Congress of the United States
Washington, DC 20515

March 27, 2006

The Honorable Andrew von Eschenbach
Acting Commissioner
Food and Drug Administration
5600 Fishers Lane
Rockville, MD 20857

Dear Dr. von Eschenbach:

According to recent media reports, FDA has recently tested approximately 20 different sodas for the presence of benzene, a known human carcinogen.[1] In its tests, FDA has apparently determined that some of these beverages contain benzene at levels 2 to 4 times the level that the U.S. Environmental Protection Agency (EPA) considers safe in drinking water.[2] This disclosure is particularly alarming in light of the fact that 15 years ago, FDA learned that many types of soft drinks contained dangerous levels of benzene, but failed to take any enforcement action or alert the public of the risk. I am writing to urge you to take immediate action to warn and protect the public against the risk of this harmful carcinogen found in these drinks consumed by so many Americans on a daily basis.

It has long been recognized that two common ingredients in soft drinks, and fruit and energy drinks—ascorbic acid (Vitamin C) and benzoate preservatives—can combine to form benzene. According to an FDA internal memorandum, in 1990, representatives of the beverage industry apparently learned about this danger in 1990 and alerted FDA to the problem at that point.[3] These representatives "expressed their concern about the presence of benzene traces in their products and the potential for adverse publicity associated with this problem."[4] Yet, instead of taking regulatory action, FDA relied upon assurances from the soft drink industry that they would voluntarily reformulate their products to prevent the formation of benzene. Now, in 2006, it is clear that these assurances amounted to nothing more than empty promises.

FDA's decision to rely upon the beverage industry to voluntarily make their products safer has endangered the millions of Americans who consume these drinks each day—and, in

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[1] ABC 7 News, *ABC 7 Medical: FDA Investigates Benzene In Soda Drinks*, February 24, 2006 (online at: http://www.wjla.com/news/stories/0206/305799.html).

[2] *Id.*

[3] David Goldstein, *FDA Finds Benzene in Soft Drinks*, Knight Ridder Newspapers (March 3, 2006). (available online at: http://www.sltrib.com/nationworld/ci_3568719); FDA, Memorandum of Meeting with the National Soft Drink Association (December 7, 1990).

[4] *Id.*

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particular, children. Soft drinks are heavily marketed toward children. Between 56% and 85% of children in school consume at least 1 soft drink daily—20% of these children consume 4 or more servings daily.[5] Additionally, the dangerous combination of Vitamin C and benzoate preservatives is found in many other fruit and energy drinks popular among children.[6] Given the high level of consumption of these beverages by children, it is critical that FDA take immediate steps to protect children and all consumers from the risk of benzene.

Further, I request that FDA provide responses to the following questions:

1. When did FDA first become aware that benzene was present in soft drinks? What actions did FDA take at that time? Upon learning of the presence of benzene in soft drinks, did FDA contact all soft drink manufacturers regarding this issue? If not, why not? Please provide a copy of any communications, whether oral, written, or electronic, FDA had with beverage manufacturers regarding benzene in soft drinks in response to FDA's initial contact with these manufacturers.

2. How frequently has FDA tested soft drinks for benzene and other toxic substances or received results of such tests from outside parties? Please provide the dates and results of any such tests. Please also provide any documents and communications, whether oral, written, or electronic, with parties outside of the Administration, relating to any such tests or the results of any such tests.

3. The Environmental Working Group recently released a list of fruit and energy drinks containing ascorbic acid and either sodium benzoate or potassium benzoate, the ingredients known to combine to form benzene.[7] Many of these beverages are popular children's drinks, including Country Time Lemonade, Giant Fruity Punch Cooler, Hawaiian Punch Fruit Juicy Red, to name a few. Has the FDA conducted tests for benzene or received any test results from outside parties on any of these fruit or energy drinks? If so, please provide the dates and results of any such tests. Please also provide any documents and communications, whether oral, written, or electronic, with parties outside of the Administration relating to any such tests or the results of any such tests. If FDA has not conducted such tests, does the FDA intend to conduct such tests or require that these tests be performed by the manufacturers?

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[5] American Academy of Pediatrics, Committee on School Health, *Policy Statement: Soft Drinks in Schools*, PEDIATRICS, Vol. 113, No. 1, January 2004, pp. 152-154 (online at: http://aappolicy.aappublications.org/cgi/content/full/pediatrics;113/1/152).

[6] Environmental Working Group, Press Release: *Children's Drinks Contain Ingredients That Can Form Benzene* (February 28, 2006) (online at: http://www.ewg.org/issues/toxics/20060228/index.php).

[7] Environmental Working Group, List of beverages containing ascorbic acid and either sodium benzoate or potassium benzoate (online at: http://www.ewg.org/issues/toxics/20060228/list.php).

4. Has FDA met with representatives of the beverage industry to discuss the recent evidence of benzene contamination in sodas? If so, please provide the dates of these meetings and a list of attendees. Please also provide any documents or communications, whether oral, written, or electronic, regarding any such meetings.

5. What actions does FDA intend to take to address the recent evidence of benzene contamination in sodas? In particular, does FDA intend to (a) provide warnings to the public about the presence of benzene in particular beverages; (b) take enforcement action against any manufacturers of beverages containing benzene; or (c) institute rulemaking proceedings to establish standards for benzene contamination in beverages? If the answer to any of these questions is no, please explain why the action is unnecessary to protect the public from benzene in beverages and what alternative actions are being taken to provide such protection.

Please provide these materials no later than April 10, 2006. Thank you for your attention to this request.

Sincerely,

HENRY A. WAXMAN
Member of Congress

EDWARD J. MARKEY
Member of Congress