Citizen Petition to Initiate Rulemaking
To Require Safer Alternatives to Bisphenol A (BPA) in
Food and Beverage Packaging for Young Children

Exhibit 9: Chapter 882: Designation of Bisphenol A as a Priority Chemical and Regulation of Bisphenol A in Children's Products (effective date August 1, 2011)

Chapter 882: DESIGNATION OF BISPHENOL A AS A PRIORITY CHEMICAL AND REGULATION OF BISPHENOL A IN CHILDREN'S PRODUCTS

SUMMARY: This chapter designates bisphenol A as a priority chemical, requires reporting for certain product categories that contain bisphenol A and prohibits sales of certain products containing bisphenol A.

1. Applicability

A. This chapter applies to manufacturers of children's products containing intentionally-added bisphenol A that are manufactured, sold, offered for sale or distributed for sale in Maine.

B. Exemptions

(1) **Used products.** This chapter does not apply to the chemical in used products.

(2) **Food and beverage packaging.** A container or packaging for a food or beverage product is exempt from the requirements of this chapter, unless that product is intentionally marketed or intended for the use of children under three years of age.

(3) **Transportation.** The requirements of this chapter do not apply to motor vehicles as defined in Title 29-A, section 101, subsection 42 or watercraft as defined in Title 12, section 13001, subsection 28 or their component parts, except that the use of bisphenol A in detachable car seats is not exempt.

2. Definitions.

For terms not defined in this chapter, the definitions found in 06-096 CMR Chapter 880, *Regulation of Chemical Use in Children's Products*, section 1 apply. The following terms, as used in this chapter, have the following meanings:

A. Baby food. "Baby food" means a prepared solid food consisting of a soft paste or an easily chewed food that is intended for consumption by children two years of age or younger and is commercially available.

B. Bisphenol A or BPA. "Bisphenol A" or "BPA" means a chemical compound having a CA (Chemical Abstract) Index Name of "Phenol, 4,4'-(1-methylethylidene)bis-" a chemical formula of $C_{15}H_{16}O_2$ and a CAS RN (Chemical Abstract Service Registry Number) of 80-05-7.

C. Child care article. "Child care article" means a consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething.

D. Exposure or exposed. "Exposure or exposed" in reference to a priority chemical means that a person is subjected in the course of daily life to a priority chemical from a product that enters the body in any quantity from any route of entry, including but not limited to inhalation, ingestion, skin contact or absorption.

E. Food and beverage packaging. "Food and beverage packaging" means containers, packaging, and packaging materials that contain and/or protect processed and raw foods and beverages at the point of sale. "Food and beverage packaging" does not include containers intended for storage or preparation of food that do not contain food or beverage when sold or purchased.

F. Infant formula. "Infant formula" means a liquid that purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk.

G. **Reusable food or beverage container.** "Reusable food or beverage container" means a container with a lid, cover, cap or nipple that is manufactured or intended for storing, carrying or transporting food or beverages, including, but not limited to, baby bottles, spill-proof cups, sports bottles and thermoses. "Reusable food or beverage container" does not include a receptacle that contains food or beverage when sold or purchased.

H. **Tableware.** "Tableware" means reusable or disposable dishes, utensils and other articles used in setting a table and/or serving a meal. "Tableware" includes but is not limited to: plates, bowls, cups/glasses, spoons, knives and forks.

I. **Toy.** "Toy" means a consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays. "Toy" does not include helmets, masks, goggles or other personal protective equipment designed to protect the wearer's body from injury during sports and recreation activities.

3. **Designation of bisphenol A as a priority chemical**

A. **Presence on chemicals of high concern list.** Bisphenol A is present on the list of chemicals of high concern published by the department under 38 M.R.S.A. §1693.

