

Children's Safe Products Act Advisory Committee

Meeting Summary

October 7, 2008

The fourth meeting of the Children's Safe Products Act Advisory Group was held on October 7, 2008 in SeaTac, Washington at the Red Lion Hotel. The meeting agenda and meeting materials are available on the [website](#).¹

The following Committee members attended the meeting:

- **Dr. Thomas Burbacher**, Center of Human Development and Disability
- **Elizabeth Davis**, League of Women Voters
- **Arthur Kazianis**, Hasbro
- **Carol Kraege**, Washington Department of Ecology
- **Denise LaFlamme**, Washington Department of Health
- **John Ryan**, Toysmith
- **Dr. Sheela Sathyana**, University of Washington Department of Pediatrics
- **Jennifer Spall**, Wal-Mart
- **Melissa Tennille**, Teaching Toys and Books
- **Laurie Valeriano**, Washington Toxics Coalition
- **Valla Wagner**, Teaching Toys and Books

The following individuals presented information:

- **Tim Shestek**, American Chemistry Council

Other attendees:

- **Bill Alkire**, Alkire & Associates
- **Tom Bybau**, University of Washington
- **Holly Davies**, Washington Department of Ecology
- **Ed Desmond**, Toy Industry Association
- **Matt Fisher**, Four Seasons
- **Kathryn Hedrick**, Bogard & Johnson, LLC
- **Bob Knight**, Find It Games
- **Carter Keithley**, Toy Industry Association
- **Joan Lawrence**, Toy Industry Association
- **Tom Lindley**, Perkins Coie
- **Rick Locker**, Locker, Greenberg & Branin
- **Pam Madson**, Washington House of Representatives (Staff)
- **Ashley Pederson**, Washington State House of Representatives
- **Cheri Peele**, Cascadia Consulting Group
- **Allen Rickert**, Top Ten Toys
- **Bill Robertson**, Washington Poison Center

¹ <http://www.ecy.wa.gov/programs/swfa/ruleChildrenAdvise.html>

- **Ivy Sager Rosenthal**, Washington Toxics Coalition
- **Carl Schroeder**, House Democratic Caucus
- **Margaret Shield**, Local Hazardous Waste Management Program, King County
- **Gary Smith**, Toy Industry Association
- **Joyce Tsuji**, Exponent
- **Neil Twilla**, Washington Department of Ecology
- **Jim White**, Washington Department of Health
- **Allyson Zipp**, Washington Attorney General's Office

Dan Silver facilitated the meeting, and Dominique Gómez of Cascadia Consulting Group took notes.

Convening and Introductions

Dan Silver convened the meeting by reviewing the initial purpose of the advisory committee and the new narrower goals given recent Congressional action on the topic.

Remaining Questions to Consider

What criteria would you use to prioritize the list of chemicals of high concern for children?

Arthur Kazianis of Hasbro spoke about current standards used by the toy industry to ensure safety, including the U.S. Consumer Product Safety Commission (CPSC) requirements under the Federal Hazardous Substances Act (FHSA): Labeling and Banning Requirements for Chemicals and Other Hazardous Substances. Kazianis passed around copies of these requirements to committee members. Toy manufacturers currently must comply with this federal regulation, and they use it as a guideline. Kazianis shared that in his company, toys with properties that are subject to this regulation go through a review from an independent toxicologist. Based on this review, the manufacturer decides how to proceed with the product.

In addition to the U.S. Consumer Product Safety Commission regulations, the European Union also regulates toy distributors under the Restriction of the use of certain Hazardous Substances (RoHS). In addition to the CPSC and RoHS regulations, the U.S. Environmental Protection Agency (EPA) also requires manufacturers to declare certain substances under various environmental regulations. To a large extent, companies must rely on upstream suppliers to comply with and report information for these regulations, as they are not the original manufacturers of all products or all components of products.

Questions and Comments

- **What is the third-party toxicologist looking at?**
 - The toxicologist will be given all the details of the chemical compounds included in product. They will do tests on the product itself. Based on these tests, an understanding of how the product is used, how a child will be exposed to the product, and existing information on the chemicals compounds, the toxicologist will perform a risk analysis.

