

Appended Comments to Legislative Report
*Options to Reduce and Phase-out Priority
Chemicals in Children's Products and Promote
Green Chemistry*

From: [Eric Yost](#)
To: [Holstad, Jennifer \(MPCA\)](#);
cc: MRobert388@aol.com; tkwilas@mnchamber.com;
Subject: Comment on "Options to Reduce and Phase-Out Priority Chemicals..." Dec 2010 Version
Date: Monday, December 06, 2010 1:52:21 PM

Jennifer:

I have reviewed parts of the "Options to Reduce and Phase-Out Priority Chemicals in Children's Products and Promote Green Chemistry" (December 2010 Version) and have a few comments.

1. First, my compliments to the authors and everyone else involved. It appears thorough and useful.

2. In the Executive Summary, under the portion of the "identify desired *outcomes* for an improved system" (p. 2), I am wondering why there is not the inclusion of language that also gives importance to industry being able to also be economically competitive to other states and the world in producing products safe for children and "green" in nature. Industrial economics includes the following: preserving and encouraging jobs, allowing for quick adaptability to the economic changes facing Minnesota industries, and timely environmental permits.

Hope this helps.

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December 13, 2010

Ms. Jennifer Holstad
Minnesota Pollution Control Agency
525 Lafayette Road
St Paul, Minnesota 55101

Dear Jennifer,

Thank you for allowing the Minnesota Chamber of Commerce to provide comments to the "Options to Reduce and Phase-Out Priority Chemicals in Children's products and Promote Green Chemistry" Report to the legislature. The reports content is thorough and useful and the PCA should be complimented for its resourcefulness. Due to the short time frame allowed for public comment, we will be brief in our observations and will offer a more detailed critique in the future.

Minnesota businesses compete in a global economy must be allowed to remain competitive in order to preserve and grow employment, while also adapting to a rapidly changing regulatory environment. The Minnesota Chamber of Commerce believes this is best accomplished by supporting a federal approach to chemical regulation. The Minnesota Chamber supports congressional review of the Toxic Substances Control Act (TSCA) including consideration of amendments that provide for a more effective implementation of the Act and allowing decisions to be based on sound science. The Chamber does not support state by state regulation of chemicals, the individual banning of specific products or any regulatory system that is duplicative on any federal policies.

The Minnesota Chamber participated in a collaborative dialogue facilitated by the Minnesota Environmental Initiative (MEI) that includes non-profits, industry, academic, science and public representatives that developed recommendations on appropriate steps for Minnesota to pursue regarding chemical regulation. We support continuing this dialogue in the future.

Due to the current state budget constraints and already ongoing and existing programs on the federal and state level, the Minnesota Chamber is of the opinion that these existing programs be further analyzed to avoid duplicative programs and requirements that may result in conflicting, confusing, and costly regulations. The Minnesota Chamber recommends that this analysis and the MEI process be completed before any new initiative or legislation is proposed.

Thank you again for allowing us to comment on the report. If you have any questions, please feel free to contact me at 651-292-4668.

Sincerely,



Tony Kwilas
Director, Environmental Policy
Minnesota Chamber of Commerce

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Preventing Harm
MINNESOTA

12 December 2010

Commissioner of Minnesota Pollution Control Agency
Commissioner of the Minnesota Department of Public Health
Minnesota State Legislators

RE: Toxic Free Kids Act Report

Preventing Harm Minnesota, a children's environmental health non-profit organization, would like to share comments regarding the recent report issued by the Minnesota Pollution Control Agency (MPCA) and the Minnesota Department of Public Health (MDH), *Options to Reduce and Phase-out Priority Chemicals in Children's Products and Promote Green Chemistry*. We laud both agencies for their progress implementing this important legislation (Minn. Stat. §§ 116.9401 to 116.9407) that we believe will ultimately help protect children from harmful chemicals and lead to healthier outcomes for Minnesota families.

On the whole, we agree with the MDH/MPCA's analysis of the current failings of existing chemical policy and also with many of their recommendations for addressing these failings such as agency participation in TSCA reform, continued participation in the Interstate Chemicals Clearinghouse, and adding priority chemicals to state preferential purchasing programs. The process outlined in the report creates a good system to identify priority chemicals in children's products. However it places the burden on the public to identify which children's products contain priority chemicals.

Consumer education alone is not enough to protect children's health from priority chemical exposure. We recommend MDH/MPCA restrict priority chemicals in children's products when there are safer alternatives. Children's products manufacturers who use priority chemicals should be required to not only disclose their use of priority chemicals, but also find safer alternatives and phase out their use of these chemicals.

