

**1) Issues associated with the ‘reporting list’ – the list of chemicals that triggers reporting by manufactures.**

- a) How many chemicals should be on the reporting list? How should they be selected or prioritized? Should the selection process be specified in the rule? Should there be allowance for chemical exemptions such as Generally Recognized As Safe (GRAS) chemicals? See <http://www.foodsafety.gov/~dms/eafus.html> for list of chemicals.

WTC Response: Ecology has determined that 50 chemicals is a manageable number and we think this is a good start. We would like to see a timeline for when other chemicals would be added to the list and specific language in the rule that requires Ecology to review and add chemicals to the list every two years. There is no need for a Generally Recognized As Safe exemption because the list is narrow and will only include chemicals that are a concern for children. If a chemical is not on the list, then a manufacturer has no duties under the law. Ecology should not be put in the position of deeming a chemical as safe, especially given the incomplete data on many chemicals on the market.

- b) Should chemicals that are not ordinarily used in consumer products be excluded? If so, how do we know what chemicals are not ordinarily used? For example in a recent study tetrachlorethylene and 4-nonylphenol were found in some children’s products.

WTC Response: No. The reason that we advocated for a reporting system for chemicals in children’s products is that there is a major data gap. We don’t necessarily know what is “ordinarily used” so if there is information that would indicate the possibility of a harmful chemical in children’s products, Ecology should include it on the list. This will also help manufacturers ask the right questions of suppliers and ensure a harmful chemical does not become “ordinarily used”..

- c) For this list of issues ‘de minimis means the amount of a substance in a product which would trigger reporting. Should there be a ‘de minimis’ value for the chemicals on the reporting list? If so, what should it be based on? Should United States National Toxicology Program (US NTP) See - <http://ntp.niehs.nih.gov/>, Consumer Product Safety Commission (CPSC) See- <http://www.cpsc.gov/> and EPA exposure limits be used? Should the de minimis level be based on something other than risk, such as detection limit?

WTC Response: This is not a rule that is establishing safe levels of chemicals in products. It is a disclosure law that is designed to provide consumers and the government with more information about harmful chemicals in children’s products. Reporting should be based on level of detection. Anything above detection limits should be reported. Consumers have a right to know if chemicals that are a high concern for children are in the products they buy. Also, putting a de

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minimus reporting level in the rule will make it difficult to change if new science shows the level is not protective. Setting the reporting requirements based on detection limits will ensure a clear requirement and not create questions of whether the level is too protective or not protective enough.

- d) If a reporting list is in the rule, should the list also include the 'de minimis' limit? If the 'de minimis' value is in the rule, how would we deal with situations where new information shows that it should be adjusted?

WTC response: See above. We do not agree with de-minimis values being included in the rule.

- e) Can the public recommend that chemicals be removed or added to the reporting list? If so what should the process be? What criteria and timeline should the agency use to make a determination or decision to add or remove a chemical? Should these criteria be in the rule? Should a reasonable toxicological risk assessment be mandated as a contingent requirement for adding or removing a chemical? Can we base such decisions on hazard assessment alone?

WTC Response: Yes, the public must be able to recommend changes to the reporting list. If other chemicals are shown to be a problem for children, they should be added to the list. The criteria in the law for developing the list considers both hazard and exposure but does not require a full blown risk assessment. Risk assessments are expensive, take long periods of time, and are often used as a definitive measure of safety despite significant uncertainty in the assumptions that are made. They should not be used for this rule. Finally, the agency cannot change the criteria established in the law. It should follow that criteria and include a provision in the rule to review and update the list every two years using the same criteria established in the law.

- f) Is there a need to benchmark Registration, Evaluation, Authorization and Restriction of Chemical substances (REACH) see - [http://ec.europa.eu/environment/chemicals/reach/reach\\_intro.htm](http://ec.europa.eu/environment/chemicals/reach/reach_intro.htm) or Restriction of the Use of Certain Hazardous Substances (RoHS (Europe)) see - <http://www.rohs.gov.uk/> or similar regulated chemical listing process as to who can add or remove chemicals from the prioritized list? Specifically is there a need to review current REACH or/and ROHS chemical criteria and prioritization lists as well as chemicals assessment approach for hazards/risks/exposure to determine if there are any cross-over applicability?

WTC Response: These laws were considered in the development of CSPA, particularly with respect to the criteria for list development, so we are not sure what you are asking.

- g) What should be the process for triggering the modification of the list after comments from the public? How is this one different from e)? What should be the frequency for modifying the reporting list?

WTC Response: See above.

