



May 28, 2021

Darin Rice
Department of Ecology
Hazardous Waste and Toxics Reduction Program Director
PO Box 47600
Olympia, WA 98504-7600

Dear Darin:

Thank you for your groundbreaking work, making Washington the first state in the nation to take action to end the use of toxic per- and polyfluoroalkyl substances (PFAS) in products such as food packaging, firefighting foam, and carpets, rugs, and home textiles.

We are writing regarding the recent report to the legislature and associated PFAS food packaging alternatives assessment conducted in accordance with [RCW 70A.222](#). The report and assessment found only 4 of the 10 food packaging applications had alternatives that met criteria in the law for the ban to take effect in early 2023.

The agency is now conducting a new assessment and will report to the legislature as required by [RCW 70A.222.070](#). We are requesting that the agency update the existing information in the first assessment and issue a report to the legislature by September 2021 for several reasons:

- ***Preventing the use of PFAS in products is an urgent matter.*** Banning the use of all PFAS paper food packaging is the goal of the 2018 law to prevent the contamination of drinking water and other environmental media, breastmilk, food, compost and people. This is an urgent matter that has solutions and the current timeline for the next round of product evaluations is concerning. We request that Ecology issue the report to the legislature by September 2021, instead of its proposed timeline of August 2022. The ban takes effect two years after the report to the legislature and should be no later than 2023, which is 5 years from when the legislature took initial action and allows more than enough time for businesses to comply.
- ***A new peer-reviewed study of 50 Seattle-area women showed current-use PFAS were nearly as abundant as the old-generation PFAS.*** It also found detections of these chemicals in breast milk to be on the rise globally and doubling every four years. Every day that the state of Washington fails to put the ban in place, vulnerable populations are being exposed to chemicals that can impair their immune systems and cause reproductive harm or cancer.

- ***There is no valid reason for using PFAS in food packaging.*** These unacceptable exposures are coming from disposable products -- paper bags, clamshells, boxes-- to hold food that can be held by an endless number of different kinds of packaging as well as durable, reusable products. There is no way to clean up breast milk once it is contaminated, so the cost of using PFAS in these short-term use products is way too high.
- ***The production of PFAS for food packaging happens in the U.S at ONE facility—Daikin America in Decatur, Alabama—a community that has suffered disproportionate impacts from multiple manufacturers of PFAS and is highly contaminated.*** The drinking water source for the community of Decatur has been polluted by PFAS for many years, due in part to the Daikin facility. According to EPA data, 78% of the community within 3 miles of the facility is either Black, Hispanic, Asian/Pacific Islander or multi-racial. This is an environmental justice issue where the pollution can be prevented if the demand for PFAS in food packaging and other products is eliminated.

The good work of the agency on the first assessment **demonstrated that there are less hazardous alternatives that can replace food packaging for all applications evaluated.** In most cases, where the alternative failed on cost and availability, it was because Ecology required an unreasonable level of data on cost and availability. **The issue was not that less hazardous alternatives do not exist, but that it was very difficult to obtain the kind and amount of data Ecology required to meet threshold criteria for cost and availability.** We urge you to adjust the criteria for cost and availability and consider putting the urgent issues above at the center of your decision-making as you carry out this next round of assessment. There is no time to waste when it comes to reducing PFAS exposure, and the current costs of using PFAS are clearly too high.

More specifically, we request the following:

1. **Change the approach to consider products’ sale and use in the market as sufficient evidence to establish availability.** Many grocery and restaurant chains are switching to PFAS-free, governments are purchasing PFAS-free and more laws are being enacted to require this for all businesses (small to large). The agency needs to consider that demand drives supply and the demand is rapidly growing. This will also drive down costs for small business as the safer alternatives become more and more available.
 - Eight fast-food and fast-casual restaurant chains with a combined total of more than 58,000 stores and over \$130 billion in annual sales have committed to eliminate PFAS in food packaging.
 - Four of the biggest grocery chains in the United States with a combined total of more than 5,000 stores and over \$130 billion in annual sales have committed to reduce or eliminate PFAS in food packaging.
 - Six other retailers selling food or food packaging with a combined total of more than 13,000 locations and over \$47 billion in annual sales have committed to reduce or eliminate PFAS in food packaging.