With thousands of new chemicals developed in the U.S. each year, we also need to focus on how to prevent chemicals that are harmful to our health and environment from being created and made into consumer products. We agree with the green chemistry recommendations outlined on pg. 56 and encourage the state to adopt the most sustained and intensive efforts to promote green chemistry from its list of options outlined in the report.

Regards,

Julia A. Earl, M.S.
Executive Director



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December 13, 2010

Minnesota Pollution Control Agency

Minnesota Department of Health

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RE: Toxic Free Kids Act

Dear Agency Staff:

As a public interest lawyer concerned about the health of children, infants and the fetus, I have briefly reviewed the Toxic Free Kids Act Report to the Legislature prepared by the Minnesota Department of Health and the Minnesota Pollution Control Agency as well as the Minnesota Chemical Regulation Project Phase I Final Report prepared by the “stakeholder” process this fall under the aegis of the Minnesota Environmental Initiative.

I have also been advised that public comments should be brief. Below, please find the critical points that I would suggest:

Minnesota’s objective should be phased prohibition of the most toxic chemicals.

- Publishing a list of priority chemicals is an appropriate first step, but starting to phase out the most toxic chemicals would achieve more than exhaustive research to develop an optimal list;
- Reporting and public education are inadequate responses to toxic contamination of products to which children or infants will be exposed;
- Prohibition of priority chemicals should not wait until it is proved that there is a safer alternative unless the product involved is itself indispensable to children’s health and safety.

Priorities should be established based on toxicity and exposure -- from the perspective of the child, infant or fetus, not the manufacturer.

- The criteria in Minnesota Statutes §116.9403 should be amended to remove the requirement that a priority chemical must be identified as a high-production volume chemical by the U.S. Environmental Protection Agency. This requirement is not relevant to the extent and severity of a child’s or infant’s exposure to the product.
- Protecting children from products distributed and sold within the State but manufactured elsewhere is at least as great a priority as addressing chemicals in

products manufactured locally. Concerns about accountability in distribution and retail sales of toxic products must be explicitly addressed.

Government should lead by example and use regulation to provide a market for safe products.

- State and local government purchasing requirements should explicitly require that products to which a fetus, infant or child will be exposed are not toxic to health and development. Least cost purchasing must be secondary to this protection.
- The best incentive for green chemistry and development of non-toxic sources of products is to promulgate and enforce regulations prohibiting toxic products.

In general, regulators should protect Minnesota's children, infants and fetuses from toxic pollution, not serve as facilitators of a hypothetical "stakeholder" process. To state the obvious, the resources of polluters and those who may profit from the sale of toxic products far overwhelm those of advocates for children or their health. A search for consensus is little more than a dilatory tactic.

Please feel free to contact me if you have any questions.

Sincerely,



Paula Goodman Maccabee



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Safe Products, Made Safely

To: Minnesota Pollution Control Agency & Minnesota Department of Health

From: Kathleen Schuler, Co-Director Healthy Legacy
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Deanna White, Co-Director Healthy Legacy
612-627-1512, dwhite@cleanwater.org

Date: December 9, 2010

Subject: Comments on *“Options to Reduce and Phase-out Priority Chemicals in Children’s Products and Promote Green Chemistry”*

We appreciate the opportunity to comment on the joint MPCA/MDH report. The report on the whole is thorough and thoughtful and addresses well the focus areas required by the Toxic Free Kids Act (Laws of Minnesota 2009, Chapter 37 H.F. No. 2123, Sections 47-50). It is also a valuable summary of the issues and activities focused on chemical regulation and green chemistry in Minnesota and elsewhere.

We present a few comments on both the framing used to describe chemical regulation issues and the specific recommendations.

- 1. Healthy Legacy recommends inclusion of priority chemical restrictions:** While manufacturer disclosure of the presence of priority chemicals in children’s products and informing consumers about ways to reduce exposure are good next steps, they don’t go far enough. We simply must require that manufacturers find safer alternatives to problem chemicals and require phase out to prevent harm to public health. We would like to see state authority and action that restricts use of priority chemicals, when safer alternatives are available. The accountability for finding safer alternatives must rest with the manufacturer, rather than the state agency. We recommend that priority chemicals be phased out by designated dates, with requirements that manufacturers find safer alternatives or the sale of the product should be banned. Manufacturers should be given an opportunity to prove that no exposure to the priority chemical will occur, however the MDH and/or the PCA should be the final arbiter of this determination.

