

Toxic Chemicals in Children's Products

38 MRSA §1691-1699-B

Stakeholder Meeting
March 6, 2009, 10 a.m.

DEP Response Training Room,
Augusta, Maine

Facilitator:

Naomi Mermin

In Attendance:

Ann Mitchell, Grocery Manufacturers Association
Michael Belliveau, Environmental Health Strategy Center
Bonny Betancourt, American Chemistry Council
Jesse Connolly, Maine Legislature
Leann Diehl, American Chemistry Council
Sally Edwards, Lowell Center for Sustainable Production
Bruce Gerrity, Toy Industry Association
Rep. Adam Goode, Maine Legislator
Kellie Miller, Maine Medical Association
Laura Harper, Maine Women's Lobby
Rep. Jon Hinck, Maine Legislator
Joan Lawrence, Toy Industry
David Neivandt, University of Maine
Chris Jackson, Maine Chamber of Commerce
Matt Prindiville, Natural Resources Council of Maine
Nancy Ross, Unity College
Charles Urquhart, Maine Labor Group on Health
Dan Walker, Toy Industry
Megan Wallace, Goodwill Industries of Northern New England
Jeri Weiss, EPA Region 1
Mark Hyland, Maine DEP
Ginger Jordan-Hillier, Maine DEP
Justin Costa, Facilitator Assistant
Sandy Cort, Learning Disabilities Association of Maine
Joanna Tourangeau, Pierce Atwood LLP
Dr. Deborah Rice, Maine CDC
Ryan Tipping-Spitz, Maine People's Resource Center
Sharon Tisher, Alliance for a Clean and Healthy Maine
Rep. Jon Hinck, Maine Legislator
Lebelle Hicks, ME BPC
Sen. Seth Goodall, Maine Legislator

Meeting Outcomes:

Outcomes Requiring Follow-up:

1. Michael Belliveau will provide Dr. Davis's study to the group
2. DEP will provide clarification to the group on the distinction between "commissioner" and "board"
3. Stakeholders will generate a list of other lists of banned/regulated chemicals that they feel would help DEP prioritize certain chemicals within the list of 1800
4. DEP will share email addresses amongst the stakeholders attending the March 6, 2009 meeting.

Items Now Scheduled for Meeting Number 2

1. Alternative Assessments and consideration of financial hardships beyond users
2. Incentives for green chemistry and alternatives assessments

Items Now Scheduled for Meeting Number 3

1. Issues regarding Confidential Business Information
2. Green Chemistry Incentives
3. DEP Resources and designation of more than minimum number of priority chemicals
4. Criteria for priority chemicals
5. Broader economic concerns including the economic impact of inaction and consideration of economic impacts on other than end-users
6. Re-visit protocol issues and criteria

Meeting Notes:

- The meeting was called to order shortly after 10 am
- Mark Hyland of the Maine DEP gave a short welcome to all those in attendance
- The facilitator asked members of the group to introduce themselves and identify any group they represented, for inclusion in the official meeting notes
 - Leann Diehl noted that she was present and representing a friend, businesswoman Cynthia Fisher
 - Ann Mitchell noted that she was present on behalf of Lorin Alusic from GMA
- At approximately 10:30 the facilitator moved to a discussion of ground rules for this series of meetings, and of the statutory guidelines for the meeting agendas
 - The facilitator identified the 3 main topic areas that would be discussed in each of the 3 meetings currently scheduled:
 - In today's meeting the substantive topic of discussion and deliberation would be DEP's protocol for the designation of priority chemicals under the statute. This topic was designed to satisfy the statutory requirement under §1699 Sec.4(1)
 - In meeting 2 (scheduled for March 27, 2009) the topic of discussion and deliberation would be the responsibilities, activities and proposed rules necessary to implement Title 38, chapter 16-D. This topic is designed to partially satisfy the statutory requirement under §1699 Sec. 4(2)
 - In meeting 3 the topic of discussion and deliberation would be stakeholder issues of concern. This topic is designed to meet the remaining statutory requirement under §1699 Sec. 4
 - The facilitator then moved into a fuller explanation of the goals of today's meeting. Those goals were:
 - To identify highlights of previously submitted email comments and to solicit additional comments from attendees.
 - To identify areas that would need to be discussed further at some other time
 - To discuss substantively those member concerns related to DEP's designation of priority chemicals

