DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement

Chapter 173-901 WAC

Better Brakes Rule

Summary of rule making and response to comments

October 2012
Publication no. 12-04-028

Publication and Contact Information

This publication is available on the Department of Ecology's Web site at
https://fortress.wa.gov/ecy/publications/SummaryPages/1204028.html

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Concise Explanatory Statement

Chapter 173-901 WAC
Better Brakes Rule

Hazardous Waste and Toxics Reduction Program
Washington State Department of Ecology
Olympia, Washington 98504-7600

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Introduction

The purpose of a Concise Explanatory Statement is to:

- Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide Ecology's response to public comments.

This Concise Explanatory Statement provides information on The Washington State Department of Ecology's (Ecology) rule adoption for:

Title:	Better Brakes Rule
WAC Chapter(s):	173-901
Adopted date:	October 19, 2012
Effective date:	November 19, 2012

To see more information related to this rule making or other Ecology rule makings please visit our Web site: www.ecy.wa.gov/laws-rules/index.html

Reasons for Adopting the Rule

Ecology is required by RCW 70.285.080, relating to brake friction material, to develop compliance criteria through rule making. In particular the law requires that Ecology develop criteria for certification of compliance using third party accredited laboratories and for a "proof of certification" mark to appear on brake pads and their packages. Without adopting rules brake friction material manufacturers would be unable to comply with the requirements of the law.

Brake manufacturers are required to submit data about the concentration of copper and other metals in brake pads sold or offered for sale in Washington. Without adopting rules to define how and what data is submitted, Ecology would be unable to use the data submitted to establish a baseline for the concentrations of these metals in brake friction materials as required by law.

The rules also outline a process by which manufacturers may apply for an exemption from the law if compliance is not feasible or would violate safety standards for specific vehicle model or type.

Differences Between the Proposed Rule and Adopted Rule

RCW 34.05.325(6)(a)(ii) requires Ecology to describe the differences between the text of the proposed rule as published in the *Washington State Register* and the text of the rule as adopted, other than editing changes, stating the reasons for the differences.

There are some differences between the proposed rule filed on June 5, 2012, and the adopted rule filed on October 19, 2012. Ecology made these changes for all or some of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

The following content describes the changes and Ecology's reasons for making them. Where a change was made solely for editing purposes, we did not include it in this section.

WAC 173-901-030

The final rule includes WAC 173-901-050(2) in the list of sections that brake friction material manufactured prior to 2015 is exempt from. This change has no effect on the meaning of the rules and was made for consistency and in response to comments we received.

WAC 173-901-040

The definition of "Brake Friction Material Manufactured as Part of an Original Equipment Service Contract" was revised. The changes clarify the original language without changing the meaning and were made in response to comments received.

WAC 173-901-060

This section was revised to change who is responsible for assigning a unique identification code to a brake friction material. Under the final rule the brake friction material manufacturer must ensure that a code is assigned. Under the proposed rule this was the responsibility of the industry sponsored registrar. This change was made in response to comments we received. A change was also made in WAC 173-901-090 for consistency with this revision.

WAC 173-901-060

Subsection 6 was edited for clarity. The changes made to this section do not alter the meaning of the rules. These changes were made in response to comments we received.

Under the final rule, manufactures of brake friction material that are not required to comply with the requirements of the rule may choose to mark products with a WX or an X to indicate that they are exempted from the law. Under the proposed rule manufacturers could only mark products with a WX. This change was made in response to comments and for consistency with other sections. In all places where this marking is referenced throughout the rule both WX and X are included.

WAC 173-901-050

Clarifying changes were made to subsection 4. These changes do not change the effect of the final rule. These changes were made for clarity and in response to comments we received.

WAC 173-901-160

The final rule includes language to explain that brake friction material manufactured as part of an original equipment service contract may be sold indefinitely after the various effective dates in the law. This change does not affect the meaning of the rules. It was made for consistency and in response to comments we received.

Various changes were made to the table illustrating the various marking possibilities. These changes have no affect on the meaning of the rules and were made to enhance clarity and in response to comments we received.

Response to Comments

Ecology received comments from ten people or groups on the proposed Better Brakes Rule. One comment was received as spoken testimony at the public hearings, while the others were received through the mail or as emails. Ecology responded to each individual commenter. This document first provides a copy of the comments as they were received. Immediately following the comment is Ecology's formal response.

One commenter provided two sets of comments, one from their home and the other from their business. These comments will be treated as one individual comment and Ecology will respond to them with a single response. In cases where two or more commenters have made similar comments the same response may have been repeated for each comment.

Comments are sorted by the last name of the person who provided the comments.

Comments Received From	**Response On**
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Comments from Carlos Agudelo, Director of Technology Development, Link Engineering Company

Wesley, Ian (ECY)

From: Carlos Agudelo [c.agudelo@linkeng.com]
Sent: Wednesday, July 18, 2012 12:37 PM
To: Wesley, Ian (ECY)
Cc: Tim Duncan
Subject: Link Engineering comments to WA Better Brakes Rule
Attachments: Link Comments on Better Brakes Rule 7.18.2012.pdf

Ian,

It would have been my preference to attend and comment in person at the hearing held last week. Unfortunately, I was on a business trip out of the country.

So, we would like to take this opportunity to provide comments on the proposed Better Brakes Rule before tomorrow's deadline. In general, this newer version of the Rule covers a significant number of questions and clarifies aspects which were not intuitively obvious in the past. The comments we are presenting on the attached document reflects our understanding of the different international standards on this topic (product conformity assessment) and what we consider to be open market practices which will ensure the availability of safe and compliant friction materials in the state of Washington.

Regarding the mechanics of the process, we would like to know (a) how do we get access to all comments submitted to the Department, and (b) how do you envision the review process for all the comments being submitted by the different stakeholders on this new and proactive rule.

Best regards, and do not hesitate to call or e-mail me with questions on the comments we are providing.

Carlos Agudelo
Director of Technology Development

Link Engineering Company
North America Laboratory Test Operations
313.319.9819 Mobile
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http://www.linkeng.com

Comments in the attachment are continued on the next page.

Comments on Better Brakes Rule — Chapter 173-901 WAC

Submitted by: Link Engineering Company – July 18th, 2012

Notes:

a) Suggested deletions are indicated in ~~red strikethrough~~ font
b) Suggested additions are indicated in **blue bold** font

Comment 1 — WAC 173-901-070
Which laboratories must a manufacturer of brake friction material use to certify compliance with this chapter? (1) To certify compliance, a manufacturer of brake friction material must ensure that its brake friction material is tested by a laboratory that is qualified and equipped for testing products in accordance with the SAE J2975:~~2001~~ **2011** testing method, and that has been found to be competent to perform the specific testing methods described by SAE 2975:2011 by maintaining accreditation:

Rationale

Correct typographical error

Comment 2 — WAC 173-901-060
Self-certification of compliance. (1) Manufacturers of brake friction material must certify to the department that any brake friction material that is sold or offered for sale in Washington state complies with the requirements of chapter 70.285 RCW and this chapter using the following process:
(a) **Step 1:** ~~Submit a sample of each brake friction material for laboratory testing. A brake friction material manufacturer may either (i)~~ Submit a brake friction material sample directly to a laboratory accredited in accordance with WAC 173-901-070 for testing in accordance with WAC 173-901-080
~~(ii) Submit a sample of brake friction material to an industry sponsored registrar that will send the sample to a laboratory accredited in accordance with WAC 173-901-070 for testing in accordance with WAC 173-901-080, on behalf of the brake friction material manufacturer~~.

Rationale

The current BMC industry-sponsored registrar has an obvious conflict of interest with Step 1 (ii) as they also provide testing service. This centralized role (a) creates unnecessary delays to complete the testing to support a timely declaration of conformity, (b) adds logistics and administrative costs for the manufacturer, (c) creates non-value-added burden to the registrar, and (d) intrudes the business dealings between the manufacturer and the testing laboratory regarding economic terms and payment processes.

Comment 3 — WAC 173-901-060
Self-certification of compliance.
(e) **Step 5:** [...]

