



Alliance for Telomer Chemistry Stewardship

July 30, 2021

Rae Eaton
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

RE: Draft—Food Packaging Applications and Candidate Alternatives to PFAS for the Second Alternatives Assessment.

Dear Ms. Eaton:

On behalf of the Alliance for Telomer Chemistry Stewardship (ATCS), I appreciate the opportunity to submit the following comments in response to the Draft—Food Packaging Applications and Candidate Alternatives to PFAS for the Second Alternatives Assessment (hereafter the “Draft Scope Document”).¹

ATCS is a global organization whose members are leading manufacturers of C6 fluorotelomer based products². Our mission is to promote the responsible production, use, and management of fluorotelomer based products, while also advocating for a sound science- and risk-based approach to regulation.

We have several concerns with the Draft Scope Document.

First, Ecology’s new approach to defining “food packaging applications” is seriously flawed and inconsistent with the intent of RCW 70A.222.070. Although the Draft Scope Document states that the new approach is “based on the function” of different food packaging products, Ecology’s approach actually disregards the intended function of the packaging and appears to focus, instead, on packaging geometry. This is exemplified by the newly-identified “closed containers” packaging application, which Ecology describes as follows:

Containers that enclose food on all sides. Interlocking pieces or overlapping walls hold the container closed for transport. Examples include clamshells, food pails, bakery boxes, and deli containers.³

This definition – which Ecology intends to use to describe a *single* packaging application – actually encompasses a broad spectrum of packaging with widely disparate performance requirements. For example, a bakery box intended for use with dry baked goods serves a very different function – with very different performance requirements – as compared to a clamshell or food pail intended for use with wet, heated food. The law requires that, as part of its alternatives assessment (“AA”), Ecology must evaluate whether an alternative will “perform as well as or better than PFAS chemicals in a specific food

¹ https://www.ezview.wa.gov/Portals/_1962/Documents/PFAS-Food/PFASAA_SecondAA_DraftScope.pdf

² <https://www.americanchemistry.com/Alliance-for-Telomer-Chemistry-Stewardship/>

³ Scope Document at 3.

packaging application.”⁴ This language clearly indicates that, for purposes of the AA, food packaging applications must be categorized by their functional performance characteristics so that, for a “specific food packaging application” the functional performance of a potential alternative can be compared against the functional performance of PFAS. By defining a packaging application – such as “closed container” -- to encompass a wide range of disparate functional performance requirements and characteristics, Ecology is circumventing the intent of the Legislature. Thus, for example, Ecology’s approach would seem to allow the agency to conclude that because a suitable alternative exists for boxes intended to hold dry baked goods, that alternative is also suitable for “closed containers” designed to hold and transport wet, heated food. This result is clearly at odds with the intent of the Legislature in addition to being unreasonable.⁵

Second, it is inappropriate for Ecology to include mold release agents within the scope of the AA. RCW 70A.222.070 applies to “food packaging to which PFAS chemicals have been intentionally added.” Mold release agents are applied to the molds used to form molded fiber packaging. While it is possible that trace amounts of these agents may inadvertently remain as a residue with the finished molded fiber packaging, these materials are not deliberately added to the final packaging and their presence, if any, in the molded fiber packaging does not impart any desired characteristics to the packaging. Since mold release agents are not intentionally added to molded fiber packaging, Ecology would be acting in a manner inconsistent with the law if it were to include these agents within the scope of the AA.

Third, the Draft Scope Document suggests that Ecology intends to consider “system alternatives” to fiber-based packaging. As described by Ecology, the term “system alternatives” appears to refer to the substitution of washable and reusable packaging in place of single use packaging. In other words, Ecology seems to be asserting that, as a “system alternative” to PFAS, businesses in Washington State could be forced to alter their business models – for example, by eliminating take-away dining options and making capital investments to accommodate washable packaging in lieu of using fiber-based packaging. Nothing in the law suggests that Ecology is empowered to require Washington State businesses to fundamentally change their business models as an “alternative” to PFAS used in paper packaging. Such action would be arbitrary and capricious and Ecology would be significantly overstepping its authority under RCW 70A.222.070 if it were to pursue this approach. Similarly, it strains credulity to imply that radical business model changes could constitute a “readily available” alternative, as required by the law.

