

Advisory Committee on Mercury Pollution

Meeting #83: Friday, June 20, 2008

Time: 9:00 am to 1:30 pm

Location: Hazen's Notch Room - The Summit – Osgood Building
Waterbury State Complex, 103 South Main Street
Waterbury, Vermont

MINUTES

Members Present:

Michael Bender, Abenaki Self-Help Association, Inc.
John Berino, Vermont Association of Hospitals and Healthcare Systems (Fletcher Allen)
Bill Bress, Vermont Department of Health
Gary Gulka, Vermont Agency of Natural Resources, Environmental Assistance Office
Jennifer Holliday, Chittenden Solid Waste Management District
Neil Kamman, Vermont Agency of Natural Resources, Water Quality Division
Senator Richard McCormack, Vermont State Senate

Guests Present:

Thomas Benoit, Vermont Dept. of Environmental Conservation
Elliot Burg, Vermont Attorney General's Office
Charity Carbine, Vermont Public Interest Research Group
Karen Knaebel, Vermont Agency of Natural Resources, Environmental Assistance Office
Bridget Schoffmeijer, NEMA, ACC, Automobile Association

The Committee members and interested parties gathered at the Waterbury State Complex, Osgood Building, Hazen's Notch Room. Neil Kamman called the meeting to order.

Subcommittee Meeting on Toxic Substances

The Subcommittee on Toxic Substances convened to discuss the charge of the Advisory Committee on Mercury Pollution regarding the legislative report on toxic substances required in H.515.

Neil Kamman indicated that there was not a specific agenda developed for this subcommittee meeting. Gary Gulka suggested that the subcommittee review the legislative charge in H.515 and the memo from Senator Ginny Lyons to the Advisory Committee entitled "Thoughts on a Possible Toxics Advisory Committee."

Jen Holliday reviewed Section 5 of H.515 on the Mercury Advisory Committee report on toxic substances.

Neil Kamman introduced the memo from Senator Ginny Lyons addressed to the Committee.

Senator McCormack indicated that the Committee is bounded by the specifics in H.515 for the report contents and that the suggestions provided by Senator Lyons are guidance on how the Committee might approach these tasks.

Elliot Burg suggested that if the subcommittee decides that the Advisory Committee should be expanded to include review of other toxic substances, then the content of the report to the Legislature expands- such as recommending the toxic substances or categories that should be added to the jurisdiction of the committee, and recommended statutory changes to the Advisory Committee's charge. He said that this would also lead the subcommittee to thinking about how the work of the expanded Advisory Committee would be accomplished.

Elliot Burg asked what resources would be available to assist in evaluating various categories of toxic substances.

Neil Kamman suggested that one resource on toxic substances is the Lake Champlain Basin work.

Neil Kamman facilitated an in-depth discussion of the charge to the Advisory Committee in the legislative report:

Jen Holliday suggested that pharmaceuticals discarded in the trash and flushed down the drain is an issue. Neil Kamman stated that there is limited information available concerning the risk of pharmaceuticals at the levels found in water bodies, but there is a great deal of interest in this.

Elliot Burg raised the issue of the precautionary principle and whether this issue should be taken off the table for discussion at the onset of the subcommittee's work.

Senator McCormack asked whether the subcommittee is getting ahead of itself and the scope of its charge by addressing this issue.

Gary Gulka suggested that in addressing the specific charge for the report, the Committee should articulate what the problem is that needs to be addressed.

In regard to a recommendation on the toxic substances or categories of toxic substances that should be added to the jurisdiction of the Committee, Neil Kamman suggested that the Committee might consider organizing its thoughts around source sectors such as households, wastewater treatment facilities, industrial activities, and health care.

Michael Bender stated that he would like to hear from proactive states and non-governmental organizations on proactive programs that have been implemented on toxic substances.

Elliot Burg stated that his first concerns are process-related questions in how the subcommittee should conduct its work. He would like to find out how other states, such as Maine, approached

this problem. He cited as an example, that the State of Maine chose not to address pharmaceuticals and he wanted to understand Maine's thinking.

Gary Gulka said that he could arrange for someone from Maine to talk about their process and program. He believed that Maine still needs to develop rules before implementing its safer chemicals program. He also said that Maine is authorized to participate in a regional chemicals clearinghouse that would assist in evaluation of chemicals.