- **Is the result of that review to define the product as “toxic” or “non-toxic”?**
 - It generally goes beyond that. The review looks at the product from a medical perspective to see whether it presents an unreasonable risk to a child of harmful exposure.
- **It was my understanding that in the past, if a product was not considered toxic under the FHSA screen, then it wouldn’t go through more tests and the like. Is that the case?**
 - It depends on the type of product: what age group is it meant for, its use, and other factors.
- **As far as I know, there is no risk assessment done on the interaction between chemical compounds and child development, because there is little data on developmental impacts. If this is the case, how can we test products for safety?**
 - There are some reports that look at the effects of certain compounds at various ages. The toxicologist takes into account the outmost extremes of possible exposure.
- **If the chemicals are on the FHSA list, they will not be used in products. Is this self-regulation of the industry or federal regulation?**
 - Federal regulation.
- **If a chemical is not on the list, then what is the process to decide whether or not it should be used?**
 - If there is a compound in a product that an outside toxicologist identifies as a risk to the child, then we will immediately look to substitute that chemical to avoid risk.

What criteria would you use to prioritize the list of chemicals of high concern for children? (continued)

Laurie Valeriano proposed that the committee focus on the question at hand, which is how to prioritize chemicals of high concern for children. She proposed that the agencies make this more manageable with two steps. The first is to identify the chemicals that are already identified as harmful from the various lists discussed in past meetings and overlay the National Health and Nutrition Examination Survey (NHANES) information to come up with a high-priority toxics list. The second is to break the chemicals into groups based on how the chemicals are commonly used. From here, Valeriano felt certain groups would naturally fall away because they are not used in children’s products (for example, pesticides). This would help prioritize remaining chemicals.

Questions and Comments

- **If we grouped chemicals by their use how would that help us?**
 - We can start to look at whether or not these chemical groups are used in children’s products.
- **One dilemma is that we need this report at end of this year. How do we give the Legislature a list of chemicals to focus on when what we have is some biomonitoring data,**

but the information doesn't match up necessarily with chemicals on the various hazard lists?

- **This approach seems to be one way to do it. The other thing is to look at chemicals that have been known to be hazardous, but they might not be in products. We (toy manufacturers) are addressing all the chemicals that are under current U.S. and E.U. regulations.**
- **We should be developing a process, a scientific method, which is objective: a way to determine what is on the original list and how substances get added to or taken off that list. How this list was developed needs to be clear for everyone, especially legislators.**
- **We must acknowledge the inherent uncertainty in the many steps here: in risk assessment, in picking which chemicals are toxic, and so on. We need to develop a list of what chemicals are in toys/children's products directly from those who know.**
 - We don't have that information – the chemical and toy manufacturers do not provide lists of what they put in their products.
 - I disagree. We do know what chemicals are there. The (existing) regulations do work; the manufacturers do provide this information.
- **What information is available that can help the Department of Ecology and the Department of Health narrow down the list?**
 - It still comes down to the manufacturers of the chemicals and original manufacturers of toys. I think that's where we have to start. That is the only place we will get accurate information short of testing.
- **There is a lot of confusion in toy industry about a rule on listing. Even if we agreed that goal of the statute was to gather information from the industry, which would then be eventually used to protect children, there comes a point when, if the agencies ask for reporting on too many chemicals, they are less likely to get useful information.**
- **Is there a number of chemicals we should be considering for the list? If there is a point after which we are less likely to get the information we want, what is that number?**
 - For the toy industry, any new chemicals to report on would be in addition to the 10-15 substances currently tested for under federal regulation.
 - New chemicals are not really an issue because of this need for testing and reporting. We (toy manufacturers) tend to stick with materials that we know, which are few and limited in nature.
 - If our goal is protecting children, there is no magic number.
 - We should prioritize based on what substances we know are in toys and what we know to be hazardous.

Short Presentation of Information by Tim Shestek, American Chemistry Council

Some opportunities exist to leverage current activities surrounding the safety of various substances to help prioritize and focus efforts. Chief among these are EPA's High Production Volume Information System. Under this system, companies report various data on toxicity and other properties of chemicals

that are imported or produced in the quantity of 1 million pounds or more each year. This system covers 95% of the chemicals imported or produced in the U.S.

Another system that may prove useful is the new Chemical Assessment and Management Program, also part of the EPA. Under this program, 6,750 chemicals (those produced in quantities of 25,000 pounds and greater each year) will be identified with data surrounding potential risk and priorities for action if needed.

