



Solutions for a  
Toxic-Free Tomorrow

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29 April 2022

The Honorable Aaron Frey  
Office of the Maine Attorney General  
6 State House Station  
Augusta, Maine 04333

Re: **Corporate Violations of Maine's Ban on Toxic Chemicals in Food Packaging (Updated)**

Dear Attorney General Frey,

We are writing to request that you immediately initiate enforcement action against two multinational corporations who are violating Maine's prohibition on the use of highly toxic chemicals known as phthalates in food packaging, which became effective on January 1, 2022:

- Goya Foods, Inc. (for several of its food and beverage products)
- Constellation Brands, Inc. (for its Corona brand of bottled beer)

Your independent action is needed to protect consumers, public health and the environment, and to overcome Maine Department of Environmental Protection's resistance to enforcing the law.

**Background.** In 2019, the Maine Legislature enacted, and the Governor signed into law, Chapter 277 (LD 1433), An Act to Protect the Environment and Public Health by Further Reducing Toxic Chemicals in Packaging. This law amended 32 M.R.S.A. §1733 by adding a new sub-§ 3-A:

*3-A. Prohibition of sale of food package containing phthalates. Beginning January 1, 2022, a manufacturer, supplier or distributor may not offer for sale or for promotional purposes in the State a food package that includes inks, dyes, pigments, adhesives, stabilizers, coatings, plasticizers or any other additives to which phthalates have been intentionally introduced in any amount greater than an incidental presence.*

Exposure to phthalates poses a serious threat to the reproductive health and brain development of babies and young children. In 2014, an expert panel to the U.S. Consumer Products Safety Commission concluded that 5% to 10% of pregnant

women and infants were exposed daily to levels of phthalates that could cause reproductive harm,<sup>1</sup> including genital malformations linked to lowered fertility, cancers, and chronic disease. In 2021, independent scientists concluded that exposure to phthalates also causes symptoms of attention deficit-hyperactivity disorder (ADHD), behavioral problems, and other learning disabilities.<sup>2</sup> Exposure to phthalates also lowers testosterone levels in adults, increasing the risk of heart disease that may contribute to 100,000 early deaths in Americans per year.<sup>3</sup>

In food packaging, the largest remaining use of phthalates is in cap gaskets made of polyvinyl chloride (PVC) plastic. Cap gaskets are the plastic layer that seals glass bottles and jars to metal caps and lids.<sup>4</sup> Phthalates are intentionally added in large amounts to PVC plastic to make it soft and flexible. Phthalates typically make up 30% to 50% of the plastic by weight and are continually shed, resulting in environmental contamination and potential consumer exposure.

## Evidence of Violations

We purchased food and beverage products packed in glass from several Maine retail locations after January 1, 2022. Two cooperating laboratories tested the cap gaskets from the packaging from these products for the presence of phthalates using an FTIR analyzer, a method validated to confirm the presence of intentionally-added phthalates above about 1% in PVC (vinyl) plastic.

We tested the cap gaskets from food packaging from 14 brand-owners subject to Maine's ban on phthalates. Two companies were found to be in violation. The packaging of **Goya Foods, Inc.** tested positive for phthalates in all ten of the glass-packaged food and beverage products sampled. The packaging of **Constellation Brands, Inc.** tested positive for phthalates in three of three beverage products sampled, for its Corona Extra brand of glass-bottled beer. A summary of our test results is attached to this letter. (For a third company, Ahold Delhaize, one out of nine products we sampled and tested positive for phthalates in its food packaging, a Hannaford-brand cream soda; company officials recently told us they're now in compliance.)

There is no excuse for these violations of Maine's prohibition on phthalates in food packaging. The following facts should extinguish any rationale proffered for allowing such non-compliance.

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<sup>1</sup> Report to the U.S. Consumer Product Safety Commission by the Chronic Hazard Advisory Panel (CHAP) on Phthalates and Phthalate Alternatives (2014) <https://www.cpsc.gov/s3fs-public/CHAP-REPORT-With-Appendices.pdf>.

