

Advisory Committee on Mercury Pollution

Meeting #84: Thursday, August 28, 2008

Time: 9:00 am to 2:30 pm

Location: Appalachian Gap Room, Osgood Building
Waterbury, Vermont

MINUTES

Members Present:

Michael Bender, Abenaki Self-Help Association, Inc.
John Berino, Vermont Association of Hospitals and Healthcare Systems (Fletcher Allen)
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
Representative Cynthia Martin, Vermont State Representative
Senator Richard McCormack, Vermont State Senate

Guests Present:

Lisa Carlson, Consumer
Jamie Feehan, Vermont State Dental Society
Ryan Goslin, Vermont State Dental Society, General Dentist
William H. Lambrukos, Northeast Delta Dental
Ben Merrick, Vermont State Dental Society, Prosthodontist
Lynn Metcalf, Vermont Agency of Natural Resources, Waste Management Division
Anthony Otis, Public Policy Attorney, Northeast Delta Dental
Sarah Rugnetta, Banking, Insurance, Securities, and Health Care Administration (BISHCA)
Peter Taylor, Vermont State Dental Society
Karen Knaebel, Vermont Agency of Natural Resources, Environmental Assistance Office

The Committee members and interested parties gathered at the Waterbury State Complex, Osgood Building, Appalachian Gap Room. Neil Kamman called the meeting to order.

Meeting of Advisory Committee on Mercury Pollution (ACMP)

Agenda Item 1

Review minutes from June 20th meeting

A motion was made and seconded to approve the minutes of the June 20, 2008 Advisory Committee meeting with a change under "Agenda Item 2" to correct EPA to read FDA. The draft minutes were approved with the change.

Agenda Item 2

Committee member concerns / public comments

Gary Gulka mentioned that the National Vehicle Mercury Switch Removal Program has increased the payment to auto dismantlers for mercury auto switches from \$1 to \$4 per convenience light switch and from \$2 to \$5 for an anti-lock break switch. The rate change was effective August 1 and will apply to Vermont auto dismantlers. The overall fund is capped at \$4 million dollars and it is unclear what will happen when the fund is depleted.

Michael Bender mentioned that the Northeast Waste Management Officials' Association has developed a report on mercury thermostat collection programs that concluded that programs with financial incentives are effective in increasing rates of collection.

Karen Knaebel mentioned that EPA has made some revisions to its mercury lamp cleanup guidance by adding new advice to dispose of bedding that comes into contact with broken compact fluorescent light bulbs.

Karen Knaebel mentioned that Vermont DEC is a recipient of an EPA Healthy Communities grant to for translating and disseminating mercury fish consumption advisories to ethnic and tribal communities and will be working with the Vermont Departments of Health and Fish and Wildlife.

Michael Bender attended the Product Stewardship Institute's mercury lamp dialogue meeting in Seattle. This was the second dialogue meeting that brought together stakeholders to discuss extended producer responsibility for collection of fluorescent lamps. At this meeting, EPA discussed its intention to conduct lamp breakage studies as a follow up to the Maine study. EPA will be looking at different types of lamps with varying levels of mercury, including lamps with lower levels of mercury than were part of the Maine study. There are three subcommittees formed as a part of the lamp dialogue that have been meeting on issues of infrastructure, financing, and enforcement. Mr. Bender also mentioned that he and Jen Holliday met with Efficiency Vermont to discuss the issue of collection programs.

Mr. Bender also pointed out that EPA Region 2 has taken an enforcement action on Macy's department stores for improper disposal of fluorescent lamps. The settlement includes a \$50,000 fine and a requirement for training employees.

Agenda Item 3

Discussion with BISHCA related to dental insurance coverage

Michael Bender distributed a packet of background information on dental amalgam issues to the Committee. One item in the packet was the 2008 ACMP legislative report. Mr. Bender indicated that one success has been the committee's collaboration with the Vermont State Dental Society (VSDS) on the amalgam separator installation requirement at dental offices. He mentioned ACMP's continued discussions with VSDS on dental brochures for patients on

