



Toy Industry Association, Inc.

www.toyassociation.org

TESTIMONY OF
TOY INDUSTRY ASSOCIATION (TIA)
SUBMITTED TO
NEW YORK CITY COUNCIL COMMITTEE ON HEALTH
IN OPPOSITION TO INT. NO. 175

"A Local Law to amend the administrative code of the city of New York, in relation to the sale of toys and child care products that contain Bisphenol A or phthalates"

June 10, 2010

www.toyassociation.org

Chairwoman Arroyo and Members of the Committee, the Toy Industry Association (TIA) appreciates this opportunity to provide testimony in opposition to Int. No. 175. TIA is a not-for-profit trade association composed of more than five hundred (500) members, both large and small in size, located throughout North America. Since 1916, TIA has been based here in New York City and the State of New York is home to many toy companies. For more than 100 years, TIA has owned and managed the American International Toy Fair in New York City, the annual show that draws approximately 30,000 visitors to New York each February.

The Toy Industry Association and its members have long been leaders in toy safety. In this role, we develop safety standards for toys, working with industry, government, consumer organizations, and medical experts. The U.S.'s risk-based standards are widely used as models around the globe. Our members products meet and/or exceed stringent U.S. safety requirements. TIA commends the bill sponsors for their keen interest in the safety of children. We share that interest, and our industry is founded on the mission of bringing fun and joy to children's lives – and in that pursuit protecting the safety of our young consumers is our top priority.

However, TIA would like to specifically address concerns with Int. No. 175 that would establish broad restrictions on Bisphenol-A (BPA) used in many product applications and would duplicate federal restrictions on phthalates in children's products.

Federal Regulation of Phthalates in Children's Products is Preemptive

Int. No 175 proposes to ban di(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP) or benzyl butyl phthalate (BBP), diisononyl phthalate (DINP), diisodecyl phthalate (DIDP) or di-n-octyl phthalate (DnOp) in products intended for use by children under the age of 12. However, the Consumer Product Safety Improvement Act (CPSIA), (H.R. 4040) was signed into law in August 2008 and already restricts the use of these specific phthalates in toys and children's products and has the effect of expressly preempting states and localities from imposing similar restrictions on phthalates in these product categories.

Specifically, the U.S. Consumer Product Safety Commission (CPSC) has issued the following guidance on this topic: “The new lead limits for lead paint and lead content preempt state law as do the new provisions on phthalates and ATVs”¹ Therefore, the provisions related to phthalates in children’s toys in Int. No. 175 are preempted and are unnecessary to include in this legislation.

Additionally, if these provisions remain in this legislation it would confuse retailers and consumers, impose additional testing and certification costs, and could cause unnecessary disruption in the marketplace.

BPA is Necessary for Product Safety and Essential Product Characteristics

Additionally, TIA is strongly opposed to the broad restrictions on Bisphenol-A (BPA) contained in this legislation. BPA is in polycarbonate, a lightweight, highly shatter-resistant, clear plastic with high heat resistance, which makes it ideal for use in a wide variety of products. BPA is found in trace amounts in polycarbonate and is not an additive. If you ban BPA, you ban polycarbonate.

BPA as used in polycarbonate plastic *is specifically chosen for the safety it imparts to products, making them shatter-resistant and hygienic.* Some of the products that utilize BPA for these safety properties include protective gear such as bicycle helmets, protective shields used in sporting goods and safety glasses, as well as eyeglass lenses, and contact lenses.

BPA is approved by the U.S. Food and Drug Administration (FDA) for very sensitive applications, including medical and food contact use, and, as such, is used widely in food storage containers and medical equipment. These food applications are far more sensitive than toys; where exposure to BPA containing compounds is limited and occasional. BPA is not restricted in toys by any state, federal or national government.

¹ U.S. Consumer Product Safety Commission guidance on CPISA Section 231 – Preemption, <http://www.cpsc.gov/ABOUT/Cpsia/sect231.html>

BPA is used less extensively in children's toys but is utilized when shatter-resistant properties are called for to eliminate the risk of breakage – which can lead to the creation of hazards such as small parts (potential choking hazard) and/or sharp edges in a child's environment which can cause laceration injuries. BPA is also UV-resistant and in a toy application provides strength and durability, reducing breakdown, again, reducing potential small part or sharp edge hazards. Elimination of BPA in these important applications could degrade the safety of toys and other consumer products where no safer alternative has been identified.

Scientific Bodies Have Verified the Safe Use of BPA

There is strong science to support the safe use of BPA in toys and consumer product applications. There is extensive research and testimony from experts on the science demonstrating the very low risk associated with BPA as well as the unique safety benefits it provides. Specifically the following authoritative scientific bodies have found BPA to be safe or to not warrant special restrictions or handling:

- In July of 2009, the California Developmental and Reproductive Toxicant Identification Committee voted unanimously against placing BPA on Proposition 65 - a list of chemicals believed to cause cancer, birth defects or other reproductive harm.
- In 2009, the German Federal Institute for Risk Assessment found that BPA is safe for "normal" use in many product applications and should not be banned.
- In Fall 2008, the U.S. Food and Drug Administration re-reviewed its assessment of the safety of BPA and confirmed there is no need to ban its use.
- The U.S. Toxicology Program, in September 2008, issued a report with that did not find BPA to warrant any special restrictions.

A ban on BPA in such broad categories of products; as currently proposed by this legislation does not take into consideration the science supporting its safe use -- or its benefits.

BPA is not restricted in toys by any state, federal or national government anywhere in the world, and the proposed BPA restrictions would be the broadest restrictions on BPA in any jurisdiction. Inconsistency with existing international, federal and all other state requirements, without regard to scientific risk, threatens the viability of toy manufacturers, distributors and retailers in the State. A broad ban of BPA in toys, as currently proposed in Int. No. 175 could result in products that do not hold up to the rigors of children's play.

Conclusion

The Toy Industry Association and its members have always recognized the special relationship we have with children, who are our principal consumers; their safety and well-being is always our top priority. As parents ourselves and an industry devoted to bringing joy (and safety) to childhood, we share your interest in the safety of toys and we urge you to carefully consider the unintended consequences of the provisions proposed in this legislation and how this bill will hurt those doing business in New York City, and force NYC consumers to source products through other means or in other jurisdictions, at no measurable increase to product safety. Therefore, TIA respectfully urges you and the Committee to **oppose the broad scope of this legislation and the passage of Int. No. 175, in its current form.**

On behalf of the members of Toy Industry Association, we thank you for consideration of these concerns. If you or the Committee has any questions with regard to our concerns on this legislation please do not hesitate to contact Joan Lawrence, Vice President, Standards and Government Affairs at: 646-520-4844 or jlawrence@toyassociation.org or Andrew Hackman, Sr. Director, State Government Affairs at: 646-520-4851 or ahackman@toyassociation.org.



BISPHENOL A OVERVIEW

Regulatory bodies around the world have assessed the science on bisphenol A (BPA). As detailed below, not one has concluded that BPA has been proven to be unsafe in its current uses. Products made with BPA contribute to the health and safety of Americans and contribute to the US economy with more than 100,000 jobs totaling \$6.1 billion in wages.

1. US Food and Drug Administration and Department of Health and Human Services reaffirmed that “BPA is not proven to harm children or adults” (January 2010).

As stated by FDA: “Studies employing standardized toxicity tests have thus far supported the safety of current low levels of human exposure to BPA.” As further noted by Dr. Joshua Sharfstein of FDA: “If we thought it was unsafe, we would be taking strong regulatory action.”

In recognition of some concerns related to effects reported in certain recent studies, FDA is carrying out in-depth studies in conjunction with the National Toxicology Program to answer key questions and clarify uncertainties. In the interim, FDA is taking reasonable steps to reduce human exposure to BPA in the food supply and stated:

“Given that these are preliminary steps being taken as a precaution, it is important that no harmful changes be made in food packaging or consumption, whether by industry or consumers, that could jeopardize either food safety or reduce access to and intake of food needed to provide good nutrition, particularly for infants.”

2. Regulatory bodies around the world have assessed the science on BPA and have determined that BPA is safe for use in food contact products.

- European Food Safety Authority (January 2007, July 2008, October 2008)
 - European Commission Risk Assessment (June 2008)
 - Swiss Federal Office of Public Health (February 2009)
 - French Food Safety Authority (February 2010)
 - Dutch Food and Consumer Product Safety Authority (November 2008)
 - Danish Environmental Protection Agency (October 2008)
 - German Federal Institute for Risk Assessment (January 2010)
 - Food Standards Australia and New Zealand (January 2010)
 - Japanese National Institute of Advanced Industrial Science and Technology (November 2005)
 - Health Canada (October 2008, July 2009)
- A 2010 prohibition of polycarbonate baby bottles in Canada was based on precaution; the Canadian scientific assessment concluded that exposure, including from baby bottles, is below levels that pose a risk. Similarly, a 2010 temporary ban on food contact products for infants in Denmark was based on precaution; a Danish expert review found no clear evidence of harmful effects.
 - In July 2009 a panel of independent scientific experts convened by the California EPA’s Office of Environmental Health Hazard Assessment unanimously concluded that BPA should not be listed as a reproductive or developmental toxicant under California’s Proposition 65 law.
 - In March 2010, the US Environmental Protection Agency (EPA) released an “action plan” on BPA that outlines EPA’s review of BPA and their plan for follow-up actions. Notably, EPA did not propose any actions, regulatory or otherwise, regarding human health but will continue to coordinate with FDA and other agencies.

