

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

January 24, 2013

A meeting of the Board of Environmental Protection was held on Thursday, January 24, 2013 at the Elks Lodge, 397 Civic Center Drive in Augusta, Maine. Robert Foley, Chair, called the meeting to order at 9:00 am with the following individuals:

Board: Present: Alvin Ahlers, Thomas Eastler, Elizabeth Ehrenfeld, Robert Foley, Richard Gould, and Susan M. Lessard.
Absent: Board member M. Wing Goodale was absent.

Staff: Heather Parent, DEP Policy Director
George MacDonald, DEP Sustainability Director
Kerri Malinowski, DEP Sustainability Division
Dr. Andrew Smith, State Toxicologist, Dept. of Health and Human Services

Others: Patricia Aho, DEP Commissioner
Cynthia S. Bertocci, BEP Executive Analyst
Mary Sauer, Assistant Attorney General
Ruth Ann Burke, Board Clerk and Administrative Assistant

I. Departmental

- A. Commissioner's Comments: None
- B. Comments from the BEP Chair: None
- C. Executive Analyst Comments: None
- D. Board Calendar: Reviewed.
- E. Departmental Orders/ applications accepted for processing: None
- F. Executive Session: None

II. Consent Agenda Items: None

III. Regular Agenda Items:

1. Chapter 882: Designation of Bisphenol A as a Priority Chemical and Regulation of Bisphenol A in Children's Products / Citizen Petition for Rulemaking to Require Safer Alternatives to Bisphenol A in Food and Beverage Packaging for Young Children / Deliberative Session

Staff: Heather Parent, DEP Policy Director
George MacDonald, DEP Sustainability Director
Kerri Malinowski, DEP Sustainability Division
Dr. Andrew Smith, State Toxicologist, Dept. of Health and Human Services

In response to direction received at the January 17, 2013 Board meeting, Department staff presented revisions to the proposed rule. Staff also presented the basis statement and response to comments.

Following discussion, the Board voted (6-0-0-1) on a motion to provisionally adopt the following amendments Chapter 882, section 5(A) Sales prohibition and to authorize the correction of typographical errors in the basis statement and response to comments:

06-096 CMR Ch. 882

Section 5. Sales prohibition of children's products containing bisphenol A

- A. Sales Prohibition. Except as provided in section 1(B) of this chapter, no persons shall sell, offer for sale or distribute for sale in Maine any:
 - (1) reusable food or beverage container containing intentionally-added bisphenol A after January 1, 2012;
 - (2) infant formula packaging containing intentionally added bisphenol A in an amount greater than the de minimis level after March 1, 2014;
and
 - (3) baby food packaging containing intentionally-added bisphenol A in an amount greater than the de minimis level after March 1, 2014.

The vote was taken pursuant to 38 M.R.S. § 341-H(1), 38 M.R.S. § 1696, and 06-096 CMR Ch. 882.

Board members Alvin Ahlers, Thomas Eastler, Elizabeth Ehrenfeld, Robert Foley, Richard Gould and Susan Lessard voted to support the motion. Board member M. Wing Goodale was absent.

Following the Board's vote, Commissioner Aho acted on the routine technical provisions of the petitioners' proposed rule in accordance with 38 M.R.S. § 341-H(2), 38 M.R.S. § 1696, and 06-096 CMR Ch. 882.

- Commissioner Aho did not adopt the petitioner's proposed definition of toddler food; no definition is needed given that the Board declined to enact the proposed sales prohibition on the packaging of toddler food containing intentionally added bisphenol A. Additionally, the petitioners' proposed definition was insufficiently clear to regulate toddler food.
- Commissioner Aho did not adopt the petitioner's proposed amendments to the definition of intentionally added because the current definition is consistent with Maine law and sufficient for program administration. In addition, the current definition is appropriately comprehensive and provides for a case-by-case evaluation of regulated products.
- Commissioner Aho amended Section 5(B) Compliance Plan to substitute "children's product" for the proposed listing of each of the products subject to the compliance plan requirement. The amended section reads as follows:
 - B. "Compliance plan required. The manufacturer of a children's product 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 meeting adjourned at approximately 10:00 a.m.)

*Next Meeting – Thursday, February 7, 2013, Florian Hall,
Department of Public Safety, 45 Commerce Drive, Augusta*