restoration materials. And the current work where the Committee has discussed equivalent insurance coverage for amalgam and non-mercury-containing fillings. Mr Bender also provided the Committee with Food and Drug Administration (FDA) web site information. Mr. Bender said that FDA's Question and Answer web page on dental amalgam states that dental amalgam may have neurotoxic effects on young children and fetuses and these ideas represent a fundamental shift within FDA. There is also a court settlement requiring FDA to classify amalgam as a medical device. An FDA Advisory Committee recommended informed consent for patients and amalgam product labeling changes. The packet also contained a letter from Congressman Dennis Kucinich, who chairs the Domestic Policy Subcommittee of the U.S. House of Representatives Government Oversight Committee. The letter was to FDA and reminded FDA of its statutory duty to prepare an Environmental Impact Statement or conduct an environmental assessment as part of the rulemaking in reclassifying dental amalgam. Also included in the packet was the testimony of Mr. Bender at the House of Representatives Government Oversight Committee on dental amalgam. Mr. Bender indicated that his testimony refuted EPA's 2002 report that estimated 1.5 tons of mercury release to the environment from dental amalgam use. His estimate was 7.5 to 9 tons of mercury release. A letter to EPA was sent about this with no response. The final item in the packet was the New Jersey House Bill 2535 on requiring dental insurance to cover non-amalgam fillings such as resin composites. Mr. Bender also indicated that a cost comparison of filling materials showed a differential cost of amalgam versus non-amalgam fillings of 20 percent or less.

Sarah Rugnetta introduced herself to the Committee as Assistant General Counsel to the Health Care Section in BISHCA and also as Director of Rates and Forms. She indicated that she was not qualified to comment on health or environmental impacts of dental amalgam but was asked to speak to the ACMP regarding differences in dental coverage related to amalgam and composite fillings.

Ms. Rugnetta indicated that in preparation for this meeting, she reviewed dental policies on file with BISHCA. She stated that dental insurance policies have four different benefit levels. Level one is preventative care which is covered at 100 percent benefit level with no patient deductible. Level two is fillings, which are generally covered at 70-80 percent of the cost and there may or may not be a patient deductible or co-payment. Level three coverage is for items such as crowns.

Ms. Rugnetta indicated that she reviewed 10 to 15 plans and they all make benefit distinctions based on the material used for fillings.

Some of the following benefit limitations were noted for various policies:

- The least expensive material to be used that provides a satisfactory result and that the patient must cover the difference in cost for non-amalgam filling material.
- Shorter waiting periods: six months for amalgam fillings versus 12 months for non-amalgam.
- Limitation on the number of non-amalgam fillings, such as one every five years.

- Limitations based on the location of the tooth: porcelain and resin composite on anterior and bicuspid teeth only; also accompanying this was if the patient chose non-amalgam filling, there would be additional cost.
- Level three limitation – crowns not payable for children less than 12 years of age

Ms. Rugnetta indicated that there were basically three dental insurance plans that service 85-95 percent of Vermonters covered by insurance.

Ms. Rugnetta looked at plans from the two largest providers, Delta Dental and Renaissance Life and Health. The only coverage limitation on children seemed to relate strictly to crowns.

Ryan Goslin stated that as a General Dentist he has not experienced any issues with waiting periods, age limitations, or limitations on the number of non-amalgam fillings per year. He believed that most insurance providers do not have these limitations.

Michael Bender indicated that he had a conversation with a dental plan carrier whose plan had limitations, including a six-month waiting period, no coverage for composite resin filling material on posterior teeth, and coverage provided for the least expensive material.

Neil Kamman asked if there were plans with no distinctions between coverage of amalgam and non-amalgam fillings. Ms. Rugnetta indicated that she would check into this.

Gary Gulka asked what percentage of Vermonters have dental insurance. Peter Taylor estimated that the overall state figure was about 50 to 60 percent, with a higher percentage in Chittenden County. He indicated that this is primarily an employer-based benefit. Sarah Rugnetta indicated that the BISHCA web site may have information and market share information on the numbers of Vermonters covered by dental insurance.

Question as to whether Medicare covers dental. Peter Taylor indicated that Medicaid covers dental and that he thought the percentage is over 50% of Vermont children are covered for dental under Medicaid.

Ms. Rugnetta said that BISHCA just deals with private insurance. Information about Medicaid can be obtained through the Agency of Human Services.

Michael Bender asked Ms. Rugnetta about her view of the New Jersey bill. She stated that she felt the language in the bill stating coverage “for dental composite restorations at the basic service percentage level of the usual, customary and reasonable fees” would be difficult to enforce for composite fillings. She also indicated that the New Jersey bill did not provide for equivalent coverage for amalgam and non-amalgam fillings.

Ms. Rugnetta indicated that BISHCA can help with legislative language if the Legislature requests help in ensuring that their intent is achieved, including any effective dates in legislation.

