

Children's Safe Products Act Advisory Committee

Meeting Summary

June 3, 2008

The first meeting of the CSPA Advisory Committee was held on June 3, 2008 at the Fabulich Center in Tacoma, Washington.

The following Committee members attended the meeting:

- **Dr. Thomas Burbacher**, Center of Human Development and Disability
- **Representative Mary Lou Dickerson**, House of Representatives
- **Representative Larry Haler**, House of Representatives
- **Lonnie Johns-Brown**, League of Women Voters (alternate for Elizabeth Davis)
- **Arthur Kazianis**, Hasbro
- **Carol Kraege**, Department of Ecology
- **Denise LaFlamme**, Department of Health
- **Dr. Barry Lawson**, WA Chapter American Academy of Pediatrics
- **Webb Nelson**, Play Visions, Inc. (alternate for Bob Knight)
- **Senator Debbie Regala**, Washington State Senate
- **Dr. Sheela Sathya**, UW Department of Pediatrics
- **Jennifer Spall**, Wal-Mart
- **Laurie Valeriano**, Washington Toxics Coalition
- **Valla Wagner**, Teaching Toys and Books

The following Committee members were unable to attend the meeting:

- **Elizabeth Davis**, League of Women Voters
- **Bob Knight**, Find it Games [Note: The new representative will be John Ryan of Toysmith and his alternate will be Mark Chernick of Play Visions.]

The following Departments of Ecology and Office of the Governor Staff presented information:

- **Carol Kraege**, Department of Ecology
- **Keith Phillips**, Office of the Governor

The following Departments of Ecology and Health staff attended the meeting:

- **Kelly Cooper**, Department of Health
- **Laurie Davies**, Department of Ecology
- **Kathy Davis**, Department of Ecology
- **Bari Schreiner**, Department of Ecology
- **Ted Sturdevant**, Department of Ecology
- **Jim White**, Department of Health

Other people who attended the meeting:

- **Melissa Bailey**, Office of Rep. Dickerson
- **Kathrin Belliveau**, Hasbro
- **Jim Dawson**, Toxic Free Legacy Coalition

- **Nancy Dickeman**, Washington Physicians for Social Responsibility
- **Mark Greenberg**, American Chemistry Council
- **Seth Goldberg**, ESSCO
- **Kathryn Hedrick**, Bogard & Johnson LLC
- **Eric Hulscher**, Goodwill Industries
- **Mark Johnson**, Washington Retail Association
- **Rhonda Kaetzel**, Exponent
- **Carter Keithley**, Toy Industry Association
- **Rick Locker**, Toy Industry Association General Counsel
- **Daniel Ma**, Intertek Testing Services
- **Karen McGaffey**, Perkins Coie
- **Grant Nelson**, Association of Washington Business
- **Jan Odano**, Washington Senate
- **Ashley Pedersen**, Washington House of Representatives
- **Terry Price**, House Democratic Caucus
- **Allen Rickert**, Top Ten Toys
- **Elisabeth Rosenson**, Weber Shandwick
- **Ivy Sager-Rosenthal**, Washington Toxics Coalition
- **John Ryan**, Toysmith
- **Kathleen Shaver**, Mattel
- **Marian Stanley**, American Chemistry Council
- **Gary Smith**, Gary Smith Co.
- **Melissa Tennille**, Teaching Toys and Books
- **Joyce Tsuji**, Exponent
- **Phil Watkins**, Goodwill Industries
- **Allyson Zipp**, Washington Attorney General's Office

Dan Silver facilitated the meeting, and Matt Schoellhamer took notes.

Convening and Introductions

Dan Silver convened the meeting with introductions of the Committee, Ecology staff, and attendees and described the next steps in the timeline. Dan Silver introduced the day's objectives of the Committee.

Objectives and Ground Rules

Dan Silver announced that this is an introductory meeting. There will be four additional meetings scheduled from July through November. He emphasized that the Committee is not here to continue the legislative debate and that the day's objectives were to clarify and prioritize next steps for the remaining meetings.

Dan suggested, and the group agreed to, three ground rules to govern these Committee meetings:

- We will demonstrate civility.
- Everyone is responsible for attending the meetings and representing his or her own interests. Each Committee member may designate one alternate to attend on his or her behalf, but that alternate must not change throughout this process.
- The Committee discussion will be among Committee members. The audience will be able to provide comments at select points in the agenda.

Questions and Comments

What ground rules should the Committee employ when talking to the press?

