

TROUBLE IN TOYLAND: THE 2001 PIRG SURVEY OF POTENTIAL TOY HAZARDS FOUND IN STORES

I. SUMMARY

This 2001 Trouble In Toyland report is the sixteenth annual PIRG toy safety survey. PIRG uses results from its survey to educate parents about toy hazards and to advocate passage of stronger laws and regulations to protect children from toy hazards. Since 1986 our surveys have led to over 100 enforcement actions by the U.S. Consumer Product Safety Commission and toy manufacturers.

In particular, PIRG focuses on choking, the leading cause of toy deaths. Our study found that many hazards posed by toys still exist. We found examples of these hazards on store shelves. Despite the implementation of the 1994 Child Safety Protection Act, publicity from PIRG, other groups and the media and intensified efforts by the Consumer Product Safety Commission (“CPSC”) and the U.S. Customs Service, the number of deaths from toys in 2000 remained the same as in 1999, while the number of injuries increased due primarily to scooter related injuries. PIRG researchers found many examples of labeling violations this year. Overall, we commend most manufacturers for complying with toy safety standards.

This report also focuses on the hazards posed by toxic chemicals contained in children’s toys, such as nail polish containing toluene and teething toys intended for children under three years old. Many soft polyvinyl chloride (PVC) plastic toys, including teething toys, contain chemicals called phthalates – which are probable human carcinogens and known to cause chronic health effects including liver and kidney abnormalities.

This year we identified loud toys that pose hearing loss hazards, toys without manufacturer information, and deaths and injuries associated with scooters, which have significantly increased this year. We also conducted a survey of online toy retailers, finding that not one online retailer posts statutory choke hazard warning labels, legally required to appear on toys sold in stores, on their web sites. We found that three out of 44 web sites post various forms of non-statutory labeling, but even these are not consistently displayed.

FINDINGS

- Toy manufacturers and retailers fail to label unwrapped small toys or toys containing small parts within bins. They also fail to label bins that contain unlabeled unpackaged toys that pose choke hazards, as required by law.
- Balloons continue to be manufactured and marketed in shapes and colors that are attractive to very young children and continue to be sold unlabeled in bins that are accessible to children.
- Toy manufacturers make toys that may pose choke hazards, as they barely pass the small parts ban test designed to protect children under three.
- Independent tests have shown that many plastic toys, including common teething toys, contain as much as 40% by weight of toxic phthalates, which may leach into children's bodies. The chemicals are probable human carcinogens and have been shown to have some of the characteristics of “endocrine disrupters” – chemicals that cause reproductive abnormalities.
- A PIRG study of Internet toy retailers found that no online toy retailers displays the CSPA statutory choke hazard warning label, legally required on product packaging sold in stores. We found that

three, or 7% of the online retailers we analyzed post various forms of non-statutory warnings, but that none of them even display these warnings consistently. Our study also found that 66% of the web sites analyzed post toys in inappropriate age categories.

- A PIRG study found that 75% of all toy recalls by the CPSC from 1974 to 2001 were due to choking and aspiration hazards.
- Toy manufacturers are over-labeling toys by placing choke hazard warnings on toys that do not contain small parts. We are concerned that this will water down the meaning of the labels and render the labels less useful to parents.
- Too many toys do not have manufacturer information on them, making it difficult for consumers and government officials to identify and recall unsafe products.

RECOMMENDATIONS

To Toy Buyers and Parents: Be vigilant this holiday season and remember:

- (1) The CPSC does not test all toys.
- (2) Not all toys on the shelves meet CPSC regulations.
- (3) Toys that meet all CPSC tests may still pose hazards, ranging from choking and hearing loss, to toxic chemical exposure.
- (4) Online toy retailers do not provide the same safety warnings that by law must appear on toy packaging.

To the CPSC:

- (1) Reexamine the parameters by which toys are judged for age appropriateness.
- (2) At a minimum, ban toxic phthalates from toys intended for children ages three and under, as other jurisdictions have already done. Preferably, as PIRG and other groups requested in a 1998 petition, ban toxic phthalates from toys intended for children five and under.
- (3) Change the small-ball rule to include ball-like rounded objects.
- (4) Continue to encourage online toy retailers to display necessary safety warnings otherwise required on product packaging and closely monitor compliance with this request.
- (5) Require manufacturers to put manufacturer identification on all toys, not merely packaging.
- (6) Require sound limitations for toys.

To Toy Makers:

- (1) Manufacturers should do more to comply with toy regulations.
- (2) Eliminate toxic phthalates from toys intended for children under 5 years old, or at a minimum eliminate toxic phthalates from toys intended for children under three years old as some companies have already done. Clearly disclose the use of toxic phthalates and other chemicals in other toys appropriate for older children.
- (3) Reexamine the parameters with which toys are judged for age appropriateness.
- (4) Put manufacturer identification on all toys, not merely packaging.
- (5) Don't make toys with noise levels of over 85 decibels.
- (6) Post statutory choke hazard warnings on online toy retail sites.

To Toy Stores:

- (1) Clearly label either bins containing small parts as required by law, or the toys within bins containing small parts, with appropriate warnings.
- (2) Carefully consider the height of bins containing toys with small parts. Make sure that they are high enough so that children under three cannot reach them.
- (3) Make sure all balloons are packaged with a CSPA warning requirement. Never place loose balloons in bins. Do not sell age-inappropriate balloons.
- (4) Display critical CSPA hazard warnings on online toy retail sites.

II. INTRODUCTION: MANY HAZARDS ARE FOUND IN TOYS

Toys should provide a creative and happy outlet for children; yet too often they bring pain and sometimes death. According to the most recent data from the CPSC, at least 17 children, none older than seven years old, died in 2000 playing with toys. Moreover, of the estimated 191,000 persons treated in hospital emergency rooms in 2000 for toy-related injuries, 70,900 (37%) were under five years old. One tragic incident that occurred recently is the death of a 14-month-old boy in Chicago, Illinois. On May 9, 2000, the child placed a toy building block in his mouth. He began to choke and tragically died due to asphyxia from aspiration of a foreign object.¹

Since 1986, PIRG has conducted toy safety research and education projects to avoid such tragic and preventable deaths. PIRG also has lobbied the CPSC, state legislatures and Congress to protect children from death and injury due to unsafe toys. PIRG's advocacy has focused on the leading cause of toy deaths: choking. Since 1990, 123, or 59%, of the 207 reported toy-related deaths were caused by choking. In 2000, 6 of 17 total toy deaths (35%) were caused by choking on balloons (1 death), balls (2 deaths), and small toys and toy parts (3 deaths).