Karen Knaebel asked if the state mandating coverage for all Vermont policies across the board is a potential method to achieve certain types of coverage. Ms. Rugnetta said that this is a potential

method, but that mandates can also lead to higher insurance premiums. She also said that depending on how legislation is drafted, it could also apply to Medicaid.

Ms. Rugnetta said that self-funded insurance plans do not have to comply with state regulatory mandates as this coverage is regulated under federal law. IBM was given as an example of a self-insured entity.

Peter Taylor indicated that Medicaid has a fee schedule and offers different fees for composites and amalgams; however, patients do not pay any difference. For Medicaid patients, the choice is between the doctor and the patient.

Lisa Carlson stated that she heard through Steve Arthur that dental clinics affiliated with the dental school do not place amalgams.

Agenda Item 4

Discussion with Vermont dentists on dental insurance coverage

Peter Taylor stated that he invited two dentists in different types of practices to explain how they practice and how they use amalgam.

Ben Merrick, Prosthodontist, explained his practice as dealing with restoration and replacement of teeth and related oral structures, often at the end stage of disease when it is too late to promote prevention as being the preferable option. A number of photos were shown of teeth that were treated with different materials – amalgam, gold, and ceramic. He indicated that fillings are not the primary type of restorations that he does in his practice.

Dr. Merrick stated that composites can work well for small fillings, where only a small amount of tooth structure has to be removed. Only about 3% of his work involves fillings.

Dr. Merrick showed a photo of a back molar with an amalgam filling next to a front tooth with a composite filling. He indicated that amalgam is a better filling choice on a molar because it is more durable in areas where there is more wear. A front tooth has less wear and therefore a composite filling may be more appropriate because of both the lack of need for durability and aesthetic purposes. Composite resins form a chemical bond to the tooth and can have a straight wall as a bonding surface. For amalgam there needs to be an undercut to provide for a firm bond to the tooth and thus more tooth material removed as a result. However, a composite resin filling on a molar would need replacement more frequently because it is less durable and wears out quicker. The filling area gets larger each time it needs to be replaced. Amalgams are very durable. Composites have gotten better, but they do break down faster. Gold fillings are the longest lasting and durable and are more technique-sensitive. Composites are more technique-sensitive than amalgams. Glass ionomer can work on a small, less stress-bearing surface.

Dr. Merrick indicated that some restorative materials are not time-tested, and because of that there is no guarantee that they will not be a problem for the patient in the future. The patient suffers if the materials do not perform. On a large filling with little tooth remaining, the best

choice can be amalgam. A crown would not work without surgery and a composite would not be durable and last for a long time. The message is that every time a tooth is treated it gets weaker. Dr. Merrick indicated that amalgam replacement materials are not fully available. There are problem situations such as the large size of a filling area and ability to keep the surface dry in some dental situations. He looks at functional stress in determining the best material. Decay can develop within any restoration. There are aesthetic demands from patients in determining the choice of restorative materials. He said that he balances function, aesthetics, longevity, and cost in making decisions, and it is different for every patient. Dr. Merrick stated that if amalgam were not available to him, it would mean the loss of a tooth in some patients. He mentioned a patient with a long bridge. Removing decay under the bridge caused bleeding gums and there was no way to keep the surface dry to use a composite resin. Every clinical situation is different, thus it makes it difficult to adequately treat patients if amalgam filling material choices are eliminated.

Jen Holliday asked Dr. Merrick if potential exposure to mercury was ever considered in his choice of restorative materials, such as in treating children or pregnant women. Dr. Merrick pointed to studies that he believes have demonstrated that there are no adverse health effects related to the use of amalgam fillings.

Cynthia Martin asked Ryan Goslin why he is using less amalgam. He said that the majority of patients choose composites for aesthetic reasons. For larger size fillings he recommends amalgam. For smaller fillings he uses composites unless tooth wear is an issue.

Michael Bender indicated that he was frustrated that the issue on the table for discussion is dental insurance – not whether to ban amalgam. He said that he had a few questions but first wanted to set the record straight. He said that we have come together to avoid the impact of mercury on the environment. Data from amalgam manufacturers on amalgam sales gathered through NEWMOA shows that amalgam use is not going down in the U.S. The question is how we increase the use of non-amalgam fillings. Mr. Bender asked whether with all things being equal, if the cost differential would lead to more use of amalgam and less of composite resin. He also indicated that about one-third of Vermont dentists are mercury-free and he would like to hear the opinion of these dentists about the cost differential and if insurance issues affect filling choices.

Ryan Goslin said that waiting periods are common, but he has not seen a longer waiting period for composite resin vs. amalgam. For insurance, it depends on the plan. If you consider that all things are equal, there may be a difference in the cost between amalgam and non-mercury fillings.

