American Progressive Bag Alliance
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Via Electronic Mail: CDCINFO@cdc.gov

Eric J. Sampson, Ph.D.
Director
National Biomonitoring Program
Division of Laboratory Sciences
Mail Stop F-20
4770 Buford Highway, NE
Atlanta, GA 30341-3724

Re: Request to Correct Phthalates Factsheet

Dear Dr. Sampson:

The American Progressive Bag Alliance (APBA) requests a revision to the Phthalates Chemical Factsheet (Nov. 2009) published by the National Biomonitoring Program, Division of Laboratory Sciences of the Centers for Disease Control and Prevention (CDC).[1] This CDC document, which was recently brought to our attention, states that "phthalates are used widely in . . . plastic bags . . . ." The language gives the impression that phthalates are used to make common plastic retail bags and that exposure to such bags may adversely affect a person's health. This is not accurate. Common plastic retail bags made from polyethylene (PE) range from typical grocery and retail bags to plastic food storage, dry cleaner and trash bags, and from newspaper delivery bags to bags used by consumer for fresh produce purchase. In other words, the "plastic bags" with which consumers have contact are made from polyethylene, do not contain phthalates, and are not polyvinyl chloride (PVC). We therefore request that the CDC delete the reference to plastic bags as a source of phthalate exposure since the public rarely comes into contact with PVC-made plastic bags, or, at a minimum, revise the factsheet to explain that the common plastic bags encountered by consumers are made from PE and do not contain phthalates.

APBA is a non-profit group representing the interests of bag manufacturers and recyclers. APBA promotes American-made plastic products as the best environmental choice at checkout for both retailers and consumers and works to correct misperceptions about plastics.

I. Phthalates and Plastic Bags

The Phthalates Chemical Factsheet available on the CDC's Biomonitoring website contains the following statement about plastic bags that implies that plastic retail bags contain phthalates:

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[1] Available at http://www.cdc.gov/biomonitoring/Phthalates_FactSheet.html, last accessed May 14, 2013.

> *Phthalates are used widely in polyvinyl chloride plastics, which are used to make products such as plastic bags, garden hoses, inflatable toys, blood-storage containers, medical tubing, and children's toys.*[2]

While it is likely accurate to state that PVC plastic bags, which are typically specialty multi-layer plastic bags used for holding blood and plasma, contain phthalates, it is not accurate to state that other types of plastic bags contain phthalates. CDC's unqualified statement suggests that the majority of plastic bags in the marketplace consist of PVC bags and contain phthalates. In reality, however, the vast majority of plastic bags in the U.S. market are made from polyethylene, which does not contain phthalates.

As discussed by the U.S. International Trade Commission, polyethylene retail carrier bags (PRCBs) are those bags used for common merchandise such as groceries and clothing, and are also known as "checkout bags".[3] "PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants to their customers to package and carry their purchased products."[4] "PRCBs, whether domestically produced or imported, consist principally of FDA [U.S. Food and Drug Administration] approved high-density polyethylene ("HDPE") resin films, low-density ("LDPE") resin films, or combinations thereof varying in size, shape, thickness, and strength characteristics depending on their intended use . . ."[5] Polyethylene bags do not contain phthalates. [According to a U.S. International Trade Commission (USITC) report, U.S. consumption of polyethylene retail carrier bags was 102.1 billion bags in 2008.[6]]

Plastic PVC bags, on the other hand, can contain phthalates, but they comprise a small, specialty segment of the plastic bag market. In fact, the distinction between PVC bags and PE bags is even apparent in the information sources that the CDC references on its website posting of the Phthalates Chemical Factsheet. The cited guidance documents state that the phthalates of issue are present in plastic products such as "blood storage bags" or "medical tubing and fluid bags",[7] not checkout bags.

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[2] *Id.*

[3] Polyethylene Retail Carrier Bags from Indonesia, Taiwan, and Vietnam Investigation Nos. 701-TA-462 and 731-TA-1156-1158 (Preliminary), U.S. International Trade Commission, page I-4 (May 2009) (USITC Report), available at http://www.usitc.gov/publications/701_731/pub4080.pdf.