(iii) Be in a form and format prescribed by the department **which clearly states the registrar used for a declaration of conformity of a given friction material formulation.**

Rationale

In accordance with WAC 173-901-040 and with item 3.3.2 of the *Preliminary Cost-Benefit and Least Burdensome Alternative Analyses – Chapter 173-901 WAC Better Brakes*, "[...] it is possible that some or all of the manufacturers could work independently to comply." In order to ensure unrestricted access to the Washington state market of complying product with clear and unambiguous markings, the corresponding declaration of conformity shall identify the actual registrar used by the manufacturer. This logic follows other product markings readily available like organic food, electrical regulation compliance, etc. where multiple markings are used side-by-side in the marketplace (sometimes with multiple markings on the same product). In addition, due to multiple factors, the same manufacturer can eventually use multiple registrars for different products.

Comment 4 — WAC 173-901-070
Which laboratories must a manufacturer of brake friction material use to certify compliance with this chapter?
(3) The registrar(s) as defined in WAC 173-901-040 shall maintain an online and publicly available database of laboratories accredited in accordance with WAC 173-901-070 for testing in accordance with WAC 173-901-080.

Rationale

In order for manufacturers to comply with the Better Brakes Rule, unrestricted access to all possible testing laboratories accredited and equipped to test to Chapter 173-901 WAC is critical to avoid commercial barriers to trade and to ensure free market rules in the state of Washington.

Prepared by:

Carlos Agudelo
Director of Technology Development
Link Engineering Company
c.agudelo@linkeng.com
313.319.9819 direct

Response to Comments from Carlos Agudelo

Comment 1: Thank you for this comment. This typographical error has been corrected.

Comment 2: Under the proposed rules, manufacturers of brake friction material are free to use either option. If a manufacturer feels that using the second option for submitting samples to a laboratory for testing creates delays, adds to costs, or otherwise creates hardship, Ecology would encourage the manufacturer to submit the sample directly to the laboratory. Ecology heard during the rulemaking that some manufacturers may wish to submit samples directly to the registrar who

would then arrange for testing. Ecology will leave this decision to manufacturers of brake friction material. No change will be made to the proposed rule.

Comment 3: Ecology intends to track this information. Ecology believes the proposed rule makes it clear that this information will be submitted during the certification process.

Comment 4: Ecology agrees that this is a great suggestion and hopes that the registrar will make a list of laboratories that can be used available to the public. However Ecology does not have the authority to require them to do so.

Comments Form Geoff Brosseau, Executive Director, California Stormwater Quality Association

CASQA
California Stormwater Quality Association
Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

July 16, 2012

Department of Ecology
Ian Wesley
P.O. Box 47600
Olympia, WA 98504-7600

Subject: Support - Adoption of Better Brakes Rule

Dear Mr. Wesley:

Thank you for inviting California representatives—including a representative of our organization, the California Stormwater Quality Association (CASQA[1])—to participate in Washington Ecology's conversations with interested parties about development of draft rules to implement the Washington Better Brakes Law. We appreciate the cooperation between Washington Ecology and the California Department of Toxic Substances Control (DTSC) on the implementation of the two related state laws that grew out of the Brake Pad Partnership, which CASQA members co-founded in the 1990s.

Timely and effective implementation of California's brake pad law (SB 346) is a high priority for our members because it will provide California's cities and counties with the tool they need to comply with stringent federal and state water quality mandates, including copper TMDLs and avoid billions of dollars in costs and potential penalties. We greatly appreciate Ecology's commitment to working with all parties affected by its decisions, including those of us in California.

Through the Better Brakes Rule development process, Washington Ecology worked with the brake pad manufacturing industry and other interested parties to develop a brake pad product compliance marking system. The development of the marking system was the reason for CASQA's involvement in Washington's regulatory process.

The system embodied in the proposed Better Brakes Rule relies on a combination of markings on brake pads and on product packages. California end users represented by the Automotive Services Council of California and the California Retailers Association have informed DTSC that this combined product plus box marking system—together with an aggressive supply chain education program—will meet their needs for successful implementation of California's SB 346. Implementation of the Washington-developed integrated pad and box marking system, which we support, will be just as important for California as it is for Washington.

[1] CASQA is comprised of stormwater quality management organizations and individuals, including cities, counties, special districts, industries, and consulting firms throughout California. Our membership provides stormwater quality management services to more than 23 million people in California. CASQA was originally formed in 1989 as the Stormwater Quality Task Force to recommend approaches for stormwater quality management to the California State Water Resources Control Board.

P.O. Box 2105 Menlo Park CA 94026-2105 650.366.1042 www.casqa.org info@casqa.org

Thank you for including CASQA and DTSC in your regulatory development process. If you have any questions, please contact me at (650) 365-8620.

Sincerely,

Geoff Brosseau, Executive Director
California Stormwater Quality Association

cc: Evelia Rodriguez, DTSC
Suzanne Davis, DTSC
Ken Zarker, Washington Department of Ecology
CASQA Board of Directors, Executive Program Committee, and Brake Pad Partnership Team

Response to Comments from Geoff Brosseau

Thank you for your comments. We were pleased to have you included in our rule-development process. Working with California's Department of Toxic Substances Control has been and will continue to be a high priority for Ecology as we move forward with implementation of the Better Brakes Law. Thank you for helping to bring California stakeholders into the Washington State rule-development process.

Comments from Dale Isley, Owner, Tymar Performance

TYMAR PERFORMANCE

Dale Isley
1422 N. Boeing Rd.
Spokane Valley, WA 99206
509-922-TRUK (8785)

RECEIVED
JUN 28 2012
HWTR-HQ

Ian Wesley
Department of Ecology
PO Box 47600
Olympia, WA 98504

June 25, 2012

Mr. Wesley,

Please consider my concerns on The Better Brakes Rule.

Although The Better Brakes Rule might seem to be an excellent idea at face value, because it would be very difficult to be taken seriously if you oppose exposing the population to additional heavy metals and harmful materials in the production of consumable car parts, I would suggest that how you perform that act is more important than the act itself.

It will cost manufacturers more to introduce another layer of government regulation where it is not needed. Not only will The Better Brakes Rule cost more to produce the item, it will also cost more to enforce inspections of new materials. Requiring materials to be submitted and approved through independent laboratories, as well as the research and development it will take to identify new substances that will be as useful as the current products, are expenses that will be passed directly to the consumer by the manufacturer, resulting in businesses choosing to move outside the state to avoid the regulation.

What the Washington population cannot currently handle is to have things cost more. Obviously, our economy is struggling to recover and this bill is another obstacle in the process. Any company wanting to produce these parts at a lower cost leaving Washington state takes with them jobs, tax revenue, and makes Washington less able to economically recover as the burden of the loss revenues will be shifted to the private sector.

If copper is the concern behind this bill, you would be FAR better off requiring replacement of pipes used in the housing industry for disposal in a pre-approved manner. The same can be said for asbestos. The amount of asbestos and/or copper in old construction is far more than the miniscule amount used in the production of brake pads.

Comparing the options of regulating an industry with higher costs to the population of Washington or offering incentives to companies to develop better substances, you could take all the money saved to actually make a difference in areas where there is a high content of the materials currently present. Adding incentives will attract business to Washington, allowing higher tax revenue and bringing jobs to the state. Jobs where people will spend their income purchasing houses, groceries, and all the consumables that go with life.

TymarPerformance.com

As a company, we definitely oppose the passing of The Better Brakes Rule. I want MORE businesses in Washington, MORE jobs in Washington, MORE ways to lessen the taxation burden on individuals.

Please, don't be so short sided that you cut off your foot to spite your toe. Let's make beneficial ecological change in a manner that doesn't hurt Washington in the process. You have a fiduciary relationship to consider the impact on our state as the Department of Ecology performs its job.

--

Dale Isley
Owner; Tymar Performance

TymarPerformance.com

The Isley Family
1422 N. Boeing Rd.
Spokane Valley, WA 99206
509-922-8785

June 15, 2012

Ian Wesley

I would like to express my deep opposition to The Better Brakes Bill as a person, as well as a business owner. This bill shows the lack of understanding the current government has about business in general.