<sup>2</sup> Engel SM, Patisaul HB, Brody C, Hauser R, Zota AR, Bennett DH, Swanson M & Whyatt RM (2021) Neurotoxicity of Ortho-Phthalates: Recommendations for Critical Policy Reforms to Protect Brain Development in Children, *American Journal of Public Health*, 111(4):687-695, <https://doi.org/10.2105/AJPH.2020.306014>.

<sup>3</sup> Trasande L, Liu B & Bao W (2022) Phthalates and attributable mortality: A population-based longitudinal cohort study and cost analysis, *Environmental Pollution*, 92:118021, <https://doi.org/10.1016/j.envpol.2021.118021>.

<sup>4</sup> Carlos KS, de Jager LS & Begley TH (2018) Investigation of the primary plasticisers present in polyvinyl chloride (PVC) products currently authorised as food contact materials, *Food Additives & Contaminants: Part A*, 35:6, 1214-1222, <https://doi.org/10.1080/19440049.2018.1447695>.

First, the law only applies to companies whose combined sales of food and beverages exceeds \$1 billion annually. See 32 M.R.S.A. §1733, sub-§3-C. Clearly, corporations of this size have the technical and legal resources to stay abreast of and timely comply with laws in multiple jurisdictions. The Maine law provided nearly 2.5 years to come into compliance from the time of its passage to the effective date of this prohibition. That was ample advance warning for a major corporation to achieve full compliance.

Second, phthalate-free cap gaskets for food packaging have been widely available commercially for many years for every type of closure. In fact, when we tested 141 brands of glass-bottled beverages sold in the U.S. in 2020, we found that two-thirds of the brands already used cap gaskets that were phthalate-free. See the report on the results of our investigation here: <https://toxicfreedrink.org/wp-content/uploads/2021/07/Capped-with-Toxics-Report2021.pdf>.

Third, many suppliers commercially sell phthalate-free cap gaskets for food packaging for every type of metal cap. We provided a list of suppliers of phthalate-free cap gaskets as a free technical resource to many of the companies that reported ongoing phthalate use in 2020.

Fourth, other testing of food packaging that we have conducted show that other major corporations that once used phthalates in their food packaging, such as PepsiCo, The Coca Cola Company, Keurig Dr Pepper, and Nestlé S.A., have all successfully transitioned to phthalate-free cap gaskets in the last two years. See page 12 of report linked above and our recent test results.

Fifth, supply chain concerns are a bogus excuse. For an additional example, consider that in the third quarter of 2021, well into the pandemic, Ahold Delhaize, a multinational corporation whose subsidiary Hannaford does business in the State of Maine, inventoried its private-label food and beverage products and successfully transitioned out of all phthalates used in its food packaging, including in its Hannaford-brand craft Cream Soda. (Personal Communication, George Parmenter, Brand Lead Health & Sustainability, Ahold Delhaize, 15 April 2022.)

As Attorney General responsible for enforcing Maine's laws, we respectfully request that you take the following actions to protect public health and the environment from unlawful use of toxic phthalates in food packaging of products sold in the State of Maine:

1. Immediately request, or ask the Maine Department of Environmental Protection (DEP) to request, that Constellation Brands (for its Corona brand) and Goya Foods (for all brands) each furnish a certificate of compliance to DEP forthwith as required by 32 M.R.S.A. §1735;
2. If a certificate of compliance is not timely furnished to DEP, initiate legal action against Constellation and Goya Foods to enforce compliance with Maine's prohibition on the intentional use of phthalates in food packaging;

3. Determine if these two companies are also in violation of the Maine Unfair Trade Practices Act (10 M.R.S.A. §205-A *et seq.*) since they have so far avoided all compliance costs while many other companies in Maine have unfairly incurred such costs;
4. If legal action is necessary, seek an injunction to halt the further sale of non-compliant products and impose the maximum penalties possible for each product sold in violation of Maine law since January 1, 2022.

We have asked you as the top law enforcement officer for the State of Maine to take these actions because the Maine DEP has demonstrated a callous disregard for implementation and enforcement of the 2019 law to restrict toxic chemicals in food packaging.