Senator McCormack asked Dr. Goslin how many of his patients use amalgam because it is cheaper. Dr. Goslin indicated that it was not very frequent, but if he were to estimate -perhaps five percent of the time.

Senator McCormack asked how close we are to completely replacing amalgam with other non-mercury filling materials. Dr. Goslin estimated perhaps 10 or 15-20 years.

Senator McCormack also asked what the function of mercury is in amalgams. Dr. Goslin indicated that the mixture of other metals would just be a powder without the mercury.

Michael Bender asked Dr. Goslin if there was no advantage in use of one filling material over the other, would he be in favor of a policy that composite resin would be the filling material of choice? Dr. Goslin stated that there is no way of making a determination on filling types ahead of time in the treatment of patients. Dr. Goslin felt it would be too difficult to have a mandate or best management practices that stated this.

Mr. Bender said that he believed some dentists used amalgam only because they are accustomed to using it. Dr. Goslin suggested that Mr. Bender's statement was an overgeneralization. He said that it may be less intrusive to use composites, but in the long run, it may not be best, depending on the location of the tooth.

Mr. Bender said that the Committee is asking dentists to meet them half way. Mr. Bender indicated that amalgam use in Scandinavian countries is about five percent of restorations.

Dr. Goslin said that that there can be different responses in different situations and that prevention is the key.

Dr. Merrick stated that in generalizing the use of any one product for filling materials, he noted that there are differences in the technical skills from one dentist to the next. And for instance, because of this, he cannot use some of the materials that Dr. Goslin uses simply because of the difference in their technical skills.

Agenda Item 5

Discussion with Delta Dental regarding dental insurance coverage

William Lambrukos of Northeast Delta Dental introduced himself stating that he had been in the dental insurance business for 32 years. He stated that most insurances pay for composites on anterior teeth. In his review of the New Jersey bill, he said that carriers will be more than happy to cover composites on posterior teeth. However, composite coverage would result in a two percent increase in premiums. There is a higher failure rate on posterior teeth with composites. Adding composite on posterior teeth is an option offered at renewal.

Mr. Lambrukos indicated that roughly 60 percent of people are self-insured. He suggested that perhaps 40 percent of people with dental insurance would be impacted.

Mr. Lambrukos indicated that he did not know the percentage of Vermonters with dental benefits, but he could obtain that number and provide it to the committee.

John Berino asked about the timeframe for implementing a provision such as in the New Jersey bill, requiring composites as an option. Mr. Lambrukos said that it could be at the time of renewal as the New Jersey bill would do – or it could be done across the board at one time.

Sarah Rugnetta said that in Vermont, the typical time frame is in October – the year after the law passes.

Mr. Lambrukos said that for Delta Dental, the waiting period for amalgams and composites is the same. He also said that the co-pay for amalgam would be the same for a composite filling.

Question as to what percentage of plans in Vermont do not pay the extra two percent premium. Mr. Lambrukos indicated that he could obtain that information, but that it may be more appropriate to look at the percentage of Vermonters under each type of plan.

Mr. Lambrukos reiterated that if legislation is passed, the same co-pay level and deductible paid for amalgam under current policies would result in a two percent premium increase. It was important to note that the cost of these fillings can be different so the patient cost could ultimately end up paying more after the co-payment level

Karen Knaebel said that she does not get charged any more for a composite filling. Mr. Lambrukos indicated that some offices may have the same fee for both types of fillings. He acknowledged that fees have gotten closer between the two and it depends on individual dentists. Lisa Carlson said that she did a survey on filling costs at 35 dental offices in Vermont in five metropolitan areas. The price range for composites was \$100 to \$221 for a two surface filling and \$78 to \$158 for the same type of amalgam filling.

Agenda Item 6

Continued discussion of dental insurance coverage for restorations

The Committee agreed that they may want to hear from the Medicaid Program in the future.

Agenda Item 7

Set Date and Agenda for next meeting

Jen Holliday asked if the dental brochure being developed by VSDS would be available to the Committee for its next meeting. Peter Taylor indicated that it would be ready by the end of the month and distributed to the Committee.

The next meeting was scheduled for September 25 at 9:00 am to 2:00 pm in Waterbury. It was agreed that the meetings of the ACMP and the subcommittee would continue to be scheduled as a back-to-back meeting.

