_2](https://swana.org/docs/default-source/resources-documents/pfas-resources/cerla_relief_pfas-letter_to_congress-may_23_2022.pdf?Status=Temp&sfvrsn=efa4c615_2). and SWANA, Your Source for Information on Per- and Polyfluoroalkyl Substances (PFAS), accessed September 2, 2022, <https://swana.org/initiatives/pfas>.

<sup>48</sup> The Brownfields Utilization, Investment, and Local Development Act of 2018 (BUILD Act) amended CERCLA to provide liability protection to state and local governments that acquire ownership or control of a contaminated property. However, that exemption from “owner or operator” liability does not apply if that government “has caused or contributed to the release or threatened release of a hazardous substance from the facility.” See <https://www.epa.gov/sites/default/files/2020-06/documents/local-gov-acquisition-guide-final-2020-esign.pdf>.

<sup>49</sup> Eric Stokstad, Science, “Common tire chemical implicated in mysterious deaths of at-risk salmon,” published December 3, 2020, accessed September 6, 2022, <https://www.science.org/content/article/common-tire-chemical-implicated-mysterious-deaths-risk-salmon>.

### Specific actions we support

- **Initiation of a state constitutional amendment recognizing the right to a clean and healthy environment** to the effect that, “Each person shall have a right to clean air and water, a healthy outdoor natural environment, and a healthful indoor living environment”.
- **The proposed federal Environmental Justice for All Act**, which would establish several environmental justice requirements and actions to address the disproportionate adverse human health or environmental effects of federal laws or programs on communities of color, low-income communities, or tribal and indigenous communities. (See H.R. 2021, 117<sup>th</sup> Cong. (2021-22)<sup>50</sup> and S. 872, 117<sup>th</sup> Cong. (2021-22)<sup>51</sup>)
- **“Right to repair” legislation** that provides residents and businesses the ability to freely open and repair home electronics, appliances, automobiles, and other products. Currently, manufacturers use a variety of tactics to prevent consumers from repairing products, which leads to stifled competition, premature and planned obsolescence of products, and producing increased waste (which all residents pay for). (See 2021 HB 1810<sup>52</sup>, SB 5795<sup>53</sup>)

## 4. Shift the Cost Burden of Hazardous Waste Management Back to Producers of Hazardous Products

### Background

Many producers (manufacturers, importers, suppliers) introduce new products with insufficient consideration of what happens when these products are no longer useful. Some products contain hazardous materials that pose risks to the people who use them or to the environment. Many hazardous chemicals continue to threaten human health and the environment after they have outlived their usefulness or are discarded.

Producers also externalize their waste management costs when they sell hazardous products and take no responsibility for their products’ end-of-life consequences. With no responsibility to consider the end-of-life consequences of their products, producers are disconnected from the hazards, impacts, and costs of the resulting waste that taxpayers, ratepayers, and local governments must manage.

Producers are similarly disconnected from the harms caused by the hazardous components of their products while in use. This leaves full responsibility for understanding these hazards to the user, who may have little information or knowledge of chemicals in a product or their characteristics. Separated from the responsibilities of their products’ consequences, producers have little motivation to redesign products to be safer, less wasteful, and less damaging.

With Extended Producer Responsibility (EPR) approaches that shift responsibility back to producers, we can mitigate corporate socialization of costs and motivate producers to produce safer, less wasteful products.

<sup>50</sup> H.R. 2021, 117<sup>th</sup> Cong. (2021-22), <https://www.congress.gov/bill/117th-congress/house-bill/2021>.

<sup>51</sup> S. 872, 117<sup>th</sup> Cong. (2021-22), <https://www.congress.gov/bill/117th-congress/senate-bill/872>.

<sup>52</sup> HB 1810, Washington State Legislature (2021-22), <https://app.leg.wa.gov/billssummary?BillNumber=1810&Initiative=false&Year=2021>.

<sup>53</sup> SB 5795, Washington State Legislature (2021-22), <https://app.leg.wa.gov/billssummary?BillNumber=5795&Initiative=false&Year=2021>.

