

Chemicals of High Concern to Children Workshop

Date: September 5, 2019

Location and Time: Vermont Department of Health, 108 Cherry St. 05402; 2:00pm-3:00pm

Present: David Englander (Vermont Department of Health), Brendan Atwood (Vermont Department of Health), Sarah Vose (Vermont Department of Health), Kerry Morlock (Vermont Department of Health), Paul Burns (Vermont Public Research Interest Group), Marcy Gallagher (Vermont Public Interest Research Group), Martin Wolf (Seventh Generation), Bill Driscoll (Associated Industries of Vermont), Andy Hackman (Serlin Haley, on behalf of the Juvenile Product Manufacturers Association), Ruma Kohli (Global Foundries), Patty Shirk (Global Foundries), Nick Sherman LeoNine Public Affairs (on behalf of Toy Association), Jennifer Gibbons (Toy Association), Lauren Heirl (Vermont Conservation Voters), Sheldon Goodwin (Vermont Conservation Voters) Tammi Wuestenberg (Vermont Department of Environmental Conservation), Matt McMann (Mac Lean Meehan & Rice, on behalf of Walmart and Proctor Gamble), Bob Miller (Vermont Teddy Bear)

By Phone: Stacy Lieberman (Jazzwares) Jos Huxley, Tanya Hall (Hasbro), Erin DeSantis (American Chemistry Council), Barbara Kinter (Specialty Graphic Imaging Association), Anna Gross (VF Corporation), Karen Lintz (UL), Tom Myers (Personal Care Products Association), Erin Segrist (Vermont Retail Grocers Association), Ira Berstein (University of Vermont Medical Center), Neil Cohen (Neil Cohen Law), Elaine Pidgeon (Levi Straus), David Winter (SGS), Brendan McClellan (Kontoor Brands), Mike Lawschick Stamps Marketing, Dave Smith (Lego), Ed Burd (Kroger), Topher Buck (Interstate Chemicals Clearinghouse), Ryan McCain (Michaels), Krista Kubinek (Michaels)

Meeting Facilitator and Note Taker: David Englander; Kerry Morlock

Agenda Item	Discussion
<p>1. Degradation:</p> <p>“5.0 Chemicals of High Concern to Children</p> <p>“The following chemicals are designated as chemicals of high concern to children:</p> <p>(1) <u>Formaldehyde and substances that are intentionally added to release formaldehyde, including but not limited to, DMDM hydantoin, imidazolidinyl urea, diazolidinyl urea, and quaternium-15.”</u></p>	<ul style="list-style-type: none"> • The discussion started with a reference to the Department of Health’s (Department) previously proposed rulemaking that required the reporting of all chemicals that were added to a children’s product and degrade to a chemical on the list of Chemicals of High Concern. <ul style="list-style-type: none"> ○ It was noted that due to concerns raised by manufacturers regarding how broad this provision was, the Department revised the proposal to what is included in Agenda Item 1. • It was noted that the Working Group discussions prior to the Workshop raised concerns about whether intentionality is either too broad or too narrow, and whether intentionality is sufficient to provide guidance to manufacturers. • The Department explained that as proposed, formaldehyde donors would be reported and appear as formaldehyde in the public database and would not result in additional reporting fees. • Alternatively, the Working Group discussed reporting each chemical individually which could result in additional fees. • Ms. Heirl commented that the proposed definition is too narrow and should be changed to what the Department originally proposed so that any chemical that degrades to a listed chemical must be reported. • A point was made that formaldehyde donor reporting is already addressed through statute via the definition of “contaminant”, and concern expressed that this could create confusion for manufacturers regarding whether to formaldehyde would need to be reported as a contaminant and as a formaldehyde donor. • Dr. Vose clarified that the definition of a contaminant addresses unintended degradation products with no function and, therefore, formaldehyde donors that were intentionally added to degrade to formaldehyde would not meet this definition of contaminant. Program guidance can address how chemicals should be reported.

	<ul style="list-style-type: none"> • Mr. Driscoll suggested making the provision more specific by including “intentionality” in the language. • Mr. Buck requested clarification as to whether manufacturers would be required to report formaldehyde as both a contaminant and as an intentionally added ingredient. Dr. Vose responded that this would depend on which definition is relevant to the inclusion of formaldehyde in a product, and further noted that manufacturers can add functions to reported chemicals as needed. • Clarification was provided that this requirement would not impact the exemption for importers with a rigorous restricted substance list and with manufacturer control programs for contaminants under the practical quantitation limit.
<p>2. “8.0 Reporting Years and Periods 8.1 On or before August 31, 2020 and annually thereafter, a manufacturer of a children’s product or a trade association representing a manufacturer of children’s products, shall submit to the Department the notice described in Section 6.0 of this rule. The submission schedule is:</p> <p>8.1.1 Submission on or prior to August 31, 2020 for products offered for sale between September 1, 2018 and August 31, 2020;</p> <p>8.1.2 <u>After August 31, 2020, submissions shall be made within 30 days of the product</u></p>	<ul style="list-style-type: none"> • It was noted that the Working Group suggested revising the language to clarify reporting is required “within 30 days” of offering a product for sale. • It was also noted that the Working Group discussed reformatting section 8.1 for clarity. • Ms. Heirl noted that requiring reporting after a product is offered for sale undermines the value of the reported data and recommended that the reporting times be proactive rather than retroactive to sale. • Ms. Heirl also raised concern that seasonal items may not be required to be reported until they’re no longer offered for sale. • Mr. Driscoll requested that “offered for sale” be defined, as it is an ambiguous term for manufacturers and could correspond to several specific actions or may be unknowable by manufacturers. • Mr. Englander requested that suggestions be provided regarding what language to use in order to clarify this. • The Department clarified that there is one fee per chemical per reporting period (between September 1 to August 31 of the following year). When a product with a reported chemical is newly offered for sale, it must be reported no later than 30 days, meaning that it is possible that a product may be reported twice within the

<p><u>being offered for sale in Vermont.</u></p> <p>8.1.3 Submissions shall continue annually thereafter.</p>	<p>first year of being offered for sale, but would continue as a single annual reporting thereafter.</p> <ul style="list-style-type: none"> • Ms. Gibbons commented that 30 days is insufficient and has concern for how “offered for sale” is defined. • Ms. Gibbons also raised concern that manufacturers may be uncertain whether a product will be sold in Vermont and asked whether refunds are issued to reporters that do not offer products for sale in Vermont. • Dr. Vose clarified that the Program does not provide refunds.
<p>3. Closing Remarks</p>	<ul style="list-style-type: none"> • The Department noted that: <ul style="list-style-type: none"> ○ Minutes will be available and will accept public comments until COB September 20, 2019. ○ Contact information is listed on the Department of Health’s rules web page. ○ The Department will review comments and then file the proposed rulemaking with the Interagency Committee on Administrative Rules likely in November, with the public comment period and meeting will likely occur December or January. • Adjourned