To cost a manufacturer more to produce a product in Washington State is a mistake of the highest level. Why are we not trying to attract companies to start or relocate their business ventures to Washington?

The less the revenue recovered from businesses that our government can get, the more that it will be required for the individual living within Washington boundaries to pay.

Right now, I don't know too many people that are not struggling. If anything, they are still recovering over their losses over the last few years. It just doesn't make any sense to put into motion legislation that will increase costs to manufacturers, who will pass those costs on to consumers. Or, worse, reallocate or build outside WA borders to continue production as usual.

If you want to lessen the ecological impact to our state, why not give incentives to companies to come here. If you want less metals and hazardous materials in brake pads, pay companies to develop their products here and reap the benefits of long term revenue over time.

The Better Brakes Rule does NOT make sense,
--

Dale Isley
coyanddale@msn.com

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JUN 29 2012
HWTR-HQ

Response to Comments from Dale Isley

We would like to thank you for your comments. Ecology has taken great effort to reduce the economic impact of the proposed rule on businesses both within Washington State and around the globe. To develop the proposed rules, Ecology convened a group of industry experts and other interested parties. This group was called the Better Brakes Rule Workgroup.

The Better Brakes Rule Workgroup used a consensus-based process to develop the proposed rule and the proposal has the support of all workgroup members including representatives of the majority of the brake friction materials manufacturing industry. During rule development, Ecology worked to contact every known brake friction material manufacturer around the globe and we have not heard from a single manufacturer that is opposed to the proposed regulation.

We would like to clarify that the proposed rules apply to all brake friction materials sold in Washington State and that brake friction material manufacturers will be required to comply with the law regardless of where they are located. There are currently no automobile brake friction material manufacturers in Washington State. Many major brake friction material manufacturers have informed Ecology that it is not economical to manufacture brake pads exclusively for sale in a single state and that they will comply with the Washington State standard for all products sold in North America.

Your comments mention other sources of copper and asbestos. In particular they mention copper pipes and asbestos used in construction. Prior to legislation being introduced, a group called The Brake Pad Partnership conducted an extensive amount of research into sources of copper pollution to the San Francisco Bay. They concluded that brake pads are one of the largest, if not the largest, source of copper pollution to the Bay. Ecology conducted a separate study, The Puget Sound Loadings Study, to estimate the amount of various chemicals, including copper, released to Puget Sound. The top three sources of copper pollution are pesticides, copper piping, and brakes. With copper piping and brakes estimated to release roughly the same amount of copper. Many people are unaware that brakes may contain asbestos, and unfortunately, brakes remain a source of asbestos exposure. Care needs to be taken when changing brakes to prevent potential exposure to this hazardous substance, as it does with the demolition and disposal of buildings containing asbestos.

Thank you for your comments.

Comments from Dietmar K Leicht, General Secretary, Federation of European Manufacturers of Friction Materials

Wesley, Ian (ECY)

From: Dietmar K Leicht [d.leicht@vri.de]
Sent: Wednesday, July 18, 2012 12:25 PM
To: Wesley, Ian (ECY)
Subject: Comments to the BETTER BRAKES RULE from the European Friction Material Industry

Dear Mr. Wesley,
The FEMFM- Federation of European Manufacturers of Friction Materials welcomes the "Better Brakes Rule" for the protection of the environment and would like to recommend from a cost perspective the establishment of accredited laboratories in Europe for the certification of the brake friction material in accordance with WAC 173-901-080.

Best regards
Dietmar K. Leicht
-General Secretary-

FEMFM Federation of European
Manufacturers of Friction Materials
Robert-Perthel-Str. 49
50739 Köln (Germany)
Tel: ~49(0)221-938808-0
Fax: ~49(0)221-938808-29
Internet: http://www.femfm.com
eMail: office@femfm.com

Response to Comments from Dietmar K Leicht

Thank you for your comments. Under the rule, manufacturers are allowed to use overseas laboratories and Ecology expects that there are currently many laboratories in Europe that meet the requirements of the rule.

Comments from Aaron Lowe, Vice President of Governmental Affairs, Automotive Aftermarket Industry Association

AAIA® Automotive Aftermarket Industry Association

DRIVING THE AFTERMARKET INDUSTRY

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FAX 301.654.3299
WEB www.aftermarket.org
E-MAIL aaia@aftermarket.org

July 18, 2012

Ian Wesley
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Dear Mr. Wesley:

The Automotive Aftermarket Industry Association (AAIA) is pleased to submit the following comments regarding the proposed rule issued by the Department of Ecology (DOE) to adopt Chapter 173-901 WAC, Better Brakes. The proposal was published in the Washington State Register on June 20, 2012 and will implement RCW 70.285, which phases copper, asbestos, and several heavy metals out of brake pads.

AAIA is a national trade association representing companies that manufacture, distribute, sell and install motor vehicle parts, accessories, service, tool, equipment, materials and supplies including brake pads. Through its membership, AAIA represents more than 100,000 repair shops, parts stores and distribution outlets. While some of AAIA's members supply the vehicle manufacturers, the vast majority of our membership sell in the vehicle aftermarket, which is everything that happens to a vehicle after it leaves the showroom.

The proposal now being considered by DOE is the product of the joint efforts of industry, environmental groups and the Department. AAIA would like to thank DOE staff for their hard work in crafting the proposal which we believe is a workable regulatory scheme for implementing the bill's requirements to reduce use of heavy metals and copper in vehicle brake pads. The self-certification program combined with the produce marking and package labeling requirements included in this proposal should ensure cost effective compliance throughout the brake pad distribution chain.

AAIA would like to particularly thank DOE for their work in crafting a provision implementing the "Original Equipment Service (OES) exemption that was included in RCW 70.285. As DOE is aware, AAIA has significant concerns that if this provision is not implemented properly, it will provide a strong and unwarranted competitive advantage to the vehicle manufacturers in marketing replacement brake pads for vehicles produced prior the 2021 compliance deadline for 5 percent copper. The proposal as agreed to by the car companies, brake manufacturers and the aftermarket will ensure that the provision is implemented as intended by the legislature, but also minimizes its potential anti-competitive impact on the independent vehicle aftermarket.

Specifically, the proposed rule states:

> (2) **"Brake friction material manufactured as part of an original equipment service contract"** means brake friction material that:

(a) Is provided as service parts originally designed for and using the same brake friction material formulation sold with a new
[3] OTS-4688.2
motor vehicle;
(b) Is manufactured as part of a contract between a vehicle manufacturer and a brake friction material manufacturer that requires the brake friction material manufacturer to provide brakes with the identical brake friction material formulation to those that originally came with a new motor vehicle; and
(c) If there are any changes to the design of the service part's brake friction formulation, or if the brake friction material manufacturer sells the parts to any party other than the vehicle manufacturer, the product is no longer brake friction material manufactured as part of an original equipment service contract.

The provisions in the proposed rule implementing the OES exemption should be retained as drafted since they properly reflect the legislative intent of this provision by requiring that the brake friction material formulation be the same as the brake originally equipped on the vehicle and because the proposed language carefully and correctly defines the scope of the OES exemption to only those brake pads sold by the manufacturer to the vehicle manufacturer.

The Alliance of Automobile Manufactures issued their support for this compromise language in their February 29 letter which stated that "Our suggested language is in line with what DOE is authorized to regulate – brake friction material – and takes into account the changes that are made to brakes within an Original Equipment Service ("OES") contract that don't affect the brake friction formulations and would therefore still be considered an OES contract part." AAIA agrees with these comments and urges DOE retain the proposed language as part of the final rule.

Thank you again for the opportunity to submit comments. Please free to contact me should you have any questions regarding our comments.

Sincerely,

Aaron M. Lowe
Vice President, Government Affairs
Automotive Aftermarket Industry Association (AAIA)
aaron.lowe@aftermarket.org

Response to Comments from Aaron Lowe

Thank you for your comments. Ecology is pleased that we were able to reach a consensus with The Better Brakes Rule Workgroup on the proposed Original Equipment Service Contract definition. Your comments ask that we retain the language as drafted in the proposed rule.

