



March 22, 2013

Ms. Cynthia Oshita  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010, MS-19B  
Sacramento, California 95812-4010

Via email: [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov)

Re: NOIL-Bisphenol A - CMI COMMENTS OPPOSING PROP 65 NOTICE OF INTENT TO LIST BPA

Dear Ms. Oshita:

The Can Manufacturers Institute (CMI) appreciates the opportunity to submit these opposing comments on the California Environmental Protection Agency Office of Environmental Health Hazard Assessment (OEHHA) regarding its intent to list Bisphenol A (BPA) as a reproductive toxicant under Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986. CMI is the national trade association of the metal can manufacturing industry and its suppliers in the United States. The can industry accounts for the annual domestic production of approximately 124 billion food, beverage and other metal cans; together they employ some 28,000 people with plants in 36 states. CMI member companies have more plants, 21, and more employees, 2621, in the state of California than in any other state in the nation.

CMI does not believe that BPA meets the criteria for listing under Prop 65 and thus opposes the listing. As recently as September 2012, international and government organizations concluded that the weight of scientific evidence indicates that BPA does not pose a reproductive or developmental health risk to people, including infants and children.

However, OEHHA (2013) states: *The... scientific evidence meets the criteria for listing specified in Section 25306(g)(2). In identifying clear evidence for "high" dose developmental toxicity of Bisphenol A, NTP identified the specific studies of individual endpoints of developmental toxicity that led to its overall conclusion. For all of the studies cited by NTP for decreases in litter size or number of live pups/litter in rats and mice, the exposures resulting in this manifestation of developmental toxicity were entirely prenatal (Kim et al. 2001, Tyl et al. 2002b, Morrissey et al. 1987, Tyl et al. 2002a, NTP, 1985). This endpoint provides a clear basis for listing of Bisphenol A under Proposition 65... Effects on growth were also identified at birth in some studies (Kim et al. 2001, Morrissey et al. 1987), and early during the postnatal period in others (Tyl et al. 2002b, Tyl et al. 2008). In addition, effects on age at onset of puberty were reported after prenatal exposure*

*only in one study (Tinwell et al. 2002), as well as after perinatal (Tyl et al. 2002b, Tyl et al. 2008) or postnatal exposure (Tan et al. 2003) in others. The formal identification of Bisphenol A as causing developmental toxicity is therefore supported by sufficient evidence of adverse developmental effects resulting from exposure during the prenatal period, and is consistent with findings from studies involving exposure during the postnatal period.*

OEHHA's recent conclusions are not consistent with those of the 2009 DART-IC, which specifically considered the NTP document in its deliberations and concluded no risk and determined that BPA should not be listed under Proposition 65, or other government bodies which have all concluded that there is a lack of scientific support for purported low-dose effects. However, these recent conclusions regarding high-dose effects are consistent with those of other government bodies. The issue remains that these high-dose effects are not likely indicative of reproductive or developmental toxicity, but rather maternal toxicity. As such, BPA should not be listed under Proposition 65.

Because adequate alternatives to BPA are not currently available for the wide range of metal packaging, actions such as a Prop 65 listing could severely impact an exceptionally wide range of metal canned packaged food, from fruits and vegetables to soft drinks and beer. A Prop 65 warning label that could be imposed by this Office would undermine FDA's goal of limiting warnings on food labels to only those deemed necessary to protect the public health, based on credible scientific evidence. The Prop 65 warning label would convey a threat to human health that is unsupported by appropriate scientific evidence and is not supported by the conclusions about the safety of BPA drawn by FDA and other federal and international public health bodies.

In sum, we do not believe that the criteria for an authoritative body mechanism listing under Prop 65 has been met, and therefore oppose the OEHHA notice of intent to list BPA. Please contact me at 202-232-4677 or [gcullen@cancentral.com](mailto:gcullen@cancentral.com) with any questions.

Sincerely,

A handwritten signature in black ink that reads "Geoffrey Cullen". The signature is written in a cursive style with a large, prominent "G" and "C".

Geoffrey Cullen  
Vice President of Government Relations