- Leann Diehl mentioned her concern that 3 meetings would not be enough, and of her view that we had until 2011
- In response, the facilitator noted the terms of her contract to moderate the stakeholder discussions and the statutory requirements regarding time. She also noted that the report generated by these stakeholder meetings could provide feedback on the general length of time dedicated to the stakeholder process.
- Bruce Gerrity brought up concerns he had with the process and with the timeline. He felt strongly that the guidelines regarding 1-2 paragraphs and 1-2 minutes time limitation that were laid out in the meeting's ground rules would be inadequate given the complexity of the issues at hand
- The facilitator clarified that those ground rules were hers, not DEP's, and that they were meant to apply only to comments submitted in advance and to initial comments during the meeting to ensure that all comments could be included. They in no way meant that any individual would be limited to 1-2 minutes during any meeting period. She reiterated the goal is to elicit stakeholder's participation through the course of an entire meeting.
- Leann Diehl asked if the stakeholder group would reconvene for other rule-makings
- The facilitator clarified that this stakeholders group was meeting in accordance with the statute
- The facilitator also asked the group if there was a desire to change the meeting schedule
- Several members of the group had questions about the end result of the stakeholder process
- The facilitator explained that the final outcome of the stakeholder group would be a report to the commissioner and that all comments and meeting notes would be included as appendices to that report
- The facilitator asked if it was the will of the group to have the March 27th meeting take place from 10-3 or from 12-5
- Leann Diehl asked that the agenda be adjusted to work through lunch. The facilitator noted that, in her professional opinion, a working lunch was somewhat impractical

- After discussion it was the will of the group to work through lunch, and to postpone a decision on the time of the March 27th meeting until the end of the current meeting
- At approximately 10:50 the group discussion moved to stakeholder issues of concern
 - The facilitator began by noting the names of groups who had submitted email comments prior to the meeting.
 - The facilitator explained that she had reviewed those comments to generate a list of themes or general concerns that were expressed most frequently. Some, especially those related to the collection of fees, were concerns that would be taken up at the March 27th meeting. The facilitator noted 2 remaining general areas of concern related to the designation of priority chemicals:
 - A concern that DEP lacks the necessary resources
 - A concern that many chemicals, more than just the minimum required, ought to be designated as priority chemicals
 - The floor was then opened for the identification of further member concerns
 - Several in the group had questions surrounding the process for the de-listing of chemicals of high concern. It was explained by DEP members present that that listing and removal from the list as a chemical of high concern is defined in the statute as a responsibility of DEP in concurrence with CDC and would not go through rule-making process
 - Leann Diehl raised concerns about business confidentiality. (Will be dealt with in Meeting 3)
 - Bruce Gerrity brought up a concern (referencing 4 B (1)(c) of the DEP Preliminary draft) that a rule would only look at the consumer side of an issue
 - It was agreed quickly that that concern would be taken up at meeting 2 on March 27th
 - Another concern was whether DEP would utilize this opportunity to create incentives for green chemistry
 - DEP reiterated that any stakeholder concerns must be within the scope of the law under discussion

