

Comments on Policy Proposal Recommendations Act 154 Chemical Use Working Group

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General Comments

Manufacturers, retailers, and other affected businesses would in principle support legislative proposals that address legitimate gaps in efforts to protect public health and safety. However, to be a responsible recommendation, a proposal needs to meet several criteria. These include avoiding duplication or redundancy or conflict relative to existing state or federal laws and regulations, addressing a legitimate threat to public health and safety, effectiveness, affordability both in absolute terms and relative to the benefits being pursued, practicality in terms of technical and other administrative expertise and resources, and appropriateness for state responsibility – as opposed to federal, industry, or other more appropriate responsibility.

In general, the recommendations approved by the majority of the Working Group do not meet key criteria, although often owing in large part to insufficient information, analysis, or specifics at this time. This stems in part from relatively little time available for meaningful evaluation and discussion of the numerous items the Working Group was charged to consider. It is possible that more time could have allowed greater cost/benefit analysis and wider stakeholder involvement to identify and refine supportable recommendations.

Nevertheless, there are several subjects and some initial steps forward worth pursuing further, particularly in Recommendation 1, and we would look forward to participating in ongoing efforts to identify and develop responsible legislative or administrative initiatives.

Comments on Specific Recommendations

Recommendation 1: Interagency Committee; Expanded Reporting; Chemical Database

There would be significant benefits to reforming and streamlining chemical reporting to lower compliance costs and burdens for manufacturers and other businesses, improve the pooling or sharing of information across state agencies, and facilitate access to information currently available to the public.

We support continued work toward these goals, including interagency coordination with direct engagement with manufacturers, retailers, and other businesses subject to relevant requirements or proposed new requirements. We would note that the recommendation should explicitly include the Agency of Commerce and Community Development as well as manufacturers and retailers among stakeholders to be engaged.

The Working Group, however, has not established the foundation necessary to recommend responsibly that the number of chemicals subject to reporting requirements should be expanded, particularly not to the point of all chemicals regardless of toxicity, volume, use, etc. Unless compliance costs and administrative burdens are addressed, it could be prohibitively expensive and burdensome to expand reporting requirements to new chemicals without a corresponding threat to health and safety.

It should also be noted that there are already mechanisms and authorities to expand existing reporting requirements if actually warranted, and a significant amount of information already being reported but not necessarily being utilized as effectively as might be possible. Issues that should be addressed before considering sweeping expansions include the above noted changes to reporting regimes to ensure that reporting requirements are affordable and reasonable, that reported information is being used effectively, and that there are sufficient health and safety concerns or risks to warrant reporting on given new chemicals.

With regard to chemical reporting made available to the public, there should be further consideration of ways to provide greater education about what information means and does not mean with regard to health and safety risks. There is potential for misunderstanding or misrepresenting information currently available to the public, such as misperceived risk attributed to the mere presence of a chemical without regard to how safely it is being used and managed.

With regard to expanding information available to the public beyond current law, the Working Group has not addressed questions of utility of information, issues of understanding and potential misrepresentation, confidential business information, and related matters that need to be addressed before recommendations for expanding public information can be made responsibly. These are questions that should be considered further by the agencies and other stakeholders noted above.

In sum, therefore, there are several aspects of Recommendation 1 worth pursuing while others would benefit from further consideration or resolving intermediate issues and questions first.

Recommendation 2: Funding for Interagency Committee

Interagency coordination and engagement of stakeholders can and should be accomplished with existing staff. There was no evidence or substantive demonstration provided to the Working Group to establish otherwise. The cost of hiring new staff specifically to work on these matters is not warranted in the context of state budget constraints and existing fee burdens on manufacturers.

Recommendation 3: Act 100 Certified Planner Requirement

Requiring that certified planners sign off on all plans submitted under Act 100 would increase compliance costs. There was no evidence or substantive demonstration provided to the Working Group to establish that the current system is leading to harm that needs to be and would in fact be addressed through such a new requirement. Until such a need can be substantively demonstrated and the potential costs can be estimated and weighed against benefits, a foundation to make this recommendation does not exist.

