



**Department of
Consumer Affairs**

Julie Menin
Commissioner

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nyc.gov/consumers

December 15, 2014

U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Elliot F. Kaye
Chairman

Robert S. Adler
Commissioner

Ann Marie Buerkle
Commissioner

Joseph Mohorovic
Commissioner

Marietta S. Robinson
Commissioner

Dear Chairman Kaye and Commissioners Adler, Buerkle, Mohorovic, and Robinson:

Toxic chemicals pose a serious threat to the health of children and infants in New York City and throughout the country. Children are especially vulnerable to harmful substances in the products because they are affected by smaller quantities of chemicals than adults, because their bodies are developing, and because young children are prone to putting objects in their mouths.¹ According to a recent report from the Icahn School of Medicine at Mount Sinai Hospital, scientific evidence is strong that toxic chemicals and other hazards in the modern environment are notable causes of diseases in children.² Despite this grave threat, current regulations continue to permit the sale of toys and other children's products that contain chemicals that are known to be toxic.

Given the gravity of this issue and the urgency of acting before more children are exposed to dangerous products, the New York City of Department of Consumer Affairs ("DCA") petitions the United States Consumer Product Safety Commission ("CPSC"), pursuant to the Administrative Procedures Act, 5 U.S.C. § 553(e), and the regulations of the CPSC, 16 C.F.R. Part 1051, to launch an investigation into the following chemicals ("Subject Chemicals"), assessing how



exposure to these chemicals might result in adverse health effects, and banning those chemicals that exposure to which leads to such effects:

- Formaldehyde
- Aniline
- N-nitrosodimethylamine
- Benzene
- Vinyl chloride
- Acetaldehyde
- Methylene chloride
- Carbon disulfide
- Methyl ethyl ketone
- 1,1,2,2-Tetrachloroethane
- Tetrabromobisphenol A
- Bisphenol A
- Diethyl phthalate
- Dibutyl phthalates
- Di-n-Hexyl phthalate
- Phthalic Anhydride
- Butyl benzyl phthalate
- N-Nitrosodiphenylamine
- Hexachlorobutadiene
- Propyl paraben
- Butyl paraben
- 2-Aminotoluene
- 2,4-toluenediamine
- Methyl paraben
- p-Hydroxybenzoic acid
- Ethylbenzene
- Styrene
- 4-Nonylphenol; 4-NP and its isomer mixtures including CAS 84852-15-3 and CAS 25154-52-3
- para-Chloroaniline
- Acrylonitrile
- Ethylene glycol
- Toluene
- Phenol
- 2-Methoxyethanol
- Ethylene glycol monoethyl ester
- Tris(2-chlorethyl) phosphate
- Di-2-ethylhexyl phthalate
- Di-n-octyl phthalate (DnOP)
- Hexachlorobenzene
- 3,3'- Dimethylbenzidine and Dyes Metabolized to 3,3'-Dimethylbenzidine
- Ethyl paraben
- 1,4-Dioxane
- Perchloroethylene
- Benzophenone-2 (Bp-2); 2,2',4,4'-Tetrahydroxybenzophenone
- 4-tert-Octylphenol; 1,1,3,3-Tetramethyl-4-butylphenol
- Estragole
- 2-Ethylhexanoic acid
- Octamethylcyclotetrasiloxane
- Benzene, pentachloro
- C.I. Solvent Yellow 14
- N-Methylpyrrolidone
- 2,2',3,3',4,4',5,5',6,6'-Decabromodiphenyl ether; BDE-209
- Perfluorooctanyl sulphonic acid and its salts; PFOS
- Phenol, 4-octyl-
- 2-Ethyl-hexyl-4-methoxycinnamate
- Mercury & mercury compounds including methyl mercury
- Molybdenum & molybdenum compounds
- Antimony & Antimony compounds
- Arsenic & Arsenic compounds
- Cadmium & Cadmium compounds
- Cobalt & Cobalt compounds
- Tris(1,3-dichloro-2-propyl)phosphate
- Butylated Hydroxyanisole; BHA
- Hexabromocyclododecane
- Diisodecyl phthalate
- Diisononyl phthalate

I. Interest of Petitioners

This petition is brought by the New York City Department of Consumer Affairs. The agency is charged with empowering consumers and businesses to ensure a fair and vibrant marketplace by enforcing the city's consumer protection laws and implementing proactive outreach targeted at consumers and businesses in New York City.³ DCA works to protect consumers from deceptive and illegal practices, including practices that are harmful or injurious to the health of consumers. For example, DCA regulates the sale of box cutters, laser pointers, and toy guns⁴, all of which can pose serious health and safety concerns if misused by minors.

Pursuant to DCA's broad jurisdiction to protect New Yorkers from illegal practices, the agency regulates, for example, the sale of permissible and prohibited tobacco products.⁵ According to the American Lung Association, among adults who smoke, 68 percent began smoking at or before the age of 18 or younger and 85 percent began smoking at or before 21.⁶ As such, preventing youth tobacco usage can potentially have positive long-term impacts. To prevent such usage, DCA both licenses cigarette retailers in New York City⁷ and also enforces City and State laws that prohibit the sale of tobacco to minors.⁸ DCA runs one of the most robust and comprehensive enforcement programs to prevent sales of tobacco to underage consumers. This program, which pairs inspectors with undercover minors, inspects nearly ten thousand City cigarette retail dealers every year to ensure they do not sell tobacco products to underage youth.

The agency also licenses and regulates New York City's 836 second-hand auto dealers. According to the National Highway Traffic Safety Administration ("NHTSA"), approximately 52 million cars have been recalled this year in the U.S., beating a previous record of 30.8 million set in 2004.⁹ To protect New Yorkers from potentially fatal defects in used cars, DCA has launched an investigation into the City's used car dealerships, seeking to discover whether they are selling unrepaired recalled cars. As part of this investigation, DCA has issued subpoenas to 200 dealers, compelling them to provide their policies on selling unrepaired recalled cars, to reveal how many such vehicles they have sold in the past year, and whether the consumer was notified at the time of sale.¹⁰ DCA seeks to ensure that any dealer found to have sold a recalled car that was not repaired at time of sale in the past year, notify the customer and make any repairs that are necessary at the dealers' expense and not sell unrepaired recalled used cars in the future.

Another example of the breadth of DCA's work to protect New Yorkers is its enforcement of New York City's Earned Sick Time Act¹¹, which requires covered employers to offer paid sick leave to their employees.¹² Paid sick leave is a fundamental benefit to employers, employees, and to the public that leads to healthier employees with better morale, less employee turnover, and lower healthcare costs in the long-term. DCA has implemented comprehensive outreach, mediation, and enforcement programs to successfully implement this historic law¹³, which now covers more than one million New Yorkers who previously did not have access to sick leave.

In addition to this work on youth tobacco, unrepaired recalled cars, and paid sick leave, DCA also regulates disclosures of the presence of harmful chemicals in products.

Though DCA has a broad mandate to protect consumers from illegal business practices, this mandate has its limits. In order for the agency to ensure that the children of New York are not being harmed by toxins in toys, DCA will need legislation or rules to enforce. A CPSC rule regarding the Subject Chemicals would allow DCA to enforce established New York City rules prohibiting false advertising, if children's products are marketed as safe, which actually contain prohibited toxic chemicals.

II. CPSC Authority

The Consumer Product Safety Act ("CPSA") authorizes the CPSC to conduct research and investigations on the safety of consumer products and to test consumer products.¹⁴ In addition, the CPSC has the authority to promulgate consumer product safety standards regarding the amount of chemicals contained in children's products.¹⁵ The CPSA authorizes the CPSC to promulgate rules declaring children's products with toxic chemicals banned hazardous products.¹⁶ Specifically, the CPSC is statutorily authorized to promulgate a rule declaring a product to be a banned hazardous substance if it finds that a consumer product is being distributed in commerce that presents an unreasonable risk of injury and no feasible consumer product safety standard would adequately protect the public from the unreasonable risk of injury associated with such product.¹⁷

III. Statement of Grounds

The United States government has thus far failed to mandate the elimination of these toxic chemicals from children's products, forcing individual states to take action. States have enacted or proposed legislation requiring manufacturers to report the existence of the Subject Chemicals in children's products or banning the Subject Chemicals from children's products.¹⁸ So far, four states: Washington, Maine, California, and Minnesota, have passed comprehensive legislation addressing toxic chemicals in children's products.¹⁹ Numerous other states are considering chemicals legislation as well, including New York, where legislators have attempted to ban several of the Subject Chemicals from children's products altogether.²⁰

According to Washington State Department of Ecology reporting data, the Subject Chemicals are present in thousands of children's products, including children's tableware, toys, clothing and footwear, bedding and baby products.²¹ The harmful effects of the Subject Chemicals have been well-documented by scientists and international organizations, as well as state and international governments.

The list of Subject Chemicals that pose a significant health risk to children was developed by the Washington State Department of Ecology and Department of Health, as required by the

Washington Children's Safe Products Act.²² The State of Washington enlisted the expertise of Dr. Catherine Karr, a nationally-recognized expert in children's health with the University of Washington Pediatric Environmental Health Specialty Unit, to develop a framework that qualitatively evaluated the evidence for toxicity and potential for exposure for each of the chemicals being considered for the list based upon a weight-of-evidence approach. A weight of evidence approach is a framework used to reach a decision about the quality and relevance of each primary study.²³ In this case, the toxicity evaluation focused on the strength and weight of evidence for key toxicological endpoints.²⁴

The resulting list of 66 chemicals includes chemicals classified as carcinogens by authoritative sources including the International Agency for Research on Cancer; the U.S. National Toxicology Program; the U.S. Environmental Protection Agency; the European Commission's Joint Research Center - Institute for Health and Consumer Protection; and the State of California List of Chemicals Known To the State to Cause Cancer or Reproductive Toxicity. The list also includes endocrine disruptors, as determined based upon reviews of the Washington State Department of Health and the University of Washington Pediatric Environmental Health Specialty Unit. All chemicals that were included in the list only because of endocrine disruption have been shown to disrupt the endocrine system based on the results of one or more relevant assay.

The Subject Chemicals' presence in children's products is dangerous because children as a group, due to a variety of factors, are more sensitive to chemicals than adults.²⁵ The chemicals reported to Washington State over this six-month period include carcinogens, endocrine disruptors, and developmental and reproductive toxicants.²⁶ Exposing our children to these harmful chemicals is an unreasonable risk of injury that we cannot afford.

These types of harmful chemicals are serious concerns that merit the CPSC's immediate attention. Research demonstrates that exposure to carcinogens can lead to cancer.²⁷ Endocrine disruptors interfere with the body's endocrine system (which regulates metabolism, growth and development, tissue function, sexual function, reproduction, sleep, and mood, among other functions) can produce adverse developmental, reproductive, neurological, and immune effects in both humans and wildlife.²⁸ Reproductive and developmental toxicants can impair reproductive capabilities and interfere with proper growth or health among children, resulting in adverse effects like genetic defects, infertility, birth defects, developmental disorders, and childhood cancers.²⁹ Chemicals that cause these types of serious impacts have no place in consumer products that are used by children.

Given the potential serious risks posed to children, the CPSC should act now to first investigate all Subject Chemicals, further investigate how exposure to these chemicals might lead to adverse health effects, and ban the use of those Subject Chemicals that are assessed to cause adverse health effects.