- The state of [Minnesota banned state purchase of PFAS](#) in compostable foodware and Connecticut and New York banned purchase of PFAS in all foodware.
- Other state laws such as in New York, Vermont and Maine are also driving demand for safer food packaging.

2. **Remove the 10% price differential and include a more narrative approach for cost because the cost of inaction is extremely high and the basis was arbitrary.** The costs of using PFAS are enormous. Just this year, Washington taxpayers are funding PFAS cleanup of soil and drinking water in the amount of \$27 million. The 10% price differential criterion was based on the approach of two states using it for very different reasons. Instead, the agency should include a narrative regarding cost and consider use in the marketplace by a variety of users as sufficient evidence that alternatives are cost-comparable. Ecology should also make it clear in the narrative that one of the state's priorities is avoiding the costs of PFAS contamination. Again, there is no way to clean up breast-milk--no price can even be assigned to this. That is why it is critical to prevent contamination in the first place.
3. **Find that PLA meets the availability and cost criteria, since the market for food packaging is dynamic and there are a growing number of companies offering and using PLA plastic.** Along with bans and corporate commitments driving demands, municipalities like Seattle have adopted requirements for food packaging to be compostable and certified. The composting certifications, including BPI and CMA, do not allow added PFAS and many of the products that meet the requirements are PLA products. Attached is the list of companies selling BPI-certified PLA products (trays, clamshells, and lined interlocking folding containers), and this list continues to grow on the BPI website. In addition, we also identified similar PLA products could be substituted for the interlocking folded containers. These are highlighted in yellow in the attachment. Five companies that offer PLA on the list were not included in Ecology's initial assessment.
4. **Evaluate alternatives by material and group similar products.** As you can see from this chart, kaolin clay-coated, uncoated and wax-coated materials meet all of the statutory criteria (hazard, cost and availability) for safer alternatives for certain products, but not for others primarily due to insufficient data. However, how can wax-coated wraps and liners be a safer alternative but wax coated bags are not? Or how can kaolin-coated pizza boxes be safer alternatives but trays are not?

When there is a lack of data and the agency can't get the data to fill the gaps, the default should be to find similar products that use the same materials. Then, if those materials meet the statutory requirement for being safer, then that designation should apply to other applications.

We appreciate the new approach on re-defining applications included in the [recent scoping document](#), but the agency should also consider that food contact paper, dinnerware, and takeout containers could also be specific applications.

	PLA (or PLA-coated)	Kaolin clay-Coated	Uncoated	Wax-Coated
Food Contact				
Wraps & Liners			NO	YES
Bags and Sleeves			Insufficient Data	Insufficient Data
Dinnerware				
Plates		YES	Insufficient Data	
Bowls	Coated: NO Foam: Insufficient Data	NO		
Food Boats		YES		
Trays	Plastic: <u>YES</u> for some users Foam, Coated: Insufficient Data	Insufficient Data		
Take-Out Containers				
French Fry	<u>YES</u> for some users	Insufficient Data		
Clamshells	NO		Insufficient Data	
Interlocking Folded Containers	Insufficient Data	Insufficient Data		
Pizza Boxes		Insufficient Data	YES	

Note: Highlights indicate Ecology found the applications met the statutory requirements.

The following provides more specific comments on the product evaluations in the first alternatives assessment.

1) Bowls:

- a. Kaolin clay-coated and PLA-coated bowls failed to meet the cost criteria.
- b. The assessment states (p.117): *“Using a 10% price increase, [Ecology] identified clay- and PLA-coated paper as cost incomparable materials for bowls (Figure 18).”*

Comments: Eliminate the 10% price differential and accept as sufficient that these products are widely available in the market and in use by a variety of users. This would result in designation of kaolin clay-coated and PLA-coated bowls as safer alternatives.

2) Trays:

- a. For trays that were PLA-coated, PLA foam, and PLA plastic, Ecology determined there was enough data to determine that their costs were comparable (within 10%), but not enough to determine availability.
- b. According to page 118 of the assessment: *“We identified PLA-coated, PLA foam, and PLA plastic trays as cost comparable materials for trays (Figure 19).”*

Comments: Grouping trays and plates because they are similar applications would mean that kaolin-coated material is a safer alternative. In addition, changing cost and availability criteria would result in PLA being a safer alternative. Ecology’s new scoping document states flat serviceware is the new proposed application encompassing both plates and trays, which would also result in a safer alternatives designation. We support this approach.

