

Office of Environmental Health Hazard Assessment



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Edmund G. Brown Jr.
Governor

January 22, 2013

Dear interested parties and Institute for Liberty submitters:

In May 2010, the California Office of Environmental Health Hazard Assessment (OEHHA) received approximately 3,000 e-mails from individuals who said they had been contacted by the Institute for Liberty about the chemical bisphenol A (BPA). The e-mails were sent during a public-comment period on the potential listing of BPA as a reproductive toxicant under California's Proposition 65. We appreciate your interest in BPA, and are writing to respond to and provide clarification on issues you raised.

Proposition 65, officially known as the Safe Drinking Water and Toxic Enforcement Act, was passed by California voters in 1986. Under this law, OEHHA maintains and updates a list of chemicals that cause cancer or reproductive toxicity. There are four different ways that chemicals are added to the list. One way is when certain federal agencies identify a chemical as causing reproductive toxicity. The federal National Toxicology Program (NTP) in a 2008 report identified BPA as harming the development of laboratory animals exposed to high doses of BPA. The NTP report is available at <http://ntp.niehs.nih.gov/ntp/ohat/bisphenol/bisphenol.pdf>. The possible listing of BPA is based on this report.

We carefully reviewed the e-mails and all other comments on the possible listing of BPA that we received in 2010. We have now determined that BPA meets the criteria for addition to the Proposition 65 list. Accordingly, we are posting a Notice of Intent to List BPA on our web site at www.oehha.ca.gov. The posting starts a 30-day public comment period on the proposed listing. Comments should focus on whether or not the criteria for listing the chemical have been met. The criteria are contained in Section 25306 of the Proposition 65 regulations, which is accessible at www.oehha.ca.gov/prop65/law/pdf_zip/RegsArt3.pdf. If OEHHA finds the criteria have not been met after review of the comments received during this new comment period, BPA will be referred to an expert scientific panel, the Developmental and Reproductive Toxicant (DART) Identification Committee, for a final listing decision.

I appreciate the strong viewpoints expressed in the e-mails from Institute for Liberty submitters, and would like to offer the following responses to those comments:

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.

- The addition of BPA to the Proposition 65 list would not ban the production or use of the chemical. Proposition 65 would require that businesses provide a warning when they expose consumers to significant levels of BPA. Rather than limiting consumer choice as indicated in your comment letters, the warnings allow consumers to make informed choices about whether they wish to buy or use products that will expose them to chemicals that are known to be reproductive toxicants and carcinogens.
- Your comment letters state that several government agencies – including NTP and the U.S. Environmental Protection Agency (U.S. EPA) – have determined that BPA is safe. In fact, recent statements by these agencies reflect some concern about BPA.

For example, NTP in its 2008 report not only said there is “clear evidence” of developmental effects in laboratory animals at high doses, but also said there is “some concern” for effects on fetuses, infants and children at current human exposures to BPA.

Similarly, the U.S. Food and Drug Administration (FDA), in its 2010 document, “Update on Bisphenol A for Use in Food Contact Applications,” says, “FDA shares the perspective of the National Toxicology Program that recent studies provide reason for some concern about the potential effects of BPA on the brain, behavior and prostate gland of fetuses, infants and children.” The same sentence appears in FDA’s March 30, 2012 update of this document.

U.S. EPA, in its “Bisphenol A Action Plan of 2010,” says, “BPA is a reproductive, developmental and systemic toxicant in animal studies.”

Only the NTP’s “clear evidence” statement provides the basis for adding BPA to the Proposition 65 list. However, we are sharing these statements with you to help clarify what these federal entities have said about BPA.

- I would also like to clarify the action that the DART Committee took in July 2009. The DART Committee determined that available scientific information on BPA had not “clearly shown” that BPA causes reproductive or developmental effects. In making this determination, the DART Committee did not make any finding that BPA is safe, as indicated in your comment letters.
- It is fair to ask why BPA is being proposed for the Proposition 65 list at this time when the DART Committee voted against adding the chemical to the list in 2009. Proposition 65 *requires* chemicals to be listed when NTP’s identification of a chemical meets the listing criteria, even if the DART Committee had decided earlier not to list it., In fact, the DART Committee in 2011 reaffirmed that NTP’s

identifications of reproductive toxicants *must* be used as a basis for making listing decisions, including the potential listing of BPA. Proposition 65 was written to ensure that chemicals could be listed based on the findings of expert entities like NTP and the DART Committee. It is not necessary for NTP and the DART Committee to concur on a chemical's toxicity in order for it to be listed.

- Your comment letters state that the current proposal to list BPA was triggered by an environmental advocacy group after the DART Committee's 2009 meeting. The Natural Resources Defense Council (NRDC) did request in writing that BPA be listed, based on the NTP document. However, Proposition 65 requires that BPA be considered for listing based on the NTP document, irrespective of the request by the NRDC or any other interested party.
- Lastly, your emails expressed concern about the costs to taxpayers for the BPA listing process, particularly the cost of public hearings. Public meetings on proposed Proposition 65 listings based on the findings of NTP only occur when they are requested by a member of the public. The cost of such public meetings is minimal. Comments are generally made by the public by mail or e-mail. Public meetings are seldom requested.

Thank you for your interest in Proposition 65. If you have any questions or concerns, please email P65Public.Comments@oehha.ca.gov.

Sincerely,



Lauren Zeise, Ph.D.
Deputy Director for Scientific Affairs