The CPSC's principal responsibility is to ensure that toys (and other products) are safe. Yet, from 1980 to 1993, the CPSC and Congress did little to protect children from dangerous products. In 1994, things began to change for the better. First, President Clinton appointed long-time child safety advocate Ann Brown as chair of the CPSC. Second, after years of battles with the powerful toy lobby, Congress finally passed PIRG's priority child safety proposal, the Child Safety Protection Act ("CSPA"), which took effect in January 1995. For the first time, warning labels were required on toys that contained banned small parts, if intended for older children, and on balloons, small balls and marbles. The CSPA also increased the size of banned small balls, because round objects pose particular choking hazards.

Yet, despite the CPSC's leadership and the regulations in place, parents should remain vigilant. First, the CPSC often lacks the resources to adequately monitor the thousands of new toy products introduced nationally. Second, many companies do not adequately comply with the specifics of the law and allow potentially dangerous toys to be produced, marketed and sold. Third, even when the CPSC does announce a recall of dangerous toys, many toys remain on store shelves or in homes because manufacturers and retailers do not do an adequate job of complying with the recall. Fourth, not all consumers find out about recalls and not all products have the necessary manufacturer information to identify recalled or dangerous toys.

Indeed, because such dangerous toys continue to be sold despite the CPSC's efforts, the state PIRGs conducted a national field study in October and November of 2001 in search of potential hazards posed by toys.

¹ U.S. Consumer Product Safety Commission, Division of Hazard Analysis, Directorate for Epidemiology, "Toy-Related Deaths and Injuries, Calendar Year 2000," November 5, 2001.

The PIRGs have a well-established record as watchdogs for identifying unsafe toys. PIRG toy safety reports over the last fifteen years have directly led to at least 100 corrective actions by CPSC and manufacturers.

III. HAZARDS CAUSED BY UNSAFE TOYS CONTINUE TO KILL AND INJURE CHILDREN

Despite federal regulations designed to reduce deaths from choking associated with toys, at least 293 children have choked to death on children's products since 1980. This is an average of about 15 deaths every year. These choking injuries and deaths continue to occur for several reasons:

1) Some toy manufacturers and importers do not comply with the regulations. Every year, the PIRGs find toys on the shelves that violate the small parts ban and other toy safety rules.

Toy manufacturers and importers continue to sell toys for children under three that violate the small parts regulations and which pose choking hazards to children. A PIRG study of all toys recalled by CPSC² found that 75% of all toys recalled by the CPSC between 1974 and October 2001 were recalled due to choking and aspiration hazards posed by small parts. (See Attachment # 4: CPSC Toy Recall Chart)

Party stores, drug stores, discount stores and dollar stores are the most common places where toys that fail the small parts test are found. Yet leading toy stores and specialty stores also carry toys that contain small parts hazards.

2) The current regulations do not address all of the choking hazards posed by toys. Tragically, children continue to choke to death on children's products that comply with the current regulations.

In March 1990, the CPSC knew of at least five deaths caused by toys larger than the choke test cylinder -- three of those caused by older designs of Fisher Price Little People -- yet still voted at the time not to increase the size of the test cylinder. In 1996, a 13-month-old child choked on one-half of a plastic sphere described as similar to the type of container in which children's toys are sold in vending machines. These objects are larger than the choke test cylinder. Although the test cylinder eliminates most objects small enough to enter the child's lower throat and air passages, it does not eliminate all objects that block the airway by obstructing the mouth and upper throat. Children continue to choke on toys that do not technically violate the CPSC regulation.

For example, one toy listed in this year's report, a mini-plastic food set, includes a plastic peach slice which barely passes the small parts test. Another part from this toy, a ball-like plastic egg, would fail the small ball test except that the test applies only to balls. These parts are especially hazardous because children are more likely to put pretend food in their mouths. This year we found an additional near-small part danger, a play tea set.

² Based upon CPSC press releases from February 25, 1974 to October 31, 2001. Available at www.cpsc.gov.

3) Not all manufacturers are in full compliance with the CSPA warning label requirements. Many older toys are still on toy shelves. Unfortunately, neither Congress nor the CPSC require manufacturers to add stickers containing new warnings to these older packages.

This year, PIRG researchers continued to find toy packages that do not yet meet the express warning requirements of the CSPA. Unfortunately, the agency interprets the law to only apply to packages printed after the effective date of regulations, August 28, 1995, not to all packages on shelves after that date. We also found over-labeled toys, such as toys labeled with a small parts warning even though they contain no small parts. Over-labeling waters down the significance of labels, rendering them less effective.

IV. TOY SHOPPING ON THE INTERNET

Consumers are increasingly using the Internet to purchase toys. Online toy sales grew 22 percent from \$650 million in 1999 to \$793 million in 2000.³ While the Internet offers consumers the convenience of avoiding crowded toy stores and the possibility of making a purchase at any time of the day or night, the web lacks many safeguards that toy packaging must, by law, prominently display. In an effort to determine whether CSPA statutory labeling appears on the Internet, PIRG conducted a survey of online toy retailers. The PIRG survey found that hazard labels required by law on toy packages sold in stores, such as the choke hazard warning, are not visible on the web.

PIRG 2001 SURVEY OF ONLINE TOY STORES

To conduct this survey, PIRG visited local toy stores in October 2001 and identified numerous popular, common toys properly labeled with statutory choke hazard warnings. PIRG then selected toys that appeal to both genders and various age groups, including Barbies and other dolls, male-oriented action figures, construction toys and youth-oriented board games. We then identified 44 websites that sell toys online. This list is intended to be representative, not all inclusive. Using the list of toys with known CSPA choke hazard labeling as a reference, PIRG visited each website with the goal of rating its toy safety labeling practices. We asked the following questions:

1) Does the website categorize its toys by age, allowing the consumer to easily browse or search for toys by age?