- Michael Belliveau brought up the idea that a further concern be that the economic cost of inaction (e.g. disease treatment) be considered in any DEP evaluation
- Bruce Gerrity, Leann Diehl raised concern about whether the extent to which a product contributes to chemical exposure will be considered
 - The facilitator noted that that issue would be taken up at a later meeting
- Leann Diehl voiced concerns that stakeholders should be able to bring up further concerns at a later point in the process
 - Bruce Gerrity seconded that concern, noting that some stakeholders came prepared to speak for just 1-2 minutes and so should be able to bring up further concerns later
- At 11:30 am the group transitioned into a discussion of some of the concerns that had been raised in the previous discussion.
 - Discussion turned first to concerns regarding confidential business information
 - Michael Belliveau asked what the concern was, given existing legal protections
 - Leann Diehl, said Cynthia Fisher's concern was around public disclosure and potential effects that could have on business
 - Matt Prindiville suggested moving discussion to another meeting
 - The facilitator decided to move the issue to meeting 3
 - Discussion of DEP's resources and perceived inadequacy:
 - Michael Belliveau agreed with this concern
 - Leann Diehl noted that during legislative debate that DEP had assured legislature that they had resources
 - DEP members spoke up to say that DEP does have the resources to implement the law and designate 2 priority chemicals by 2011
 - Discussion of DEP's ability to do more than just meet minimum of 2 chemicals:
 - It was agreed that this issue, along with concerns about DEP's resources, would be moved to meeting 3 for discussion at that time

- Discussion of economic evaluation and cost of economic inaction:
 - Michael Belliveau stated that using this information could help DEP prioritize chemicals. He also mentioned a new study from a Dr. Davis that he would share with group.
 - Laura Harper noted that even trace amounts of a chemical would be of concern
 - Further discussion of this item was moved to meeting 3
- Discussion about removing chemicals of high concern:
 - It was noted that this process is governed by the statute. Further discussion was dropped
- Discussion of incentives for green chemistry and alternative assessments:
 - Discussion was quickly moved to meetings 2 and 3
- From Approximately 11:40 to 12:15 Ginger Jordan-Hillier gave a presentation on DEP's 'straw man' proposal for the Designation of priority chemicals
 - A handout of the preliminary draft proposal was available for all
 - Ms. Jordan-Hillier emphasized that in several places the preliminary draft used the phrase "to be present" as a triggering mechanism to satisfy statutory prerequisites for designation.
 - Lebelle Hicks asked, in reference to 2.C(4) of the preliminary draft, what information DEP is able to request.
 - Ms. Jordan-Hillier responded that that information was spelled out by the statute in §1695.
 - There were questions about the DEP's preliminary draft using "Board" when the statute references "commissioner"
 - DEP will get back to the group with more information on that issue
- At approximately 12:15 the group broke for lunch
- At approximately 12:35 the group began discussion of the protocol for the designation of Priority Chemicals

- Ms. Jordan-Hillier photocopied and distributed several copies of the facilitator summary of comments from emails received prior to the meeting on this subject
- There was some discussion of a “weight of evidence” approach being used in the designation protocol
 - After concerns raised by Michael Belliveau and clarification by several experts in the room it was agreed that there would be no consensus of the group unless the term “weight of evidence” was further defined
- There was discussion of utilizing the Canadian approach
 - Some questioned whether that could be used within our legal framework
 - Dr. Rice suggested that the more general question of how to prioritize chemicals within the list of 1800 already identified remains open. She noted that the statute identifies factors that must be considered, but does not dictate how those factors are to be weighed in relation to one another.
 - Michael Belliveau suggests that priority be given to those chemicals present in umbilical cord blood
 - Rep. Hinck noted that could weigh the process in favor of substances that bioaccumulate
 - David Neivandt noted that he had a problem with banning a substance merely because someone else did
 - There was general consensus that item 2 A. (2)f is of relatively less importance
 - Rep. Hinck reiterated that the target of the legislation was children
- The facilitator suggested that there was general agreement on the idea that prioritization of certain chemicals needed to be science-based and that focused in particular on human health and environmental impacts. Discussion proceeded from that idea
 - Lebel Hicks suggested prioritizing those chemicals found in umbilical cord blood
 - Some suggested that there might be consensus around prioritizing any of the items listed in 2 A. (2)(a) of the DEP preliminary draft.

