

PUBLIC HEARING
STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

In the matter of:)
)
Notice of Proposed Adoption of New)
Chapter 3, Section 28500 to Title)
27, California Code of Regulations,)
Naturally Occurring Lead in Candy)
-----)

CALEPA HEADQUARTERS BUILDING
SIERRA HEARING ROOM
1001 I STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, MAY 8, 2019
10:03 A.M.

JAMES F. PETERS, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

A P P E A R A N C E S

STAFF:

Dr. Lauren Zeise, Director

Mr. Allan Hirsch, Chief Deputy Director

Mr. Carl DeNigris, Acting Chief Counsel

Dr. Elizabeth Marder, Cancer Toxicology and Epidemiology
Section, Reproductive and Cancer Hazard Assessment Branch

Dr. Martha Sandy, Chief, Reproductive and Cancer Hazard
Assessment Branch

ALSO PRESENT:

Mr. Luis Castaño Martinez, Frudest

Mr. Armando Crespo, Dulces De La Rosa

Mr. Alfonso Garcia, Hispanic Candy National Association

Mr. Atanasio Menéndez, Caramelos Don Picoso

Ms. Debra Miller, National Confectioners Association

Mr. Matt Nevins, Center for Environmental Health

Mr. Wil Sumner, Sumner Analytical

Mr. Victor Zavala, Caramelos De La Rosa, Distribuidora De
La Rosa, Mazapan De La Rosa, Chupaletas

I N D E X

	PAGE
Opening Remarks by Chief Deputy Director Hirsch	1
Presentation by Acting Chief Counsel DeNigris	4
Presentation by Dr. Marder	6
Ms. Miller	11
Mr. Sumner	14
Mr. Garcia	17
Mr. Nevins	18
Mr. Castaños Martinez	20
Mr. Zavala	21
Mr. Menéndez	23
Mr. Crespo	25
Mr. Zavala	26
Mr. Sumner	27
Closing remarks by Chief Deputy Director Hirsch	28
Adjournment	29
Reporter's Certificate	30

P R O C E E D I N G S

1
2 CHIEF DEPUTY DIRECTOR HIRSCH: Okay. I think
3 we'll get started now.

4 Good morning and bienvenidos. My name is Allan
5 Hirsch. I am Chief Deputy Director for the Office of
6 Environmental Health Hazard Assessment, known in short as
7 OEHHA.

8 With me is our Acting Chief Counsel Carl
9 DeNigris, and our staff scientist Dr. Elizabeth Marder.
10 Also, in the audience is Dr. Martha Sandy, who is the
11 Chief of the Branch that is working on this regulation,
12 and our Director, Dr. Lauren Zeise, is here as well.

13 Just we need to do some housekeeping first. If
14 you need to use the restroom during the public hearing,
15 you would go out the back door, turn left, make another
16 left at the end of the lobby and the restrooms are on your
17 right.

18 Also, I want to give fair warning that we are in
19 the middle of fire drill season here at the CalEPA
20 building. So there's a chance if we have to evacuate the
21 room because of a fire drill or a real emergency, you
22 would walk out the doors, go down the stairs, and then
23 exit the building off on the left. Basically, the way
24 that you came into this building.

25 If you hear a fire drill, often the drills, more

1 likely than not, will probably affect other floors in the
2 building and not this one. So it's important to actually
3 listen to the PA announcement. But as we say at OEHHA,
4 the risk is not zero, that the drill could affect us.

5 And also, today's hearing is being webcast. If
6 you want to alert a colleague about that, they can access
7 the webcast by going to video.calepa.ca.gov.

8 Under the provisions of the Administrative
9 Procedure Act, this is the time and place set for the
10 presentation of comments, orally or in writing, regarding
11 OEHHA's proposed new chapter and section in California
12 Regulations Chapter 3, Naturally Occurring Lead in Candy,
13 section 28500, naturally occurring levels of lead in
14 candy.

15 OEHHA considers this proceeding to be a
16 quasi-legislative hearing, because it is carrying out a
17 rulemaking function delegated to it by statute. OEHHA
18 will take under submission all written comments and oral
19 statements submitted or made during this hearing.

20 The Director of OEHHA, Dr. Lauren Zeise, has
21 designated me to conduct this hearing on her behalf, and I
22 will be doing so in accordance with provisions of the
23 Administrative Procedure Act.

