



March 27, 2023

Ms. Emily Dominiak
NYS Department of Environmental Conservation
Albany, New York

Re: Comments on TCCP Rulemaking Proposal – February Presentation

Dear Ms. Dominiak,

Below, please find comments from the Toy Association and the Juvenile Product Manufacturers Association (JPMA) on the Department of Environmental Conservation's (DEC) proposed rulemaking related to Environmental Conservation Law (ECL) Article 37 Title 9 establishing an ingredient disclosure program and prohibiting certain chemicals in children's products. Both organizations attended the February 16 virtual public meeting and appreciate the opportunity to provide input on issues related to the forthcoming draft rule.

The Toy Association is a not-for-profit trade association representing approximately over 800 toy makers, marketers, distributors, and retailers, large and small, located throughout North America. The Toy Association is founded on the mission of bringing fun and joy to children's lives, and our members have long been leaders in toy safety. In this role, we participate in the development of safety standards for toys, working with industry, government, consumer organizations, and medical experts. The U.S. risk-based standards are widely recognized and used as models around the globe. The Toy Association regularly conducts educational seminars on these industry standards, and educates parents and caregivers on choosing appropriate toys, and how to ensure safe play.

List of Chemicals Under Consideration: HPCs & COCs

We request that DEC focus the scope of the rulemaking to HPCs and COCs that are listed in the underlying statute, those that have been already reviewed by the US Environmental Protection Agency (EPA) under the Toxic Substances Control Act (TSCA), or those currently being required under the reporting requirements in the states of California, Maine, Vermont, Oregon and Washington. More closely aligning these chemical lists will increase the effectiveness of the implementation and will provide consistent information to the state and to consumers. In addition, it will help to ensure confusing information without proper context is not presented to

consumers, based on a lack of scientific information to support knowledge of the presence of the additionally proposed chemicals at such low levels, or health effects at those levels.

National alignment in these programs ensures consumers that they are receiving all the appropriate information that has been determined by scientific consensus to be important for their own health and safety. The inclusion of so many additional classes of chemicals will cause consumer confusion and prevent the relevant, meaningful and consistent information from being made available to those interested in purchasing a product, and will increase costs of products to the consumer with no corresponding benefit.

Contaminants and de minimis reporting levels

We remain strongly concerned that the proposed rule does not take the well-established and commonly applied 100 ppm de minimis threshold for contaminants into account for the reporting of the COCs and HPCs. DEC was specifically given the statutory authority to set threshold levels for contaminants in §37-0907 (1)¹. The absence of a threshold level will lead to significant misalignment with the other chemical reporting programs and will cause confusion and issues with overreporting that significantly reduce the effectiveness of the intended messaging provided to consumers, since inconsequential chemicals will be listed. Similar programs in other states have consistently recognized that such trace contaminants do not present a risk to consumers and by exempting them allow clearer information to be provided in the reporting. The de minimis threshold also allows reporting entities to determine without testing whether many contaminants will exceed 100 ppm, or that they are being controlled to the lowest practicable level given the state of the art of manufacturing and are exempt from being reported, allowing for more effective managing of the reporting process. Unfortunately, the current DEC approach requires reporting entities to either over-report in the absence of information indicating presence of a chemical, thus rendering useless the information given to consumers, or to spend significant amounts of resources and money to do quantitative testing, passing these costs on to consumers. In either case, the consumer loses.

Practical Quantification Limits (PQLs)

We are requesting NYDEC reconsider the approach being taken to specify Practical Quantification Limit (PQL) levels for each chemical based in part on non-governmental or non-authoritative sources such as industry or retailer Restricted Substances Lists (RSLs). Such lists are often based on non-regulatory limits or on levels not achievable under varying production conditions and as such cannot be reliably and repeatably measured under typical commercial

¹ § 37-0907. Reporting on the use of chemicals.

