

Toxic Chemicals in Children's Products
38 MRSA §1691-1699-B
Stakeholder Meeting
March 27, 2009, 10 a.m.
DEP Response Training Room,
Augusta, Maine

Facilitator:

Naomi Mermin

In Attendance:

Michael Belliveau, Environmental Health Strategies Center
Jesse Connolly, Maine Legislature
Evelyn deFrees, Learning Disabilities Association of Maine
Sally Edwards, Lowell Center for Sustainable Production
Pam Eliason, Lowell Center for Sustainable Production
Bruce Gerrity, Toy Industry Association, Preti-Flaherty
Rep. Adam Goode, Maine Legislature
Lani Graham, Maine Medical Association, Maine Physicians for Social Responsibility
John James, Maine DEP
Andy Hackman, Consumer Specialty Products Association
Ginger Jordan-Hillier, Maine DEP
Laura Harper, Maine Women's Lobby
Mark Hyland, Maine DEP
Kellie Miller, Maine Medical Association
Curtis Picard, Maine Merchant's Association
Matt Prindiville, Natural Resources Council of Maine
Deborah Rice, Maine CDC
Stephen Rosario, American Chemistry Council
Mark Rossi, Clean Production Action
Sharon Tisher, Alliance for a Clean and Healthy Maine
Charles Urqhart, Maine Labor Group on Health
Dan Walker, Toy Industry
Cynthia Fisher, Looks Gourmet Food Co.
Dianne Tilton, Maine Legislature
Lorin Alusa, GMA
Joan Lawrance, Toy Industry Association
Arthur Kazianis, Hasbro Inc.
Andrew Dolby, Facilitator Assistant

Meeting Outcomes:

Outcomes Requiring Follow up:

1. Bruce Gerrity, Andy Hackman and Steve Rosario to provide digital copies of the Washington, California and EPA reports they cited as relevant background reading for the groups discussion. Facilitator agreed to having provided reports shared.
2. DEP to identify information on existing protections of Confidential Business Information for discussion at meeting number three. This may require Attorney General's office participation.

Items Now Scheduled for Meeting Number 3:

1. Broader economic concerns including the economic impact of inaction and consideration of economic impacts on other than end users.
2. Additional discussion of the protocol for designating priority chemicals.
3. Issues regarding confidential business information.

Items now Scheduled for Meeting # 4:

1. DEP resources and designation of more than the minimum number of priority chemicals.
2. Green chemistry incentives.
3. Further discussion on the timeline for stakeholder process.

Meeting Notes:

The meeting was called to order at 10 am.

- Facilitator Naomi Mermin led the group in a round of introductions including name and the parties they represented.
- The facilitator announced that technical experts Sally Edwards and Pam Eliason of the LCSP would be late due to car trouble, and the agenda would be adjusted accordingly. Attendees were briefed on exits and facility amenities.

The facilitator moved to review the statutory agenda.

- This was to remind the group that the stakeholder process is set up in the legislation to do very specific things. It is to provide the Commissioner of the Department of Environmental Protection with recommendations in the following areas: development of protocol for designation of priority chemicals (PC), proposed rules necessary to implement the law and other stakeholder issues of concern.
- The facilitator noted that today's meeting was being held largely to discuss the rules necessary to implement fee provisions and other responsibilities of the law. Designation of priority chemicals was discussed in the first meeting on March 6th, 2009. Stakeholder issues of concern would be discussed further in the third meeting.

The facilitator went on to review the meeting goals and timeline.

- Meeting #1 was designed to illicit stakeholder issues of concerns to be discussed at another meeting and discuss the protocol for designation of priority chemicals.
- Meeting #2 (today) will be used to discuss the implementation of the law.
- Meeting #3 is for the discussion of stakeholder concerns. A principle concern in meeting # 1 was insufficient time and notice for discussion of the protocol for designation of priority chemicals. The facilitator recommended adding further discussion to meeting #3. Meeting #3 is schedule on April 27th, 2009 from 12 pm to 5pm. Additional issues currently identified for meeting #3 include; Confidential Business Information, Green Chemistry incentives, DEP Resources and designation of more than minimum number of priority chemicals, broader economic concerns including the economic impact of inaction and consideration of economic impacts on other than end-users.
- Meeting #4 was scheduled at the consensus of the group for May 4th, 2009. It will be used to discuss items from Meeting #3 and other stakeholder concerns that arise.