Findings: 18 out of the 44 websites reviewed, or 41%, contain age labeling.

2) If yes to #1, can we find inappropriate toys within the age groupings? (To answer this question, PIRG looked for two primary deficiencies. First, we browsed a category for a specific age group (i.e. two-year-olds) and searched for toys labeled for older children (i.e. ages three and older). Second, within a certain age category, we explored the online vendor's links to its "recommended toys" or toys "similar" to the product being viewed. We noted if a consumer could easily link from a specific age category (i.e. toys for two-year-olds) to toys intended for older children.)

³ *Toy Industry Fact Book 2001-2002 Edition: Chapter Five- Industry Economics and Marketing*, Toy Industry Association, 2001 (citing an NPD Group study).

Findings: Of the 18 websites containing age labeling, PIRG found inappropriate toys within one or more age group on 12 of the sites, or more than 66%.

3) Does the website consistently label its toys with choke hazard warnings, if required?

Findings: PIRG found that NONE of the websites provide statutory choke hazard warnings on toys requiring such labeling on packaging if sold in stores. Only three of the online stores—Amazon.com/Toys R Us, Walmart and Toys N Joys—provide choke hazard labeling, but none that comply with the CSPA. However, even the companies that use the non-statutory label do not use it consistently on every toy that requires a choke hazard warning if sold in a store.

4) If yes to #3, is the choke hazard warning on the same page?

Findings: Amazon.com/Toys R Us includes its warnings on the same page as the toy description and picture; however, the consumer has to scroll down to find the information. Walmart requires the consumer to scroll down slightly and click on a hyperlink that says “Safety Requirements” to get to the choke hazard warning. Toys N Joys, although it labels only a small number of its toys, includes the choke hazard warning on the same screen as the toy.

5) If yes to #3, does the website use statutory labeling for toys containing small parts, including both statutory language and the warning symbol?

Findings: Amazon.com/Toys R Us, Walmart and Toys N Joys do not use statutory warnings on their websites. They use the statutory language but do not include the easily identifiable picture.

6) Does the website include the manufacturer’s recommended age for each toy?

Findings: Of the 44 websites reviewed, 25 (57%) always include the manufacturer’s recommended age for a toy; 9 (20%) sometimes include the manufacturer’s recommended age; and 10 (23%) never include the manufacturer’s recommended age.

(Please refer to Attachment # 5 for a detailed overview of each online store’s labeling practices.)

The CPSC has encouraged toy retailers to put safety warnings on retail web sites. Thus far, PIRG’s analysis shows that only three online retailers, including Toys R Us/Amazon.com, Walmart, and Toys N Joys, have added some safety warnings on their web sites, but none that comply with the CSPA. However, even the non-statutory hazard labels do not appear consistently for every toy that requires CSPA warnings. Despite this lack of prominent and consistent warning labeling, Toys R Us has conveyed that making the hazard labels prominent on web sites will benefit toy retailers by diminishing the number of returns from toy buyers who bought an inappropriate toy for a particular child and by eliminating the problem of unhappy customers who bought something that they did not know was hazardous.

PIRG encourages manufacturers to voluntarily display statutory hazard warnings on the Internet if the toy is otherwise required to display a specific hazard warning by law. Product packaging is labeled to make consumers aware of potential hazards associated with particular products at the time and place that they are deciding to purchase the product. However, toy shoppers who purchase toys on the Internet are not alerted to these potential dangers when they are deciding to buy the toy.

We offer the following tips to consumers when shopping on the Internet:

- Consumers must be extra cautious when buying toys on the web. It is impossible to examine the toy for potential dangers.
- Hazard labels that must be on toy packages by law are not provided on the web. If it seems likely that the toy has small parts, do not purchase it for a child under three.
- Remember that many manufacturers and retailer web sites offer developmental age labels (57% of those surveyed in PIRG's analysis). A developmental label is **not** a safety label, rather it only indicates that the characteristics of a toy are matched to a particular age category's motor skills. It does not warn consumers of potential hazards associated with particular toys.
- Some toys on the web may be manufactured by companies that are unfamiliar with toy safety regulations. Also, be wary that you may purchase toys that have been previously recalled by the CPSC. Check the CPSC web page, www.cpsc.gov, for recalled toys and other consumer products.

PIRG commends the CPSC for recommending that statutory warning labels appear on web sites just as clearly as they do on toy packaging. We are disappointed, however, that the CPSC has not been more aggressive in seeking compliance with their request. As our study confirmed, not one online retailer complies with the CSPA rules for in-store packaging. We also urge the CPSC to better monitor compliance with its request and to push manufacturers to comply as soon as possible. We urge the CPSC and decision-makers to support proposals that would make hazard warnings mandatory on the Internet for toys that must otherwise display such warnings.

V. HISTORY OF TOY SAFETY LEGISLATION

In 1979, the CPSC banned the sale of toys containing small parts if intended for use by children under the age of three, regardless of age labeling. However, the absence of an explicit labeling requirement for other toys with small parts still caused safety hazards. Some manufacturers attempted to circumvent the small parts ban by mislabeling products actually intended for children under three with "Ages three and up" labels. This led parents to misinterpret these vague labels as a developmental warning and purchase such toys anyway -- despite the small parts -- for children under three. Moreover, no CPSC regulation required warnings on a significant choking hazard, balloons, which were exempt from the 1979 small parts ban.

Throughout the 1980s, consumer groups lobbied Congress and the CPSC to increase the size of the small parts test and to require an explicit choke hazard warning on toys intended for older children, if the toys contained banned small parts.

The toy industry lobby stymied the enactment of a federal small parts hazard labeling law and so the PIRGs turned to the states. In 1992, following a campaign led by ConnPIRG and other child safety advocates, Connecticut passed a tough choke hazard warning label law that took effect on January 1st, 1993. One result was that some large manufacturers complied with the Connecticut law on a national basis, rather than label products separately for the Connecticut market. More importantly, passage of the Connecticut law forced the toy industry to the bargaining table in Congress.

Nevertheless, the Toy Manufacturers of America (TMA), now the Toy Industry Association (TIA), representing the multi-billion dollar toy industry, unsuccessfully attempted to overturn the law in federal court. The TMA argued that Connecticut's action to protect its consumers was preempted by federal law, even though no federal law required choke hazard labels.

