Testimony in Opposition to
HB 6526
An Act Concerning Toxics Disclosure and Innovation for Healthy Children
Committee on Children
Connecticut General Assembly
Hartford, CT
March 5, 2013

Introduction

The American Chemistry Council (ACC), an association of leading companies engaged in the business of chemistry, is pleased to provide comments on HB 6526, an Act Concerning Toxics Disclosure and Innovation for Healthy Children.

ACC member companies apply the science of chemistry to make chemicals used by a wide variety of industries and businesses to make innovative products, technologies, and services.

ACC members are committed to continuously improving their environmental, health and safety performance – for our workers, our families, our customers and the public. In fact, commitment to implement industry's voluntary health, safety and environmental performance initiative, Responsible Care®, is a condition of membership within ACC. ACC shares this committee's interest in promoting a healthy and safe environment for Connecticut's children.

In my position in ACC's Regulatory and Technical Affairs Department, I work on health, product safety and science policy issues that impact the business of chemistry, so I am very familiar with both what the United States Environmental Protection Agency (EPA) is actively doing today to regulate chemicals and what is currently under discussion at the federal level for future, additional regulation of chemicals.

Although there are a number of significant flaws with HB 6526, I would like to make three key points for this Committee's consideration as it reviews this legislation.

First, although the bill correctly recognizes that priorities must be identified in any proposed chemical management system, the bill fails to do so according to objective, transparent, scientific criteria that identify those substances that present both the highest hazard AND greatest potential for exposure. This is the only way to ensure that the highest priorities have been identified and that the resources of Connecticut are focused on substances that have any actual potential for risk to children.

Second, HB 6526 bypasses the most important and essential scientific step necessary to determine if any high priority chemical poses any actual risk to children in the products, uses and applications impacted by this bill, i.e., a risk or safety assessment.

Third, EPA has undertaken several new programs and actions to regulate chemicals that are protective of public health, including children's health, and that are relevant to the Committee's consideration of HB 6526.

Prioritization Process Must be Systematic and Risk-Based

HB 6526 proposes to create a list of priority chemicals in a haphazard manner, without applying systematic, screening-level criteria that integrate hazard criteria with greatest potential for exposure to identify those chemicals of potential concern to children. The bill permits substances that appear on the states of Maine and Washington's High Concern Lists to be added to Connecticut's list without any consideration as to whether those substances are relevant to Connecticut. The bill permits chemicals to be added to Connecticut's priority list if they have been detected in humans in biomonitoring studies or simply present anywhere in a household or in drinking water, or in consumer products used in or present in homes.

The problem with this approach is that it is a very crude method and, as such, it is very likely to produce a long list of chemicals that may or may not pose any real

risk to anyone, let alone children. Therefore, it is unlikely to actually identify authentic priorities. The mere "presence" of a chemical (in humans, in the environment, or in consumer products) does not equal harm. The U.S. Center for Disease Control (CDC) has stated clearly, "The presence of an environmental chemical in people's blood or urine does not mean that it will cause effects or disease."
http://www.cdc.gov/exposurereport/pdf/FourthReport_ExecutiveSummary.pdf (at p. 3). The same is true of the presence of a chemical in a consumer product. What this bill overlooks is the basic tenet of toxicology: the "dose makes the poison." The potential for true exposure to children at levels of concern under HB 6526 would be theoretical, at best. The public health benefits of this approach, therefore, are highly questionable.

In 2011, to help explain its perspectives on prioritizing chemicals to EPA, ACC developed a simple and straightforward prioritization screening tool that applies a science- and risk-based approach that considers both the degree of hazard and extent of exposure potential when setting priorities. It leverages available data and existing hazard classification frameworks already in use across industry and agreed to by regulators. I have attached ACC's tool to my testimony in Appendix A.

HB 6526 Completely Bypasses the Most Critical Step for Children's Health: The Risk/Safety Assessment

Once an appropriately scientific prioritization screening tool is used by a regulator to identify those substances that present the highest hazard AND greatest potential for exposure, the next critical step, from a public health standpoint, is to conduct a risk/safety assessment. In a risk or safety assessment, risk characterizations include consideration of information about product uses and reasonably anticipated exposures, including potential exposures to children. Risk characterizations use valid, reliable and relevant scientific studies and information, giving such studies and information appropriate weight, to determine potential risks associated with relevant levels of exposure under expected conditions of use.

HB 6526 completely skips this critical step in the evaluation of whether any actual risk may be posed by the presence of high priority chemicals in children's and consumer products that children may encounter in Connecticut. This bill presumes – without a safety assessment to evaluate whether any real risk exists to children –

that all high priority chemicals must be removed (banned) from children's products through a Product Innovation Plan designed to identify a "replacement" or substitute for the high priority chemical within tight timeframes of a three-year phase-out. If these requirements aren't met, the manufacturer may be prohibited from selling children's products in Connecticut.