- Existing food safety programs are already precautionary - they employ safety factors, typically between 100 and 1000, to create a margin of safety between public exposure and levels found to cause effects in laboratory animals.

For example, the European Food Safety Authority (EFSA) set a Tolerable Daily Intake (TDI), which is the amount of BPA a consumer (including babies and infants) can safely ingest without harm over a whole lifetime. The TDI was set by applying a safety factor of 100 to the No-Observed-Adverse-Effect-Level determined from studies on laboratory animals.

- A consumer would have to ingest more than 500 pounds of food and beverages in contact with BPA every day for a lifetime to exceed the TDI set by EFSA
- A 22 pound infant would have to drink more than 423 4 oz bottles per day to exceed the TDI

3. Products Made with BPA Contribute to the Health and Safety of Americans

- Epoxy resins are used as a protective coating in most metal food and beverage containers to help prevent corrosion and contamination, avoid food spoilage and provide a shelf life of two years or more.
 - Canned infant formula is provided to more than 8 million low-income women, infants and children at nutritional risk under the federal Special Nutrition Program for Women, Infants and Children (WIC)
- Shatter-resistant polycarbonate plastic made with BPA can be found in many products that contribute to health and safety:
 - Plastic bottles and cups without the risk of cuts from broken and chipped glass
 - Sports safety glasses (polycarbonate lenses are recommended by the American Academy of Ophthalmology)
 - Helmets
 - Sports safety equipment, such as face shields and face guards
 - Life-saving medical devices such as incubators and kidney dialysis machines
 - Blast and bullet resistant shielding to protect government officials, police, prison officials, military personnel, as well as bank tellers and convenience store clerks
- Polycarbonate is used to make lightweight products such as automotive parts that save energy and reduce green house gas emissions.

4. BPA Makes an Important Contribution to U.S. Economy (2007 data)

- Along with 9 plants that manufacture BPA, polycarbonate plastic or epoxy resins, approximately 1,400 downstream facilities in the U.S. process polycarbonate or epoxy into finished products – nearly all states are represented – with an investment value of \$6 billion.
- More than 39,000 workers are employed *directly* in chemical processing and plastic/resin facilities and downstream fabrication facilities.
- An additional 64,700 workers are employed *indirectly*. These individuals are employed in the wide network of supplier industries that provide goods and services (raw materials, utilities, capital goods, services) to businesses that rely on polycarbonate plastic and epoxy resins.
- \$6.1 billion in total wages (direct and indirect employment).
- Over \$1.3 billion in federal/state/local taxes, plus \$894 million in Social Security and Medicare taxes are paid in relation to the 39,000 workers directly employed in chemical processing and plastic/resin facilities and downstream fabrication facilities.



Testimony of the
Phthalate Esters Panel
of the
American Chemistry Council

on Introduction 0175-2010
to amend the administrative code of the city of New York,
in relation to the sale of toys and child care products
that contain bisphenol A or phthalates

Before the Committee on Health
of the New York City Council

June 10, 2010

The Phthalate Esters Panel (the Panel) of the American Chemistry Council appreciates the opportunity to provide testimony on Section 20-632 of Introduction 0175-2010 pertaining to the manufacture, sale, and distribution of children's products containing certain phthalates. The Panel represents the North American manufacturers of phthalates, many of which have been in commercial use in a wide a variety of applications for more than 5 decades and have undergone extensive study and government review. These companies take their responsibility as stewards of the products they manufacture very seriously.

As Committee members are no doubt aware, Congress passed the Consumer Product Safety Improvement Act (CPSIA) in 2008 which included the following restrictions on the same six phthalates addressed in 0175 –

- A prohibition on the sale of children's toys and child care articles with concentrations of more than 0.1 percent of di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP), and
- An interim restriction on the sale of children's toys that can be placed in a child's mouth¹ and child care articles that contain more than 0.1 percent of diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP).

¹ Toys that can be put in the mouth are defined in the CPSIA to include toys or parts smaller than five centimeters in at least one dimension. Toys that cannot be put in the mouth, but can be licked, are not included in the interim restriction.



The federal phthalate restrictions were imposed by statute and became effective on February 10, 2009; no implementing regulation was necessary. Subsequent to the effective date of the CPSIA restrictions, CPSC issued test methods for the determination of the identified phthalates in toys and child care articles in March 2009. A Statement of Policy for testing of component parts of toys and child care articles also was issued in August 2009. These actions were in anticipation of the mandatory testing of toys and child care articles imposed by the CPSIA. The CPSIA also increased the fines and civil penalties associated with violations of consumer product requirements.

One key aspect of the CPSIA is that the restrictions on DINP, DIDP, and DnOP are temporary – subject to review by the Consumer Product Safety Commission (CPSC). The Commission’s decision will be based on the outcome of a study of “the effects on children’s health of all phthalates and phthalate alternatives as used in children’s toys and child care articles” by a Chronic Hazard Advisory Panel (CHAP).² The seven members of the CHAP held their first meeting in April 2010 and will submit a report on their evaluation in the spring of 2012.

The CHAP will conduct a comprehensive review of all exposures, not just those from toys, that is expected to result in a recommendation on whether the interim restrictions on DIDP, DINP, and DnOP should remain in effect. The Panel also will review whether concerns exist about the use of any non-phthalate plasticizers for toys and child care articles. As a result, the Office of Pollution Prevention and Toxics of the US Environmental Protection Agency recently announced that it would defer its own detailed assessment of potential risks from this same group of phthalates until after the CHAP has completed its review.

The phthalate provisions of 0175 duplicate those of the federal CPSIA and, consequently, provide for no additional protection to the children of New York City. The City’s Department of Health has previously indicated (in 2007), moreover, that it does not have the resources to enforce toy restrictions locally. The suggestion that a local law would facilitate more aggressive enforcement of the federal restrictions, therefore, also is illusory.

The one apparent difference between the CPSIA and 0175 is the provision in Section 20-632(e) that would extend the restrictions on the six phthalates to a “child feeding product,” defined in the proposed legislation as “a consumer product designed or intended to facilitate feeding or nourishing a child.” In fact, however, these products already are subject to the phthalate restrictions under the federal law. The term “child care article” is defined by the CPSIA as “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.” As a consequence, paragraph (e) of the proposal duplicates the requirements of the CPSIA and affords no additional protection to New York City children.

² Legislation pertaining to toys passed in the European Parliament in 2005 also imposed interim restrictions on the use DIDP, DINP, and DnOP.



As a matter of information, moreover, phthalates were voluntarily removed from nipples, pacifiers, and teethers by the product manufacturers several years ago. The voluntary removal extends to DINP, whose use in these products was found not to be hazardous to children by a previous CPSC CHAP in 2002.

We urge the Committee to strike the phthalate provisions from this bill as they achieve no additional protection. While we understand the Committee's interest in protecting the children of New York City, we ask the Committee to recognize that federal law has already addressed phthalates in toys, child care articles, and child feeding products.



**Testimony of Miranda Massie,
New York Lawyers for the Public Interest
Regarding Introduced Local Law to amend the administrative code of
the city of New York, in relation to the sale of toys and child care
products that contain bisphenol A or phthalates**

June 10, 2010

Christopher K. Tahbaz
Debevoise & Plimpton LLP
Chair

J. Huntley Palmer
JPMorgan Chase Bank, N.A.
Treasurer

Jamie A. Levitt
Morrison & Foerster LLP
Secretary

Shelley J. Dropkin
Citigroup Inc.
Vice Chair for Nominating & Governance

Hector Gonzalez
Mayer Brown LLP
Vice Chair for Litigation & Program

Robert I. Kleinberg
Vice Chair for Development

Edward F. Maluf
Bingham McCutchen LLP
Vice Chair for Pro Bono

Kathy H. Rocklen
Proskauer Rose LLP
Vice Chair for Finance & Investment

John S. Siffert
Lankler Siffert & Wohl LLP
Immediate Past Chair

Michael A. Rothenberg
Executive Director

Marianne L. Engelman Lado
General Counsel

Good morning chairperson Maria Del Carmen Arroyo and members of the Committee, and thank you for the opportunity to provide testimony today. My name is Miranda Massie, and I am the Litigation Director and an attorney for the Environmental Justice Program at New York Lawyers for the Public Interest (NYLPI). NYLPI is a nonprofit civil rights law firm whose Environmental Justice Program works with communities of color and low-income communities throughout New York City on environmental matters. Our program has recently engaged in advocacy supporting substantial reform of the federal Toxic Substances Control Act; in addition, we have supported New York State's Child-Safe Products Act and other state legislation designed to protect New Yorkers against toxic chemicals.