24 The entire proceeding is being recorded by a
25 certified court reporter. The transcript and all exhibits

1 and evidence presented at this hearing will be included in
2 the administrative record for this rulemaking.

3 The written comment period for this proposed
4 rulemaking will close on May 22nd, 2019. So you have
5 about two weeks to absorb what is said here and you still
6 have time to take that into account as you submit written
7 comments to us.

8 For organizational purposes, we request that
9 those of you wishing to speak complete a blue speaker's
10 card. And they're on the table in the back of the room.
11 And you can either bring it up here to the front of the
12 room or you can provide it to Monet Vela, who is over on
13 that side of the room, though you're not required to do so
14 in order to speak. At the end, after everyone who's
15 filled out a blue card has spoken, I will ask if anyone
16 else wants to speak.

17 And also, I just want to be sure that you're
18 aware, because this is a formal public hearing, we will
19 essentially be in listening mode. Some of you perhaps
20 have been to pre-regulatory workshops that we or other
21 State agencies have done. And there's often
22 back-and-forth conversations in those cases. But here,
23 we're -- this is a formal public hearing, and so we may
24 ask clarifying questions of you, if we just need something
25 clarified. If you just need something simple that --

1 clarified, you can ask a clarifying question of us, but
2 State hearings are not really set up for, you know, a
3 substantive two-way conversation. So we're here to
4 listen. And, of course, we will have a written record of
5 what is said. And we will very carefully consider that as
6 we go through all of the comments written and oral that we
7 get on this regulation.

8 If we adopt a final reg, we will provide written
9 responses to all relevant comments that we receive at
10 today's hearing, as well as written comments. If you have
11 a detailed comment, we strongly recommend that you submit
12 it to us in writing by the May 22nd deadline, so we can
13 give it full consideration.

14 So to enable the audience to hear you and to
15 ensure that your comments are recorded for the record,
16 when I call your name, you can come to this microphone,
17 when you're called to speak. It's helpful to the court
18 reporter if you state your name and the organization that
19 you represent, if any. However, you're not required to do
20 so in order to speak.

21 So at this time, our Acting Chief Counsel, Carl
22 DeNigris will present OEHHA's exhibit.

23 ACTING CHIEF COUNSEL DeNIGRIS: Thank you, Allan.

24 In order to save time, we have already provided
25 copies of the text of the proposed regulation, the Initial

1 Statement of Reasons, the technical support document, and
2 the Notice of Proposed Rulemaking to the court reporter to
3 be marked as Exhibit A to the hearing transcript and
4 included in the hearing record.

5 (Exhibit A marked for identification.)

6 ACTING CHIEF COUNSEL DeNIGRIS: As required by
7 the Administrative Procedure Act, the public and
8 interested parties were notified of this proposed
9 regulation at least 45 days prior to today's hearing. The
10 notice of this proposed regulation was published on
11 OEHHA's website and sent by email to interested groups and
12 individuals on March 15th, 2019 and was published in the
13 California Regulatory Notice Register on March 15th, 2019.

14 I'll now briefly go over the legal authority for
15 the proposed regulation.

16 (Thereupon an overhead presentation was
17 presented as follows.)

18 ACTING CHIEF COUNSEL DeNIGRIS: So on this first
19 slide, we have the proposed regulatory text. So OEHHA is
20 proposing to add a new chapter and section, Section 28500
21 Naturally Occurring Levels of Lead in Candy, and
22 specifically for candies flavored with chili and/or
23 tamarind. We're proposing a naturally occurring level of
24 0.02 parts per million.

25 --o0o--

1 ACTING CHIEF COUNSEL DeNIGRIS: So Health and
2 Safety Code section 110552 subsection (c)(2) defines
3 adulterated candy as candies with lead in excess of the
4 naturally occurring level. And subsection (c)(3) requires
5 that OEHHA, in consultation with the California Department
6 of Public Health and the Attorney General's Office adopt
7 regulations establishing naturally occurring levels of
8 lead in candy containing chili and tamarind.

9 --o0o--

10 ACTING CHIEF COUNSEL DeNIGRIS: Subsection (c)(3)
11 also defines naturally occurring lead as lead that is not
12 avoidable by good practices, such as agricultural,
13 manufacturing, and procurement practices or other
14 currently feasible practices, and also not -- lead not
15 from agricultural equipment, fuels used on or around soils
16 or crops, fertilizers, pesticides, materials applied to
17 soils or crops, or materials added to water used to
18 irrigate soils or crops.

