Testimony of
Sarah Brozena, Senior Director, American Chemistry Council
To the Vermont House Human Services Committee
In Opposition to S. 55 –
An Act Relating to the Regulation of Toxic Substances and Hazardous Materials
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Introduction

The American Chemistry Council (ACC), an association of leading companies engaged in the business of chemistry, is pleased to provide comments on S. 55, an Act relating to the regulation of toxic substances and hazardous materials.

ACC member companies apply the science of chemistry to make chemicals used by a wide variety of industries and businesses to make innovative products, technologies, and services. ACC members are committed to continuously improving their environmental, health and safety performance – for our workers, our families, our customers and the public. In fact, commitment to implement industry's voluntary health, safety and environmental performance initiative, Responsible Care®, is a condition of membership within ACC. ACC shares this Committee's interest in promoting a healthy and safe environment for Vermont's children.

In my position as a Senior Director in ACC's Regulatory and Technical Affairs Department, I work on issues related to health, product safety, and science policy that impact the business of chemistry. I am very familiar with the U.S. Environmental Protection Agency's (EPA) regulatory framework for chemicals, and have also reviewed several state chemical regulatory programs.

I would like to address three key points for this Committee's consideration as it reviews Section 4 of this legislation to amend Act 188 - Chemicals of High Concern to Children (CHCC), 18 V.S.A. § 1776. First, use of a weight-of-scientific evidence approach to the evaluation of chemicals is critical to the credibility of any chemical regulatory program. Second, regulation of chemicals by the Commissioner should continue to be based upon the recommendations of the CHCC Working Group. Third, the existing law's requirements for consideration of exposure information must be retained if this law is going to provide benefit to children's health.

Maintaining the use of a weight-of-scientific evidence approach to evaluation of chemicals is critical to the credibility of any chemical regulatory program.

S. 55 proposes in Section 4(b) to authorize the Commissioner of Health to add chemicals to the CHCC list on the basis of "credible, peer-reviewed, scientific information," replacing the law's existing requirement to base these decisions on the "weight of credible scientific evidence." The proposed language is not an acceptable replacement.

It is critical that the state of Vermont base its chemical regulatory decisions on scientific information that has been evaluated in a manner accounting for the quality and relevance of the information. A weight-of-scientific evidence approach ensures that information from scientific studies and research is given appropriate weight, based on the quality and relevance of the studies. This prevents development of regulations based on science that is not robust or relevant, and allows for greater clarity and transparency in the regulatory process. For these reasons, modern chemical management laws such as the Toxic Substances Control Act (TSCA) rely on weight-of-scientific evidence to inform regulatory decision-making on chemicals.

Further, while "credible, peer-reviewed scientific information" is important, the fact that information has been peer reviewed is not sufficient to demonstrate its quality or relevance for regulatory purposes. Some studies published in the peer reviewed literature do not contain adequate information for risk assessment of chemicals, and the degree of robustness and scientific uncertainty can vary. Further, since not all scientific studies and research are published in journals, and hence not peer reviewed, this requirement limits the studies which the Commissioner might review when deciding whether or not to add a chemical to the CHCC list. Use of a weight-of-scientific evidence approach helps decision makers evaluate the strengths and weaknesses of <u>all</u> types of studies that are available on a chemical, giving greatest weight to the highest quality and most relevant information, which therefore gives credibility to the decisions based on the information. If Vermont's decisions are not scientifically credible, the expectation of public health benefits will be called into question.

Regulation of the sale or distribution of children's products by the Commissioner should continue to be based upon the recommendation of the CHCC Working Group

S. 55 changes existing Section 4(d)(1) provisions relating to the role of the CHCC Work Group. The amendment would authorize the Commissioner to regulate the sale or distribution of a children's product containing a chemical of high concern to children, simply **after consultation** with the CHCC Working Group. The changes remove the requirement for the Commissioner to act **upon the recommendation** of the CHCC Working Group. This amendment undermines the valuable role of the CHCC Working Group, (a group which contains relevant stakeholders and

members with technical and scientific backgrounds), in making science-based recommendations to the Commissioner before the Commissioner could regulate the sale or distribution of a children's product containing a chemical of high concern. A prohibition on the sale or distribution of a children's product in Vermont or a requirement to label a product before it can be sold in the State is not trivial regulation. Mere "consultation" with the scientific and technical working group is not a sufficient check on the Commissioner's authority to ensure that the decision is based in science and therefore justified. The original "upon the recommendation" of the CHCC WG should remain in the law in order to inform the Department's decision-making on the scientific and technical matters of chemical and product regulation.

Existing requirements for consideration of exposure information must be retained.

S. 55 changes the existing requirements regarding the degree of exposure to chemicals in children's products that could prompt rules to prohibit or regulate a children's product in the State of Vermont. The amendments first change Section 4(d)(1)(A)'s standard for the Commissioner's determination from "children will be exposed" to "children may be exposed" to a chemical of high concern in a children's product. Then the amendments strike the requirement (in Section 4(d)(1)(B)) that the Commissioner address the probability and frequency of exposure to a chemical of high concern in a children's product that could cause or contribute to certain adverse health impacts. This language that would be deleted is the critical "nexus" between the degree of exposure and potential harm to health.

All that would be required to prohibit a children's product in Vermont is that the Commissioner determine that children "may be exposed" to the chemical in the children's product, based largely on: the "presence" of the children's product in the State; the "presence" of the chemical in the children's product; the "presence" of the chemical in the household and the workplace; or the "potential exposure" to the chemical in the children's product. The removal of Section 4(d)(1)(B) omits entirely the role of magnitude, frequency and duration of exposure when assessing exposure and the nexus between that exposure and contribution to adverse health impacts. This amendment would allow the Commissioner to ignore the relationship between potential exposure and potential harm. These amendments would provide the Commissioner broad authority to prohibit the sale of children's products in the State based on a "may be exposed" determination that's based largely on the "presence" of the chemical. These changes assume – incorrectly-- that the mere "presence" of a chemical equates to harmful exposure.

It is critical for any regulatory program addressing chemicals to put hazard information about a chemical into the context of relevant exposures to that chemical. Information about the degree and frequency of exposure to chemicals is critical to understanding whether or not the chemical actually poses a risk from its use in children's products and warrants regulation of the sale and

distribution of that product in Vermont. Chemical regulatory programs must consider both relevant hazards and exposures, otherwise the beneficial impact of the regulatory agency's decisions will be speculative at best and arguably ineffective at reaching the stated goals of protecting human health. The amendments to Section 4(d)(1) (A) and (B) should be struck.

Conclusion

Thank you for the opportunity to speak today. I hope this information has been helpful to your understanding of the importance of using science as the foundation of any chemicals regulatory program. ACC urges this committee to reject these amendments to Vermont's existing CHCC program, and instead maintain the existing law's provisions that ensure a scientific foundation in the program in order to provide benefit to the health of children.