Studies on the Harms of BPA and Phthalates:

NYLPI supports introduced local law no. 175 ("Int. No. 175") as an important step forward in the regulation of BPA and recognition of the harm of phthalates. BPA and the types of phthalates regulated in New York City's ("the City's") proposed legislation are endocrine disruptors that have been linked to a variety of unnatural physiological effects. Over 200 studies support the conclusion that these chemicals pose dangerous health risks.¹ Endocrine disruptors can mimic or alter the effects of hormones in the body and these effects can be seen from infancy into adulthood.²

BPA exposure begins in the womb, which is the time when there is the highest risk of the chemical causing harm.³ BPA has been found in

¹ Lyndsey Layton, *Food safety bill's ban on BPA resisted*, WASHINGTONPOST.COM (June 1, 2010, 9:15 AM), <http://www.washingtonpost.com/wp-dyn/content/article/2010/04/25/AR2010042503408.html>.

² Science Daily Staff, *Endocrine Disruptors in Common Plastics Linked to Obesity Risk*, SCIENCEDAILY (June 1, 2010, 11:10 AM), <http://www.sciencedaily.com/releases/2008/05/080514091427.htm>.

³ BREAST CANCER FUND, *Bisphenol A (BPA)*, <http://www.breastcancerfund.org/clear-science/chemicals-glossary/bisphenol-a.html> (last visited June 1, 2010).

amniotic fluid, the umbilical chord and human breast milk.⁴ The most recent studies from this year further confirm that pre-birth exposure to BPA can result in later health risks.⁵ Even very low levels of BPA can easily cross from the placenta to the fetus and ultimately affect the development of the reproductive tract, the brain, the mammary glands, and the immune system.⁶ When exposed to BPA during the early stages of development, there is also a greater risk to the individual of acquiring heart disease, diabetes, an impaired liver,⁷ breast cancer⁸ and prostate cancer⁹ later in life. BPA has also been linked to infertility,¹⁰ early puberty, and increased aggressive behavior in girls¹¹.

Exposure to endocrine-disrupting phthalates results in similar harms as exposure to BPA; and pregnant women and their children are the most vulnerable to their effects.¹² Both exposures result in triggering early puberty,¹³ reducing testosterone levels and sperm count and leading to structural abnormalities in reproductive systems.¹⁴ In addition, phthalates may increase the risk of liver cancer.¹⁵ Exposure to phthalates may be correlated with behavioral or neurological function because they have been shown to affect the masculine play behavior of boys¹⁶ as well as increase the likelihood of developing ADD/ADHD¹⁷ and autism¹⁸. The list of harms precipitated by BPA and phthalates may grow as further research is completed.

⁴ *Id.*

⁵ Laura Vandenberg & Wendy Hassler, *BPA crosses the placenta, remains in the fetus, show rat and human studies*, ENVIRONMENTAL HEALTH NEWS (June 8, 2010, 5:45 PM), <http://www.environmentalhealthnews.org/ehs/news/science/bpa-crosses-placenta-is-active-form-in-fetus>.

⁶ *Id.*

⁷ Michelle Crozier-Haynes, *Keeping BPA From Baby: Why the Endocrine Disruptor Bisphenol-A Should be Banned From Products for Infants and Children*, 21 *Colo. J. Int'l Envtl. L. & Pol'y* 167, 182 (2010).

⁸ BREAST CANCER FUND, *supra* note 3.

⁹ Julian Josephson, *Chemical Exposures: Prostate Cancer and Early BPA Exposures*, 114 *Envtl. Health Perspectives* A 520 (2006), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1570083/pdf/ehp0114-a00520.pdf>.

¹⁰ ENVIRONMENTAL HEALTH NEWS, *High BPA levels found in hospitalized, premature infants*, <http://www.environmentalhealthnews.org/ehs/news/science/high-bpa-in-premature-infants> (last visited June 1, 2010).

¹¹ Lisa Wade McCormick, *BPA Exposure on Pregnancy May Cause Aggressiveness in Girls*, CONSUMERAFFAIRS.COM (June 1, 2010, 2:20 PM),

http://www.consumeraffairs.com/news04/2009/10/bpa_aggression.html.

¹² Olga Naidenko, Ph.D., Senior Scientist, Environmental Working Group, Statement before the National Research Council (Feb. 21, 2008), available at <http://www.ewg.org/node/26052>.

¹³ Elizabeth S. Berman & Kimberly K. Smith, *Getting the Lead Out: The Tight Timelines of the Consumer Product Safety Improvement Act Have Created Chaos and Uncertainty in the Marketplace*, 32 *L.A. Lawyer* 24, 27 (2009).

¹⁴ ENVIRONMENTAL WORKING GROUP, *Phthalates*, <http://www.ewg.org/chemindex/term/480> (last visited June 1, 2010).

¹⁵ *Id.*

¹⁶ Lisa Wade McCormick, *Study Claims Phthalates Exposure In Pregnancy Diminishes Masculinity*, CONSUMERAFFAIRS.COM (June 1, 2010, 2:23 PM),

http://www.consumeraffairs.com/news04/2009/11/swan_phthalates_study.html.

¹⁷ Maria Cone, *Phthalates, Chemicals Used Widely in Cosmetics and Fragrances, Linked to ADD*, THEDAILYGREEN (June 1, 2010, 10:00 AM), <http://www.thedailygreen.com/environmental-news/latest/phthalates-add-causes-47012901>.

¹⁸ Maria Cone, *Scientists Find 'Baffling' Link Between Autism and Vinyl Flooring*, SCIENTIFIC AMERICAN (June 1, 2010, 9:05 AM), <http://www.scientificamerican.com/article.cfm?id=link-between-autism-and-vinyl>.

Risk of Exposure for Pregnant Women, Infants and Children:

Since pregnant women and children are most vulnerable to the harms of these chemicals, BPA and phthalates are especially dangerous when found in products designed for infants and children. There is a very high risk of infants and children coming into contact with BPA. More than 1 million metric tons of BPA are produced in the United States each year, and it is found in plastic goods, liners in tin cans that may hold baby formula, and as an epoxy resin on children's toys and other products.¹⁹ While many manufacturers have voluntarily ceased making plastic bottles in the United States, BPA may continue to contaminate unregulated children's products from abroad. Additionally, phthalates have been common in the plastics of many products designed for children such as toys and teething rings.²⁰ Because phthalates are widespread in household products, they have been found present in human bodies across the population.²¹

Trends Towards Greater Regulation of these Chemicals:

Due to the prevalence of BPA and phthalates and the research supporting their risks, there has been a recent trend in other local legislation as well as regulations at the state, national and international level to protect people against these chemicals. Furthermore, many retailers and manufacturers have advanced towards recognizing that the chemicals can be detrimental to human health. Some of the country's biggest retailers including Walmart,²² Toys R Us,²³ CVS²⁴ and Target²⁵ have regulated BPA and phthalates in certain of their products sold. In the U.S., manufacturers such as Avent, Disney First Years, Gerber, Dr. Brown, Playtex and Evenflow have phased out the use of BPA in baby bottles.²⁶

The FDA has expressed some concern over the effects of BPA,²⁷ and potential legislation against BPA in food and beverage containers is pending in the Senate.²⁸ BPA laws are already in place in Connecticut, Minnesota, Washington, Wisconsin and Maryland; and BPA bills are pending in at least ten other states, including New York.²⁹ Moreover, the federal government has already recognized the types of phthalates mentioned in the City's proposed legislation and regulated their use in children's toys and other child care articles with the Consumer Products Safety Improvement Act of 2008. Now more than 20 states are considering regulations on

¹⁹ Crozier-Haynes, *supra* note 7, at 170-71.

²⁰ Rachael Rawlins, *Teething on Toxins: In Search of Regulatory Solutions for Toys and Cosmetics*, 20 *Fordham Envtl. Law Rev.* 1, 7 (2009).

²¹ *Id.* at 4.

²² Ylan Q. Mui, *Wal-Mart to Pull Bottles Made With Chemical BPA*, WASHINGTONPOST.COM (June 1, 2010, 5:00 PM), <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/17/AR2008041704205.html>.

²³ Parija B. Kavilanz, *Wal-Mart, Toys 'R' Us unveil new safety rules*, CNNMONEY.COM (June 1, 2010, 2:00 PM), http://money.cnn.com/2008/02/15/news/companies/toysafety_update/index.htm.

²⁴ CVS, Product Quality and Safety, <http://info.cvscaremark.com/our-company/corporate-responsibility/products/product-quality> (last visited June 2, 2010).