19 --o0o--

20 ACTING CHIEF COUNSEL DeNIGRIS: So with that, I
21 will turn the meeting over to Dr. Marder to go over
22 OEHHA's approach for establishing the naturally occurring
23 level.

24 --o0o--

25 DR. MARDER: Thank you. Thank you, Carl, for

1 introducing OEHHA's proposed addition of Chapter 3 and
2 section 28500 to Title 27 of the California Code of
3 Regulations.

4 As was just presented, this new section would
5 establish naturally occurring levels of lead in candies
6 flavored with chili and tamarind. OEHHA has released a
7 technical support document, titled *Naturally Occurring*
8 *Lead in Certain Candies. Candies Flavored with Chili*
9 *and/or Tamarind* that lays out the data and analysis
10 supporting the proposed levels.

11 --o0o--

12 DR. MARDER: OEHHA developed an ingredient-based
13 approach to estimate the sum of naturally occurring lead
14 in candies flavored with chili and/or tamarind, based on
15 an evaluation of the lead -- of the level of lead
16 plausibly considered to be naturally occurring consistent
17 with Health and Safety Code section 110552, and that would
18 be contributed to a candy by a given ingredient and the
19 amounts of each such ingredient typically present in
20 candies.

21 That includes: identifying ingredients that may
22 substantially contribute to naturally occurring lead in
23 these candies; and then subsequent evaluation of the level
24 of naturally occurring lead in these ingredients; and
25 finally, estimating the level of naturally occurring lead

1 in the candies.

2 --o0o--

3 DR. MARDER: A total of 6 ingredients have been
4 identified as potential contributors of naturally
5 occurring lead in candies flavored with chili and/or
6 tamarind. In addition to chili and chili powder, as well
7 as tamarind, the other ingredients are: food-grade salt,
8 sugar, food-grade silicon dioxide, and food-grade titanium
9 dioxide.

10 --o0o--

11 DR. MARDER: For each of these 6 ingredients,
12 OEHHA determined amounts that would be present in types of
13 candies flavored with chili and/or tamarind. The table
14 below -- or above is adapted from Table 11 in the
15 technical support document and shows these ingredient
16 amounts by type of candy flavored with chili and/or
17 tamarind.

18 --o0o--

19 DR. MARDER: For each of these 6 ingredients,
20 OEHHA then determined the amount of lead plausibly
21 considered to be naturally occurring consistent with
22 Health and Safety Code section 110552 that would be
23 present in the ingredient itself. The table on this slide
24 is adapted from Table 12 in the technical support document
25 and shows the amount of naturally occurring lead by

1 ingredient, such as 0.01 parts per million for chili
2 powder.

3 --o0o--

4 DR. MARDER: To estimate naturally occurring lead
5 in candies themselves flavored with chili and/or tamarind,
6 OEHHA then calculated the sum of the naturally occurring
7 lead concentrations that would be contributed by varying
8 amounts of the 6 identified ingredients. The table on
9 this slide, modified from Table 13 in the technical
10 support document, includes examples of these calculations
11 for types of candies. For each example in this table, you
12 see the percentage of each ingredient in the candy with
13 the concentration of the naturally occurring lead
14 contributed by each ingredient in the parentheses below.

15 In the last column on the right, the total
16 concentration of naturally occurring lead and totaled in
17 each candy, is calculated as the sum of each ingredient's
18 contribution. This was repeated for various candies
19 running -- here's a second set of examples.

20 --o0o--

21 DR. MARDER: But in this process, OEHHA
22 determined the maximum concentration of naturally
23 occurring lead in candies flavored with chili and/or
24 tamarind to be 0.02 parts per million.

25 --o0o--

1 DR. MARDER: OEHHA also evaluated results of
2 recent lead analyses of candies flavored with chile and/or
3 tamarind. The figure be -- the figure in the slide,
4 modified from Figure 3 in the technical support document,
5 shows lead concentrations from 195 samples of candies
6 produced by 9 manufacturers in Mexico that were tested for
7 lead content between 2012 and 2017.

8 Of these candies, only 7.7 percent contained lead
9 above 0.02 parts per million. That means that over 92
10 percent of candies flavored with chili and/or tamarind
11 that were tested contained lead from either below
12 detection limits up to 0.02 parts per million.

13 With that, I will --

14 (Thereupon a fire alarm announcement.)

15 DR. MARDER: There we go. Just under the bell.

16 CHIEF DEPUTY DIRECTOR HIRSCH: We'll be fine.

17 You thought I was joking.

18 (Laughter.)