By way of background, the Better Brakes Rule Workgroup (the Workgroup) reached consensus on the definition "Brake friction material manufactured as part of an original equipment service contract." Ecology reordered and rewrote this original definition prior to the publication of the proposed rule. This was done in an effort to increase the clarity of the definition. We do not believe there is a significant difference between the definition in the proposal and the original definition as agreed to by the Workgroup. However Ecology received comments requesting that the definition be restored to the original language agreed to by the Workgroup. Ecology has restored the language to its original form that was previously agreed to by the commenter and other members of the Workgroup.

Thanks again for your comments on the proposed rule.

Comments from Julia Rege, Senior Manager - Environment & Energy, Global Automakers

GlobalAutomakers

Aston Martin • Ferrari • Honda • Hyundai • Isuzu • Kia • Mahindra
Maserati • McLaren • Nissan • Peugeot • Subaru • Suzuki • Toyota

July 19, 2012

Ian Wesley
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Re: Washington Department of Ecology Proposed Better Brakes Rule (6/20/2012)

(Submitted via Email)

Dear Mr. Wesley,

The Technical Affairs Committee of the Association of Global Automakers, Inc. (Global Automakers)[1] appreciates the opportunity to provide comments to the Department of Ecology (Department) on its proposed Better Brakes Rule, released June 20, 2012. Global Automakers has been actively engaged in the development of the Better Brake Rule. We participated as a member of the Better Brakes Rule Workgroup that was convened by the Department to develop draft rules to implement Chapter 70.285 RCW, the Better Brakes Law. We have also submitted comments in December 2011 and February 2012, as well as a letter of support for release of the proposed rule in April 2012. Global Automakers appreciates the open, transparent process and the multiple opportunities that stakeholders had to provide input throughout development of the proposal.

Global Automakers and its members are committed to supporting the development and use of safe chemicals and products in the automotive industry. Through the application of green chemistry principles and sound scientific methods, Global Automakers believes that the design and development of new chemistries and technologies will continue to provide innovative solutions to current and emerging environmental challenges. Our goal is to ensure that our members have the opportunity to provide high quality, environmentally sound, and safe products and services. With these goals in mind, we look for ways to provide tools to our members to facilitate continuous improvement and to ensure that wherever possible we assist them to not only meet but exceed safety and environmental standards.

The regulations as proposed would require brake friction materials manufactured beginning January 1, 2015 to contain no more than 0.1 percent by weight (%wt) asbestiform fibers, 0.01 %wt cadmium and its compounds, 0.1 %wt lead and its compounds, 0.1 %wt mercury and its compounds (collectively known as the regulated

[1] The Association of Global Automakers represents international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. Our Technical Affairs Committee members include: American Honda Motor Co., American Suzuki Motor Corp., Aston Martin Lagonda of North America, Inc., Ferrari North America, Inc., Hyundai Motor America, Isuzu Motors America, Inc., Kia Motors America, Inc., Mahindra & Mahindra Ltd., Maserati North America, Inc., McLaren Automotive Ltd., Nissan North America, Inc. Peugeot Motors of America Subaru of America, Inc., ADVICS North America, Inc., Delphi Corporation, Denso International America, Inc., and Robert Bosch Corporation. We work with industry leaders, legislators, and regulators in the United States to create public policies that improve motor vehicle safety, encourage technological innovation, and protect our planet. Our goal is to foster an open and competitive automotive marketplace that encourages investment, job growth, and development of vehicles that can enhance Americans' quality of life. For more information, visit www.globalautomakers.org.

Association of Global Automakers, Inc. 1050 K Street, NW, Suite 650 • Washington, DC 20001 TEL 202.650.5555 GLOBALAUTOMAKERS.ORG

GlobalAutomakers

constituents) and beginning January 1, 2021 to contain no more than five (5) %wt copper and its compounds. The regulations also provide exemptions, including, but not limited to, the exemptions for brake friction material manufactured prior to 2015 from the requirements for the regulated constituents, those manufactured prior to 2021 from the requirements for no more than five %wt copper content, and those manufactured as part of an original equipment service contract. Global Automakers supports the regulations as proposed and the Department's move forward to finalize the regulations.

While we support the regulations as proposed, Global Automakers also recognizes that the Department will convene an advisory committee under Chapter 70.285 RCW to evaluate the feasibility of no more than 0.5 %wt copper content in brake friction materials for future regulatory consideration. The feasibility of brake friction materials with no more than 0.5 %wt copper content is still uncertain, and feasibility should be based on proof of concept, rather than speculation of potential. An open, collaborative process involving all interested stakeholders will be necessary and important in assessing the feasibility of lower copper content.

In addition, Global Automakers would like to reiterate from our previously submitted comments the importance of harmonization between the Washington and California Better Brake regulatory programs for reduction of regulatory burden. While Washington and California may not be able to harmonize all aspects of their regulations due to diverging state laws, Global Automakers believes that at a minimum both states should provide reciprocity agreements. Harmonized programs will reach the same goals (5% copper content by 2021) while reducing compliance costs, ensuring no duplication of efforts, and allowing manufacturers and suppliers to offer one consistent product in both states.

Thank you for your consideration of our comments. If you have any questions regarding the comments, please contact me at jrege@globalautomakers.org or (202) 650-5559.

Sincerely,

Julia Rege
Senior Manager, Environment & Energy

Response to Comments from Julia Rege

Thank you for your comments. Ecology agrees with your comments regarding the evaluation of the availability of friction materials containing less than 0.5 percent copper. Due to differences between the Californian and Washington laws a formal reciprocity agreement would not be possible, however working with California's Department of Toxic Substances Control has been and will continue to be a high priority for Ecology as we move forward with implementation of the Better Brakes Law.

Comments from Filipa Rio, Senior Manager, Environmental Affairs, The Alliance of Automobile Manufacturers

Alliance OF AUTOMOBILE MANUFACTURERS

July19, 2012

Mr. Ian Wesley
Washington Department of Ecology
P.O. Box47600
Olympia, WA 98504-7600
(Delivered via Email)

Re: Washington State Proposed Regulation for Better Brake Pads

Dear Mr. Wesley:

The Alliance of Automobile Manufacturers ("Alliance") appreciates the opportunity to provide comments to the Washington Department of Ecology ("DOE") proposed rule for Better Brake Friction Material.

The Alliance is a trade association of 12 car and light truck manufacturers, consisting of BMW Group, Chrysler Group LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda North America Operations, Mercedes-Benz USA, Mitsubishi Motors, Porsche Cars North America, Inc., Toyota Motor North America, Volkswagen of America, Inc., and Volvo Cars of North America. Together the Alliance represents approximately three-fourths of the new car sales in the U.S.

The Alliance supports green chemistry goals and the use of safer alternatives in the auto industry and constantly works to make our vehicles safer for public health and the environment. We thank you for your collaborative and transparent stakeholder process and for the multiple opportunities for stakeholder input provided by DOE. The Alliance offers the attached comments for your consideration in the final rule. Please feel free to contact me should you have any questions or concerns at frio@autoalliance.orgor (202)326-5551.

Sincerely,

Filipa Rio

Filipa Rio
Senior Manager, Environmental Affairs
Alliance of Automobile Manufacturers

BMW Group•Chrysler Group LLC •Ford Motor Company•General Motors Company•Jaguar LandRover
Mazda•Mercedes-Benz USA •Mitsubishi Motors •Porsche•Toyota •Volkswagen•Volvo
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Alliance Comments

The following includes Alliance comments regarding:

- WAC 173-901-030 (3) Applicability
- WAC 173-901-040 Definitions
- WAC 173-901-150 Brake friction material manufactured as part of an original equipment service contract (OESC)
- WAC 173-901-160 Responsibilities of wholesalers, distributors, installers, and retailers of brake friction materials
- Other Concerns

WAC 173-901-030 (3) Applicability

WAC 173-901-030 (3) needs the following revisions:

- Subparagraph (a) is missing the exemption for WAC 173-901-050(2) and
- Subparagraph (c) is requested to be exempt for WAC 173-901-060.