Healthy Legacy promotes healthy lives by supporting the production and use of everyday products without toxic chemicals. We advocate for consumer education, business leadership, and protective policies to advance safe alternatives in Minnesota.

2. Recommendations for chemicals policy: We agree with the five recommendations in the report.

- a. Manufacturer disclosure of priority chemicals in children's products. This step is necessary to fill a gap in information necessary for state agencies to evaluate children's exposures to priority chemicals. The recommended reporting requirements listed on page 48 of the report are comprehensive and necessary to carrying out this work.
- b. Educate the public about exposures to priority chemicals. Public education is essential, but education alone is not enough. We need to assure that priority chemicals do not end up in children's products in the first place. See comment 1.
- c. Continue Participation in the Interstate Chemicals Clearinghouse. As a lead state in chemicals policy, Minnesota's participation is essential.
- d. State agency participation in state Toxic Substances Control Act (TSCA) reform activities. State level advocacy for and involvement in TSCA reform will help assure that reforms passed reflect state needs and preserve state authority to regulate chemicals when necessary.
- e. Evaluate Preferential Purchasing as a tool for reducing use of priority chemicals. Minnesota has demonstrated the power of state purchasing for pollution prevention efforts. A logical next step is to extend this tool to reduce the use of priority chemicals.

3. Green Chemistry recommendations: We support the MPCA's green chemistry recommendations described on page 56 (Listed as A-D, below). These recommendations are necessary, but represent a minimal effort to promote green chemistry:

- a. Establishing formal green chemistry policies.
- b. Track and report on green chemistry activities in the biennial legislative pollution prevention report.
- c. Promote green chemistry as part of the pollution prevention.
- d. Designate one FTE staff person to promote green chemistry.

4. Green Chemistry options for further consideration: The report presents on pages 57-58 a comprehensive list of options from exploratory to sustained and intensive efforts to promote green chemistry. We support the maximum level of effort to create a robust green chemistry environment in the state. The legislature and the new administration should adopt as many of these recommendations as feasible and allocate adequate resources to carry out this work.

5. **One sided view of TSCA reform:** Page 9 of the report describes TSCA reform activities and quotes the opinions of two industry representatives on the recently introduced bills. While it is reasonable to present the opinions of representatives of the American Chemistry Council and SOCMA, the viewpoints of advocates of the bills are glaringly omitted. The *Safer Chemical, Healthy Families* coalition, representing over 250 groups across the country, has advocated for the strong TSCA reform embodied in H.R. 5820. The report's portrayal of the issues in this manner reflects an industry bias, as it fails to reflect the robust support for strong reform within the public health community and the importance of TSCA reform to public health and the health of our environment. Quotes from SCHF leadership and others supporting H.R. 5820, are widely available in press stories and on the SCHF web site.

6. **Portrayal of the Minnesota Green Chemistry Forum:** We appreciate the inclusion of a description of the Minnesota Green Chemistry Forum in the report. However, it should also be listed on page 30 of the report under "States' green chemistry activities," as it is a Business-NGO partnership to promote green chemistry in the state of Minnesota, illustrating Minnesota's leadership on this issue.

Thank you again for the opportunity to comment on the report. Please let us know if you have any questions concerning our comments.



December 13, 2010

Jennifer Holstad
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Re: Minnesota Chemicals of High Concern List

RE: Concerns & Recommendations Regarding Minnesota Report: Options to Reduce and Phase-out Priority Chemicals in Children's Products and Promote Green Chemistry

Dear Ms. Holstad:

On behalf of a Coalition of the trade associations listed below (the Coalition), we appreciate the opportunity to comment on the joint legislative report titled "Options to Reduce and Phase-out Priority Chemicals in Children's Products and Promote Green Chemistry" (Report) required as part of the 2009 Toxic Free Kids Act legislation (Minn. Stat. §§ 116.9401 to 116.9407), drafted by the Minnesota Pollution Control Agency (MPCA) and the Minnesota Department of Health (MDH).

The Coalition appreciates that the Report acknowledges in several places the need to work toward chemicals management solutions on the national level and to develop incentives for Green Chemistry use by businesses. However, the Coalition strongly objects to the recommendations contained in the Report to create Minnesota-specific data programs and costly systems for reporting Priority Chemicals in products. These Minnesota-specific programs are duplicative of federal and other state programs, unnecessary, and will be extremely costly to implement. This letter discusses some of these concerns, yet, in light of the *extremely* short time we have been provided to comment on this 120-page Report, we will be submitting a more detailed analysis to the Legislature once we can complete a more thorough review.

