



Memorandum

TO: Darin Rice, Marissa Smith—Dept of Ecology
FR: Laurie Valeriano, Toxic-Free Future
Re: Data call-in for bisphenols and alternatives in food cans.
Date: July 29, 2021

The memo provides Toxic-Free Future’s analysis of Safer Products for Washington and the authority granted to Ecology related to calling in data for products and ingredients. For bisphenols used in food cans linings, where there is a current lack of data to make determinations under the law, we request that the agency call data in from manufacturers to fill the gaps.

Now that Ecology is in Phase 3 of the program and identifying safer alternatives in order to enact restrictions or bans, **the agency should get ingredient level information in order to determine what alternatives are being used in order to evaluate their hazards.**

According to the **RCW [70A.350.030 \(4\)](#)**:

*“(4) To assist with identifying priority consumer products under this section **and making determinations** (emphasis added) as authorized under RCW [70A.350.040](#), the department may request a manufacturer to submit a notice to the department that contains the information specified in RCW [70A.430.060](#) (1) through (6) or **other information relevant to subsection (2)(a) through (d)** of this section. The manufacturer must provide the notice to the department no later than six months after receipt of such a demand by the department.”*

“(2) When identifying priority consumer products under this section, the department must consider, at a minimum, the following criteria:

- (a) The estimated volume of a priority chemical or priority chemicals added to, used in, or present in the consumer product;*
- (b) The estimated volume or number of units of the consumer product sold or present in the state;*
- (c) The potential for exposure to priority chemicals by sensitive populations or sensitive species when the consumer product is used, disposed of, or has decomposed;*
- (d) The potential for priority chemicals to be found in the outdoor environment, with priority given to surface water, groundwater, marine waters, sediments, and other*

ecologically sensitive areas, when the consumer product is used, disposed of, or has decomposed;"

The department is currently in the process of identifying safer alternatives and determining regulatory actions. In order to make these decisions, the department is evaluating the hazards of the chemical and non-chemical substitutes. Manufacturers are not readily providing this information, which creates a barrier to decision making. The agency has not requested any information from can manufacturers using its authority.

The information is also relevant because through the process, another priority chemical or priority chemical may be identified as a substitute in a product that could impact sensitive populations or sensitive species or contaminate waterways. Therefore, it is important for the agency to obtain ingredient level information from the manufacturers that can be used for the regulatory determination or identification of other priority chemicals or products.

More specifically, the department should use its authority under [RCW 70A.350.040](#)(2)(b)(i), (ii) and (iii) to require each manufacturer of cans sold in the State of Washington to submit to the department, as applicable, the following information:

- a. a complete list of their products in this category that contain bisphenols; and,
- b. for all of their products in this category that do *not* contain bisphenols, a complete list (100%) of product ingredients, by chemical name and CAS #. This list should capture the ingredient(s) that serve the function of a can lining, including the specific identity of any ingredients they consider proprietary. Along with this, the department should also require the manufacturers to provide any information they possess on the hazards of the ingredients.

As noted in [RCW 70A.350.040](#)(2)(a), the order to submit the above information must be "consistent with [RCW 70A.350.030](#)(4)." We interpret this to mean that the order needs to assist Ecology in "making determinations as authorized under [RCW 70A.350.040](#)" and request information consistent with what is "specified in [RCW 70A.430.060](#)(1) through (6) or other information relevant to subsection (2)(a) through (d) of this section."

- [RCW 70A.350.040](#)(3)(a) authorizes Ecology to determine that "Safer alternatives are feasible and available" as part of the support for restricting or prohibiting "members of a class of priority chemicals in a priority consumer product." Learning which food cans contain Bisphenols will help Ecology know which products to disregard in your search for safer alternatives. Knowing all of the ingredients in cans linings free of bisphenols and any hazard information for those ingredients is essential to determining whether it is truly a safer alternative.
- Information on product ingredients and hazard is also relevant to [RCW 70A.350.030](#)(2), both "(c) The potential for exposure to priority chemicals by sensitive populations or sensitive species when the consumer product is used, disposed of, or has decomposed" and (d) "The potential for priority chemicals to be found in the outdoor environment ...

when the consumer product is used, disposed of, or has decomposed.” Asking manufacturers to disclose the ingredients in food can linings will help identify other potential priority products and chemicals. In addition, using ingredient and hazard information to find safer alternatives that are then used to justify a ban on bisphenols in food can linings will directly prevent sensitive populations from being exposed to PFAS from these products and will prevent these chemicals from being released from the products into the outdoor environment.

In conclusion, we believe that calling in this data is important for Ecology to make determinations under the law and we request that you use the authority provided in the law to do this.