

Food & Beverage

LITIGATION UPDATE

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LITIGATION UPDATE

Legislation, Regulations and Standards

Federal Initiatives

[1] Congressional Democrats Accuse DOD of Subverting Information About Perchlorate Contamination; Federal Lawmakers Introduce Legislation

Two House Democrats have reportedly accused the Department of Defense (DOD) with “covering up and hiding” information about the occurrence of perchlorate contamination across the United States. According to a news source, the accusation made by John Dingell (D-Mich.) and Hilda Solis (D-Calif.) in a May 16, 2003, letter to Secretary of Defense Donald Rumsfeld is based on the contention that DOD has failed to respond to a two-year-old request from the Environmental Protection Agency (EPA) for the results of a 2001 DOD analysis of potential perchlorate contamination emanating from military sites dating to 1950. The legislators have evidently asked for the results of the 2001 survey by June 6.

Concerns about the rocket-fuel constituent’s effect on the production of thyroid hormones and its potential to cause Graves’ disease, cancer in adults, and damage to fetuses and newborns apparently put perchlorate high on EPA’s research priority list in the late 1990s. A recent report issued by the nonprofit research organization, Environmental Working Group, blamed perchlorate pollution for the contamination of more than 500 drinking water sources in 20 states and lettuce crops in California.

DOD has long challenged an EPA draft risk assessment that recommends a 1 part per billion drinking-water level for the chemical, and EPA has been unable to proceed with any regulatory action until the National Academy of Sciences completes a review of EPA’s data. The Senate Armed Services Committee recently approved the fiscal year 2004 authorization bill (S. 1050) whose provisions include requiring DOD to fund an independent epidemiological study of perchlorate exposure in drinking water and a review of the chemical’s human-health effects.

Meanwhile, Senator Barbara Boxer (D-Calif.) and Representative Lois Capps (D-Calif.) have introduced legislation ([S. 820](#) and [H.R. 2123](#)) that would require EPA to promulgate a national drinking-water standard for perchlorate by July 2004 and require companies discharging the chemical to disclose that information to EPA. *See Inside EPA*, May 15, 2003; *The Wall Street Journal*, May 19, 2003.

State Initiatives

[2] California Acrylamide Workshop Presentations Now Available Online

The California Environmental Protection Agency’s Office of Environmental Health Hazard Assessment has made available on its Web site [presentations](#) from a May 12, 2003, public workshop focusing on Safe Drinking Water and Enforcement Act (Prop. 65) regulatory options for acrylamide. The byproduct of high-temperature cooking processes is currently listed as a carcinogen “known to the state to cause cancer” under Prop. 65. Workshop discussions



included ways of modulating acrylamide through cooking practices and methods of assessing acrylamide's cancer potency.

United Kingdom

[3] U.K. Agency Issues Sodium Recommendations for Children, Urges Manufacturers to Reduce Salt in Processed Foods

Based on new findings from the Scientific Advisory Committee on Nutrition, the U.K.'s Food Standards Agency has issued recommendations for daily maximum levels of salt consumption for children. The agency advises parents to reduce the amount of salt used in cooking and salt added at the table, cautioning that about 75 percent of most people's salt intake comes from processed food. "While consumers can add less salt at the table and in cooking, they cannot change the amounts of salt in processed foods ...," Food Standards Agency Chair John Krebs was quoted as saying. "This is the responsibility of the food industry. We are urging all food manufacturers and retailers to set targets for reductions in levels of salt in all processed foods," he said.

The recommendations are as follows: for children ages 0 to 6 months, less than 1 gram of salt per day; ages 7 to 12 months, less than 1 gram/day; ages 1 to 3 years, less than 2 grams/day; ages 4 to 6 years, less than 3 grams/day; ages 7 to 10 years, less than 5 grams/day; and ages 11 to 14 years, less than 6 grams/day. See *Foods Standards Agency News Release*, May 15, 2003.

Litigation

Trans Fats

[4] Oreo Lawsuit Withdrawn; Lawyer Says Publicity Goal Achieved

According to news sources, a lawsuit against Kraft Foods North America Inc. seeking to halt the marketing and sale of Nabisco Oreo cookies to California children because the cookies contain *trans* fat, has been withdrawn. Lawyer Stephen Joseph, who brought the May 1, 2003, suit on behalf of a nonprofit he created, reportedly indicated that he withdrew the lawsuit because he learned that Kraft was working to reduce the *trans* fat levels in Oreos and because the vast media attention had accomplished his goal of raising awareness about *trans* fats in processed foods. "You've got to recognize when you've scored a home run," Joseph said. "We have raised the awareness of *trans* fat to the top of the mountain." A Kraft spokesperson, expressing satisfaction about the suit's withdrawal, suggested that the legal basis for the suit was weak; he noted that while California law allows suits for products not known by ordinary consumers to be unsafe, Kraft researchers have found some 3,000 articles on *trans* fats published since the early 1990s. See *CNN.com*, *sfgate.com* and *Associated Press*, May 15, 2003.

Fast Food

[5] Court Finalizes Settlement List in Suit by Vegetarians Against McDonald's

A judge in Cook County, Illinois, has reportedly substituted a Jewish organization for groups he removed from the list of award recipients recommended by counsel who agreed to settle a case involving claims that McDonald's Corp. failed to



disclose that its fries were cooked in beef-flavored oil. Further details about the litigation appear in issues 5 and 13 of this Update, November 6, 2002, and January 15, 2003. The court's action resolves a dispute over which organizations would share the \$10 million award; among the organizations are vegetarian, Hindu and Sikh groups. The settlement fund was also to be used for children's nutrition, hunger relief efforts and promoting an understanding of Kosher practices. *See USA Today*, May 20, 2003.