### What we generally support

- **Extended Producer Responsibility (EPR) programs** that shift the cost burden of collecting and disposing of hazardous waste away from the public and back to producers. This includes compressed gas cylinders, marine flares, batteries, home electronics, mercury-containing lights, and pharmaceuticals.
- **A comprehensive Extended Producer Responsibility framework for all household hazardous waste** to enable safe disposal of all hazardous materials without the need for redundant legislation and infrastructure for every emerging hazardous material.
- **Alternative approaches to keep hazardous substances embedded in large household items, such as mattresses, furniture, carpeting, flooring, and appliances, out of landfills.** When these products are landfilled, leachate can mobilize hazardous materials including PFAS, organohalogen flame retardants, bisphenol compounds, and phthalates. That leachate can pass through wastewater treatment and enter the terrestrial environment via biosolids distribution and the aquatic environment via wastewater effluent discharge.

### Specific actions we support

- **Battery recycling legislation for all battery formats, including electric vehicle batteries.** (See Washington State Legislature (2021-22) HB 1896<sup>54</sup>).
- **Repeal of the 2025 sunset provision in the mercury-containing lights product stewardship program.**<sup>55</sup>

## 5. Break Down Barriers to Progress

### Background

“To protect human health and the environment, we must evaluate and understand all chemical exposures to communities, particularly historically underserved communities who have been disproportionately exposed to pollution for generations,” Michal Freedhoff, assistant EPA administrator for chemical safety and pollution prevention.<sup>56</sup>

Responsible, evidence-based policymaking requires data, but we collectively do not have the information needed to protect the health and wellbeing of King County residents and the environment.

We do not have a complete picture of where childhood lead exposures occur because we do not have a comprehensive testing program in Washington State. We also have very limited data on community exposure to other hazardous chemicals. We can map health disparities using proxy measures, but we often lack the data to validate such mapping tools. Although we collect waste pesticides, solvents, chemicals, and other hazardous

<sup>54</sup> HB 1896, Washington State Legislature (2021-22), <https://app.leg.wa.gov/billssummary?BillNumber=1896&Initiative=false&Year=2021>

<sup>55</sup> See WA RCW 43.131.421 <https://app.leg.wa.gov/RCW/default.aspx?cite=43.131.421> and RCW 43.131.422 <https://app.leg.wa.gov/RCW/default.aspx?cite=43.131.422>.

<sup>56</sup> U.S. Environmental Protection Agency, “EPA Releases Screening Methodology to Evaluate Chemical Exposures and Risks to Fenceline Communities”, published January 21, 2022, accessed August 8, 2022, <https://www.epa.gov/newsreleases/epa-releases-screening-methodology-evaluate-chemical-exposures-and-risks-fenceline>.

materials, disclosure of hazardous substances production is not required so we don't know how much of these products are initially sold, how much is stored, or how much is released into the environment.

As a program, we do not currently have the information we need to understand and address where risk is present and where it is not. We need improved regulatory provisions requiring disclosure of hazardous material production and distribution. Only then will we be able to better evaluate and address risk to King County residents.

### **What we generally support**

- **Quantify the volumes of hazardous materials sold for use in Washington State** to provide a baseline measure against which we can evaluate production, use, storage and disposal of hazardous materials.
- **Improved mapping of factors that lead to health disparities** to better predict human exposures to hazardous chemicals. This includes proximity to roads and impacts of prevailing winds, smelter plumes, age of housing, disposable income, etc.
- **Revising the State Board of Health Notifiable Conditions rule** to change notification thresholds for elevated blood lead levels to align with CDC exposure thresholds.<sup>57, 58</sup>
- **Expanded biomonitoring for hazardous chemicals in Washington State**, building upon the Washington Environmental Biomonitoring Survey (WEBS),<sup>59</sup> to collect biological samples (blood, urine, etc.) from a large and diverse sample of Washington residents to better understand the burden of chemical exposures including the burden on our most vulnerable communities.