IV. Examples of Children's Products Containing Toxic Chemicals

Charms & Angels Bracelet-Making Kit³⁰

Toxin found: **Cadmium**

Cadmium is a naturally-occurring metal used in batteries and found in cigarette smoke. You can be exposed to cadmium by breathing or ingesting it. Children may be exposed through toys, jewelry or enameled crafts. Exposure may come from inhaling cadmium dust or fumes or ingesting contamination on your hands.

Cadmium and cadmium compounds are listed as carcinogens in the Thirteenth Report on Carcinogens published by the National Toxicology Program because they are known to cause cancer. Long-term exposure to high levels of cadmium can cause lung cancer.³¹ There also may be an association between exposure to cadmium and cancer of the prostate, kidney, and bladder. Breathing high levels of cadmium can severely damage the lungs and may cause death. Eating food or drinking water with very high levels of cadmium can severely irritate the stomach, leading to vomiting and diarrhea, and sometimes even death.

Ingestion of cadmium salts can cause severe and sometimes fatal poisoning. Inhaling cadmium dusts and fumes may cause acute poisoning. Long-term exposure to lower levels of cadmium can lead to a buildup of cadmium in the kidneys and possible kidney disease. Other long-term health effects include lung damage, emphysema, bronchitis, fragile bones, pulmonary edema, difficult breathing, anemia, rhinitis, and discoloration of teeth.

Long-term inhalation of cadmium dust or fumes can cause chronic cadmium poisoning that includes chest pains, headache, and weakness. Long-term inhalation of cadmium salts can lead to cadmium poisoning that includes convulsions, headache, muscular cramps, and vertigo. Short-term inhalation of cadmium dust or fumes may cause cough, headache, chest pain, irritability, and throat and nose irritation.

Toddler Boy Batman Costume³²

Toxin found: **Phthalates**

Phthalates are a family of chemicals used in plastics and many other products. They are used to soften and increase the flexibility of plastic and vinyl. Phthalates are used in hundreds of consumer products including flexible plastic and vinyl toys. They have been used to make pacifiers, soft rattles, and teething rings but at the request of the U.S. Consumer Product Safety Commission, U.S. manufacturers have not used phthalates in those products since 1999. Children can be exposed to phthalates by chewing on soft vinyl toys or other products made with them, and by breathing household dust that contains phthalates.

Phthalates are often classified as endocrine disruptors; they disrupt the normal functions of our bodies hormones. Exposure to phthalates has caused birth defects such as cleft palate in



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experiments with laboratory animals. Exposure to small amounts of phthalates causes undescended testes.

DA Fashion Hair Clip (paisley purple)³³

Toxin found: **Cobalt**

Cobalt is a hard, lustrous, gray metal, and chemical element. It is a naturally occurring element found in rocks, soil, water, plants, animals and humans. Cobalt-containing products include corrosion and heat-resistant alloys, hard metal, magnets, cutting tools, pigments, fertilizers, varnishes, inks, colored glass, surgical implants, batteries.

Chronic exposure to cobalt-containing hard metal (dust or fume) can result in a serious lung disease called "hard metal lung disease", which is a type of pneumoconiosis (lung fibrosis). Some cobalt compounds are classified as carcinogens by authoritative sources. Inhalation of cobalt compounds can induce lung and other cancers in rats and mice. Furthermore, inhalation of cobalt particles can cause respiratory sensitization, asthma, shortness of breath, and decreased pulmonary function. Occupational studies are not conclusive but do indicate that cobalt may be an agent of lung cancer in humans. Oral exposures to soluble cobalt compounds are associated with testicular atrophy and reduced fertility in male rodents.

P'Kolino Little Reader Chair³⁴

Toxin found: **TDCPP (chlorinated Tris)**

TDCPP was a flame retardant used in children's pajamas in the 1970s until it was eliminated from that use due to adverse health effects. Now, TDCPP is a widely used flame retardant added to polyurethane foam in furniture and baby products. According to a 2011 study looking at the presence of various flame-retardants in baby products, TDCPP was the most common additive. Over time, TDCPP escapes from the foam and mixes with dust in our homes. The dust lands on household surfaces, including toys and food, and some of it is ingested. Young children are the most likely to be exposed because of their tendency to put toys and their hands into their mouths. Source: <http://www.ceh.org/wp-content/uploads/2013/11/Kids-Furniture-Report-Press.pdf>

TDCPP has been found to cause negative health impacts in animals, including increased cancer rates, DNA mutations, and reproductive effects. TDCPP has been listed as a known carcinogen under California's Proposition 65, and a Consumer Product Safety Commission assessment concluded that it increases cancer risk. In humans, men with higher levels of household TDCPP had lower sperm counts and altered hormone levels. In men attending infertility clinics, exposure to TDCPP was linked with changes in hormone levels.



V. Conclusion

For the reasons stated above, the Petitioner requests that the Consumer Product Safety Commission use its authority under the Consumer Product Safety Act, **15 U.S.C. § 2054(b)**, to investigate all Subject Chemicals and, where sufficient scientific evidence exists to prove that the presence of a Subject Chemical can lead to adverse health effects, ban such Subject Chemical from all children's products **pursuant to 15 U.S.C. § 2057**.

Thank you for your consideration of this petition and we look forward to your response.

Sincerely,

Julie Menin
Commissioner

¹ See, e.g., Testimony of Phillip J. Landrigan, MD, MSc, FAAR, Icahn School of Medicine at Mount Sinai, Before the US House of Representatives Subcommittee on Energy and the Economy (March 12, 2004), stating that "Infants and children, and most especially unborn children in the womb, are exquisitely sensitive to toxic chemicals." *See also*, Centers for Disease Control, "Principles of Pediatric Health: Why Are Children Often Especially Susceptible to the Adverse Effects of Environmental Toxicants?" (January 17, 2013), noting that "Beginning before conception and persisting throughout childhood, children are often more susceptible to environmental toxicants compared to adults."

² Analysis of the Washington State ACToR database, as cited in Children's Environmental Health Center at the Icahn School of Medicine at Mount Sinai, New York State's Children and the Environment (December 2013).

³ New York City Charter §2203

⁴ New York City Administrative Code § 10-134.1; New York City Administrative Code § 10-134.2; New York City Administrative Code § 10-131

⁵ Relevant laws and rules available at http://www.nyc.gov/html/dca/downloads/pdf/retail_cigarette_dealer_law_rules.pdf.

⁶ Centers for Disease Control and Prevention. National Center for Health Statistics. National Health Interview Survey (2008). Analysis by the American Lung Association, Research and Program Services Division using SPSS software. Available at <http://www.lung.org/stop-smoking/about-smoking/facts-figures/children-teens-and-tobacco.html>.

⁷ New York City Administrative Code § 20-202

⁸ See, e.g., <http://www.nyc.gov/html/dca/html/initiatives/preventing.shtml>.

⁹ See, e.g., Jim Gorzelany, "What to Do (And How To Find Out) If Your Car Is Being Recalled", *Forbes* (October 23, 2014). Available at <http://www.forbes.com/sites/jimgorzelany/2014/10/23/what-to-do-if-your-car-is-being-recalled/>

¹⁰ http://www.nyc.gov/html/dca/html/pr2014/pr_073014.shtml

¹¹ New York City Administrative Code §§ 20-911 through 20-925

¹² Employers with five or more employees who are employed for hire more than 80 hours a calendar year in New York City must provide paid sick leave. Employers with fewer than five employees must provide unpaid sick leave.

¹³ See, e.g., www.nyc.gov/paidsickleave.

¹⁴ 15 U.S.C. § 2054(b)

¹⁵ 15 U.S.C. § 2056

¹⁶ 15 U.S.C. § 2057

¹⁷ 15 U.S.C. § 2057

¹⁸ <http://www.saferstates.com/bill-tracker>

¹⁹ Revised Code of Washington, §§ 70.240.010 to 70.240.060; Maine Revised Statutes, §§ 1691 to 1699-B; California Code of Regulations, § 69.502; Minnesota Statutes, §§ 116.9401 to 116.9407.

²⁰ <http://open.nysenate.gov/legislation/bill/S4614-2013>

²¹ Washington Toxics Coalition, "What's On Your List? Toxic Chemicals in Your Shopping Cart" (February 2014).

²² <http://www.ecy.wa.gov/programs/swfa/cspa/pdf/cspa-rationale-intro.pdf>,

<http://www.ecy.wa.gov/programs/swfa/rules/pdf/CSPAexsum.pdf>

²³ See, e.g., <http://www.strath.ac.uk/aer/materials/8systematicreview/unit10/evidence/>

²⁴ <http://www.ecy.wa.gov/programs/swfa/rules/pdf/p2text.pdf>

²⁵ See, e.g., Testimony of Phillip J. Landrigan, MD, MSc, FAAR, Icahn School of Medicine at Mount Sinai, Before the US House of Representatives Subcommittee on Energy and the Economy (March 12, 2004), stating that "Infants and children, and most especially unborn children in the womb, are exquisitely sensitive to toxic chemicals." See also, Centers for Disease Control, "Principles of Pediatric Health: Why Are Children Often Especially Susceptible to the Adverse Effects of Environmental Toxicants?" (January 17, 2013), noting that "Beginning before conception and persisting throughout childhood, children are often more susceptible to environmental toxicants compared to adults."

²⁶ Washington Toxics Coalition, "What's On Your List? Toxic Chemicals in Your Shopping Cart" (February 2014).

²⁷ See, e.g., <http://www.cancer.org/cancer/cancercauses/othercarcinogens/generalinformationaboutcarcinogens/known-and-probable-human-carcinogens>.

²⁸ See, e.g., <http://www.niehs.nih.gov/health/topics/agents/endocrine/>.

²⁹ See, e.g., https://extranet.fhcr.org/EN/sections/ehs/hamm/chap3/section12/12.14_toxins.html.

³⁰ Information provided to DCA by the Center for Environmental Health on December 11, 2014.

³¹ <http://ntp.niehs.nih.gov/pubhealth/roc/roc13/index.html>

³² Information provided to DCA by the Center for Environmental Health on December 11, 2014, referencing EPA (http://www.epa.gov/teach/chem_summ/phthalates_summary.pdf) and NIH (http://toxtown.nlm.nih.gov/text_version/chemicals.php?id=24) reports.

³³ Information provided to DCA by the Center for Environmental Health on December 11, 2014, referencing CDC information (<http://www.cdc.gov/niosh/topics/cobalt/>).

³⁴ Information provided to DCA by the Center for Environmental Health on December 11, 2014, referencing Washington Toxics Coalition report (<http://watoxics.org/chemicals-of-concern/chlorinated-tris>).



November 24, 2014

Carter Keithley
President and CEO
Toy Industry Association
1115 Broadway, Suite 400
New York, NY 10010

Julie Menin
Commissioner

42 Broadway
8th Floor
New York, NY 10004

212-436-0215

nyc.gov/consumers

Dear Mr. Keithley:

As the holiday gift-buying season begins, I am writing to urge your association and its members to commit to manufacturing and selling toys that are safe for children. The Department of Consumer Affairs enforces laws to ensure that New York City's consumers and businesses benefit from a fair and vibrant marketplace. We recognize that working with industry groups can be an effective way to help ensure that businesses comply with the law and work to keep the general public safe. We look forward to your cooperation on this and hope that you will moderate the anti-regulatory stance you have taken in the past.

Children and adolescents are especially vulnerable to harmful substances in the products they use, because they are affected by smaller quantities of chemicals than adults, because their bodies are developing and because young children are prone to putting objects in their mouths. The federal government has regulated 14 chemicals found in toys. At least four states have passed regulations that go beyond the federal standard. But there are around 85,000 industrial chemicals in use and in many cases scant evidence about their effects on human beings.

