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VIA EMAIL: SaferProductsWA@ecy.wa.gov

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Department of Ecology
State of Washington
PO Box 47600
Olympia, WA
98504-7600

Re: Safer Products for Washington Preliminary Draft Rule Language

Dear Sir or Madam:

The Can Manufacturers Institute (CMI) is the national trade association of the metal can manufacturing industry and its suppliers in the United States (U.S.). The can industry accounts for the annual domestic production of approximately 130.7 billion food, beverage, aerosol, and general line cans; employs more than 28,000 people with plants in 33 states, Puerto Rico, and American Samoa; and generates about \$15.7 billion in direct economic activity.

CMI appreciates the opportunity to provide comments to the Washington Department of Ecology (“Ecology”) on Ecology’s Preliminary Draft Rule Language for the Safer Products for Washington program’s first implementation cycle—in particular the section on “Bisphenols,” which would impose a restriction on drink can linings and a reporting requirement for food can linings. With these comments, CMI hopes to contribute to a dialogue that will enhance shared understanding of the safety of can linings in the U.S., current can lining technology, and the most appropriate regulatory framework for ensuring the safety of food packaging materials.

The comments below offer the following important points for Ecology to consider before moving forward with the draft rule:

- Food packaging is already regulated thoroughly under federal laws administered by the U.S. Food and Drug Administration (FDA).
- The draft rule provisions regarding the rebuttal of a detected bisphenol are technically infeasible. CMI proposes alternative language that would be clear and practical.

- Intended applicability of the draft rule regarding reporting parties is unclear and should be focused on retailers.

The remainder of CMI's comments discuss the above points.

1. [Food packaging is already regulated thoroughly under federal laws administered by the FDA.](#)

The FDA regulatory framework assures the safety of food contact materials including food and beverage can linings. Every lining component is evaluated for safety by the FDA via a specific listing in the Federal Register or by a comprehensive pre-market review. FDA requires extensive data about new food contact substances as part of the Food Contact Notification process. The Regulations at 21 CFR 175.300 address can linings as food contact substances.

Globally, food packaging regulators employ comprehensive risk assessments to determine safety for their populations. The use of a hazard-based assessment process alone, such as Cradle to Cradle Certified™ (C2CC), is insufficient to determine the safety of food packaging. CMI welcomes the dissemination and use of certification methodologies as appropriate, but they are voluntary and often commercialized processes, not risk determinations or de facto regulatory processes.

2. [The draft rule provisions regarding the rebuttal of a detected bisphenol are technically infeasible.](#)

With the regulatory language as currently proposed at 114(1)(c)(iii)(B), it would not be feasible to demonstrate the actual source of any bisphenol found within a drink can due to the widespread environmental presence of bisphenols in air, water, and soil prior to packaging. However, can manufacturers are able to readily identify the use of a bisphenol-based epoxy can liner from date codes and manufacturing records or through analytical testing.

CMI proposes the following language.

(B) A statement that the consumer product described in (a) of this subsection does not contain a bisphenol-based epoxy can liner, and the evidence supporting the statement. Include information, data, and sources relevant to demonstrate a bisphenol-based epoxy can liner was not used.

The language above more clearly expresses the purpose of the regulation, which is that bisphenol-based liners should not be used in drink cans. There is traceability through the supply chain to confirm that such liners are not used, and this information is shared widely and routinely. CMI would support the language above. As proposed, the provision essentially would establish a no-detection standard that would be technically infeasible to apply.

3. Intended applicability of the draft rule regarding reporting parties is unclear and should be focused on retailers.

Within the respective supply chains, a can liner manufacturer or can manufacturer will not necessarily know the end consumer location of a specific food or drink can. Also, fillers will not know exactly which products are being sold in Washington. The only possible reporting party with knowledge of what is actually being sold in Washington is the retailer.

CMI suggests that the appropriate point for application of all obligations is at the retailer, as retailers are responsible for selling the product to the consumer. Retailers can request any necessary assurances and information from suppliers, which they do already for other purposes.

We appreciate full transparency and continued opportunity for stakeholder input, including this opportunity to provide input on the draft rule language. Thank you for your consideration of our input. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "David A. ...". The signature is written in a cursive style with a large, stylized initial "D".