Although there is not a recommended protocol, Dan encouraged Committee members to respond to press inquiries. However, members should not attempt to characterize other Committee members' viewpoints and should clarify that they do not speak for the entire Committee.

Governor's Charge to the Committee

Keith Philips, Office of the Governor, provided the Governor's goals for the outcomes and timeline of the advisory committee process. The Governor's primary goal is children's safety, and Keith emphasized that the Governor will not compromise on this issue. The Governor's other goals are that the law:

1. Does not affect toys with inaccessible electronics.
2. Ensures the safety of children's car seats.
3. Ensures that toys are safe.

In order to achieve these goals, the Governor would like to identify and focus on the highest priority chemicals and to identify whether European Union (EU) and California standards are stringent enough to ensure safety. The Governor is committed to presenting a legislative request to the legislature during the 2009 session and would like to ensure that this is a collaborative process.

There were no questions for Keith Philips.

Background on Legislation

Rep. Mary Lou Dickerson, prime sponsor of the bill, provided a summary of the current version of the legislation and of the process that developed it. The bill had bipartisan support in the legislature, passing the House 92-2 and the Senate 40-9. The Committee is not here to recreate the bill, but rather to make technical changes that will improve it. The coalition that created the bill reached out to manufacturers last June but did not receive any feedback, and this process to revise the two sections of the act might not have been necessary had input been provided. Rep. Dickerson considers this Committee to be an advisory group to the Legislature as well as the Governor.

There were no questions for Rep. Dickerson.

Introduce Member Perspectives

Committee members were asked to identify themselves and state their priorities for the discussion.

Advisory Committee Members

Sen. Debbie Regala, 27th District

Sen. Debbie Regala's primary goal is the safety of our children. Her priorities are to identify and to learn more about the challenges industry sees in moving the bill forward and implementing the legislation.

Rep. Larry Haler, 8th District

Rep. Larry Haler's background is as a nuclear engineer from Hanford. He considers the safety of our children to be paramount but thinks that 24 parts-per-million (ppm) is very small ("background noise"). He clarified that he is not criticizing the bill, but he would like to see the associated cost-benefit analysis. In particular, Rep. Haler's priority is to learn what the cost and return on investment will be for large and small businesses and for taxpayers. Over the last four years there has been a problem in Olympia and Washington DC of not considering the costs of proposed legislation. Lead is dangerous, but there are far more dangerous chemicals to be concerned about, such as asbestos and arsenic. We need rules on the quality of children's toys, but he doesn't know of anyone in business who seeks to build a bad product.

Denise LaFlamme, Department of Health

Denise LaFlamme stated that her guiding principle is to ensure children's health and safety. One priority of the Department of Health is to address whether or not the law will limit car seat availability.

Laurie Valeriano, Washington Toxics Coalition

Laurie Valeriano began by clarifying that the Washington Toxics Coalition was one of the groups that played a role in developing this legislation. She identified five specific priorities for this process:

- Address the problem of internal electronic components.
- Address the issue of car seats. It is not her intent to ban car seats in any way, and the research Washington Toxics Coalition conducted showed that car seats did not violate the standards in the bill.
- Understand the specific processes by which manufacturers test toys for compliance.
- Finalize the timeline for developing the larger list of priority chemicals.
- Address the specifics of how to ensure effective testing of chemical quantities while maintaining confidential business information (CBI).

Lonnie Johns-Brown, League of Women Voters (for Elizabeth Davis)

Lonnie Johns-Brown began by stating that the League of Women Voters was a strong supporter of the bill. She then described her priorities, ranked in the following order:

- Address the bill's application to toys with internal electronics.
- Address the bill's potential to impact car seat availability.
- Address issues around the chemical list, testing, and confidential business information (CBI).

She recommended starting with one or two points on which it would be relatively easy to reach consensus.

Carol Kraege, Department of Ecology

Carol Kraege outlined the following priorities for the Department of Ecology:

- Develop a rule that makes sense and that the Department will be able to implement.
- Receive assistance in clarifying how industry conducts testing and what should be reported.
- Receive feedback from the Committee as to how the report should be structured.

Carol agreed that it would be good to agree on certain decisions quickly; however, the issue of testing toys and developing the larger list of chemicals may take time, and the Committee needs to get started if these issues are to be resolved by the end of the final meeting. Ecology must meet the July 1, 2009 deadline for implementing the new standards for cadmium and lead. She also does not want to wait until October to broach the topic of the report structure.

