April 27 2009 DEP Stakeholder meeting public Law Ch 643 123rd 2nd Regular Session Sec. 4 Meeting Highlights prepared by the facilitator.

Facilitator:
Naomi Mermin

In attendence:

Lorin Alusic – Grocery Manufacturers Association
Michael Belliveau – Environmental Health Strategy Association
Jesse Connolly – Maine Legislature
Rep. Bob Duchesne – Maine Legislature
Evelyn deFrees – Learning Disabilities Association of Maine
Sally Edwards – Lowell Center for Sustainable Production
Pam Eliason - Lowell Center for Sustainable Production
Chelsea Fournier – Toy Industry Association
Rep. Adam Goode – Maine Legislature
Lani Graham- Maine Physicians for Social Responsibility
Andy Hackman – Consumer Specialty Products Association
Laura Harper – Maine Women's Lobby
John Hinck – Maine Legislature
John James – Maine DEP
Ginger Jordan-Hillier - Maine DEP
Arthur Kazianis – Toy Industry Association
Peter LaFond – Assistant Attorney General
Joan Lawrence – Toy industry Association
Paul Liebow – Maine Physicians for Social Responsibility
David Neivandt – University of Maine
Curtis Picard – Maine Mercvhants Association
Deborah Rice – Maine CDC
Stephen Rosario – American Chemistry Council
Nancy Ross – Unity College Sharon Tisher – Alliance for a Clean and Healthy Maine
Ryan Tipping-Spitz – Maine People's Resource Center
Charlie Urqhart – Maine Labor Group on Health
Dan Walker – Toy Industry Association
Steve Wilson – Toy Industry Association

<u>Meeting Notes:</u>

The meeting was called to order at 12 pm.
- Facilitator, Naomi Mermin led the group in a round of introductions including name and the organization they represent.
-Facilitator reviewed the stakeholder process, the statutory agenda and the ground rules.
-Facilitator reviewed the day's agenda, the key topics include: Economic Concerns Confidential Business Information, Additional Discussion of the Protocol for Designating Priority Chemicals.

Facilitator opens the topic of economic concerns.

- Sharon Tisher is asked to give a short summary of a study prepared by Dr. Davis' study on children's diseases. The study highlights a "new pediatric morbidity", citing a shift from infectious or genetic diseases in children to preventable conditions exacerbated by exposure to toxins. The report states that the preventable component of these diseases costs the state of Maine $380 million dollars annually. Tisher also states that the report, which dealt with 4 common childhood health conditions, is very conservative when compared with other notable statistics from the World Health Organization (WHO).

-Arthur Kazianis questions whether the report takes into account "environmental exposure" and if exposure to toxins can be broken down into greater detail.

-Sharon Tisher responds the report does not.

-Curtis Picard states that lead poisoning accounts for 70% of the study's economic ramifications, and also takes issue with the cost analysis of 1 mg. of lead accounting for a 1 point drop in an individual's IQ which has ramifications of their earning potential.

- Dr. Deborah Rice supports up the cost analysis used in the report and describes it as a well vetted and agreed upon methodology.

-The facilitator states that the data on lead and IQ/earnings is widely accepted due to long term studies that have been completed on the subject.

-Stephen Rosario is concerned about the report because of it's narrow area of potential causation. Rosario states that the link between the diseases and chemicals is obtuse and does not consider social environment. Rosario warns the group not to base assumptions off such reports.

-The facilitator asks the group to re-focus on the current topic of stakeholder economic concerns.

-Stephen Rosario states the report lacks focus.

-Paul Liebow defends the report by saying peer reviewed studies must be regarded as the best available science.

-Andy Hackman stresses that economic impacts should be considered on both sides, from a consumer perspective and industry perspective.

-Lani Graham states health effects cannot be set head to head with factors like employment loss. Employment and economic impacts can be quantified in the present, where health issues cannot be measured until much later.

-Michael Belliveau appreciates Picard's highlighting lead. Cites the stakeholder group in

the 1920's that failed to ban lead. Moving quickly to safe alternatives will save in the future, both health and money.

-Andy Hackman doesn't see how the report perspective can be used to establish cost points.

-Stephen Rosario states that trying to make every chemical a villian will take us down the wrong path. Mistakes were made with lead, we learned from those mistakes. We have a lot of data on chemicals and research is constantly evolving.