During this discussion several attendees made statements about the timeline of the meetings.

- Bruce Gerrity stated a new report from the state of Washington concerning similar legislation was critical reading for the group and warranted discussion. Gerrity also brought into question the legislative timeline for designated PC and stated new information from the afore mentioned report may warrant revising that timeline.
- Andy Hackman also stated a similar report from California warranted the groups attention. Hackman stated that the group should take into the account the amount of time taken in other states and possibly learn from their processes.
- Stephen Rosario referenced an article concerning the EPA's renewed focus on high production/volume chemicals and new testing methodologies in testing health issues relating to children and adults. He called for revisiting the group's timeline to see what federal work may complement the group's goals.

- Mike Belliveau stated that continued dialogue was constructive as long as it did not lead to unnecessary delay, and also that the state of Maine has been working on the issue of toxic chemicals in children's products for over three years detailing the work of the governor's task force and the legislature.
- John James, Jesse Connolly with the help of Ginger Jordan-Hillier clarified the statutory timeline and the projected timelines to meet statutory milestones given the necessary processes.
- A discourse occurred between Gerrity, Rosario and Hillier-Jordan concerning the projected timelines. It was the perception of Gerrity and Rosario that a good "work product" such as quality discussion of the many issues at hand would warrant more time, whereas Hillier-Jordan had the viewpoint that the 2 year timeline to designate PC was reasonable and realistic and no extension would be necessary.
- Jesse Connolly and Adam Goode were asked of the legislative ramifications. Goode stated that this was work handed down from the 123rd legislature that was to be acted upon.
- Dianne Tilton talked about the possibility of an extension in the timeline.
- The facilitator clarified that any extension of the timeline, while sought by some members of the group, was *legislative* action and nothing could be decided at the stakeholder meeting.
- Sharon Tisher urged action sooner than later citing the health ramifications of Maine citizens.
- Andy Hackman commented that an extension was not obstructionist, and suggested that if further contentions arose in the future meetings an extension should be considered then, but also opined that further contention seemed likely.
- Matt Prindiville detailed the necessary rule making processes and stated he felt that was a lot to accomplish in two years, implying that the group didn't have much time to delay.
- The facilitator noted the suggestions and then stopped further discussion of the timeline and also reminded the group that a consensus was not necessary in the group.

The facilitator asked the group to set the topic agendas for the remaining meetings.

- Meeting #3 topics will include: economic concerns, additional discussion of the protocol for designating PCs, and confidential business information.
- Meeting #4 topics will include: DEP resources for designation of more than the minimum # of priority chemicals, green chemistry incentives, timeline discussion.
- The facilitator asked that boundaries be placed on stakeholder considerations of outside reports. The facilitator said she would make the reports mentioned by participant available to the group if those mentioning them provided digital copies to share.
- Mike Belliveau stated that endless reports should not be used as a filibuster and that the groups purpose was make recommendations, not necessarily to agree on anything.
- Stephen Rosario said the three reports identified were key reading and it would be in the group's interest to look at the information available.
- The facilitator mediated comments between Rosario and Belliveau, stating the importance of prudent information and research, but also respecting the groups own work and timeline.
- Deb Rice stated the EPA report may not be applicable to the group's work.
- Cynthia Fisher reminded the room that the group's work had far reaching ramifications on both sides of the issue and that it should allow as much time as needed.

