

*2009 Biennial Summary Report*

# **Status of Minnesota's Toxics in Packaging Program**

**September 1, 2009**

**Minnesota Pollution Control Agency  
520 Lafayette Road North  
Saint Paul, MN 55155-4194**

This report summarizes developments and activities related to Toxics in Packaging for Fiscal Years 2008 and 2009. 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 contact John Gilkeson at (651) 757-2391 or [john.gilkeson@state.mn.us](mailto:john.gilkeson@state.mn.us)

Total cost of preparing this report as required by Minn. Stat. § 3.197 was \$350.

This report is printed on recycled paper containing at least 30 percent post-consumer waste.

This report can be made available in other formats, including Braille, large type, computer disk or audiotape, upon request.

## Legislative Background:

In 1991, the Minnesota Legislature passed the “Prohibitions on Selected Toxics in Packaging” bill (Minn. Stat. § 115A.965, 1992 Session Laws Ch. 337, Sec. 50). The bill was based on model legislation drafted two years earlier 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) total by weight for the four metals.

Minnesota is one of 19 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 19 states, the packaging laws are seen (by some) as a national standard in the absence of federal legislation, at least for major domestic packaging manufacturers and distributors. 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 by eliminating the use of that unwanted material. 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, a number of states with enacted laws formed the Toxics in Packaging Clearinghouse (TPCH) under the auspices of CONEG to encourage consistent and streamlined implementation of each state’s Toxics in Packaging law. Administration of TPCH was transferred to the Council of State Governments (CSG), and then to the Northeast Recycling Coalition (NERC) in 2005. Currently there are ten state members of the Clearinghouse and nine states that have toxics in packaging laws but who are not members of the Clearinghouse. Since the 2007 Biennial Report, Washington joined TPCH and Maine left TPCH.

TPCH Member States	States with Legislation/Not TPCH Members
1. California	1. Florida
2. Connecticut	2. Georgia
3. Illinois	3. Maine
4. Iowa	4. Maryland
5. Minnesota	5. Missouri
6. New Hampshire	6. Pennsylvania
7. New Jersey	7. Vermont
8. New York	8. Virginia
9. Rhode Island	9. Wisconsin
10. Washington	

The legislation in some non-member states does not include enforcement authority and this is cited by those states as a barrier to implementation of the law and TPCCH membership. Responsibility for enforcement also varies among the states; in some states the authority clearly rests with the environmental agency, in other states it clearly rests with the agency responsible for trade/consumer protection, and in some states it is not clear who has primary authority.

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 TPCCH offers ex officio membership to industrial representatives. Carrying over from the 2007 Report, associations that participate in TPCCH include the Steel Recycling Institute, the American Plastics Council, and Paper Recycling Coalition. Since 2007, the Society of Glass and Ceramic Decorators has gone through a number of changes reflecting changes in the industry. There are currently two member associations representing various parts of this industry: the Association of Safe Glass and Ceramic Decorators and the Society for Glass and Ceramic Decorated Products. The Clearinghouse also has a network of technical experts that it can draw on.

### **Enforcement Actions**

As a member of TPCCH, Minnesota participated in discussions of and supported enforcement actions by other state members for packaging that was used and sold by national retailers. See discussion below and attached copy of the recently released TPCCH Report: “An Assessment of Heavy Metals in Packaging: 2009 Update.”

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

### **Exemptions Granted**

TPCCH did not receive requests for or issue any temporary or permanent exemptions during the reporting period. Minnesota did not receive any exemption requests during the reporting period.

### **Current Activities**

Minnesota joined the Toxics in Packaging Clearinghouse in 1993 and has remained active.

During the reporting period, the TPCCH:

- Continued to communicate with states that have legislation but are not TPCCH members, regarding toxics in packaging issues and possible membership in TPCCH. Minnesota communicated with Missouri and Oregon regarding toxics in packaging and possible TPCCH membership during the reporting period. Missouri’s statute does not clearly spell out state agency responsibility and enforcement authority. Oregon does not have toxics in packaging statutes.

- Coordinated and communicated on toxics in packaging issues with the U.S. Environmental Protection Agency and trade groups that are not represented as ex officio members of TPCH, such as the Institute of Packaging Professionals.
- Carried out a package compliance-testing project funded by a grant from the USEPA Source Reduction Assistance Program. This is described in further detail below.

### **EPA Grant to Assess Compliance With Toxics in Packaging Statutes**

IN FY 2008, TPCH received a grant from USEPA Region 1's Resource Conservation Challenge Grants Program to carry out additional assessment of packaging for metals content using a Portable X-ray Fluorescence Analyzer. The grant was received and all of the work was done during the period covered by this biennial report. The Final Grant Project Report, "An Assessment of Heavy Metals in Packaging: 2009 Update," was published June 30, 2009.

Following up from the 2007 TPCH packaging assessment project, staff from TPCH member states purchased and submitted a wide variety of packaging samples for testing. Significant levels of the four banned metals were found in a variety of packaging samples. While there were some problems with domestic packaging, most of the samples with high levels were imported. TPCH communicated with all of the distributors whose packaging had high levels of the banned metals. Most distributors have responded with acknowledgement of the TPCH findings and have addressed the issue in their supply chain. TPCH member states pursued enforcement action in select cases where packaging manufacturers or distributors were not responsive to initial requests to come into compliance. As with the 2007 report, the release of this report and its findings generated considerable trade press coverage.

A copy of the Final Grant Project Report is attached.