In addition to the proposed changes to the AA enumerated above, we have broader concerns about the AA process, including the following:

- **Stakeholder Participation** We commend Ecology for its outreach to stakeholders and its efforts to keep the public and stakeholders informed of the agency’s progress in developing both the first and second AAs through the use of webinars, emails and regular updates of the food packaging AA website. However, the process Ecology followed for the first AA had glaring deficiencies that must be corrected in the second AA. Most importantly, stakeholders were not given the opportunity to review and provide comment on the draft AA. This is a critical deficiency because, for most of the key elements of the AA, such as cost, availability and

⁴ RCW 70A.222.070(3)

⁵ Indeed, the approach suggested by Ecology would be workable (and consistent with legislative intent) only if Ecology were to focus its assessment on the most demanding performance requirements within a given application (e.g., containing and transporting wet, heated food) when assessing whether an alternative performs “at least as well as” PFAS in that specific packaging application.

performance, Ecology had not previously articulated **what** specific data it was using as inputs into its final analysis, nor had Ecology explained **how** it was interpreting that data to arrive at the central conclusions of the AA. For example, in assessing cost comparability, Ecology relied on inconsistent data regarding the pricing and availability of alternatives and Ecology assumed that a 10% cost increase was “comparable” cost for purposes of RCW 70A.222.070. Stakeholders did not have an opportunity to comment on either of these aspects of Ecology’s analysis because they were first articulated in the draft AA – which stakeholders were not allowed to review or comment on. In addition, Ecology failed to respond, in any systematic, reviewable way, to the stakeholder comments that were received during the course of the AA process (e.g., through a response to comments document or a section of the AA devoted to responding to substantive comments). These two failures effectively eviscerate the stakeholder participation process and allow Ecology to reach conclusions in the AA that may be based on inaccurate data and inappropriate or unreasonable assumptions. Ecology must correct these procedural flaws in the second AA by: (i) allowing stakeholders to review and comment on the draft AA before it is sent to peer review; and (ii) summarizing and responding to substantive comments raised by stakeholders.

- **Use of unscientific, promotional information** For key aspects of the AA, such as the performance of alternatives as compared to PFAS, Ecology based its findings on advertising and promotional materials produced by the companies selling and marketing those alternatives, rather than objective, scientific data. Examining a product’s advertising claims may provide information, but provides no information on the product’s actual performance with supporting data. In order to credibly ascertain whether a given alternative performs as well as, or better than, an approved PFAS chemical -- as required by the statute -- Ecology must rely on objective, scientific data. Specific test methods have been widely adopted within the food industry to assess the performance requirements of different food packaging applications. These tests are standardized through such industry associations as the Technical Association of the Pulp & Paper Industry (TAPPI). The most commonly used oil and grease resistance tests are commonly referred to as the Kit test (TAPPI T559) and turpentine test (TAPPI T454). If the results of the AA are to be credible and reliable, Ecology must use verified data from these types of scientific tests to determine whether an alternative performs as well as, or better than, an approved PFAS chemical for a particular application. Ecology’s willingness to rely on advertising and promotional materials as an indicator of performance may be related to the agency’s apparent decision that alternatives do **not** need to perform as well as PFAS because PFAS used in packaging products “set an unnecessarily high standard for performance” (*PFAS in Food Packaging Alternatives Assessment*, February 2021 at p. 80). This assertion by Ecology ignores the express language of the statute, which requires that “[i]n order to determine that safer alternatives are available, the safer alternatives **must** . . . perform **as well or better** than PFAS chemicals in a specific food packaging application.” (emphasis added). The statute does not grant Ecology the authority to determine that PFAS performance is “unnecessarily high;” it requires Ecology to conclude that alternatives perform at the high level provided by PFAS – or better.
- **Inadequate assessment of economic impacts** As discussed previously, Ecology concluded in the first AA that a 10% increase in the price of packaging is acceptable and signifies that an alternative is available “at a comparable cost” to PFAS packaging. (*PFAS in Food Packaging Alternatives Assessment*, February 2021 at p. 113). Remarkably, there is no indication from the AA that Ecology assessed – or even considered – the economic impacts that a 10% increase in

packaging costs could have on small businesses in Washington State, as well as consumers in underserved communities and food insecure populations in the State. We urge Ecology to evaluate these impacts in the second AA.

ATCS appreciates the opportunity to provide these comments and we look forward to the continued discussions on this important topic. We welcome continued dialogue and providing additional information. If you have any questions or comments, please contact me at shawn_swearingen@americanchemistry.com

Sincerely,

Shawn Swearingen
Director, ATCS