19 DR. MARDER: Well, I had just finished, so Carl,
20 if you want to.

21 ACTING CHIEF COUNSEL DeNIGRIS: Right. So again
22 here is the proposed regulatory text and a reminder that
23 the written public comments are due by 5:00 p.m. on May
24 22nd. And then up there is -- we encourage people to
25 submit written information through our website at this

1 address, right there at oehha.ca.gov/comments.

2 CHIEF DEPUTY DIRECTOR HIRSCH: Okay. Well, that
3 concludes our formal staff presentations.

4 Now, we come to the part of the hearing where the
5 public can comment. I don't have any blue cards. I don't
6 think -- there you go. So why don't you -- yeah, if you
7 have them, and -- you can give them to me. And you can go
8 ahead and speak first. If anyone else has -- oh, if
9 anyone else has blue cards, appreciate it if you could
10 either give them to me or to Monet.

11 Yes, you should come up to the microphone here.
12 So Debra Miller with the National Confectioners
13 Association.

14 MS. MILLER: Is that good?

15 Okay. Well, thank you very much. My name is
16 Debra -- Debra Miller, and I'm the Senior Vice President
17 for Scientific and Regulatory Affairs at the National
18 Confectioners Association. I'm also a mom and a
19 scientist. And I, like the rest of my organization, are
20 very committed to food safety. So I'd like to thank you
21 for the opportunity to speak today.

22 The organization that I represent, the National
23 Confectioners Association, represents over 500 candy
24 manufacturers or those who provide ingredients to the
25 confectionery industry and we probably contribute to

1 almost all of the confectionery products sold across North
2 America.

3 Those member companies include those who make
4 Mexican style candies, those include chili and tamarind,
5 including several companies located here in California and
6 a number also located south of the border.

7 I'm here to bring forth some of their issues for
8 a feasible path forward for compliance for these
9 companies, and to note the progress that they've made so
10 far. So as a bit of background about the National
11 Confectioners Association, we've had a long history of
12 working with agencies here in California on food safety
13 issues.

14 NCA was part -- a partner in supporting the
15 development of the Vargas legislation that's now codified
16 and in the section of that Health and Safety Code you
17 mentioned. The expressed purpose of that legislation was
18 to empower the Department of Public Health to prevent the
19 sale in California of adulterated candy that could pose an
20 actual health risk.

21 In regard to lead, as you mentioned, the -- it --
22 the level that was considered to be opposing no risk was
23 at 100 parts per billion or 0.1 ppm. And this was
24 selected because it also corresponds with the FDA's lead
25 in children's candy guideline. This guideline was based

1 on a thorough health risk and exposure assessment, and it
2 remains the lowest established lead level for candy
3 adopted by any regulatory authority around the world. So
4 it is indeed a safe level.

5 Further, the National Confectioners Association
6 also worked with California's Attorney General's office
7 and the Environmental Health Coalition for nearly 3 years
8 to facilitate our candy companies in Mexico to opt in to
9 the Attorney General's Prop 65 consent judgment on this
10 issue, and to educate them about the interim level of 100
11 parts per billion of the naturally occurring level, and
12 also helped them best manage and source practice -- and
13 have best sourcing practices to ensure their compliance
14 with that level.

15 So NCA very much wants to continue its role in
16 the -- in facilitating a dialogue here between the candy
17 industry and the State of California.

18 And that said, our members do have a few -- I've
19 identified a few concerns with the current proposed rule.

20 One, we feel that the limit -- there are
21 limitations on the data on which the agency has based
22 their technical support document as it does not include a
23 number of ingredients sourced, either in Mexico or
24 different variants of salt and sugar that may contribute
25 lead.

1 Secondly, we feel that the -- it is unclear how
2 the agency will judge compliance with this rule, and how
3 it will be measured, and over time, how the -- how this
4 rule may be phased in. And we have a number of
5 suggestions that we'd like to make.

6 So we will be providing written comments on these
7 issues. Hopefully, these suggestions will help improve
8 this proposed rule in a manner that will allow all
9 stakeholders to embrace it.

10 So I thank you very much for holding this
11 hearing, and allowing me to speak today.

12 CHIEF DEPUTY DIRECTOR HIRSCH: Thank you very
13 much. Okay. I saw other people reaching for the blue
14 cards, so anyone feel free to come on up.