Increased state compliance and related technical assistance has great potential value; however, greater specificity as to what assistance would be provided, as well as the cost and funding for such assistance, would need to be provided and assessed before the Working Group could responsibly include this in its formal recommendations. This could be further considered by agencies and manufacturers and other stakeholders in the course of reforming existing reporting requirements as discussed in the comments on Recommendation 1.

Recommendation 4: Act 100 Expand List of Substances

Reporting requirements under Act 100 can be costly and administratively burdensome. There was no evidence or substantive demonstration provided to the Working Group to inform a cost benefit consideration of this recommendation on its own merits or relative to alternative approaches to expanded reporting requirements. Rather than simply expanding chemicals and lowering thresholds for reporting under Act 100 without considering costs and burdens or concerns with specific chemicals, we would recommend the approach outlined in our comments on Recommendation 1.

Recommendation 5: Ban PFASs Food Contact Substances/Dental Floss

The Working Group did not discuss the merits of this recommendation. It did not engage stakeholders with expertise and interests in the issue. It did not assess the sufficiency of or warranted deference to federal regulatory entities and regimes. In sum, the Working Group did not do due diligence to support this recommendation at this time.

Recommendation 6: Make it Easier to Restrict/Label Chemicals of High Concern in Children's Products

The existing statutes addressed by this recommendation were specifically designed to help ensure that the regulatory decisions in question are made with the breadth of expertise and perspectives necessary for balance and competence, and that decisions are informed by sufficient scientific evidence. This recommendation seeks to enable regulatory changes that are less informed and less scientifically justified than was intended when Act 188 was enacted. These are critical failings of this recommendation.

Recommendation 7: Expand Act 188 to Cover All Consumer Products

Act 188 already has a regular reporting requirement on whether to expand its coverage to additional products; this is a question that is already addressed in existing law. Expanding Act 188 raises a number of questions of costs and benefits that were not discussed by the Working Group. The Working Group did not discuss or establish grounds for overruling the existing mechanism for recommending any expansion.

Recommendation 8: Provide Greater Information on Chemicals and Hazardous Materials

As noted in the comments provided on Recommendation 1 above, there are a number of questions that should be further considered and addressed regarding information currently available to the public and any possible expansion of such information. As noted previously, there is potential for misunderstanding or misrepresenting information currently available to the public, such as misperceived risk because of the mere presence of a chemical without regard to how safely it is being used and managed.

Rather than making this specific recommendation, therefore, we would support the approach on this matter outlined in our comments on Recommendation 1.

Recommendation 9: Improve Citizen Right to Know, Assess, and Address Risks of Contamination

This recommendation overlaps significantly the areas addressed in Recommendation 1. Rather than making this specific recommendation, we would support the approaches on these matters outlined in our comments on Recommendation 1.

Recommendation 10: Citizen Suit Enforcement

There was no evidence or substantive demonstration provided to the Working Group to establish that the current system is leading to harm that needs to be and would in fact be addressed through citizen suit enforcement. Moreover, citizen suits raise questions of additional cost, arbitrariness and predictability, and professional competence in regulatory enforcement and compliance that were not meaningfully discussed or considered by the Working Group. As such, the Working Group did not establish with due diligence a foundation to make this recommendation.

It should also be noted that if agencies are demonstrated to be failing to properly enforce regulations, it is more appropriate to consider and address issues with those agencies directly.

Recommendation 11: Medical Monitoring

As with other recommendations, this proposal was not the subject of extensive discussion by the Working Group. The written proposal suggests that this recommendation might have few if any precedents in federal or other state law, and to the extent that is the case, the reasons for that have not been presented or considered. It also suggests that this is a matter that has not yet been addressed in the courts, leaving open a question as to whether it is in fact necessary. Given the many questions surrounding this matter, the Working Group has not established a foundation to make this recommendation.

Recommendation 12: Strict Joint and Several Liability

There was no evidence or substantive demonstration provided to the Working Group to establish that the existing civil remedies in state law are as such leading to harm that needs to and would be prevented through the expansion of remedies proposed in this recommendation. Moreover, the proposal raises a number of significant questions about costs and liabilities, including those associated with legal and permitted activities, that were not meaningfully discussed or considered by the Working Group. Given the many questions and clear concerns surrounding this matter, the Working Group has not established a foundation to make this recommendation.