



Toxics in Packaging Clearinghouse  
C/o Northeast Recycling Council, Inc.  
139 Main Street, Suite 401  
Brattleboro, VT 05301

April 11, 2008

Federal Trade Commission/Office of the Secretary  
Room H-135 (Annex B)  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

RE: Green Packaging Workshop -- Comment, Project No. P084200

Dear Sir/Madam:

The Toxics in Packaging Clearinghouse (TPCH) appreciates the opportunity to provide comments on the Federal Trade Commission (FTC) Guides for the Use of Environmental Marketing Claims ("Green Guides"). The TPCH, on behalf of its ten member states, wants to ensure that any revisions to the FTC Green Guides address the use of toxic heavy metals in packaging, particularly with regard to general claims such as "sustainable" or "environmentally friendly."

This request is supported by recent studies conducted by the TPCH that found significant amounts of packaging on retail shelves in the U.S. contained heavy metals, including lead and cadmium. Furthermore, it is the experience of TPCH that manufacturers and distributors of packaging and packaged products are inadequately monitoring packaging for heavy metal content, particularly imports, placed into U.S. commerce.

Nineteen U.S. states have toxics in packaging laws that prohibit the intentional use of heavy metals (lead, cadmium, mercury and hexavalent chromium) in packaging and packaging components sold or distributed in their state. These laws also limit the incidental presence of the sum of these metals to less than 100 ppm. The purpose of toxics in packaging laws is to prevent the unnecessary use of toxic substances in packaging materials that, when discarded, comprise one-third of U.S. municipal solid waste generation and go into our nation's landfills, waste incinerators, and recycling streams, where these toxic constituents are difficult to control and may impact the environment and public health.

The Toxics in Packaging Clearinghouse coordinates implementation of toxics in packaging laws among its ten member states (California, Connecticut, Illinois, Iowa, Minnesota, New Hampshire, New Jersey, New York, Rhode Island, and Washington), and serves as a single point of contact for organizations and companies seeking further information and clarifications. The attached Fact Sheet provides further information on toxics in packaging legislation, including a list of states with laws.

In the past three years, TPCH has conducted two assessments of packaging to determine whether heavy metals are prevalent in packaging today, 15 years after most states enacted toxics in packaging laws. In 2005-2006, TPCH initiated its first comprehensive assessment of heavy metals in packaging, screening over 355 packaging samples for the presence of lead, cadmium, mercury, and hexavalent chromium using a portable x-ray fluorescence (XRF) analyzer. Sixteen percent of the packages tested failed the screening test with greater than 100 ppm of one or more of the restricted metals, and may be in violation of state laws.

Packages of products imported from China and other Asian countries are most likely to contain these toxic metals, including lead and cadmium. These metals are added to some plastic resins as inexpensive stabilizers, or are used as inks and colorants. The complete results of this study were published in a June 2007 report, *An Assessment of Heavy Metals in Packaging: Screening Results Using a Portable X-Ray Fluorescence Analyzer*, which is provided as an attachment.

In the first quarter of 2008, TPCH conducted a second evaluation of packaging for the presence of heavy metals, again using an XRF analyzer. Preliminary analysis of the 409 samples indicates similar results to the 2005-2006 project.

Since 2006, TPCH and its member states have conducted extensive outreach to the packaging supply chain, from raw material suppliers to retail establishments, about the findings of these studies. We have learned that many companies have packaging specifications that require compliance with state toxics in packaging requirements, however, most companies do not independently verify that the packaging or packaging components delivered by suppliers actually meet the specifications.

Overseas suppliers may not understand or adhere to specifications related to toxics in packaging, or may disregard specifications to cut costs by substituting less expensive raw materials. Further, few companies routinely monitor through quality assurance programs the continued adherence to toxics in packaging specifications. With a significant and growing volume of imported packaging and packaged products, independent verification and routine monitoring of inventory is needed to ensure the quality of packaging and the validity of supplier certifications. This is certainly a lesson that U.S. toy manufacturers recently learned.

**In closing, TPCH recommends the following:**

- **Revisions to the FTC Green Guides address heavy metals in packaging, particularly with regard to general claims such as “sustainable” or “environmentally friendly.”**
- **Claims are not based solely on manufacturer specifications.**
- **Claims are substantiated by independent testing and routine monitoring to ensure that environmental attributes are delivered and maintained over the sales life of the product.**
- **Packaging is in compliance with federal and state laws.**

Thank you for taking into consideration the request of TPCH on behalf of its member states. If you have any questions or comments, please contact me at (518) 402-8705 or [pmpettit@gw.dec.state.ny.us](mailto:pmpettit@gw.dec.state.ny.us); or Patricia Dillon, TPCH Program Manager at (802) 254-8911 or [info@toxicsinpackaging.org](mailto:info@toxicsinpackaging.org).

Sincerely,

Peter Pettit  
Chair – Toxics in Packaging Clearinghouse &  
NY Department of Conservation

Enclosures:  
Fact Sheet – Toxics in Packaging Clearinghouse  
TPCH Report, *An Assessment of Heavy Metals in Packaging*, June 2007

cc:  
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