- i) How should the reporting list of chemicals be prioritized? Should the chemicals on this list be prioritized by importance to be phased out/banned? - Should prioritization be based upon a strict toxicity measure of a standard exposure level to a set number of children, and which ones cause the most harmful effects? Or upon which chemicals are the most prevalent among those children are exposed to? Or which toxic chemicals are found at the highest levels in which children's products? Or, which high priority chemicals are found in the most popular children's products? We do not understand this question. Why would the reporting list have to be prioritized? If a chemical winds up on the reporting list, manufactures are required to report if the chemical is in their product.
- h) Should the sources for identifying high priority chemicals (EU, REACH, California, Canada, et al.) be included in the rule? If not, would it just be included in the final report and available on the DOE website?

WTC Response: We are fine with including it in a final report or as an appendix to the rule.

- k) Should there be some high priority chemicals for which there is no 'de minimis' value, i.e., zero amount can be intentionally added to the production of a children's product? What would be the method to identify what is intentionally added? What about chemicals that are not intentionally added but are present in the product due to manufacturing processes or contamination?

WTC Response: See our position on de minimis. These are all questions that are overly complicated to answer and underscore the reasons not to establish a de minimis level. Whether a chemical is intentionally added or not is irrelevant in protecting children's health.

- i) How should Ecology/DOH weight the value of the REACH list compared to Canada or California's lists in coming up with our own list?

WTC Response: Ecology/DOH staff are highly qualified to determine what chemicals meet the criteria in the law and to create the list based on the best science.

- m) What do we mean by "children's products?" Should we more precisely/carefully/narrowly? define the universe of children's products to be covered by reporting? It would be good to make sure we are all talking about the same products. Are there some products that we are missing? See California's draft cosmetics reporting form to get an idea of how they have defined the universe of cosmetics products.  
<http://www.cdph.ca.gov/programs/cosmetics/Pages/faq.aspx>

WTC Response: The law is fairly clear on what products are covered and there are numerous exclusions. The bill covers: toys; children's cosmetics; car seats; products designed or intended by the manufacturer to help a child with sucking or teething (e.g. pacifiers); products that facilitate sleep, relaxation, (mattresses, blankets, etc.); products used for the feeding of a child

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(bottles, sippy cups); and clothing. These are the products that should be covered. For practical reasons, it seems reasonable to phase in the reporting requirement.

- n) Should reporting be limited to chemicals known to be used in manufacturing or should it also include chemicals known or likely to be present due to common contamination?

WTC Response: Manufacturers have a duty to ensure the products they make for children are not harmful regardless of whether they have intentionally added a chemical to a product or not. Thus, it is reasonable to include chemicals that are present due to contamination because it can be avoided. For example, in an analysis of cosmetic ingredients in 15,000 products, Environmental Working Group found that 22 percent of all products may be contaminated with 1,4-dioxane, based on its common presence in workhorse detergent-like ingredients that the cosmetics industry uses in a wide array of products. This finding is confirmed by new product tests finding this cancer-causing chemical in 18 of more than two dozen products, including 15 products for babies and children. This chemical is classified by EPA as a probably carcinogen and can readily penetrate the skin. It is reasonable to include chemical contaminants such as this one.

## **2) Issues associated with the reporting process**

- a) How should confidential business information be reasonably treated?

WTC Response: We support allowing manufacturers to report chemicals in ranges, as is allowed by the law. This provision was specifically requested by manufacturers to address the issue of CBI. Toxic chemicals in consumer products should not be considered CBI at all, particularly since there is no requirement to disclose all ingredients in specific amounts. This is a non-issue.

- b) What should be the timeline for reporting? (who should have to report on what, when?) Should there be a phased-in approach? If so, what should it be based on? How would it work? Which companies, for which materials or substances should be required to report first

WTC response: As mentioned above, we think it is reasonable to phase in the reporting requirement.

- c) What information and format must a report contain? Is there any reason to allow submittal of hard copy, rather than electronic, data?

WTC Response: The CSPA specifically lays out the information the report must contain, including the name of the chemical, a description of the chemical's function in the product, and the amount used (either in exact amount or a range). We support electronic submittal of data.

- d) Should there be a standardized mechanism for reporting (i.e. companies are required to fill out a standardized form for each chemical etc.)? This may help minimize time trying to translate information to the public.

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WTC Response: Yes, this makes a lot of sense.

- e) What should be done with the information reported to Ecology? Options range from releasing information upon request to actively putting it in the public eye – i.e. post it on a website, do press releases, etc.. Should the way the information will be handled be in the rule? Should information be provided in a manner that clearly communicates exposure risk or the lack thereof? Should these options be in the rule?