That is why I urge your Association and its members to: voluntarily create a standard that goes well beyond federal law and ban toxic chemicals in all products made or sold by TIA members; pull all toys with suspected toxic chemicals off the shelf; cease your efforts to oppose legislation that would keep toxic toys off the market. As an example, you could look to one of the country's top retailers, buybuy Baby, which has issued a restricted substances list for all products it sells.

I would also like to remind you that under New York City's Public Safety law, it is illegal to sell any toy firearm that can reasonably be perceived to be an actual firearm, unless the exterior is predominantly brightly colored. Toy guns that resemble real firearms pose a substantial danger to the public safety as we all saw in Cleveland, OH this week, where reportedly, a 12-year-old boy carrying a toy gun was fatally shot by police.

We are hoping you will work with us to prevent illegal, dangerous or toxic products from being sold or offered for sale to consumers in our City, especially when those products are toys that children will use. We look forward to speaking with you to discuss how your organization can help us keep our children safe.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Menin". The signature is fluid and cursive, written in a professional style.

Julie Menin, Commissioner

Testimony of Kai Falkenberg
New York City Department of Consumer Affairs
Before the
New York City Council Committee on Consumer Affairs

Hearing on Introduction 803-A (Toxic Chemicals in Children's Products)

January 14, 2016

Good morning, Chairman Espinal, as well as members of the Committee on Consumer Affairs. I am Kai Falkenberg, Senior Legal Counsel at the Department of Consumer Affairs ("DCA"), and I am joined by several colleagues from the agency: Amit Bagga, Deputy Commissioner of External Affairs, Alba Pico, First Deputy Commissioner, Shira Gans, Senior Policy Director, Steve Ettannani, Senior Advisor, External Affairs, and Alvin Liu, Senior Staff Attorney. We are also joined today by our colleagues from the New York City Department of Health and Mental Hygiene, Daniel Kass, Deputy Commissioner of Environmental Health and Eric Colchamiro, Senior Legislative Analyst.

I greatly appreciate the opportunity to speak with you about the bill before the committee today – Introduction 803-A ("Intro 803-A"). This bill, which would bar the sale of children's products and toys with hazardous chemicals and metals, is consistent with DCA's mission to protect and empower New York City's consumers and businesses. DCA is the country's largest municipal consumer protection agency. We license approximately 80,000 businesses across 55 different industries, resolve complaints between consumers and businesses, conduct legal investigations, enforce the City's Paid Sick Leave and Commuter Benefits laws, and operate the City's Office of Financial Empowerment, which is focused on empowering low income New Yorkers.

DCA's work includes protecting consumers from deceptive and illegal practices that may be harmful to New Yorkers. In addition to our robust enforcement of sales of tobacco to underage consumers, we regulate items such as box cutters, toy guns, and laser pointers, all of which may pose health and safety risks if misused by minors. Given the scope of our work, we have found it appropriate and necessary to call attention to the issue of toxic chemicals and heavy metals in children's products and toys. We applaud the committee for highlighting this very important issue and, in particular, would like to recognize the leadership of Council Speaker Melissa Mark-Viverito for introducing the bill we are discussing here today. Following a discussion of DCA's efforts to address the safety of children's products, we will provide specific comments on Intro 803-A.

Toxic Chemicals and Metals: The Regulatory Landscape

Toxic chemicals and heavy metals pose a serious health risk to children and infants in New York City and throughout the country. Young children are especially vulnerable since they often put objects in their mouths and exposure to even small quantities of harmful chemicals can affect their development.¹ Diseases caused by toxic chemicals can be prevented by protecting children

¹ See Age Determination Guidelines: Relating Children's Ages to Toy Characteristics and Play Behavior, U.S. Consumer Product Safety Commission (Sept. 2002).

from environmental threats to their health. That goal has been hampered, however, by the federal government's failure to mandate the elimination of many toxic chemicals from children's products.

In 2008, Congress took a step in the right direction by enacting the Consumer Product Safety Improvement Act ("CPSIA") which established federal standards for the use of 14 chemicals in children's products. That law, however, is limited to certain subgroups of children's products – specifically, toys and products small enough to be ingested. Beyond that limitation, the federal standards do not sufficiently address the breadth of chemicals that can have potentially harmful effects on children.

In addition, the federal regulatory regime is complicated by the fact that the same products may be subject to oversight by multiple agencies and standards. In the State of New York alone, chemicals in children's products can fall under the jurisdiction of up to four different agencies, governed by no fewer than five federal and state statutes.

Accordingly, while the federal government is best positioned to address these concerns, existing laws and regulations are inadequate to ensure that the products being used by our children are free of toxic chemicals.

DCA's Efforts

Recognizing the serious risks posed to children by harmful chemicals, DCA has urged the CPSC to engage in greater efforts to restrict the use of these substances in children's products. In December 2014, the Agency petitioned the CPSC to launch an investigation into 66 chemicals of high concern that are currently being used in children's products. We called upon the CPSC to assess the risk of adverse health effects associated with the continued use of each of those chemicals and asked the agency to issue rules banning the sale of any children's product that contains any of the named chemicals in sufficient concentrations to result in adverse health effects.

Following his receipt of our petition, Chairman Eliot Kaye of the CPSC expressed to DCA his intent to work with Congress to help address our mutual concern on the matter. A copy of DCA's petition has been made available to members of the committee today.

DCA has also reached out to the toy industry directly seeking their commitment to remove unsafe toys from the marketplace. In late 2014, just as the holiday gift-buying season was set to begin, the Agency teamed up with New York State Attorney General Eric Schneiderman to urge retailers to commit to manufacturing and selling toys that are safe for children. Specifically, in a letter to the President and CEO of the Toy Industry Association, DCA urged the association to voluntarily adopt a safety standard that goes beyond federal law and ban toxic chemicals from all products made and sold by its members. The Agency also urged the Association to pull all toys with suspected toxins off the shelves, and support legislation that would keep toxic toys out of the marketplace. In conjunction with that effort, we issued tips for New York City consumers on how to avoid hazardous children's toys. You should all have received copies of our letter and the Toy Industry Association's response.

Like this Agency, other jurisdictions have been similarly frustrated by the lack of robust and comprehensive federal standards. As a result, a number of individual states and counties have taken actions like the bill we are discussing here today. Five states: Maine, Minnesota, Oregon, Vermont, and Washington have enacted bans or require reporting on chemicals in consumer and children's products. There are also bills pending in New York State that would similarly restrict the sale of children's products containing certain chemicals and metals beyond the federal standards. Four counties in New York: Albany, Suffolk, Westchester, and Rockland have also passed legislation regulating the sale of children's products with certain chemicals and metals.

The passage of these laws by state and local governments has, however, raised questions of federal preemption. The legislation in Albany County has been stayed pending resolution of a challenge on preemption grounds, and it is our understanding that Albany's law has since been amended to address these concerns. Given similar questions regarding preemption, the New York City Law Department is currently reviewing Intro 803-A to identify any preemption issues that could be posed by any portion of the current version of the bill.

Intro No. 803-A: Opportunities and Challenges

To the extent federal statutes allow the City to enact local legislation in this area, this bill presents New Yorkers with an opportunity to minimize existing hazards to our children's health. If crafted and implemented effectively, it will significantly increase protections for New York City children and would send a strong signal nationwide that the presence of these toxic chemicals in children's products will not be tolerated.

That said, there are a few points we would like to raise concerning implementation and enforcement of the legislation in its current form. We note that all of these points presume resolution of the preemption concerns by the Law Department, as I just mentioned.

First, Intro 803-A bars retailers only from "knowing" violations. To establish a violation, DCA would have to prove that the retailer was aware that the product contained a banned substance. Since there is no requirement that retailers test all of their products, a defense that the retailer was unaware of the toxic chemicals in the product will be difficult to overcome. Conversely, requiring testing could unfairly burden small businesses, which often don't have the means and methods to analyze their stock. Further, limiting the legislation to "knowing" violations may actually discourage retailers from testing the products they sell since knowledge could trigger future liability.

Second, the legislation does not address the methods for detecting the presence of the banned substances. We have preliminarily explored the use of portable x-ray fluorescence ("XRF") guns for this purpose. The CPSC has conveyed to us that these machines do not produce definitive results and as such, can only be used for screening purposes; subsequent and expensive lab testing would be required for confirmation and enforcement action. Even as a screening tool, XRF guns are of limited use as they are only suited to screen a small subset of the products covered by Intro 803-A. Based on conversations with federal regulators and their accredited labs,

we have determined that XRF guns and “wet testing” at a contracted laboratory would be required for enforcement.

Third, the cost of enforcement would be high. A single XRF gun ranges in price from \$20,000 to \$75,000. These prices do not include the costs of training staff and requisite safety protocols required to operate the equipment and use it in a public space. Lab testing is expensive, as well. Certified laboratory testing fluctuates depending upon the design and make-up of the product. Labs will charge fees to test per component of an item. Components include items like snaps, buckles and zippers on a product. And even those component rates, at least for the lab we contacted, vary by product type. For example, to test one children’s backpack for all the metals banned in Intro 803-A it was estimated to cost over \$1,000 by a CPSC-certified lab.

Fourth, DCA does not currently have the staffing or expertise to enforce Intro 803. There are approximately 40,000 brick and mortar locations in the five boroughs that could potentially sell children’s products as defined by the legislation. This includes 99-cent stores, clothing stores, supermarkets, and bodegas, all of which sometimes sell children’s products and toys. The agency would need additional inspectors, legal and administrative staff as well as experts trained in interpreting the lab results.

Recognizing the complex regulatory landscape, preemption concerns, and potential consideration of New York State legislation, we look forward to working with you to address these issues before Intro 803-A is put up for committee vote.

Thank you for the opportunity to testify today. My colleagues and I will be happy to answer any questions you might have.



Toy Industry Association, Inc.

www.toyassociation.org

December 1, 2014

Julie Menin
Commissioner
Department of Consumer Affairs
42 Broadway, 8th floor
New York, NY 10004

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Dear Commissioner Menin:

I am writing in response to your letter dated November 24, 2014. The Toy Industry Association (TIA) commends your interest in assuring that toys are safe for children, and your outreach to our organization to help ensure that toy companies comply with all applicable standards and regulations. I am puzzled and disappointed, however, by your assertion that our association has taken an “anti-regulatory stance” in the past.

TIA and its members have been leaders in the development and implementation of stringent toy safety requirements for over seventy years. Our industry worked alongside government and consumer representatives to develop the very first toy safety standards and relinquished authority over those standards to an independent standard development organization (ASTM) more than thirty years ago. Moreover, TIA actively supported passage of the Consumer Product Safety Improvement Act (CPSIA) in 2008, which made the toy safety standards a federal law, imposed third-party conformity assessment requirements on all toys sold in the United States, and established substantial financial and even possible criminal penalties for failure to comply.

As you are aware, under numerous federal safety and environmental regulations it is currently illegal to sell toys containing substances known to be harmful to children and to which children may be exposed. These stringent, preemptive laws and regulations include the CPSIA, and the Federal Hazardous Substances Act (FHSA), the Child Safety Protection Act (CSPA), the Toxic Substances Control Act (TSCA) and the federal toy safety standard, ATSM F963, which became mandatory in 2009. TIA’s members typically exceed those requirements and performing rigorous safety assessments prior to the marketing of any product.

