



**U.S. CONSUMER PRODUCT SAFETY COMMISSION
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**STATEMENT OF COMMISSIONER ELLIOT F. KAYE
ON THE APPROVAL OF A FINAL RULE
PROHIBITING CHILDREN'S TOYS AND CHILD CARE ARTICLES
CONTAINING SPECIFIED PHTHALATES**

October 18, 2017

I am pleased that today the Commission voted 3—2 to issue a final rule prohibiting children's toys and child care articles containing certain harmful chemicals. One would think that no society would ever tolerate a system where its citizens – especially its youngest children – are used as guinea pigs to determine if they are being poisoned every day by chemicals in their food, their homes and their household products. But that is exactly how it works in our country when it comes to chemical management.

Our public policy in this area consists of all of us, especially our children, blindly being exposed each day to scores of chemicals, both individually but more often in combinations, and without any certainty that these chemicals are not causing cancer in adults, are not preventing women from having children, and are not causing children to suffer intellectual and developmental delays.

And the effects are not just felt on an individual basis. Credible concerns have been raised that some violent behavior and its effects on and costs to society might in part be caused from exposure to certain chemicals that impair the brain. The prevalence of chemical exposures is believed to be at least partially responsible for the explosion of certain chronic diseases and adverse health effects across society. The impacts on our bodies and our health care system are far from insignificant.

In an exceedingly rare and overwhelming bipartisan way, Congress stepped into this sad state of affairs in 2008. Congress directed our agency, the Consumer Product Safety Commission, to convene a panel of the world's top scientists, to study phthalates as a group of chemicals of very high concern and directed us to act

based on the panel's findings as necessary to protect us all, especially the most vulnerable among us. Phthalates are ubiquitous in our society because they are mostly used to soften plastic.

The science around these chemicals had matured to the point where Congress felt compelled to outright ban three of them immediately, place an interim ban on three more and charge us with studying and acting on those phthalates and phthalate alternatives that harm the public.

There were at least three strong health protective provisions in the related section of the law Congress passed. First, the scientific panel was charged to look not only at the impact of chemicals in isolation, but also as mixtures through a cumulative risk assessment. This direction made sense, since we are all exposed in real time not just to a single chemical but actually to cocktails of them. Second, Congress said we should draw the safety line in a place where we felt there was "a reasonable certainly of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety." In other words, Congress clearly instructed us to err on the side of being extremely health protective, especially when it comes to the most vulnerable among us. Third, Congress sought to avoid what is called "regrettable substitution" by having the panel of scientists consider phthalates and phthalate alternatives, with the hope that any resulting regulatory action would not just take away one harmful chemical to have it replaced by another.

Nine years later, we are finally fulfilling the Congressional vision toward a saner, more rational and, certainly, more health-protective system, at least with respect to this one type of chemical. After all the strong and compelling scientific work put into it, our decision today should have come with unanimous support. Sadly it did not.

I find that all the more curious because no one among us is immune to the effects of these chemicals. We all have families and friends that we would do anything to protect. Except, it seems, when it comes to chemicals. Even when Congress spoke so clearly about the need to protect infants, children, pregnant women and the rest of us. There was inexplicable opposition here at the Commission and there will very likely be judicial review down the line.

I would like to speak to that issue. More specifically, I would like to speak to the judges and law clerks who may look over this record and make a final determination. First, please see how specific Congress was in the statute with its charge, how highly protective of the health and safety of vulnerable populations in a

preventative way the standard it established is, and how that differs from our other statutes in a meaningful way.

Second, please note the fidelity with which the panel of independent scientific experts, the CHAP, followed Congressional and Commission direction, how thorough the CHAP was and how its methods and conclusions were validated by a substantial peer review.

Next, please observe how carefully the Commission and its staff reviewed the scientific report, as well as the public comments at each stage of the rulemaking and how this effort and the analysis included the latest and most credible and relevant scientific data available.

And finally, please look to the actual science and the way the CHAP and the Commission relied on that science and valid scientific methodologies to address points raised at each step of the process. Some of those points were valid; some appear less so. Regardless, each was addressed with great care and broad support throughout the rulemaking record.

I want to express my gratitude to our expert staff for their tremendous work on this rulemaking, as well as all of the independent scientific experts who served on the CHAP, and all those stakeholders who took the time to provide comments throughout this rulemaking process.

This safety effort was years in the making and the result serves the public health very well. The result is also 100 percent consistent with the direction from Congress. The only policy limitation is that the process unfortunately addresses just a part of one group of chemicals. That is due to the lack of investment in the science necessary to find answers sooner. Meanwhile, we still allow ourselves, our families and our friends to be poisoned each day by numerous other chemicals before we slowly act.

None of us is well-served by such a system, and we all are paying for it one way or another. Even though the Commission has just approved this rule, today was sadly not the day for us to all join together for a safer and better world for our children. Hopefully, tomorrow will be.