3) Bags and sleeves:

- a. Ecology found that cost data for uncoated paper and wax paper bags were insufficient based on a determination that product testing had found more than half of bags and sleeves tested positive for fluorine.
- b. As stated on page 115 of the assessment: *“In the previously cited studies [by TFF/SCHF and others], more than half of the bags and sleeves tested contained PFAS. However, we could not identify prices for confirmed PFAS-containing bags or sleeves [to set a baseline for the 10% range]. With product testing finding more than half of bags and sleeves contained fluorinated chemicals, we determined that there is insufficient information to evaluate the cost comparability of wax-coated bags or sleeves.”*
- c. Product testing conducted by [TFF/SCHF in 2018](#) found several examples of major users, such as Kroger, Albertsons, and Whole Foods Market, using PFAS-free bags and sleeves. Again, this wide usage should indicate these products are available at a comparable cost.

Comments: Uncoated and wax-coated alternatives met the safer statutory requirements for wraps and liners. Bags and sleeves are made from these materials and sold by major companies

as identified in the first assessment, so they should be grouped with these applications and found to meet the statutory requirements for safer.

4) French fry cartons:

- a. Performance data was lacking for kaolin clay-coated cartons.
- b. According to page 119 of the alternatives assessment, Ecology found certain French fry cartons to be readily available and cost comparable: *“PFAS-free paperboard containers are likely to be found among conventional products—we identified clay- and PLA-coated paperboard as readily available. Since we did not identify any product that contained PFAS, and PFAS-free alternatives appear to be a large percentage of the market, we determined that clay-coated and PLA-coated French fry cartons were cost comparable.”*

Comments: French fry cartons sold as French fry cartons should meet the performance criteria and therefore this category should be identified as having a safer alternative. Ecology only searched for marketing words such as “grease and oil resistance.” Ecology should consider that products sold for the purposes of holding food products such as French fries meet the performance criteria. For example, Southern Champion Tray clay-coated kraft French fry scoops should meet the performance criteria. Furthermore, a clay-coated plate and food boat met the performance criteria for other product categories. Ecology is proposing to define a different application as open-top containers, which is not necessary to identify safer alternatives. However, we support this avenue as well.

5) Clamshells:

- a. Ecology determined that there were insufficient data on cost and availability for uncoated clamshells. PLA clamshells did not meet the criteria Ecology used for cost comparability and Ecology concluded there was insufficient data on availability for some of them as well.
- b. According to page 120 of the assessment: *“We collected and compared unit price information for 8 – 9” clamshells. Using a 10% price increase, we identified PLA-coated paper, PLA foam, and PLA plastic clamshells as not cost comparable (Figure 20).”*

Comments: Changing the cost criteria as recommended above and taking the approach that these products are available for sale and therefore would be in use in the market results in safer alternatives. In addition, as mentioned above, the PLA market is growing and a large number of PLA clamshells are available (see attachment), so Ecology should determine that they are available. Ecology is proposing to re-define the application as closed containers. While we support this broader category to ensure the ban applies, the fact remains that there are already safer alternatives.

6) Interlocking folded containers:

- a. Ecology determined that the data on cost and availability for kaolin clay-coated was insufficient and that there was insufficient data for PLA availability.

Comments: As mentioned above, the PLA market is growing and a large number of PLA-coated interlocking folding containers and similar products that could be substituted are available (see attachment) so Ecology should determine they are available.

In addition, kaolin clay-coated plates and food boats were identified as safer alternatives. Given that kaolin clay-coated material can be used to make interlocking containers and are being sold, the material should be considered safer for this application.

Finally, this Innobox Edge product obtained from Whole Foods market on 5/26/21 in Seattle (Interbay) is an example of a PLA lined, 100% recycled interlocking folding container, as additional evidence on availability.



Thank you for considering our comments. Please feel free to contact us with any questions.

Sincerely,

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Mark Rossi
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