When we met on October 1, 2021, the DEP Commissioner informed us that the phthalates ban was self-implementing and on track. Then, however, in a move communicated to industry but not to the public, DEP posted a memo dated December 10, 2021 which indicated that the Department would not be enforcing the prohibition on the use of phthalates in food packaging effective January 1, 2022. DEP cited a complaint from one industry supplier and the need for a negotiated rule-making over an unnamed technical issue that has still not been clearly stated. We requested the opportunity to participate in the rulemaking, but have not been notified of a meeting and believe it still has not been convened yet some four months later.

(As a further sign of bad faith regarding implementation of this law, DEP has also failed to exercise its discretion to ban certain uses of PFAS in food packaging pursuant to 32 M.R.S.A §1733 sub-§3-B despite the necessary findings having already been made by the State of Washington and growing evidence of high-level contamination of Maine farmland that likely resulted from the in-state production of food packaging containing PFAS.)

We appreciate your leadership in ensuring strict and fair enforcement of Maine law to protect consumers, public health, and the environment as fully intended by the Maine Legislature.

Respectfully submitted,



Michael Belliveau  
Executive Director

cc: Melanie Loyzim, Commissioner, Maine Department of Environmental Protection  
The Honorable Stacy Brenner, Senate Chair, Environment and Natural Resources Committee  
The Honorable Ralph Tucker, House Chair, Environment and Natural Resources Committee

**Results of Testing for Phthalates in Food Packaging Sold in  
Maine after January 1, 2022**

Brand Owner	Total Number of Products Sampled & Tested	Number of Products Testing Positive for Phthalates	Product Type and Notes
Goya Foods, Inc.	10	10	Food & beverage. <i>See positive test results below</i>
Constellation Brands, Inc.	3	3	Alcohol: beer. <i>See positive test results below</i>
Ahold Delhaize N.V.	9	1	Food & beverage. <i>See positive test results below</i>
Albertsons Companies	8	0	Food & beverage. Shaw's private-label
Amazon.com	3	0	Italian soda. Whole Foods Market private-label
Anheuser-Busch InBev SA/NV	8	0	Alcohol: beer
Boston Beer Company	11	0	Alcohol: beer
Campbell Soup Company	4	0	Food: sauces
ConAgra Brands, Inc.	2	0	Food: condiments
Hormel Foods/MegaMex Foods LLC	6	0	Food: salsa
Kirin Company	2	0	Alcohol: beer
Molson Coors Beverage Company	7	0	Alcohol: beer
Nestlé S.A.	2	0	Beverage: ready-to-drink coffee
The J.M. Smucker Company	5	0	Food: peanut butter & caramel topping
The Kraft Heinz Company	2	0	Food: Dijon mustard and pasta sauce
<b>TOTALS:</b>	<b>82</b>	<b>14</b>	

**Fourteen Samples of Food Packaging Sold in Maine Tested Positive for Phthalates:**

Brand Owner	Product Variety	Date of Purchase	Location of Purchase	Company Response
Goya Foods, Inc.  <i>Brands: Goya, Goya Malta</i>	Refresco Coconut Soda	01/24/22	Portland, ME	Did not respond to queries about its compliance plans
	Refresco Strawberry Soda	01/24/22	Portland, ME	
	Jamaican Style Ginger Beer	02/05/22	Portland, ME	
	Jamaican Style Ginger Beer	02/03/22	Old Town, ME	
	Jamaican Style Ginger Beer	01/29/22	Bangor, ME	
	Sofrito	01/16/22	South Portland, ME	
	Sofrito	01/16/22	South Portland, ME	
	Malt Beverage	01/24/22	Portland, ME	
	Malt Beverage	01/29/22	Bangor, ME	
	Cola Champagne	01/29/22	Bangor, ME	
Constellation Brands, Inc.	Corona Extra	01/29/22	Bangor, ME	Awaiting response
	Corona Extra	01/29/22	Bangor, ME	
	Corona Extra	01/29/22	Bangor, ME	
Ahold Delhaize	Hannaford Cream Soda	02/06/22	Portland, ME	Company officials stated that they are now in compliance