15 Yeah, exactly.

16 Wil Sumner from Sumner Analytical.

17 MR. SUMNER: Sumner Analytical is a part of the
18 technical committee with the Attorney General's office.
19 So I'm really representing the Attorney General's office,
20 but I also have been working with the Mexican candy and
21 seasoning industry on the prevention of control aspects of
22 lead or heavy metals in foods.

23 One of the questions that I talked to Dennis
24 Ragan about and I didn't know if he was asked to your
25 group. In the sample preparation for the data being

1 generated by your group, did you use the edible portion as
2 identified by FDA for purposes of your analysis or did you
3 include the stems and seeds of the chilis, which is a
4 natural part of the chili powder, because the chili
5 industry does not separate these items when grinding up
6 chilis for the product. If you did not include that, we
7 would suggest that you do some additional testing to show
8 the data.

9 So I know Dennis was going to ask your group that
10 directly last week. I don't know if you received that
11 question or not, so -- so that's just -- okay. That's one
12 question and issue.

13 The other aspects of this, of course, and the
14 analytics between laboratories, the variation between
15 laboratories even in a proficiency program may have a
16 challenge with the 20 part per billion number. So we
17 certainly would like to verify that the proficiency
18 testing between laboratories don't -- will stay within the
19 20 part per billion range.

20 I know the Attorney General is requesting a 10
21 PPB detection level for the analytics from all approved
22 laboratories doing the testing. That's just a question
23 that we have to the group.

24 In terms of in looking at your study, one of --
25 some questions have come up. You've chosen some chili

1 peppers -- or some chili products that don't represent
2 some of the chili products that are actually used in the
3 industry. An Arbol chili or a more rough-surfaced chili
4 is also utilized for the flavoring and coloring aspects of
5 the chili industry and the candy industry.

6 The surface area this precludes effective washing
7 processes and makes it much more difficult. So I'm not --
8 and I know that the three chilis that you used were more
9 of a smooth surface chili, making it much easier to
10 physically remove the powder -- or, excuse me, the lead,
11 which comes from topical. We understand that most of the
12 lead in chilis is a topical, not a systemic issue.

13 But in terms of a naturally occurring level that
14 can be physically removed from the product, that
15 represents a challenge that the industry is going to come
16 back as part of our comments on your study.

17 Other issues in terms of not just that, but in
18 terms of the products themselves. One of the issues that
19 we saw when they established the 100 part per billion
20 level, FDA just kind of adopted that number after it was
21 established originally for candy and started applying that
22 to other foods being imported to the United States.

23 So our question is what controls or what
24 regulatory aspects on this naturally occurring level will
25 the FDA adopt or not adopt for other foods.

1 A third challenge under the Attorney General's
2 office, we found that we were establishing 25 parts per
3 billion for infant -- well, drinks such as apple juice for
4 infants with a higher consumption rate. And it seems --
5 it just seems rather a challenge to us that you're
6 establishing 20 ppb as naturally occurring for chili
7 powder, and for candies especially, when, in fact, the
8 apple juice industry has a 25 ppb number for their
9 product.

10 So I understand that these numbers aren't
11 completed, but we're hoping that we will kind of really
12 look at these numbers and push them to a more reasonable
13 number.

14 All right. That's all the questions I have at
15 this point. Thank you.

16 CHIEF DEPUTY DIRECTOR HIRSCH: Okay. Thank you
17 very much. We will definitely consider those as we look
18 at all of the comments that we get.

19 Anyone else?

20 Thank you. Alfonso Garcia from HCNA.

21 MR. GARCIA: Hi. Good morning. Thank you for
22 the public hearing. I'm the President of the National --
23 Hispanic Candy National Association. And as you say, I
24 have just two clarifying questions.

25 First, the proposal you're presenting is because

1 you're concerned about the health of the California
2 residents. And the question is that then why you're only
3 targeting our industry and not other industry which
4 products contain similar levels of lead?

5 And the other question would be, which other
6 candy industries has this low level of natural occurrence
7 of 0.02 ppm?

8 CHIEF DEPUTY DIRECTOR HIRSCH: Well, the first
9 question I think is simple enough to answer, which is that
10 there's a State law that requires us to develop and
11 promulgate in reg a naturally occurring level for lead in
12 candy containing chili and tamarind. So that's in the
13 law. That's why we're focused on those specific products.

14 Your second question, I don't -- that may be a --
15 I don't know. That's probably something we would need to
16 think about a little bit more and provide a formal
17 response to.