²⁵ CENTER FOR HEALTH, ENVIRONMENT AND JUSTICE, PVC: The Poison Plastic (Highlights of CHEJ's Target PVC Campaign), http://www.besafenet.com/pvc/target_timeline_campaign.htm (last visited June 4, 2010).

²⁶ Jane Houlihan, Sonya Lunder & Anila Jacob, *Timeline: BPA from Invention to Phase-out*, ENVIRONMENTAL WORKING GROUP (June 1, 2010, 11:00 AM), <http://www.ewg.org/reports/bpatimeline> [hereinafter *Timeline*].

²⁷ U.S. DEP'T HEALTH & HUMAN SERVS., Bisphenol A (BPA) Information for Parents (2009), <http://www.legalbluebook.com/Rules.aspx?ContentSectionAssetID=1181> (last visited June 2, 2010).

²⁸ To Ban the Use of Bisphenol A in Food Containers and for Other Purposes, H.R. xxxx, 111th. Cong. (2009), available at http://markey.house.gov/docs/consumer_protection/2009bpalegislation.pdf.

²⁹ *Timeline*, *supra* note 26.

phthalates in response to the federal law,³⁰ and there are laws against phthalates in states such as California, Washington and Vermont.

Internationally, Canada regulates the importation, sale and advertising of baby bottles that contain BPA.³¹ Denmark regulates feeding bottles, cups and materials in contact with baby formula that contain BPA.³² In addition, the EU already bans the sale and import of certain toys containing phthalates,³³ and countries including Austria, Denmark, Finland, France, Germany, Greece, Norway, Sweden, Argentina, Fiji, Mexico and Japan have all regulated the chemical.³⁴

The Necessity of this Law in New York City:

New York City should follow in the steps of other local governments including Albany, Suffolk, Rochester, and Schenectady Counties in New York towards regulating BPA.³⁵ Furthermore, the City's proposed regulation of children's toys and products beyond baby bottles and sippy cups offers the more comprehensive protection needed in comparison to current legislation in other jurisdictions. The approval of Int. No. 175 will set a strong precedent for other jurisdictions to follow as the trend for greater protection from these chemicals continues.

This proposed legislation is particularly pressing because there is presently no protection for pregnant women, infants and children against BPA in New York City. If pending state or federal legislation fails or is delayed, there will be no legal safeguard for residents of New York City to rely on without this legislation. In addition, the proposed legislation is vital for New York City's low-income communities, women and non-Hispanic blacks, which are disproportionately exposed to these chemicals.³⁶ For example, low-income families may rely more on purchasing products at local stores instead of the big chains that have already voluntarily taken steps to limit products with BPA and phthalates.

NYLPI also supports Int. No. 175's prohibitions against the use of phthalates in child care products, child feeding products and children's toys. However, the bill's language is very similar to the Consumer Products Safety Improvement Act at the federal level, which would preempt this proposed law. Therefore, we urge City Council to investigate harmful uses of phthalates in classes of products outside of those covered by federal law. For instance, phthalates are used in building materials in schools and in school supplies. The proposed law, as written, would not protect children if they are exposed to phthalates in these ways.

Based on the recent trend towards further regulation and the phasing out of BPA and phthalates, manufacturers and distributors have already been well aware of the harms of these

³⁰ *Id.* Connecticut, Hawaii, Illinois, Maryland, Massachusetts, New Jersey, New York, Rhode Island and West Virginia are among the states that have introduced legislation to regulate phthalates.

³¹ News Release, Health Canada, Government of Canada Protects Families With Bisphenol A Regulations (Oct. 17, 2008), http://www.hc-sc.gc.ca/ahc-asc/media/nr-cp/_2008/2008_167-eng.php.

³² Press Release, Danish Minister of Food Henrik Høegh, Danish ban on bisphenol A in materials in contact with food for children aged 0-3 (Mar. 26, 2010), <http://www.fvm.dk/Default.aspx?ID=18488&PID=169747&NewsID=6014>.

³³ EU Phthalates Directive 2005/84/EC, 2005 O.J. (L 344) (EC).

³⁴ Rawlins, *supra* note 20, at 5.

³⁵ A BPA ban has also been enacted locally in Chicago, Illinois.

³⁶ BREAST CANCER FUND, *supra* note 3.

chemicals and the need to replace them. Therefore, it will not be too burdensome for them to comply with this important legislation. NYLPI strongly supports the proposed law as a significant advancement towards the protection of New York City's vulnerable communities, pregnant women, infants and young children from these dangerous chemicals.

Again, thank you for the opportunity to provide testimony.



Center for Health, Environment & Justice

P.O. Box 6806 • Falls Church, VA 22040 • Phone: 703.237.2249 • Fax: 703.237.8389 • www.chej.org

**Testimony of Mike Schade, *PVC Campaign Coordinator*
Center for Health, Environment and Justice**

June 10, 2010

***Hearing on Int. No. 175, A Local Law to amend the administrative
code of the city of New York, in relation to the sale of toys and child
care products that contain bisphenol A or phthalates***

The Committee on Health of the New York City Council

Good morning chairperson Maria Del Carmen Arroyo and members of the Committee. Thank you for the opportunity to testify today.

My name is Mike Schade and I'm with the Center for Health, Environment and Justice (CHEJ), a national environmental health organization. I work out of CHEJ's NYC office, and have worked professionally on children's environmental health issues for the past 10 years here in New York State. I am the co-author of numerous national reports investigating both phthalates and bisphenol A in children's and consumer products.

We commend and fully support the NYC Council's legislation to ban phthalates and BPA in children's products.

Phthalates

It appears, while well intentioned, the proposed NYC legislation on phthalates would unfortunately be pre-empted by the federal law that Congress enacted.

Given this, we urge the City Council to investigate opportunities for the City to regulate phthalates that find their way into other products children, infants, women of childbearing age come in contact with on a regular basis, which are not currently covered by federal law.

This is critically important as some phthalates have been linked to reproductive problems including shorter pregnancy durationⁱ and premature breast development in girlsⁱⁱ and sperm damageⁱⁱⁱ and impaired reproductive development in boys^{iv}. Phthalates are highest in children ages 6 to 11, and in women^{vii}.

While phthalates have been banned in children's toys by Congress, they're widespread in products children come in contact with on a daily basis in schools. Over 90% of all phthalates are found in PVC products, such as PVC flooring and other building and office products in schools. They're also commonly found in cosmetics.

Phthalates are released from PVC into the air inside schools and the phthalates cling to dust and can then be breathed in by children and teachers. A number of independent peer-reviewed studies have found a correlation between phthalates emitted from PVC flooring and asthma. An average of one out of every 13 school-age children has asthma and it is a leading cause of school absenteeism: 14.7 million school days are missed each year due to asthma.^{viii}

We urge the city to explore procurement, regulatory & legislative opportunities to reduce children's exposure to phthalates in other products such as PVC building products, school and office supplies in NYC public schools, and would welcome the opportunity to work with you in doing so.

Bisphenol A

I would like to now shift my focus to BPA. BPA is a synthetic sex hormone, and over 200 studies have found that low doses of BPA have been linked^{ix} to many chronic diseases on the rise. BPA has been linked to cancer, abnormal behavior,^x diabetes and heart disease,^{xi} infertility^{xii}, developmental^{xiii} and reproductive^{xiv} harm, obesity,^{xv} and early puberty,^{xvi} a known risk factor for breast cancer.^{xvii} It's worth noting that these studies were largely conducted by independent scientists. In contrast, studies that are

paid for by the chemical or plastics industry consistently find no harm from exposure to BPA, just like the tobacco industry argued smoking was safe for decades.

The Center for Disease Control and Prevention (CDC) has found BPA in the urine of 93% of the U.S. population^{xviii} and it is very likely that almost every single person in this room has measurable levels of BPA in our bodies. Even babies are born pre-polluted with BPA -- BPA has even been found in the cord blood of newborn babies.^{xix}

BPA is found in many products infants, children, and women of childbearing age come in contact in on a daily basis. This includes baby bottles, sippy cups, infant formula, canned food, infant and children's toys, and even thermal receipt paper.

Most recently, I co-authored a report investigating BPA in canned food. We tested food from 50 cans purchased in 19 states (including NY) and Canada. Shockingly, we found BPA in canned foods from almost every product we investigated -- 92% of the cans we tested. We also found real-life meals involving one or more cans of food can cause an individual to ingest levels of BPA that have been shown to cause health effects in laboratory studies.

Given these concerns, there have been substantial and growing governmental and markets actions to address BPA in consumer products at the local, state, national and international levels.

Wal-Mart, CVS, Rite Aid, Toys"R"Us, Kmart, Safeway, Sears, and Whole Foods have all committed to phase out BPA-contaminated baby bottles.

Many different BPA-free alternatives for infant formula and baby food packaging are already on the market from companies such as Nestle, Similac, and Gerber.