Jen Holliday said that she will contact Washington State to find out more about their safer chemicals laws and programs. She believed that Washington changed their chemical strategy and approach recently.

John Berino suggested that consideration needs to be given to the resources needed to carry out the work, administrative and otherwise, of an expanded toxics substances committee.

Neil Kamman asked whether the subcommittee should hear from an NGO group. Jen Holliday suggested Michael Wilson from University of California, Berkeley. Gary Gulka suggested that the subcommittee may want to hear from federal and industry perspectives. Michael Bender suggested hearing the European Union perspective. Gary Gulka mentioned that Canada also has a toxics substances program and mentioned that Maine's task force report has a good summary of REACH (Registration, Evaluation and Authorization of Chemicals) and the Canadian program.

Michael Bender suggested that the Maine task force report be a reading assignment for subcommittee members.

Elliot Burg suggested that subcommittee members read the Maine report and formulate questions prior to the next meeting to be prepared for a conversation with the State of Maine at this next meeting.

Elliot Burg asked if the Advisory Committee is fully constituted with the additional members as specified in H.515.

It was agreed that a letter would be sent by the Chair to the Secretary of Natural Resources requesting the appointment of another DEC representative. It was also agreed that a letter would be sent by the Chair to the Governor's Office recommending the appointment of Charity Carbine of the Vermont Public Interest Research Group.

Senator McCormack suggested that there is no need for the committee to reinvent the wheel, but to research what other states and entities have implemented.

Gary Gulka said that the Advisory Committee on Mercury Pollution was formed with a very broad charge to make recommendations to the Legislature on methods to reduce risk and exposure from mercury and he felt that a broad charge in legislation for an expanded committee would be appropriate. He also said that staff/administrative resources would be an issue for an expanded committee.

Michael Bender stated that he was in favor of a broad charge for an expanded advisory committee.

Neil Kamman suggested that with limited resources, the Committee may have to look at a single priority chemical per year.

The subcommittee agreed by consensus that the effort to develop the legislative report on toxic substances will be accomplished through a subcommittee.

It was agreed by consensus that the first step would be for the subcommittee to read the Maine task force report and legislation. Gary Gulka provided the subcommittee with a written summary of the Maine law.

Elliot Burg suggested that the initial discussion with the State of Maine focus on the process that their task force followed in developing recommendations.

It was agreed that prior to the next meeting, subcommittee members would send questions via email to Gary Gulka on Maine's toxic substances report and program that can be used for the phone discussion with the representative from Maine.

Jen Holliday volunteered to research toxic substances policy in the State of Washington and report back to the subcommittee at the next meeting.

It was agreed that time would be reserved on the agenda of the next subcommittee meeting for a discussion with the State of Washington, if it is determined that this would be of value to the subcommittee's work.

It was agreed by consensus that the first meeting would focus on the process used in other states such as Maine and Washington to develop policies and programs. At the following meeting, the subcommittee would devote time to a discussion of existing programs on toxic substances in the state. It was suggested that there may be a homework assignment prior to the second meeting for subcommittee members to research and report back on particular programs in the state. Future meetings would then focus on deliberations of the subcommittee in formulating its recommendations on the specific charges.

The subcommittee agreed by consensus that Neil Kamman would chair the subcommittee and Jen Holliday would serve as co-chair.

It was suggested that a subcommittee work plan be developed at the next meeting.

The next meeting was set for August 28 in Waterbury. This meeting would be from 9 a.m. to 2 p.m. and would include a subcommittee meeting and a meeting of the Advisory Committee.

A second meeting of the subcommittee was tentatively scheduled for September 18th or 25th.

Neil Kamman said that he would contact Senator Ginny Lyons to inform her of meeting dates. Richard McCormack also said that he would ask her about Legislative Council administrative support for the work of the subcommittee.

The following agenda items were agreed upon:

- 1) Discussion on Maine and Washington safer chemicals reports and laws
- 2) Initial discussion of state entities and programs addressing toxic substances
- 3) Discussion of subcommittee work plan

Meeting of Advisory Committee on Mercury Pollution

Agenda Item 1

Review draft minutes the meeting

A motion was made and seconded to approve the minutes of the May 28, 2008 Advisory Committee meeting. The draft minutes were approved without changes.