18 MR. GARCIA: Okay. Thank you.

19 CHIEF DEPUTY DIRECTOR HIRSCH: Okay. Anyone
20 else?

21 Matt Nevins with the Center for Environmental
22 Health.

23 MR. NEVINS: My name is Matt Nevins. And I'm the
24 RESEARCH manager at the Center for Environmental Health.
25 On behalf of our 5,000 California supporters, I thank

1 OEHHA for protecting California's children by proposing to
2 reduce the amount of lead in chili and tamarind candies.

3 We appreciate the effort that OEHHA has put into
4 calculating naturally occurring lead contamination in the
5 ingredients used in these candies. We believe that the
6 naturally occurring level currently used, 100 parts per
7 billion, is outdated and should be reduced.

8 The estimation of naturally occurring lead
9 contamination is challenging, because many of the
10 available data sets include values that are mostly below
11 the level of quantitation for the lead analysis.

12 However, it appears to us that a naturally
13 occurring level of 10 parts per billion, in addition to
14 being more health protective than the proposed 20 parts
15 per billion, is a feasible and justifiable naturally
16 occurring lead level.

17 In the data compiled by the Attorney General's
18 office, over 80 percent of the tested candies were
19 contaminated with less than 10 parts per billion lead.
20 From the Center for Environmental Health's perspective,
21 this is clear evidence that through good agricultural,
22 manufacturing, and procurement practices, lead
23 contamination less than 10 parts per billion is feasible,
24 indicating that a naturally occurring contamination level
25 higher than 10 parts per billion is not appropriate.

1 We note that California's lead and candy law
2 requires the naturally occurring lead level to be reviewed
3 every 3 to 5 years. This updating of the naturally
4 occurring level is years overdue. We look forward to
5 OEHHA expediting the process of adopting a new level, and
6 thank you for holding this hearing.

7 CHIEF DEPUTY DIRECTOR HIRSCH: Okay. Thank you.

8 Anyone else?

9 Thanks. Luis Castaño Martinez from Frudest.

10 MR. CASTAÑO MARTINEZ: Yes, I have some questions
11 because the natural -- the concept of naturally occurring
12 lead, the document that support that phrase is different
13 from, I think, I'm supplier of chili. It's a raw
14 material. It's an ingredient. And it's different from
15 the reality from the data. We -- that we have from the --
16 let's say, the natural -- the reality of Mexico how the
17 dry process -- the drying process is different, because
18 those results are from lab and from fresh chilis as Wil
19 said.

20 Also, the drying system is with oven
21 mechanically. And in Mexico, 90 percent of the chilis are
22 dried with sun -- are sun dried. So the conditions are
23 very different from mechanically than naturally dry. And
24 the impact of the cost of the industry, if Mexico starts
25 using ovens and fresh chilis will be very, very different

1 from the -- from now.

2 So I'm just asking to consider the economical
3 impact, and also the research that have been done is
4 different in lab with fresh pods than sun-dried that --
5 Mexican. We use different varieties also that needing
6 a -- were taken to this -- to this experiment that you --
7 that you have done.

8 Thank you.

9 CHIEF DEPUTY DIRECTOR HIRSCH: Thank you.

10 Anyone else?

11 Sure. Vince -- and, I'm sorry, I may mis --

12 MR. ZAVALA: Victor.

13 CHIEF DEPUTY DIRECTOR HIRSCH: Oh, I'm sorry.
14 Victor Zavala, Caramelos De La Costa?

15 MR. ZAVALA: De La Rosa.

16 CHIEF DEPUTY DIRECTOR HIRSCH: Oh, De La Rosa.

17 Okay. Sorry.

18 MR. ZAVALA: Hello. My name is Victor and I am
19 speaking for Caramelos De La Rosa, but also for other
20 three companies in the group, Distribuidora De La Rosa,
21 Mazapan De La Rosa and Chupaletas.

22 I would like to probably ask this audience to
23 review the study cycle information that was used to
24 determine the levels, because it's only using a small
25 sample of the data that is not shown in the study.

1 Also, the limits of detection for the approved
2 labs to perform the analysis, some of them are way higher
3 than the requested level. One thing that is not
4 considered is the regions of the crops used. It only
5 mentions California and Mexico without being specific.

