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Legislative Position: Oppose

Maryland SB 273

Environment – PFAS Chemicals – Prohibitions and Requirements

Senate Education, Health and Environmental Affairs Committee

Wednesday February 2, 2022

Dear Chairman Pinsky and Members of the Committee

We wish to express our opposition to SB 273 for the following reasons:

- The definition of PFAS (per- and poly-fluoroalkyl substances) is overly broad and includes high molecular weight fluoropolymer such as polytetrafluoroethylene (PTFE), which are highly stable, too large to be bioavailable, and do not have the potential to become widespread in the environment.
- The procedures and timeline for transitioning certain retail products, January 1, 2023, is unrealistic and does not allow adequate time to develop a regulatory process to evaluate chemistries used in consumer products.
- The proposed definition of food package found in 9-1901 is very broad and could be interpreted to cover a wide range of durable food processing equipment, such as tubing, refrigerators, ovens and refrigerated rail cars.

W. L. Gore & Associates – A Maryland Manufacturer

W. L. Gore & Associates is a privately held company employing more than 2,900 people working in 13 manufacturing facilities in Cecil County Maryland. Gore has been a presence in Maryland since 1973 and we are the largest private sector employer in Cecil County. We use high molecular weight fluoropolymers such as polytetrafluoroethylene (“PTFE”) to manufacture a wide variety of products of high societal value including implantable medical devices, GORETEX membranes, filtration and venting used in emission controls, fuel cell components, products used in the pharmaceutical industry, and aerospace cables and aircraft sealing.

PFAS (per- and poly-fluoro alkyl substances) Definition

The PFAS group includes thousands of different substances with very different properties, and different PFAS are used in a wide variety of products. While we do not make or sell firefighting foam, carpet, or food packaging, we are concerned about the potential for unintended restriction of fluoropolymers associated with legislation based on broad definitions of PFAS.

Fluoropolymers are a distinct class within the broad PFAS group. High molecular weight fluoropolymers like PTFE are highly stable, too large to be bioavailable, and do not have the potential to become widespread in the environment. While these fluoropolymers do contain one or more fully fluorinated carbon atoms, data show that their properties present low health and environmental hazards.ⁱ The scientific community



considers these materials to be inert. The inertness of PTFE has already been recognized in the Maryland regulations:

“Fluoropolymer material (FPM) means an inert fluorinated chemical that includes polytetrafluoroethylene or similar materials and is processed with other materials to produce products that are temperature resistant, chemically inert, and weather durable.” COMAR 26.11.19.30B(5)

We have observed that many groups who are working to address important health and environmental topics use the broad term PFAS, when they are most interested in a distinct sub-group of PFAS (e.g., perfluoroalkyl acids such as PFOA). Many of the issues raised focus on specific properties such as: water solubility (mobility), toxicity, the potential for a substance to bioaccumulate, and the propensity for a substance to degrade into other substances of concern.

Because they are large, immobile, and inert materials, fluoropolymers like PTFE are different from the PFAS that are the source of potential environmental concern. The current legislative definition of “PFAS Chemicals” in 6-1601 is not overbroad, because it is limited to a small number of PFAS used in fire-fighting foam. The proposed amendment, however, would broaden the definition of PFAS Chemicals to cover all PFAS, including fluoropolymers. We suggest that the definition of “PFAS Chemicals” exclude high molecular weight fluoropolymers such as PTFE, or that it be narrowed to cover the classes of PFAS typically used in carpet treatments and food packaging treatments.

To exclude fluoropolymers, the definition of PFAS Chemical in 16-160(D) and 19-1901(H) could be drafted as follows:

“PFAS means non-polymeric per- and polyfluoroalkyl substances that are a group of man-made chemicals that contain at least two fluorinated carbon atoms, excluding gases and volatile liquids. PFAS include PFOA and PFOS.

Procedures and Timelines for Transitioning Retail Products

We note that for rugs and carpets (6-1604.1(B)) and for food packaging (9-1902(D)), the legislation is proposed to go into effect on January 1, 2023. In the absence of a regulatory assessment on the performance of alternatives, there is no means to demonstrate that any replacements for the restricted PFAS will provide the necessary performance or represent an improvement over the current product. Also, without regulatory guidance on how to establish compliance (e.g. appropriate analytical methods), manufacturers, distributors and retailers will lack the tools that they need to demonstrate compliance, especially in such a short time frame. If the intention is to improve the environmental profile of certain consumer products, Gore believes a better approach would be to develop legislation that establishes a regulatory process to evaluate chemistries used in consumer products. One recent example of such a regulatory program is “Safer Products for Washington” established in 2019 by the “Pollution Prevention for Healthy People and Puget Sound Act.” <https://ecology.wa.gov/Waste-Toxics/Reducing-toxic-chemicals/Safer-products>



Food Packaging Definition

The proposed definition of food package found in 9-1901 is very broad and could be interpreted to cover a wide range of durable food processing equipment, such as tubing, refrigerators, ovens and refrigerated rail cars. Because of their inertness and purity, fluoropolymers such as PTFE are authorized for use in articles intended to come into contact with food. 21 CFR 177.1550.

It is our understanding that the PFAS typically used in single use consumer food packaging (e.g. microwave popcorn bags, fast food wrappers) are not fluoropolymers. As discussed above, due to the complexity of this topic, we believe the legislation should seek to establish a regulatory program rather than effect a legislative ban. In addition to narrowing the definition of PFAS, we suggest that the food package definition be narrowed to focus on high volume food packaging that is typically thrown away after a single short-term use. We are not experts in this area, but think the language could be modified along the following lines to achieve the distinction between disposable packaging and durable products:

9-1901(c) "Disposable or Single Use Food Package" means a package or packaging component that is designed for a single short term direct food contact use, such as food wrappers and bags, bottles, straws, disposable cups, and lids, disposable cutlery, plates and takeaway containers, including: . . ."

Summary

Our concerns with SB 273 include:

1. Not all PFAS are the same and the definition of PFAS in these bills is overly broad and could lead to unintended consequences.
2. Gore has 2,900 Associates working in 13 plants in Cecil County manufacturing products of high-societal value using a type of fluoropolymers (e.g., ePTFE/PTFE) that are considered to present low health and environmental hazards.
3. The bills' procedures and timelines for transitioning retail products are unrealistic. In the absence of a regulatory assessment on the performance of alternatives, there is no means to demonstrate that any replacements for the PFAS that will be an improvement over the current product. Also, without regulatory guidance on how to establish and demonstrate compliance, manufacturers, distributors, and retailers will lack the tools they need to comply, especially in a short time frame.
4. The proposed definition of food packaging found in 9-1901 is very broad and could be interpreted to cover a wide range of durable food processing equipment such as tubing, refrigerators, ovens and refrigerated rail cars.

ⁱ Henry BJ et al., 2018. A Critical Review of the Application of Polymer of Low Concern and Regulatory Criteria to Fluoropolymers. Integrated Environmental Assessment and Management Volume 14, Number 3, pp. 316-334.