JOHN E. BALDACCI
GOVERNOR

May 18, 2007

Ms. Maureen O'Donnell, Industrial Hygienist
Directorate of Standards & Guidance
Room N3718, US Department of Labor
200 Constitution Ave., N.W.
Washington, DC 20210

Re: Docket No. H-022K, Global Harmonization System ANPRM

Dear Ms. O'Donnell:

These comments are submitted on behalf of the State of Maine's Governor's Task Force to Promote Safer Chemicals in Consumer Products, the Maine Department of Labor and the Maine Department of Environmental Protection.
While we recognize that the comment period of the September 12, 2006 Advance Notice of Proposed Rulemaking (ANPRM) has expired, we have communicated on the subject of this comment with Attorney Ian Moar, of the DOL Office of the Solicitor, and were encouraged to bring our thoughts to your attention earlier rather than later. These comments are responsive to the question to the public in the ANPRM regarding whether there are "any health or physical hazards that aren't covered in either the HCS or the GHS that should be added." (ANPRM, p. 17)

Our Task Force was established by Executive Order dated February 22, 2006, to investigate the adequacy of existing federal and state laws and regulations regarding chemical safety, and to recommend state action to improve the safety of chemicals in consumer products. For background, you may review the Executive Order at www.maine.gov/tools/whatsnew/index.php?topic=Gov_Executive_Orders&id=21193&v=Article and our Interim Report at www.maine.gov/dep/oc/saferchemintrpt.htm. You will note that the Interim Report addresses many inadequacies of the federal Toxic Substances Control Act, and comments on some weaknesses of existing MSDS disclosure requirements. A focus of the Executive Order is concern regarding persistent bioaccumulative toxics (PBTs), such as mercury, and brominated flame retardants.

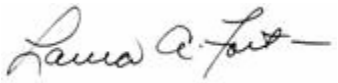
Our concern is related to the assumption made in the September 12, 2006 ANPRM that proposed revisions of OSHA regulations in response to the Global Harmonization System (GHS) would NOT incorporate ecological or environmental fate disclosures, such as persistence and bioaccumulative potential, in the Hazard Communication Standard (MSDS). The comparison chart at Appendix A to OSHA's Guide to The Globally Harmonized System of Classification and Labeling of Chemicals makes it clear that while the GHS, as well as the ISO Safety Data Sheet for Chemical Products, and the ANSI MSDS Preparation z400.0-2004, all require disclosure of "ecological information" including persistence and bioaccumulative potential, the OSHA HCS has "no present requirements" for such disclosure. The ANPRM acknowledges this discrepancy, and does not propose to redress it in proposed rulemaking: "....the GHS safety data sheet format includes a section that addresses environmental information. OSHA would not require inclusion of environmental information for SDSs used in workplaces." (ANPRM p. 9). The ANPRM goes on to note (p. 16) that "OSHA does not preclude such [environmental] information being on a safety data sheet, but will not review or enforce such provisions," for the purported reason that such disclosures are "outside OSHA's jurisdiction to regulate."

In connection with your agency's work on proposed rulemaking to conform OSHA HCS regulations to GHS regulations, we urge you to carefully reexamine the legal conclusion that OSHA does not have jurisdiction to require disclosure of scientific evidence that a chemical persists and bioaccumulates. We suggest that this conclusion be reassessed in view of the ample evidence developed in studies conducted by the Centers of Disease Control, the Environmental Working Group, and others, that certain chemicals are present in the blood, tissue, hair, and cord blood, of human beings, including, of course, workers. These chemicals are a result of a variety of environmental exposures including workplace exposures; they persist for long periods of time in human beings, and are passed on to fetuses in the uterus, with potentially serious toxicological effects. We believe that the fact that many workers carry with them an existing "body burden" of these chemicals is highly material information when assessing the risks of workplace exposures of these same chemicals. The fact that a chemical bioconcentrates implies a long half-life in the body, including the body of workers. That could have implications for the way in which the chemical is handled in the workplace. Given the toxicological perspective that the "dose makes the poison," the fact that workers may already have a body burden of PBTs that they are handling, or of related chemicals with similar toxicological endpoints, may well put the worker at greater health risk. Because PBTs have been found in high quantities in breast milk and to pass through the placenta to affect fetal development, they are of particular concern to female workers and the health of future generations of America's workers. Finally, both male and female workers need to be concerned about bringing these persistent chemicals back to their vehicles and homes on their shoes, clothing, hair and bodies.

The perspective that environmental fate has no relevance to workplace exposures ignores the best of current science; it also defeats the admirable goal of consistency in international and national worker safety and environmental requirements, a goal that OSHA has been a leader in advocating.

Sincerely,

David P. Littell, Commissioner
Dept. of Environmental Protection



Laura A. Fortman, Commissioner
Department of Labor

cc: Karin Tilberg, Office of the Governor, State of Maine
Ian Moar, DOL Office of the Solicitor
Ginger Jordan-Hillier, MeDEP