TIA and its members are constantly alert to possible emerging hazards that might warrant an amendment of the toy safety standards to assure the safety of children. Policies that seek to restrict the use of certain chemicals or products must, however, be based on credible, science-based research and should include full consideration of the level of



Toy Industry Association, Inc.

www.toyassociation.org

exposure and potential (or lack thereof) for harm. TIA continues to support strong regulations for toys that are national in scope to allow for consistently safe products across the country.

We are always available to speak with you and work in genuine partnership to ensure safe and fun play for children.

Sincerely,

Carter Keithley
President and CEO



**Christopher Goeken, Esq.,
Director of Public Policy**

**Proposed Int. No. 803-A
Concerning the Sale of Children's Products Containing Certain Chemicals**

**New York City Council Committee on Consumer Affairs
250 Broadway New York, NY**

January 14, 2016

My name is Christopher Goeken and I am the Director of Public Policy with the New York League of Conservation Voters.

Most parents would be shocked to learn that toys and other children's products--things our children come into contact with every day--may contain toxic chemicals.

We are not talking about chemicals with 15 syllables that only scientists have heard of. Mercury, cadmium, lead, and arsenic are still being found in children's products. In fact, a survey report we released just last month by Clean and Healthy New York, WeAct, and the Center for Environmental Health identified a dozen children's products that contain toxic chemicals for sale right here in New York City.

There is a growing body of scientific evidence linking toxic chemicals to at least five chronic conditions: cancer; learning and developmental disabilities; Alzheimer's and Parkinson's diseases; reproductive health and infertility; and asthma. During growth of the brain and nervous system in childhood, toxic chemicals can cause irreversible damage.



While there are federal laws that deal with some of these toxic substances, they mostly are focused on toys, not children's products in general. (Except for lead and in some cases cadmium, which is limited by the CPSC in children's products as well). Pacifiers, changing pads, crib mattresses, strollers, high chairs, carriers, pack-n-plays, infant swings, car seats, necklaces, clothing, and other children's products do not have the same testing standards as toys. Proposed Intro. 803-A is designed specifically to address this shortfall by limiting the presence of toxic chemicals in children's products.

This is an important distinction, because it means that Intro. 803-A is not preempted by federal law. States and localities are free to create regulatory standards where the federal government has not specifically regulated market safety. If there is a vacuum in product safety regulation, states and localities can act. A locality can also mirror federal standards to allow local enforcement of those standards.

The primary federal law that deals with regulation of toxic chemicals in toys is the Consumer Product Safety Improvement Act of 2008 (CPSIA). With few exceptions, CPSIA is entirely focused on toys. Since federal law largely covers toys and to avoid any preemption issues, Intro. 803-A is carefully crafted to avoid preemption by focusing on unregulated children's products. It also allows for co-enforcement of CPSIA standards for lead and cadmium, which is specifically permitted under the federal laws. Intro. 803-A is on very safe ground from a preemption standpoint.

Toxic chemicals and our children should not mix. NYLCV urges you to enact Proposed Intro. 803-A and protect kids in New York City.

The New York League of Conservation Voters, Inc., is the only statewide environmental organization in New York that fights for clean water, clean air, renewable energy and open space through political action.

**Testimony of Rick Locker
New York City Council
Consumer Affairs Committee
January 14, 2016**

My name is Rick Locker. I'm a lawyer at Locker Greenberg & Brainin LLP and act as General Counsel to the *Juvenile Products Manufacturers' Association, Inc* ("JPMA"), the *Halloween Industry Association, Inc* (HIA)¹ and also as Co-Counsel to the *Safe To Play Coalition* composed of Associations of Industries representing a wide array of manufacturers, importers, distributors and retailers of children's products throughout New York, the United States and globally (including apparel, toys, juvenile products and Halloween products). We have an expertise in the development of stringent national and global children's product safety requirements. There is nothing more important to me than assuring that U.S. children's products are the safest, most well regarded products in the world. I welcome the opportunity to again appear before New York City Council members to discuss these important issues and how we can increase enforcement locally of comprehensive safety requirements regulating both acute and chronic hazards to children. Nothing is more important than assuring safe products are available for their protection, care and enjoyment.

Thank you for the opportunity to appear before this Committee to share my views and concerns with *Proposed Int. 803-A*. I appreciate it and hope I can contribute to your deliberations on this matter.

Federal Law Already Uniquely Bans any Acutely or Chronically Hazardous Children's Product.

Children's Products must already, by federal law, meet the requirements of the Federal Hazardous Substances Act (FHSA) and the Consumer Product Safety Act (CPSA), as recently amended. These statutes and ensuing regulations administered by the U.S. consumer Product Safety Commission already provide that any children's product that presents a mechanical, thermal, electrical hazard or presents any acute or chronic chemical hazard to a child is to be considered a banned hazardous substance. Succinctly put products that present any hazardous exposure to a child cannot be legally sold in the United States. These laws apply specifically to children's products and are distinct from regulation of substances by The Food and Drug Administration (FDA) under the FDCA and the EPA under TSCA and its various enabling statutes and enforcement regulations.

¹ HIA is a not-for-profit corporation consisting of more than 30, many New York city Based< makers and sellers of a broad array of Halloween products including but not limited to costumes, accessories, décor, crafts and toys. Membership accounts for 50% of all such products sold in the U.S. The HIA produces the annual International Halloween Show held every year in New York city during the first week of December.

The FHSA prohibits a manufacturer from introducing into interstate commerce any “banned hazardous substance.”² Section 2(q) of the FHSA³, defines a “banned hazardous substance” to include “*any toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted.*”⁴ The FHSA defines the term “hazardous substance” to mean, inter alia, “[a]ny substance or mixture of substances which (i) is toxic..., if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.”⁵ The FHSA defines “toxic” as “*any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.*”⁶ Together, these statutory provisions ban the sale of any children’s product (“*any toy or other article intended for use by children*”) containing sufficient levels of a toxic chemical to potentially cause substantial injury or illness through reasonably foreseeable ingestion, inhalation, or absorption. The CPSC has issued regulations to enforce these provisions, including regulations explaining the precise circumstances in which a substance qualifies as “toxic.”⁷ CPSC’s regulations sum up the requirements of federal law as follows: “*A toy or other article intended for use by children that contains an accessible and harmful amount of a hazardous chemical is banned.*”⁸ In this regard *Proposed Int. 803-A* banning of substances by total weight, a) regardless of whether such content limits correlate to any hazard and b) regardless of whether there is a reasonable possibility that a child using the product would actually be exposed to the listed substances conflicts with the federal scheme of regulation. As a consequence this legislation would ban perfectly safe products that contain any level of the listed substances without regard to whether such action is actually necessary to ensure child health and safety. *This is why we must oppose it in its current form.*

The FHSA also contains an express preemption clause stating that (subject to limited exception not relevant here) provides “*if under regulations of the Commission promulgated under or for the enforcement of section 2(q) [15 U.S.C. § 1261(q)] a requirement is established to protect against a risk of illness or injury associated with a hazardous substance, no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations.*”⁹

² 15 U.S.C. § 1263(a).

³ 15 U.S.C. § 1261(q)

⁴ 15 U.S.C. § 1261(q)(1)(A).

⁵ 15 U.S.C. § 1261(f)(A).

⁶ 16 C.F.R. § 1500.3(c)(2).

⁷ 15 U.S.C. § 1261(g).

⁸ 16 C.F.R. § 1500.231(c)(1).

⁹ 15 U.S.C. § 1261 note, § (b)(1)(B).

Similarly, the CPSA authorizes the Commission to issue rules banning the sale of hazardous consumer products that present an *"unreasonable risk of injury."*¹⁰ Also like the FHSA, the CPSA includes an express preemption provision to effectuate the statute's "purpose" to *"develop uniform safety standards for consumer products and to minimize conflicting State and local regulations."*¹¹

In the 2008 under the Consumer Product Safety Improvement Act of 2008 ("CPSIA")¹², Congress adopted as federal law a stepped lead in substrate requirement for all children's products (now 100ppm) and the voluntary toy safety standards issued by the American Society for Testing and Materials ("ASTM"), known as the ASTM F963.¹³ Congress provided that those standards *"shall be considered to be consumer product safety standards issued by the Commission under"* 15 U.S.C. § 2058, id., meaning the ASTM F963 standards is now within the scope of CPSA's preemption provision for "consumer product safety standards." ASTM F963 contains nearly 70 pages of detailed requirements aimed at addressing various possible risks associated with toys, including the risk of exposure to toxic chemicals. In particular, ASTM F963 specifies maximum permissible levels of lead, mercury, antimony, cadmium, arsenic, mercury and other accessible chemicals from toys (see ASTM F963, et seq § 4.3.5.1(2) and Table 1). These requirements are *"designed to reduce children's exposure to heavy elements contained in accessible toy substrate"*. Under CPSIA CPSC's Lead in Paint and Similar Surface banning regulation was also modified to 90ppm.¹⁴

The CPSA's preemption provision also provides: *"Whenever a consumer product safety standard under this chapter is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard"*¹⁵

Therefore under existing law no person can now distribute or sell any children's product that contains hazardously accessible antimony, arsenic, cadmium, cobalt, mercury, lead or lead paint or any similar surface coating in New York City. These are the very same substances sought to be regulated by *Proposed Int. 803-A*, but in a non-identical manner. This creates an irreconcilable conflict with the federal scheme of regulation triggering concern about constitutional violations.¹⁶ A preemption analysis generally

¹⁰ 15 U.S.C. §§ 2057,2058.

¹¹ 15 U.S.C. § 2075; see also 15 U.S.C. § 2051(b)(3).

¹² Pub.L.No. 110-314

¹³ 15 U.S.C. § 2056b(a).

¹⁴ 16 CFR 1303

¹⁵ 15 U.S.C. § 2075(a).

¹⁶ Article VI, Clause 2 of the United States Constitution, states:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States,

requires an analysis of Congressional or federal regulatory intent related to the establishment of uniform national standards, rules regulations or requirements and can be express or implied.

New York State Conflict

Apart from inconsistency with the robust federal scheme of regulation of children's products there is also a concern with violation of New York State's Constitution, since Article IX , Section 2(c) provides that local law cannot be inconsistent with State regulation (or Home Rule). The New York State Attorney General is already on record as indicating that New York State currently has authority pursuant to Executive Law § 63(12) and New York General Business Law § 396-k, which also prohibits the sale, import, manufacture of children's products that pose an unreasonable risk of injury. The New York Attorney General has indicated that such laws apply to regulation of children's products containing toxic substances at unsafe levels, authorizing injunctive relief as well as penalties up to \$1000.00 per violation. In connection with such authority and enforcement, the Attorney general has also noted that CPSC requirements, protocols, test methods and certification requirements govern.

Practical Considerations Harming New York City Employers

These constitutional mandates are but one factor to be considered here. Expending taxpayer funds to create burdensome, inconsistent duplicative requirements on local businesses in a manner that burdens intrastate manufacturers and retailers without evidence on the record of any demonstrable hazard to children in the City represents questionable legislative action. Simply put there is no evidence before this body which reasonably supports any hazardous exposure to children from the products the City now seeks to additionally regulate. It is undisputed that such hazards and substances do not exist due to the extensive scope and scheme of federal regulations already in place for toys and many children's products as discussed above. Conspicuously absent from the record is any evidence that these regulations are needed or desirable. Furthermore apart from undermining nationally uniform regulation, the unintended consequences of such regulations would be to cause harm to New York City based manufacturers and retailers that produce and sell perfectly safe products. New York City remains a powerful Fashion Center. This is also true for the Halloween Industry, the Juvenile Products Industry and Retailing. By establishing confusing, non- identical standards as a predicate to distribution and sale of any children's products in New York

shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding”.