The Committee discussed work plan items and scheduled dates for topics. It was decided that Mercury Containing Lamps and Crematoria would be switched on the work plan and Crematoria would be addressed at the September meeting if possible and Mercury Containing Lamps would be discussed at the October meeting. Lisa Carlson added that she was interested in doing a survey of senior citizens concerning their attitudes towards pulling teeth with amalgam at the time of death. John Berino said that he would be willing to review survey questions.

The following tentative agenda was set for the September meeting:

- Continued discussion of dental insurance coverage for restorations
- Review of VSDS dental brochure
- Mercury Program Updates
- Committee appointments
- Crematoria emissions – discussion with Air Pollution Control Division (tentative)

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

Ms. Sarah Rugnetta from BISHCA indicated that she would check to see if there were insurance plans with no distinctions between coverage of amalgam and non-amalgam fillings.

The committee needs to check the BISHCA web site for possible market share information on the numbers of Vermonters covered by dental insurance.

The committee needs to determine if inviting someone from the Agency of Human Services to talk about Medicaid coverage in Vermont relating to dental is warranted and/or to verify if the percentage of Vermont children covered for dental under Medicaid is over 50%.

William Lambrukos of Northeast Delta Dental stated that he would obtain the percentage of Vermonters that are covered by dental benefits.

Neil Kamman to check with Air Quality Division for their availability to present at the September ACMP meeting regarding crematoria.

Subcommittee Meeting of ACMP
Advisory Committee on Toxics (ACT)

Members Present:

Michael Bender, Abenaki Self-Help Association, Inc.
John Berino, Vermont Association of Hospitals and Healthcare Systems (Fletcher Allen)
Elliot Burg, Vermont Attorney General's Office
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
Lynn Metcalf, Vermont Agency of Natural Resources, Waste Management Division
Cynthia Martin, Vermont State Representative

Guests Present:

Thomas Benoit, Vermont Agency of Natural Resources, Waste Management Division
Charity Carbine, Vermont Public Interest Research Group
Lisa Carlson, Consumer
Allison DeMag, American Chemistry Council
William Driscoll, Associated Industries of Vermont (AIV)
Ginger Jordan-Hillier, Maine DEP (via telephone)
John James, Maine DEP (via telephone)
Sarah Kraege, Washington Department of Ecology (via telephone)
Dave Nightingale, Washington Department of Ecology (via telephone)
Steve Rosario, American Chemistry Council
Alex Stone, Washington Department of Ecology (via telephone)
Tasha Wallis, Vermont Retail Association
Karen Knaebel, Vermont Agency of Natural Resources, Environmental Assistance Office

The Subcommittee members and interested parties gathered at the Waterbury State Complex, Osgood Building, Appalachian Gap Room. Neil Kamman called the meeting to order.

Agenda Item 1

Discussion on Maine and Washington safer chemicals reports and laws

Gary Gulka and Jen Holliday gave brief introductions to the Maine and Washington State programs and speakers that would be presenting their program overviews. Questions were provided in advance to Maine and Washington that Subcommittee members submitted.

Agenda Item 2

Guest Speakers from Maine (via telephone)

Ginger Jordan-Hillier and John James

Ginger Jordan-Hillier explained that the Maine Department of Environmental Protection (DEP) has been involved with restrictions on toxic chemicals in consumer products since the 1990s, beginning with ozone-depleting chemicals and mercury. Toxic chemical bans were at first narrow in scope and restricted to products –such as thermometers. Then broader bans were enacted on flame retardants such as penta- and octa-brominated diphenylethers. Maine was the first state to ban brominated flame retardants. The Maine legislature was becoming frustrated with chemical by chemical restrictions on toxic substances. With brominated flame retardants, the Legislature gave DEP the authority to ban any flame retardant for cause.

Ms. Jordan-Hillier stated that chemical policy discussions had been occurring at the national and international levels, and actions had been taken in Europe and Canada to better identify the health and toxic effects of chemicals in commerce. These actions led Maine's Governor to issue an executive order in 2006, directing a task force to develop recommendations for a more comprehensive chemicals policy that focused on the use and development of safer alternatives to priority chemicals in consumer products.

Ms. Jordan-Hillier indicated that after the task force report was issued, two bills were introduced on toxic substances, one from the Governor and one from legislative leadership. The bill that eventually passed is a tool that establishes a framework for addressing chemicals in a more orderly fashion using a chemical-by-chemical approach and is guided by certain principles as follows (also see page 21 of the Maine task force report):

- Shift the burden of proof away from government to prove harm and onto manufacturers to prove the relative safety of chemicals that they produce or use.
- Shift the standard of proof away from having to demonstrate unreasonable risk to acting with foresight to prevent harm.
- Ensure that chemical policies protect the most vulnerable populations among us.
- Require safer alternatives to hazardous chemicals when available, while phasing out high hazard chemicals such as persistent, bioaccumulative and toxic chemicals (PBTs).
- Honor the public's right to know about chemical hazards, while ensuring that data gaps on chemical safety are closed.
- Consider the best work of other governments that are developing chemical policies, such as Canada and the European Union to inform policy making at home.