[4] *Id.*

[5] *Id.* at page I-6

[6] USITC Report at page 18.

[7] *See Public Health Statement for Di(2-ethylhexyl)phthalate (DEHP),* available at http://www.atsdr.cdc.gov/toxprofiles/phs9.html; *Public Health Statement for Di-n-octylphthalate (DNOP),* available at http://www.atsdr.cdc.gov/toxprofiles/phs95.html; *ToxFAQs for Di(2-ethylhexyl)phthalate (DEHP),* available at

II. IQA Background and Applicability to the Chemical Factsheet

The CDC has a stated commitment to providing high quality information to the public, and in cases where the information is non-compliant, the Information Quality Act (IQA), P.L. 106-554 (also known as the Data Quality Act), the Office of Management and Budget's (OMB) government-wide guidelines, and CDC's Information Quality Guidelines provide a means for an affected party to request a correction.[8] Thus, in addition to this letter, APBA is submitting the attached "Information Quality Control Request for Correction/Complaint" pursuant to CDC's Information Quality Guidelines.

A. Overview of the IQA

Congress enacted the IQA to "ensur[e] and maximiz[e] the quality, objectivity, utility and integrity of information . . . disseminated by Federal agencies" like the CDC. To do so, it required the OMB to issue government-wide implementing guidance. It also instructed each agency to issue its own guidelines, which have two functions:

(i) to apply the OMB Guidelines to the agency's particular circumstances, and

(ii) to "establish administrative mechanisms allowing affected persons to seek *and obtain* correction of information . . . disseminated by the agency that does not comply with the [OMB] guidelines. . . ."[9]

OMB issued its final guidelines in February 2002. HHS issued department-wide guidelines,[10] and CDC issued its own agency-specific guidelines.[11]

OMB's Guidelines require that all disseminations meet "a basic standard of quality . . . appropriate to the nature and timeliness of the information . . . ."[12] "Quality" is defined in terms

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http://www.atsdr.cdc.gov/tfacts9.html; *ToxFAQs for Di-n-octylphthalate (DNOP)*, available at http://www.atsdr.cdc.gov/tfacts95.html; *Food and Drug Administration Phthalates and Cosmetic Products*, available at http://www.fda.gov/Cosmetics/ProductandIngredientSafety/SelectedCosmeticIngredients/ucm128250.htm ; and *National Library of Medicine, National Institutes of Health ToxTown—Phthalates*, available at http://toxtown.nlm.nih.gov/text_version/chemicals.php?id=24.

[8] *See OMB, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*, Final Guidelines (corrected), 67 Fed. Reg. 8,452 (Feb. 22, 2002); and U.S. Department of Health & Human Services, *Guidelines for Ensuring the Quality of Information Disseminated to the Public*, Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry, Section II.A. Covered Information, available at http://aspe.hhs.gov/infoquality/Guidelines/cdcinfo2.shtml#iia.

[9] Pub. L. No. 106-554, § 515(b)(2)(B) (emphasis added).

[10] *See* note 8, supra.

[11] *See* note 8, supra.

[12] 67 Fed. Reg. at 8,458.

of "objectivity," "utility" and "integrity."[13] "Objectivity" is centrally relevant in cases of scientific health information. As discussed below, objectivity has significant consequences both for the substance of such information and the way it is presented. "Utility" also is important in this case, as it refers to the usefulness of the information to its intended users, including the public.[14]

B. Objectivity

From a substantive perspective, "objectivity" means that information must be *accurate, reliable* and *unbiased*.[15] Influential information regarding risks to health, safety or the environment must be based on "the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices. . . ."[16] From the perspective of presentation, "objectivity" means that information must be presented in an accurate, clear, complete and unbiased manner, which includes presentation of information in the proper context.[17] Influential information regarding risks to health, safety or the environment must be comprehensive, informative and understandable, and must specify, among other things, each significant uncertainty.