Article 1, Section 8, Clause 3 of the United States Constitution, known as the Commerce Clause, states that: “Congress has the power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes”.

City, a wide array of businesses that sell children's products would be competitively disadvantaged as consumers seek products at a lower cost with greater availability in adjoining counties, states and online. This is exacerbated because at retail, Distribution Centers are simply not capable of segregating products by City, so New York based businesses will lose sales, market share and goodwill well beyond the confines of the City.

In this regard thoughtful consideration should be given to potential costly impact on New York City based businesses, their employees and customers¹⁷.

As New Yorkers, we all have a shared interest in ensuring that only *safe* products are available for use by consumers. With children we recognize this responsibility is even greater. It is also important that to avoid unintended consequences that restrict availability of safe reliable products that consumers want for the protection, care and enjoyment of their children, that laws be based in sound science and risk assessment models applied in a consistent, nationally (indeed globally) uniform manner. In this regard we fully support local enforcement of the stringent national safety requirements we have cited. Thank you for your consideration.

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¹⁷ The Apparel, Fashion Accessory, Halloween, Juvenile Products Industries and significant retailers of these products are significant contributors to the local economy.



TESTIMONY OF

STEPHAN EDEL, POLICY DIRECTOR, CENTER FOR WORKING FAMILIES

BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON CONSUMER AFFAIRS

CONCERNING PROPOSED INT. NO. 803-A: A LOCAL LAW TO AMEND THE
ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, IN RELATION TO THE SALE
OF CHILDREN'S PRODUCTS CONTAINING CERTAIN CHEMICALS

JANUARY 14, 2016

Chairman Espinal, distinguished members of the Committee.

My name is Stephan Edel, and I present this testimony on behalf of the Center for Working Families ("CWF"). I am pleased to offer the following testimony in support of Proposed Int. No. 803-A to amend the administrative code of the city of New York, in relation to the sale of children's products containing certain chemicals. This bill would provide civil penalties for knowingly distributing children's products that contain known hazardous chemicals.

The Center for Working Families is a non-profit, non-partisan, 501(c)(3) organization committed to policy development and promotion. Through research, public education, leadership development and issue campaign organizing, we work to articulate and implement concrete public policies that advance working people and working families.

Expert chemists and advocates have identified serious health impacts of these chemicals; their toxicity is not in debate. There is a scientific consensus that total content standards are a reasonable and effective measure of the presence of toxic chemicals. The only contested issue is whether the city should have a role in enforcing reasonable standards with civil penalties.

The Center for Working Families strongly supports the passage of proposed Int. No 803-A which will reduce the chances of exposing children to harmful chemicals and encourage industries producing or purchasing products for the New York market to adhere to high standards when making decisions.

While various state and federal agencies attempt to regulate children's product safety, many experts have argued for a higher standard. Businesses and consumers alike want children's products to be safe. By setting a clear bar to reduce level of toxins, the bill offers clarity to

businesses and reassurance to families. Complying with the law will not be unduly burdensome and will ensure our children's products do not contain unsafe levels of known toxic chemicals.

This is of particular concern for low-income communities of color are already burdened by disproportionate environmental and toxicity burdens. One report by Physicians for Social Responsibility on toxic chemical exposure found that toxic chemical exposures create specific burdens borne by communities-of-color, Indigenous peoples, and low income communities. Their research showed that in New York City discount stores in low-income areas were commonly

“... selling more lead-laden toys and jewelry containing cadmium, a known carcinogen that causes kidney and immune system damage, than stores in more affluent communities.”

As our city government focuses on creating an equitable and healthy city, ensuring that we are not further burdening the most vulnerable children must be a top priority.

Thank you for the opportunity to provide testimony. We urge you to protect the health of New York City's children by passing Introduction 803-A.

**Testimony of
Kathleen Curtis
Clean and Healthy New York
To the New York City Council
Concerning the Intro 803-A
January 6, 2015**

Good morning. Thank you for the opportunity to speak in favor of Intro 803-A.

My name is Kathy Curtis, and I'm the executive director of Clean and Healthy New York, a statewide environmental health advocacy organization. I'm also a mom and a grandma, so the issue of keeping our kids safe from toxic chemicals has personal, as well as professional, importance.

I'm here this morning to talk about why this bill matters to children, why it matters to New York City.

Toxic chemicals play a significant role in our health. They can cause cancer, promote learning and developmental disabilities, wreak havoc on our ability to have children, lead to obesity and diabetes, cause asthma, damage organs, and more. Rates of many of these problems have risen with the influx of untested chemicals into daily life.

And children are more vulnerable to the effects of chemicals:

- They eat, breathe, and drink more, pound for pound, than adults do.
- They explore their world with their hands – and their mouths. My 10 year old daughter shoots daggers at me every time I bring it up, but I still have to remind her to keep things out of her mouth. Sometimes more than once a day. So they bring more of their environment into their bodies. Studies on flame retardant chemicals have found that toddlers have levels of these toxic chemicals on average five times as high as their mothers.

- Kids' bodies are changing rapidly, and for very young children and those entering puberty, they are going through critical windows of development, times when even small changes to chemicals in the body can shape health outcomes for the rest of their lives. Low doses matter to developing bodies.

Because of failings in federal and state policy, toxic chemicals are used in the products we rely on daily. They are in our couches, our jewelry, our toy cars, our car seats.

Washington State enacted a law to require reporting on 66 toxic chemicals in products made for children. It has had over 12,000 reports of toxic chemicals used in children's products in the last year alone, and over 24,000 reports since the database went online in 2012. Clearly, the problem is broad, and deep.

Heavy metals, the focus of this law, illustrate the broader problem. Here are just three of the metals in the bill, the harm they can do.

Antimony can cause liver and heart damage. In adults, it can lead to premature births or loss of a fetus.

Cadmium can cause breast or uterine cancer, early onset of puberty, kidney and lung damage, loss of motor skills and behavioral problems.

Cobalt can build up in heart, liver, pancreas and kidneys, can affect behavior. It is a likely carcinogen.

By passing Intro. 803-A, you will help protect children. This bill will ban the sale of products containing toxic chemicals – antimony, arsenic, cadmium, cobalt, lead, and mercury – in products made for children 12 and under. The bill has some important exemptions, including athletic and safety gear, such as helmets. It exempts medical devices.

By passing Intro 803-A, you send a message, and it has ripple effects around the world. New York City, with its large population, and large economy, has a huge impact on the marketplace, and on the decisions made at the state level.

Having this law on the books will make a positive difference for New York City's children. It will result in fewer toxic chemicals in children's life, which in turn will mean healthier children. I urge you to advance and pass Intro 803-A and the associated resolution without delay. Truly: our children are counting on you.



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STATEMENT OF
ANSJE MILLER
EASTERN STATES DIRECTOR
CENTER FOR ENVIRONMENTAL HEALTH

BEFORE
THE NEW YORK CITY COUNCIL
COMMITTEE ON CONSUMER AFFAIRS

HEARING ON
A LOCAL LAW TO AMEND THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK,
IN RELATION TO THE SALE OF CHILDREN'S PRODUCTS CONTAINING CERTAIN
CHEMICALS

JANUARY 14, 2016

Doctors and scientists warn of a silent epidemic of dangerous health effects from exposures to toxic chemicals in our homes. The government has only safety tested 200 of the 85,000 registered chemicals. But the chemicals we are talking about today are well studied by academics and other scientific researchers and their negative health effects are well known.

These are brain drain and cancer causing chemicals. These are chemicals linked to genetic abnormalities, hyperactivity, asthma, obesity, and fertility that we have readily found in products sold to New York City's children. We went out shopping in NYC stores on only *one day* and found all these toxic toys.

Congress is now working on conferencing a chemical reform bill that they have been working on for more than 5 years, but nothing in that bill would protect children from many dangerous chemicals in toys. It's shocking that so much time has been spent on a bill that doesn't provide basic protections for our children's health.

A simple XRF gun can detect the presence and levels of the dangerous chemicals named in Proposed Int. No. 803-A. At the Center for Environmental Health, we daily use an XRF gun to test products for their safety to human health. When we find chemicals of concern, we send the products to an outside lab for independent third-party verification. These results demonstrate that the XRF gun is a reliable indicator that the City can use to enforce this local law.

The chemical industry tells us to wait until they fix the broken federal chemical system. Samuel Beckett wrote a play. Two guys stand around waiting for Godot thinking they'll be saved once he comes. At the end of the play Godot never shows and the guys still stand around waiting.

We will no longer wait for Godot while New York's children are being exposed to these brain drain chemicals. Thank you to the NY City Council for stepping up and saying "No more waiting – our kids must be protected from these dangerous brain drain chemicals and increase our children's chances for a bright future."

Thank you for the opportunity to speak before the Council this morning in support of intro 803-A. My name is Jon Whelan and I am a single father of two young girls.

I became aware of the toxic chemical issue over the last four years while working on a documentary about the chemicals in everyday consumer products. Many children's products like jewelry, apparel, toys, and clothing contain chemicals linked to cancer and also chemicals linked to endocrine (hormone) disruption. Shockingly, companies selling products with these harmful chemicals are not breaking any federal law - the law is broken. The federal government is failing to protect our kids.

The Consumer Product Safety Commission (CPSC) does not have the authority to keep the chemicals of greatest concern out of our children's products. Because there's so little federal regulation, manufacturers have no incentive to be proactive and voluntarily switch to safer chemical formulations. Using the cheapest chemistry possible may be good for corporate cash flow but not so good for our children, and we're paying for it.

A recent economic analysis in the European Union estimates the cost of exposure from endocrine disrupting chemicals in the EU is more than \$209 billion a year in actual health care expenses and lost wages.¹ I can't tell you what that the total cost of exposure to cancer-causing chemicals is in economic terms but I can tell you that 50% of Americans will be diagnosed with cancer in their lifetime. The President's most recent Cancer Panel Report warns Americans to avoid toxic chemical exposure. Perversely, we allow companies to sell us products that contain these same harmful chemicals that the Cancer Report warns us about. The report goes on to say that toxic chemicals exposures are "devastating American lives."

Unfortunately, I can relate to that: my wife died from cancer seven years ago. So now it's my sole responsibility to protect my young daughters, but I need your help.

- We need to get the chemicals of greatest concern out of children's products.
- Consumers need full chemical disclosure on product labels. If manufacturers were required to disclose all chemicals on product labels then they would make better choices about the chemicals they sold, and consumers could make better choices about what they bought.

Most consumers believe that if a product is on a store shelf then it must be safe. Someone, somewhere is making sure of it, right? Nope, it's not true but the Council can make it come true in New York City by passing a bill that restricts the sale of children's products with harmful chemicals. I hope you do and if there's anything I can do to help then please ask. Thank you.

Jon Whelan
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¹ <http://minux.com/1Q5PTos>



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January 13, 2016

As pediatricians and scientists at the Children's Environmental Health Center at the Icahn School of Medicine at Mount Sinai, a Collaborating Centre in Children's Environmental Health of the World Health Organization, we strongly support New York State's proposed legislation entitled the Child Safe Products Act, in relation to regulation of toxic chemicals in children's products.

This legislation is a major step forward with respect to chemical reform in New York State and has significant potential to reduce exposures to toxic chemicals in vulnerable populations including infants, children and adolescents.

We have witnessed firsthand the need for chemical reform. Reports have documented children's exposures to lead in metal charms, cadmium in toys, arsenic in CCA treated wood play sets, and mercury in children's sneakers. Determining which children's products are safe is an impossible task for parents, leaving them overwhelmed, frustrated and concerned about their child's safety.

