
To: Senator Claire Ayer and Members of the Senate Committee on Health and Welfare
From: Lauren Hierl, Vermont Conservation Voters
Date: March 18, 2015
Subject: Testimony in support of amendments to Act 188

Good morning, thank you for the opportunity to testify today in support of the proposed technical fixes to the Chemical Safety Program established in Act 188 enacted in 2014. For the record, my name is Lauren Hierl, and I'm the Political Director of Vermont Conservation Voters.

Last year, the Vermont Senate passed a bill to protect children from toxic chemicals. That bill followed on work this body has done for years to restrict the use of chemicals like flame retardants, BPA, lead, mercury, phthalates and more – chemicals linked to health problems such as cancer, infertility, and neurological damage, which are used in children's products.

The bill enacted last year was intended to protect the health of our children. When I watch my 3-yr-old and 8-month-old put toys in their mouths, I shouldn't have to worry that those toys contain chemicals that we already know are dangerous for their health. And the Senate acknowledged this is an issue that needs to be addressed when you passed the Toxic-Free Families Act last year.

A major motivation for enacting this legislation was so that a more comprehensive look could be taken on this issue, by the experts at the Department of Health, instead of the legislature tackling one chemical at a time, year by year.

The policy statement in the Toxic-Free Families Act is exactly in line with this sentiment: "It is the policy of the State of Vermont: (1) to protect public health and the environment by reducing exposure of its citizens and vulnerable populations, such as children, to toxic chemicals, particularly when safer alternatives exist."

The urgency of the proposed amendments - which aim to make Vermont's Chemical Safety Program function as intended – is that federal reform is impending that could preempt state action, but grandfather in laws already on the books in states like Vermont.

And for the first time in recent memory, Toxic Substances Control Act (TSCA) reform legislation has a real shot at passing. Unfortunately, the reform under discussion is strongly supported by the chemical industry – the industry that reform is supposed to be better regulating.

As the head lobbyist for the American Chemistry Council – the chemical industry lobbying group – stated recently in the New York Times, “This is the best moment, without question,” Mr. Dooley said from his office overlooking the Capitol. “I think we will get 70 votes on the Senate floor, or that is what Senator Udall, who spoke with us the other day, predicted.”¹

We support the technical fixes in the proposed language because we believe these tweaks will help Vermont’s Chemical Safety Program work better to reduce our children’s exposure to toxic chemicals.

Specific proposed changes:

- “Weight of” scientific evidence.
 - This type of standard has been used at the federal level to delay action, as EPA must comprehensively review all studies and determine a preponderance of evidence, rather than just establishing a clear scientific record in support of action.
 - Often, industry-funded studies outnumber unbiased studies, so are all studies weighed equally, or are industry-funded studies considered less reliable?
 - And evidence abounds that industry-funded studies tend to find no negative health impacts of their products. A recent Newsweek story dove into the science behind BPA, and found that 100% (11 out of 11) of industry-funded studies found BPA had no significant action, while 92% (109 of 119) studies that had no industry funding *did* find negative health effects of BPA.² How will the Department of Health “weigh” and reconcile these different types of studies?

- “After consultation with the working group.”
 - It’s quite rare and doesn’t seem appropriate to give authority to a citizen committee, with stakeholders with clear biases participating, to have the ability to determine at the end of the day whether action should be taken to protect public health. Instead, the working group should provide valuable input, but the Commissioner of Health should have the final say in how to move forward with regulating chemicals of high concern to children.

- “Probability” of health impacts and potential rather than proven exposure.
 - The senate passed a bill last year without this burdensome language around exposure and probability of health impacts.

¹ http://www.nytimes.com/2015/03/07/us/tom-udalls-unlikely-alliance-with-the-chemical-industry.html?_r=0

² <http://www.newsweek.com/2015/03/13/bpa-fine-if-you-ignore-most-studies-about-it-311203.html>

- Everything that makes it onto our list of chemicals of concern to children meets a high bar of public health threat – chemicals shown with clear scientific evidence to pose a threat to human health, and to be chemicals currently found in our bodies and/or homes. This bill contains multiple references to potential for exposure to the chemical, so action will not be taken on products or chemicals without exposure pathways and public health risks.
- The probability language in Act 188 could be used by industry groups to challenge or litigate action to regulate chemicals. How exactly will the Commissioner and/or working group definitively demonstrate a 51% probability that a chemical in a children’s product will cause or contribute to a particular health problem? That’s not the standard set in other similar laws. Instead, they generally use a standard of requiring demonstrable potential to harm human health and the availability of safer alternatives. The revised language better aligns with other state chemical regulatory programs, such as Maine’s Safer Chemicals in Children’s Products Law.
- Availability of safer alternatives.
 - Establishing potential harm and availability of a safer alternative was the approach initially adopted by the Senate last year, and is still in the policy statement of the bill.
 - We agree the Department of Health shouldn’t be on the hook to conduct these safer alternatives assessments. In Maine, for example, they actually require the regulated parties do their own safer alternatives assessments, or else pay for a state-sponsored one.
 - There is also a growing body of these assessments available. The Interstate Chemicals Clearinghouse has lots of resources on safer alternatives assessments – they provide detailed guidance, hold webinars, and catalogue available safer alternatives assessments. Also, groups like Green Screen are available to help industry groups and others conduct safer alternative assessments.³

The bottom line is we’re talking about chemicals known to cause health problems like cancer, infertility, and brain damage, and these chemicals are being used in our kids’ toys, teething rings, clothes, and more. We believe the proposed changes to the Chemical Safety Program will make the program more workable to actually meet the policy goal laid out in the bill: to reduce exposure of Vermont’s children to toxic chemicals in children’s products.

³ See, for example: http://www.theic2.org/aa_library and <http://www.greenscreenchemicals.org/>