Agenda Item 2

Committee member concerns / public comments

Michael Bender mentioned a class-action law suit against the U.S. Food and Drug Administration (FDA) that he was involved with, in which FDA agreed to modify its consumer information web page on dental amalgam in regard to health and safety concerns. A primary change in the web page is reference to other countries that more stringently restrict dental amalgam use to health and safety concerns. The lawsuit also required FDA to complete rulemaking in 2009 on the classification of dental amalgam as a medical device. The classification level (I, II, or III) determines the degree of control required for material handling. Mr. Bender suggested that the link to FDA's web page be forwarded to the Vermont State Dental Society.

Neil Kamman mentioned that he spoke with the DEC's Air Pollution Control Division about the crematorium that was proposed in Milton. He learned that there have been as many as ten crematoria that have been built and these fall well under regulatory thresholds, being evaluated under a general permit condition. He indicated that he would like to discuss this with Doug Elliott in the air permitting program and find out if he was aware that other jurisdictions have denied crematoria based on environmental considerations. The Committee agreed that they would then like to invite Mr. Elliott to a Committee meeting in the future.

Michael Bender stated that crematory emissions will become more significant due to the increasing number of cremations. It was suggested that amalgam removal could be a stipulation in approving or allowing new crematoria.

Senator McCormack said that an argument could be made that even de minimis releases of mercury are not acceptable.

John Berino mentioned that he mentioned dental amalgam removal to pathologists from the morgue at Fletcher Allen. The response to the idea of amalgam removal was one of disbelief that such an idea would even be considered. First, hospital staff would not know how to remove amalgam, and secondly, there are ethical issues. He felt that there is the need for a great deal of education in order to comprehensively convey the message that this is a significant source of mercury emissions.

Michael Bender stated that every state legislature has reacted negatively to amalgam removal from the deceased.

Agenda Item 3

Updates on sensitive populations outreach, spill procedures, auto switches, maple sugar thermometer exchange, and implementation of thermostat legislation.

- Sensitive Populations Outreach

Karen Knaebel indicated that a joint letter from the Department of Health and the Vermont Grocers' Association was sent to 657 grocers along with two mercury fish cards for display at each establishment. Mercury in fish posters were being placed at all state fishing access areas through the Department of Corrections. Ms. Knaebel also indicated that an EPA grant application was being developed in conjunction with the Department of Health to update language-specific advisories for ethnic groups so that they can better understand the advisories, based on the fish they eat. The new fish advisories will be translated into several languages as part of the grant.

- Spill Procedures

Karen Knaebel indicated that Mercury Spill and CFL cleanup guidance for first responders has been finalized and about 500 copies will be distributed to municipalities, solid waste districts, fire departments, state agencies and others that may receive phone calls from the public on these matters. In addition, over 14,000 CFL fact sheets (half page size) with information on cleanup of broken bulbs have been distributed to municipalities and solid waste districts. Efficiency Vermont has distributed 5000 CFL fact sheets for placement in retail establishments (hardware stores and their various lighting partners).

- Maple Sugar Thermometer Exchange

DEC has collaborated with the Agency of Agriculture, Food & Markets to conduct a maple sugar thermometer exchange. The Agency of Agriculture has helped to distribute postcards to maple sugar makers as a method to sign up for the exchange. More than 260 mercury sugar thermometers will be exchanged for non-mercury digital thermometers in the coming year. The first exchange event will occur at the Maplerama in Tunbridge in July.

- Implementation of Thermostat Legislation

Karen Knaebel indicated that DEC is gearing up to implement new thermostat legislation requiring original equipment manufacturers (OEMs) of mercury thermostats to establish

wholesale, retail, and municipal collection points for mercury thermostats and pay \$5 per thermostat collected. Letters have been sent to OEMs informing them of the requirements in Vermont and the need to submit a collection plan by October 1, 2008. The Thermostat Recycling Corporation (TRC) met with DEC to discuss implementation by their members. Ms. Knaebel indicated that she hoped that all OEMs would join with TRC to implement a single, unified collection program. DEC has had discussions with TPI, another thermostat OEM that does not utilize the TRC collection system, but is part of the second collection system for smaller OEMs in Maine. Jen Holliday indicated that the solid waste districts were eager to participate in the incentive program.