As environmental pediatricians, the single most common clinical question we get from parents is, "Is this product safe for my child or unborn child?" The burden cannot remain on the consumer to figure this out. Legislation that specifically addresses children's unique vulnerabilities with respect to environmental exposures is urgently needed. Most critically, children's products must be deemed safe prior to being placed on the market for mass consumption.

The proposed legislation allows for a more comprehensive consideration of potentially harmful chemicals in children's products. Several locations, including California, Maine, and Washington have all successfully implemented such legislation. Parents across New York State and throughout the country are demanding such reform.

In summary, passage of this legislation sends a clear statement that children's environmental health is a top priority and that New York State will not continue to allow products to be tested in the global market to see whether decades later there is the potential for harm. To protect the health of generations of New York State children, we must ensure that children's toys, products, and clothing are free from harmful and potentially harmful chemicals. We would be more than happy to follow up with you regarding any questions that you might have.

Sincerely,

Maida P. Galvez, MD, MPH
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Testimony of

Bobbi Chase Wilding
Clean and Healthy New York
To the New York City Council
Concerning Intro 803-A

January 14, 2016

Good morning, Council members. Thank you for the opportunity to speak in support of Intro 803-A and the associated resolution. My name is Bobbi Chase Wilding. I'm the deputy director of Clean and Healthy New York, a statewide environmental health advocacy organization. I have tested children's products for toxic elements here in New York City and around the state. I'm also a mother, of two school-age children.

In December, Clean and Healthy New York, along with allies, released its seventh report documenting toxic chemicals in children's products in New York State. We have tested items bought in stores from Buffalo to Long Island, and every borough of New York City.

Here, as in other municipalities, we highlighted a "dirty dozen." Our testing found:

- **Lead** in sandals, a keychain, two necklaces, overalls, a lunchbox, a small purse, and a charm bracelet – eight items in all
- **Cadmium** in a pencil case, and a keychain
- **Arsenic** in sandals, two keychains, a lunchbox, a necklace – five items
- **Antimony** two pairs of sandals, two keychains, two necklaces, a doll, a bag – five items
- **Cobalt** in sandals, two necklaces, overalls, a keychain, and a charm bracelet – six items

We tested the items using a tool called an X-Ray Fluorescence Analyzer, or XRF for short. Devices like these have been used extensively by manufacturers and regulators alike. The type of device we used for this study is called an HD XRF, and is made by upstate New York company, XOS. The Consumer Product Safety Commission staff have found that HD XRF results are directly comparable to laboratory testing, without damaging the item, and at much lower cost over time. This technology could be very helpful to the City in implementing a law like intro 803-A.

The good news is that we tested many items that do not contain these troubling chemicals. Companies can, and many are, making children's products without them. It requires them to pay attention to feedstock, so they don't accept contaminated recycled metals, and it requires them to choose designs that can be made with safer materials. And many companies have risen to the challenge.

Now is the time to make sure that all items sold for children are free from these harmful chemicals. Parents shouldn't have to worry that the things their children use or wear daily threaten their health. Thank you for your leadership, Speaker Mark-Viverito, and thank you to the 32 Council members who cosponsor the bill. Please pass Intro 803-A without delay.

January 14, 2016

My name is Kimberly Hall and I am a member of WE ACT and a resident of Harlem for over 20 years, but my most important role is Mom. I have two children and I am aware of the risks / perils of toxic chemicals. The bill to ban these toxins / chemicals needs to be passed to protect all of our children. It's a shame that you have to read multiple labels before you can purchase a simple toy for your child. Let's do the right thing to protect the kids.

Kimberly Hall
3150 Broadway, Apt 4E
New York, NY 10027
(646) 477-0662

January, 14th, 2016

My name is Stephanie Hoyle. I am a member of WeAct, an established activist organization which advocates for the people on issues including the Children's Safety Act.

WeAct has provided me with the knowledge of products, toys, cookware, and supplies being sold in my community. These dangerous toxic chemicals are toxins that harm us all. And these products are being sold to my people; unknowingly!

I, Stephanie Hoyle, have been a resident of NYC all my life. From Brooklyn to Harlem, Wagner Houses since 2000; one of the many low income communities in which these products are sold. I am a mother of three, a member of WeAct and an advocate of the community. I am asking for you to protect the community as I am tasked to protect my children. I ask the committee of Consumer Affairs, to do its job, to protect low income communities from the unknowing dangers of toxic products. Purchasing toxic products is a danger to my children, to me and my community. I am obligated to speak out on the danger factor.

Stephanie Hoyle

445 E 120th Apt. 8A
New York, NY 10035

January 13, 2016

My name is Rita Miller and I am a member of WE ACT for Environmental Justice. I would like to thank the committee for inviting the public to be a part of this process. I would like voice my support for the Child Safety Products ACT 803-A.

I am a resident of the Harlem community with concerns for the newborn and the school age children whom are our future.

There are currently many children's products being sold which have dangerous chemicals at various 99 cents stores. To name a few products there are plastic baby bottle, plastic cups, toys and baby hygiene products sold at very low prices which invites the community residents (in any financial status) to buy.

We have been to Albany and Washington D.C. addressing the issues concerning the dangers for children everywhere and the importance of the Child Safe Products Act and the need explicitly to remove hazardous chemicals from children's products.

We endeavor to continue to work on having this act approved and we believe that it's anywhere it can be accomplished it's in New York because New York can get it done. Thank you

Sincerely,

Rita Miller

208 W 151 St A6

NYC, NY 10039

David Evans

with WEAFT
and Columbia
University

Lead, cadmium, mercury and arsenic
Children extra vulnerable because of high GI uptake and
permeable blood-brain barrier

Lead, mercury & arsenic have many health effects, but all share an
adverse impact on ~~IQ~~ intelligence & memory, ~~etc~~ Also the
risk of infant & early childhood development is high

These metals are not needed in toys or other consumer
products, and their use should be banned.

History tells us that the economic impact on the toy
industry will be lower than companies claim.
During battles over PCBs and vinyl chloride, the
companies estimated the cost of removal 10 times higher
than public health advocates of the bans did. After they
were banned, the actual cost was ~~only 1/10~~ 10 times
lower than the ^{bans} advocates estimate + 100 times
lower than what the companies had estimated

→ This might well apply to toys as well - necessity is the mother of invention
and our scientific institutions might be able to develop more rapid ^{methodology} ~~methodology~~

The precautionary principle says we should ensure
that chemicals are safe before we use them in manu-
facturing.

~~AFS~~ Evans



A Call for Toxic-Free Children's Products

New York City
December 2015



A
report
by

**CLEAN &
HEALTHY
NEW YORK**

 **CEH**
center for environmental health

WEACT
FOR ENVIRONMENTAL JUSTICE

Acknowledgements

A Call for Toxic-Free Children's Products: New York City was produced by Clean and Healthy New York, Center for Environmental Health, and WE ACT for Environmental Justice.

Product testing was conducted by Bobbi Chase Wilding, MS, Clean and Healthy New York.

Report authors wish to thank the staff at XOS, Inc., for allowing us use of their testing equipment.

Executive Summary

Children's products containing toxic chemicals are for sale in New York City. These chemicals are dangerous, unnecessary, and pose health risks to children. They can cause cancer, trigger asthma, lower IQ, and damage vital organs.

This report, produced by Clean and Healthy New York, Center for Environmental Health and WE ACT for Environmental Justice, documents our project to purchase, in the five boroughs of New York City, products intended to be used by children on a daily basis and test them for the presence of some of the most hazardous chemicals. What we found should be troubling to all, especially parents and those who make policy in New York City.

In 2014, manufacturers of children's products reported over 11,000 uses of toxic chemicals to the Washington State Department of the Ecology. In the same year, the Maine Department of Environmental Protection received reports from multiple manufacturers of children's products about the use of BPA, arsenic, cadmium and mercury in products marketed to or intended for use by children.

New York City and New York State currently have no laws that require manufacturers to disclose the use of or ban many toxic chemicals in children's products. This report's findings clearly highlight the fact that some of the most dangerous chemicals are indeed in children's products on the store shelves in New York City. In this holiday season, parents and others need to know what is in the products they could be buying for kids.

We visited Jack's World, Macy's, Regine's, Shopper's World, Target, Toys"R"Us and several 99 cents stores in boroughs across New York City in June and September 2015 and tested a variety of toys, accessories, novelty products and apparel. Products were tested using a High Definition X-Ray Fluorescence Analyzer (HD-XRF). This analyzer has been determined by the United States Consumer Product Safety Commission to have accuracy comparable to laboratory testing, and is accepted for determining compliance with the federal Consumer Product Safety Improvement Act.

Not all products tested contained chemicals of concern; this report documents the ones that did. We found:

- Arsenic in two products: shoes and a lunch box,
- Antimony in five products: clothing, a necklace, an accessory, a purse and a doll,
- Cadmium in two products: a pencil holder school supply and an accessory,
- Cobalt in jewelry and accessories,
- Lead in four products: jewelry, accessories, and footwear.

This survey report, while not exhaustive, demonstrates that there are toxic heavy metals in a variety of children's products sold at discount retailers, mid-priced big-box stores as well as high-end department stores. We know that there are thousands of such products because of self-reporting data from children's products makers; this report shows that they are present on store shelves in New York City.

There is a wealth of growing scientific evidence linking chemicals in commonly-used children's products to diseases and disorders of environmental origin. The incidence of these health impacts is on the rise. Children are uniquely vulnerable because they eat, drink and breathe more — pound for pound — than adults, put their hands and objects in their mouths more often, and are undergoing developmental stages that are sensitive to disruption from toxic chemicals.

New York legislators should protect children from toxic chemicals by banning their use in toys and children's products. Makers of children's products should not allow toxic chemicals in their products, and retailers should refrain from selling children's products containing toxic chemicals.

Introduction

Non-toxic products occupy store shelves right next to those that contain toxic chemicals. There is no way a parent or anyone shopping can tell by looking at them, reading the label or visiting the company website which ones are safe and which ones contain hidden hazards. Even the most knowledgeable parents can't protect their families.

Children and babies are exposed all day, every day to toxic chemicals in products made for their use. Their rapidly developing brains and growing bodies are more susceptible to the health impacts of these hidden hazards. Parents can't get the information they need to shop their way out of this problem. Stronger laws are needed to adequately protect our children.

Some states have taken action. The Children's Product Safety Act of 2008 in Washington State requires children's product makers selling products in the state to disclose the use of dangerous chemicals. This disclosure has shed light on the fact that dangerous chemicals are in thousands of

products intended for everyday use by children and babies. Maine passed a similar law in 2008, which was amended in 2011, and they are now also collecting data on use of chemicals in products. Vermont and Oregon followed suit in 2014 and 2015 respectively.

The results of testing in New York City show that the problem is not just local to Washington State, but widespread. Children's products containing lead, cadmium, arsenic, and other highly dangerous chemicals were easily found on store shelves in each of the New York City stores surveyed.

If we fail to address this silent public health and environmental epidemic, exposure to toxic children's products today can cause lifelong harm to many children in our community. Members of the New York City Council should act now to ban the most dangerous toxic threats so parents will know that the toys they buy are safe. Children and babies in New York City can't wait any longer.

The Science: Toxic Chemicals Cause Health Problems

Toxic chemicals in household products contribute to the rise in diseases. They are linked to cancer, learning disorders, genetic anomalies, hyperactivity, developmental delays, asthma, obesity and infertility.