6 It only also mentions only tamarind and chili as
7 natural ingredients that could include lead. But the fact
8 is that there are many other ingredients in the industry
9 that affect -- and, for example, I mention strawberries,
10 figs, nuts, that may also be affected by lead in the soil,
11 and are used more frequently than these ingredients,
12 tamarind and chili, in the everyday consumption that would
13 affect the public health would have a bigger impact than
14 the candies itself.

15 And also, candies with tamarind and chili could
16 be associated with a specific ethnic group. And there are
17 some other foods that contain tamarind and chili that are
18 not included in the study. If I may mention, I -- myself,
19 I tried Thai Chinese food that contains peanuts, that
20 contains tamarind, that contains a lot of chili. And I
21 consume those more than the actual candies. That's what
22 I'm stating my personal insight.

23 So probably it would be necessary to evaluate the
24 impact of other foods, not only the candies.

25 Thank you very much.

1 CHIEF DEPUTY DIRECTOR HIRSCH: Thank you.

2 Anyone else?

3 Right. Good morning.

4 Atanasio Menéndez from -- also well from
5 Caramelos Don Picoso.

6 MR. MENÉNDEZ: Good morning, everybody. We were
7 formerly Dulces Anahuac. And we are candy producers. And
8 it has been said we also are concerned about the
9 limitation of the study only on tamarind and chili.

10 (Thereupon a fire alarm announcement.)

11 CHIEF DEPUTY DIRECTOR HIRSCH: It should be
12 short.

13 MR. MENÉNDEZ: So I was saying that we find that
14 your study is only limited to the candy and tamarind and
15 coming from Mexico. And as Mexican chili and tamarind
16 should be also analyzed, all the raw materials, coming
17 from all the countries in the world, and for all the food
18 we consume, because a can -- lead is present in our life
19 in everything.

20 So to really determine a natural occurrence, we
21 don't have to focus only on chili and tamarind from
22 Mexico. We have to work on every ingredient, and every
23 producer, and every food stuff that we consume, not only
24 in California but in the world. So we are talking about
25 milk, soups, salsas, pizza. Whatever a Californian can

1 consume and put into his mouth should be entered in the
2 same study.

3 The natural occurrence that you have determined
4 0.02 parts per million we feel it's very low. And until
5 the study is finished with all the ingredients and all the
6 food stuff, we couldn't conclude a real natural occurrence
7 limit.

8 So this means also time. And I think that we
9 have to work all together in doing so, and we request more
10 time. May 22nd is very close. It's not enough time. And
11 the study should be -- do in deep numbers, so we can
12 conclude something.

13 We feel that focusing on candy coming from Mexico
14 is discriminatory, because it's not including all the food
15 stuff that a Californian can consume. And we have been
16 working with our suppliers and things have improved
17 through the years. And we have a lot of things to --
18 still we can do, but we need more time.

19 That's it. Thank you.

20 CHIEF DEPUTY DIRECTOR HIRSCH: Thank you.

21 Oh. Oh, we did.

22 Oh. Okay. That's unfortunate.

23 Okay. If you could come up to the mic and
24 introduce yourself.

25 MR. CRESPO: Thank you very much. My name is

1 Armando Crespo. I work for Dulces De La Rosa.

2 Two simple questions. The first one is that in
3 the study that was provided to us, you identified a
4 certain type of chili, and not all the chilis that are
5 used in the industry. So we'd like you to specify what
6 types of chilis were considered as part of this test.

7 The other question, which is a commercial
8 question, which is very important, if this law were to be
9 implemented, what would be the form in which you would
10 analyze the product which is already in the marketplace?

11 Most of our products have a shelf-life between 18
12 to 24 months. Therefore, if this were to be implemented,
13 there would be a substantial amount of product in the
14 marketplace that would still be out there with the 0.1
15 parts per million statute. Therefore, it would be a big
16 problem when you would implement this new law in the
17 authorities finding a product, which is in the law, but
18 now with a new regulation of 0.02.

19 So that is a major concern that would cause
20 problems for the industry, as well as the supermarkets and
21 everyone who sells the product.

22 Thank you.

23 CHIEF DEPUTY DIRECTOR HIRSCH: Okay. Well, I can
24 provide I think a relatively simple response to your
25 second question. And that is if our number were finalized

1 and put into regulation, it would be the California
2 Department of Public Health, our sister agency, would be
3 responsible for enforcing it. They have a program now in
4 which they are sampling and analyzing lead levels in
5 candy. And they would have the authority to take
6 enforcement action, and they also, as the regulator,
7 would have the discretion to have a reasonable phase-in
8 period.