Defeated at trial and in the appellate courts, and facing even broader proposals from other state PIRGs, TMA capitulated and agreed to negotiate with Congress and consumer groups over federal legislation. The result was the 1994 Child Safety Protection Act, which required hazard labels on toys, balloons and marbles intended for children under six, if they contain banned small parts, and increased the size of the small ball test from 1.25 inches to 1.75 inches.

The Child Safety Protection Act, Public Law 103-267, was signed by the President on June 16, 1994 and took effect January 1, 1995. Final CPSC regulations took effect August 28, 1995.

VI. SMALL PARTS HAZARDS: 1979 SMALL PARTS BAN AND 1994 CHILD SAFETY PROTECTION ACT

The 1979 CPSC regulations codified that toys containing small parts are banned if intended for children under three. A toy is intended for children under three if it is determined by CPSC guidelines to have "play value" for children under three, i.e., it has bright colors, rounded edges, simple construction, and is easy to understand. It is illegal for a manufacturer to make a toy that is obviously intended for a child younger than three and use a label that says "For children three and older" in order to circumvent the small parts regulation. If a toy has "play value" for children under three, it may not have any separate small parts (and all attached parts are subject to "use and abuse" testing to ensure that small parts do not break off the toy.)

Toys are tested with the choke test cylinder. This test device, specified in the 1979 regulations, is a hollow truncated cylinder with an interior diameter of 1.25 inches and a slanted bottom with a depth ranging from 1 to 2.25 inches. If the entire product, or any component of the product which separates during use and abuse testing, fits entirely within the cylinder, the product is banned for children under three. Since 1995, toys intended to be used as balls, even if not precisely round, are tested with a larger, 1.75 inch diameter template. However, other rounded objects not intended to be used as balls, such as spherical plastic fruit, are still subject to the less stringent small parts test.

Problems resulted from the CPSC's failure to require warning labels on toys intended for older children that contained banned small parts. The 1994 Child Safety Protection Act addressed several of these problems. Many parents misinterpreted weak manufacturer labels (e.g., "three and up") as developmental

advice, rather than as choke hazard warnings. They purchased toys with dangerous small parts for their 1-2 year olds, not realizing that the manufacturer's vague label was a circumvention of the small parts ban, not an invitation to buy this toy for an advanced child. Since many families with one to two year olds also had three to six year old children, infants choked to death on unlabeled toys containing small parts intended for older siblings. The laws also failed to appropriately address balloons or small balls as serious potential choking hazards to children.

(1) The 1994 CSPA requires the following explicit choke hazard warning on all toys intended for children between three and six years old that contain small parts.



Warning: CHOKING HAZARD: Small Parts. Not For Children Under 3 yrs.

Toys that have play value for children under three are banned, if they contain small parts.

(2) The 1994 CSPA increases the size of banned small balls.

Small balls often pose serious choking hazards. Round objects have a greater tendency to cause choking problems because a child's airway can be completely blocked. The small parts test cylinder has a diameter of 1.25 inches, yet children have choked to death on balls as large as 1.75 inches. The 1994 law increases the size of banned small balls to 1.75 inches, if intended for children under three years old.

(3) The 1994 CSPA requires warnings on small balls and marbles.

Parents believe that balls are safe for young children, but at least 67 children have choked to death on small balls since January 1980. Children choke on small balls that are larger than the small parts test cylinder. Since 1980, at least 12 children have choked to death on balls sized between 1.25" and 1.75" in diameter, the respective sizes of the old and new small ball test.

Any small ball intended for children older than three must include the following warning:



WARNING: CHOKING HAZARD--This toy is a small ball. Not for children under 3 yrs.

Any toy intended for children between three and six years old that contains a small ball must include the following warning:



WARNING: CHOKING HAZARD--This toy contains a small ball. Not for children under 3 yrs.

Any marble intended for children older than three must include the following warning:



WARNING: CHOKING HAZARD--This toy is a marble. Not for children under 3 yrs.

(4) The 1994 CSPA requires choke hazard labels on all balloons.

Balloons pose a grave choking hazard to children, causing more choking related deaths than any other children's product. Almost half (46%) of the choking fatalities reported to the Commission have involved balloons. At least 57 children have died in this tragic way since 1990. In 2000, one child, who was two and a half years old, choked to death on a balloon. This year's list of dangerous toys includes balloons marketed for young children as well as unlabeled balloons that are still on store shelves.

It is inappropriate to market balloons to children younger than eight years old. Balloons marketed for toddler birthdays (Baby's First Birthday!) or containing such child-friendly figures as Winnie the Pooh are inappropriate. Parents should avoid latex balloons altogether for children under eight, and even then they should use extreme caution. While children younger than three are most at risk from choking hazards, older children are also at risk from choking on uninflated balloons or parts of balloons. Mylar balloons do not pose the serious choking hazards associated with latex balloons since they break differently when popped, are not elastic and do not obstruct a child's air way as do latex balloons.

The CSPA requires a warning on the front of all latex balloon packages:



CHOKING HAZARD -- Children under 8 yrs. can choke or suffocate on uninflated or broken balloons. Adult supervision required. Keep uninflated balloons from children. Discard broken balloons at once.

(5) The 1994 CSPA requires choke hazard labels on bins and vending machines.

If toys or small balls required to be labeled are sold in vending machines, or in bins without packaging, those vending machines and bins must contain these same statutory warnings. It is common, even in national chain toy stores, that bins containing cheap unpackaged toys and balls are not labeled.

VII. TOXIC TOYS IDENTIFIED

WARNING: DON'T BUY PLASTIC TOYS CONTAINING TOXIC CHEMICAL PHTHALATES

Parents and toy givers should not purchase soft plastic polyvinyl chloride (PVC) toys for children five years old and under that contain phthalate chemicals. PVC is hard and brittle, so phthalates are added as "plasticizers," or softeners. Testing has shown that some children's teething and other toys contain up to 40% phthalates--a class of chemicals that has been linked to chronic hazards, including liver and kidney damage. The chemicals are probable human carcinogens and have been shown to have some of the characteristics of "endocrine disruptors" – chemicals that cause reproductive abnormalities. Testing also has shown that these chemicals are not "bound" to the plastic, but leach out of it over time. Chewing and sucking on toys during play can increase the rate at which these toxic chemicals are leached and increase exposure by children.

