

Calif. AG Disputes FDA on Tuna Warning

By ERICA WERNER
The Associated Press
Friday, August 19, 2005; 11:11 PM

WASHINGTON -- The Food and Drug Administration told California this week that the state's attempt to require mercury warnings on tuna conflicts with federal law.

California's attorney general disputed the FDA letter Friday, and said it was an attempt to stop a lawsuit the state has filed against tuna companies over the warnings.

"The federal government has no authority to prevent California, or any state, from requiring warnings that provide truthful, important information to consumers," said Tom Dresslar, spokesman for California Attorney General Bill Lockyer.

A year ago, Lockyer sued the nation's three largest canned tuna companies to enforce Proposition 65, California's 1986 law requiring businesses to provide "clear and reasonable" warnings when they expose consumers to known reproductive toxins, such as mercury.

The companies are Tri-Union Seafoods, maker of Chicken of the Sea; Del Monte, maker of Starkist; and Bumble Bee Seafoods, maker of Bumble Bee.

The FDA letter, written by Commissioner Lester Crawford on Aug. 12, argues that the warnings Lockyer is seeking are pre-empted under federal law.

Such warnings "frustrate the carefully considered federal approach to advising consumers of both the benefits and possible risks of eating fish and shellfish," Crawford's letter says.

The letter says the FDA has determined that the best way to warn consumers about health risks is with advisories, targeted to particular audiences, delivered by doctors or specific media outlets. General warning labels can overexpose consumers to warnings, or scare the wrong audience away from food they should be eating, the letter says.

Dresslar said many people never see FDA advisories, and providing a posted warning in a supermarket or a label on a can would inform many more people about potential reproductive problems from mercury.

He also contended that the timing of the letter appeared designed to "squash" California's lawsuit. A San Francisco Superior Court trial date is set for Oct. 19, and the defendants have informed California they plan to ask the judge to find that Proposition 65 is pre-empted by federal law, Dresslar said.

"Coincidence? Probably not, considering the Bush administration's propensity to formally side with industry in pre-emption litigation," Dresslar said.

Dr. David Acheson, chief medical officer at the FDA's Center for Food, Safety and Applied Nutrition, said he was not aware of any connection between the letter and the trial timing.

A spokesman for the tuna industry praised Crawford's letter and criticized Lockyer.

"Lockyer dismissed the FDA's concerns without addressing any of the major issues presented," said David Burney, executive director of the U.S. Tuna Foundation. "Tuna should be treated as an important source of nutrition and an important food source for the low-income community, not a political football."

<http://www.washingtonpost.com/wp-dyn/content/article/2005/08/19/AR2005081902000.html>

CALIFORNIA

FDA opposing state warnings on canned tuna

Top official sides with firms in mercury suit

- [Bob Egelko, Chronicle Staff Writer](#)

Saturday, August 20, 2005

The Bush administration is siding with tuna companies in opposing a lawsuit by the state that would require signs on store shelves or labels on tuna cans in California warning of the dangers of mercury, state Attorney General Bill Lockyer reported Friday.

Lockyer, whose office filed the suit in June 2004 under a California anti-toxics law, said he had received a letter this week from the head of the U.S. Food and Drug Administration declaring that enforcement of the state law would conflict with federal law and would mislead consumers.

"California should not interfere with FDA's carefully considered approach of advising consumers of both the benefits and possible risks of eating seafood," FDA Commissioner Lester Crawford said in the letter. Under federal law, he said, the FDA "has been given broad authority to regulate the labels of food products," and a state has no authority to take a stricter approach.

The FDA has issued public advisories about mercury in fish and recommended limits on consumption by children and women of child-bearing age. But many health and environmental groups consider the FDA standards too lax, and Lockyer spokesman Tom Dresslar said the federal advisories were far less effective at reaching the public than the retail-store warnings sought by the state.

Dresslar said the major tuna companies targeted by the suit -- makers of Chicken of the Sea, StarKist and Bumble Bee brands -- had given notice that they planned to seek dismissal of the suit on the same grounds cited by Crawford. It's another example of the administration's joining with businesses to thwart states' ability to protect their residents by enforcing their own consumer and environmental laws, Dresslar said.

A similar argument by makers of nicotine patches succeeded in April 2004 when the California Supreme Court ruled that FDA-approved warning labels for the products precluded the state from requiring additional warnings.

The suit over canned tuna, filed in San Francisco Superior Court, is one of several by Lockyer that invoked Proposition 65, a 1986 state ballot measure, against mercury in seafood. Prop. 65 requires public warnings about exposure to substances at levels that may cause cancer or birth defects.

Mercury can damage the nervous system, affecting intelligence, memory and behavior. Pregnant women, nursing mothers and children are particularly vulnerable. The mineral enters water or air as waste from mines, power plants and solid-waste incinerators and works its way up the food chain, with the largest concentrations found in large predatory ocean fish, including tuna.

Major restaurants and supermarkets settled two 2003 suits by the state with agreements to post warnings about mercury in fish, notices that refer to the nutritional value of fish and types of fish especially high in mercury. The cases marked the first time that Prop. 65 had been applied to food products.

Makers of canned tuna have fought Lockyer's suit, however, insisting that their products are safe. Canned tuna has a lower mercury content than other fish on the state's list. But Lockyer contends even chunk light tuna, which has about one-third the mercury level of canned albacore, may exceed safe levels for fetuses and growing children.

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URL: <http://sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/08/20/BAGJCEASDU1.DTL>

August 19, 2005 06:15 PM US Eastern Timezone