WTC Response: The intent of the law was to provide the information to the public via the web and specific language was in the bill that passed in the legislature. The Governor vetoed the section that included this provision because the section also included timelines for rule adoption that would have been difficult to meet. However, we understood that the Governor's intent was for the public to be able to have full access to this information through the web and for Ecology to require this in rule. Speaking specifically to the reporting requirements in her veto message, the Governor stated "I have retained this portion of the bill as a future tool for ensuring the safety of our children."

It is imperative that parents have information on the chemicals in products they give their children so that they may decide whether to purchase a product or not.. The CSPA intended information to be published on a website, including information on the chemical and any safe alternatives. We support nothing less than the public having full access to the information .

- f) How can a chemical or material manufacturer determine if their product has a chemical from the reporting list? - Testing, Self-certification or Self-declaration of conformity, documented oversight process to ensure none of the chemicals are used at any point in the production process, etc.. If we allow something other than testing results to be submitted, what information must be included in the report?

- g) Is there a need to benchmark Registration, Evaluation, Authorization and Restriction of Chemical substances (REACH) see - [http://ec.europa.eu/environment/chemicals/reach/reach\\_intro.htm](http://ec.europa.eu/environment/chemicals/reach/reach_intro.htm) or Restriction of the Use of Certain Hazardous Substances (RoHS (Europe)) see - <http://www.rohs.gov.uk/> or similar regulated reporting process? If we allow something other than testing results to be submitted, what information must be included in the report? Specifically is there a need to review current REACH or/and ROHS reporting process to determine if there are any cross-over applicability?

- h) How should Ecology summarize and analyze reported data that is submitted by manufacturers? Should information be analyzed by products or types of products? Should this work feed into revising the reporting list? Ecology should create a searchable database so consumers can look up a product by name and find out if it has a high priority chemical in it. .

### **3) Issues associated with enforcement of the CSPA**

- a) How should the reporting requirements established by the rule be enforced?

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WTC response: If a manufacturer is found to be in violation, they should be subject to penalty.

- b) What should trigger a penalty? Should the agency provide notice and opportunity to comment prior to issuing a penalty?

WTC response: The law is clear: a violation of the chapter (i.e. reporting) is subject up to a \$5000 penalty and repeat offenders up to a \$10000 penalty.

- c) Should the media be informed?

WTC Response: Yes. The same way for permit violations.

- d) Should Ecology independently test products to ensure compliance with the law?

WTC response: Yes. That is part of any robust enforcement scheme.

- f) What methods (audits, inspections, objective evidence)? should Ecology use to ensure that manufacturers are compliant with the reporting requirements of the CSPA?

WTC response: Ecology is going to have to do some of their own testing. Random audits are appropriate. Also, the rule should include a requirement that upon request manufacturers submit testing results showing they do not have to report.

- f) Should labeling be considered? For example: If a product contains one or more reporting chemical, it gets labeled in some way - such as some cautionary language a la Prop 65. WTC response:

WTC response: Labeling is not required by the law.

**4) The Issues listed below are being evaluated by our legal counsel. While you are welcome to provide your position on these issues, it is doubtful that Ecology will act against the advice provided by our legal counsel.**

- a) Should the reporting list be in the rule?

b) How can penalties be appealed or what Due Process should be incorporated? If a right to appeal a penalty is allowed, what grounds for appeal should there be that will prevent endless appeals that merely delay the implementation of the rule and allow the continued use of a high priority chemical in children's products?

- c) Should other mechanisms besides penalties be used for multiple violations? If so, what?

**5) Additional Comment:**

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WTC has serious concerns about leaving lead, phthalates, and cadmium off the high priority chemical reporting list.

In general, we do not agree that pre-emption applies to the state requiring the disclosure of lead, cadmium and phthalates in children's products. The federal law does not require that these chemicals be disclosed--merely that standards be met and testing take place to ensure compliance.

In addition:

1) For phthalates--DINP, DIDP, DnOP--were banned in toys that can be placed in a child's mouth pending a scientific review. This is very limited. We have concerns about phthalates in all toys, particularly since they can leach out, wind up in house dust exposing children crawling around. Parents in Washington are also very concerned about phthalates and have a right to be able to get the information about the levels in children's products. We think that all phthalates should be on the high priority chemical list, but only take one spot as a family of chemicals.

2) We continue to be concerned that the federal lead standards are quite high. Right now up to 300 ppm lead can be in children's products according to the federal law. The American Academy of Pediatrics recommended a lead standard of 40 ppm when the law was in development. Parents should have access to the information on levels of lead in toys so they can choose to be more conservative or avoid lead all together. Also, the industry is already testing for lead so the information is available and should be made public.