

2005 Biennial Summary Report

**Status of Minnesota's
Toxic Metals in Packaging Program**

October 3, 2005

**Minnesota Pollution Control Agency
520 Lafayette Rd. N.
Saint Paul, MN 55155-4194**

This report summarizes developments and activities for Fiscal Years 2004 and 2005. The purpose of this report is to provide summary information. No policy changes are needed or recommended at this time.

The statutory requirement for this report is found in Minn. Stat. § 115A.965, subd. 7, which reads:

By September 1 of each odd-numbered year, the commissioner shall prepare and submit to the environment and natural resources committees of the senate and house of representatives, the finance division of the senate committee on environment and natural resources, and the house of representatives committee on environment and natural resources finance a report to include:

- (1) enforcement actions taken by the commissioner under this section for the reporting period; and
- (2) for each exemption granted, the identity of the party requesting the exemption, a brief description of the packaging, and the basis for granting the exemption.

If you have questions or would like additional information, please telephone John Gilkeson at (651) 215-0199 (electronic mail at john.gilkeson@state.mn.us), or Jim Chiles at (651) 296-7273 (electronic mail at james.chiles@pca.state.mn.us).

Total cost of preparing this report as required by Minn. Stat. § 3.197 was \$250.

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Legislative Background

In 1991, the Minnesota Legislature passed the “Toxics in Packaging” bill (Minn. Stat. § 115A.965). The bill was based on model legislation drafted two years previously by a working group in the Coalition of Northeastern Governors (CONEG), with the active cooperation of a wide range of stakeholders: environmental groups, industry and governmental agencies.

The law prohibits the intentional introduction of lead, cadmium, mercury, or hexavalent chromium into packaging or the components of packaging that is offered for sale or is being distributed for promotional purposes. It also prohibits the incidental presence of these metals at concentrations exceeding 100 parts per million (ppm).

Minnesota is one of 18 states that have adopted the model "toxics in packaging" legislation. Because most packagers and package manufacturers selling into the U.S. market distribute to at least one of the 18 states, the packaging laws have become a national standard without federal legislation. The law was one of the first to pursue a “source reduction” strategy, an approach that strives to keep unwanted material out of the recycled and discarded waste stream entirely. The law applies to manufacturers, distributors and suppliers of packaging as well as to manufacturers of packaged products. The effect of the law is to ask these parties to maintain on file current certificates of compliance that show they are following the packaging law.

Joint Action

In 1992, member states formed the Toxics in Packaging Clearinghouse (TPCH) under the auspices of CONEG to encourage consistent and streamlined implementation of each state’s Toxic Metals in Packaging law. Currently there are seven dues-paying state members, three additional states with dues pending, and eight states that have toxics in packaging laws but who have not joined the clearinghouse.

The clearinghouse members consider exemption requests jointly. The clearinghouse receives and answers requests for information and clarification from businesses, governmental agencies, and stakeholder groups, thus minimizing the administrative costs borne by individual states that have enacted the law and are members of the Clearinghouse. Current information may be found at the clearinghouse website, <http://www.toxicsinpackaging.org>.

In the interest of obtaining information needed for good decision-making, the TPCH offers ex officio membership to industrial representatives. The clearinghouse also has a network of technical experts on which it can draw.

Enforcement Actions

In FY 2005, in conjunction with the state of Connecticut, TPCH coordinated enforcement, response, and publicity related to noncompliant packaging. This packaging had intentionally-introduced lead as part of an electronic circuit board for a blinking light. Based on information provided by NBTY, manufacturer of the product Flex-a-Min that was sold in this package, the

Clearinghouse estimates that this action resulted in 600,000 packages being removed from the shelves and properly managed outside the municipal solid waste stream.

TPCH also investigated an allegation that certain imported steel food cans with side seams contained lead in the packaging, and an allegation that wrappers for imported Mexican candy contained lead. The New York Attorney General worked with the TPCH on the latter issue.

No enforcement actions were undertaken by the MPCA commissioner during this reporting period.

Exemptions Granted

TPCH coordinated the shift of a temporary exemption to permanent status for glass container manufacturer Stanpac Inc. The request related to ceramic labels on the surface of glass bottles.

Current Activities

Minnesota joined the Toxics in Packaging Clearinghouse in 1993 and has remained active. In FY 2004 and 2005 the Minnesota Pollution Control Agency and the Office of Environmental Assistance jointly provided staff representatives to the TPCH monthly teleconferences since the toxics in packaging law has both toxicity reduction and enforcement components. During the reporting period, the TPCH:

- Shifted its base of operations from the Council of State Governments in Lexington, Kentucky, to the Northeast Recycling Council in Brattleboro, Vermont;
- Worked to ensure a level playing field between domestic packagers and foreign packagers that ship into the United States, including occasional sampling events;
- Agreed on a permanent exemption relating to decorated glass and ceramic packaging, which will need to be incorporated in member states' laws;
- Applied for and received a package compliance-testing grant from the USEPA Source Reduction Assistance Program; and
- Coordinated with the U.S. Environmental Protection Agency and trade groups, such as the Institute of Packaging Professionals.