Ms. Jordan-Hillier emphasized that these were important underlying principles and she urged the Subcommittee to review them.

Ms. Jordan-Hillier said there was a huge learning curve for the state. Besides a framework, the law provides a tool to deal with certain frustrations such as lack of toxicity data. For example, under this framework, industry must provide toxicity information for priority chemicals identified under the law.

A question was asked in regard to how Maine formulated its definition of chemicals of high concern. Ms. Jordan-Hillier indicated that the definition evolved from concerns of the environmental community as well as definitions established under the European REACH program (Registration, Evaluation and Authorization of Chemicals) and the Canadian Government's chemical and categorization program. These programs similarly define chemicals of high concern as having the following properties: persistence, bioaccumulation, aquatic toxicity, carcinogenicity, mutagenicity/genotoxicity, reproductive toxicity, developmental toxicity, endocrine disruption, neurotoxicity, and systemic toxicity/organ effects.

In response to the question posed by the subcommittee as to whether the Maine task force evaluated in-state programs that managed toxic substances, Ms. Jordan-Hillier responded that staff from the Disease Control Center and Pesticide Program participated in the task force.

In another questions posed by the Subcommittee as to whether Vermont should be taking action to regulate toxic substances, Ms. Jordan-Hillier answered in the affirmative and indicated that many learned people, including reports from the U.S. Government Accountability Office (GAO), have expressed the position that the Federal Toxic Substances Control Act (TSCA) is not working. For states to effect change at the federal level, it takes initiative at the state level. One goal in Maine, she said, was to force that federal change. She said that it is important for many states to send the message that this is a very real problem.

She recommended to the Subcommittee that it would be preferable to have programs in Vermont that are similar to the laws in Maine and Washington. This allows for collaboration during program development and implementation, sharing of limited staff resources, and helps to evolve models for better legislation in the future.

Elliott Burg asked which chemicals in Maine have been evaluated to date and asked for a description of the evaluation process. Ms. Jordan-Hillier indicated that this task has not been completed yet; the first task is to publish a list of chemicals of high concern. This list is being built and is not due under statute until January 1, 2010. The development of this list will be done in a way that is transparent to the public – so that information and deliberations used in the decision-making process are clearly identified and available to the public. She said that the next task is to develop protocols to prioritize chemicals through a stakeholder process. Maine must identify two priority chemicals by 2011. That identification triggers notification by children's product manufacturers. This notification includes the number of units sold that contain the chemical, the amount of priority chemicals in each unit, and the intended purpose of the chemical. Maine has the authority to obtain supplemental information from a chemical manufacturer, including the extent to which chemical exposure will occur through product use, the ability of the chemical to leach from the product, the purpose of the chemical and information on safer alternatives to the chemical. Maine DEP can also waive some of the manufacturer reporting requirements if the information is already available from another source.

Charity Carbine asked if toxicity data on a chemical is required from an independent third party. Ms. Jordan-Hillier responded that it would not be required from an independent third party. This was not a consideration in the legislature. However, the data submitted would have to be satisfactory to the DEP.

In response to a Subcommittee questions concerning the major challenges to Maine in implementation of the law, Ms. Jordan-Hillier indicated that being the first state to implement the law has meant that they have had to figure out all aspects of implementation on their own. For example, Maine is determining the process for being transparent in the selection process for chemicals of high concern. There are some manufacturers that would like to use the process developed by Maine DEP for their own internal screening tool on chemicals to avoid or eliminate in product development. Maine will be utilizing an intern to assist them in the process.

John James indicated that there is a waiver provision on reporting if the specified use is minor in volume. This provision has is being worked on in the protocol under development.

Ms. Jordan-Hillier responded to one of the Subcommittee's questions as to why the law deals only with children's products. She indicated that children's exposure to toxic chemicals is the highest priority from a health perspective. With limited resources in the Department, there was a need to focus on priorities. Also she stated that legislators would agree that it was politically smart to have this focus during the legislative process. She also pointed out that the definition of children's products is fairly broad.

