

Warning Sounded on Heavy Metals in Chocolates

Bridget Huber | Feb. 11, 2015



Just in time for Valentine's Day, news that may break a chocolate-lover's heart: A consumer group is taking legal action against an array of major chocolate manufacturers and retailers, saying they've failed to warn consumers about the potentially harmful levels of lead and cadmium in their products.

The Oakland, Calif.-based consumer group **As You Sow** is expanding its fight today. Under California's Proposition 65 — which requires warnings on products containing chemicals that cause cancer, birth defects or other reproductive harm — **As You Sow** is filing 60-day notices against chocolate makers Mars, See's Candies and The Hershey Co.

The action, which could lead to private lawsuits, brings to 16 the number of manufacturers or retailers put on notice by the consumer group. **As You Sow** says it has identified 26 chocolate products that exceed California's threshold "safe-harbor" levels and illegally fail to carry warning labels.

A single serving of the chocolate with the highest lead levels contained 5.9 times the maximum allowable dose level set by California's Office of Environmental Health Hazard Assessment, according to the watchdog group. Those with the highest concentrations of cadmium contained 8.2 times the maximum allowable dose level set by the state, per serving. None carry a warning label.

The companies and products were targeted after the group commissioned testing on 42 chocolate products for lead and cadmium, which are identified as reproductive or developmental toxins by California officials. (The brands and products tested by the group are listed here.)

As You Sow's legal effort was launched quietly last July. It so far has generated four rounds of legal filings against manufacturers and retailers, all brought under Prop. 65, which also is known as California's Safe Drinking Water and Toxic Enforcement Act.

Cited earlier in the litigation were chocolates under the brand names Godiva, Dove, Ghirardelli and Lindt. Several of the chocolates allegedly in violation of Proposition 65 are organic products.

As You Sow also has claimed that retailers Whole Foods, Trader Joe's and Kroger have sold store-brand chocolates exceeding California standards for the two heavy metals.

Pressure to change products

Prop. 65 actions can be brought by private individuals or groups, and can result in agreements by companies to post warnings, pay penalties or reformulate products. If no agreement is reached, the complaining groups can take manufacturers to court. The California Attorney General's Office also can sue.

The consumer group hopes the legal action will arm the public with information and push manufacturers to change their practices, said Eleanne van Vliet, **As You Sow**'s director of toxic chemical research. "Who wants to be eating anything with a cancer causing or reproductively harmful substance?" she said. "We would rather have the manufacturers reformulate and remove the offending chemical."

In a statement, the National Confectioners Association, a trade group representing many chocolate makers, said, "The U.S. chocolate industry has always made every effort to provide a safe product and continues to do so; cocoa powder and chocolate are safe to eat." A spokesperson for Trader Joe's, Rachel Broderick said, "We take the issues raised in this filing seriously and are working to address them."

A spokesperson for the organic chocolate-maker Green and Black's parent company, Mondelez Global LLC, said the company stands by the safety of its products. It is investigating the claims and has "started a conversation about how to resolve the matter."

Spokespeople for Whole Foods and Lake Champlain Chocolates declined comment. Other companies named in the notices did not respond to emails and phone calls seeking comment.

Hershey's spokesman Jeff Beckman said his company's products all meet federal and state standards, including California's. "People have been eating cocoa and chocolate for centuries with no evidence of a single incident of concern regarding these naturally occurring minerals," he said.

The potential health benefits of dark chocolate, which is rich in antioxidants, have gotten a lot of play in recent years. But, in many cases, dark chocolate has higher concentrations of heavy metals.

While the concentrations of lead and cadmium found in the chocolates are relatively low, cadmium can cause cancer at high doses, disrupt hormones and spur digestive problems. Lead is linked to problems with the nervous system and reproductive problems. Children are particularly susceptible to lead's effects, and can suffer learning and behavioral problems, even at very low levels according to the Centers for Disease Control and Prevention.

"Children are amazingly sensitive to lead — especially very young children and the unborn child," said Howard Mielke a research professor at Tulane University School of Medicine's pharmacology department. Even if children are exposed to just a small amount of lead through chocolate, it's not their only exposure, he said. Playgrounds, for example, are often contaminated.

Disputing the claims

Herb Heller, president of the company Earth Circle Organics, which was named in the notices because it sells cacao nibs that allegedly exceed California's cadmium limits, said consumers would have to eat much more than the recommended serving size each day for twenty years to experience increased risk.

His company tests its products for heavy metals and disputes **As You Sow**'s claims. But he said that some level of heavy metals exist throughout the food chain. "Nobody is happy about the presence of these chemicals in food, but it's very, very difficult to eliminate them altogether."

A 2013 study by Israeli researchers looked at the levels of heavy metals in chocolate bars from the U.S., Europe and Israel and concluded that children who eat a lot of chocolate may be at risk of exceeding daily lead limit levels set by the U.S. Pharmacopeial Convention. Adults, according to the study authors, were at little risk, if any, because their digestive systems absorb less heavy metals than children's.

Concern over heavy metals in chocolate is "old news," said Hershey's Beckman. In 2001 another environmental group began similar legal action against Hershey, Mars and other candy companies for allegedly violating Proposition 65. But,

in an unusual step, California's then-attorney general wrote a letter in which he deemed the metals "naturally occurring," which means they are exempt from the law's disclosure requirements.

Some subsequent research challenges that idea. One 2005 study on Nigerian cocoa farms found lead in cocoa bean shells, likely from contaminated soil, but little lead in the cocoa beans themselves. The finished product, however, had higher lead levels which led researchers to conclude that much of the contamination occurred after the cocoa left the farm — in processing, shipping or manufacturing. Some potential sources of heavy metal contamination are exhaust from vehicles and machines powered by leaded gasoline, paint chips, packaging or fertilizer.

"There's either a part in machinery or something in the process that's causing the contamination," said Mielke. Manufacturers can get to the bottom of it, he said, "It just takes some careful evaluation."

Forcing action

That's the kind of action **As You Sow** hopes to force. "Most industry doesn't take action until it is made to do so," said Danielle Fugere, president of the group. "Nobody is making them do anything. And so they haven't."

She said her group has had talks with some of the companies but did not give details.

The Food and Drug Administration recommends that candy likely to be eaten by children contain less than 0.1 parts per million lead. Some of the products tested by **As You Sow** exceeded this level, van Vliet said, though she said she could not share specific data because of the dispute.

California's guidelines for lead intake are much stricter than those recommended by the U.S. Food and Drug Administration. California's safe-harbor limit is 0.5 micrograms per day.

The California's Attorney General's office did not respond to requests for comment. Heller says the state regulation needs to be reined in: "This law — which was very, very well-intentioned — is now so broadly applied that everything from a watermelon to a wrench has to have a Prop. 65 warning label on it."

But Mielke said companies have figured out how to reduce lead in food products in the past. Canning companies, for example, switched away from lead soldering and the levels of the metal dropped. "The manufacturers are certainly responsible for making sure their products aren't contaminated," he said.