BACKGROUND

Toxic chemicals permeate our daily lives. More than 70,000 synthetic chemicals are used and produced today, and an estimated 1,000- 2,000 new chemicals are added to the market each year.⁴ These chemicals are released into the air and water, used in the workplace, transported through our communities, and contained in the products we buy. Many common industrial chemicals can cause cancer and birth defects, as well as significant environmental damage such as ozone depletion and pollution of drinking water.

Public health officials are paying more attention to the potential risks children face from exposure to toxic chemicals in toys. To date, the greatest concerns, and actions taken, have focused on toys intended for children under three, especially toys intended to be put in the mouth.

DEHP, a type of phthalate voluntarily phased out by U.S. toy manufacturers in 1986, is a probable human carcinogen. According to a September 5, 2001 Food and Drug Administration assessment, DEHP used to soften plastic could harm young children, especially newborns in intensive care.⁵ Yet, toy manufacturers replaced it with another phthalate, DINP, which contains the following warning when purchased for scientific laboratory use:

"May cause cancer; harmful by inhalation, in contact with skin, and if swallowed; possible risk of irreversible effects; avoid exposure; and wear suitable protective clothing, gloves, and eye/face protection."

When a toy buyer purchases a toy containing the same DINP, he or she will usually see no warning or even a label reading "non-toxic." A few toy companies are beginning to label their teething rings and rattles as PVC and phthalate free. For the vast majority of toys, however, the only effective way to determine if the toy has PVC and phthalates is to call the company directly (see Attachment #6: Phthalate Chart). Even then, a consumer has to be persistent when contacting a company's customer service center.

In scientific tests commissioned by Greenpeace, common children's toys, including teething rings, were found to contain as much as 40% by volume of DINP. Nearly all of the 63 soft PVC toys in one recent round of tests contained 10-40% by weight of phthalates. Yet, virtually no phthalate-containing PVC plastic toy (or other plastic products) contains any hazard warning or even an ingredient list. In fact, many toys containing phthalates routinely are labeled "non-toxic." [For more information on the latest Greenpeace tests, see their November 1998 report entitled "Children at Risk: Toxic Chemicals in Vinyl Children's Toys."]

Numerous scientific agencies have conducted tests with results similar to those of Greenpeace.⁶

- In 1998, the European Scientific Committee concluded that the levels of chemical plasticisers leaching from soft PVC toys exceed safety limits and give reason for concern.

⁴ *Generations at Risk: How Environmental Toxins May Affect Reproductive Health in Massachusetts*, Greater Boston Physicians for Social Responsibility (GBPSR) and the Massachusetts Public Interest Research Group (MASSPIRG) Education Fund, July 1996, at xi.

⁵ *Washington Post*, p. A24, September 6, 2001.

⁶ This information is available on the web at www.greenpeace.org/~toxics/.

- On November 10, 1999, the European Union proposed an emergency ban on sales of mouthing toys made from PVC. The permanent ban would outlaw the use of six phthalates in toys for children under three years old, while other toys for older children would be required to have a label warning parents not to let young children put these toys in their mouths.
- On July 6, 2000, the European Parliament plenary voted to permanently ban the use of all phthalates in all toys and child products that can be mouthed. The plenary also demanded that all toys containing PVC intended for children between three and six must be labeled to indicate whether the product contains phthalates.
- On April 3, 2001, the European Parliament voted in favor of instituting a substitution policy for PVC plastic, beginning with the substitution of PVC in children's toys and medical devices.

In December of 1998, the U.S. Consumer Product Safety Commission called for further study to “adequately assess” phthalate toxicity following the filing of a petition by PIRG, Greenpeace, Consumer Federation of America and other consumer groups on November 19, 1998, which urged the U.S. CPSC to ban toys containing PVC and phthalates intended for children five years of age and under. That CPSC study concluded that few if any children are at risk from the chemical because the amount that they ingest does not reach a level that would be harmful.

In response to the petition filed by consumer groups, the CPSC took two actions. First, the CPSC authorized a Chronic Hazard Advisory Panel (CHAP) to assess the existing scientific data concerning the potential risks of phthalates to humans and to specifically assess whether phthalates pose a cancer risk to humans. However, existing scientific analysis has been inconclusive and plagued with uncertainty. While there is insufficient evidence to conclude that phthalates are a human carcinogen, there is enough data to take precautions to protect small children who are at a more vulnerable stage of development. The CHAP completed their report in June 16, 2001 and found that while the majority of children will not be adversely affected by DINP, “there may be a risk of health effects from DINP exposure for any young children who routinely mouth DINP-plasticized toys for seventy-five minutes per day or more.” DINP, or diisobutyl phthalate, is the most commonly used phthalate in toys.

In an October 30, 2001 response to the CHAP report, the Scientific Committee on Toxicity, Ecotoxicity and the Environment (CSTEE) of the European Commission concluded that a benchmark dose for exposure to DINP must be developed for children younger than three years old. Thus, this European Union committee has concluded that the health risks from DINP must be reduced.

The CPSC is conducting a study to determine the mouthing patterns in infants. The results of the CHAP report support PIRG's recommendation that young children should not be playing with toys that contain phthalates.

The CPSC's second action in response to the petition filed by PIRG and other groups was to request that the toy industry voluntarily remove phthalates from rattles and teething rings only, even though the petition

filed by PIRG and other groups requested that the CPSC ban the use of phthalates in all toys for children five years old and under.

Most toy companies have complied with the CPSC request. Many toy companies are planning to or already have eliminated phthalates from production, surpassing the CPSC's voluntary ban. A recent example is Mega Bloks, a manufacturer of preschool building blocks. In an October 16, 2000 press release, a Mega Bloks spokesman said, "Parents should be reassured that their infants will not be exposed to any phthalates or PVC while playing with Mega Blocks construction toys." PIRG commends Mega Bloks and other manufacturers for protecting children from potentially toxic chemicals.