WAC 173-901-040 Definitions

The Alliance previously recommended that the definition for "manufacturer" be revised to "motor vehicle manufacturer" and that a second definition for "brake friction material manufacturer" be added in order to eliminate any ambiguity between the two. We continue to believe that a clear distinction between the two types of manufacturers is needed.

Further, the Alliance has concerns with the definition of "brake friction material manufactured as part of an Original Equipment Service Contract (OESC)." Although we appreciate DOE's attempt to clarify the definition by the addition of section (c), we request that DOE go back to the original language the Alliance submitted, and that DOE agreed to, in our comment letter from February 29, 2012. The language is as follows:

"Brake friction material manufactured as part of an original equipment service contract" means brake friction material that:

> *a. is provided as service parts originally designed for and using the same brake friction material formulation sold with a new motor vehicle. ~~This means that the service parts must be identical to the parts that originally came with the new motor vehicle -- they must be indistinguishable.~~ If there are any changes to the design of the service part's~~, or its~~ brake friction formulation, the product is no longer brake fiction material manufactured as part of an original equipment service contract; and*
>
> *b. is manufactured as part of a contract between a vehicle manufacturer and a brake friction material manufacturer that requires the brake friction material manufacturer to provide ~~identical parts~~ brakes with the identical brake friction material formulation to those that originally came with a new motor vehicle. The brake friction material manufacturer may only sell these parts directly to the other party to the contract, the*

vehicle manufacturer.

Our suggested language is in line with what DOE is authorized to regulate - brake friction material - and takes into account the changes that are made to brakes within or in relation to an Original Equipment Service Contract that does not affect the brake friction formulation and would therefore still be considered an OESC part. Every brake pad has the brake friction formulation code stamped on it, so any change can be tracked by DOE.

The OESC exemption is automatic. If an OEM uses the OESC exemption and the brake lining formulation (tracked by the code) changes from the initial production level, then the OEM would either move to a compliant friction material or apply for a further exemption.

We also request that DOE clarify in Section WAC 173-901-150 that if a brake friction manufacturer sells these parts to other parties other than the vehicle manufacturer, as described in the OESC definition, that the OESC exemption remains intact for the vehicle manufacturer. Currently WAC 173-901-150(3) indicates that vehicle manufactures must have "a system in place to ensure that brake friction material manufactured as part of an OESC is only installed on vehicles for which it is designed." As vehicle manufacturers cannot ensure that OE brakes will not be sold by brake suppliers to other parties, this requirement should be removed.

WAC 173-901-150 Brake friction material manufactured as part of an original equipment service contract (OESC)

WAC 173-901-150(4)(b)(i)
This section is contradictory. It indicates that manufacturers of brake friction material for vehicles manufactured before 2015 as part of an OESC "will not be required to submit testing results for the regulated constituents." However, the very next sentence seems to contradict that statement saying, "Manufacturers of brake friction material must still submit testing results to an industry-sponsored registrar and to the department for copper, nickel, zinc, and antimony, to fulfill reporting requirements under RCW 70.285.070 and WAC 173-901-110." Neither RCW 70.285.070 nor WAC 173-901-110 requires testing. The statute requires brake friction manufacturers to provide "data to the department adequate to enable the department to determine concentrations of antimony, copper, nickel, and zinc and their compounds in brake friction material sold or offered for sale in Washington State;" and WAC 173-901-110 allows manufacturers to rely on formulations to provide the concentrations of regulated constituents. WAC 173-901-110 does indicate that after January 1, 2015, compliance with the self-certification of Compliance Section WAC 173-901-060, which requires testing, will fulfill brake manufacturers' reporting requirements under RCW 70.285.070.

The Alliance recommends that this section be changed to allow manufacturers of brake friction materials manufactured as part of an OESC for vehicles manufactured prior to January 1, 2015 or prior to January 1, 2021 (and are exempt from Sections WAC 173-901-050(1) & (2)) be allowed to fulfill the reporting requirements under RCW 70.285.070 and WAC 173-901-110 using formulations as is allowed in WAC 173-901-110 for the initial baseline reports. In addition, language should be added to WAC 173-901-060 to allow these OESC brake friction materials to

be certified compliant under without undergoing testing since these brake friction materials are exempt from the requirements to reduce or eliminate regulated constituents.

Marking Requirements for OESC brake friction materials:
WAC 173-901-090 (6) indicates that there is no requirement for brake friction materials exempt from this Chapter to be marked. It is unclear whether this also refers to OESC brake friction materials which are exempt from 173-901-050 and 173-901-060.

There are several instances throughout the proposed rule that seem to require markings on brake friction material for OESC exempt brakes:

- *WAC 173-901-090 (2) "Marked proof of certification. When must brake friction material and its packaging be marked?" Brake friction material that is manufactured on or after January 1, 2015, and is sold or offered for sale in Washington State must have marked proof of certification on the brake friction material and its packaging.*

This section should be amended in two areas. First, include a caveat that certain brake friction material, including OESC-exempt brakes for vehicles manufactured before 2015 and 2021, is exempt from markings on the brake friction material. Second, include "point of sale" before packaging. This would clarify parts sent to manufacturing plants do not need the packaging marked.

- *WAC 173-901-150(2) Brake friction materials manufactured as part of an OESC are still subject to all other requirements of chapter 70.285 RCW and this chapter including, but not limited to, certification of compliance, marked proof of certification, and reporting requirements.*

This section should be amended to indicate that OESC-exempt brakes for vehicles manufactured before 2015 and 2021, is exempt from markings on the brake friction material.

- See WAC 173-901-160(2) below.

WAC 173-901-160 Responsibilities of wholesalers, distributors, installers, and retailers of brake friction materials

WAC 173-901-160(1) May I sell brake friction material that I have in stock before the effective dates of chapter 70.285 RCW? The proposed rule indicates here that brake friction material manufactured before January 1, 2015 (at any concentrations of regulated constituents) or 2021 (containing > 5% copper) can be sold until January 1, 2025 and 2031, respectively. However, it should be indicated here that exempt brake friction materials, such as OESC parts, can continue to be installed according to the requirements of the exemption.

WAC 173-901-160(2) - How will I know that the brake friction material I sell is compliant? The table in this section indicates under "WX" that "brake friction materials marked with an "X" are designed for use on exempted vehicles. It is a violation of this chapter to install these friction materials on nonexempt vehicles." However, WAC 173-901-100 states that the

environmental compliance marking "WX" indicates "that the brake friction material has either been granted an exemption from certain requirements of chapter 70.285 RCW and this chapter, under WAC 173-901-140, or it is designed for use on a vehicle that is not required to meet the requirements of chapter 70.285 RCW and this chapter." The language in the table indicates that "X" is to be used only for exempted vehicles. The Alliance suggests that the language under "WX" mimic the language found in WAC 173-901-100(5).

In the following row, "Brake friction material that is not marked with an environmental compliance marking or the year of manufacture," it is indicated that "unmarked brake friction material manufactured prior to 2015 may be sold for use on any vehicle until 2025. It is a violation of this chapter to sell unmarked brake friction material that is manufactured after 2015 for use on a vehicle that is required to comply with this chapter." This appears to contradict WAC 173-901-090 (6) which indicates that there is no requirement that for brake friction materials exempt from this Chapter to be marked.

WAC 173-901-170(1) Responsibilities of vehicle manufacturers, vehicle dealers, and other people selling motor vehicles – Vehicle Manufacturer Responsibilities

This section should be amended to read, "Manufacturers of new motor vehicles offered for sale in Washington State must ensure that new motor vehicles are equipped with brake friction material certified to be compliant with the requirements of this chapter."

Other Concerns

The Alliance would like to take this opportunity to reiterate that the states of Washington and California should work together to harmonize the implementation of their brake friction materials legislation and achieve their shared goals. Any regulatory difference could potentially impose unnecessary burden on industry. The Alliance recognizes and appreciates that the DOE has engaged California's Department of Toxics Substances Control in the stakeholder process; however, it is still unclear whether the two separate state programs will unnecessarily complicate the compliance process. We urge the Department to at a minimum provide a reciprocity agreement so that compliance with one state's program will suffice for compliance with the other, as harmonized programs will ultimately reach the same goal of 5 percent copper content by 2021.