Lastly, a relatively new California law has been passed to establish a process by 2012 to identify chemicals that might pose risk in consumer products, especially to subpopulations including infants and children.

Questions and Comments

- **It is surprising that these databases have not come up in discussion until this point. It seems that these will be very helpful to the Department.**
- **It seems that there are representatives of the two ends of supply chain present: the beginning manufacturer and the ultimate user. Can anyone name the entity in the middle?**
 - The "middle-man" is the compounder that takes the original materials and adds the various components.
- **Under the High Production Volume program, 2,200 chemicals are under analysis. When will this information be available?**
 - Some of the information is being released now, and some of it will be released when this process is done. Companies are still submitting information for that program; it is currently about 90% complete.
- **Will the chemicals we are interested in be on this list?**
 - Yes, some will. EPA will develop and populate a list of priorities based on special concerns.
- **Is EPA starting to look at criteria for priority groupings?**
 - Yes. Exposure, hazard information, physical chemical properties, persistence, and bioaccumulation are possible triggers for making these priority groupings.
- **Will these processes that are underway give us information that we can use to winnow the list of chemicals? Should we wait for these efforts to finish?**
 - No. This will take too long, and some of this information is already available.
 - It may be useful to follow these other processes not for what they produce, but for information on the criteria they use and their process.
 - This information will be very helpful. I would prefer to have an accurate system that works well, rather than to rush into something because of the pressure that the Legislature has placed on Ecology and the Department of Health. The E.U. and California have much longer timelines than ours.

- **What about the second option of sorting the various substances on our lists by whether or not they are found in toys?**
 - It is likely that we can determine that some things are not in certain toys, but on the other hand, they may be included in others. The larger manufacturers will be better able to answer these questions, whereas smaller manufacturers will need to work with their factories, suppliers, and others. It gets highly complex.
- **I don't understand why it is so difficult to get information about what substances are in the toys?**
 - Maybe this is a problem based on trade secrets. Or perhaps this is due to the many players, manufacturers, suppliers, and so on.
 - Information is coming through testing and through middle-company reports. Most information will be through testing. Information about resins and components, electronic components, and the like will come through reporting from the supply chain.
- **If today is the last formal meeting – how do we continue?**
 - As the departments prepare the report, we are hoping to involve the committee's members in many ways. Rather than having meetings, we are likely to have targeted conference calls. Unfortunately, there will not be a lot of time to review the report to the Legislature because of the short timeline.

Moving Forward

Denise LaFlamme and Carol Kraege outlined their roles and thoughts on how to continue the process of writing the report with the input of the committee. They reflected on remaining needs for completing the report. The report will outline a draft process for developing a list of priority substances in children's products. The departments would like to make sure they have a clear picture of what existing standards and regulations toy companies comply with and what information is currently available through reporting and testing. A priority for the departments stems from the Governor's directive to make sure that the process, especially with respect to reporting requirements, is practical and implementable, keeping in mind the number of small businesses that will be affected.

Questions and Comments

- **Will retailers need to report?**
 - The focus will mostly be on manufacturers, but we will also consider the standards that retailers have developed (such as the presentation by Wal-Mart in a previous meeting).
- **The truth is that Washington State is the only entity we will have to report to. To comply with California's Proposition 65 toy manufacturers need only to label if a product contains a listed chemical, not report. For that standard, we are either in compliance or not. If a product does not have any of the substances on the list, then we don't need to label. What the department is proposing is a fundamentally different mechanism.**
- **Another approach would be similar to the European Union. In this case, we have a certificate showing that we are in compliance, the product has been tested for the various protocols, and it passes all the necessary tests. We have the certificate, and it is available on request.**

- **Are we to report only when we find that we have a chemical that is on the list?**
 - Yes.
- **This topic is a point of major of confusion for toy companies. Many believe they will need to report for every single product.**
- **Another approach is to report on failures only – that is, report only on violations.**
- **It does not make sense that you are so concerned about the reporting. I thought I had understood that the major issue from an economic standpoint was the testing, and you will need to do that regardless of reporting.**
 - Yes, testing is still issue. But reporting is also very time-consuming.
- **What will the process be for checking up on non-reports? For instance, if a company does not report any violations but they most likely have a few.**
 - That is unclear at this point. If there is a complaint, the Departments will respond and may test the relevant products. We will certainly look at any existing testing the company is already doing first.