There was a question of how important it was to include pesticide management programs in the task force process. Ms. Jordan-Hillier indicated that it was very important to have toxicologists and pesticide experts on the task force, even though pesticides are exempt under the law. Integrated pest management personnel were directly involved, but a pesticide toxicologist was not directly involved with the task force. Nevertheless, this person we indirectly involved the writing of the report. Ms. Jordan-Hillier indicated that there are certain chemicals that can be classified as a pesticide or not, depending on the product label and use. An example given was chlorine bleach – if the label says that the product kills germs or disinfects, then it is a pesticide; however, if the label does not indicate that it disinfects, then the same chemical is not classified as a pesticide. She indicated that Washington State does not exempt pesticides from its law.

Michael Bender said that he believed it was important for the Subcommittee to include input from the Agency of Agriculture in its deliberations.

Ms. Jordan-Hillier mentioned that Maine's task force was a core group that brought in others and other expertise as needed.

Michael Bender asked how an interstate chemicals clearinghouse would help in implementation of the law. Ms. Jordan-Hillier said that a chemicals clearinghouse could house chemical data that Maine would not have to request or otherwise search for and could provide quality control for the data. Maine and Washington continue to communicate in order to find opportunities for information sharing.

Elliott Burg asked what changes would be made to the law if the law in Maine could be re-written to make it work better. Ms. Jordan-Hillier indicated that it is too early at this point to determine this. She also said that improvements were made through the legislative process.

In answer to the same question, John James said that under the current law, there is no funding mechanism for investigating safer alternatives.

Jen Holliday asked if it is up to the state to determine if a safer chemical exists. John James said that the state has the burden of demonstrating a safer alternative if they are going to proceed to ban the chemical. Maine DEP has the authority to ask for information on safer alternatives from the manufacturer.

Michael Bender said that it may not be in the best interest of manufacturers to research and seek out safer chemical alternatives. John James indicated that it is still a few years before Maine will be conducting alternative assessments.

Ms. Jordan-Hillier mentioned that environmental groups wanted 100 substances to be identified as priority chemicals and the Department wanted only two. Ms. Jordan-Hillier said that the identification of chemicals of high concern and priority chemicals may lead to the voluntary elimination of these chemicals from children's products before it is necessary to go through the entire process set out under the law. She gave an example of a toy manufacturer who wanted the list of chemicals of high concern as guidance for chemicals to avoid for use in products. Ms. Jordan-Hillier said that this law is a more practical and efficient method to address chemicals of concern than the current method.

Michael Bender asked if the Maine bill was supported by all stakeholders. She indicated that the American Chemistry Council was opposed to the bill. The bill passed unanimously in the Senate and almost unanimously in the House. She said that this bill represents the beginning of a shift to the precautionary principle that has been embraced by Europe and resisted in the U.S.

Miss Jordan-Hillier mentioned that under TSCA, EPA spent ten years attempting to ban asbestos; however, the courts threw out the case because under the statute, the burden of proof is so high. We now know that there is no safe level for asbestos – one example that shows that we need to proceed with caution on persistent chemicals.

Ms. Jordan-Hillier also mentioned the recently passed Consumer Product Safety Improvement Act that was passed by Congress. It strengthens lead restrictions in children's products and bans three phthalates in children's products even though test data is not complete. She suggested that this is a major shift in policy toward a more precautionary approach.

Agenda Item 3

Guest Speaker from Washington State (via telephone)

Dave Nightingale, Sarah Kraege, and Alex Stone, Washington Department of Ecology

Dave Nightingale of Washington Department of Ecology (DOE) provided an overview of toxic chemical management and regulation in Washington State. Sarah Kraege from the Solid Waste Program and Alex Stone from the Hazardous Waste Program were also on the line.

Mr. Nightingale identified three organizations that were instrumental in Washington's efforts.

- Northwest Product Stewardship Council (NWPC) and the Chemicals Subcommittee
- North American Hazardous Materials Management Association
- Children's Environmental Health Network of Washington

Washington State has a PBT executive order and rules and three chemical action plans – one for mercury, lead and polybrominated diphenyl ethers. The one chemical at a time approach has been a very deliberative process.

The Beyond Waste Plan (2004) is a solid and hazardous waste consensus strategy or vision for less toxic products, improving products, and making government more efficient. The goals of the plan include:

- Safer products and services
- Efficient/sustainable materials management
- Greater economic vitality

The plan calls for relying on product stewardship approaches to safer products.

There were two symposia (January 2007 and January 2008) on chemicals policy that were sponsored by NWPC.