C. Utility

The OMB IQA guidelines define "utility" in terms of:

> the usefulness of the information to its intended users, including the public. In assessing the usefulness of information that the agency disseminates to the public, the agency needs to consider the uses of the information not only from the perspective of the agency but also from the perspective of the public.[18]

This often underestimated requirement is important because it goes to the heart of why an agency is disseminating information in the first place. To the extent that an agency document misstates or overstates the hazards of a substance the information is not useful to other federal or state agencies whose regulatory or policy resources will now be misdirected. It also is not useful to the public, who will be misled as to the potential impact or prevalence of the substance in their environment, and this may lead to unnecessary actions to protect themselves from substances that are not, in fact, hazardous as characterized.

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[13] *Id.* at 8459; *cf.* 44 U.S.C. § 3504(e)(1)(B).

[14] *Id.*

[15] 67 Fed. Reg. at 8,549 (emphasis added).

[16] *Id.*; *see also* 42 U.S.C. § 300g-1(b)(3)(A).

[17] *Id.* at 8,459 (emphasis added).

[18] *Id.*

III. Relief Requested

As demonstrated above, the Phthalates Chemical Factsheet published by the CDC contains a statement or an omission that is likely to mislead the public as to whether common plastic bags contain harmful chemicals and is in direct contravention of CDC's IQA commitment to provide quality information to the public. The factsheet does not meet the "objectivity" standard as the information as it related to plastic bags is not accurate. The documents referenced do no support the information. Furthermore, the statement is material as it may impact the public's decision to use plastic bags. The factsheet must be presented in the proper context in order to correct these IQA deficiencies. APBA, therefore, requests that the CDC either revise the Phthalates Chemical Factsheet to explain that plastic bags made from materials such as PE do not contain phthalates, or the CDC should delete the reference to plastic bags as a source of phthalates. As noted above, the universe of PVC plastic bags containing phthalates is small, and thus, any reference to bags in the chemical factsheet may be placing too high of an importance on that exposure route.

This request is further supported by the need to mitigate unjustified economic impacts. APBA asks the CDC to carefully assess the role plastic bags, and PE bags in particular, play in the retail and consumer marketplace. De-selection of plastic bags for other bags, such as paper bags, would harm not only those who produce and use plastic bags,[19] but also the environment, consumers, and the public health. According to a life cycle analysis by Franklin Associates, Ltd, "plastic bags create fewer airborne emissions and require less energy during the life cycle of both types of bags per [plastic and paper] 10,000 equivalent uses — plastic creates 9.1 cubic pounds of solid waste vs. 45.8 cubic pounds for paper; plastic creates 17.9 pounds of atmospheric emissions vs. 64.2 pounds for paper; plastic creates 1.8 pounds of waterborne waste vs. 31.2 pounds for paper."[20] Furthermore, plastic bags are typically recycled or reused.

Whatever duty the CDC has to inform the public of hazards carries a companion duty not to mislead or misinform the public. From APBA's perspective, the public is misinformed or misled when CDC proclaims, in an unqualified fashion, that all plastic bags contain phthalates and exposure to plastic bags can affect human health. We, therefore, respectfully request an immediate correction to the Phthalates Chemical Factsheet. The reference to plastic bags as a source of phthalate exposure should be deleted, or, at a minimum, the factsheet should be revised to explain that the common plastic bags encountered by consumers are made from PE and do not contain phthalates.

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[19] There are 30,800 American workers in 349 plants across the country who are in the plastic bag manufacturing industry.

[20] *Resource and Environmental Profile Analysis of Polyethylene and Unbleached Paper Grocery Sacks*, Franklin Associates, LTD, cited in *Paper Bags vs. Plastic Bags: Which is Really Better* (August 21, 2010), available at http://www.care2.com/greenliving/paper-bags-vs-plastic-bags-which-is-really-better.html?page=2. *See also Life Cycle Assessment for Three Types of Grocery Bags—Recyclable Plastic; Compostable, Biodegradable Plastic; and Recycled, Recyclable Paper*" Boustead Consulting & Associates (2007).

Respectfully submitted,

/S/

Mark T. Daniels
Chairman, American Progressive Bag Alliance

Enclosure