



Know Your Package

Ensure your packaging material meets the requirements

One little known and often misunderstood area of food law relates to the regulation of food packaging materials. The safety of all materials used for packaging of foods is controlled by the little one-page Division 23 of the Food and Drugs Act and Regulations, Section B.23.001, which prohibits the sale of food in a package that may yield to its contents any substance that may be injurious to the health of a consumer of food. This puts the onus clearly on the food seller (manufacturer, distributor or vendor) to ensure that any packaging material that is used in the sale of food products will meet that requirement. Non-compliance could result in a range of enforcement action including product detention or a food recall.

Because the Canadian law is so general, and in the absence of positive lists delineating permitted ingredients, many suppliers of packaging material intended for use with food voluntarily submit their material (whether in the form of a finished product, such as laminated film, or a container or a formulated product, such as a resin or colour concentrate) for a pre-market assessment of their chemical safety. Obtaining a “no objection letter” from Health Canada (HC) or the Canadian Food Inspection Agency (CFIA) does not constitute formal approval in a legal sense but it gives the recipients the confidence to assure their prospective customers that the products they are selling have been deemed acceptable, from a chemical safety standpoint, for use in specified food packaging applications. The “letter of no objection” has no expiry date but it will be rescinded if information comes to light showing that it could potentially pose a risk.

Hundreds of these applications are made every year to the CFIA and HC with perhaps half of them requiring some kind of formal health risk assessment. Simple applications with complete data can be done within a couple of months while more complex material (particularly when some data is missing) can take up to a year or more.

To assist manufacturers of food packaging materials in recognizing equivalency (and thus inter-changeability) between polymer resins, HC’s Food Directorate does provide a list on its website of those polymers for which “letters of no objection” have been issued for use in food packaging so that new requests for inter-changeable resins are not necessary.

In my experience, the CFIA and HC regulators do an excellent job of managing this area of food regulation; they

phone you back within a day or two, they will work with you and try to provide timely responses, and they provide excellent guidance for submissions. However, problems arise from two sources, neither of which is the fault of the regulator.

Firstly, because of the permissive wording of Division 23, some companies have concluded that there is no mandatory requirement and proceed without reference to the regulator. Apart from the contractual liabilities that this may entail, approval may actually be required under other legislation. Under the Meat Inspection Act, for example, packaging must be approved. As well, most federally registered facilities with HACCP requirements have packaging approval as a mandatory prerequisite. So approvals may be required before HACCP certification is granted and non-compliance afterwards could lead to removal of HACCP certification or even de-registration.

The second most common problem arises from the food company just not thinking about the packaging approval until the last minute. Marketing plans are made and contracts signed before the packaging manufacturer has obtained a “no objection letter” creating a frustrating crisis for everyone. I have occasionally been able to obtain an “interim no objection letter” in these situations but it is not a good practice to rely on these.

The regulation of food packaging materials could serve as a good model for many other areas of food law. Without compromising food safety, risk assessments are completed and are communicated immediately. Prior approved substances are listed so that they effectively enjoy a GRAS (generally regarded as safe) type of status. Red tape is minimal. Individuals not committees make decisions. “No objection letters” can be issued the same day and because no regulatory change is required, there is no need to trigger our sclerotic food regulatory system. At the same time, the food sellers remain on notice that they still retain the onus of ensuring that the material is safe. Processing aids are regulated through a similar regime. Why couldn’t many new additives and novel foods, for example, be regulated in this way?

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