

January 11, 2010

John James
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Subject: Comments on Proposed Regulations to Implement the Toxic Chemicals in Children's Products Act

Mr. James:

Environmental Working Group (EWG) strongly supports the State of Maine's efforts to protect children from harmful chemicals in consumer products. You may recall that in February 2007 I made an invited presentation before the Governor's Task Force to Promote Safer Chemicals in Consumer Products. Its final report concisely summarizes both my presentation and the research of EWG and countless scientists worldwide, concerning children's unique vulnerability to chemicals: "Industrial pollution begins in the womb" and "the health consequences are potentially very serious" (State of Maine 2007).

We applauded the passage of Maine's Toxic Chemicals in Children's Products Act in 2008. And we support many provisions in the Department of Environmental Protection's (DEP) proposed implementing regulations, "*Chapter 880: Regulation of Chemical Use in Children's Products.*"

First, we agree with DEP's inclusive definition of children's products: "any consumer product containing a chemical of high concern that when used or disposed of will likely result in a child's or a fetus's being exposed to that chemical." EWG-led biomonitoring studies have identified hundreds of industrial chemicals, pollutants and pesticides in umbilical cord blood from American babies (EWG 2005,2009), including 232 in babies of minority descent (EWG 2009).

Our tests of the toxic fire retardant polybrominated biphenyl ethers (PBDEs) found roughly three times more PBDEs in toddlers than in their mothers (EWG 2007). Children's tendency to put their hands and objects in their mouths subjects them to greater exposure to toxic chemicals used in consumer products like paint, computers, stain-resistant fabrics and upholstered furniture. These products are truly "children's products," and Maine's decision to include them will help ensure that DEP identifies and addresses the most worrisome ingredients in consumer products.

We also strongly support the proposal to designate as high priority chemicals those that have been detected in people's bodies and/or in the indoor environment. EWG's and others' scientific publications have detected nearly 500 chemicals in human tissues (www.ewg.org/sites/humantoxome). Our tests of umbilical cord blood demonstrate that even before birth, American children are exposed to complex mixtures of dangerous substances that may have lifelong consequences (EWG 2009). A similarly complex mixture of chemicals has been detected in household dust samples, indicating a potential for chronic exposure for young children in particular (Rudel 2003).

However, several aspects of the proposed regulations and the underlying law are troubling. Most serious is the statutory constraint that limits the ability of the Department of Environmental Protection (DEP) to restrict use of priority hazardous chemicals unless the agency has identified a safer and cost-effective alternative (Section 4.A.2). This provision will encourage companies to defend current, potentially dangerous, products while discouraging research and innovation to make these products safer.

To help lessen the potential public health effects of this loophole, we recommend that DEP publish on its website a list of both its priority chemicals and the products that contain them. This will speed progress on

alternatives and allow parents to avoid these products if they wish. Therefore we recommend that DEP publish and update this comprehensive list whether or not there are known, feasible or safe alternatives.

The proposed regulations draw chiefly on existing data about a chemical's toxicity and presence in people, homes and/or the environment. These rules will help protect consumers while efforts to reform the federal Toxic Substances Control Act are underway. However, a federal bill would tackle the problem of children's exposures more comprehensively and produce new information about the safety of the thousands of untested chemicals used in consumer products. In the interim, DEP should acknowledge that most industrial chemicals are not fully tested for their health impact and should take steps to gather more information about untested chemicals instead of assuming that they are safe.

We suggest the DEP include several administrative mechanisms to ensure that children receive the maximum protection from harmful chemicals:

- DEP should include a petition process to allow citizens to request the listing of new priority chemicals and/or to suggest alternatives for hazardous chemicals in products.
- DEP should place strict limits on companies' ability to assert confidentiality claims in order to withhold information about the identity or potential health effects of listed chemicals. EWG has documented that that industry routinely uses "confidential business information" (CBI) claims to place a cloak of secrecy over vital information about thousands of chemicals, including some used in products designed for use by children.
- The proposed regulation appears to limit its reach to "intentionally-added" priority chemicals. Instead, the Department should apply these regulations to any chemicals in products, since a chemical's ability to contaminate a child's body does not depend on whether or not the compound is intentionally added to a product.
- DEP should allow listing of entire families of chemicals if evidence suggests that they share toxic properties, especially if these chemical groupings are employed by the U.S. Environmental Protection Agency or other federal agencies.
- We recommend that DEP define "children" as all persons 18 years and younger to ensure that teens are fully protected from chemicals that may disrupt or alter puberty.

Thank you for your work to implement this important law, which hope will help protect children from toxic industrial chemicals and help parents choose safer products.

Sincerely,



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