The rates of childhood cancers have been trending upward in the last four decades. Childhood leukemia increased by 40% and brain cancer increased by 39% since 1973.¹ This increase in cancer incidence occurred during a period marked by the rising use of a wide range of industrial chemicals. In 2012, childhood cancer was the second leading cause of death (after accidents) among New York's children from age 5 to age 15.² Childhood cancer survivors go on to have chronic health issues including second cancers, heart damage, osteoporosis and thyroid problems.

As the 2008-09 President's Cancer Panel stated, "the true burden of environmentally induced cancer has been grossly

underestimated. With over 80,000 chemicals on the market in the United States, many of which are in products used by millions of Americans in their daily lives and are unstudied and largely unregulated, exposures to potential environmental carcinogens is widespread."³

Asthma incidence and mortality have more than doubled since 1991. In New York City, the rates of asthma hospitalizations for children 0-4 years tops out at 69.3 per 10,000 and for those ages 5 -14 years the rate is 36 per 10,000. While the science on what causes asthma is not conclusive, we do know what triggers asthma and chemicals play a role.⁴

In fact, according to the Society of Toxicology, "*Even in low concentrations, many chemicals are irritants and will trigger symptoms in asthmatics that have twitchy hypersensitive airways.*"⁵ In all, 28% of developmental disorders

are due to direct toxic environmental exposure, or combinations of exposures with genetic susceptibility.⁶ Genetics loads the gun, environment pulls the trigger.

Toxics in household products disproportionately impact children and babies. Babies' and children's growth needs cause them to consume more than double the food and water and breathe more air proportionally than adults. Infants typically double in weight by five months of age and triple by one year. This rapid growth makes the developing organs, especially the brain, highly vulnerable to toxic exposures. Hand-to-mouth behavior of young children also puts them at increased risk. They spend time on the ground, causing them to breathe in dust and particles that contain toxic chemicals. They also put everything in their mouths, greatly increasing the likelihood that they will ingest dangerous chemicals as they come out of products. Children's immature metabolism makes them less able to break down and excrete toxic chemicals.⁷

Toxic chemicals are added to products that are found in virtually every home and on store shelves throughout this country. Products that children use every day contain toxic chemicals. Each and every day, children and babies are at risk of developing chronic and debilitating illnesses due to unnecessary, preventable exposure to toxic chemicals.

Current regulations are inadequate to protect our children, our families, our communities and the environment. The Toxic Substances Control Act of 1976, the Consumer Products Safety Act of 1972, and the Consumer Product Safety Improvement Act of 2008 have allowed for very limited regulation of chemicals. But as the data in this report shows, current protections do not keep toxic chemicals out of children's products. Diseases of environmental origin are preventable, and eliminating exposure to environmental hazards is the best defense against them. Efforts to remove toxic exposure have been successful in the past. The removal of lead from gasoline resulted in a 90% reduction in blood lead levels in American children; decreased use of alcohol during pregnancy has greatly reduced the number of babies born with fetal alcohol syndrome. Although cancer is caused by a complex interaction of genetic predisposition and exposure to environmental factors, we do know that reducing exposure to known carcinogens will result in a reduction in the incidences of cancer.

Further, the reduction of the use of neurotoxins will reduce the incidence of lowered IQ and learning disabilities. It's also logical that reducing the use of reproductive toxicants will reduce the incidence of infertility. Reducing the use of asthmagens will reduce the incidence of asthma, as well as the number, frequency and severity of asthma attacks.

The Problem

In 2008, the State of Washington passed the Children's Safe Products Act which requires makers of children's products sold in Washington to report to the state if these products contain any of a list of 66 Chemicals of High Concern to Children. This landmark legislation has opened a window, documenting the presence of previously hidden hazards in children's products including clothes, car seats, bedding, tableware and toys. Washington State's children's product database shows 11,223 uses of toxic chemicals in children's products as reported in 2014 alone.⁸

In November 2015, Washington State released children's products testing conducted in 2014 and 2015. They found antimony in 72% of children's products tested, lead in 48%, cobalt in 38%, arsenic in 34%, cadmium in 14%, and mercury in 8%.⁹

What does that mean for New York's children? Survey reports in New York counties from Erie to Suffolk identified toxic chemicals in a wide array of children's items.

Results: NYC Stores Sell Toxic Children's Products

Clean and Healthy New York tested products purchased at stores across New York City, including Jack's, Macy's, Regine's, Shopper's World, Target, Toys"R"Us and several 99 cents stores. Products were tested using a High Definition X-Ray Fluorescence Analyzer (XRF), which can detect elements like lead, mercury, chlorine and bromine. We identify twelve product with harmful chemicals.

- **Arsenic** in two items: shoes, and a lunch box;
- **Antimony** in five items: clothing, a necklace, an accessory, a purse, and a doll;
- **Cadmium** in two items: a pencil holder school supply and an accessory;
- **Cobalt** in six items: jewelry and accessories;
- **Lead** in four items: jewelry, accessories, and footwear.

Digimon Study Set—Pencil Case



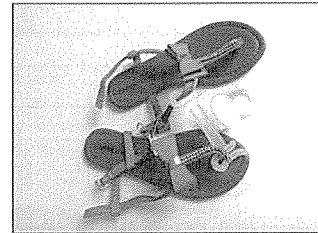
Cadmium

Best Show in Town—Key Chain



Lead

Pink Crush Sandals—Rhinestones



Antimony, Cobalt, Lead

I ♥ NY Bag



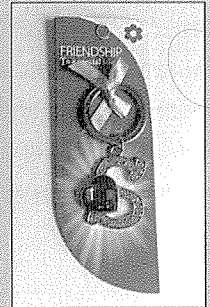
Lead

Carter's Shirt and Overalls



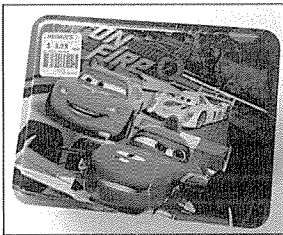
Cobalt, Lead

Friendship "S" Keychain



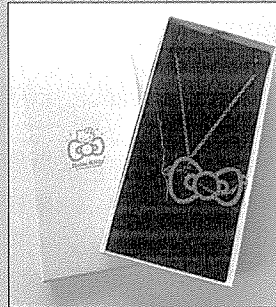
Antimony, Cadmium, Cobalt,

Cars Lunch Box



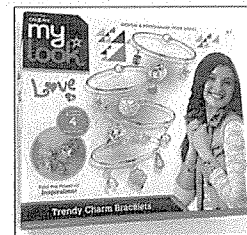
Arsenic, Lead

Hello Kitty Necklace



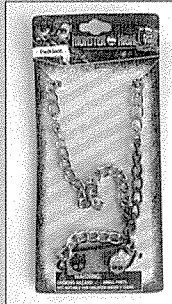
Antimony, Cobalt, Lead

My Look DIY Jewelry Kit



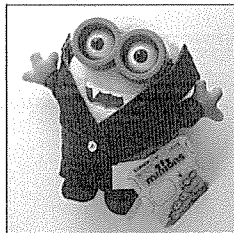
Cobalt, Lead

Monster High Necklace



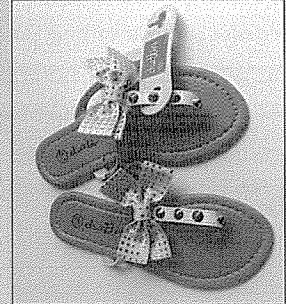
Arsenic, Lead

Minions Dracula Doll



Antimony

Chattie's Sandals



Antimony, Arsenic

Summary & Recommendations

Our testing shows that these products are not just sold far away — they are on store shelves right here in New York City.

A handful of major retailers have told their suppliers that they will no longer accept products that contain some chemicals of concern to human health and the environment. But it is clear from the results of our survey that voluntary efforts alone are not enough to get toxic chemicals out of children's products.

A comprehensive federal law to reform the nation's chemical policy has been stalled for a decade. Even if this law were enacted, it could be another decade before it regulates a single chemical. In this absence of Federal action, 33 states considered or enacted policies in 2014 to address toxic chemicals in consumer products.

In New York State, a law to ban the most highly toxic chemicals and require disclosure of a more comprehensive list of others has passed in the Assembly several times but stalled in the State Senate. In 2015, 42 state senators co-sponsored the Child Safe Products Act — many more than it needed to pass — but Senate leadership blocked its passage in the final days of the session. Counties have already taken the lead, passing laws to ban toxic chemicals in Albany, Rockland, Suffolk, and Westchester counties.

We make the following recommendations:

New York City should protect children from toxic chemicals by banning their use in children's products.

The City Council has legislation pending that would tackle the chemicals included in this report, protecting millions of children from the dangers posed by heavy metals. New York City should join the four counties that have already acted in leading efforts to remove toxics from children's products.

New York State should protect children from toxic chemicals by banning their use in children's products.

The New York State legislature should address the issue of toxic toys in children's products in the upcoming legislative session. During the past several years, a comprehensive children's products policy has gotten more traction than ever before and is ready for passage in 2016.

Toy and children's product manufacturers should stop using toxic chemicals in their products.

Many of the toys and products we tested did not contain toxic chemicals harmful to children. Since children's products can be made without them, we call upon manufacturers to stop using them. This requires manufacturers to take better control of their supply chain to ensure that the products they offer for sale do not contain potentially harmful substances.

Retailers should refuse to sell children's products containing toxic chemicals.

Retailers should ensure that products on their shelves are free of toxic chemicals. Major retailers and those that specialize in baby products should lead the way by making sure their products do not contain them. Retailers can learn how through the Getting Ready for Baby Campaign, (www.gettingready4baby.org), which works with retailers to urge their suppliers to stop using hazardous chemicals in infants and toddler's products.

Appendix 1: Detailed Results

All quantities are reported in parts per million (ppm). * indicates that lead level, including confidence range, could violate federal law.

#	Product	Part	Store	Antimony	Arsenic	Cadmium	Cobalt	Lead
1	Chatties Sandals	Rhinestone	Regine's	538	253			
2	Pink Crush Sandals	Rhinestone	Shopper's World	3434			1,236	108,042
3	Digimon Pencil Case	Plastic material	7 Trading			661		
4	Best Show in Town Bats and Ball Keychain	Red paint on ball	7 Trading	61				4,147
5	Hello Kitty Bowtie Necklace	Metal	Jack's				760	
5		Rhinestone		1,064				74,231
6	Carter's Baby Collection—Shirt & Overalls	Button face	Macy's				13,711	
6		Painted snap face					2,559	78.9*
7	Cars Lunchbox	White interior	Regine's		227			85.9*
8	Minions Dracula Doll	Body	Toys"R"Us	208				
9	Monster High Necklace	Dark pink coating	K-Mart		60.5			80.5*
9		Bright pink coating			247			76*
9		Yellow coating		442	47.3		1,400	
9		Bare metal link					2,457	
10	I ♥ NY bag	Zipper pull	Jack's	56.9				17,961
11	S Keychain	Rhinestone	Target	2051			506	
11		Metal back				80.3		
12	My Look jewelry kit	Key charm	Target					164
12		Metal bracelet					2,135	169
12		Silver bracelet						194
12		Flower charm—back						244
12		Brass bracelet					1,915	204

Total number of items containing chemical of concern

5

3

2

6

8

Appendix 2: Methodology

During the summer and fall of 2015, the authors of this report visited a number of stores in New York City and purchased over a dozen children's products. Clean and Healthy New York staff then screened the children's products thoroughly in their office, using an Innov-X X-Ray Fluorescence Analyzer (XRF). We then used an XOS High Definition X-Ray Fluorescence Analyzer (HD XRF) to verify our results. Quantities of heavy metals presented in this report were determined using HD-XRF.