Soft Drinks

[6] Former Employee Sues Coca-Cola for Selling Contaminated Products and Engaging in Deceptive Marketing and Accounting

Alleging that Coca-Cola Frozen Ice Drinks contained metal shavings and that management ignored his concerns, a former employee has reportedly filed a lawsuit against the company in a Fulton County, Georgia, state court. The lawsuit further alleges that 11-year company veteran Matthew Whitley also brought to management's attention a \$65 million marketing fraud purportedly intended to get Burger King to become a Coke customer and that employees were inflating profits by falsely reporting Coke syrup deliveries as sales. Whitley reportedly complains that the response to his concerns was "a false and fraudulent performance review" and his termination. Coca-Cola has apparently issued a statement indicating that it could not respond to the lawsuit until an independent investigation is completed and that Whitley demanded \$44 million to keep quiet about his allegations. *See money.CNN.com*, May 19, 2003.

Other Developments

[7] PCRM Looks at "Addictive Qualities" in Cheese; Examines Caloric Content of Fast-Food Salads

According to the president for the Physicians Committee for Responsible Medicine (PCRM), a nonprofit vegan group founded in 1985, recent, unpublicized studies have suggested that "cheese, chocolate, sugar, and meat all spark the release of opiate-like substances that trigger the brain's pleasure center and seduce us into eating them again and again." Neal Bernard also discusses research showing (i) "participants moving to a vegetarian diet have a harder time giving up cheese than almost any other food"; (ii) "the principal protein in cheese, casein, breaks apart during digestion to produce abundant amounts of morphine-like compounds called casomorphins"; and (iii) naxolone, an opiate-blocker used to treat morphine and heroin overdoses, reduces the desire for chocolate, sugar, cheese, and meat suggesting that their attraction does indeed come from druglike effects caused within the brain."

Bernard asserts that "just as Big Tobacco intentionally manipulated the addictive qualities of its products, Big Food does the same. Chocolate manufacturers spend long hours nailing down the exact proportion of fat and sugar that makes their products maximally addicting. Farmers breed and feed cattle in such a way to 'marble' fat through the muscle tissue, putting the most seductive possible sizzle in the steak. And cheese producers talk about their USDA-sponsored marketing program 'triggering the cheese craving.'" He concludes by stating "it looks like Ronald McDonald may have more in common with Joe Camel than anyone dares admit. It's time to share the blame."



PCRM also recently issued [a report](#) contending that most fast-food salads are “no more healthful than a burger without the bun, dipped in salad dressing.” Nutritionists apparently rated salads at Au Bon Pain, Burger King, McDonald’s, Panera, Subway, Taco Bell, and Wendy’s. Only two of 34 salads received high marks for high fiber and low fat, saturated fat, cholesterol, and sodium. And a number of salads actually had more fat and calories than the largest hamburger sandwiches offered. McDonald’s Crispy Bacon Chicken Ranch Salad with Newman’s Own Ranch Dressing apparently has 51 grams of fat and 661 calories, more fat and calories than and the same cholesterol as a Big Mac. See *The Wall Street Journal*, May 8, 2003; *TheDay.com*, May 19, 2003.

[8] Corporate Influence on Science to Be Topic of CSPI Conference

Corporations’ alleged “use of science to manipulate public opinion and influence public policy” will be the subject of a July 11, 2003, Center for Science in the Public Interest (CSPI) [conference](#) in Washington, D.C. “The public is not aware that tactics used by the tobacco industry to manipulate science are also widely used by other industries,” the director of CSPI’s Integrity in Science Project was quoted as saying. “This conference seeks to shed light on how pharmaceutical, food, chemical, and other companies fund scientific research in the service of those industries’ short-term gain,” she said.

Food-related sessions at the event will include author and nutritionist Marion Nestle addressing purported food-industry influence on federal-dietary guidelines and journalist Neil Munro on biotechnology and the media. See *CSPI News Release*, May 20, 2003.

Scientific/Technical Items

Alcoholic Beverages

[9] Researchers Contend That Beer and Liquor Company Advertising Targets Teens

Magazines commonly read by teenagers, such as *Rolling Stone*, *People* and *Sports Illustrated*, tend to have more beer and liquor advertisements, according to a new study published in *The Journal of the American Medical Association*. C.F. Garfield, et al., “Alcohol Advertising in Magazines and Adolescent Readership,” *JAMA* 289(18): 2424-2429, 2003. Over a four-year period, researchers examined the number of beer, wine and liquor advertisements in 35 different magazines with varying youth readership, finding 1,201 ads for beer, 443 for wine and 7,504 for liquor. They assert that wine marketing did not appear to be linked to teen readership, but contend that the number of beer and liquor ads rose by 60 percent with every additional million adolescent readers (adolescent readership ranged from 1.0 to 7.1 million). The researchers advocate government regulation or independent audits to monitor alcohol advertising aimed at underage drinkers. Alcohol-industry advertising is currently self-regulated through trade-association codes designed to avoid marketing to teens.



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Food & Beverage Litigation Update is distributed by Dale Walker and Mary Boyd in the Kansas City office of SHB. If you have questions about the Update or would like to receive back-up materials, please contact us by e-mail at dwalker@shb.com or mboyd@shb.com. You can also reach us at 816-474-6550. We welcome any leads on new developments in this emerging area of litigation.

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