NOTE: To view the full list, go to: www.maine.gov/dep/oc/safechem/highconcern/

B. **Criteria for designation.** The following criteria for designation of bisphenol A as a priority chemical, as set forth under 38 M.R.S.A. §1694, have been met as documented in the basis statement accompanying this chapter:

(1) Bisphenol A has been found through biomonitoring to be present in human blood, including umbilical cord blood, breast milk, urine or other bodily tissues or fluids;

(2) Bisphenol A has been found through sampling and analysis to be present in household dust, indoor air, drinking water or elsewhere in the home environment;

(3) Bisphenol A has been found through monitoring to be present in fish, wildlife or the natural environment;

(4) Bisphenol A is present in a consumer product used or present in the home;

(5) Bisphenol A has been identified as a high production volume chemical by the federal Environmental Protection Agency; and

(6) The sale or use of bisphenol A or a product containing bisphenol A has been banned in another state within the United States.

4. **Information submission required**

A. **Infant formula and baby food**

(1) No later than 180 days after the effective date of this chapter, the manufacturer of infant formula or baby food that is sold in a plastic container, jar or can that contains intentionally-added bisphenol A, shall report to the department the following information:

(a) The name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer;

(b) A description of the product or products containing bisphenol A;

(c) The number of product units sold or distributed in Maine or nationally;

(d) The amount of bisphenol A in each unit of the product;

(e) The function of bisphenol A in the product; and

(f) Other information the manufacturer deems relevant to the reporting of the chemical.

(2) No later than January 1, 2012, the manufacturer of infant formula or baby food that is sold in a plastic container, jar or can that contains intentionally-added bisphenol A, shall submit to the department an assessment of the availability, cost, feasibility and performance, including potential for harm to human health and the environment, of alternatives to bisphenol A, polycarbonate plastic or epoxy resin, and the reason bisphenol A, polycarbonate plastic or epoxy resin is used in the manufacture of the infant formula or baby food container, jar or can in lieu of identified alternatives. This assessment must, at a minimum, include all of the elements of an acceptable assessment listed in 06-096 CMR Chapter 880 Regulation of Chemical Use in Children's Products.

(3) The commissioner may extend the deadline for submission of the alternatives assessment required under this paragraph. Request for a time extension must be made in writing on or before December 1, 2011. If an assessment acceptable to the department is not timely submitted, the department may assess fees as provided under 06-096 CMR 881 to cover the cost of preparing an independent assessment.

(4) Upon receipt and review of acceptable alternatives assessment(s) submitted to, or prepared for, the department, and no later than January 1, 2013, the department shall report the findings of the alternatives assessment(s) to the Board of Environmental Protection and, if appropriate, propose an amendment to this chapter reflecting those findings.

NOTE: In accordance with 06-096 CMR Chapter 880 section 3(A), a manufacturer may comply with the requirements of this section by relying on information submitted on behalf of the manufacturer by a trade association, chemical manufacturer or other third party, provided the information is presented in a form acceptable to the commissioner. Alternatively, manufacturers may comply by agreeing to fund an alternatives assessment contracted by the department to an independent party.

The department encourages manufacturers to prepare and submit a workplan for the alternatives assessment. The work plan should include a schedule for completion of the alternatives assessment and details concerning the submittal and content of interim deliverables to facilitate department approval of the alternatives assessment.

B. Toys, child care articles and tableware. No later than 180 days after the effective date of this chapter, the manufacturer of a toy, child care article, or tableware that contains intentionally-added bisphenol A, shall report to the department the following information:

(1) The name and address of the manufacturer;

(2) The name, address, and phone number of a contact person for the manufacturer;

(3) A description of the product or products containing bisphenol A, including the overall size of the product and/or the component of the product that contains BPA and whether the product or BPA-containing component of the product, can be placed in the mouth. A toy can be placed in a child's mouth if any part of the toy can actually be brought to the mouth and kept

in the mouth by a child so that it can be sucked and chewed. If the children's product can only be licked, it is not regarded as able to be placed in the mouth. If a toy or part of a toy in one dimension is smaller than 5 centimeters, it can be placed in the mouth.;

(4) The number of product units sold or distributed in Maine or nationally;

(5) The amount of bisphenol A in each unit of the product, or the amount of polycarbonate plastic or epoxy resin (percent by weight) in each unit of the product;

(6) The function of bisphenol A (or polycarbonate plastic/epoxy resin) in the product; and

(7) Other information the manufacturer deems relevant to the reporting of the chemical.

