



Rule Adoption Notice

Persistent Bioaccumulative Toxins Chapter 173-333 WAC

As a result of legislation passed in 2003 (ESSB 5766) Ecology is required to send out notification to businesses affected by rule adoptions. To comply with this law and to keep the regulated community better informed of Ecology rule adoptions, you are receiving this notification of a rule adoption.

For more information or technical assistance:

Program:

Mike Gallagher
PO Box 47600
Olympia WA 98504
360-407-6868
Mgal461@ecy.wa.gov

Rules Coordinator:

Jerry Thielen
PO Box 47600
Olympia, WA 98504
(360) 407-7551
1Hjthi461@ecy.wa.gov

For more information:

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Requirements of the rule

This rule is a new rule, to be known as Chapter 173-333 WAC – Persistent Bioaccumulative Toxins (PBT) Regulation. The PBT Rule is a procedural rule, which establishes Ecology's process and procedures to address the subject of persistent bioaccumulative toxic substances and helps Ecology set its internal priorities in addressing PBTs.

The goal of the PBT Rule is to reduce and phase-out PBT uses, releases and exposures in Washington. The PBT Rule establishes a process that Ecology will use to evaluate and identify actions that should be taken for particular PBTs. This process is designed to enhance actions being taken under other environmental laws and regulations.

The purpose of the PBT Rule is to:

- Establish criteria Ecology will use to identify PBTs that pose human health or environmental threats in Washington state;
- Establish a list of PBTs in the rule;
- Establish procedures Ecology will use to review and periodically update the PBT List;
- Establish criteria for selecting PBTs for which Ecology will prepare chemical action plans (CAPs);
- Define the scope and content of CAPs and establish the process Ecology will use to prepare those plans; and
- Define the processes Ecology will use to coordinate the implementation of this rule with the Department of Health (Health) and other agencies.

This rule will only apply to the Ecology. The rule will not impose new requirements on persons using or releasing PBTs, and it does not create new authorities nor does it constrain existing authorities for Ecology. The rule also provides for public involvement opportunities to allow interested persons to participate in the processes for identifying PBTs and developing recommendations on measures to address uses and releases of PBTs.

Summary of the rule changes adopted on January 13, 2006

Ecology will implement this chapter in ways that allow stakeholders, interest groups, and the public to plan their participation in decision-making processes and future responses to recommendations that result from those processes.

One of the key sections of the PBT Rule is a list of 25 chemicals and chemical groups that Ecology has determined are PBTs (Table 1). Ecology intends to use this list, known as the **PBT List**, to select chemicals for CAP development, in decision-making concerning Ecology programs for characterizing chemicals in the ambient environment, to encourage and inform the Department of Health in their efforts to monitor chemicals in human tissue, and in promoting public awareness of PBTs.

Additionally, in the rule, Ecology created a separate category for metals called “metals of concern”. The metals of concern in the PBT Rule are cadmium and lead. This category was established as an interim category pending completion of EPA’s inorganic metals assessment framework process. Ecology may prepare CAPs for one or more of the metals of concern using the CAP development process as defined in the PBT Rule.

Table 1. Chemicals and Chemical Groups on the PBT List and the Metals of Concern List.

Metals	Flame Retardants	Banned Pesticides	Organic Chemicals
Methyl-Mercury	PBDEs Tetrabromobisphenol A Hexabromocyclododecane Pentachlorobenzene	Aldrin/Dieldrin Chlordane DDT/DDD/DDE Heptachlor Epoxide Toxaphene Chlordecone Endrin Mirex	1,2,4,5-TCB Perfluoro-octane sulfonates Hexachlorobenzene Hexachlorobutadiene Short-chain chlor paraffin Polychlorinated Naphthalenes
Combustion By Products	Banned Flame Retardants	Banned Organic Chemicals	Metals of Concern
PAHs PCDD PCDF PBDD/PBDF	Hexabromobiphenyl	PCBs	Cadmium Lead

The PBT Rule clarifies that Ecology’s listing of a chemical on the PBT List does not represent a decision that all uses and releases of the chemical should be reduced and phased out. Ecology also states in rule that it will not use the PBT List as the sole basis for establishing discharge monitoring requirements that are not required under current permits. Instead, Ecology will evaluate and recommend additional monitoring, if necessary, when preparing CAPs.

Any pesticide with a currently valid registration that has been issued by the Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or any fertilizer regulated under the Washington Fertilizer Act, chapter 15.54 RCW, will not be included on the PBT List.

The PBT Rule includes “persistence”, “bioaccumulation” and “toxicity” criteria that Ecology will use to identify and add additional chemicals or chemical groups to the PBT List, as well as criteria for removing chemicals from the PBT List. Any revisions to the PBT List determined necessary by Ecology will be made following the formal rulemaking process. The PBT Rule also sets forth evaluation factors and processes that Ecology will use to determine whether a CAP should be prepared for a PBT on the PBT List. Also included in the PBT Rule is a provision stating that Ecology will not prepare a CAP where uses or releases of the PBT are already prohibited under other laws, where there is credible scientific information that the PBT is not used, released or present in Washington, or where Ecology determines that there are no available opportunities for reducing or phasing out the PBT beyond levels already required under other laws.

Ecology will prepare a preliminary schedule that will identify the PBTs for which CAPs will be developed over a “multiyear schedule”. The draft multiyear schedule will include the rationale for selecting these PBTs and a timeline for completing CAPs for these PBTs. Ecology will notify the public when it has prepared a preliminary schedule and provide an opportunity for public review and comment on the multiyear schedule.

CAPs will include, as appropriate, the following information, evaluations and recommendations: general information about the PBT chemical, production, uses and releases of the PBT, human health and environmental impacts of the PBT, current management approaches, and recommended policy options to further manage, reduce, or phase-out the PBT.

Once a PBT is selected for CAP development, Ecology will initially plan and scope the CAP of the selected chemical based upon available information regarding the chemical's products, uses and releases; human health exposure and ecological hazards; environmental releases, fate, and transport; environmental concentrations and available substitutes; available options for managing uses and releases; estimated costs, benefits and effectiveness of alternate management options; and any other information Ecology determines is necessary to support the CAP development process. Ecology will consult with Health regarding all portions of the CAP related to human health exposures.

Ecology will create an external advisory committee for each CAP that Ecology develops. The purpose of the advisory committee is to provide stakeholder input and expertise. The advisory committee will follow a consultative process, where Ecology will draft the CAP in consideration of input from advisory committee members. All advisory committee meetings will be open to the public.

Ecology will develop a draft CAP for advisory committee review and comment. Ecology will review all advisory committee comments and, as appropriate, revise the draft CAP prior to distributing it for public review and comment. Ecology will then notify the public when it has developed a draft CAP and provide an opportunity for public review and comment.

Ecology will review and provide responses to all public comments on the draft CAP prior to issuing the final recommendations. Ecology will notify the public of the final recommendations through an announcement that will be published in the *Washington State Register* and posted on the Ecology web site. Ecology will also provide written notification to individuals or organizations who submitted comments on the draft CAP.

Effective Date

This rule, known as Chapter 173-333 WAC becomes effective on February 13, 2006.

Appeal procedures

This adoption can be appeal under procedures described in the Administrative Procedure Act (RCW 34.05.330). For additional information about appealing this adoption please contact Jerry Thielen, Ecology's Regulatory Affairs Manager at (360) 407-7551 or by email jthi461@ecy.wa.gov.

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