### **Specific actions we support**

- **Blood lead testing for all Washington children** to collect better data to better identify and predict toxic lead exposures, to evaluate the effectiveness of risk criteria, and to inform other actions. Some states require that all children be tested and some require testing of children based on certain risk factors. Washington State has no testing requirement. The 2009 Washington State Lead Chemical Action Plan recommended, "*universal screening* for risk factors (such as low income or old housing), followed by *voluntary testing* when risk factors are identified or uncertain."<sup>60</sup> The plan further recommended, "If voluntary steps do not result in a significant increase in [blood lead level] testing, the state should reconsider requiring blood testing for all children or targeted higher risk populations." Since 2009, we have observed little change; only 4.2 percent of Washington children under 72 months old were tested

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<sup>57</sup> WA Chapter 246-101 WAC, <https://app.leg.wa.gov/wac/default.aspx?cite=246-101&full=true>.

<sup>58</sup> Centers for Disease Control and Prevention, Childhood Lead Poisoning Prevention, "Blood Lead Reference Value", published October 27, 2021, accessed August 8, 2022, <https://app.leg.wa.gov/wac/default.aspx?cite=246-101&full=true>.

<sup>59</sup> Washington State Department of Health, "Biomonitoring in Washington State," accessed September 7, 2022, <https://doh.wa.gov/data-statistical-reports/environmental-health/biomonitoring>.

<sup>60</sup> See Recommendation #2, page 220, in Holly Davies et al., Washington State Department of Ecology and Washington State Department of Health, "Washington State Lead Chemical Action Plan," published September 2009, accessed August 18, 2022, <https://apps.ecology.wa.gov/publications/SummaryPages/0907008.html>.

in 2018, among the lowest in the nation.<sup>61,62</sup> Based on that recommendation and lack of progress since it was issued, we now support a requirement for blood lead testing for all Washington children or targeted higher risk populations.

- **A review of Washington State’s blood lead risk factors<sup>63</sup>** to consider additional demographic and cultural criteria, and clearer geographic criteria.
- **An update of the State’s 2009 Washington State Lead Chemical Action Plan, along with a review of progress made toward each of the plan’s recommendations.<sup>64</sup>**
- **A study bill in the legislature to examine potential lead content thresholds for lead in cookware.**

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## Acronyms

6PPD	N-(1,3-Dimethylbutyl)-N'-phenyl-p-phenylenediamine
BPA	Bisphenol A
CDC	Centers for Disease Control and Prevention
CRCLA	Comprehensive Environmental Response, Compensation, and Liability Act, a.k.a. Superfund
DDT	Dichlorodiphenyltrichloroethane
EPA	United States Environmental Protection Agency
EPR	Enhanced Producer Responsibility (programs)
PBTs	Persistent, bioaccumulative and toxic substances
PCBs	Polychlorinated biphenyls
PFAS	Per- and polyfluoroalkyl substances, a class of about 12,000 chemicals. About 650 of those are currently in commerce.
TSCA	Toxic Substances Control Act

<sup>61</sup> Centers for Disease Control and Prevention, “Blood Lead Levels (µg/dL) among U.S. Children < 72 Months of Age, by State, Year, and Blood Lead Level (BLL) Group,” published April 21, 2021, accessed August 18, 2022, <https://www.cdc.gov/nceh/lead/docs/cbls-national-data-table-508.pdf>.

<sup>62</sup> John Stang, Crosscut, “Avoiding the truth about lead poisoning can hurt WA kids,” published February 28, 2017, accessed August 18, 2022, <https://crosscut.com/2017/03/are-wa-kids-at-risk-for-lead-poisoning-we-dont-really-know>.

<sup>63</sup> Washington State Department of Health, “Blood Lead Testing: Information for Health Care Providers,” accessed August 18, 2022, <https://doh.wa.gov/public-health-healthcare-providers/healthcare-professions-and-facilities/professional-resources/blood-lead-testing>.

<sup>64</sup> See Chapter VII - Recommendations, page 213, in Holly Davies et al., Washington State Department of Ecology and Washington State Department of Health, “Washington State Lead Chemical Action Plan,” published September 2009, accessed August 18, 2022, <https://apps.ecology.wa.gov/publications/SummaryPages/0907008.html>.