



Warren U. Lehrenbaum
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August 25, 2020

VIA EMAIL

Ken Zarker, Section Manager
Hazardous Waste & Toxics Reduction Program
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504

Re: PFAS In Food Packaging Alternatives Assessment

Dear Mr. Zarker:

I am writing to seek further information regarding the materials that were presented by the Department of Ecology (“Ecology”) and its contractor, SRC, Inc. (“SRC”) during the August 11, 2020 webinar summarizing the status of Ecology’s PFAS in food packaging alternatives assessment (“AA”). For the sake of simplicity, I will use the term “Ecology” in this letter to refer to Ecology and/or SRC.

During the webinar, Ecology announced that, for certain types of food packaging, it had identified “PFAS-free alternatives for specific food packaging applications” that are readily available in sufficient quantity and at comparable cost to PFAS-containing products. For most food packaging applications, we are unaware of any PFAS-free alternatives that satisfy these criteria. Therefore, we request that Ecology provide us with the following information regarding the PFAS-free alternative products that Ecology has found to be readily available at comparable cost to PFAS-containing products:

- A. Identifying information (such as brand name, model number, product name and manufacturer name) for each specific item of PFAS-free packaging that Ecology has found to be readily available at comparable cost, and the packaging type or application represented by that item of packaging.
- B. For each item of PFAS-free packaging identified under (A) above, the specific data and/or source(s) of information Ecology has relied on to conclude that the item of packaging is readily available, at comparable cost to PFAS-containing packaging.

During the webinar Ecology also announced that it had identified PFAS-free packaging products that “perform as well as or better than PFAS chemicals” in specific food packaging

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applications. We are unaware of any PFAS-free alternatives that satisfy this criterion, for many food packaging applications. Therefore, we request that Ecology provide us with the following information regarding the PFAS-free alternative products that have been found to “perform as well as or better than PFAS chemicals” in specific food packaging applications:

- A. Identifying information (such as brand name, model number, product name and manufacturer name) for each specific item of PFAS-free packaging that Ecology has found to “perform as well as or better than” PFAS-containing packaging, and the packaging type or application represented by that item of packaging.
- B. For each item of PFAS-free packaging identified under (A) above, the specific data Ecology has relied on to conclude that the item of packaging performs as well as or better than PFAS-containing packaging, including the specific performance parameters (e.g., oil and grease resistance, gas permeability, flexibility, etc.) assessed for each packaging type.

The information we are requesting is fundamental to the findings Ecology must make pursuant to RCW 70.95G.070, however, as far as we are aware, Ecology has never made any of this information available to stakeholders. Without this information it is impossible to provide meaningful input on key elements of the AA.

Finally, since Ecology apparently intends to send SRC’s final report to peer review shortly, without providing an opportunity for public comment as previously communicated to stakeholders, we ask that you provide the information we have requested as quickly as possible. In particular, if some items of information are easier to provide than others, we request that you provide those items as they become available.

Thank you for your assistance.

Sincerely,



Warren U. Lehrenbaum
Crowell & Moring LLP

cc: Cathy Rudisill, SRC



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

September 21, 2020

Warren U. Lehrenbaum
Crowell & Moring LLP
1001 Pennsylvania Avenue Northwest
Washington, D.C. 20004-2595

Dear Warren U. Lehrenbaum:

Thank you for your letter dated August 25, 2020, related to the PFAS in Food Packaging Alternatives Assessment (AA).

The Washington State Department of Ecology (Ecology) appreciates your participation in the PFAS AA stakeholder process established under the Toxics in Packaging state law. Ecology recognizes there is a lot of interest in the project and we thank you for your engagement.

In reviewing your information request, the letter assumes an analytical approach that is more granular (e.g., involving a list of every model number of every available alternative products) than Ecology has undertaken for the product applications under consideration.

However, if you are interested in obtaining the sources of information used in Ecology's determination of safer alternatives for specific food packaging applications, AA, please follow the agency public records process outlined on the [agency's website](#). All public record requests must be directed to the agency Public Records Officer via an online request or written submittal.

Ecology does not plan to release the draft PFAS in Food Packaging Alternatives Assessment (AA) or the related report to the Legislature before finalizing and submitting it. The AA is currently undergoing the mandatory external peer review process with the Washington State Academy of Sciences, and the report based on the AA is still being drafted. Because the alternatives assessment documents are still undergoing deliberative reviews and our conclusions may change, we will be unable to share drafts of the AA or the legislative report about the AA prior to publication.

We acknowledge this approach does not allow additional stakeholder review and comment before finalization. Ecology had, at one time, planned to provide an additional comment period. After further consideration, we determined we are unable to offer this additional review and comment period for the reasons outlined below.

The statute (now codified at [RCW 70A.222.070](#)) requires Ecology to submit "a report with the findings and the feedback from the peer review of the department's alternatives assessment..." Our determinations about the availability of safer alternatives must be "supported by feedback from an external peer review of the department's alternatives assessment..." Based on this language, we have

concluded that the AA submitted to the Legislature must be the same as that which was given to the peer reviewers.

If you have any questions, please contact our PFAS in Food Packaging AA Project Coordinator, Rae Eaton (rae.eaton@ecy.wa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Zarker". The signature is stylized with a large, looped "K" and a long horizontal stroke extending to the right.

Ken Zarker
Pollution Prevention and Regulatory Assistance Section Manager
Hazardous Waste and Toxics Reduction Program