November 20, 2006

Mr. Mike Gallagher, PBT Coordinator
Department of Ecology
P.O. Box 47600
WA, 98504
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Re: Draft Multiyear PBT Chemical Action Plan Schedule

Dear Mr. Gallagher:

The North American Metals Council ("NAMC") appreciates the opportunity to provide comments on the Washington State Department of Ecology's ("Ecology") September 2006 Draft Chemical Action Plan Schedule ("Draft Schedule"), Publication Number 06-07-025. The Draft Schedule was proposed in order to implement the final "Persistent Bioaccumulative Toxins" rule ("PBT Rule"), which was adopted in January 2006 and codified in Chapter 173-333 WAC. NAMC is an unincorporated not-for-profit group of metals-producing and metals-using associations and companies that focuses on science and policy matters that affect metals in a generic way.

NAMC previously participated in Ecology's rulemaking process for the PBT Rule, and filed comments in November 2005 as well as during Ecology's 2001-02 consideration of this issue. In each instance, NAMC's purpose was to make Ecology aware of scientific efforts underway at the U.S. Environmental Protection Agency ("U.S. EPA") and elsewhere focused on evaluating the scientific validity of applying to metals PBT-based hazard criteria that were initially developed for organic compounds. In 2002 and again in 2006, Ecology made commitments to refrain from classifying metals as PBT substances pending the completion of EPA's Inorganic Metals Assessment Framework ("Metals Framework"). For example, Ecology's January 13, 2006 explanation of "Key Areas where changes were made in the final PBT Rule," which you distributed to the PBT Rule Advisory Committee and other interested parties, acknowledges the scientific objections to use of PBT criteria for metals and notes Ecology's decision instead to "classify lead and cadmium as 'metals of concern' pending completion of EPA's Inorganic Metals Assessment Framework."

Inconsistent with Ecology's prior commitments and the national and global recognition of the problems with applying PBT criteria to metals, the Draft Schedule nonetheless continues to do so. With one passing reference -- page v of the Executive Summary -- that "[t]he PBT rule includes a list of 27 chemicals (comprised of individual PBTs, PBT chemical groups and metals of concern), referred to as the PBT List," a footnote indicates that these distinctions will be

dropped throughout the rest of the Draft Schedule "[f]or ease of reading," and indeed they never surface again throughout the 118-page body of the report. Instead, the Draft Schedule goes on to apply a full-fledged numerical PBT assessment to a list of substances -- including cadmium and lead. Among the numerous tables are several that supply values for persistence, bioaccumulation, and toxicity of cadmium and lead (*see, e.g.*, Tables 4, 6) or rely on these numerical values in ranking cadmium and lead as well as chemical substances *(e.g.*, pages 5, 6, 13, 18, 41, 83). The persistence metric for these metals is an assigned default value of 15,000, which Appendix A explains "was used since this value exceeds the persistence value of 14,965 days for PFOS" -- the maximum value available from the literature for any substance considered in the Draft Schedule (Draft Schedule at 93). The bioaccumulation metric for both cadmium and lead is based entirely on bioaccumulation and/or bioconcentration factors (BAF/BCF) taken from EPA sources.

EPA has not yet completed its final Metals Framework, but EPA's Science Advisory Board ("SAB") has issued its final report on the draft Metals Framework, and EPA Administrator Stephen Johnson has also responded to the SAB's report, noting EPA's agreement with several key points. These documents state without qualification that the use of BAF/BCF criteria to assess the bioaccumulation of metals is scientifically inappropriate. For example, the SAB's final report flatly recites: "The SAB strongly agrees with the statement that BCF/BAFs do not apply for metals." (SAB Report, Review of EPA's Draft Framework for Inorganic Metals Risk Assessment, at 53 (Jan. 25, 2006), http://www.epa.gov/sab/pdf/metals_sab-06-002.pdf.) EPA Administrator Johnson's letter concurs that the "use of bioaccumulation factors and bioconcentration factors are not scientifically supported for use as generic threshold criteria for the hazard assessment of metals." (Letter from Stephen L. Johnson to Dr. M. Granger Morgan, April 3, 2006, available at http://www.epa.gov/sab/fiscal06.htm.) With regard to the use of persistence in evaluating hazard for metals, the SAB has previously stated that "persistence is a problematic scientific issue for assessing metals hazards and risks." (*See* EPA-SAB-EC-LTR-03-001, *Review of Metals Action Plan: An EPA Science Advisory Report*, at 5 (Oct. 23, 2002), available at http://www.epa.gov/sab/fiscal03.htm.) Our previous comments cited numerous scientific authorities in complete accord with these conclusions, which we would be willing to resubmit if it would be helpful to you.

NAMC urges Ecology to remove from its Draft Schedule any analyses that seek to classify or rank cadmium or lead using PBT criteria, since Ecology has twice acknowledged its willingness to abide by the EPA's (and its SAB's) analysis of the validity of applying PBT criteria to metals. Those bodies have firmly rejected -- after lengthy scientific review -- the use of persistence and BAF/BCF criteria in assessing, classifying, or ranking metals on the basis of hazard.

Respectfully submitted,

William J. Adams, Ph.D., Chairman
North American Metals Council