- Mike Belliveau also made note of the statutory protections regarding current protections of confidential business information and requested the background information on that issues and whether it would need to be discussed at length or not.
- Bruce Gerrity reminded the room of his comment from a previous meeting in which he addressed the conflict between statutory confidential business protections in the face of the rule.
- Kellie Miller reminded the room that health of Maine citizens was involved and was the inspiration for the legislation.
- After mediating comments between Miller and Gerrity, the facilitator then proceeded to conclude future meeting topics and schedule.
- John James was called on to clarify the distinction between "commissioner" vs. "board" as was raised in meeting #1.
- Commissioner v. Board: Where the law calls for rulemaking by the Commissioner approval is implied as Title 38 rests the department's rulemaking authority in the Board of Environmental Protection.

The facilitator moved to the next agenda item - Fees for PC data collection

- John James stated the provision and said a fee of \$500 had been derived from DEP's experience with disclosure of information under Maine's Mercury products laws and managing that information. James stated the \$500 fee was a starting place for discussion.
- Andy Hackman questioned the number \$500. Hackman called the fee a disincentive to local manufacturers and referenced a much lower annual pesticide data collection fee of \$125.
- Sharon Tisher and Hackman had a discourse on the quality of pesticide data at lower fees. Hackman reiterated his opposition is to a fee.
- Stephen Rosario echoed Hackman's sentiments that a fee would serve an economic disincentive to local manufacturers. Rosario also brought up the cost of data compilation in industry.
- John James reminded the room that the fees were discretionary and one time.
- Hackman stated there needed to be some consideration of the data needed for PCs so the fee could reflect managing necessary information and prioritizing data.
- Hackman, the facilitator and James had a dialogue on the use of public information and the possibility of a graduated fee or setting boundaries on data requested (based on priority needs?)
- Mike Belliveau states the initial \$500 dollar fee may not be enough to cover the costs of the management of data by the department. Belliveau cites work done by the governor's task force and says the initial \$500 fee may just be a starting place so the department can meet statutory rules. He says the fee must be enough to do the job and the draft rule may not be enough to do that.
- Laura Harper and Evelyn deFrees agreed. deFrees cites the cost of treating learning disabilities and the lack of information available to the consumer.
- The group continued to debate the fee, industry claiming the fee would hurt the economy while others believe it would allow the lawmakers and consumer to receive the data necessary to make critical changes. Many shared the sentiment that the fee was too small to cover data collection costs picked up by the DEP, while industry representatives proposed that so much information existed in the public arena that the fee should be lower or non-existent. Many business leaders also voiced the need for targeted data requests to avoid the costs of preparing a large amount of data that may not be

necessary.

- Rep. Dianne Tilton and Ginger Jordan-Hillier held a dialogue concerning the number of possible companies that would have to pay necessary fees, but with no PCs named, that number is as of yet unknown.
- Mike Belliveau also brought up the issue of trade associations paying a one time fee while representing multiple companies, thus undercutting the DEP's budget for managing data.
- In conclusion the facilitator said that both sides were seeking a mechanism to accurately determine the cost of data collection.
- Andy Hackman, Mike Belliveau and Stephen Rosario held a brief discourse on the prioritization of data versus the discretionary power given the DEP in the draft legislation. No consensus was reached.

The facilitator calls a brief lunch break, after which the group will reconvene to discuss acceptable Assessment of Alternatives.