Some companies are using substitutes such as ethylene vinyl acetate ("EVA") as a replacement for soft PVC. EVA does not have the safety concerns attributed to phthalates. Most significantly, it can be used without a plastic softener, thus eliminating the use of potentially harmful phthalates. Some toy companies have discontinued manufacturing teethingers and rattles. No toy company, however, has recalled mouthing toys containing phthalates. These toys are still on the shelves and available to consumers.

Toy companies assert that they have eliminated phthalates from production due only to "consumer concern" and not due to any danger from the phthalate itself. In addition, toy companies and the CPSC have used only a narrow definition of mouthing toys -- referring only to teethingers and rattles. Children mouth on more toys than merely teethingers and rattles, such as vinyl books and soft blocks. PIRG urges the CPSC and the toy industry to expand their definition of mouthing toys. We request that phthalates be immediately eliminated from all mouthing toys, including vinyl books and bath toys, as a prerequisite to the CPSC enacting the full ban proposed in our 1998 petition.

While the U.S. CPSC has not yet recommended actions as strong as those proposed by its international counterparts, PIRG has always taken a more conservative posture concerning exposure to toxic chemical hazards by embracing the precautionary principle.

THE PRECAUTIONARY PRINCIPLE AND THE RIGHT TO KNOW

The toxicity of most toxic chemicals is unknown or inconclusively studied. Of the more than 70,000 synthetic chemicals currently in use, only a small fraction has been adequately examined for toxic effects in humans.⁷ The CPSC's preliminary report on phthalates, according to Greenpeace experts, is largely based on biased industry data. Yet, it still finds potential risks to children that require more study.

Unfortunately, toxicological information is often incomplete. Animal testing usually looks at health effects using one chemical at a time. This strategy fails to provide information about interactive effects, which may occur with exposure to more than one chemical. Moreover, animal tests often fail to examine for subtle, delayed, or difficult-to-diagnose conditions. Epidemiological (human) studies are often limited by inaccurate exposure assessments and incomplete information about health outcomes. Further complicating matters, the federal government is reducing its support for research and information analysis. Corporate funding is filling the void, providing an opportunity for bias in study design and data

⁷ *Generations at Risk: How Environmental Toxins May Affect Reproductive Health in Massachusetts*, Greater Boston Physicians for Social Responsibility (GBPSR) and the Massachusetts Public Interest Research Group (MASSPIRG) Education Fund, July 1996, at vi.

interpretation.

Laws that regulate human and environmental exposure to hazardous substances generally take one of two possible approaches -- "better safe than sorry" or "innocent until proven guilty." PIRG believes, especially when it comes to children's risks and exposure, that a "better safe than sorry," or **precautionary principle**, should guide risk management and regulatory decisions. This means that the issue of safety should be thoroughly considered **before** human and environmental exposures are permitted. No hazardous substance should be allowed to slip through the cracks because of a lack of information, time, or funding. Where there is some evidence of human or environmental toxicity, the precautionary approach demands that exposures be avoided or minimized. In our view, the troubling findings of Greenpeace and numerous international safety agencies call for immediately limiting children's exposure to phthalates. PIRG urges parents to keep toys known to contain phthalates away from children under three. This is especially true for teething and mouthing toys.

All members of the public, in the home, school and workplace, have the **right to know** and to be fully informed about the chemicals that they are likely to come in contact with and the potential health hazards associated with exposures. PIRG believes that risks of toxic exposure to children should be minimized. To minimize exposure to toxic chemicals, PIRG supports requiring facilities that use toxic chemicals to report what type of chemical they use and how much is used in products they produce. In addition, PIRG supports the creation of a publicly accessible database, regulated by the CPSC, of the toxic chemicals being used by manufacturers and importers.

Moreover, individuals who are adequately informed of the presence and toxicity of hazardous materials will be more prepared and able to minimize exposures at home and in the workplace. Yet, the toy industry does not label its toys that contain toxic phthalates. Until it does, or is required to do so, parents and toygivers must rely on independent scientific testing, as conducted by Greenpeace and numerous other organizations.

VIII. OTHER HAZARDS FOUND IN TOYS

This year, PIRG identified three other hazards: 1) a toluene-containing nail polish, 2) toys that are dangerously loud for children, and 3) the threat of injury posed by scooters. In years past we also identified pull toys posing a strangulation hazard. This year, PIRG researchers did not find toys posing that hazard; however, this does not mean that they are off the shelves. Consumers should be aware of these potential hazards.

TOLUENE IN CHILDREN'S PRODUCTS IS UNACCEPTABLE

Toluene, also called methyl benzene, is a colorless flammable liquid.⁸ Toluene occurs naturally in crude oil. Many companies use toluene as an additive in aerosol sprays, paints, spot removers, cosmetics, and perfumes. According to the U.S. Environmental Protection Agency, exposure to toluene occurs when

⁸ *Chemicals in the Environment: Toluene* (CAS NO. 108-88-3), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, August 1994.

people using products that contain toluene breathe it in, consume it, or absorb it through skin contact.⁹ According to EPA, toluene causes the following health hazards:¹⁰

- Damage to the developing fetus.
- Irritation to the nose, throat, and eyes.
- Higher levels can cause dizziness, lightheadedness, and a loss of consciousness
- Repeated exposures can damage bone marrow causing low blood cell count.
- Damage to the liver and kidneys.
- Slowed reflexes, trouble concentrating, and headaches.
- Prolonged contact can cause a skin rash.

PIRG found toluene listed as an ingredient in two different nail polishes that are part of children's make-up sets. According to the EPA, skin contact is a form of exposure to toluene. Children using the nail polish containing toluene will be exposed to the chemical. PIRG opposes the use of toluene in children's products. PIRG urges parents to carefully read the labels and ingredients of children's products and urges parents to purchase only non-toxic nail polish and makeup kits, craft kits and other products.

TOXIC NOISE: TOYS THAT ARE DANGEROUSLY LOUD

Every day almost 140 million Americans experience noise levels that the U.S. Environmental Protection Agency (EPA) categorizes as "annoying or disruptive."¹¹ "Children are especially vulnerable to noise induced hearing loss—which often happens gradually and without pain—from overexposure to noise."¹² Almost 15 percent of kids ages 6 to 17 show signs of hearing loss, according to a 1998 study published in the *Journal of the American Medical Association*. In addition, the National Campaign for Hearing Health, a non-profit group sponsored by the Deafness Research Foundation, has identified noticeable hearing loss in children under age five due to loud noises.¹³ However, at this time there are no federal regulations in the United States that limit the noise levels of toys. A European standard exists; however, it is inadequate because it sets the sound threshold too high at 115 decibels.