- **Auto Switch Collection**

Gary Gulka reported on the status of the mercury auto switch collection program. As the end of 2007, the first full year of the mandatory collection program, about 1200 switches were turned in for recycling. This represents about 5 percent of the switches estimated previously to be available for collection on an annual basis (about 25,000 switches). Including switches collected in 2008, about 2000 switches (containing about 4 pounds of mercury) have been turned in thus far. The third party administrator for switch collection, End of Life Vehicle Solutions (ELVS), reports to DEC annually on a facility-by-facility basis the number of switches collected. Since some auto salvage yards may not have filled their collection containers and turned them into the program, they may have collected switches but those numbers have not yet been entered into the database. Because of this, DEC believes the collection numbers may not fully reflect actual collections to date. DEC intends to have contact during the year (phone and/or mail) to monitor compliance with the switch removal and collection requirements. When the ELVS annual report is received next year, DEC will make it a priority to follow up on those auto salvage yards that have not returned containers. Mr. Gulka reported that the collection rate seems low; however, further evaluation is needed to better understand what is happening. Auto salvage yards are still receiving \$1 per switch returned to the program. He also indicated that federal regulation on secondary smelters, which handle auto scrap, have new requirements to reduce mercury emissions. Many of these smelters will be requiring source reduction of mercury switches by their suppliers, which should improve compliance. A national evaluation of the auto switch removal is currently underway. The national program has achieved a milestone of over one million switches collected.

Agenda Item 4

Set date and agenda for next meeting

It was agreed that a committee re-appointment letter would be prepared for Jen Holliday and John Berino.

It was agreed that the next meeting would be on August 28, on the same day as the toxic substances subcommittee meeting.

Agenda items for this meeting include a discussion of the insurance reimbursement issue for amalgams and other restorations with a representative from Banking, Insurance, Securities and Healthcare Administration invited to the meeting.

It was decided that there would be a September meeting, held in conjunction with a meeting of the toxic substances subcommittee. Agenda items for the Advisory Committee were identified as dental brochures, mercury-containing lamps, and program updates, as necessary. A meeting in October would address mercury emissions from crematoria. Representatives of the Air Pollution Control Program will be invited to discuss mercury emissions inventories and the significance of crematoria mercury emissions, as well as the recent proliferation of crematoria in Vermont.

Summary of Motions Passed and Other Action Items Agreed to at this Meeting

It was agreed that a letter would be sent by the Chair to the Secretary of Natural Resources requesting the appointment of another DEC representative. It was also agreed that a letter would be sent by the Chair to the Governor's Office recommending the appointment of Charity Carbine of the Vermont Public Interest Research Group.

Jen Holliday said that she will contact Washington State to find out more about their safer chemicals laws and programs and report back to the subcommittee at the next meeting.

The subcommittee agreed by consensus that the effort to develop the legislative report on toxic substances will be accomplished through a subcommittee.

It was agreed by consensus that the first step would be for the subcommittee to read the Maine task force report and legislation.

It was agreed by consensus that the first subcommittee meeting would focus on the process used in other states such as Maine and Washington to develop policies and programs. At the following meeting, the subcommittee would devote time to a discussion of existing programs on toxic substances in the state. It was suggested that there may be a homework assignment prior to the second meeting for subcommittee members to research and report back on particular programs in the state. Future meetings would then focus on deliberations of the subcommittee in formulating its recommendations on the specific charges.

The subcommittee agreed by consensus that Neil Kamman would chair the subcommittee and Jen Holliday would serve as co-chair.

Neil Kamman said that he would contact Senator Ginny Lyons to inform her of meeting dates. Richard McCormack also said that he would ask her about Legislative Council administrative support for the work of the subcommittee.

Neil Kamman will contact the Air Pollution Control Program to further discuss crematoria emissions and find out if the program is aware that other jurisdictions have denied crematoria based on environmental considerations.

It was agreed that prior to the next meeting, subcommittee members would send questions via email to Gary Gulka on Maine's toxic substances report and program that can be used for the phone discussion with the representative from Maine.