Arthur Kazianis, Hasbro

Arthur Kazianis has been in engineering and safety with Hasbro for 17 years, has spent his entire career in quality assurance, and views himself as a resource on these topics. Hasbro's responsibility is to design products that meet global safety standards. To achieve this they work with the Toy Industry Association to set up rules and oversight procedures, and to identify and plan reactions to emerging hazards. The toy industry shares the concern for protecting children and has introduced many standards in the last five years. He was disappointed to learn that the industry had missed an earlier opportunity to provide feedback on this bill. Arthur highlighted the following priorities, in order:

- Clarify that exposure is an important aspect of safety, and that internal electronic components pose no risk.
- Address the issue of limits, specifically the parts-per-million (ppm) levels for the various chemicals.
- Discuss the specifics of testing requirements and their costs. Hasbro had to spend \$160 thousand to ensure compliance after the European Union passed the Restriction of Hazardous Substances Act (RoHS).
- Address the list of chemicals.

Questions surrounding the timeline are of interest but are not a top priority.

Valla Wagner, Teaching Toys and Books

Valla Wagner perceives her role as spokesperson for specialty retail interests, including non-traditional sellers such as museum gift shops that are not represented on the Committee. These specialty retailers (of which they are one) are in closest contact with the end consumer, know families and children by name, and have professional contacts. While small retailers are not better than large retailers, they are different.

Her priority concerns are:

- That there will be unintended consequences that limit innovation in children's toys.

- The bill needs to properly account for the fact that many smaller businesses have small profit margins and may not be able to afford the testing requirements that a larger retailer can.
- How will the bill address the issue of toys aimed at children of different ages? Will science kits aimed at 12 year-olds be handled in the same manner as teething toys?
- Will banned toys be available through internet retailers?
- The final law needs to be practical and enforceable.
- Definitional questions that affect the law's exceptions need to be addressed. For instance, "What's a bicycle?"
- What happens to inventory that was legally purchased prior to the date the law goes into effect? Will there be a grandfather clause, or will it all need to be disposed of on that date?

Jennifer Spall, Wal-Mart

Jennifer Spall stated that Wal-Mart, as the world's largest retailer of toys, is committed to children's safety. Wal-Mart rolled out the strictest toy standards in the industry last summer, and many of the questions that have come up in this meeting were raised during that process. Jennifer would like to see testing that is not completely out of line with other processes that are already in place. She is also interested in addressing the question of compliance. Currently the State says it may have the ability to test only 20 stock-keeping units (SKUs), but Wal-Mart sells thousands of SKUs. Finally, there is considerable ambiguity around the definition of a children's product and over the issue of intended age. While Jennifer agrees with Valla's interest in clarifying inventory issues and discussing the possibility of a grandfather clause, these issues were a lower priority for her.

Webb Nelson, Play Visions, Inc.

Webb Nelson explained that he has serious problems with the bill and considers it a draconian measure and an attempt to "run before we walk." He wants clarification of what this bill is intended to accomplish. How is the toy industry supposed to meet such a stringent standard for lead, when ambient concentrations may be higher than the standard? His highest priority is that the Committee discusses the timeline for implementing the new standards.

Rep. Mary Lou Dickerson, 36th District

Rep. Mary Lou Dickerson identified her priorities as:

- Come to an agreement today on internal electronics and car seats.
- Get clarity on the issue of internal testing standards as soon as possible.

She is happy to hear about the Toy Industry of America's standards for 2009 but added that on September 12th 2007 the toy industry testified that quality was job #1 and then faced three major recalls. She would like to see accountability.

Dr. Thomas Burbacher, Center of Human Development and Disability

Dr. Thomas Burbacher comes to these Committee meetings without a specific agenda. He responded to multiple previous comments by stating that while any number expressed in ppm is small, negative effects of all of these chemicals have been demonstrated in children at such low levels. He identified the following priorities:

- Address the issue of car seats, based on comments so far.
- Make sure that the e-waste issues associated with electronic toy disposal are considered.
- Ensure that Washington is in step with EU requirements to minimize additional burden on manufacturers and retailers.
- Receive an explanation of the ASTM toy safety standards.
- Set the timeline for finalizing the larger list of chemicals.