Since children are so vulnerable to loud noises, PIRG researchers focused on toys that pose hearing loss hazards to children. With the critical assistance of a Product Safety Investigator from the Wisconsin Department of Agriculture, Trade and Consumer Protection, PIRG was able to test the sound levels of toys using a decimeter microphone.

⁹ Ibid.

¹⁰ *Hazardous Substance Fact Sheet: Toluene*, New Jersey Department of Health and Senior Services, Revised August 1998. www.state.nj.us/health/eoh/rtkeb/1866.pdf.

¹¹ Karin A. Bilich, *Protect Your Child's Hearing*, American Baby, August 9, 2001, <http://www.americanbaby.com/hk/CDA/featureDetail/0,2215,1896,00.html>.

¹² Ibid.

¹³ Dr. Donald Shiffman, *Healthy Kids*, American Academy of Pediatrics, p. 26, February/ March 2001, www.healthykids.com (citing a study from the National Campaign for Hearing Health, www.hearinghealth.net).

To conduct this study, the Investigator visited toy stores in October 2001 and purchased toys that made noises. The Investigator used a decimeter to obtain the decibel readings of 14 toys. The decimeter's microphone was placed on the Investigator's collar, near the ear. Another decimeter microphone was placed next to the toys sound piece. Readings were taken from both decimeters when the toys were on a table or away from the Investigators ear and when the toy was played next to the ear. With this exercise the Investigator tried to simulate how a child would play with the toys, both by sitting up away from the toys and by lying down with the ear next to the toys. The results listed (in Attachment #1) are either the range, rough average, or the only level that registered on the decimeter.

Using this research as a guide, PIRG identified toys that present potential hearing loss dangers to children. The Occupational Safety and Health Administration (OSHA) reports that prolonged exposure to sounds at 85 decibels or higher can result in hearing damage.¹⁴ The American Academy of Pediatrics as well as the National Campaign for Hearing Health also use 85 decibels as the threshold for dangerous levels of noise. The National Campaign for Hearing Health, in their Toxic Noise Guidelines, sets forth the following relationship between decibel levels and time of exposure:¹⁵

- 85 decibels: Exposure over an 8-hour period causes hearing loss
- 85-90 decibels: Exposure over 2 hours causes hearing loss
- 90-100 decibels: Exposure over 1-2 hours causes hearing loss
- 100- 110 decibels: Exposure between 2 to 15 minutes causes hearing loss
- 110-120 decibels: Exposure less than 30 seconds causes hearing loss
- 120 decibels: Exposure less than 30 seconds causes hearing loss
- 130 decibels: Any exposure will result in permanent hearing loss

Based upon these guidelines, toys that have sounds of over 85 decibels and that are played with near the ear are included in our list of potentially dangerous toys. PIRG identified seven toys, out of the 14 tested, that have sounds of 85 decibels or higher. PIRG urges toy buyers to avoid toys that are too loud for children. To protect children from toys that are dangerously loud, PIRG supports the League for the Hard of Hearing's recommendations:¹⁶

- If a toy sounds too loud to you in the store, don't buy it. Children are even more sensitive to sound than adults.
- Put masking tape over the speakers of any toys that you already own that are too loud. This will reduce the noise levels of the toys.
- Remove batteries from loud toys.
- Report a loud toy to the CPSC.

¹⁴ OSHA Noise Exposure Standard, 39 FR 23502 (as amended) section 19010.95.

¹⁵ National Campaign for Hearing Health, Toxic Noise: Are you at Risk? Fact Sheet, <http://www.hearinghealth.net/pages/factsstats/index.html>.

¹⁶ See footnote 12.

PULL TOYS WITH WOODEN KNOBS AT END OF PULL CORD POSE CHOKE AND STRANGULATION DANGERS

The American Society for Testing and Materials' ("ASTM") voluntary standard for pull toys states that in "pull toys intended for children under 36 months, cords and elastics greater than 12 inches long shall not be provided with beads or other attachments that could tangle to form a loop." The CPSC has the authority to enforce the ASTM voluntary standards and exercises that authority when necessary. The CPSC has recalled pull toys in the past, some of which were listed in our previous toy reports as a strangulation hazard to children.

The pull toys included in a previous report had pull cord lengths of over 20 inches, a wooden knob at the end of the cord, and play value for children under three years old. A pull cord of over 12 inches with a knob attached to its end poses a strangulation hazard to children. The cord could get entangled around a child's neck and be locked into place by the knob.

Parents should remove beads, knobs, or other attachments from their child's pull toy cord if the cord is over 12 inches long. Two years ago, PIRG worked with a manufacturer to eliminate a strangulation hazard. The manufacturer removed the knob and the toy no longer poses a strangulation hazard to children.

THE RISK OF INJURY ASSOCIATED WITH SCOOTERS

Popular lightweight scooters, which first went onto the market in the United States in 1999 are posing a serious threat of injury to children. According to CPSC data, injuries associated with non-powered scooters have increased dramatically. Injuries associated with motorized scooters also are on the rise. From January 2000 through December 31, 2000, CPSC estimates there were about 40,500 emergency room treated injuries associated with scooters. In August 2001, CPSC estimated that between January 2001 and July 2001, there were more than 68,530 emergency room-treated injuries caused by scooters. About 85% of the injuries were to children younger than 15 years old. Two-thirds of the injuries are to males. Most common injuries are fractures. CPSC has reports of 11 deaths relating to non-powered scooters so far in 2001.

In addition, the number of injuries related to motorized scooters is increasing. Motorized scooters are two-wheel scooters, similar to the unpowered scooters, but equipped with either a small 2-cycle gasoline engine or an electric motor and a battery. Some manufacturers are retrofitting stocks of non-powered scooters with electric motors. In addition, kits are available to retrofit non-powered scooters. For the first 7 months of 2001, CPSC reported 2,250 emergency room-treated injuries due to motorized scooters. During the same period in 2000, there were 1,460 injuries reported. A total of 4,390 injuries were reported in 2000. That is up more than 200 percent from 1999's 1,330 injuries. Thirty nine percent of the injuries occurred to children under 15 years of age. The most common injuries were fractures. Most injuries were to the arms, legs, faces and heads. CPSC has reports of three deaths relating to motorized scooters so far in 2001.