- The facilitator welcomes Pam Eliason and Sally Edwards and goes over the schedule for the rest of the meeting which will include discussing Alternatives Assessment (AA) and fees for AA. Pam Eliason and Sally Edwards then introduce themselves and their work with Lowell Center for Sustainable Production.
- They are part of a state agency that works with companies and helps them reduce their use of toxic chemicals.
- Mark Rossi of Clean Production Action also introduces himself and the Green Screen methodology for assessing alternative chemicals.
- John James is asked to walk through the components of an acceptable AA. The DEP can, at it's discretion, request from a manufacturer using a PC an alternative assessment. There is permission in the statute that allows an outside contractor to be hired by the DEP at the cost of the manufacturer. The acceptable AA present in the draft was informed by previous experience scrutinizing the use of mercury and deca BDE in products. First the DEP would seek information about the use of the PC in the product. The DEP would then seek to identify similar products on the market that use an alternative. Emerging alternatives in the industry would try to be identified. Finally there is an attempt to illicit scientific studies and other information that CDC will need to weigh in on the comparative safety of PC vs available alternatives.
- Pam Eliason and Sally Edwards respond to the structure of the AA. The basic structure of collecting info on the PC, identifying alternatives and then completing a comparison is common. They talk about their experience collecting information on PCs in MA after a list of PCs had been identified. The utility of that chemical must be considered in finding alternatives, and this was stressed as an important part of the process. In some cases knowing the utility may help avoid chemical to chemical comparison as opposed to redesign of the product.
- Sally Edwards talked about the varying aspects of AA such as environmental, technical and economic elements that are key in a successful AA.
- The facilitator stressed that the group must focus on what an acceptable AA must include.
- Bruce Gerrity made known his beliefs that an acceptable AA can not just be looked at from a consumer's viewpoint, but it must also consider the impact on businesses. Gerrity cited earlier comments that an AA did not have to look at cost to manufacturers, saying an undue economic burden could be put on small businesses that may find it extremely difficult to tender proper information to DEP.
- Pam Eliason suggested the cost issue was included in (e) advantages and disadvantages.

- Arthur Kazianis stated assessing the risk of PCs in a product may mitigate cost for manufacturers. He felt no risk assessment is in the draft legislation.
- Sally Edwards responded saying a risk assessment wasn't necessary as the legislation focused on the hazard aspect of PCs.
- Stephen Rosario stated that both sides of the issue would always disagree on the risk/hazard assessment of PCs and their alternatives because safety is in the eye of the beholder.
- The facilitator noted this line of discussion, but asked the group to focus on what constitute an "acceptable alternatives assessment". The fundamental need of an AA is not the topic of discussion.
- Bruce Gerrity stated an acceptable AA has to include practicality and affordability of accomplishment. He felt the draft legislation did not do that. He asked how an AA could occur without gathering competitive products and evaluating what alternatives may already be used. Gerrity asked how a company might accomplish this without doing exhaustive and expensive research.
- Pam Eliason clarified Gerrity's question and suggested this research could be accomplished internally within the company whose product was in question relative to that product and use.
- Mark Rossi clarified the statutory needs for a proper AA stating that some part of that information be requested from manufacturers. The questions of who provides what information maybe needs to be defined further.
- Sharon Tisher stated that she felt the solution was contained in the statute itself because once a PC is identified a company has to file with DEP. She claims that companies that do not file can be asked for alternatives to the PC.
- Cynthia Fisher stated that since it is proprietary information, it would be very difficult to get alternative chemical data from competitors.
- Matt Prindiville said similar criteria for an acceptable AA has been used in the state for mercury and DECA before. Prindiville believed the group should focus on the core elements of an AA and specific data that the specific data requested from local manufacturers would be minimal.
- Stephen Rosario believes that the draft legislation is not a viable option for AA, it does not involve hazard, risk or exposure assessment.
- The facilitator stopped Rosario's comments, clarifying and noting his comments and moving on.
- Jesse Connolly stated that the statute exempted all food and beverage packaging except that intentionally marketed to children under three and asked Cynthia Fisher what her concerns were. Fisher replied that her concern was for all Maine businesses.
- After a dialogue between Connolly and Fisher, the facilitator reminded the group of time constraints and asked everyone to focus their comments and limit long redundant comments.
- Bruce Gerrity disputed the idea of specific lab practices or methodology written into the statutes because different PCs may require flexibility in testing. He felt the definition was too narrow.
- Mike Belliveau said the broader aim of the legislation was to eliminate PCs in consumer products and the AA is a tool to do that. One way to gather information without burdening manufacturers is to add rules inviting public comments on the AA.
- Cynthia Fisher asked who would provide the AA for end product manufacturers who use