Remaining Questions to Consider

Are there classes of materials that are more problematic – for example, are there certain types of plastics that are worse than others? Are there some products/materials that are likely to be flammable and require the addition of chemical flame retardants?

This question is in response to the concern that because testing is so expensive, certain smaller toy manufacturers simply would not be able to market their products in Washington.

Questions and Comments

- **I think we could rule out certain materials as not being hazardous. Natural toys, for instance, which are solely made of wood, organic cotton, and similar materials. If a company made their toy exclusively from natural products, then perhaps we would not require them to report.**
 - This approach makes sense, but we would need to be clear about the language.
 - There are many “natural” products that are not natural. Defining “natural” may not be under the purview of this committee because it is not legislated.
 - What about the dyes in the fabric/
 - Toys may be simpler to categorize as natural because there are fewer ingredients in some than other products.

- **Is there a certification out there that is rigorous, tested, and acceptable so that the certification will be sufficient?**
 - Perhaps the E.U. organic label.
 - Perhaps the labeling required by the Labeling of Hazardous Art Materials Act (LHAMA) for arts & crafts supplies.
- **We need to make sure we provide an exemption for materials that are not accessible. If there is no accessibility, there is no exposure and no risk.**
 - There was no agreement on this in the past meetings.
 - EPA and the E.U. give accessibility exemptions.
 - Exemptions should not be given.
- **Toy companies need more guidance. Especially for the small manufacturer, guidelines and guidance are crucial.**
 - I agree about the need for guidance. Perhaps the California requirements for jewelry are a good model. They give guidance about what companies should test and shouldn't test. This sort of guidance can be very descriptive and may be better than trying to capture all of that in the actual rule.
- **Violations are another area where confusion exists. Will the product be pulled? Will there be a public list of violators?**
 - Most likely the product will not be pulled. Violations might be listed on a website. But there is no real decision about what to do with violators.
 - The statute does provide in Section 7 for civil penalties in the amount of \$5,000 for a first offense and \$10,000 for repeat offenses.
- **Including certain chemicals on the list based solely on robust data might be possible. But what do we do with chemicals that we don't have data on?**
 - Those chemicals are not in play at present, because they are not on any of the lists that we are looking at. We are using these existing lists from a practical perspective of gathering together what is already known. But, we do need to consider how to get new chemicals on the list as well as how to take some off.

Public Comment

Dan Silver opened the floor to the public for questions and comments related to the proceedings.

Public Comments

- **The departments need to look at volume. What toys are we selling the most of? Information about everything would be desirable, but if we are looking at children's toys,**

we need to consider the numbers. For the smallest manufacturers that are only making a few thousand toys, that is just so small. The cost of testing will push them out of this state, and we will lose toy diversity.

- **At the annual Toy Fair, there are probably 1,500 vendors, 1,300 of which are small vendors. When we consider the basic economics of their businesses, many of them will stop selling to Washington. Let the federal government do its job.**
- **Of all the chemicals that are regulated through California's Proposition 65, only two apply to toys. The two are DEHP and lead.**

Meeting Summary and Next Steps

Dan Silver summarized the meeting. The departments must focus on two main issues. The first is how to develop a clear, scientific method to sort and prioritize the substances to a manageable list. The second is how to address the need to report in a practical way. Although the committee did not necessarily reach agreement on these issues, the responsibility comes back to the State to make decisions considering all the committee's input in these past meetings.

Carol Kraege of the Department of Ecology outlined the next steps for Ecology and the Department of Health. The departments will take into account all the information that has been presented and discussed at the meetings. They will focus on the Governor's message about the necessity for a rule that is practicable and can be implemented. The report will draw on existing regulations, reports, and lists of hazardous substances. It will also lay out various policy options for how to deal with violations. The idea of providing a guidance document to manufacturers, especially for the benefit of smaller manufacturers, will certainly be kept in mind.

Dan Silver closed the meeting by thanking the committee and audience members for their input and patience and reminding participants that from the beginning, all committee members expressed the same two main goals: ensuring safe toys for children and developing a process that is efficient and practical.