There's beginning to be movement away from BPA in canned food. Over 10 years ago, Eden Foods phased out the use of BPA in many of their foods. Muir Glen, a subsidiary of General Mills, recently announced they will begin packaging their tomato products in BPA-free cans this year. Hain Celestial, Heinz and Nestle are in the process of researching and testing of alternatives to BPA, and have plans to phase out BPA in some of their products. In Japan, most major manufacturing companies have already changed the interior can coatings to eliminate or reduce the use of BPA.

Water bottle companies such as Nalgene have eliminated BPA.

Canadian retailers are eliminating BPA including Sears, Wal-Mart, Home Depot and members of the Canadian Council of Grocery Distributors.

On the governmental policy side, a number of U.S. cities and counties have taken action on BPA including here in NYS. Suffolk County, New York Albany, Rockland and Schenectady Counties have all banned BPA in baby bottles. The City of Chicago has also enacted a restriction on BPA.

Over twenty state legislatures have introduced bills addressing BPA, and six states have had bills signed into law: Connecticut, Maryland, Minnesota, Vermont, Washington, and Wisconsin. Both the Connecticut's and Massachusetts' Departments of Public Health have issued warnings about BPA.

At the U.S. Federal level, two bills have been introduced in each house, including legislation introduced by Senator Schumer (NY) and Representative Weiner (NY).

Earlier this year, the FDA and the Department of Health and Human Services issued statements expressing concern about the impact of BPA exposure on human health, mirroring earlier concern raised by the federal National Toxicology Program or NTP. The NTP expressed some concern for effects on the brain, behavior, and prostate gland in fetuses, infants, and children at current human exposures. Just a few months ago, the U.S. EPA added BPA to its chemical of concern list, and has developed a “Chemical Action Plan” that recommends more proactive transitions to safer products.

In March, the Canadian ban on BPA-containing baby bottles came into force.

There is growing momentum in European countries to restrict BPA: bills have been introduced in the United Kingdom and France, and Denmark has issued a temporary ban on BPA in products for children ages three and under. Just yesterday, Germany’s Federal Environment Agency announced they have advised manufacturers, importers and users of BPA to use safer alternatives.

Conclusion

These new policy and market trends should be reinforced and replicated by legislation in NYC. We strongly urge you to protect the health of the most vulnerable populations, our children, by enacting legislation to ban bisphenol A.

Thank you for the opportunity to testify today.

For more information:

Mike Schade, PVC Campaign Coordinator
Center for Health, Environment and Justice
9 Murray St. 3rd Fl.
NY, NY 10007
212-964-3680 / mike@chej.org /

Citations

ⁱ Latini, G. et al. 2003. In-Utero exposure to Di-(2-ethylhexyl)-phthalate and human pregnancy duration. *Environmental Health Perspectives* 111:1783-1785.

ⁱⁱ Colón, I. Et al. 2000. Identification of phthalate esters in the serum of young Puerto Rican girls with premature breast development. *Environmental Health Perspectives* 108: 895-900.

ⁱⁱⁱ Duty, SM et al. 2003. The relationship between environmental exposures to phthalates and DNA damage in human sperm using the neutral comet assay. *Environmental Health Perspectives* 111:1164-1169.

^{iv} Swan, S. et al. 2005. Decrease in anogenital distance among male infants with prenatal phthalate exposure. *Environmental Health Perspectives* 113: 1056-1061.

^{vii} Center for Disease Control and Prevention. 2005. *Third national report on human exposure to environmental chemicals*. Atlanta, GA: Centers for Disease Control and Prevention.

^{viii} U.S. Environmental Protection Agency. 2009. “Managing asthma in schools.” Online: <http://www.epa.gov/iaq/schools/asthma.html> (20 October 2009).

^{ix} The Endocrine Disruptor Exchange, led by Dr. Theo Colburn, has conducted an extensive review of 319 studies that looked at health outcomes from BPA exposure at 1 part per million or less. They document with references

many different health endpoints, including the effects listed here.

www.endocrinedisruption.com/endocrine.bisphenol.summary.php Accessed April 9, 2010

- ^x Rubin BS, Lenkowski JR, Schaeberle CM, Vandenberg LN, Ronsheim PM, Soto AM (2006). Evidence of altered brain sexual differentiation in mice exposed perinatally to low environmentally relevant levels of bisphenol A. *Endocrinology* 147:3681-3691
- ^{xi} Lang IA, Galloway TS, Scarlett A, Henley WE, Depledge M, Wallace RB, Melzer D (2008) Association of urinary bisphenol A concentration with medical disorders and laboratory abnormalities in adults. *JAMA* 300:1303-1310
- ^{xii} Salian S, Doshi T, Vanage G (2009). Perinatal exposure of rats to bisphenol A affects the fertility of male offspring. *Life Science*. vol 85 (21-22): 742-52.
- ^{xiii} Rubin BS, Lenkowski JR, Schaeberle CM, Vandenberg LN, Ronsheim PM, Soto AM (2006). Evidence of altered brain sexual differentiation in mice exposed perinatally to low environmentally relevant levels of bisphenol A. *Endocrinology* 147:3681-3691
- ^{xiv} Sugiura-Ogasawara M, Ozaki Y, Sonta S-I, Makino T, Suzumori K (2005). Exposure to bisphenol A is associated with recurrent miscarriage. *Human Reproduction* 20:2325-2329
- ^{xv} Howdeshell, K, AK Hotchkiss, KA Thayer, JG Vandenberg and FS vom Saal (1999). Plastic bisphenol A speeds growth and puberty. *Nature* 401: 762-764
- ^{xvi} Paul B. Kaplowitz, MD, PhD, Eric J. Slora, PhD, Richard C. Wasserman, MD, MPH, Steven E. Pedlow, BS, and Marcia E. Herman-Giddens, PA, DrPH (2001). Earlier Onset of Puberty in Girls: Relation to Increased Body Mass Index and Race. *Pediatrics* Vol. 108 No. 2, pp. 347-353
- ^{xvii} Early puberty as risk factor for breast cancer: www.breastcancerfund.org/clear-science/timing-of-exposure/childhood-and-adolescence
- ^{xviii} Calafat AM, Ye X, Wong LY, Reidy JA, Needham LL (2008). Exposure of the U.S. population to bisphenol A and 4-tertiary-octylphenol: 2003–2004. *Environmental Health Perspectives* 116(1):39-44.
- ^{xix} Environmental Working Group. Human Toxome Project. 20 samples of infant cord blood were tested and more than 200 chemicals were found in each. www.ewg.org/sites/humantoxome/participants/participant-group.php?group=In+Utero/newborn. Accessed April 9, 2010.



Children's
Environmental
Health Center

BISPHENOL A (BPA) AND PHTHALATES AND CHILDREN'S HEALTH

**RE: Int. No. 175 - A Local Law to amend the administrative code
of the city of New York, in relation to the sale of toys and child care products
that contain Bisphenol A or phthalates.**

MOUNT SINAI CHILDREN'S ENVIRONMENTAL HEALTH CENTER

June 10, 2010

PHILIP J. LANDRIGAN, MD, MSc
Professor and Chair
Department of Preventive Medicine
Mount Sinai School of Medicine

DAMIRIS PEREZ, MPA
Coordinator, Pediatric Environmental Health Specialty Unit
Mount Sinai School of Medicine

PERRY E. SHEFFIELD, MD, MPH
Pediatric Environmental Health Fellow
Department of Preventive Medicine
Mount Sinai School of Medicine



Children's
Environmental
Health Center

Centers of Excellence in Children's Environmental Health

Dear Committee on Health,

We appreciate the invitation to provide testimony on the hazards of Bisphenol A and phthalates. We represent the EPA Region II Pediatric Environmental Health Specialty Unit and the Mount Sinai Center of Excellence in Children's Environmental Health.

In the face of growing economic challenges, an area for which there can be no compromise is children's health. There is an urgent need to invest in primary prevention strategies today in order to ensure the health of future generations to come.

We therefore urge the Committee on Health to support the local law to amend the administrative code of the city of New York, in relation to the sale of toys and child care products that contain Bisphenol A or phthalates. We have the ability to prevent exposures to this toxic chemical in the places it matters most: where children live, learn and play. Environmental exposures in these settings have been found to contribute to childhood conditions as well as diseases of adult onset.

Overview of Bisphenol A (BPA) and Phthalates

Bisphenol A is a plastics chemical produced in a volume of millions of pounds per year. BPA is found in linings of canned foods including ready-to-eat infant formulas, and in hard plastics made of polycarbonate (found in sports water bottles, water dispensers and baby bottles). The primary source of exposure varies by age, gender, developmental stage and individual behavior. For BPA, the primary route of exposure is probably ingestion.

Phthalates are man-made chemicals used in soft, flexible plastics, polyvinyl chloride (PVC) products, and in a variety of personal care products such as shampoos and lotions. These chemicals are anti-androgenic and can adversely impact androgen-sensitive tissues during specific windows of development.

