



OEHHA Holds Public Hearing on Setting Naturally Occurring Lead Level in Candy

OEHHA, PROPOSITION 65

By FIONA SMITH, July 17, 2017

The Office of Health Hazard Assessment (OEHHA) **held a public hearing¹⁾** on whether it should launch a rulemaking to set a naturally-occurring lead level in candy containing chili and tamarind, but officials did not indicate when they would make a final decision.

The hearing attracted a handful of public comments, including from the Center for Environmental Health (CEH), which **formally petitioned the agency in March²⁾** to start a rulemaking process. [see **OEHHA Will Consider Process to Establish Permissible Lead Levels in Certain Candies³⁾**, May 14, 2017]

Robert Falk, an attorney with Morrison & Foerster, representing the National Confectioners Association, took a contrary position and advocated for the agency to leave in place its existing program to limit lead in such candy.

The CEH petition cites the 2005 Unadulterated Candy law, under **Health and Safety Code 110552⁴⁾**, which called on OEHHA to set a naturally occurring lead level in candy with chili and tamarind. That level would be used by the California Department of Public Health (CDPH), which handles enforcement of lead in candy. Until OEHHA sets such a level, the law allows CDPH to use a maximum lead level of 100 parts per billion (ppb) in such candy—based on the state Attorney General's legal settlement in the case **People v. Alpro Alimento⁵⁾**.

Under the current 100 ppb standard, CDPH testing and enforcement actions have been dropping in recent years and there have been no recalls of candy with chili and tamarind since 2013, according to Mark Starr, deputy director for environmental health at CDPH, who spoke at the hearing.

The 100 ppb standard is too high and recent Prop. 65 settlements involving lead in food have determined naturally occurring lead levels more than ten times lower, according to the CEH petition.

"Manufacturers have shown much lower limits are feasible," said Tayler Ward a program assistant with CEH, at the public hearing. "To continue using 100 parts per billion as the level that's naturally occurring would be willful blindness."

The current effort to control lead in candy has been successful, said Falk at the hearing, pointing to the CDPH reported drop in recalls and the efforts by companies to improve manufacturing processes. The biggest challenge of complying with the current 100 ppb standard has been to educate smaller

Mexican candy manufacturers on the best practices to reduce lead in chili and tamarind candy, said Falk.

"It would be very daunting to upset the apple cart and have to re-educate those companies and they may very well come out of compliance," Falk said.

The Unadulterated Candy Law does not require OEHHA to set a naturally occurring lead level if it does not have the funding to dedicate to the program, Falk said.

"OEHHA doesn't have the resources to redo this program now" and it should move on to other priorities, Falk said.

The deadline to submit public comment on the petition is Thursday, July 20, 2017.

Resources for this article

1. held a public hearing

<https://oehha.ca.gov/risk-assessment/hearing-petition-requesting-adoption-regulations-setting-naturally-occurring-lead>

2. formally petitioned the agency in March

<https://prop65clearinghouse.com/documents/22287>

3. OEHHA Will Consider Process to Establish Permissible Lead Levels in Certain Candies

<https://prop65clearinghouse.com/articles/13056>

4. Health and Safety Code 110552

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC§ionNum=110552

5. People v. Alpro Alimento

<https://prop65clearinghouse.com/cases/483>