STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

BETH NAGUSKY
ACTING COMMISSIONER

MEMORANDUM

TO: Board of Environmental Protection

FROM: Andrea Lani, Bureau of Remediation and Waste Management

DATE: December 16, 2010

RE: Adoption of Chapter 882, Designation of Bisphenol A as a Priority Chemical and Regulation of Bisphenol A in Children's Products

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Statutory and Regulatory Reference:

A. **Statutory authority:** 38 MRSA §§1691 through 1699-B [PL 2007, c. 643]

B. **Specific legal mandates requiring adoption:** 38 MRSA §1695 requires the commissioner to designate at least two priority chemicals by January 1, 2011. The department's regulation 06-096 Chapter 880, Regulation of Chemical Use in Children's Products section 2(D) requires that designation of a priority chemical be done through the adoption of a rule. This rulemaking constitutes the first of the two required designations.

Location/Applicability:

The proposed regulation will apply statewide.

Description:

The proposed *Chapter 882, Designation of Bisphenol A as a Priority Chemical and Regulation of Bisphenol A in Children's Products*:

- Designates bisphenol A as a priority chemical;
- Requires manufacturers of toys and tableware that contain intentionally-added bisphenol A to submit information to the department on the extent to which the chemical is used in the product and the likelihood that children will be exposed to it as a result of its presence in those products;
- Requires manufacturers of infant formula and baby food sold in containers containing intentionally-added bisphenol A to submit information on use and likelihood of exposure as well as submit to the department an assessment of alternatives to bisphenol A use in those products; and
- Prohibits the sale of any reusable food or beverage container that contains bisphenol A beginning January 1, 2012.

On August 19, 2010, the Board of Environmental Protection held a public hearing on the Department's proposed Chapters 882. During the hearing and the public comment period that followed, the Department received comments from 456 interested parties as well as a petition with more than 850 signatures

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supporting the designation of bisphenol A as a priority chemical. The department received 11 comments from interested parties opposed to the designation of bisphenol A as a priority chemical.

- The department has made a number of revisions to the proposed rule based on comments received to help clarify elements of the rule, facilitate consistency with regulations in other jurisdictions and to ease compliance burdens on manufacturers. Revisions the department proposes are as follows:
- Amended the language in Section 1(B)(1) Used Products to more closely match the statute.
- Amended the definition of "child care article" to more closely match the federal definition.
- Amended the definition of "reusable food or beverage container" to provide greater clarity.
- Amended the definition of "toy" to more closely match the federal definition and to expressly exempt personal protective equipment used during sports and recreation activities.
- Amended the language in section 4(B)(3) to include information on whether a toy is intended to be mouthed, to aid in the department's assessment of exposure once the information has been gathered.
- Amended sections 4(B)(5) and (6) to allow for the reporting of polycarbonate plastic or epoxy resin as a surrogate for BPA in cases where manufacturers are unable to test for the presence of the chemical.
- Removed subsection 5(B) Labeling.
- Merged subsection 5(C) with former subsection 5(D) [now 5(B)] to simplify reporting requirements.

Among those commenters supporting the department's proposal, 152 urged prohibiting sales of infant formula and baby food in containers containing intentionally-added bisphenol A. The board held a workshop to discuss this issue on October 7, 2010 and recommended that the department add to the proposal a requirement that manufacturers of these products submit an alternatives assessment to the department. The department made the recommended change and posted the revised rule for public comment. The department received 64 comments in support of the additional language and six comments in opposition. Five of the commenters opposed to the addition of the alternatives assessment.

The supplemental basis statement includes all of the comments received in a summarized form and the Department's responses, including our reasons for either accepting or failing to accept the recommended changes to the rule.

Environmental Issues:

Toxic chemicals in consumer products present significant risk of adverse health consequences ranging from subtle cognitive development to chronic disease and premature death. The Governor's Task Force to Promote Safer Chemicals in Consumer Products concluded that substantial human and societal costs of disability, birth defects and disease, including health care, educational and employment-related costs, may be attributable to increasing exposures to toxic chemicals. Reducing or eliminating exposures to these chemicals by shifting to use of safer alternatives may significantly reduce these costs.

The Declaration of Policy at 38 MRSA §1692 states, "It is the policy of the State, consistent with its duty to protect the health, safety and welfare of its citizens, to reduce exposure of children and other vulnerable populations to chemicals of high concern by substituting safer alternatives when feasible."

Concern over potential health effects from bisphenol A has grown in recent years due to findings that show BPA migrating into food and beverages from storage containers, including baby bottles, and studies

that show the possibility for effects at low doses, including disruption of the hormone systems of the body. The greatest source of non-workplace human exposure to BPA appears to be through food in BPA-containing packaging. Babies who are fed liquid canned formula from polycarbonate bottles have the highest consumer exposure through diet to BPA.

Departmental Recommendation:

The Department recommends that the board adopt sections 1 through 4 the proposed rule, which are routine technical as provided in 06-096 CMR Chapter 880 section 2(D), and provisionally adopt section 5, which is major substantive in accordance with 38 MRSA §1696(1).

Estimated Time of Presentation:

30 minutes.