



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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September 25, 2019

Jessica Bowman
FluoroCouncil
700 Second Street NE
Washington, DC 20002

Dear Jessica Bowman,

Thank you for your letter of August 26, 2019, and for bringing concerns from the FluoroCouncil and other interested industry groups forward regarding the PFAS in Food Packaging Alternatives Assessment. We value relevant and timely input from all interested parties and are committed to working with you to address your concerns.

Your letter identifies four main topics, and we address them here in the order of your letter:

1. Project Transparency and Interested Party Input

Your letter contends that our process has not been sufficiently transparent and has not allowed for sufficient input from interested parties. As an example of this, you cite our decision to identify and then change the initial PFAS Base-Case selection. We conducted a records review in order to clarify and document the facts.

The project contractor, SRC, Inc. (SRC), is coordinating communications with interested parties. We have communicated extensively with interested parties through one-on-one phone calls, one-on-one email correspondence, a public webinar, a conference call, and multiple online surveys. We have maintained and updated a website and sent listserv messages on the project's progress to over two hundred recipients. FluoroCouncil member company representatives have been participants in each of these communications and via in-person engagement. Since the outset of the project work in January 2019, we have routinely invited FluoroCouncil members and interested parties to contact us at any time with comments or suggestions.

The development of the initial PFAS Base-Case began with both email and phone communications with the FluoroCouncil regarding commercially relevant PFAS used in food

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packaging. The FluoroCouncil indicated in these communications that C6-methacrylate polymers were the most widely used PFAS in food packaging. We also reviewed documents made available by the Environmental Defense Fund, cited as a “non-industry source” in your letter. These documents included over 1,000 pages of industry food contact submissions to the Food and Drug Administration (FDA) obtained through a Freedom of Information Act request. For reasons described in our May 15 webinar, we selected Food Contact Notifications (FCNs) 885 and 1027.

Following the announcement of the PFAS Base-Case at our May 15 webinar, The Chemours Company (Chemours) contacted us by email. In a follow-up May 22 phone conference with Bob Buck and Kai-Volker Schubert of Chemours, they informed us that FCNs 885 and 1027 were being withdrawn from the market and that inventory would be exhausted in the coming weeks. These FCNs are both C6-methacrylate polymer products in the class recommended by the FluoroCouncil as relevant for our assessment work. During that May 22 conversation with Chemours, we discussed the possibility of engaging the FluoroCouncil to survey members for information on suitable PFAS products as replacements for FCNs 885 and 1027. SRC followed up with a request to that effect with the FluoroCouncil by email on May 28, 2019. The FluoroCouncil responded with input on relevant FCNs on June 11, 2019. We appreciate the cooperation of the FluoroCouncil and its members in providing this input.

Following additional analysis of options, we updated the PFAS Base-Case to FCN 604 (599). These substances are further identified on the FDA website as referring to Chemical Abstracts Service Registry Numbers (CASRN) 863408-20-2 and 1225273-44-8. We have not made formal requests to the FluoroCouncil or its members for further information and data on these products because we have not yet finalized what specific data are needed for our assessment work. We know that requests of this nature will likely involve significant effort both to gather the data and to obtain the necessary permissions to share that data with our project. We want to minimize this burden by making one complete request for data. Unfortunately, we need to develop our thinking further on the decision rules before we can appropriately specify data needs (discussed further below). We will contact the FluoroCouncil as soon as we have completed our data needs assessment.

In summary:

- The suggestion that only “non-industry sources” were used and that we did not involve industry experts is incorrect. We directly sought input on the PFAS Base-Case from the FluoroCouncil and its member representatives prior to our initial base-case selection and supplemented that input with industry food contact substance notification documents from the FDA.

- SRC initiated contact with the FluoroCouncil to obtain assistance in selecting a new base-case candidate. The idea for a survey of FluoroCouncil member companies was developed in our call with Chemours.
- We have not yet finalized the specifics of our assessment data needs. It would be premature to contact the FluoroCouncil or its members for specific additional data at this time. By waiting until our needs are clearly defined, we can avoid inefficiencies and burdensome multiple data requests.