NOTE: Upon review of information submitted pursuant to section 4 of this chapter, the commissioner may request that a manufacturer clarify the submittal, supplement incomplete information or provide additional information not specified in this chapter if the commissioner determines that the information is needed for the department to complete its evaluation of the priority chemical. See department rules, 06-096 CMR 880(3)(D); see also 38 M.R.S.A. §1695(2).

5. **Sales prohibition of children's products containing bisphenol A**
(This section is effective August 1, 2011.)

A. **Sales prohibition.** Except as provided in section 1(B) of this chapter, no person shall sell, offer for sale or distribute for sale in Maine any reusable food or beverage container containing intentionally-added bisphenol A after January 1, 2012.

B. **Compliance plan required.** The manufacturer of a reusable food or beverage container subject to the sales prohibition of subsection A shall file, or cause all of its distributors to file, a compliance plan with the department no later than 180 days prior to the effective date of a sales prohibition under this section, unless the manufacturer receives a time extension in writing from the department. The compliance plan must:

(1) Identify the manufacturer's products subject to the sales prohibition;

(2) Specify whether compliance will be achieved by discontinuing the sale of the children's product in Maine or by substituting a safer alternative in the product;

(3) If compliance is achieved by substitution of a safer alternative in the product, identify the safer alternative and the timetable for substitution; and

(4) Confirm that the manufacturer has notified all persons that offer the product for sale or distribution in Maine of the sales prohibition, as required by 38 M.R.S.A. §1696(4).

(a) Confirmation shall include a copy of the notice and a list of the persons to whom it was sent.

(b) A retailer is exempt from the sales prohibition requirements of this section if the manufacturer failed to notify the wholesaler and retailer in accordance with this subsection, and the department did not notify the retailer of the sales prohibition.

C. **Waiver for specific uses.** The manufacturer or distributor of a children's product that is subject to a sales prohibition under subsection 5(A) may apply to the commissioner for a waiver for one or more specific uses of bisphenol A. The waiver application must be submitted at least 180 days

prior to the effective date of a sales prohibition, or prior to a new product being sold in Maine and must, at a minimum:

(1) Identify the specific children's product use or uses for which the waiver is sought;

(2) Identify the alternatives considered for substitution of the priority chemical;

(3) Explain the basis for concluding that the use of an alternative is not feasible; and

(4) Identify the steps that have and will be taken to minimize the use of the priority chemical.

D. The commissioner may grant a waiver with or without conditions upon finding that there is a need for the children's product in which the priority chemical is used and there are no technically or economically feasible alternatives for the use of the priority chemical in the children's product. Waivers may be granted for a term not to exceed 5 years and may be renewed for one or more additional 5-year terms upon written application demonstrating that technically or economically feasible alternatives remain unavailable. The commissioner shall deny or grant waiver requests within 60 days after receipt of a completed waiver application.

6. **Department Address.** Information submissions may be made by regular or electronic mail. The department may provide electronic or paper reporting forms. Use the following address to send all correspondence to the department:

Maine Department of Environmental Protection
Bureau of Remediation and Waste Management, Safer Chemicals Program
17 State House Station
Augusta, ME 04333

NOTE: Electronic reporting forms and/or email addresses for reporting will be provided at:
www.maine.gov/dep/oc/safechem/index.htm

STATUTORY AUTHORITY: 38 M.R.S.A. §§ 1691 through 1699-B

EFFECTIVE DATE:
January 9, 2011 – filing 2011-3 (except Section 5)
August 1, 2011 – filing 2011-205 (Section 5), major substantive final adoption