- There was further discussion of using carcinogens, endocrine disruptors, PBT's as priority factors
- Michael Belliveau stated it was unlikely there would be one formula that would create an accurate list of the most dangerous chemicals
- The facilitator clarified the relationship between chemicals of high concern and priority chemicals, as defined in the statute.
 - Leann Diehl stated that the very placement of a chemical on the list affects businesses and they want obstacles to that
 - Michael Belliveau expressed his opinion that much of what Ms. Diehl was advocating for was rejected by the legislature. He also noted that it was inappropriate when reviewing the list of 1800 chemicals to do an exposure analysis for each. Such a process would lead to nothing happening, a "paralysis by analysis" he argued.
- The facilitator reframed the debate to look at how the protocols for designation could be set up to avoid paralysis.
 - David Neivandt suggested the idea of a scientific sub-group to prioritize chemicals
 - The facilitator asked if we could use existing data to bridge the gap between a list of 1800 and a list of only a few hundred
 - There was some discussion of what other sources of data and other lists might be utilized to achieve this goal
 - Leann Diehl stated that this legislation aims to ban certain substances and other regulations in other states and countries were merely about regulating. Thus, it would be inappropriate to utilize those other lists. She also noted that with further scientific review not all chemicals were concluded to be dangerous. She cited the example of a bill that Rep. Hinck had introduced which failed to pass after CDC testimony was heard.
 - Dr. Rice interjected to clarify that CDC testimony at that time was that they had not had time to do a full literature review of chemicals under discussion, not that CDC had concluded that the chemicals were safe.
 - Matt Prindiville argued that not all other lists under discussion related to the regulation (as opposed to the banning) of those chemicals.

- Joanna Tourangeau noted that the discussion would still only get us down to a list of several hundred, with no further guidance.
- The facilitator responded and asked for other broad areas of concern.
 - Michael Belliveau stated he was uncomfortable with the idea that each individual chemical would go through its own rule-making process.
 - DEP clarified that “batches” of chemicals could go through in a single rule making.
 - Lebelle Hicks again voiced concern over what information would be collected.
- Matt Prindiville thought we should focus on narrowing the list of 1800 chemicals to a more manageable one.
 - Leann Diehl asked if that meant there would be 300 priority chemicals identified, and it was explained that such designation was a separate process.
 - There was discussion of what other lists of banned/regulated chemicals would be appropriate.
 - It was agreed by the group that each stakeholder would generate a list of other lists that they felt would be appropriate for use in prioritizing some of the 1800 chemicals under discussion.
- The facilitator asked whether group members wanted to add language regarding the presence of the chemical in umbilical cord blood to Ch 880 2 B. (Additional factors that may be considered by the board) in the Preliminary Draft DEP Protocol for Designation of High Priority Chemicals.
- Dr. Rice suggested the idea of a scientific subgroup to work on prioritizing chemicals within the current list of 1800.
 - There was discussion of whether the group wanted to recommend the formation of such a body to the DEP commissioner
 - Leann Diehl expressed desire for the stakeholders group to form its own scientific subgroup
 - Michael Belliveau expressed his belief that no consensus of such a group would occur, but that he had no problem with further outside conversations taking place

- The facilitator decided to move the discussion of guidance to CDC of how to move from the larger list to a smaller list discussion to meeting 3.
- Matt Prindiville suggested that there was general consensus of the group to vote on recommending that priority be given to those chemicals that were present in umbilical cord blood, breast milk, and maternal blood.
 - Before the vote Joan Lawrence expressed concern that the group would be voting on any outcome at today's meeting
 - Bruce Gerrity again noted the confusion over the 1-2 minute speaking ground rule
 - Joan Lawrence stated that the Toy Industry believed that they would be able to get experts to speak on their behalf, but were unable to do so for this meeting due to the 1-2 minute speaking ground rule
 - The group voted on Mr. Prindiville's suggestion, with 8 stakeholders voting in favor: Mr. Prindiville, Michael Belliveau, Laura Harper, Rep. Adam Goode, Charles Urquhart, Nancy Ross, Kelly Miller, Sharon Tisher, and Leann Diehl abstaining. **NOTE: Our notes were not clear on all the votes –please let us know if your vote is not properly represented here.**
- The group agreed to have email addresses shared amongst the stakeholder group present via email, but that they would not be posted to any website.
- There was final discussion and consensus that the group would continue to take up discussion of protocol issues in meeting 3.
- The group voted to keep the March 27th meeting from 10am-3pm.
- The meeting adjourned shortly after 3 pm.