



**U.S. CONSUMER PRODUCT SAFETY COMMISSION
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**STATEMENT OF COMMISSIONER ROBERT ADLER ON THE
APPROVAL OF A FINAL RULE
PROHIBITING CHILDREN’S TOYS AND CHILDCARE ARTICLES
CONTAINING SPECIFIED PHTHALATES**

October 18, 2017

Our vote today represents a major milestone in a process that was started many years ago – at least back to the 1980s – when serious concerns were first raised about the potential health effects of phthalates. In fact, when I left CPSC in 1984, the agency was in the early stages of grappling with phthalate hazards. And, over the years, we saw sporadic efforts to understand and address the full dimension of the health effects of these chemicals.

So, it was with mixed feelings when I returned to CPSC in 2009, I saw that phthalates remained – and will continue to remain – a matter of concern. To my delight, I saw that Congress had just taken a giant, and much needed, step in 2008 with the passage of section 108 of the Consumer Product Safety Improvement Act (CPSIA). Section 108 banned certain phthalates in children’s toys and childcare articles and imposed an interim ban on others, with a general direction for CPSC to evaluate the health effects of all phthalates in children’s products.

Pursuant to this direction, the Commission convened a Chronic Hazard Advisory Panel (CHAP) to study phthalates and phthalate alternatives in children’s toys and childcare articles. I believe that the CHAP’s review and the staff’s further analysis have brought the health and safety issues into clear focus, and I commend both the CHAP and our staff for this excellent work.

I am particularly delighted that Congress adopted a comprehensive approach to addressing phthalate hazards rather than a piecemeal one-by-one “whack-a-mole” plan that merely sets the stage for what has come to be known as regrettable substitution of one hazardous chemical for another.

Turning to the specific vote before us, my starting point is the statute that guides our decisionmaking. As we all know, Section 108 of CPSIA requires the Commission to base its decision about whether or not to ban certain phthalates on our determination whether a ban is needed “in order to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety.”

So, as I parse this legal standard, I look most carefully at two separate phrases. The first is whether the Commission can make a safety determination on phthalates with “reasonable certainty.” And, based on the evidence before us in the briefing package, I believe there is reasonable certainty regarding the data on phthalates. Staff has made a compelling case that the risk, based on measuring the Hazard Index of actual women of reproductive age, is a small, but significant, real, concrete number. More importantly, based on this risk, it’s almost inescapable that fetuses and infants are at even greater risk.

The second phrase is “no harm to children, pregnant women or other susceptible individuals.” As I read these words, we are not directed to make a finding that any particular phthalate presents a “significant, but reasonable,” amount of harm in order to act. We must find “no harm.”

One might ask why Congress would impose such a stringent standard for rulemaking. I believe that there is a simple but compelling answer to this question. Simply put, if we cannot make a finding of a reasonable certainty of no harm, by implication, we are making a determination that there is a reasonable certainty of harm. And, unlike other types of harm such as paper cuts, upset stomachs or bruises, harm from phthalates is almost never trivial. When a child is harmed by phthalates, the harm is very likely to be serious and life-altering.

So, when I reflect on the legal test that Congress imposed on CPSC, I see that Congress intended for us to walk the extra mile to protect our most vulnerable citizens from extremely serious harm – a proposition with which I am in complete agreement.

I think for all of us the toughest decision is about DINP. Clearly, in terms of harm to susceptible populations, it is a less potent chemical than DEHP. But, the problem is that it still presents antiandrogenic effects and its growing use as a replacement for DEHP leads to a staff finding that DINP now contributes roughly as much as DEHP to cumulative risk. In short, merely because there is a reduced risk that does not mean it’s an acceptable risk, and it certainly doesn’t mean “no risk” or “no harm.”

And, here, I want to thank Congress for its direction in section 108 for us to consider the potential health effects of each phthalate not only in isolation, but also in combination with other phthalates – and to consider the cumulative effect of total exposure to phthalates. This direction helps us avoid a Tragedy of the Commons dilemma where we look only to the

individual impact of each phthalate but ignore the total health risk from permitting harm upon harm.

One final thought: Today's vote represents yet another action taken by CPSC to address the challenges of chronic hazards in consumer products. I must say how proud I am of CPSC staff and my colleagues for how effectively we have addressed these challenges given how modest our resources are. I doubt that when Congress established our agency anyone was seriously thinking of these risks as part of our portfolio. And, I'm greatly concerned that more and more of these risks are coming our way with no added funding to address them. So, it is my profound hope that once the budget-cutting, regulation-bashing madness that I see in Washington these days passes, we will be able to give our most vulnerable citizens the protection from chronic hazards that they deserve.