-Lani Graham says that lead is a beautiful example of how wrong Rosario is. Research is always evolving and critical data comes to light every year, and the current research does not show the full impact of some chemicals.

-Sharon Tisher states that the state of Maine has particularily good data on the cost of neuro behavioral disorders.

-John Hinck states that too much attention may be applied to chemicals across the board based on lead. Tens of thousands of chemicals in commerce, the list being considered is small. Says the market will adjust were market alternatives are available.

-Arthur Kazianis using lead as an example, reminds the group that Hasbro lobbied to reduce the lead in toys below the federal regulations.

-Paul Liebow states that if we can specifically show a biochemical effect on animals we can highly suspect such effect in humans. Cites vinyl chloride cases of testicular cancer of factory workers.

-Matt Prindiville clarifies that legislation is broader than just toys. Any product that is used by or on kids can apply.

-Steve Wilson wonders how report relates to toys.

-Facilitator clarifies the use of lead in the study.

-Steve Wilson says the group needs more relevant information for toys. Lead has been regulated, and this doesn't apply to the economic impact on toys.

-Chelsea Fournier states that the law as it currently stands to be imposed is totally swayed towards the consumer, but what is the effect on producers in Maine. The costs of re-tooling and re-design are not addressed, and this is a bigger impact than many think it is. Manufacturer interest is ignored.

-Rep Duschene says he is not hearing anything that is really helpful in implementing policy, as many present arguments were settled in the legislative process.

-Steve Wilson states businesses all over the state will be effected, so implementation could have a huge economic impact.

-Matt Prindiville states that the issues of the alternative chemical and costs associated are often a boon to alternative manufacturers and not for Priority Chemical producers. The costs of the consumer is paramount when choosing a product that doesn't include a Priority Chemical. The cost of retooling is part of the process. Uses DECA as an example, those who made the alternative product saw benefit and consumers were able to purchase products without DECA for a comparable cost.

-Stephen Rosario says the issue is much more complicated than DECA and broad generalization cannot be made. Logistical issues must be considered. Chemistry is not easily transferrable within product lines.

-Paul Liebow states that if the message goes out to industry that safer alternatives will have a place because of citizen action, the market will come up with solutions and we will reap the benefits.

-Matt Prindiville agrees with Stephen that the process is complicated, but the focus should not be on the manufacturer, but on the consumer. Alternative assessment process will deal with availability.

-Michael Belliveau the issue here is what are comparable costs. This is a market driven bill.

-Arthur Kazianis states there is a cost associated with reducing lead. From the lead perspective reduction is doable and has been done. The problem we have as toy manufacturers is that some products contain lead by technical definition. The hidden costs have excluded products that have a safer use for children.

-Paul Liebow says that is a perfect argument of mandatory manufacturer recycling.

-Arthur Kazianis says unintended costs have taken products off of the shelves and discusses chemicals in electronic products. He is concerned is when the electronic components in toys contain priority chemicals that are not accessible, will that be regulated off of the shelves. This is a concern.

-Matt Prindiville specific product restrictions is a ways down the road, there is no blanket ban on specific chemicals. DECA is a good example. Enough safeguards exists to prevent what Kazianis is talking about.

-Arthur Kazianis states that cases in other states have caused the banning of products through the copying of legislation from legislation.

-Stephen Rosario states that there are three factors that go into producing a product: safety, cost and application. Consumers will deal with the costs in the end. Using baby

bottles as an example that costs go up for consumers in place of priority chemical laden products.

-Mike Belliveau a law passed in Maine banning lead in children's products specifically allows electronic toys due to considerations of access. If it is not feasible, it is not going to be mandated.

-Arthur Kazianis states that some priority chemicals have a very useful application in products, for example BPA shatter proofing products.

-John Hinck says the protocol to be used for the designation of priority chemicals had many components specified in the law. The legislation cannot be amended in the stakeholder meeting.

-Deborah Rice states once a chemical is designated, it is a potential chemical and once alternatives assessments are done it can be eliminated from explicit uses. The toy industry concerns are not necessarily things that they should be worried about. The specifics of the alternatives assessment will dictate banning of specific chemicals.

-Sharon Tisher says the legislation accounts for concerns and is well written to anticipate everything.

-Matt Prindiville states there will be checks and balances on the process and multiple chances for producers to communicate.