To prevent injuries while using both motorized and non-powered scooters, PIRG joins the CPSC in its recommendations to consumers:

- Wear proper safety gear, including a helmet that meets CPSC's standard, knee and elbow pads, and wrist guards.
- Ride the scooters on smooth, paved surfaces without any traffic. Avoid streets, or surfaces with water, sand gravel or dirt.
- Do not ride the scooter at night.
- Check with local authorities for riding guidelines and restrictions for motorized scooters.
- Children under 12 should not ride motorized scooters.

IX. TOY RECALLS ARE INEFFECTIVE

RECALLED TOYS

This year, PIRG researchers found a toy that is identical to toys already recalled by the CPSC. While CPSC has been aggressive over the past years in recalling unsafe toys, some toys fall through the cracks, and not all consumers find out about recalls. In fact, most consumers are not informed of most product recalls. Less than 20% of consumers who purchase recalled products ultimately find out about the recall. Consumers' lack of critical product recall information leads to dangerous consequences for consumers. Despite the fact that CPSC occasionally announces recalls publicly, through national television and through programs coordinated with national toy stores and pediatricians offices, many consumers do not find out about recalled products. Most consumers remain uninformed about the dangers that may be in their homes.

Many consumers who are informed of the recall through public means find it difficult to determine if they actually own the product subject to the recall. This difficulty often results in stressful and time-consuming uncertainty until the determination of ownership of the recalled product is made. The use of many children's products by numerous children, as well as the potentially dangerous consequences of this lack of safety information for toys and other children's products, makes direct to consumer notification of recalled products all the more critical.

To effectively communicate recalls to consumers, CPSC should mandate the creation of Consumer Registration Cards that would be used to directly contact consumers about recall and safety actions taken by the CPSC and or the manufacturer of the product. So called "warranty" cards used by some manufacturers are ineffective for communicating safety information because of the irrelevant and intrusive questions they ask of consumers. Consumers must be guaranteed that their contact information be used solely for safety purposes and not for marketing. PIRG supports a petition filed by Consumer Federation of America in 2001, which requests that CPSC require manufacturers to institute the use of Consumer Registration Cards. This petition also requests a regulation to require name and contact information, including address and phone number or phone number and web address, on every product intended for children.

TOYS WITHOUT MANUFACTURER INFORMATION

This year PIRG researchers identified a number of toys that do not contain any manufacturer identification or any manufacturer information. Manufacturer information should be on all products, including toys, for a number of important reasons. First, it is very difficult for consumers to determine if a product they own was subject to a recall if there is no manufacturer information on the product. Second, many products do not include a list of ingredients; if a consumer wants to determine what materials were used to produce a product, it is almost impossible without manufacturer identification and information. While some products contain manufacturer information on toy packaging, most consumers discard the packaging soon after they purchase the product. Third, the Consumer Product Safety Commission cannot effectively recall products if the Commission does not know which manufacturer produced the product that caused a death or injury.

X. POSITIVE SIGNS IN 2001

While PIRG identified some improvements in 2001, parents should still be vigilant, especially for potential choke hazards. PIRG attributes improvements to the following factors:

- Since implementation of the 1994 Act, fewer obsolete-labeled or banned toys remain on shelves, due to stock depletion.
- The continuing intensive joint CPSC/U.S. Customs Import Surveillance Program conducted at ports of entry has prevented many unsafe toys from entering the United States. For example, more than half a million defective and non-compliant toys were prevented from entering the United States in 1994 alone. This effort has resulted in substantial injury prevention and greater compliance by manufacturers and importers with safety regulations.
- Under pressure to improve their toys, responsible manufacturers have worked with the American Society for Testing and Materials (ASTM) on a voluntary standard for small action figures that took effect in 1996, requiring such pre-school figures to not only be larger than the choke tube, but also be blocked by a 1.68 inch diameter hole in a template. Figures no longer resemble the old “peg” or wine-cork shape of the older Fisher Price Little People. This year PIRG did not find any of these older “little people” on the shelves.
- Continued education by the media, consumer groups and the CPSC has helped to increase public awareness.
- Despite failure of the Congress and CPSC to require that warnings appear in a certain type, size, and color, fewer toys are inconspicuously and improperly labeled.
- Many toy manufacturers have complied with the CPSC’s request to voluntarily remove PVC and phthalates from teething rings and rattles, although old stock remains on shelves.
- A few toy companies are beginning to label their toys as PVC and phthalate free.
- At least three online toy retailers, including Toys R Us, Walmart and Toys N Joys, are displaying some form of hazard warnings on the Internet.

ATTACHMENTS

ATTACHMENT 1: The 2001 PIRG Trouble In Toyland Potentially Hazardous Toy List.

These toys found on store shelves are examples of toys that pose potential hazards to children. The list is intended to be representative, not all inclusive.

ATTACHMENT 2: Deaths From Toys 1990-00. Chart based on CPSC data.

ATTACHMENT 3: List of Toys Recalled as a Result of PIRG Trouble in Toyland Reports (1988-2001). Includes recalls and other remedial actions taken by CPSC, manufacturers and retailers.

ATTACHMENT 4: Chart Of CPSC Toy Recalls (1974-2001). Chart based on CPSC press releases.

ATTACHMENT 5: PIRG's Survey of Online Toy Retailers. Analysis of representative sample of online toy retailers.

ATTACHMENT 6: Chart of Toy Companies and their Policies Regarding Phthalates. A list of some toy companies, their phone numbers and their policies and actions taken regarding the use of phthalates, primarily in mouthing toys. This information is based on a telephone survey conducted by PIRG during October and November 2001. All toxic toys on toy list are based on manufacturer representations. For additional information on phthalates in toys, see the Greenpeace web site <http://www.greenpeace.org>.

ATTACHMENT 7: PIRG's Tips For Toy Safety. A quick summary of other CPSC toy regulations and ideas for toy buyers.