

# **Advisory Committee on Mercury Pollution**

Meeting #101: November 15, 2010

Time: 9:30 am to noon

Location: Laundry Building Conference Room, Waterbury State Office Complex  
Waterbury, Vermont

## **MINUTES**

### **Members Present:**

Michael Bender, Mercury Policy Project  
Bill Bress, Vermont Department of Health  
Gary Gulka, Vermont Agency of Natural Resources, Environmental Assistance Office  
Jennifer Holliday, Chittenden Solid Waste District (via telephone)  
Neil Kamman, Vermont Agency of Natural Resources, Water Quality Division  
Senator Richard McCormack

### **Guests Present:**

Peter Taylor, Vermont State Dental Society  
Theo Kennedy, Otis & Brooks, representing Northeast Delta Dental  
Anthony Otis, Otis & Brooks, representing Northeast Delta Dental  
William Driscoll, Associated Industries of Vermont  
Patrick Rowe, Vermont Department of Health  
Charity Carbine, Vermont Public Interest Research Group

The Committee members and interested parties gathered at the Laundry Building conference room at the Waterbury State Office Complex. Neil Kamman called the meeting to order.

### **Agenda Item 1**

Accept minutes from October 14th meeting

Two typographical errors were corrected and the draft minutes of October 14<sup>th</sup> were approved.

### **Agenda Item 2**

Public comment/committee member concerns

Gary Gulka mentioned that the Agency of Natural Resources (ANR) sponsored a stakeholder meeting in October on sustainable funding for a statewide lamp recycling program for spent lamps from residential and small business sources. ANR was seeking comment on a draft legislative proposal that provided a framework for product stewardship of waste products, with mercury lamps being the first specified product. A second meeting is scheduled for November 16. As a stipulation of Efficiency Vermont's funding for lamp recycling at hardware stores for a two-year period, ANR has agreed to actively seek a sustainable source of funding.

Gary Gulka also mentioned that he e-mailed Committee members the Vermont Department of Health's (VDH) focus group study report on parents with concerns about immunizations. He said that there is significant discussion in the report about public confusion, lack of trust, and a desire for balanced information on the advantages and disadvantages of immunizations.

Senator McCormack asked Committee members if there is any proposed mercury lamp legislation for the upcoming legislative session. He indicated that he will make a drafting request for this as a placeholder. Senator McCormack said that he has heard from constituents about lack of convenient opportunities for recycling spent mercury lamps.

Neil Kamman mentioned that a Request for Proposals has been issued for fish tissue sampling for mercury and PCBs at 100 indicator locations on Lake Champlain. Test results will then be used to update fish advisories.

Michael Bender mentioned his interest in an awareness-raising campaign with schools that serve tuna in lunch programs. Some schools serve white tuna which can have three times as much mercury as light tuna. Some light tuna may have comparable amounts of mercury to white tuna. Some schools serve tuna every day. He felt it is important to educate school food services on reducing exposure to mercury by the right choices in tuna purchases. It was agreed to place this issue on the agenda of the next meeting.

Mr. Bender indicated that negotiations on an international mercury treaty will reconvene in January in Japan.

### **Agenda Item 3**

Dental amalgam fact sheet dissemination – discussion with Oral Health Director, Vermont Department of Health

The Committee discussed how best to use the time available at the meeting to have a constructive conversation and move the issue forward. Michael Bender suggested that the Committee have a discussion but defer any decisions to future meetings. He felt that Committee members should have an opportunity to review a reference in Dr. Patrick Rowe's letter to the Committee in December 2009, in which he referenced a study on the economic input of dental amalgam. Mr. Bender also said that there will be a report coming out on environmental externalities of mercury in the environment that the Committee should also review. Mr. Bender also provided the Committee with a response to Dr. Rowe's letter. Mr. Bender also said that he felt that several assertions in the letter were incorrect.

Dr. Patrick Rowe, Oral Health Director with VDH, said that he appreciates the work that has been done by the Committee to reduce the risk of mercury exposure. He said that he would review Michael Bender's letter. Dr. Rowe agreed that he looks at the dental amalgam issue from a different angle – he has to look at how to protect the health of Vermonters and that environmental harm has to be weighed against discouraging Vermonters from using dental amalgam because of fear or misperception of the issue.