Since these substances are not chemically bound to the plastics to which they are added, they can leach out of products causing exposure through ingestion of foods found in plastic packaging, or mouthing of products. Exposure of BPA and phthalates-containing products to high temperatures – as occurs with heating or sterilizing baby bottles in the microwave – promotes leaching of the chemicals. Young children may be uniquely vulnerable to these exposures as they frequently place toys and other plastic products in their mouths, an age appropriate behavior.

Exposure to BPA and Phthalates is Widespread

The Centers for Disease Control and Prevention (CDC) tracks exposures to many environmental chemicals in a nationally representative sample of people ages 6-85 years old (CDC 2008). Measurements of BPA and phthalate metabolites in the urine are included in the CDC report. Nearly all Americans have measurable concentrations of BPA and phthalates in their bodies.

Children are at Risk for Exposure to BPA and Phthalates

Children and adolescents have disproportionately high levels compared to adults; the reasons for these differences remain unclear. Possible explanations include varying routes and sources of exposure, differences in metabolism, or a combination of these factors.

The half lives for both BPA and phthalates are very short, indicating that these chemicals are rapidly cleared from the body. Urine tests to assess exposure to BPA and phthalates are currently conducted for research purposes only. Studies suggest that a one-time measurement of urinary levels is likely to be a good measure of long-term exposure given the relative constancy of exposures in children's daily lives (Teitelbaum 2008). There is, as yet, no clinical reference level to indicate what level of exposure is associated with human health effects. Further research is needed in this area.

Health Effects Due to BPA and Phthalate Exposure

Due to the widespread use of these chemicals as well as evidence of universal exposure in the US population, concerns have been raised that young children may be vulnerable to developing long-term health effects. Many studies in animals show an association of exposure to BPA, even in small amounts, to adverse health effects including neurobehavioral disorders including hyperactive behavior, (Ishido 2004) and learning (Carr 2003), obesity (Masuno 2005), altered insulin sensitivity (Ropero 2008), and cancers of the breast (Markey 2001, Vandenberg 2007), prostate (Maffini 2006, Prins 2008) and uterus (Maffini 2006, Newbold 2007). Human studies for BPA, however, are extremely limited. A recent study of adults reported a relationship of high BPA exposures and heart disease, Type 2 diabetes, and abnormal liver function tests (Lang 2008). BPA has not yet been classified with respect to carcinogenesis in humans (IARC 1989, 1999).

There is also concern that phthalates can affect both the neurologic and reproductive systems in developing infants. Prenatal exposure to some types of phthalates have been associated with decreased anogenital distance in male infants (Swan 2005) and behaviors associated with conduct and attention deficit hyperactivity disorders (Engel 2010).

The US Food and Drug Administration (FDA) published a draft risk assessment of BPA in August 2008, concluding that the chemical was safe as currently used. This was in contrast to the conclusion of many other scientists. The National Toxicology Program, part of the US Department of Health and Human Services, has voiced concern about BPA's effects on the brain, behavior and the prostate gland in fetuses, infants and children. The FDA is currently reconsidering the risks of BPA (Scelfo).

BPA and Phthalate Legislation

The full range of Bisphenol A and phthalates toxicity in humans is not yet known due to the paucity of human studies. Due to the uncertainty in predicting total BPA and phthalate exposure of infants and very young children through ingestion and mouthing, legislation was developed as a precautionary measure. In 2005, the European Union banned phthalates in all toys and child-care products through ingestion and mouthing. In 2009, Canada prohibited the importation or sale of BPA in bottles, toys and food packaging for infants and newborns. In 2009, California was the first within the United States to ban some phthalates in toys and child-care products and prohibits manufacturing, sale and distribution. Following suit in 2009 Suffolk County was the first county in New York to ban the sale of baby bottles and sippy cups containing Bisphenol A (BPA).

In these instances, a precautionary approach has been taken, refusing to wait until human studies confirm the health effects already seen in animals. These measures have been enacted to protect our most vulnerable populations, infants and toddlers at critical stages of development, and hence at greatest risk for a wide range of potential health effects.

Protecting the Health of Children

The New York City Council Committee on Health has the opportunity to join the ranks of Canada, European Union, California and flagship counties in clearly stating that children's environmental health is a top priority and will not continue to allow products to be tested in the global market to see whether decades later there is the potential for harm.

We should ensure that toys, child care products, food and beverage containers and sport drink bottles used regularly by children are free from chemicals such as BPA and phthalates. Legislation in relation to the sale of BPA and phthalates in children's bottles, toys, products, and containers will protect the health of generations of children.

Thank you for the opportunity to submit testimony at this important hearing. We would be more than happy to answer any questions that you might have.

Children's Environmental Health Center • info@cehcenter.org • (212) 824-7125





A Guide to Plastics For Easy Reference

Front of card

Pocket Guide to Plastics Guía del Botello a los Plásticos

Growing Up Healthy
(212) 241-3185
Creciendo Saludable

safer Plastics
Plásticos Más Seguros




	
PETE	HDPE
	
LDPE	PP


Back of card

Pocket Guide to Plastics Guía del Botello a los Plásticos


Growing Up Healthy
(212) 241-3185
Creciendo Saludable

Plastics to Avoid
Plásticos Que Deben Evitar

	
V	PS
	
OTHER	



Mount Sinai Community Health Bulletin







Quick Guide to Safe Plastics

Staying Healthy in a Changing Environment #3




All plastics are not the same. Some are safer than others. When plastics come in contact with food and water, they can leak certain chemicals. The Growing Up Healthy Pocket Guide to Plastics can be used while shopping to help you make the best choices for you and your family.

Check the symbol on the bottom of plastic items before you buy:

The safer plastic choices for food and beverages

			
PETE	HDPE	LDPE	PP

Plastics to try to avoid

		
V	PS	OTHER

(Usually PVC or vinyl) (Usually Styrofoam)

Other tips for the safe use of plastics:

1. Try not to use plastic containers in the microwave. If you can, it's safer to use glass or ceramic containers.
2. Beware of using plastic wraps in the microwave. A safer choice is waxed paper.
3. Try to reduce your use of products made of PVC, vinyl or Styrofoam.

For more information, contact: Dr. Luz Claudio or Reeve Chase (212) 241-1293 reeve.chase@msm.edu

Mount Sinai Medical Center OCC# 05-0189



Children's
Environmental
Health Center

Department of Community
and Preventive Medicine
Mount Sinai School of Medicine

One Gustave L. Levy Place
Box 1057
New York, NY 10029-6574

Tel.: 212.824.7125
Fax: 212.996.0407
E-mail: info@cehcenter.org
www.cehcenter.org

TESTIMONY OF WENDY MINDEL RUBINSTEIN

**Executive Board Member, Mount Sinai Children's Environmental Health Center,
Mother and Environmental Health Activist
in support of Int. No. 175**

June 10, 2010

Members of the Health Committee, thank you for the opportunity to testify today on amending the administrative code of the city of New York in relation to the sale of toys and child care products that contain bisphenol A or phthalates. My name is Wendy Rubinstein, and I am a mother of a three year old and an Executive Board Member of the Mount Sinai Children's Environmental Health Center. I am also a lifelong New Yorker as is my husband of ten years.

The Children's Environmental Health Center at Mount Sinai (or MSCEHC) is among the foremost institutions researching the effects of everyday chemicals on pediatric health and development. MSCEHC's Director, Dr. Philip Landrigan, is a world leader in the field of public health and preventive medicine. Dr. Landrigan, Mount Sinai's pioneering doctors and researchers, and my fellow colleagues on the Executive Board share grave concerns about the relationship between pediatric exposures to everyday chemicals such as BPA and phthalates and childhood and adult disease.

We believe there is an urgent need for state and local governments to enact laws such as the one being considered today, because the federal chemical regulatory process is broken. More than 80,000 new synthetic chemicals have been developed since World War II with fewer than 20% ever having been tested for possible toxicity to infants, children and pregnant women. Almost 3,000 of these chemicals are classified as "high production volume", meaning they are produced in excess of 1 million pounds per year. This includes BPA and phthalates, since 2.3 billion pounds of BPA and 200 million pounds of phthalates are produced annually. Coinciding with this chemical revolution is the fact that rates of chronic childhood disease are skyrocketing. Scientific evidence is implicating chemical exposures in early life as the reason for these increases in childhood disease as well as an increased risk for disease in adulthood.

Studies by the federal Centers for Disease Control and Prevention have demonstrated that nearly all Americans have measurable concentrations of BPA and phthalates in their bodies. The main concerns surrounding BPA and phthalate exposure is due to their ability to disrupt the normal functioning of the body's endocrine system. BPA was originally developed by the pharmaceutical industry as a synthetic estrogen, but was discovered to have helpful properties in plastics. BPA is used to make a hard plastic called polycarbonate that is used in many children's products including sippy cups, teethingers and toys. Infant formula and foods are contaminated with BPA when it leaches from the chemical linings used to keep metal food cans from rusting.