-Stephen Rosario says undue concern is raised by the process and will hurt business.

-Matt Prindiville states public can sort out between at risk chemicals in risky applications. Undue concern is unwarranted.

-Sally Edwards states that the use phase is not the only area of concern, production phase and waste.

-The facilitator attempts to clarify the industry's concerns and focus on the economic concerns.

-Steve Wilson wants to know how every side of the issue can assist in the process to avoid unintended consequences. How can stakeholders participate in the process?

-John James says rule-making process require public input, hence why it was proposed as the process for designation - offers a robust process for input.

The facilitator moved to the next agenda item - confidential business information.

-John James states the legislation is silent on how information is treated concerning products. DEP administration rules are cited.

-Andy Hackman asks what qualifies as a trade secret under Maine law.

-Stephen Rosario suggests one area that should be looked at is the CBI rules in TOSCA which is very comforting to industry.

-Andy Hackman supports Rosaries suggestion.

-Steve Wilson states a trade secret is knowledge that competitors do not know and the public does not know. The interests of the intellectual property are protected in court. The concern is that if there is a blanket rule for an IP holder to disclose information, you may be forcing a company to loose its economic/competitive advantage. Patent and trade secret must be adequately protected.

-Michael Belliveau states he is not surprised that the chemical industry is comfortable with the the non-functional, non-democratic nature of TOSCA's data declaration process.

-Peter LaFond says trade secrets are protected under Maine law.

-Sharon Tisher asks Steve Wilson if an ingredient in Coke were lead, would you agree that the public should know that?

-Steve Wilson states that there is a way to conform and provide the information necessary for the legislation while not disclosing trade secrets.

-Sharon Tisher pushes Steve Wilson to answer yes or no.

-Steve Wilson says the public would know that because of reverse engineering…and the issue is whether we take a shotgun or rifle approach…either ask Coke for disclosure or demand the secret recipe. A FOI request could compromise the CBI in that case.

-Sharon Tisher states that a whole recipe would not be asked for, rather a list of priority chemicals would need to be disclosed if they were contained in a product.

-Steve Wilson says some measure needs to be taken so CBI is not disclosed to the public and patent rights are lost. Cites the court procedure for disclosing and disputing what is CBI.

-Peter LaFond asks Steve Wilson the context in which he is worried about data being compromised.

-Steve Wilson says that if data is compiled by DEP, then a citizen or agent of another interest could request that data using FOI and therefore compromise trade secrets.

-Matt Prindiville says the legislation is very clear in data disclosure and that it is very limited and the conversation about full disclosure is not relevant. It focuses on one

priority chemical, not whole confidential processes.

-Lani Graham states she doesn't know whether there are considerations to the confidentiality portions of the legislation. There is a legitimate problem here with business interests and the disclosure of information and how both can be accomplished. Asks for other examples.

-Ginger Hillier-Jordan clarifies an earlier reference to online data concerning CBI legislation.

-Andy Hackman is struggling with the definition of a definitive trade secret. Strong CBI protections must be in place to avoid danger of mitigating a companies competitive advantage.

-Lorin Alusic questions the process for requesting information by the public concerning CBI and how industry would be notified. We believe there must be some determination in court that there must be justifiable cause for access to the data be granted.

-Peter LaFond advises becoming familiar with how the Maine Supreme Court interprets CBI.

-Chelsea Fournier notes missing section in rule (Sec 2D4). Also questions the feasibility of another section that forces producers to research functionally equivalent products.

-John James corrects mistake (should read Sec 2C4). The legislature intends to require manufacturers to disclose the mere presence of the chemicals and also whether they were intentionally added.

-Michael Belliveau cautions to clarify that legislation adheres to components and added by whom. Intentionally added chemicals and their function must be disclosed.

-Paul Liebow asks who has an absolute right to know, commissioner, judge?

-Peter LaFond states the court would determine using the analysis of state law. The court would ultimately determine whether it is a trade secret.

-Paul Liebow cites the pharmacological industry vetting studies that only prove what they want. There needs to be a process to get all relevant research even if it says something companies don't want to share.

-Andy Hackman states that relying on the courts to decide trade secrets will make it a very costly process. It should be made explicit.

-Ginger Jordan-Hillier asks industry if they are opposed to public disclosure on all of the items, or just a few? REACH in Europe will be requiring downstream producers to make information public and what impact will that have here?

