

2003 Biennial Summary Report

Status of Minnesota's Toxic Metals in Packaging Program

September 1, 2003



Minnesota Pollution Control Agency

**520 Lafayette Rd. N.
Saint Paul, MN 55155-4194**

This report summarizes developments and activities for Fiscal Years 2002 and 2003. The purpose of this report is to provide summary information. No policy changes are needed 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 Jim Chiles at (651) 296-7273 or contact him via electronic mail at james.chiles@pca.state.mn.us.

Total cost of preparing this report as required by Minn. Stat. § 3.197 was \$360.

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 “Toxic Metals 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 this 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. In 1998, the state members relocated the TPCH’s base of operations from CONEG to the Council of State Governments, which is headquartered in Lexington, Kentucky. This shift reflects the fact that legislation about the safe disposal of packaging is no longer limited to the Northeast.

The clearinghouse considers exemption requests jointly. It receives and answers requests for information and clarification from businesses, governmental agencies and stakeholder groups, thus minimizing the administrative costs borne by states that have enacted the law.

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

No enforcement actions were taken during this reporting period.

Exemptions Granted

No new exemptions were granted during this reporting period. In early FY 2002 the TPCCH provided technical assistance to a company asking whether compliance with Food and Drug Administration standards for food service packaging would serve as proof of compliance with the toxics in packaging laws. The answer provided was that FDA compliance in and of itself does not verify that environmental packaging laws have been satisfied.

Updates to Legislation

Minnesota has updated its statute to reflect the decision by Council of State Governments members to extend by 10 years the expiration dates for certain exemptions (changing the expiration date from January 2000 to January 2010). The statutory exemptions cover packaging material that has more than 100 parts per million of the prohibited metals because of use of recycled materials; if it is reusable; if the product in the package is regulated by health or safety laws; if transportation is regulated; or if disposal is being done under radioactive or hazardous waste requirements. The remaining exemption covers packaging that has a controlled system of distribution and reuse.

Current Activities

Minnesota joined the Toxics in Packaging Clearinghouse in 1993 and has remained active. The Minnesota Pollution Control Agency and the Office of Environmental Assistance provide staff representatives to the TPCCH monthly teleconferences. During the reporting period, the TPCCH meetings touched on the following subjects:

- ensuring a level playing field between domestic packagers and foreign packagers that ship into the United States, including occasional sampling events;
- extending the source-reduction approach to significant sources of mercury in the waste stream;
- grant applications for public outreach; and
- coordination with the U.S. Environmental Protection Agency and trade groups, such as the Institute of Packaging Professionals.

The TPCCH is preparing a five-year report, for publication in late 2003. Because the packaging industry appears to be coming into substantial compliance with the statute, Minnesota has requested that the TPCCH either begin to plan for eventual disbanding or to identify additional environmental gains that can be achieved in a cooperative, multi-state process similar to that which yielded the original model legislation.