Instead of costly and unnecessary Minnesota-specific programs, the Coalition encourages MPCA and MDH to focus on mechanisms to work with the U.S. Environmental Protection Agency to evaluate chemical data and promote the use of Green Chemistry technologies. The Coalition's main concerns with the Report's recommendations fall into the following areas:

- **Chemical Reporting:** The Coalition strongly objects to the creation of a costly and unnecessary Minnesota-specific Priority Chemicals reporting requirement for Children's products. As noted in the Report this program is NOT unique; Washington State is attempting such a program and it will be extremely costly. Specifically, the Washington State Department of Ecology (DoE) estimates that data needed to fulfill their program **will cost businesses up to \$27.6 million** in the first year and **up to \$69.5**

million over the first 20-years¹. Additionally DoE notes that over the course of the program it would only result in, “3 avoided cases of CHCC content resulting in recalls, litigation, or children’s health impacts of a minor degree.”² **Minnesota should not create a duplicative and costly program** that will most certainly create a significant burden– with no meaningful increase to protecting human health. In addition to Washington State’s activities, the US Environmental Protection Agency’s (EPA) recently proposed changes to its Inventory Update Reporting (IUR) regulation will provide extensive information on the use of chemicals in commerce, including in products used by children. These proposed changes to the IUR are part of EPA’s recent Enhancing Chemicals Management Program, which includes other activities relating to collection and assessment of information about chemicals, chemical action plans, and green chemistry. These EPA activities are additional evidence of the costly duplication that would result from a Minnesota chemical reporting scheme. See: http://www.epa.gov/oppt/existing_chemicals.

- **Priority Chemicals and Chemicals of High Concern:** As noted in this Coalition’s previous comments³ to MDH, we continue to have significant concerns with the basis for the development of the Chemicals of High Concern list and the upcoming Priority Chemicals lists. Currently these lists rely on flawed data sources and ignore exposure and risk. The Coalition objects to any immediate action to educate the public on the Priority Chemicals list until such time as these data source concerns have been addressed. The Coalition also strongly objects to any efforts to take any action on the Priority Chemicals; given that this list has been developed **without appropriate stakeholder input and outreach**.
- **Interstate Chemicals Clearinghouse:** The Coalition is very concerned about MPCA and MDH participation in the Interstate Chemicals Clearinghouse (ICC or IC2). The statute gives MPCA and MDH the authority to engage in a ICC partnership among states to share information on approaches to managing, organizing, prioritizing, and evaluating chemicals and safer alternatives AND on chemical data (e.g., use, hazard, risk, environmental/health impacts). However, the IC2 does not exist as currently envisioned by the statute. Such an ICC entity would need: (1) to be formally chartered as an objective scientific entity, (2) to be sanctioned by a government, and (3) prioritizes chemicals through an open and public stakeholders’ process. **The IC2 has NOT met these objectives for objectiveness and stakeholder involvement.**

Once again as noted in the Report, there are extensive efforts occurring at the national and international levels to develop data on chemicals and their human health and environmental impacts, as well as, to prioritize chemicals of concern. As noted, the U.S. Environmental Protection Agency under the current Administration is implementing new programs to prioritize chemicals and develop data for evaluating exposure and risk from a chemical’s use. The Coalition encourages MPCA and MDH to leverage these efforts and extensive expertise on the federal level. **It does not make sense for MPCA and MDH to recommend in this Report the creation of redundant and duplicative Minnesota-specific regulatory programs.** The Coalition also encourages MPCA and MDH to focus on the positive incentives to businesses for using green chemistry technologies that are referenced in the Report.

If you have any questions or comments, please feel free to contact either Andy Hackman with the Toy Industry Association at 646-520-4851 or Kevin Fisk with the Grocery Manufacturers Association at 616-984-6209 as representatives of the Coalition. We look forward to our continued work together on this important public policy issue.

¹ Washington Department of Ecology, *Preliminary Cost-Benefit and Least Burdensome Alternative Analysis*, Pages 8-11. 10-01-035.

²Ibid.

³ Coalition comments dated: August 31, 2010 and May 4, 2010.

Respectfully Submitted by the Following:

American Chemistry Council
American Cleaning Institute
Consumer Specialty Products Association
Grocery Manufacturers Association
Personal Care Products Council
Toy Industry Association

Cc: Michael Sandusky, Minnesota Pollution Control Agency
Bob Schroeder, Chief of Staff, The Office of Governor Tim Pawlenty