-The facilitator tries to clarify what items of disclosure are especially upsetting to industry.

-Steve Wilson and the facilitator clarify what data will be asked for.

-Facilitator/Ginger Jordan Hillier walk through 4 key disclosures: Identify the product which contains the priority chemical, the number of units sold in ME or nationally, the amount of priority chemical in each unit and the intended purpose of the priority chemical in the product.

-Andy Hackman says a list of “bad products” may stigmatize companies. CBI is the only functional way to protect or manage data that may have an economic impact on the products.

-The facilitator clarifies with Hackman that some of what he is concerned with is not actually confidential information but the impact of information/chemicals/products.

-Andy Hackman says the only way industry can manage this aspect is through CBI. DEP could do anything they want with the data, so CBI is the only functional way to protect it.

-Mike Belliveau says CBI is a common way to manage data that is not always confidential. There needs to be preventions on abusing CBI so the process is not burdened.

-The facilitator summarizes a groups sentiment that when genuine CBI is identified, there should be a clear process that CBI goes through that legitimately protects companies but is not available as an all purpose information shield contrary to the purpose of the legislation.

-Andy Hackman states DEP should identify how it will publish data.

-Matt Prindiville states it is important to know what the DEP hopes to get from information. It helps the DEP find out volume and prevalence of a product.

-Steve Wilson says proper administration for CBI may make process quicker and less costly for everyone involved. There has to be a way to protect CBI and such a process will mitigate lawsuits against DEP.

-The facilitator tries to clarify which items will breach protected data. The facilitator urges industry to submit something in writing that would suggest a process.

-After a short exchange with Arthur Kazianis, the facilitator says that formulation is the level at which CBI likely applies, but the process under question is way ahead of that point.

-Arthur Kazianis says is difficult to disclose information because process is different than Europe.

-The group has a quick discussion that SKU (shop keeping unit) will be used when determining the number of units sold.

-Chelsea Fournier asks about what type of data concerning sold units would be required?

-Steve Wilson says an “escape valve” must be put in place to make sure DEP is not inundated by lawsuits concerning CBI around number of units sold.

-John James states there is an opportunity to tailor information we don’t need.

-Andy Hackman states there should be a consultative process that occurs and should be explicit in the rule.

-Ginger Jordan-Hillier doesn’t understand how CBI evolution in Europe affects this conversation.

-Andy Hackman says full CBI affects in Europe are not fully known.

-Sally Edwards says the REACH rules on CBI are complex.

-Arthur Kazianis clarifying that REACH is implemented in Europe. Manufacturers are required to pre register. Products that contain certain chemicals are pre-registered.

The Facilitator calls for a break after which the group will reconvene to discuss designation of priority chemicals.

-Matt Prindiville put together a collection of lists including the REACH Sin List, the Stockholm Treaty, Norway List of Substances of High Concern. This will allow cross reference of chemicals to see what chemicals and subsequent data exists. These are a good starting point so we do not have to re-invent the wheel.

-The facilitator asks Pam Eliason to explain how a list of chemicals of high priority can be made into a smaller list of priority chemicals based on their experiencee at TURI.

-Pam Eliason explains that an advocacy perspective drove the compilation the list they began with - so they already began with a high priority list. The probability of there being alternatives drove the narrowing of the list. Economy specific factors were considered. Careful consideration was given to individual state’s concerns and goals. Uses were also prioritized to get the most “bang for the buck”.

-Sharon Tisher references a Richard Dennison paper concerning the quantifying of risk

analysis regarding the first session topic.

-Pam Eliason says the selection of the ten chemicals was indeed based on exposure. Exposure is incorporated on a fundamental level.

-Andy Hackman exposure is the most readily available way to look at chemicals of high priority. Exposure must be considered in order to narrow the field using limited resources.

-The facilitator reads from the minutes of the first meeting concerning using cord blood as an example of what chemicals can be traced from mother to fetus. No consensus was reached as to whether that really proved exposure.

-Matt Prindiville suggests using chemicals of high priority lists to cross reference and see what data exists concerning alternatives and exposure.

-Andrew Hackman disputes adverse reaction as subjective and contextual. Clarifying what an adverse reaction is would aid DEP in making a choice.

-Facilitator asks if that is not inherent in the pre requisites listed.