The Children's Safe Products Act is similar to Maine's law. The criteria for establishing lists of chemicals are almost identical to Maine's law. Lead, cadmium and phthalates are restricted as of July 2009. The law requires the identification of chemicals of high concern by January 2009; however, no numerical target is set for the number of substances listed. Priority chemicals must then be identified, which go through a rulemaking process. There is an advisory committee involved. Manufacturers will be required to report on priority chemicals. There is not similar authority as in the Maine law to require more information from a manufacturer. A chemical ban will not be recommended unless a safer alternative exists. The Washington law does not exempt pesticides, unlike Maine.

Recent actions in Washington were discussed. Washington is prepared to move forward to ban PBDEs because safer alternatives have been identified. Maine and Washington are collaborating on a database being used to identify chemicals of high concern. A Chemicals Policy Issues paper was developed by Oregon and Washington this past summer.

The Beyond Waste Plan has recommendations for action on five priority categories: mercury, PBDEs, electronic wastes, architectural coatings, and selected pesticides. There has been some progress on these chemicals or local programs.

Jen Holliday asked if NWPC is recommending a chemical policy framework. Dave Nightingale stated that this has not happened, however, the chemical policy issues paper addresses it and he said that it is possible that legislation will be introduced in the future.

Alex Stone said that there is a California Green Chemical Policy under development and there is a great deal of information available on the California Green Chemistry web site.

Neil Kamman asked if emerging contaminants have been addressed – such as byproducts of nanotechnology or mixtures of chemicals that can act as endocrine disruptors. Washington DEQ staff indicated that there was no discussion on these chemicals in Washington.

Elliott Burg asked if reporting requirements are required regardless of where the product is manufactured. The response was that reporting requirements apply regardless of location.

Alex Stone mentioned that Maine, Washington, and Vermont have toxics in packaging laws that restrict four heavy metals in product packaging – lead, mercury, hexavalent chromium, and cadmium.

Elliott Burg asked if there were chemical use restrictions when the chemical use was related to aesthetics or to novelty items. Both Maine and Washington programs indicated that action can be taken to restrict chemicals in novelties and non-vital uses without the existence of alternatives.

Alex Stone also mentioned concern in Washington for worker exposure to toxics and release of toxics at the end of product life.

Alex Stone indicated that Washington can consider restricting a chemical's use if no data exist – lack of data may factor into Washington's chemical prioritization scheme.

Gary Gulka asked both Washington and Maine officials if they had recommendations on reading materials for Subcommittee members.

The following information resources were recommended:

- Book by Mark Schapiro entitled *Exposed: The Toxic Chemistry of Everyday Products and What's at Stake for American Power*
- State Chemical Policy Options and other resources on the Lowell Center for Sustainable Production's web site
- California Green Chemistry Initiative
- California Green Chemistry Report by Michael Wilson, Center for Occupational and Environmental Health at University of California Berkeley
- Environmental Defense Fund web site and reports by Richard Dennison on comparisons of REACH and TSCA

Agenda Item 4

Discussion of subcommittee work plan

Michael Bender suggested there be a side-by-side comparison of the existing state laws

Mr. Bender suggested that the Subcommittee develop some fundamental questions concerning the direction in which it wants to proceed in recommendations

Jen Holliday suggested a speaker from California for the next meeting

Michael Bender also suggested that someone from the Agency of Agriculture be invited to the next meeting to discuss pesticides

Tasha Wallis volunteered to assist the Subcommittee in identifying in-state programs and entities addressing toxic substances.

Elliott Burg suggested that the Subcommittee proceed on multiple tracks – look at general concept for a program that would work in Vermont as well as identify in-state programs.

It was agreed by consensus that the Subcommittee would address these two issues. Elliott Burg agreed to work with Michael Bender and Charity to develop some framework questions to help the Committee determine the general direction of a Vermont toxic substances program. The list of questions will be developed via email to be discussed at the next meeting.

Neil Kamman, Lynn Metcalf, Gary Gulka, and Tasha Wallis will take on the task of identifying in-state programs to be shared at the next meeting.

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

Elliott Burg agreed to work with Michael Bender and Charity to develop some framework questions to help the Committee determine the general direction of a Vermont toxic substances program. The list of questions will be developed via email to be discussed at the next meeting.

Neil Kamman, Lynn Metcalf, Gary Gulka, and Tasha Wallis will take on the task of identifying in-state programs to be shared at the next meeting.

Neil Kamman will contact the Agency of Agriculture, Food & Markets and invite a representative from the pesticides program to speak about pesticide management and regulatory programs.