Dr. Sheela Sathya, Pediatrician

Dr. Sheela Sathya is a pediatrician with a Masters in Public Health focusing on chemical impacts on early post-natal development, and she hopes to be a source of information for the Committee. As a pediatrician, she would like to come away from these meetings with a better sense of how to explain the concept of ppm to parents. Her other priorities are:

- Address the issue of car seats, as they are very important to children's' health.
- Gain a better understanding of the manufacturing process, particularly why and how these chemicals are used.
- Clarify the method of risk assessment. Will risk be measured only in terms of the quantity of chemicals in the toy, or will it also take into account the effects of exposure at key points in the child's development of sustained exposure over several years?

Dr. Barry Lawson, Pediatrician

Dr. Barry Lawson, a pediatrician in neonatology, represents the Washington Chapter of the American Academy of Pediatrics. He agrees with Sheela's list of priorities and would also like more information on how the bill compares to the EU's requirements and to California's Proposition 65.

Develop Advisory Committee Agenda

Dan Silver summarized the results of the Committee member perspectives and proposed an agenda based on those perspectives and priorities. The Committee discussed the structure of this agenda.

Summary of Committee Member Perspectives and Develop Overall Agenda

Dan Silver identified three goals that all members of the Committee seemed to share:

- Promote children's' safety.

- Craft an effective law that will positively affect children's' safety.
- Create a practical and enforceable law.

Dan then summarized the following priorities that seemed to be shared by the group:

- Electronic components
- Car seats, noting that there was a lot of interest in addressing this issue quickly
- Testing, especially how product testing would align with that required by the EU and California
- Timelines, including:
 - Grandfathering
 - The impacts of manufacturing cycles on implementation
 - Government enforcement timelines
- List of chemicals

Dan also noted that members of the Committee had mentioned three issues that seemed to cut across many of these topics:

- Issues related to recommended age
- Product exceptions
- Communication to the public, including customers and patients

Dan proposed that the list of priorities be used as the agenda for the entire Advisory Committee process and that the three additional issues be addressed throughout the process. Dan asked the Committee to provide feedback on the structure of the overall agenda.

Comments and Questions

The Committee had no objections to the sequence of the agenda but made the following comments and questions.

- **Proprietary manufacturer issues are very important.**
The Committee agreed to handle this issue under the list of chemicals topic.
- **Confidential business information (CBI) should also be included under the list of chemicals topics**
There were no objections to including CBI in the agenda.
- **Washington Toxics Coalition is not interested in moving the standards timeline.**
The Committee clarified that "timeline" could refer to several different concepts related to the bill. There was interest in continuing a discussion of the standards time line, and of including the question of grandfathering in toys purchased before the law.
- **The Committee should continue to discuss the relevance of EU standards.**

- **The Departments of Ecology and Health will come to the next meeting with a summary of the compliance issues and concerns involving car seats.**

Assign a Portion of the Agenda to the Next Meeting

Dan proposed that the Committee address the issues of car seats and testing at the next meeting, currently scheduled for July 29th.

Comments and Questions

- **The Committee should still address electronic components sufficiently.**
Dan clarified that electronic components were still on the agenda and would be addressed. There was agreement that that was a reasonable plan.
- **Are their other examples of compliance testing besides those offered by the EU and California?**
The EU has a new toy safety directive, although implementation is five years away. Because of the long timeline, Hasbro is not yet working to comply because they do not know what the requirements will ultimately look like. The toy safety directive is similar to the REACH directive.¹

Recommendations

It was agreed that the issues of car seats and testing should be discussed at the next meeting.

Identify Potential Speakers for Next Meeting

Dan Silver proposed that Committee meetings should focus on learning and discussing information. He solicited suggestions for knowledgeable individuals that the Committee would like to address the group.

Suggestions for Expert Speakers and Materials

- **Three Committee members recommended Mr. Ma from Intertek as an expert in testing.**
There was one request that such a testing presentation focus on the burden of this legislation on the industry.
- **Members of the US Consumer Product Safety Commission could not attend this first meeting, but they are available to present to the Committee if asked.**
- **Seth Goldberg, attending as a member of the public, is the CEO of a testing company and offered to talk.**
- **John Ryan, attending as a member of the public, offered to speak on the details of the manufacturing process and provide written materials to the Committee.**
- **In advance of meetings, provide written materials on relevant topics. For the next meeting, provide written materials detailing how the industry tests to meet the various state standards.**

¹ The EU's Registration, Evaluation, Authorization and Restriction of Chemical Substances directive

Arthur volunteered to provide materials on testing; however, California does not test for phthalates, so Hasbro does not have that process in place yet.