Further, the Alliance is concerned that reaching a 0.5 percent level in the future will be difficult and requires the need for a collaborative process as Washington determines next steps in timing for that level.

Thank you for the opportunity to comment on this very important rulemaking, and please feel free to contact me should you have any questions.

Response to Comments from Filipa Rio

Thank you for your comments.

WAC 173-901-030 (3) Applicability

The exemption to WAC 173-901-050(2) has been added to subparagraph (a). Ecology agrees that adding this to the applicability section makes the rule clearer. It should be noted that because

original equipment service contract (OESC) parts are exempted from WAC 173-901-050(2) in that chapter, this change will have no effect on the meaning of the rule.

WAC 173-901-060 will not be added to subparagraph (c). This issue was discussed during the rule making process and brakes manufactured after 2015 must be certified and marked even if they are made as part of an OESC.

WAC 173-901-040 Definitions

Thank you for your comment. Ecology has careful reviewed each use of the term 'manufacturer' and believes the rule is clear when it is referring to the vehicle manufacturer, brake friction material manufacturer, or both.

The definition of "Brake friction material manufactured as part of an original equipment service contract" has been restored to the language that was agreed upon by the Better Brakes Rule Workgroup.

WAC 173-901-150(3) indicates that vehicle manufacturers must have "a system in place to ensure that brake friction material manufactured as part of an OESC is only installed on vehicles for which it is designed." Ecology understands that vehicle manufacturers cannot control what happens to parts after they are sold. Ecology is asking vehicle manufacturers to put some system in place, such as a unique part number, that will help prevent these parts from being installed on other vehicles.

WAC 173-901-150 Brake friction material manufactured as part of an original equipment service contract (OESC)

Thank you for your comments regarding WAC 173-901-150(4)(b)(i). Even though friction material manufactured under an OESC for vehicles manufactured before 2021 is not subject to copper, nickel, zinc, and antimony limits, manufacturers of this friction material are still required by RCW 70.285.070 to report the concentrations of these metals in their brake friction material. While RCW 70.285.070 does not specifically require manufacturers to test for concentrations of copper, nickel, zinc, and antimony, the statute does provide that "manufacturers of brake friction material sold or offered for sale in Washington state shall provide data to the department adequate to enable the department to determine concentrations of antimony, copper, nickel, and zinc and their compounds in brake friction material sold or offered for sale in Washington state." The department may use its rule making authority to specify what manufacturers must do to fulfill this statutory requirement, and it is a reasonable exercise of the department's rule making authority to require manufacturers to test their brake friction material for these constituents and to submit the results to the department. It is also reasonable for the department to allow manufacturers, for the initial baseline report, due January 1, 2013, to meet their statutory responsibility by using design intent or formula, rather than conducting testing, which is what the rule provides.

Ecology agrees that the language in WAC 173-901-090 (6) in the proposed rule is unclear and could possibly be misread as including parts manufactured as part of an OESC. This section has been updated to make it clear that this section does not apply to parts manufactured as part of an OESC. The other sections of the rule that require markings on OESC parts are correct.

With regards to the suggested change to include “point of sale” before “packaging,” distributors of brake friction materials have informed Ecology that when dealing with pallets or boxes of brake friction material they may want the packaging mark to be clearly visible. The Better Brakes Law only applies to brakes and vehicles sold or offered for sale in Washington State. There are currently no motor vehicle manufacturing plants in Washington State that install brakes on newly manufactured vehicles. As such, Ecology is unaware of any brakes being sent to manufacturing facilities, which would require a marking on the packaging.

<u>WAC 173-901-160 Responsibilities of wholesalers, distributors, installers, and retailers of brake friction materials</u>

Regarding WAC 173-901-160(1), Ecology agrees with your comment and this section has been updated to reflect that certified OESC parts can continue to be installed indefinitely.

In each instance where ‘WX’ or ‘X’ appears both will now be referenced and the description of these identifiers has been modified to include OESC parts.

The language in the table has also been clarified. Thank you for correcting these oversights.

We agree that the word ‘new’ should appear before ‘motor vehicles’ in WAC 173-901-170(1)

Ecology agrees with your comments regarding the evaluation of the availability of friction materials containing less than 0.5 percent copper. Due to differences between the California and Washington laws a formal reciprocity agreement would not be possible, however working with California’s Department of Toxic Substances Control has been and will continue to be a high priority for Ecology as we move forward with implementation of the Better Brakes Law.

Oral Comments from Heather Trim, People for Puget Sound

My name is Heather Trim. I am with People for Puget Sound and we do appreciate that this was a very good process, stakeholder process, to develop this rule. We do believe that this is a very important new law for the environment and as such, People for Puget Sound was one of the proponents in the first place - for getting this passed.

It is important that we do this right since we are first in the nation and I found out tonight that in fact, California hasn't even begun implementation. So, this is doubly important for us and it is good that the stakeholders were participating from across the country and from California.

So, some of the concerns we had were sort of the devil in the details about, for example, the definition of trace, which got resolved. We appreciate that. We are very glad that the marking, is going to be on the packaging and certification.

We would have preferred and I guess we still would prefer, that the certification marking and the marking on the actual brake pads be clearer for the consumer. One challenge is just that it's clear - it is well done - it's just that if you are a consumer, you're not going to necessarily know how to interpret it. And it's not going to be like yes or no. So, that is the one concern that we have and continue to have - though it's probably not an issue that is going to be changed at this point, but I just wanted to raise that. Thank you.

Response to Comments from Heather Trim

Thank you for your comments. Ecology was glad that the Better Brakes Rule Workgroup was able to resolve the issues regarding the definition of trace.

Due to differences between the California and Washington State law regarding implementation dates and other factors it is not possible to make a single marking that will enable someone to tell if a product complies with both states' laws. However Ecology believes the rule comes as close as is possible to this goal.

In Washington State if a product has a certification mark on the product packaging, the end purchaser of the product will be able to tell that that product complied with the law when it was made. If the brake is a high copper product and has a certification mark on its packaging it may be sold until 2031. This marking serves a very simple yes/no marking until that date. After 2031 one will have to look at the letter indicating the level of environmental compliance to determine if the product contains more than 5 percent copper by weight and may be legally sold within the state.

Comments from Ann Wilson, Senior Vice President, Government Affairs, Motor & Equipment manufacturers Association

Motor & Equipment Manufacturers Association
The Voice of the Motor Vehicle Supplier Industry

1030 15th Street, NW, Suite 500 East • Washington, DC 20005
202-393-6362 • Fax: 202-737-3742 • www.mema.org

Via E-mail

July 18, 2012

Mr. Ian Wesley
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Dear Mr. Wesley:

The Motor & Equipment Manufacturers Association (MEMA) represents more than 700 companies that manufacture motor vehicle parts for use in the light- and heavy-duty vehicle original equipment and aftermarket industries. Motor vehicle parts manufacturers are the nation's largest manufacturing sector, directly employing over 685,000 people across the country. MEMA represents its members through four affiliate associations: Automotive Aftermarket Suppliers Association (AASA); Heavy Duty Manufacturers Association (HDMA); Motor & Equipment Remanufacturers Association (MERA); and, Original Equipment Suppliers Association (OESA).

The members of MEMA and the Brake Manufacturers Council (BMC) of AASA have worked tirelessly to provide both formal and informal technical and policy input to all the stakeholders during the debate on the Better Brakes legislation and the subsequent Better Brakes Rule Advisory Workgroup. MEMA and BMC support the regulations as published and urge the state to adopt this rule without changes. We believe this rule represents the necessary balance between various stakeholders and any changes would delay timely implementation.

MEMA and BMC are moving forward with an aggressive agenda to limit the amount of copper in brakes nationwide. We are using the requirements of the Better Brakes Rule as springboard for a national Memorandum of Understanding (MOU) between brake manufacturers, vehicle manufacturers, retailers, distributors, installers, states, and other agencies. We believe this MOU will impact the sale of brakes nationwide and provide similar limits as outlined in the Better Brakes Rule.

