



# AmericanCoatings

ASSOCIATION<sup>SM</sup>

To: Senate Ways and Means Committee  
From: Riaz Zaman, Sr. Counsel, Government Affairs, American Coatings Association  
Re: *SB 5369 – Reassessing standards for polychlorinated biphenyls in consumer products*  
Written comments to the Senate Ways and Means Committee, State of Washington, hearing on Feb. 17, 2023  
Date: Submitted online on Feb. 17, 2023 at: <https://app.leg.wa.gov/csi/Testifier/>

Dear Madame Chair, Vice Chairs and Members of the Committee:

Thank you for this opportunity to comment on SB 5369. The American Coatings Association (hereinafter “ACA”) is the national trade association representing the paint and coatings industry in the United States, and the association that brought forward the paint recycling program now operating in Washington. We have also been in contact with Department of Ecology (hereinafter “Ecology”) throughout its implementation of the *Safer Products for Washington Program*, which Bill 5369 attempts to recognize and build on.

ACA opposes Senate Bill 5369 for the following reasons:

Ecology, as part of its *Safer Products for Washington Program* determined that regulation of paints under the program is preempted by TSCA (the *Toxic Substances Control Act*), the federal law that governs toxics at the national level. ACA agrees with Ecology’s position. SB 5369 directs Ecology to undertake a regulatory process that it has already determined it is preempted from doing. This will likely result in unnecessary litigation costs for both paint manufacturers and the state, with the Attorney General’s office being required to litigate a court determination of preemption, as required by SB 5369 at Sec. 3(3)(a).

The bill also requires additional duplicative spending from Ecology by requiring the agency to reopen its *Safer Products for Washington* regulatory process, after already determining it is preempted. This would involve continuing a regulatory process based on an inaccurate analysis of alternatives in the paint industry. Ecology would also incur costs related to supporting the Attorney General’s office in litigation, while developing a position contrary to its prior determination that it is preempted.

We are also deeply concerned that this bill will not significantly reduce PCB contamination in the Spokane River, so all associated costs to the state and industry provide no significant or commensurate environmental benefit. The likely result of this bill will be additional consideration of PCB control measures and related costs years after implementation, as a correction to this bill. Studies indicate that paint is not a major contributor to PCB contamination. Most paints do not contain PCBs. The type of inadvertent PCBs found in some paints, being those with certain green and yellow pigments, do not

significantly bioaccumulate in fish. Unfortunately, the bill does not distinguish those paint products without PCBs or by pigment type.

As noted in the hearing in the Senate Environment, Energy and Technology Committee, a study by Ecology indicates main contributors to non-legacy PCB contamination are yellow foam, sidewalk chalk and breakfast cereal containing a yellow dye at issue. A study by the Spokane River Task Force also indicates electrical equipment, fish feed, paper products and lubricants. These potentially significant contributors are not at issue in SB 5369. ACA believes the bill should require a study to identify products that significantly contribute to PCB contamination instead of targeting products with little to no impact on PCB contamination. In listing paint in the *Safer Products for Washington Program*, Ecology did not conduct a comparative analysis of products to identify the most significant contributors to PCB contamination. We had requested Ecology conduct such an analysis.

ACA acknowledges that we have met with the prime sponsor of the bill, and we appreciate his willingness to talk further. I would welcome the opportunity to discuss this matter with other Senators. We are hopeful that if the bill does move forward, we can find language that will limit the scope to products with residual PCB amounts, while acknowledging that without further analysis of products, this bill will not significantly reduce PCB contamination in the state.

Sincerely,

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