- many elements purchased from other companies.
- Pam Eliason cited the protocol for companies who are complying with European regulations.
 - Andy Hackman asked how AA would look at cost impacts and brought alternatives feasibility measures from the EPA model.
 - Pam Eliason agreed that cost while not explicitly identified is part of a good Alternatives Assessment because it relates to feasibility.
 - Joan Lawrence reminded the group that over 75% of the 1000 national toy companies are small or medium sized that may struggle with AAs.
 - Mark Rossi states that the Green Screen is just one publicly available approach that is proven to work, the statute should allow for others that are as effective. He also questioned whether the transitory cost issue should be dealt with in another section of the draft.
 - John James says the answer to Rossi's questions lays in the market shares of the alternative chemicals. The market share of such chemicals will be critical in the assessment process, i.e. if they are in wide use this suggests their economic feasibility as an alternative.
 - Bruce Gerrity brings up what he feels is a direct conflict within the legislation relating to the board and commissioner considering cost incurred by manufacturers in discontinuing the use of the PC.
 - John James states that the legislation focuses more on the cost to the consumer rather than the manufacturer.
 - Matt Prindiville thinks it is important for the DEP to identify where the cost matters. The cost to the manufacturer usually increases the price of the product. This is a consumer oriented law and cost to move to a safer chemical will have benefits for manufacturers.
 - Sharon Tisher states that quality of information about PCs will get better once the process of legislating PCs develops.
 - Stephen Rosario states that cost is not just bottom line. We want to provide a safe product that is affordable to the consumer. It has to have utility. It has to be safe. It has to be affordable. There are very real costs in society that can affect things. Competition breeds alternatives. Actually naming a third party methodology in the statute (referring to Green Screen) narrows the process too much. It should be broader.
 - The facilitator brings the focus back to what is included in a proper alternative assessment.
 - Mark Rossi speaks to the methodology of Green Screen.
 - Bruce Gerrity states there should be a bar (allowances?) for considering manufacturing costs. DECA is a bad example. Rules should consider the importance of the product in the market and society.
 - Matt Prindiville observes that the rule allows other chemical screening tools, not just Green Screen.
 - Michael Belliveau believes the statute should require documentation on industry investigation of alternatives. Determine what studies were used to find/not find alternatives and good faith efforts.
 - Mark Rossi had several specific comments on the draft, in Section D "for sale in the U.S." we should look globally for acceptable alternatives, don't limit to US. The presumption 3B presume sold and in "wide" use, "wide" is not in the statute may be expanding the threshold unduly.

- Cynthia Fisher notes the further burden AA places on small businesses.
- Pam Eliason and Sally Edwards state that collaboration between small businesses and sharing of the transition process can help. When industry sectors work together, as they have seen happen, companies use common tools which allows for information sharing and helps companies refine and improve their products cost effectively. They are also pushing back information requests to suppliers. The role of the small business owner is changing and this is part of the learning curve. Competitors may have to cooperate with each other's processes in order to meet goals.
- Arthur Kazianis brings up issues of supply chain and believes no company can just be looked at by itself.
- Supply chain issues are noted and added to meeting number 4 for discussion.
- Loren Alusa says compelling competitors to collaborate is a problem with proprietary information.
- Stephen Rosario references anti-trust legislation to illustrate the difficulty companies may have in collaboration. Also believes AA should go through a nationally recognized program as opposed to Green Screen. Worried the legislation is endorsing a methodology that may have unknown bias.
- Mark Rossi states that the life cycle cost of a product is a critical consideration. Also points out a conflict in the presumption and statute.
- Bruce Gerrity expounds on the AA as it relates to toys, should identify the extent to which the subject chemical is present and for whom the product is intended, and how it is accessible.
- Arthur states that sometimes a PC may be used for purposes that are not superfluous to the product's utility.
- Mike Belliveau states it may be reasonable for businesses to show documentation of attempting to get data concerning components from suppliers or information on alternatives. This would acknowledge the effort of the business to comply.
- Stephen Rosario respectfully disagrees with Mike Belliveau.

