

Office of Environmental Health Hazard Assessment



Matthew Rodriguez
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Edmund G. Brown Jr.
Governor

January 22, 2013

Sharon Rubalcava
Alston & Bird LLP
333 South Hope Street, 16th Floor
Los Angeles, California 90071-1410

Dear Ms. Rubalcava:

Thank you for your letter of May 13, 2010, on behalf of the Motion Picture Association of America (MPAA), responding to the Request for Relevant Information on the possible listing of bisphenol A (BPA) under Proposition 65¹. BPA is a candidate for listing as known to cause reproductive toxicity. The potential listing would be by the authoritative bodies provision² of Proposition 65 and based on findings by the National Toxicology Program (NTP). NTP made its findings in a report³ by the NTP Center for the Evaluation of Risks to Human Reproduction that BPA causes developmental toxicity at “high” doses.

After review of all the submissions received in response to the Request for Relevant Information, OEHHA has determined that BPA meets the criteria for listing under the authoritative bodies provision of Proposition 65. Accordingly, a Notice of Intent to List BPA will be published in the near future. Following its publication, there will be a 30-day period for submission of public comments regarding the possible listing. Comments should focus on whether or not the criteria for listing have been met.⁴ In the event that OEHHA finds the criteria have not been met after review of the comments, the chemical will be referred to the Developmental and Reproductive Toxicant Identification Committee (DARTIC) for its consideration as required by regulation.⁵

You comment that the possible listing of BPA under Proposition 65 is both controversial and subject to different opinions. You also note that MPAA lacks the expertise to comment on the underlying scientific studies. Rather, the MPAA comments focused on concerns about

¹ The California Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.5 et seq.

² Health and Safety Code section 25249.8(b) Title 27, Cal. Code of Regulations, section 25306.

³ National Toxicology Program – Center for the Evaluation of Risks to Human Reproduction (NTP-CERHR, 2008). *NTP-CERHR Monograph on the Potential Human Reproductive and Developmental Effects of Bisphenol A*. NIH Publication No. 08 – 5994.

⁴ Title 27, Cal. Code of Regulations, section 25306.

⁵ Title 27, Cal. Code of Regulations, section 25306(i).

California Environmental Protection Agency

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

the possible economic impacts of the listing of BPA. Those concerns include the potential for warnings on CDs and DVDs as well as other entertainment-related merchandise. Because of the potential economic impacts, you urged OEHHA to explore every avenue to avoid casting the net too widely under Proposition 65 and limit the application of the listing, or to adopt a maximum allowable dose level (MADL) concurrently with the listing of BPA, should that listing occur.

We acknowledge your concerns regarding the listing of BPA. If the chemical is listed, we will provide compliance assistance to businesses to reduce the likelihood of unnecessary litigation and warnings. In cases where the average use of a product by the average consumer does not result in exposure to a listed chemical that exceeds the MADL, no warning is required. OEHHA can assist interested parties by providing a MADL, as you have requested.

OEHHA's general practice, when feasible, is to propose a MADL within one year of the listing of a chemical. In many cases, we have been able to finalize a MADL at or near the time the warning requirement for a newly listed chemical takes effect. In some instances, OEHHA has been able to propose MADLs concurrent with or even prior to the listing of a chemical. If OEHHA makes a final determination to add BPA to the Proposition 65 list, we will consider whether it is feasible to release a draft MADL concurrent with the listing. At a minimum, we would make it a priority to develop and adopt a MADL for BPA at the earliest possible date following the chemical's listing. As you may be aware, Proposition 65 provides a "grace period" of 12 months after the chemical is listed before any interested party can sue for alleged violations of the Act. During that time, product manufacturers can evaluate their product exposures against the MADL and determine whether or not a warning is necessary.

OEHHA also can develop interpretive guidelines and safe use determinations to provide further guidance to businesses and the public concerning the applicability of Proposition 65 to specific products or uses of a chemical. OEHHA would consider developing these materials as appropriate if BPA were listed.

Thank you for your interest in Proposition 65. If you have any questions or concerns, please contact me at (916) 322-6325 or by email at Lauren.Zeise@oehha.ca.gov.

Sincerely,



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