

February 21, 2021

Chair Marsh and Members of House Committee On Energy and Environment,

I urge you to pass HB 2495 and support its passage as law.

I suggest a possible improvement to the bill regarding listing a class of chemicals. The bill provides:

“(4) “Class of chemicals” means a group of chemicals that are related or similar based on their structure, use, physical property, radiological property or other factors.”

“The authority may include a class of chemicals on the list.”

While this concept of listing chemical classes makes sense to avoid harmful substitutions, the vagueness of the above definition may have unintended adverse consequences.

I do not know the source for this definition: “related or similar based on their structure, use, physical property, radiological property or other factors.” I doubt that it is a term of art with well-defined objective boundaries in the relevant technical fields. In particular, “related or similar based on ... use ... or other factors” could encompass any possible substitute chemical. That in turn could discourage innovation in finding non-toxic substitutes, depending on how the agency implements this statutory provision. This is so, I suspect, despite the waiver mechanism.

I am not an expert in this field and do not know the best solution to this vagueness problem. But as a patent attorney I understand that innovation depends on clearly defining the boundaries of any prohibition against a class of technology, be it a patent claim, legislation or regulation.

Consider these two possible amendments.

1. Add a provision allowing the authority when it includes a class of chemicals to also exclude particular specified chemicals within that class known to have no harmful toxicological effects.

2. Require the authority to define the class of chemicals in a manner having reasonably certain boundaries to those in the relevant technical fields.

Thank you for advancing this bill and for your service.

John D. Vandenberg
Patent Attorney
Sherwood Oregon