

The Honorable Olympia Snowe
The Honorable Susan Collins
The Honorable Thomas Allen
The Honorable Michael Michaud
United States Congress, Washington, D.C.

May 20, 2008

Re: Federal Policy Reform to Protect Children's Health from Harmful Chemicals

Dear Senators Snowe and Collins, and Representatives Allen and Michaud,

We greatly appreciate your leadership in protecting the health of Maine families and the environment from mercury, lead poisoning and other pollution hazards. We are writing now to alert you to a specific opportunity and challenge to achieving safer chemical policy reform at the federal level. We need your support and vigilance in protecting Maine's interests.

Congress will soon begin the lengthy process of overhauling the failed and outdated federal Toxic Substances Control Act (ToSCA) of 1976. In fact, proposed legislation to begin the ToSCA reform debate has just been introduced in the Senate (by Sen. Lautenberg) and in the House (by Rep. Waxman). These identical measures are based on a 12-year old pesticide law and emphasize improved risk assessment methods to identify unacceptable levels of harm from exposure to industrial chemicals.

We laud this recognition that our federal safety system for chemicals in commerce is badly broken. This first step by Congress follows the growing awareness that chemicals that disrupt hormones and cause learning disabilities and reproductive harm are routinely used in everyday products ranging from baby bottles and toys to cosmetics and couches. This creates the welcome opportunity to begin a comprehensive reform of federal chemical policy.

The challenge, then, is to strengthen the proposed federal legislation to better reflect modern policy development over the last decade by Maine, other states, major corporations, and the European Union, all of which have adopted policies that emphasize substitution of unnecessary hazardous chemicals with safer alternatives. (See description below of Maine's comprehensive safer chemical policy enacted by an overwhelming bipartisan margin earlier this year).

Toward this end, we respectfully request that you:

1. SUPPORT the need to overhaul the federal Toxic Substance Control Act of 1976
2. WAIT before co-sponsoring the current legislation until the federal bills are strengthened
3. WORK to amend the current legislation to incorporate Maine's safer alternatives law
4. WORK to strengthen the targeting of persistent, bioaccumulative & toxic chemicals (PBTs)
5. OPPOSE state preemption aimed at limiting the states' authority to restrict toxic chemicals

As you know, Maine continues to be a national leader among the states in taking policy action to replace unnecessary dangerous chemicals with safer alternatives. For example, a series of Maine laws enacted between 2000 and 2004 established a comprehensive phase-out of mercury-containing products such as thermometers and thermostats in favor of mercury-free alternatives.

Since then, more than twenty states have followed Maine's lead in moving this potent neurotoxin out of commerce. Maine has also taken policy action in the last six years to restrict the use of arsenic in pressure treated wood, PBDE flame retardants in televisions, computers, mattresses, and couches; and lead in toys and other children's products.

Most importantly, this year, following the recommendations of the Governor's Task Force to Promote Safer Chemicals in Consumer Products¹, the Maine Legislature overwhelmingly passed a comprehensive safer chemical policy framework by a vote 35 - 0 in the State Senate and 129 - 9 in the House of Representatives. Governor Baldacci signed LD 2048, the Kid Safe Products bill, on April 17, 2008.

Under this comprehensive safer chemical policy framework:

- Maine will publish a list of Chemicals of High Concern based on their inherent hazardous properties, such as ability to harm children's development, disrupt hormones, cause cancer or reproductive harm, or persist in the environment or build up in the food web;
- Maine will then select Priority Chemicals that are likely to threaten children's health;
- Then, the burden shifts to manufacturers who must publicly disclose whether they add priority chemicals to any consumer product that may expose a child or fetus;
- Finally, the law grants the Maine Department of Environmental Protection the authority to require safer alternatives to priority chemicals in consumer products whenever children are exposed and such alternatives are proven to be available, effective, and affordable.²

In the last ten years, U.S. leadership on chemical policy has shifted to the states and Europe. In leading the states, Maine is joined by Washington, Massachusetts, California, Connecticut and a dozen other states that are taking action in lieu of the federal government to ensure that industrial chemicals used in everyday products are safe for our children's health and the environment. Also, in Europe, comprehensive safer chemical policy enacted in 2007, known as REACH, shifts the burden of proof onto chemical manufacturers and relies on precautionary action to move the most dangerous chemicals out of commerce in favor of safer alternatives.

State progress toward comprehensive safer chemical policy reform has begun to overcome the serious gaps in the federal safety system that still allows the routine use of hazardous and untested chemicals in commerce without assurance of safety. Several GAO reports and other independent studies repeatedly demonstrate that ToSCA, the only federal environmental statute that has never been reauthorized, is badly broken. When ToSCA was passed, 62,000 chemicals in commerce were grandfathered in without mandatory health and safety testing or restrictions on use. In more than 30 years under ToSCA, the EPA has required chemical manufacturers to test fewer than 200 chemicals and has restricted only 5 chemical substances in commerce. ToSCA wrongly places the burden on government to prove harm, rather than on chemical manufacturers to prove the safety of their products. Also, the standard of proof under ToSCA is so onerous as to handcuff the EPA from taking meaningful action even on known hazards.³

Thank you for your consideration and your leadership. We would be happy to provide you with additional information or documentation at your request. We look forward to working with you on federal chemical policy reform in the months and years ahead in order to ensure that the

health of Maine families and environment are fully protected through safer substitutes to unnecessary toxic chemicals in commerce.

Respectfully yours,

Michael Belliveau, Executive Director
Environmental Health Strategy Center

Sarah Standiford, Executive Director
Maine Women's Lobby

Sandra Cort, Board Member
Learning Disabilities Association of Maine

Matt Prindiville, Director, Toxics &
Clean Production Project
Natural Resources Council of Maine

Rev. Jill Job Saxby, Executive Director
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Syd Sewall, MD, MPH, pediatrician
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Jesse Graham, Executive Director
Maine People's Alliance

Heather Spalding, Associate Director
Maine Organic Farmers & Gardeners Association

Melissa Boyd, Executive Director
Peter Wilk, MD, President
Physicians for Social Responsibility, Maine Chapter

¹ Maine Governor John Baldacci's Task Force to Promote Safer Chemicals in Consumer Products. Final Report. December 2007. <http://www.maine.gov/dep/oc/safechem/saferchemfinrpt.htm>.

² Public Law, Chapter 643, 123rd Maine State Legislature, An Act to Protect Children's Health and the Environment from Toxic Chemicals in Toys and Children's Products, 38 M.R.S.A. §§ 1691 *et seq.*

³ United States Government Accountability Office. Chemical Regulation: Approaches in the United States, Canada, and the European Union (GAO-06-217R). Washington, D.C.: U.S. Government Printing Office, 2005;

Wilson MP, Chia D, Ehlers B. Green Chemistry in California: A Framework for Leadership in Chemicals Policy and Innovation, Special Report of the California Policy Research Center, University of California, to the California Senate Environmental Quality Committee and Assembly Committee on Environmental Safety and Toxic Materials. March 2006. http://coeh.berkeley.edu/news/06_wilson_policy.htm.