There are a number of serious flaws with this approach. First, it assumes that once a chemical is identified as a priority chemical that the State can mandate or schedule innovation to replace it. The Product Innovation Plan that would prescribe a substitute is very similar to what are called "alternative assessments." These alternative assessments are not trivial exercises. They can be complex, lengthy and costly. Most alternative assessment schemes today are voluntary or are tools designed by business for business. They go to the very heart of how products are made. Requiring a State approved, one size fits all solution in the alternative assessment area within a three-year timeframe, is problematic.

Second, safety is not the only criteria to consider when evaluating alternatives. The function (or functions) that a chemical serves in the product and the costs required to substitute an alternative is key considerations. For example, the change of a chemical material can result in changes to the equipment required to make an end-product. Making such equipment changes can require both time and money. There are many similar cost/benefit factors that must be carefully weighed and evaluated. HB 6526 does not appear to consider the other relevant factors, such as function, cost, and consumer acceptance, in dictating selection of an alternative as the ultimate objective of the bill.

Identifying priority chemicals for potential chemical regulation is an important first step when implementing a sound chemicals management program. However, leaping straight from a crude and likely ineffective prioritization straight to product bans without any scientific safety assessment to determine whether any actual risk to children exists is unscientific, unrealistic, and may arguably be unconstitutional as a property taking without due process.

EPA's Actions to Strengthen the Chemical Management Safety Net

In 2010, EPA began taking several new important steps toward strengthening the federal chemical management safety net under the major federal law regulating chemicals in commerce: the Toxic Substances Control Act (TSCA). One of these was enhancements to the Inventory Update Rule (IUR), re-named the Chemical Data Reporting (CDR) rule.

The CDR is a regulatory tool under which manufacturers report to EPA their uses of chemicals in a variety of industrial categories, commercial categories and consumer product categories. EPA uses this information to understand potential exposures to these chemicals. Under the new CDR, which was published on February 11, 2013, companies provided EPA more data on more chemicals than ever before. What this tells you is that EPA has access to significant data and information about chemicals in commerce and this access is going to continue to improve with each subsequent CDR. One significant change in CDR reporting that is relevant to Connecticut and other states in the U.S. is that the EPA refined the CDR consumer and commercial product categories so they are now reported separately. Companies now further distinguish among the types of consumer products so Agency and the public are better able to understand what chemicals are in children's products.

EPA is using the enhanced information from the CDR to inform its recent undertaking to perform safety assessments on its priority chemicals, called work plan chemicals, where exposures to children are a very important consideration. On March 1, 2012, EPA published the methodology and results of its prioritization process, identifying 83 substances slated for safety assessments between 2012 and 2016. (See Attachment B and http://www.epa.gov/oppt/existingchemicals/pubs/enhanchems.html)

Also of note to my earlier discussion (about HB 6526 bypassing the safety assessment step), even after taking such a quantitative approach to identifying these priority chemicals, EPA makes clear in its methods document that "identification of a chemical as a TSCA Work Plan Chemical does not itself constitute a finding that the chemical presents a risk to human health or the environment. Rather, identification of a chemical as a TSCA Work Plan Chemical

indicates only that the Agency intends to consider it for further review." (See p. 2 Appendix B). In other words, EPA's experts are very aware that priority setting involves a screening-level evaluation only and should not be used, without additional evaluation, to impose regulatory action on a chemical.

In fact, in January 2013, EPA published the first five of its safety assessments of the initial Work Plan chemicals. Those assessments have been published for public comment and will undergo third-party peer review. EPA may revise the assessments based on the peer reviews before issuing final assessments. Any potential risk management decisions on any of those substances will not be considered until after the assessments have been finalized.

These more assertive regulatory activities by EPA to strengthen the federal chemical management system will benefit not only public health, but children's health, across the U.S.

There will likely be two federal bills introduced this Congress designed to modernize and strengthen TSCA. It is likely that those bills will improve federal chemical regulation in ways that will help the states better protect their citizens and environments, such as by providing the states access to EPA's confidential business information (CBI) on chemicals – a suggestion that has been recognized widely as an important improvement to the existing statute.

Conclusion

Thank you for the opportunity to speak today. I hope this information has been helpful to your understanding of the importance of using science as the foundation of any chemicals management program Connecticut may contemplate and of the activities EPA is already doing today in the area of chemical regulation.

ACC urges this committee to consider this information and, in light of it, to ask itself whether HB 6526 is even necessary and whether it would provide significant public health benefit to the children of Connecticut.