

44-1844(A)(6)

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ARIZONA CORPORATION COMMISSION

June 15, 1990

JAMES MATTHEWS  
EXECUTIVE SECRETARY

SECURITIES DIVISION  
(602) 542-4242

44-1844(A)(6)

Ms. J. Sue Morgan  
Perkins Coie  
1201 Third Ave.  
40th Floor  
Seattle, Washington 98101-3099

RE: ECOVA Corporation

Dear Ms. Morgan:

On the basis of the facts set forth in your letter of April 20, 1990 and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We have attached photocopies of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

DEE RIDDELL HARRIS  
Director of Securities

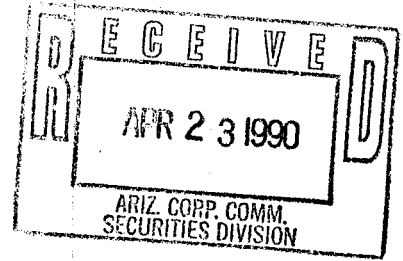
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Enclosure

# PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
1201 THIRD AVENUE, 40TH FLOOR • SEATTLE, WASHINGTON 98101-3099 • (206) 583-8888

April 20, 1990



VIA FEDERAL EXPRESS

Ms. Julie VanDyne  
Arizona Corporation Commission  
Securities Division  
1200 West Washington Street  
Phoenix, Arizona 85007

Re: ECOVA Corporation

Dear Ms. VanDyne:

We are counsel to ECOVA Corporation, a Delaware corporation ("ECOVA"). On April 17, 1990, we wrote to your office to confirm the availability of exemption from registration of ECOVA's proposed reorganization, pursuant to § R14-4-101 of the Regulations of Arizona Corporation Commission, Title 14, Chapter 4, Article 1, as amended. Pursuant to our telephone conversation today, we hereby respectfully request that the exemption filing be withdrawn. ECOVA instead will claim an exemption from registration under § 44-1844(A)(6) of the Arizona Revised Statutes, as amended.

Since its inception three years ago, ECOVA has incurred significant losses, and believes the proposed recapitalization and reorganization is necessary for it to continue its operations without being forced into bankruptcy or liquidation.

ECOVA has currently outstanding one class of common stock and four series of preferred stock. In the proposed reorganization, ECOVA will be merged with ECOVA Acquisition Corporation and will be the surviving corporation. Each outstanding share of ECOVA common stock will be converted into the right to receive \$.01 in cash and the right to subscribe for Series B Preferred Stock of the reorganized ECOVA. Each outstanding share of ECOVA Series A Preferred Stock will be converted into .22 of a share of common stock of the reorganized ECOVA and the right to subscribe for Series B Preferred Stock of the reorganized ECOVA. Each outstanding share of Series B, Series C and Series D Preferred Stock of ECOVA will be converted into 32.81

Ms. Julie VanDyne  
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shares, .31 of a share and 32.81 shares, respectively, of Series A Preferred Stock of the reorganized ECOVA. Also, in conjunction with the reorganization, stockholders of ECOVA who have provided short-term debt financing to ECOVA will convert that debt into Series B Preferred Stock of the reorganized ECOVA and a corporate partner of ECOVA will accelerate a \$500,000 installment under a research and development agreement to purchase shares of Series B Preferred Stock of the reorganized ECOVA. All Series B Preferred Stock will be purchased at \$1.00 per share. The rights of holders of existing ECOVA common stock and Series A Preferred Stock are nontransferable and will expire concurrently with the effectiveness of the merger. The rights offering will close immediately after the closing of the merger.

ECOVA is currently registered under the Securities Exchange Act of 1934 (the "1934 Act"). The reorganization is subject to a vote of the stockholders under Delaware law, which is being solicited pursuant to a Proxy Statement/Registration Statement on Form S-4 which was filed with the Securities and Exchange Commission on April 11, 1990. It is expected that the common stock will be deregistered under the 1934 Act after the effectiveness of the merger.

We believe that the reorganization, including the rights offering to the holders of ECOVA common stock and Series A Preferred Stock and the exercise of those rights, is exempt from registration pursuant to § 44-1844(A)(6), which exempts a series of transactions incident to a statutory reorganization or merger incident to a vote by security holders. No commissions will be paid to any person in connection with the reorganization. There are only ten holders of common stock and one holder of Series A Preferred Stock who are residents of Arizona. The holders of common stock own 126,350 shares, collectively, for which they would receive cash, and only participate in the rights offering portion of the reorganization. The Arizona holder of Series A Preferred Stock, who owns 10,000 shares, would have its shares exchanged for 2,200 shares Common Stock in the reorganized company and participate in the rights offering portion of the reorganization. The rights of holders of existing ECOVA common stock and Series A Preferred Stock are nontransferable and will expire concurrently with the effectiveness of the merger. The rights offering will close immediately after the closing of the merger.

We respectfully request that you review this matter and advise us that no action will be taken against ECOVA if shares of Series B Preferred Stock are sold in the rights offering

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April 20, 1990  
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portion of the reorganization without registration in reliance  
on § 44-1844(A)(6).

I will call you Tuesday, April 24, 1990, to confirm your  
receipt of this letter.

Very truly yours,



J. Sue Morgan

JSM:cmm

cc: ECOVA Corporation

A09031