Neil Kamman acknowledged that the Committee has worked for years with the Vermont State Dental Society and there has been a good working relationship. The Committee conveyed concerns that the VSIDS brochure did not have adequate coverage on environmental concerns of mercury. Some of these concerns were addressed in revisions to the brochure, but the Committee felt that certain concerns were not fully addressed. Mr. Kamman suggested that there could be an opportunity to convey the Committee's information to the public on the VDH web site.

Mr. Bender said that he would prefer to table further discussion and communicate with VDH through a small subcommittee, then come back in January to discuss with the Committee.

Gary Gulka referenced the VDH-commissioned report entitled, *Report on Questionnaire Focus Group Interviews of Parents with Concerns about Immunizations*. He said that this report and its findings are relevant to the Committee's discussion on dental amalgam and providing information to the public. The report refers to parents feeling confused, not fully trusting some information sources, and seeking balanced information on the benefits and risks of immunizing their children. Mr. Gulka said that credibility of information sources is an important issue and that there would be some members of the public who would mistrust information from any of the groups represented at today's advisory committee meeting.

Mr. Gulka said that VSIDS had made a significant effort to address environmental concerns in its brochure, especially when compared to other public and government documents on dental amalgam. He said that an ideal outcome would be to have a single document on dental amalgam or filling choices that was endorsed by the Committee, VDH, and VSIDS, and that covered health and environmental concerns.

Neil Kamman said there are two options so far discussed for moving forward: (1) work with VDH on web-based material, such as their dental amalgam fact sheet and incorporate environmental information; and (2) work on a unified document endorsed by the parties.

Peter Taylor indicated that he is always open to working together and the current VSIDS brochure may require updating as the US Food and Drug Administration revises its health and safety information after hearings in December.

Gary Gulka felt that the VDH web site was not an adequate vehicle for public dissemination, and that hard copy documents available in dental clinics and other health care provider locations is more effective.

Michael Bender expressed skepticism that a unified document with the support of all could be created.

Dr. Rowe said that he would be willing to have the discussions on web-based material and supports a unified message and document if that is possible.

Jen Holliday said that she supports the concept of a unified message but feels that it would be difficult to blend the various perspectives of the different groups.

Dr. Rowe and Bill Bress agreed to meet to outline the basic information on environmental aspects of dental amalgam and mercury that could be included with existing VDH information on dental amalgam.

Peter Taylor said that if the information is on the VDH web site, then he will link to it.

The Committee agreed by consensus that it first would work with VDH to include more environmental information on dental amalgam and mercury on the VDH web site. Then the Committee will decide if further steps are appropriate.

#### **Agenda Item 4**

Future of Advisory Committee on Mercury Pollution – discussion of recommendations

Senator McCormack said that he has a legislative drafting request in place in the event that the Committee has a legislative recommendation. He indicated that although the Committee supported an advisory committee on toxics to replace the mercury advisory committee, he wondered whether formation of an advisory committee would delay action on toxics. He wondered what role the advisory committee on toxics would serve.

Neil Kamman said that the model of an advisory committee has been successful for mercury; it could be the right approach for toxics if it keeps track of what is happening nationally and can provide legislators with options for moving forward on toxics.

Charity Carbine said that an advisory committee has the potential to become a parking lot for legislative action on toxics. She indicated that it would not be possible to attain consensus on toxics issues on a committee with industry representatives and public health advocates. She believes that a toxics advisory committee would become stymied by lack of consensus. There is a lot more consensus around the mercury issue than there would be on other toxics.

Jen Holliday said that there is a real need for Vermont to have an active role in toxics policy and that there is a real need for something to be put into place.

Senator McCormack said that there needs to be a strong scientific basis to restrict chemicals in commerce. Do we already have a strong scientific foundation or do we need better science?

William Driscoll said that the makeup of an advisory committee is important and whether all interested parties are given an opportunity to participate. Also important is how the committee is structured and its charge.

Charity Carbine said that Vermont has been a leader in legislation to restrict the use of certain toxic chemicals in products such as bis-phenol A, lead and flame retardants, and that Vermont is past the point of needing an advisory committee and should be considering legislation similar to that in the states of Washington and Maine. An advisory committee would be duplicating the actions in the legislature. The Agency can convene stakeholder groups and meetings at any time on a toxics issue, where consensus is not necessarily reached but the positions of various stakeholders is acknowledged.