Dan Silver will contact the proposed speakers regarding their interest and availability in presenting at the next Committee meeting.

Description of the Rule Making Process and Ecology's Draft Language regarding Internal Electronic Components

Carol Kraege provided a summary of the overall rule making process:

- May 20, 2008: Ecology filed CR101, a scoping document that lays out the intent of the rule.
- June 25, 2008: Deadline to provide Ecology comments on the draft language Carol distributed at this meeting.
- August 2008: Ecology will put revised draft language out for public comment.
- September 2008: Ecology will hold two public hearings.
- October 2008: The public comment period will close in the beginning of October.
- December 2008: Ecology will revise and file the final version.
- January 1, 2009: The rule change will go into effect

Carol also provided a summary of the content and intent of the rule change that will govern only toys with internal electronic components, separate from the overall rule on children's products. The rule stipulates that an item is exempt from the law's restrictions if the electronic components providing functionality are internal and not accessible during regular use. This language is intended to focus only on toys with internal electronic components, and the narrow focus is necessary to achieve the tight timeline. Carol anticipates additional rulemaking processes to cover other specific items as issues arise.

Questions and Comments

- **Will the Committee be able to offer comments on the draft language for the overall rule at the September 9th meeting?**
Carol confirmed that the Committee will be able to comment on the draft at that time.
- **Must a toy use software to be defined as electronic under this definition?**
No, the rule's definition includes, but is not limited to, toys that use software.

Public Comment

Dan Silver opened the floor to public comment from the meeting attendees.

Questions and Comments

- **Eric Holster, Goodwill Industries, is interested in the definition of a retailer and the issue of grandfathering as a reseller of used toys.**

- **Alan Ricker, Top Ten Toys, said that he is sensitive to the distinctions that might be drawn between toys with internal electronic components and those with external ones.** It seems that toys that have buttons will be covered, but that “assemble your own” kits aimed at older children could be ruled out. Be aware that this subset of educational tool is out there and has real value. Alan thought this issue could fall under either the concept of age or exceptions, but would probably be more effectively addressed as a subtopic under exceptions. Several Committee members and attendees expressed uncertainty as to whether such products would be defined as toys or as educational tools and pointed to a need for clarification on this issue.
- **Nancy Dickeman, Washington Physicians for Social Responsibility, asked that barriers to testing not affect the stringency of standards in any way.**
- **Seth Goldberg, ESSCO, said that where and how a toy is used are important questions.** A child that assembles a model wind generator probably isn’t going to stick it in their mouth. ESSCO has a spectral analysis database that Seth would be happy to share.
- **Marian Stanley, American Chemistry Council, commented that phthalates are ubiquitous.** You can take them out of specific materials or components and still have an item not meet the specified standards.
- **Kathrin Belliveau, Hasbro, said that she is very impressed by the constructive nature of first meeting.**
- **Jim Dawson, Toxic Free Legacy Coalition, works with parents and reports that they are scared by this issue of toxics in children’s products.** He thinks that the industry will benefit greatly from transparency, as well as from the adoption of standards.
 - Melissa Tennille warned against focusing on recalls. Increasing the number and stringency of standards won’t decrease recalls. Furthermore, recalls by themselves are not a problem. In fact, they are a sign that the system is working. The culture of fear Jim Dawson referred to is caused by misinformation.
- **Committee members Valla Wagner and Arthur Kazianis commented that certain toys will not be able to meet the standards because there is no substitute for certain materials.** For instance, any toy with wires requires solder, and solder requires a concentration of 100 ppm lead. It was noted that the EU regulates lead at 1,000 ppm.
 - There was a competing comment that Washington Toxics Coalition tests have shown significant variability in the amount of lead in certain toys, which seems to indicate that levels could be reduced.
- **Committee member Webb Nelson stated that toys would become substantially more expensive if these standards are adopted.**
- **Two participants asked that the Committee look at the issue of accessibility and the role exposure plays in risk.**
- **Grant Nelson noted that there was a need to address ALL internal inaccessible components, not just electronic components.** For example, the Find It Game sold in the legislative building has many individual components that are inaccessible under normal use and abuse. Under the law, this game will be banned for sale in the state unless we provide an exception.

Determine Date, Time, and Location of Next Meeting

The Committee agreed that the next meeting will be held in SeaTac on July 29th, 2008. Ecology has yet to determine the exact location.