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DEPARTMENT OF ENVIRONMENTAL PROTECTION



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**TESTIMONY OF PATRICIA AHO, COMMISSIONER
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**SPEAKING IN SUPPORT OF L.D. 902
RESOLVE, REGARDING LEGISLATIVE REVIEW OF PORTIONS OF CHAPTER
882: DESIGNATION OF BISPHENOL A AS A PRIORITY CHEMICAL AND
REGULATION OF BISPHENOL A IN CHILDREN'S PRODUCTS, A MAJOR
SUBSTANTIVE RULE OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**BEFORE THE JOINT STANDING COMMITTEE ON
ENVIRONMENT AND NATURAL RESOURCES**

DATE OF HEARING: APRIL 10, 2013

Senator Boyle, Representative Welsh, and Members of the Committee, I am Patricia Aho, Commissioner at the Department of Environmental Protection, speaking in support of LD 902.

I am here to present this provisionally adopted rule of the Board of Environmental Protection (Board) and request your adoption.

On June 21, 2012, a Citizen Petition to Initiate Rulemaking concerning Department rule, Chapter 882, *Designation of Bisphenol A as a Priority Chemical and Regulation of Bisphenol A in Children's Products*, was submitted to the Board. The petition sought to extend the existing prohibition on the sale of reusable food and beverage containers containing bisphenol A (BPA) to packaging used for infant formula, baby food, and toddler food.

On January 24, 2013, the Board voted to provisionally adopt a sales prohibition on infant formula and baby food packaging containing intentionally added bisphenol A in an amount greater than a de minimis level, because evidence showed that children under three years of age who consume infant formula and baby food from packaging containing bisphenol A are exposed to the priority chemical, and that there are safer alternatives available at comparable costs.

In order to regulate within its given authority, the Board amended the proposed rule to clarify that the ban applies to infant formula and baby food packaging. The Board also added to the petition's proposed rule the phrase, "in an amount greater than a de minimis level," because the Board's authority is limited to imposing a ban on a children's product containing BPA "in an amount greater than a de minimis level." Lastly, the Board changed the effective date for the ban on infant formula and baby food packaging from January 1, 2013, as proposed in the petition, to March 1, 2014 because the effective date of a prohibition may not be sooner than 12 months after notice of the proposed rule is published. The petition language was posted for public comment on August 15, 2012, and so the earliest effective date for the prohibition would be August 15, 2013. The rule also requires that manufacturers of products subject to the sales prohibitions must file, or cause their distributors to file, a compliance plan with DEP no later than 180 days prior to the effective date of the sales prohibition. Manufacturers and distributors will need time to develop compliance plans which will be due 180 days before the effective date of the prohibition

The Board voted not to adopt a rule prohibiting the sale of toddler food packaging containing intentionally added bisphenol A because it is unclear what products would be considered intentionally marketed to, or intended for the use of children under three years of age. It would be difficult to provide the regulated community with a sufficiently clear, fair notice of whether or not they are subject to the regulation because the term

LD 902: Resolve, regarding Legislative review of Portions of Chapter 882: Designation of Bisphenol A as a Priority Chemical and Regulation of Bisphenol A in Children's Products, a Major Substantive Rule of the Department of Environmental Protection
Testimony of Patricia W. Aho, DEP
Public Hearing: April 10, 2013

"toddler" especially in relation to food products is usually correlated to development stages rather than age.

This matter was thoroughly deliberated over several months by the Board, and includes an extensive record; therefore, the Department requests that this Committee approve the rule that was provisionally adopted by the Board on January 24, 2013.

Thank you for your consideration in allowing for this testimony. I'd be happy to answer any questions that you might have.