In addition, MEMA and BMC are committed to engaging in an education program with the other members of our industry, such as the retailers, to make sure that everyone within the distribution system understands the product marking and package labeling system; and the need to only sell and install brake pads that are in compliance with the appropriate standard within Washington and California. Any delay in implementation of the Washington regulations will impact both of these efforts.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Ann Wilson

Ann Wilson
Senior Vice President, Government Affairs

Automotive Aftermarket Suppliers Association

Heavy Duty Manufacturers Association

Motor & Equipment Remanufacturers Association

Original Equipment Suppliers Association

Response to comments from Ann Wilson

Thank you for your comments on the proposed rule. Ecology appreciates your organization's commitment to a national solution to this important environmental issue and to an education and outreach campaign. Both of these efforts will be important for the success of Washington State's Better Brakes Law.

Comments from Kevin M Wolford, Executive Director, Automotive Manufacturers Equipment Compliance Agency, Inc. (AMECA)

Automotive Manufacturers
Equipment Compliance Agency, Inc.

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P.O. Box 76960 ✧ National Capitol Station ✧ Washington, D.C. 20013-6960

AMECA

Department of Ecology
Ian Wesley
PO Box 47600
Olympia, WA 98504-7600

July-19-2012

Dear Mr. Wesley,

I am writing in response to the Request for Comments regarding WAC 193-901. Thank you for giving interested parties a chance to comment on this process and thus create a better more workable regulation for all.

By way of background, the Automotive Manufacturers Equipment Compliance Agency, Inc. (AMECA) was incorporated in late 1994 to continue providing the same Safety Equipment Services to the states that the American Association of Motor Vehicle Administrators, (AAMVA) had provided since 1967. The Safety Equipment Services program was created, *at the request* of motor vehicle and equipment manufacturers, to provide a cost effective and central organization for all jurisdictional registration and compliance listings. Previously, to the creation of this program, manufacturers had to submit information to separate, and in some cases, dozens of jurisdictions. This caused undo delay and expense for the manufacturers.

The AMECA program is an efficient centralized program that notifies government, industry and the general public about items of motor vehicle safety equipment that have been tested by an AMECA-accredited laboratory and found to be in compliance with applicable United States standards. We serve the national and international automotive industry, the standards-setting community, the federal government's General Services Administration (GSA), numerous state governments, as well as several foreign governments. Our ultimate client is the motoring public and police officers in the field. We want to protect the motoring public from substandard and untraceable parts and provide support to police officers in identifying non-compliant, illegal and unsafe equipment.

Many state laws regulating automotive safety equipment, including friction material, were promulgated by the Vehicle Equipment Safety Commission (VESC). VESC was created by Congress as an Interstate Compact (P.L. 85-684; 72 Stat. 635). While it's true that the VESC has not met in years it could be reconvened because the underlying interstate commerce act is still on in effect and members of the law enforcement safety community, which originally comprised the VESC, still regularly meet. VESC regulations continue to be used by the states. AMECA is the custodian of the VESC files. A complete list of VESC regulations is available at VESC.org.

Telephone: 202-898-0145 ✧ FAX: 202-898-0148 ✧ www.ameca.org ✧ info@ameca.org

As mentioned above, friction material identification markings, called Edge Codes, are a state regulated item. Edge Codes were first registered with the Equipment Compliance program started by AAMVA in 1967 and transferred to AMECA in 1994. Jurisdictions typically refer to VESC V-3 in their standards. Where jurisdictions do not refer to VESC V-3 specifically, they may also refer to the powers of the Commissioner of Motor Vehicles to regulate items of motor vehicle safety. In general, the Commissioner of Motor Vehicles has broad regulatory powers in regards to public safety. As with AAMVA, AMECA has individual signed agreements with various states for providing equipment compliance services as their Agent. AMECA is the only organization with agreements to provide listing of state regulated products in the United States.

AMECA/AAMVA has been the sole registrar of friction material Edge Codes. Friction material Edge Codes contain the following three parts:

1) A manufacturer identification marking assigned by AMECA/AAMVA.
2) A material designation determined by the manufacturer
3) The coefficient of friction determined by SAE J866

AMECA has been recognized by both industry and courts as the sole registrar of friction material Edge Codes—even in jurisdictions where edge codes are not specifically required to be used. WAC 173-901 allows for multiple industry registrars for the supplemental environmental codes. While we are supportive for of multiple registrars for the supplemental environmental codes, we strongly believe that WAC 173-901 needs to be specific that the environmental codes, especially in regards to WAC-173-901-060 (c) are *supplemental* to existing industry Edge Code markings conducted by AMECA. We think this for the following reasons:

1) It's our belief that there will eventually be 3 to 5 worldwide registrars. If every registrar starts issuing new separate manufacturer identification markings, an area which was previously AMECA's sole responsibility, then conflicting databases would be created. This could negate the whole purpose of the WAC registration code entirely because you could not determine who actually made the material.
2) It is not clear that Washington Department of Ecology has the jurisdiction over existing regulations to create a separate registration process for the entire Edge Code marking. Certainly, the supplemental environmental markings are entirely up to Department of Ecology. However, by allowing multiple entrants to issue a unique identification code in its entirety, the Washington Department of Ecology would be essentially creating the situation which existed in pre creation of the SES in that manufactures may have to submit data to multiple sources to ensure compliance.

Consequently, we would suggest that the phrase "identification code" be submitted with, where possible, "supplemental environmental marking." In cases where submitting "supplemental environmental marking" is not possible the phrase "existing identification code" would add further clarification. These modifications would ensure that the Washington State

Department of Ecology is not going to establish a new friction material database which is inconsistent with existing databases or in conflict with other jurisdictions.

In regards to the laboratory accreditation program, AMECA's laboratory accreditation program invites both independent laboratories and industry laboratories to apply for our accreditation. We have had excellent success with this program with over 60 accredited laboratories. AMECA maintains close and regular communication with its accredited laboratories and conducts periodic physical audits of the laboratory as well as providing them with current standards and regulatory information. The concern with WAC 173-901-070 section(c) and (d). In reviewing both RCW43.21a.230 the following issues were raised:

- No guidelines as to what "other factors as the director considers appropriate." For instance, would the Department require that PE or PhD level education is required for laboratory personnel?
- No alternative for overseas labs for qualification "to quality assurance programs administered by the federal environmental protection agency."
- No criteria for approving an accrediting body by the department.
- Will round robin testing be conducted by the Department?

The selection of laboratories is going to be particularly challenging for manufacturers. We have found only a few labs capable of conducting the testing. In addition, labs which are theoretically capable have not displayed enthusiastic interest in conducting the testing. Finally, the lack of reference materials for any new laboratory to use can cause great uncertainty by the manufacturer that the testing results are valid.

In conclusion, we applaud the Department's goals and appreciate your allowing us to comment. We believe that a few short clarifications mentioned above will provide greater director to manufacturers, laboratories and prevent confusing in the marketplace.

Sincerely,

Kevin M. Wolford

Executive Director

Response to Comments from Kevin M. Wolford

Thank you for your comments.

Ecology agrees that the proposed rule language in WAC 173-901-060 (c) may be confusing and that the industry sponsored registrar may not "assign" the unique identification code in its entirety. Ecology understands that multiple parties may be involved in "assigning" this unique identification code. However when the unique identification code is reported to Ecology and marked on the product, the code must appear as one string. We have revised the proposed rule to clarify that the manufacturer must ensure that each friction material has a unique identification code and removed the requirement that it be assigned by the registrar.

Ecology agrees that it does not have the legal authority and the rule does not require that brakes be marked with the hot and cold coefficients of friction, which are an essential component of the Edge Code. Ecology also does not have the authority to, and the rule does not, override existing laws in other states that require brakes be marked with an Edge Code. Manufacturers are free to use the Edge Code as the first part of the unique identification code required by our law (or not) and they are free to choose any organization that meets the requirements of the rule to act as an industry sponsored registrar. Ecology would encourage manufacturers to select registrars in a manner that reduces confusion or duplicative reporting.