Jen Holliday said that we can't lose the broader role of the mercury advisory committee. If a committee works under the precautionary principle, there is a lot of other work, some of which is non-regulatory and not specifically legislated, that can happen to reduce risk. An example of this was the school science lab cleanout project that was highly successful – but was not mandatory – but was pushed by the precautionary principle. We are going to be up against controversy with every chemical and there is not going to be consensus in an advisory committee.

Jen Holliday said that she would support the Maine and Washington approaches to regulating toxic chemicals over having nothing, but expressed concern that these are very bureaucratic processes with large resource demands.

Michael Bender asked if a program does not have the resources, how will this work?

Charity Carbine acknowledged that resources would be an issue.

Michael Bender asked about non-legislated issues such as education and outreach and whether there could be a role for an advisory committee.

Gary Gulka acknowledged that a major concern of the agency in any legislated program would be resources.

Senator McCormack said that delegation of authority to a state agency works if the resources also come along with the authority, but it also depends on the administration in power.

Jen Holliday asked Charity Carbine why she supports a toxics program similar to that in Maine and Washington, and why this approach is not a parking lot for taking real action.

Charity Carbine said that legislation could require ANR to be on a schedule to evaluate a minimum number of chemicals over a certain time period. She said that a Vermont program could utilize the work done by other states on chemical evaluation and that much has been accomplished in Maine, Washington, and Minnesota to identify priority chemicals in the last two years.

Senator McCormack asked whether the Agency of Natural Resources is authorized to look at toxic chemicals.

Neil Kamman said that the ANR, as well as the Natural Resources Board, have authority to set standards for toxic contaminants in air, water, and waste but the Agency lacks the authority to regulate chemicals in products.

Charity Carbine said that both an advisory committee and an agency program will take resources, and given the choice, she would prefer a program.

Michael Bender suggested a streamlined approach to an agency program that utilizes existing resources and taps into the work of other state programs – and does not do cutting edge research.

Gary Gulka reminded the Committee that the recommendation in the toxics report two years ago charged the new advisory committee with coming up with a list of priority chemicals and making recommendations to the legislature on a toxics program appropriate for Vermont, considering other state and federal programs in place.

Neil Kamman suggested that one approach would be for the Legislature to authorize a two-year effort of an advisory committee to recommend a toxics program. The deliverable after two years would be the program that is appropriate for Vermont considering resources and other programs in place.

Charity Carbine said that waiting two years would hinder good policy from moving forward in the coming year.

Neil Kamman suggested a two-year period would allow the time to find resources to implement a program.

Michael Bender suggested that the Legislature could charge the Agency of Natural Resources to develop a report and recommendations through a stakeholder process. He suggested that this could be a fallback approach if a specific toxics program does not pass in the legislative session.

Neil Kamman suggested that we had done exactly that through the Committee report to the Legislature on toxic substances.

Senator McCormack said that a study committee might be more likely than an advisory committee.

Neil Kamman said that a state function to address toxic chemicals of concern in products would be appropriate and is needed.

Gary Gulka said that an acceptable approach might be to charge the ANR and VDH with making recommendations to the Legislature on a toxics program, while at the same time terminating the mercury advisory committee in the coming year – to enable the agencies to have the resources for this work.

Jen Holliday said that given the discussion, the Mercury Advisory Committee's report could recommend the sunset of the Committee and make a non-specific recommendation, simply laying out the options for moving forward on toxics.

#### **Agenda Item 5**

Set next meeting date and agenda

The next meeting date was set for December 13.

The following agenda items were identified for the November meeting:

- Committee recommendations for annual report to the Legislature
- Tuna served in school lunch programs – risk communication issues

### Summary of Motions and Actions

Dr. Rowe and Bill Bress agreed to meet to outline the basic information on environmental aspects of dental amalgam and mercury that could be included with existing VDH information on dental amalgam. The Committee agreed by consensus that it first would work with VDH to include more environmental information on dental amalgam and mercury on the VDH web site. Then the Committee will decide if further work on outreach materials is appropriate.