The facilitator moved to discuss AA fee.

- John James outlines the law that attempts to implement discretionary fee on a manufacturer that does not timely produce a report of alternatives.
- Bruce Gerrity calls law an open ended blank check and totally inappropriate. Parameters of cost must be established.
- Andy Hackman agrees and says there must be parameters of data requested.
- When chemical is tee'd up (i.e. the commissioner or BEP decision document that designates one or more PC's), that is when the information needed can be prioritized and specified. This will also take in to account existing public information available. DEP notes that they would not assess a fee if the third party has provided the requested acceptable alternatives assessment.
- Pam Eliason gives perspective saying that 15 different assessments were completed in 10 months for \$250,000.
- The group discusses the use of outside contractors to complete compliance goals. Hackman suggests some companies may simply prefer to say DEP you do it – what system is set up? Belliveau suggests it should be explicit that a manufacturer can just say DEP go ahead and do it with a contractor. It is suggested that DEP consider identifying three to four assessors/contractors including some suggested by industry.
- Hackman, Rosario and Belliveau discuss the benefits of risk assessment which Belliveau

says does not apply. The differences are cited as irreconcilable and fundamentally philosophical in nature.

- Matt Prindiville speaks to trust building efforts that should be made on all stakeholder's parts. Anything that can be done to build local trust so that DEP gets info and industry isn't feeling persecuted would be good. We do have a shared goal of moving PC out of products. Dialogue with other states that are already going through prioritization issues prove that Maine is not a rogue state. Stephen Rosario agrees.
- Mike Belliveau suggest sharing costs up the supply chain to lessen the impact on end product producers.

The facilitator moved to discuss banning products.

- The facilitator welcomes everyone back and frames the discussion of the protocol for banning products and how companies end up in such a place.
- John James walks through the steps of banning a PC:
 - Designate a priority chemical (PC)
 - Collect info if needed (i.e. not provided by other states)
 - Complete an alternative assessment (AA)
 - Ban PC if safer, affordable alternative exists.
- One rule could ID and ban PC without requesting info if it is banned in another state.
- Arthur Kazianis asks if risk assessment is not valid (referencing Mike B.'s earlier comments) what can be used to evaluate chemicals?
- Pam Eliason feels risk is addressed in the language of the draft legislation.
- Bruce Gerrity totally disagrees with the assessment of alternatives without looking of other implications of manufacturing product. Also need to look at the degree of the presence of the chemical in the product.
- Mark Hyland is not sure of volume of chemical present in a product matters.
- Andy Hackman, Stephen Rosario, Mark Hyland and others engage in a discussion concerning levels of PC in particular products and how harm can be demonstrated. Issues of cost concerning transitioning into safer chemicals surface again. The issue of finding economically viable alternatives is discussed, a few individuals bring up points concerning the market and how viable alternatives can be found there. Mark Hyland asks how testing can keep up, with so many products on the market? The issue of the cost of transitions and AA largely dominate the group's focus.
- Andy Hackman specifically would like 4 A prerequisites for a ban to include harm not just exposure and use of the EPA principles in design for environment.
- Mark Rossi specific suggestions that B 1 b consider life cycle costs not just purchase. That B2 safety in first sentence comes from statute but not the full sentence from statute. (Michael Belliveau notes if complete sentence used definition of a,b,c, d doesn't work as easily.). Mark notes 3b adjective "wide" goes beyond the statute and should be eliminated.
- Charles Urquhart likes 2 c and recommends keep it in.
- Micahel Belliveau Sec B2 process concern "consider all relevant" may need to narrow or define legally. DEP shouldn't be obligating itself to demonstrate release from product, if you keep manufacture and disposal should be added to use.

Discussion of future meeting agenda's for April 27th and May 4th.

- The proposed agenda item on supply chain issues is eliminated

The meeting was ended promptly at 3pm.