The commenter raises several concerns/questions regarding the section relating to laboratory accreditation. Please view WAC 173-50 for a complete list of "other factors" Ecology considers when accrediting laboratories. The commenter might also be interested in the Ecology's Accreditation Program's procedures manual. A link to both of these may be found on their Web page: www.ecy.wa.gov/programs/eap/labs/lab-accreditation.html.

With regards to overseas labs, the commenter is mistaken. Overseas labs may be used if they are certified to the IS01 7025:2005 standard by a lab accreditation body that is a signatory to the International Laboratory Accreditation Cooperation Multilateral Recognition Arrangement.

The bodies that are approved to accredit labs for the purposes of this chapter are explained in WAC 173-901-060. If the commenter is asking about the criteria for approving alternative laboratory accreditation organizations, the proposed rule states that is the responsibility of the person proposing the alternative to demonstrate that the alternative is equivalent to or better than the organizations that are approved under the proposed rule.

Ecology will not conduct round robin testing of laboratories. It is the manufacturers' responsibility to ensure that lab results are accurate. Ecology will purchase and test brake friction materials sold in the state to determine if it complies with the requirements of the law.

Thank you again for your comments.

Appendix A: Records from Public Hearings

Ecology hosted two public hearings on the Better Brakes Rule. A transcript of the hearing on July 10, 2012, may be found below. No testimony was offered at the second hearing, on July, 12, 2012 and no transcript was created of this hearing. As such a copy of the summary memorandum to the director has been included.

Transcript from The Better Brakes Rule Public Hearing
July 10, 2012 Hearing
Bellevue, WA and Yakima, WA

Ian Wesley, Rule Writer
Lori LeVander, Hearing Officer NWRO
Anne Knapp, Hearing Officer CRO
Heather Trim, Speaker-People for Puget Sound

LL: Let the record show that it is um, 7:01 p.m. on Tuesday, July 10, 2012.

This Hearing is being held at the Department of Ecology's Bellevue office and also through video-conference—at Ecology's Yakima office. Two Hearing Officers will ensure that people who want to provide spoken comments have an opportunity to do so. The Hearing Officer in Yakima is Anne Knapp; the Hearing Officer in Bellevue is Lori LeVander.

On June 20, 2012 Ecology published NOTICE of this scheduled joint hearing—and of the joint hearing to be held July 12—in the WASHINGTON STATE REGISTER [WSR# 12-12-056]. On that date Ecology also sent NOTICE via postal mail, to approximately 10,000 potentially regulated businesses and via e-mail to approximately 600 individuals. On June 21, 2012 the Department of Ecology issued a press release [#12 – 196] through ECOLOGY-NEWS@LISTSERV.WA.GOV

The purpose of this Hearing is to collect public comments about the ways this proposed BETTER BRAKES RULE defines how Ecology will apply the new state law, Chapter 70.285 RCW - Brake Friction Material.

As Hearing Officer it's my responsibility to ensure that each person who wants to provide comments has an opportunity to do so. It is my duty to ensure we provide a clear recording of the comments received. All spoken comments on the record will be transcribed and delivered to the BETTER BRAKES RULE Project Team along with any written comments provided. Written and transcribed comments carry equal weight in Ecology's consideration for RULE language.

Any questions?

When it's your turn to comment, state your name, contact address, and the name of any group you represent. I will call the names from the sign in list and I have 2 names, one and a half, names of people who would like to speak.

Anyone in Yakima, Anne? –

AK: No, we have nobody here in Yakima.

LL: All right, um, anyway, please stand or sit near the recorder and the first name we have here is Brian Pentilla.

BP: I was a depends but I would say I no at this point.

LL: No at this point. It depends on Heather. All right. Heather Trim.

HT: Up here?

LL: Yes, thank you.

HT: *So my name is Heather Trim. I am with People for Puget Sound and we do appreciate that this was a very good process, stakeholder process, to develop this rule. Uh, we do believe that this is a very important, um, new law for the environment and as such, People for Puget Sound was one of the proponents in the first place of getting this passed.*
And um, it is important that we do this right since we are first in the nation and I um, found out tonight that in fact, California hasn't even begun implementation. So, doubly important for us and so it is good that the stakeholders were participating from across the country and from California.
So, um, some of the concerns we had were uh, sort of the devil in the details about, for example, the uh definition of trace, which got resolved. So we appreciate that. Um, we are very glad that the marking, marking, is going to be on the packaging and certification.
Um, we would have preferred and I guess we still would prefer, that the uh, certification marking and the marking on the actual brake pads be clearer for the consumer. So one challenge is just that it's, it's, it is clear, it is well done, it's just that if you are a consumer um, you're not going to necessarily know how to interpret it. Um, And it's not going to be like yes or know or something like that. So, that's, that is the one concern that we have and continue to have that probably not an issue that is going to be changed at this point but I just wanted to raise that. Thank you.

LL: All right, Thank you.

Brian – OK, last chance but you can send your comments in writing.

All righty, um

Thank you for your comments. If you chose not to speak tonight, we invite you to send your comments in writing. Ian Wesley's e-mail and postal address appears on each of the Focus sheets and on his card in the back;.

Ian and this Project Team must receive all written comments about the Rule by five o'clock on Thursday, July 19, 2012. Again, 5 pm, Thursdays July 19, 2012.

The BETTER BRAKES RULE Team will read every written comment received by the deadline, as well as the transcripts of oral comments recorded during the joint Hearings tonight and on July 12. Based on your comments, the BETTER BRAKES RULE Team will determine whether the proposed Rule should be adopted or published—or that the Rule needs adjustment or revision before Ecology can adopt it. We anticipate that the RULE will be final by October 2012.

When the Rule is adopted, Ecology will publish your comments along with our responses, showing to what extent your comments influenced the final language of the Rule. At the time of adoption, Ecology will post the collected comments and responses in the Rule file on our webpage. If you gave us a contact address, our staff will notify you and provide a link to the final RULE and all related rulemaking documents. If we don't have your contact information, please add it to the sign-up sheet as you leave.

Thank you for helping us ensure the quality of the BETTER BRAKES RULE. We trust that it will serve the best interests of Washington's people and our environment.

Let the Record show this Hearing ended at 7:07 p.m. on July 10, 2012. Thank you.

End of hearing

DEPARMENT OF ECOLOGY

HEARING SUMMARY

M E M O R A N D U M

July 13, 2012

TO: **Ted Sturdevant**
Director

FROM: **Dolores Mitchell**
Hearings Officer

SUBJECT: **Rule-making Public Hearing Summary**

WAC title: **Chapter 173-901 WAC – the Better Brakes Rule**

Topic: **Defining how Ecology will apply new state law, Chapter 70.285 RCW - Brake Friction Material; phasing copper, asbestos, and other metals out of brakes on licensed personal or commercial vehicles.**

Program name: **Hazardous Waste and Toxics Reduction**

Name(s) of Ecology employees at hearing in Lacey:
Ian Wesley, Rule Coordinator and Presenter
Peggy Morgan, Section Supervisor (Q & A Facilitator)
Elisa Sparkman, Logistics and Sign-in; **Tina Price**, Reception
Dolores Mitchell, Hearing Officer

Ecology employees participating in Spokane via video-conference:
Mary Ausburn, Hearing Officer
John Blunt, HW&TR Staff
Carol Bergin, Reception and Sign-in

Total number of people at hearing(s): Four interested persons in Lacey; one in Spokane.

Total number of comments on record: None offered

Summary of Comments:
Informal comments offered by attendees before and after the structured event, praised Ecology for conducting a comprehensive and inclusive rule development process. The attendees had participated in that process as representatives of business entities that would have to comply with our new law and the proposed rule. They appreciated Ian Wesley's forward-looking attitude and broad outreach. Industry-specific questions posed during the pre-hearing Q&A supported both the rule's purpose and its content.

cc: Deputy Director, Polly Zehm
Program Manager, K Seiler
Agency Rules Coordinator, Bari Schreiner
Rule Writer, Ian Wesley