Phthalates are also endocrine disruptors. They alter the normal functioning of the body's hormonal signaling system and disrupt communication between cells and organs in the body. Phthalates are added to toys and bottles to make plastics flexible. They are also found in cosmetics and personal care products like lotions and shampoos.

Both BPA and phthalates can leach out of the products to which they are added causing exposure through ingestion of foods found in plastic packaging or mouthing of products. Children are particularly at risk, because they place toys and plastic products in their mouths. They eat and drink more relative to their size, and thus have greater exposure pound-for-pound than adults. Also they are in a state of rapid growth, and their developing bodies are more sensitive to chemical disruption. In short, when it comes to assessing the risks of chemical exposures, children are not simply little adults.

There is a broad and growing consensus within the scientific community that BPA and phthalates pose significant threats to our children's health and that exposures should be avoided. As the evidence against these chemicals mounts, legislation has increasingly been adopted as a precautionary measure to restrict their use, both at the state and local levels in the United States and also abroad. In 2005 the EU banned phthalates in all toys and child-care products. Last year Canada restricted the use of BPA in bottles, toys and food packaging for infants and newborns. California has banned some classes of phthalates in toys and child-care products. Legislation banning BPA in children's products have also been passed in Minnesota and Connecticut. Here in New York State bans on BPA have been passed, starting with Suffolk County in 2009 followed by Schenectady and Albany Counties.

I urge the Health Committee to support this local law and protect the children of New York City from chemicals strongly suspected of posing serious health risks. When my daughter, Ava, was born just over 3 years ago I could not imagine how difficult it is to be a parent in today's complex world. I am unable to trust the products sold in the marketplace and spend countless hours researching their ingredients if they are even listed on the product to begin with. Phone calls to manufacturers and store keepers do not help as a majority are completely unaware of the chemicals used in the products they sell for use by children. As a parent knowledgeable and concerned about these issues, I can say from experience that the federal government has allowed a heavy burden to be placed on parents' shoulders; it is impossible to do what's right for your child's health with the current state of chemical regulation in this country. Suspect chemicals such as BPA and phthalates are ubiquitous and even if one is successful in reducing exposures at home to a minimum there are still daily exposures as soon as your child steps out the front door. This amendment to the administrative code is an important sign of progress towards filling the enormous holes in our federal health protection system. It is a common sense, precautionary measure that will reduce the threats to our children's health, and should also have the side benefit of improving the well-being and productivity of their worried parents. Thank you.



Championing
Environmental Justice
Leadership & Action
Since 1988!

**WE ACT COMMENTS ON PROPOSED INTRODUCTION 589-A
SALE OF TOYS, CHILDCARE AND CHILD FEEDING PRODUCTS THAT CONTAIN PHTHALATES
BEFORE THE COMMITTEE ON HEALTH OF THE NEW YORK CITY COUNCIL
June 10, 2010**

TESTIMONY OF WE ACT for ENVIRONMENTAL JUSTICE

WE ACT is a Northern Manhattan-based organization building healthy communities by ensuring the meaningful participation of people of color and low income in the development of environmental health and protection policy and practice. For more than 20 years, WE ACT has been a strong voice advocating for reducing the production of environmental pollutants, and more recently for the discontinuance of toxic chemical use in household and personal care products, particularly those most frequently used by pregnant women and children. We thank the Committee and the Council for taking leadership on this very important action to protect the health and development of our children, particularly the infants and toddlers who will most benefit from the proposed legislation.

As you know, phthalates are chemicals used to make certain plastics flexible and to adhere fragrance to products such as lotions, perfumes, and soap. The National Institutes for Environmental Health Science and its inter-agency work groups, including the National Toxicology Program (NTP), has conducted and supported extensive research on the reproductive and/or developmental toxicity of phthalates and have concluded that phthalates disrupt development and function of endocrine systems, adversely affects reproduction, adversely affects the development of human male reproductive systems, and is causes cancer. Indeed, the NTP found that fetuses and the very young are most at risk.

Bisphenol A, another target of the proposed legislation, is equally dangerous from a health perspective. BPA is used to manufacture polycarbonate (soft/pliable) plastics and epoxy linings of tin cans. Scientists have known since 1938 that BPA is an endocrine disruptor and can mimic actions of the female hormone estrogen in adults. More recently, BPA has been shown to affect hormonal processes during fetal and infant development. Exposure to BPA at levels resulting from ordinary experience has been implicated in conditions ranging from neurocognitive and behavioral development, development of prostate and mammary glands, and precocious puberty.

One of the most dangerous features of phthalates and BPA is their widespread use. The Centers for Disease Control as early as 2003 found that phthalates were present at detectable levels in 93% of urine samples collected as part of the National Health And Nutrition Examination Survey (NHANES), and recent studies by researchers at the Columbia University Mailman School of Public Health found, through blood tests of mothers and their children, that exposure to phthalates and BPA is ubiquitous. This is because both phthalates and BPA are used in diverse applications (e.g., tin cans, plastic bottles, cups, toys, and baby products) and both compounds can leach into to food, drink, saliva, skin, and even the placenta into the human body where they wreak their havoc on health and development. Importantly, the conditions facilitating leaching of phthalates and BPA exist in ordinary use of the products containing them. That is, both can easily enter material such as milk, fat-containing food and drink, saliva, and food and drink heated to 85-degrees Fahrenheit and above. Phthalates can also be released through mechanical disruption such as bending, chewing, and pressure.

The mounting evidence so strongly demonstrates the public health risk posed by continued use of phthalates and BPA that jurisdictions worldwide, including our own federal government, have imposed restrictions of its use. In 2008, the United States passed the Consumer Product Safety Improvement Act (Public Law No. 110-314, the Act). In sum, the Act: 1) substantially increases civil penalties (up to \$15 million), 2) lowers burdens of proof for criminal prosecution, 3) allows state attorneys general to enforce federal product safety laws, 4) provides

whistle blower protection for employees who report safety violations or cooperate in investigations, and 5) steps up enforcement efforts involving other federal agencies, foreign product safety regulators and state health agencies. The Act also bans use of certain phthalates in some products:

1. Prohibits the sale of children's toys and child care articles with concentrations of more than 0.1 percent of DEHP or BBP.
2. Establishes an interim ban on the sale of children's toys that can be placed in a child's mouth and all child care articles that contain more than 0.1 of DINP, DIDP, or DNOP. Toys that can be put in the mouth are defined to include toys or parts smaller than five centimeters in dimension, and exclude toys that can only be licked. The interim ban was to be effective on Feb. 10, 2009; further studies and product safety rules regarding phthalates and phthalate alternatives are mandated.
3. Provides only limited preemption of state laws regulating phthalates and phthalate alternatives.

At the state level, the California State Office of Environmental Health Hazard Assessment (OEHHA) of California listed DEHP as a carcinogen in 1988 and as a developmental toxin and male reproductive toxin in 2003. In December 2005, OEHHA listed three additional phthalates – BBP as a developmental toxin; DBP as a developmental toxin and female and male reproductive toxin; and DnHP as a female and male reproductive toxin. In April 2007, OEHHA listed DIDP as a developmental reproductive toxin.

Following these findings, the California in the fall of 2007 enacted Assembly Bill No. 1108 (AB 1108), prohibiting the manufacture, sale, or distribution of children's products containing six specified phthalates. Prior to the adoption of AB 1108, the City of San Francisco had adopted an ordinance effecting a similar prohibition. After passage of AB 1108, the City of San Francisco amended its Ordinance to suspend the previous phthalate ordinance so as avoid conflict with the Assembly Bill, which applies statewide

Austria, Denmark, Finland, France, Germany, Greece, Norway and Sweden placed bans on the use of phthalates in manufacturing soft Polyvinyl chloride plastic (PVC) toys. Japan placed a temporary ban on phthalate use in 2001, and made it permanent in 2003. The Japanese law targets specifically the use of phthalates in objects intended for the mouths of young children (e.g., pacifiers, bite rings and teethingers).

In 2005, the European Parliament, one of the EU's legislative arms, made permanent an earlier temporary emergency ban, in place since the 1990s, on 6 phthalates in amounts greater than 0.1% of mass: DEHP, DBP, and BBP were permanently banned in all toys and childcare items, while DINP, DIDP and DnOP were banned in toys able to be placed in a child's mouth. The EU also banned some phthalates in cosmetics. The EU defines DEHP, DBP and BBP as reprotoxic, a compound that has adverse effects on reproductive systems and endocrine functions. The EU ban is consistent with the EU's adoption of the precautionary principle.