9 And I know there's a representative of the
10 Department of Public Health who's in the audience and is
11 listening. So that would be a discussion that you would
12 have with them.

13 And the first one was a little technical about
14 the kind of chilis. I don't know if we're able to answer
15 that.

16 I know that you have -- obviously, we talked
17 about that in our document.

18 ACTING CHIEF COUNSEL DeNIGRIS: We'll take that
19 under submission and respond after the comment period
20 closes.

21 CHIEF DEPUTY DIRECTOR HIRSCH: All right. Okay.
22 Well, my apologies for running out of the blue cards. If
23 you had a question you -- yeah, come up to the microphone
24 and identify yourself again.

25 MR. ZAVALA: I'm sorry. I would like to repeat

1 the question or rephrase the question Armando did and ask
2 if these limits will apply to all food with chili in
3 general, or only 2 candies with guajillo and anaheim
4 chili, because tamarind is species that is very specific,
5 so is guajillo and anaheim chili. If we use a different
6 chili, would that be in regulation or not?

7 Victor Zavala from Caramelos De La Rosa.

8 ACTING CHIEF COUNSEL DeNIGRIS: We will take that
9 under submission and respond to that after the close of
10 the comment period.

11 MR. ZAVALA: Okay. Thank you very much.

12 MR. SUMNER: Wil Sumner with the technical
13 committee from the Attorney General's office.

14 In looking at your salt data, it was -- you
15 used -- the data that you used was from sea salt mainly
16 from Sea of Cortez. Unfortunately, if you looked at sea
17 salt from the Mediterranean or other areas, you're going
18 to find much higher levels of lead.

19 So, I mean, certainly your data set is showing 10
20 ppb or less is normal in salt. However, there have been
21 studies in France, and Italy, and other countries with
22 much higher levels of lead in sea salt. So you may want
23 to relook at your salt data.

24 And I know that Dennis Ragan and I can share the
25 data that we gathered for salt in other parts of the

1 world. So you may want to reassess that number as well.

2 I mean, we're focusing on lead contribution
3 exercises for this number. So, yes, we're focusing a lot
4 on chili and tamarind. But there's other sources in
5 sugars and salts that may or may not be in that same
6 range.

7 So you may have to expand your data set to
8 include, for instance, the different grades of sugar. I
9 mean, yes, there's food-grade sugar. But if you have more
10 molasses and things like that, we've conducted studies in
11 other food products and molasses has much higher levels of
12 lead.

13 So, again, you may want to consider some of these
14 other data sets and consider naturally occurring levels.

15 CHIEF DEPUTY DIRECTOR HIRSCH: Okay. Anyone
16 else?

17 Once, twice, three times.

18 Okay. Well, I'd like to thank you all for coming
19 here. And especially, I know many of you have traveled a
20 long way. We don't often have people from Mexico coming
21 to our public hearings, so we appreciate the effort that
22 you made to come here.

23 Again, we will, you know, very carefully go
24 through the transcript as we look at comments and
25 decide -- and consider them and decide, you know, what we

1 want to do in response to those comments. I would again
2 recommend that you -- that the people who spoke follow up
3 with written comments and get those to us by the 22nd.
4 That would be helpful. But again, if you don't, I can
5 assure you, we will go through our transcript carefully
6 and consider those.

7 So hearing no additional requests to speak, I
8 hereby close this public hearing. And again, the office
9 will accept written public comments until 5:00 p.m. on May
10 22nd, 2019. The methods for submitting written comments
11 is on our website. But just to quickly go through that,
12 you can submit comments via our website at
13 oehha.ca.gov/comments, or you can mail hard copies to
14 Monet Vela at the Office of Environmental Health Hazard
15 Assessment, 1001 I Street, 23rd floor, P.O. Box 4010,
16 Sacramento, California, 95812-4010. And again, that
17 information is on our website.

18 So thank you very much for coming here.

19 (Thereupon the California Office of Environmental
20 Health Hazard Assessment public hearing adjourned
21 at 10:47 a.m.)

22

23

24

25

C E R T I F I C A T E O F R E P O R T E R

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing California Office of Environmental Health Hazard Assessment public hearing was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California;

That the said proceedings was taken before me, in shorthand writing, and was thereafter transcribed, under my direction, by computer-assisted transcription.

I further certify that I am not of counsel or attorney for any of the parties to said hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of May, 2019.

JAMES F. PETERS, CSR
Certified Shorthand Reporter
License No. 10063