2. Peer Review Process

Your letter contends that our peer review process must include all pertinent stakeholders. We believe that Ecology has the discretion to select the Washington State Academy of Sciences (WSAS or Academy) members or other scientists, as needed, for the peer review process. The law does not identify the peer review process as a stakeholder or interested party review process.

WSAS members either are members of the National Academies of Sciences, Engineering, and Medicine, or are elected directly to the WSAS by their peers. The large majority of WSAS members are professors or scientists at highly regarded universities and research institutions, and their election to the Academy is a testament to their strong professional reputations.

While professionals employed by food packaging makers or suppliers would have relevant experience to conduct a peer review, they might also have a financial interest in the outcome of the assessment. Avoiding or promoting a ban on PFAS in a particular packaging application could directly affect markets for products sold or promoted by their employers. It might be difficult then for these industry employees to be objective in their review.

3. Decision Rules

Your letter contends that we have selected arbitrary parameters or “decision rules,” and that we have not explained the basis for these selections. Ecology is required to use the AA process identified in the Interstate Chemicals Clearinghouse Alternatives Assessment Guide (IC2 Guide). The IC2 Guide states that “...decisions...should be documented and explained.” The use of decision rules and our proposal to develop them are further specified in the Statement of Work released in January 2019:

Ecology will propose decision rules for comparisons between PFAS-based and PFAS-free alternative products. The Contractor will interview experts and knowledgeable parties, and engage interested parties (see Interested Parties Outreach and Engagement below) to develop data on cost comparability,

performance measures, and other assessment criteria (Table 1). The contractor will provide input and feedback on Ecology's proposed decision rules.¹

Ecology has not finalized any of the decision rules, including decision rules addressing performance. The Legislature directed that Ecology should make the safer alternative determinations. Ecology is not required to solicit approval from interested parties on any of these decisions. Ecology will report the basis for the final decision rules and assessment levels in our published findings.

4. Individual Food Packaging Applications

Your letter contends that we are contemplating *not* conducting separate assessments for different food packaging applications. That is incorrect. The Statement of Work describes the need to address specific applications and other requirements for PFAS-free alternative products as identified in the RCW 70.95G. Ecology has the discretion to select which products it will address in this first phase of food packaging assessment. SRC's Product Scoping Survey was an information gathering exercise intended to gain insights into how to properly define and address "specific food packaging applications."

The specific applications that Ecology selects for this assessment will depend on a variety of factors. For example, Ecology may choose to assess a chemical alternative treatment that provides functional oil and grease resistance in a number of different, specific applications. In this way, we may achieve economies in the hazard assessment, since the chemical components of alternatives used in different applications might be identical. This would be a prudent use of State resources and in no way violates the requirement to address specific applications.

Ecology may focus its assessment work on products or markets for other reasons, such as the potential size of the market, or for environmental justice considerations. Understanding the market for a specific application also helps to enrich the assessment by, for example, supporting the need for specific application performance requirements. While we must address specific applications, we have the discretion to consider other factors that we find useful in selecting products for assessment.

Summary

We thank the American Forest & Paper Association, the FluoroCouncil, the Foodservice Packaging Institute, and the Washington Retail Association for taking the time to document your concerns. As the project progresses further, there will be many opportunities for interested

¹ https://www.ezview.wa.gov/Portals/_1962/Documents/PFAS/PFAS_Food_Pckg_AA_Statement_of_Work.pdf

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parties to provide feedback and information, primarily through group engagement processes such as surveys, webinars, and conference calls.

In order to improve communications, we are planning to develop a separate Ecology website for the food packaging assessment work. We will provide additional information and responses in a Frequently Asked Questions (FAQ) section or document on the website. Please contact us at any time should you have additional suggestions or concerns.

Best regards,

A handwritten signature in black ink, appearing to read "Ken Zarker". The signature is stylized and cursive.

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

By certified mail: 9489 0090 0027 6021 5211 31

cc: Renée Lani, FluoroCouncil