-Mike Belliveau in an effort to eliminate confusion reiterates that harm to human health and environment will be established by being on the list, no chemical with no concern can make it on the list. The challenge for DEP is to pick some chemicals to work on. He suggests working with industry to come up with chemicals to work on.

-Paul Liebow asks what sort of adverse impact would be acceptable?

-Andy Hackman the dart-board approach is not a good approach to policy. It is a poor use of DEP's time.

-Mike Belliveau states we cannot burden DEP with paralysis by over analysis.

-Andy Hackman states that will pit industry against industry.

-Paul Liebow states usage must be considered when choosing what chemicals to work on. If application is non-essential or not.

-Lani Graham states it is not a good use of time starting from the beginning. I would encourage DEP to use foreign research. A safer alternative must exist, and it is in industry's best interest to help out.

-Andy Hackman states that an informed decision should be made based on research done concerning adverse impact on human and environmental health.

-Sharon Tisher responds to Paul Liebow, saw a report that found a statistical correlation

between vinyl flooring and autism. Hackman's arguments bolster defining more than the minimum number of PCs.

-Pam Eliason states that Trade Associations should help designate a chemical, industry could be very helpful in whittling down a huge list of chemicals into a few priority ones.

-Andy Hackman industry would have a hard time considering priority chemicals because it believes most of the chemicals are not of concern.

-Matt Prindiville tells story illustrating that the problem is complex and must be tackled one aspect at a time and the law provides for all of the processes concerning public comment and phasing out priority chemicals. We should keep it in perspective when we are working.

-Rep Duchesne says we have a good idea what chemicals have already been vetted as priority chemicals and we will pick the low hanging fruit first.

-Andy Hackman argues that to justify DEP taking action, we are going to all argue different thresholds. Put the goal posts out there and let the data fall where it may. What are we most concerned about.

-Paul Liebow says the goal posts on the field are where the children are playing and the other thresholds that apply to other areas, we are not concerned about.

-The facilitator clarifies that rule-making process is the process being proposed by DEP as the protocol for designating priority chemicals. Most of the details of what will be considered are directly taken from the legislation.

-Andy Hackman asks what would industry have to do to prove that a chemical is safe?

-John James says designating by rule allows data for basis of designation to be viewed by public.

-Hackman wants a rationale for what chemicals are designated and why.

-Mike Belliveau states that Hackman is not making recommendations for the process under this law, rather an amendment of the law itself. He states Hackman is looking for a different law.

-Andy Hackman and Mike Belliveau have an exchange about what industry can do to convince DEP that a chemical is safe.

-Arthur Kazianis asks in an effort to help supply data, are we regulating chemicals that are already regulated by the government?

-John James answers one thing the board can consider is whether action has been

taken by the government.

-The facilitator with the help of John James clarifies the definition of Children's Product as any product that children are directly exposed to, not just toys.

-Stephen Rosario states that the playing field is not level and the law is philosophically divergent from our needs. Cites Penta and octa and DECA. Says goal post is always moving. Risk analysis is necessary.

-Andy Hackman pushes for a common context for decision making.

-Laura Harper doesn't understand how things are unclear for Hackman because the chemicals are the worst of the worst.

-Michael, Stephen, Andy and John engage in a back and forth in which Stephen says Mike Belliveau is undercutting Stephen's member companies and making nefarious claims. Belliveau states that industry is trying to maintain a legal handle to burden the process.

-Mark Hyland says he is open to suggestions from industry on what chemicals to attack first.

- The facilitator acknowledges Andy Hackman's value in the group and importance of his contribution and suggest refocusing on the protocol discussion.

-Matt Prindiville asks for a consensus on how to make the list smaller. Using the lists to focus on a more manageable group.

-Andy Hackman states no list is perfect.

-Nancy Ross asks industry for the list of chemicals they would not defend

-David Neivandt agrees we should go through the list and get it down by cross referencing it with other ones.

-Facilitator asks if someone can do that before next meeting. General sense is not before next meeting but that it may be an ongoing activity stakeholders pursue after the stakeholder process concludes (and the University semester ends).

Discussion of the 4th and final meeting.

-During agenda review group questions focus of Green Chemistry topic, whether it is incentives or other green topics. The group agrees to remove Green Chemistry topic and in its place talk about a possible ongoing work beyond the stakeholder process between the advocates and industry.

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The meeting was ended promptly at 5:00