Within the environmental justice (EJ) context, phthalate and BPA-containing PVC products are most pervasively used in communities of color and low-income. In Northern Manhattan, our neighborhoods abound with discount and 99-Cent store offering the cheapest, most poorly manufactured PVC products – most likely to contain the worst forms of phthalate. Low-income families use phthalate and BPA-containing products for everything from baby feeding, to dinnerware, and microwaved cookware, not to mention personal care and beauty products such as creams, nail adornments, and hair permanent solution. Therefore action to stem the use of these toxic materials would benefit members of our community.

WE ACT applauds the Committee's effort to protect the health of our communities and our children by taking this very important action to restrict the use of phthalate and BPA in products geared at this most vulnerable population.



Testimony

Of

**Nancy Clark, MA, CIH, CSP
Assistant Commissioner
Bureau of Environmental Disease Prevention**

before the

New York City Council Committee on Health

regarding

Intro. 175: Sale of Toys and Child Care Products that Contain Bisphenol A or Phthalates

June 10, 2010

250 Broadway
New York, NY

Good afternoon Chairperson Arroyo and members of the Health Committee. My name is Nancy Clark, and I am the Assistant Commissioner of the Bureau of Environmental Disease Prevention at the New York City Department of Health and Mental Hygiene. With me today is Dr. Paromita Hore, Bureau Coordinator for Environmental Risk Assessment. On behalf of Commissioner Tom Farley, I would like to thank you for the opportunity to testify regarding Intro 175.

In my testimony today, I would like to provide an overview of what we know about the potential human health effects of bisphenol A (BPA) and phthalates, a summary of the federal Consumer Product Safety Improvement Act of 2008 (CPSIA), and the challenges of local regulations aimed at limiting the amount of these substances in children's products.

Background on Bisphenol A and Phthalates

Bisphenol A (BPA) is an industrial chemical used to make a hard, clear plastic known as polycarbonate, which has been used in many consumer products, including reusable water bottles and baby bottles. BPA is also found in epoxy resins, which act as a protective lining on the inside of metal food and beverage cans. These uses of BPA are subject to premarket approval by the U.S. Food and Drug Administration (FDA) as indirect food additives or food contact substances. The original FDA approvals were issued in the 1960s. BPA can leach into food from the protective internal epoxy resin coatings of canned foods and from consumer products. BPA in food and beverages accounts for the majority of daily human exposure. Human exposure to BPA is widespread. BPA has been found in the urine of more than 90% of Americans.

The scientific evidence that bisphenol A causes adverse health effects in humans is not well established. The National Toxicology Program (NTP), a federal interagency program of the U.S. Department of Health and Human Services, has reviewed the scientific literature on BPA exposure and health effects in laboratory animals. NTP notes that some of the animal studies raise concerns about potential human reproductive and developmental effects in both females and males. Researchers generally agree that more study is needed to understand exactly how these findings relate to human health and development. Investigations to date have not demonstrated specific human health effects or magnitude of such effects.

Phthalates are a diverse group of chemicals that impart flexibility and resilience when added to polyvinyl chloride (PVC) plastics. Phthalates are also found in a wide variety of consumer products including personal care products, such as soaps, shampoos and deodorants; vinyl products, such as floor tiles, shower curtains, upholstery, and waterproof clothing; children's toys and vinyl-covered books; care and feeding items; gel caps and coatings on some pharmaceuticals; and medical equipment such as serum bags and IV medical tubing. As a result, human exposure to phthalates is common. Several studies confirmed the presence of phthalates or their metabolites in persons of all age groups, including newborns exposed prenatally.

People are exposed to phthalates in the food they eat, the air they breathe and through direct contact with the many products that contain the chemicals. Ingestion by mouthing PVC products is the most common means of exposure to phthalates in consumer products. Generally, phthalates are metabolized and excreted quickly and do not accumulate in the body.

The six phthalates identified in Intro 175 are present in a wide variety of consumer products, and have been subject to at least some scientific investigation. The main health concerns posed by phthalate exposure are their potential to interfere with male hormones and male reproductive organ development. There is also a possibility that phthalates adversely affect females.

Federal Regulations on BPA and Phthalates

The Consumer Product Safety Improvement Act was passed by Congress in 2008. This law currently limits the amount of the six phthalates in children's toys, care products and feeding products to less than 0.1% of the total product. The CPSIA has set final limits on three phthalates—DEHP, DBP and BBP—as more is known about these chemicals. The limits on the other three phthalates—DINP, DIDP and DNOP—are interim standards. The Consumer Product Safety Commission has convened a Chronic Hazard Advisory Panel on Phthalates to further study these chemicals and to issue a report of its findings in 2012.

The CPSIA does not address BPA in children's products; however, the FDA is currently investigating the need to limit BPA in food containers to reduce human exposure through contact of the BPA surface in containers with food and beverages contents. We are following developments of this FDA initiative.

We fully support the federal actions and industry initiatives to reduce human exposures to phthalates and BPA in children's products.

Local Regulations on BPA and Phthalates

The efficacy of a ban on such products is dependent on reliably knowing which products contain the chemicals. Intro 175 covers broad categories of products for which the ingredients are unknown and which are not always labeled. No federal regulations exist requiring disclosure and labeling of ingredients in plastic products, therefore neither the Department, Department of Consumer Affairs nor the more than 15,000 distributors and retailers in New York City who may sell the targeted products can readily know which products contain BPA or phthalates. In addition, this bill would require enforcement by Department of Consumer Affairs of an industry where it has no regulatory authority.

Federal regulations are the most effective way to limit public exposure, and we support a move towards removal of these chemicals from children's products. However, we caution that it is unlikely that any state or local government can effectively remove products containing phthalates and BPA from store shelves. While many localities and states across the country have adopted regulations similar to that which is proposed, without oversight at the factory level or labeling by the manufacturer, local authorities are limited in their ability to enforce such a ban on products potentially containing BPA or phthalates. While CSPIA allows for the use of labels, the current law does not require them on plastic products.

Conclusion

In summary, we support the idea of limiting the use of bisphenol A and phthalates in children's toys and care and feeding products and support further federal action to limit BPA in food and beverage containers. Banning BPA and phthalates from children's products at the point of production would eventually eliminate them from the consumer market. However, without

manufacturing and labeling standards, efforts to identify and prohibit the sale of children's products that contain these chemicals will likely be ineffective and would not be enforceable on the local level.

Thank you for this opportunity to testify. I am happy to answer your questions at this time.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 6/10/10

(PLEASE PRINT)

Name: NANCY CLARK

Address: ASSISTANT COMMISSIONER

I represent: DOHMH

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 589 A Res. No. _____

in favor in opposition

Date: 6/10

(PLEASE PRINT)

Name: CHRISTINA HUNG

Address: 1638 AMSTERDAM AVE

I represent: WE ACT

Address: 1638 AMSTERDAM AVE

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 175 Res. No. _____

in favor in opposition

Date: 6.12.10

(PLEASE PRINT)

Name: STEPHEN ROSARIO

Address: _____

I represent: ACC

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 175 Res. No. _____

in favor in opposition

Date: June 10, 2010

(PLEASE PRINT)

Name: Wendy Mindel Rubenstein

Address: 333 East 57th Street

I represent: Mount Sinai Children's Environmental

Address: Health Center

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 175 Res. No. _____

in favor in opposition

Date: June 10 2010

(PLEASE PRINT)

Name: Miranda Massie

Address: 150 W. 30th, 11th Fl.

I represent: Ny Lawyers for the Public Int.

Address: see above

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 175 Res. No. _____

in favor in opposition

Date: 4.10.10

(PLEASE PRINT)

Name: STEVEN Lisotto

Address: 1300 Wilson Blvd Arlington, VA

I represent: ACC - PHARMAS ESTABL PANEL

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 175 Res. No. _____

in favor in opposition

Date: JUNE 10, 2010

(PLEASE PRINT)

Name: Joan Lawrence

Address: TOY Industry Association 1115 BWAY

I represent: TOY Industry Association NYC

Address: 1115 Broadway, New York

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 175 Res. No. _____

in favor in opposition

Date: 6/10/10

(PLEASE PRINT)

Name: Michael Schaefer

Address: _____

I represent: Center for Health, Environment & Justice

Address: 9 Murray St. 3rd Fl NY NY 10007

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 175 Res. No. _____

in favor in opposition

Date: 6/10/10

(PLEASE PRINT)

Name: Steven G. Hentger

Address: 1300 Wilson Blvd. Arlington VA

I represent: American Chemistry Council

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 175 Res. No. _____

in favor in opposition

Date: 6/10/10

(PLEASE PRINT)

Name: Rain Wilson

Address: Woodsid, SS-10 31st Avenue

I represent: Those in favor of the bill

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 175 Res. No. _____

in favor in opposition

Date: 6/10/10

(PLEASE PRINT)

Name: Georgia Vasilopoulos

Address: 46-03 31st Avenue 11103

I represent: Those in favor of the bill

Address: _____

Please complete this card and return to the Sergeant-at-Arms