Sampling was not random: We found no chemicals of concern. We only include chemical results when the chemical information from Washington State's database as our guide⁸, along with extensive past experience in testing products in New York State. This report is not a systematic survey of any product type, brand, or store. We do not report products in which a chemical was found at or above the following levels, codified by the Toxic Free Toys Act passed in Suffolk County in 2015.

- Cadmium: 75 parts per million (ppm);
- Arsenic, antimony, cobalt and mercury: 40 ppm;
- Lead: 90 ppm in surface coating, 100 ppm base material.

These levels are based on protective standards set in the U.S. and globally. We have included three items with lead concentrations just below the current legal threshold. In those cases, the confidence levels (presented as a range) are large enough that the items could, in fact, be in violation; further testing would be needed.

About the XRF Analyzer

The High Definition X-Ray Fluorescence Analyzer (HD XRF) is one produced by XOS, based in East Greenbush, NY. XRFs are used by government agencies and product manufacturers to screen consumer products for toxic chemicals. XRFs can detect elements such as lead, cadmium, chlorine, arsenic, mercury, cobalt, and antimony, as low as the level of parts per million. The HD XRF has been determined to be comparable to laboratory testing by the Consumer Product Safety Commission for determining compliance with the federal Consumer Product Safety Improvement Act.¹⁰

Footnotes

1. Landrigan, *et al* (2013) *New York State's Children and the Environment, A Report from the Children's Environmental Health Center*, Icahn School of Medicine at Mount Sinai. www.mountsinai.org/static_files/MSMC/Files/Patient%20Care/Children/Childrens%20Environmental%20Health%20Center/NYS-Children-Environment.pdf

2. See above.

3. Reuben, SH, (2010) "2008-09 Annual Report Reducing Environmental Cancer Risk: What We Can Do, Now." The President's Cancer Panel. deainfo.nci.nih.gov/advisory/pcp/annualReports/pcp08-09rpt/PCP_Report_08-09_508.pdf

4. New York City Department of Health and Mental Hygiene. NYC Tracking Program: Environmental and Health Data Portal Asthma. Emergency Room Visits for Children 0 - 4 years old. nyc.gov/health/tracking

5. Society of Toxicology, (2015) "Tox Topic: *Can All Those Chemicals Be Causing My Asthma?*" [www.toxicology.org/pubs/docs/pr/](http://www.toxicology.org/pubs/docs/pr/ToxTopics/TT1_Asthma.pdf#search=%22)

[ToxTopics/TT1_Asthma.pdf#search=%22](http://www.toxicology.org/pubs/docs/pr/ToxTopics/TT1_Asthma.pdf#search=%22)

6. See footnote 1.

7. See footnote 1.

8. State of Washington, Department of Ecology, (2015) Children's Safe Product Act Database. www.ecy.wa.gov/programs/hwtr/RTT/cspa/search.html

9. Washington State Department of Ecology (2015) "Chemicals of High Concern to Children in Children's Clothing, Footwear, and Accessories." fortress.wa.gov/ecy/publications/documents/1503039.pdf

10. Consumer Product Safety Committee. (2015) "Study on the Applicability of X-ray Fluorescence Spectrometry for Use in ASTM F963 Total Element Screening." www.cpsc.gov/PageFiles/181483/Lead-in-Paint-Measure-April2015.pdf

All websites accessed 12/15/2015

A Call for Toxic-Free Children's Products

New York City
December 2015

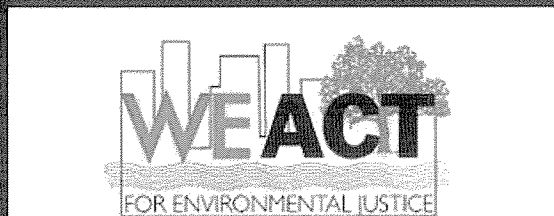
**CLEAN &
HEALTHY
NEW YORK**

CHNY advances policy and market changes to promote safer chemicals, a sustainable economy, and a healthier world.

62 Grand Street, Albany, NY 12207
www.cleanhealthyny.org
Office: 518-641-1552



CEH protects people from toxic chemicals by working with communities, consumers, workers, government, and the private sector to demand and support business practices that are safe for public health and the environment.



WEACT builds healthy communities by assuring that people of color and/or low-income participate meaningfully in the creation of sound and fair environmental health and protection policies and practices.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: CECIL CORBIN - MARK

Address: _____

I represent: WE ACT FOR ENVIRONMENTAL

Address: JUSTICE 1854 AMSTERDAM AVE

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803-A Res. No. _____

in favor in opposition

Date: 11/14/2016

(PLEASE PRINT)

Name: Muhammad Dalhata

Address: 430 Essex St

I represent: Center for Working Families

Address: 1 Metrocenter

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803-A Res. No. _____

in favor in opposition

Date: JAN 14 2016

(PLEASE PRINT)

Name: STEPHEN ROSARIO

Address: 11 N. PEARL ST. ALBANY NY

I represent: AMERICAN CHEMISTRY COUNCIL

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803A Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: ABRAHAM MAMUYE

Address: 1955 E 57th St Brooklyn NY

I represent: MAMUYE BROTHERS INC.

Address: 1305 BWAY NY NY 10008

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803 Res. No. _____

in favor in opposition

Date: 1/14/16

(PLEASE PRINT)

Name: TINA JOHNSON

Address: 1854 AMSTERDAM AVE NY NY 10031

I represent: WE ACT FOR ENVIRONMENTAL JUSTICE

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803 Res. No. _____

in favor in opposition

Date: 1/14/16

(PLEASE PRINT)

Name: SHERYL REIKO ANN BASS

Address: _____

I represent: MYSELF

Address: _____

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: MARTIN WOLFF

Address: BURLINGTON, VT.

I represent: SEVENTH GENERATION

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803 A Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: DAVID EVANS

Address: 552 Riverside Drive, 6K

I represent: WEACT

Address: 1354 Amsterdam Ave

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Joe Shmugh

Address: 34 West 33rd St. 8th floor

I represent: BOBYFARM

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 1-14-16

(PLEASE PRINT)

Name: STEVEN LEVY

Address: 1384 BROADWAY 10018

I represent: STAR SIDE KIDS

Address: 1384 BROADWAY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803 Res. No. _____

in favor in opposition

Date: 1/14/16

(PLEASE PRINT)

Name: DANIELLA RIN DOWER

Address: PO BOX 450 NY, NY 10031

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803 Res. No. _____

in favor in opposition

Date: 1/14/16

(PLEASE PRINT)

Name: DAVID LEVINE

Address: 7 West 13th St NYC

I represent: American Sustainable Business Camp

Address: 1401 My Ave DC

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803-A Res. No. _____

in favor in opposition

Date: 1/14/2016

(PLEASE PRINT)

Name: KATHLEEN A CURTIS

Address: 323 BONNYVIEW LN SCH'DY NY

I represent: CLEAN AND HEALTHY NEW YORK

Address: 62 GRAND STREET ALBANY NY 12306

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803 Res. No. 80

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Jordan Christensen

Address: 400 S 2nd St Brooklyn, NY 11211

I represent: Citizens Campaign for the Environment

Address: 235 Main St Farmingdale, NY 11735

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803A Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: CHRIS D'ANDREA

Address: 125 WORTH

I represent: NYC DOHMH

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 803

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Stephane Hoyle

Address: 445 East 20th Street NY NY 10035

I represent: we act

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803A Res. No. _____

in favor in opposition

Date: 1/14/2016

(PLEASE PRINT)

Name: Bobbi Chase Wilding

Address: 62 Grand St., Albany, NY 12207

I represent: Clean and Healthy New York

Address: above

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: LAURA ORNSTEIN

Address: 20 COMMERCE ST #5B BEACON NY

I represent: NYS SUSTAINABLE BUSINESS COUNCIL

Address: same as above

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. _____ Res. No. 803

in favor in opposition

Date: 1/14/2014

(PLEASE PRINT)

Name: Ansgar Miller

Address: 42 Broadway, Ste. 140, NY, NY 10007

I represent: Center for Environmental Health

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. 803 Res. No. _____

in favor in opposition

Date: 1/14/16

(PLEASE PRINT)

Name: Rob Korblum

Address: 151 Kent Ave. Brooklyn NY 11249

I represent: NYPIRG

Address: 9 Murray St. NY NY 10003

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. 803 A Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: RICK LOCKER

Address: 420 5th Avenue NY NY

I represent: SAFE TO PLAY COALITION

Address: SME

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. _____ Res. No. 803
 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: MAIDA GALVEZ, MD

Address: MOUNT SINAI

I represent: AAP

Address: 1 GUSTAVE LEVY 1057 NY,
10029

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. _____ Res. No. 803
 in favor in opposition

Date: 1/14/10

(PLEASE PRINT)

Name: James Beck

Address: 233 Park Pl #38, Brooklyn

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. 803A Res. No. _____
 in favor in opposition

Date: 1-14-16

(PLEASE PRINT)

Name: Jon Whelan

Address: 5 Carmine St. NY NY

I represent: Parent

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803-A Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Shirley Gans

Address: _____

I represent: DCA

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803-A Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Steve Eramanni

Address: _____

I represent: DCA

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803-A Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Alba Pico

Address: _____

I represent: DCA

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803-A Res. No. _____

in favor in opposition

Date: 1-14-2016

(PLEASE PRINT)

Name: Amrit Singh Bagga

Address: _____

I represent: DCA

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803-A Res. No. _____

in favor in opposition

Date: 1-14-2016

(PLEASE PRINT)

Name: Ken Falkenberg

Address: _____

I represent: DCA

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803-A Res. No. _____

in favor in opposition

Date: 1-14-2014

(PLEASE PRINT)

Name: Christopher Goelker

Address: ~~3405 80th St~~ 30 Broad St.

I represent: NYLCV

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803A Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Alvin Liu

Address: _____

I represent: DCA

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803-A Res. No. _____

in favor in opposition

Date: 1/14/2016

(PLEASE PRINT)

Name: Rita Miller

Address: 208 West 151 Street #A6

I represent: We Act for Environmental Justice

Address: Amsterdam Avenue

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 903A Res. No. _____

in favor in opposition

Date: 1/14/16

(PLEASE PRINT)

Name: Danielle Iverson

Address: 801 South Greenbrier St Arlington, VA 22204

I represent: AAFA

Address: 140 6th Street Washington, DC

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. Int Res. No. 803A
 in favor in opposition
Date: 1/14/16

(PLEASE PRINT)

Name: Mark Fellin
Address: 1550 M St Washington DC 20005
I represent: JPMA
Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 803 Res. No. _____
 in favor in opposition
Date: _____

(PLEASE PRINT)

Name: Hilary Baum
Address: 5454 Palisade Ave Bronx 10471
I represent: myself
Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 803A

in favor in opposition

Date: 1/14/16

Name: SAM SHAMIE (PLEASE PRINT)

Address: 39 COLIN PL BKLYN NY

I represent: DELTA CHILDRENS PRODUCTS

Address: 114 WEST 26th ST NYC

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 803A

in favor in opposition

Date: 1/14/16

Name: Joseph SHAMIE (PLEASE PRINT)

Address: 35 COLIN PLACE BKLYN

I represent: DELTA CHILDRENS PRODUCTS

Address: 114 WEST 26th NYC

Please complete this card and return to the Sergeant-at-Arms