1. Reporting of chemical use. No later than twelve months after a chemical of concern or high-priority chemical appears on the lists promulgated pursuant to section 37-0905 of this title, every manufacturer who offers a children's product for sale or distribution in this state that contains a chemical of concern or a high-priority chemical shall report such chemical use at or above practical quantification limits to the department, provided however, that the department may, through regulation, establish an alternative threshold for the reporting of trace contaminants.

laboratory conditions, which is the definition of a PQL. In addition, in the absence of a reasonable reporting threshold, a single PQL for each chemical cannot be accurately established as it will vary significantly based upon the matrix in which the chemical is present e.g., the PQL of a given chemical will be significantly lower in an aqueous solution than in a thermoplastic polymer. We have not objected to the established PQLs in other states because they have a 100 ppm *de minimis* level in place for trace contaminants which resolves this issue.

Reporting Information & Thresholds

DEC proposes to require reporting for “inaccessible components” which is inconsistent with the existing reporting programs in both Washington state and Vermont. As federal and international safety standards have correctly assessed, “inaccessible components” do not pose any health or safety risk to children and no assessments have been performed that would demonstrate otherwise. In DEC’s presentation, it was stated that there is consideration of whether the Interstate Chemicals Clearinghouse (IC2) Reporting Database could be updated to include a check box for noting that a reported chemical is in “inaccessible components.” Even if changing the IC2 database is possible, providing consumers with information on “inaccessible components” still serves no public benefit but is an added burden for reporting entities. We urge DEC to require reporting only on accessible components, with accessibility determined in accordance with the federal standard at 16 CFR 1199.

Reporting Frequency & Fee Structure

We support the DEC’s proposal for annual reporting as this would align with several other state programs. We also support the DEC’s proposal for a simplified fee structure that aligns more closely with the other state programs. As such, we request additional information related to the intended fee structure for review and public comment. With regard to retailer notices, we support DEC considering a format for retailer notices which links to the IC2 reports, and look forward to additional information for public comment as well. Since reporting information is already publicly available to retailers through state programs (and has been for several years) the least burdensome method and format for retailer notices is requested. We urge DEC to consider a credible scientific source that manufacturers can rely on and reference for this information, such as the Agency for Toxic Substances and Disease Registry.

Qualification Tests for Structurally Related Compounds

We appreciate the request for input regarding the question of whether structurally related (or varying chain length) compounds could share a test method. While in principle this could be an option to consider, in order to avoid potential misinformation and additional excessive reporting burdens, it would be necessary to be able to confirm for each chemical group that all variants are able to be individually identified by the test method, and also whether each chemical in the assigned group meets the reporting criteria in the first place. Of course, it must also take into account that not all structural analogs of a group have similar health effects.

Thank you for your consideration of these concerns. We strongly recommend alignment with the other states which have already implemented similar programs with the same stated purpose. The currently proposed framework for NYDEC's rulemaking is focusing on the technical presence of chemicals, but this is not addressing the real and appropriate consideration of exposure potential and risk; as was in evidence during the public comment presentation, there is a misconception that presence equals risk, and the current reporting structure for DEC's rulemaking only increases the miscommunication. We recognize that our industries are not the only affected ones, and manufacturers of other product categories can and will have parallel or additional considerations for DEC in the rulemaking process. We remain willing to schedule a time to meet and discuss these issues in more detail at your convenience. In the meantime, please feel free to contact The Toy Association; either ocaine@toyassociation.org or Jos Huxley at jhuxley@toyassociation.org if you have any questions or would like further information.

Sincerely,

A handwritten signature in blue ink that reads "Owen Caine". The signature is fluid and cursive, with the first name "Owen" being larger and more prominent than the last name "Caine".

Owen Caine
Vice President, Government & Regulatory Affairs
The Toy Association

A handwritten signature in black ink that reads "Lisa R Trofe". The signature is cursive and written in a professional, slightly slanted style.

Lisa Trofe, CAE
Executive Director
JPMA