



Western States Petroleum Association
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Chief Operating Officer and Chief of Staff

June 26, 2007

The Honorable Linda Adams
Secretary, California Environmental Protection Agency
1001 I Street
P.O. Box 2815
Sacramento, CA 95812-2815

Subject: Initial WSPA comments on CalEPA Green Chemistry Initiative

Dear Secretary Adams:

On behalf of the Western States Petroleum Association (WSPA), we appreciate the opportunity to provide comments on CalEPA's Green Chemistry Initiative. WSPA is a nonprofit trade association that represents petroleum companies in California and the other five western states.

The Special Report, "Green Chemistry in California: A Framework for Leadership in Chemicals Policy and Innovation," by Wilson, Chia and Ehlers ("Special Report") stressed the need to understand and act on gaps in chemical information. This recommendation is consistent with the direction given to the Department of Toxic Substances Control (DTSC) in an April 20, 2007, memo from Cal-EPA Secretary Linda Adams announcing Cal-EPA's Green Chemistry Initiative: undertake and use the results of a baseline assessment in developing options for the state to identify and fill gaps in chemical data and regulation. With the launch of the Green Chemistry Initiative, Cal-EPA is entering into a policy arena that is already heavily regulated at the International, Federal, State and local government levels. Thus, a comprehensive gap analysis must be performed at the outset to avoid duplicative and possibly contradictory regulatory actions.

In response to Cal-EPA's solicitation for initial comments on its Green Chemistry initiative, the Western States Petroleum Association (WSPA) has identified five steps central to this baseline assessment. These actions will ensure that DTSC has sufficient and valid information to clearly identify any data or regulatory gaps, describe potential risks presented by such gaps, and define a reasonable range of options to fill them.

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1. *The Special Report provided general summary information about a few Federal and State laws, concentrating primarily on certain aspects of the Federal Toxic Substances Control Act. Based on this cursory treatment of existing laws and regulations the authors concluded that data, safety and technology gaps exist in the current regulatory framework. However, before establishing a completely new program, DTSC should conduct a more comprehensive review of all existing applicable laws, regulations and programs, both to pinpoint specific gaps and to identify any duplication or overlap in current programs.*

Recommendation: Perform a comprehensive gap analysis to assess the breadth of coverage of current laws, regulations and programs intended to reduce risks to workers, public health and the environment. Such analysis should include all existing Federal, California and local laws, regulations, implementation mechanisms (i.e., policy directives, ordinances, public-private partnerships, etc.) applicable to the development, production, acquisition, distribution, use, and disposal of chemicals.

2. *The Special Report identified some, but not all of the existing databases, inventories and chemical lists that provide information to regulators and the public on various substances. Since such information will form the foundation of Cal-EPA's Green Chemistry Initiative, DTSC should identify all relevant sources of chemical information, how the information is used under existing laws, regulations, and programs, whether and through what mechanisms it is available to the public, and whether it is subject to any restrictions (such as trade secret protection requirements).*

Recommendation: (1) Identify specific information and data essential to the development of Cal-EPA's Green Chemistry Initiative. (2) Perform a comprehensive gap analysis of all existing databases, inventories and lists that can be used to obtain this information and determine whether the available information is sufficient, or if additional information should be obtained to inform development and implementation of the Initiative.

3. *The Special Report specifically recommended development of a chemical reporting system for California, but it did not review or evaluate all of the current reporting requirements that exist at Federal, State and local levels. To understand if significant gaps exist, and to avoid duplication and overlap in reporting, DTSC should develop a comprehensive list of all existing reporting requirements.*

Recommendation: Compile a comprehensive list of all reports that must be filed with Federal, State and local agencies, including the information and data submission requirements for each. Consistent with recommendation # 2 above, determine whether current reports provide sufficient baseline information, and if not what specific additional information should be obtained. DTSC should also determine whether current laws and regulations provide the authority necessary to obtain such information.

4. *The Special Report indicated that several organizations have established voluntary guidelines and programs that support and promote green chemistry concepts. However, it did not identify or discuss specific programs, or how they function. Nor did it identify the extent of public and private sector participation in such programs or specific activities undertaken by participants that result in actual pollution prevention and reduction of risk to workers, public health and the environment.*

Recommendation: Identify voluntary programs (such as ACC's Responsible Care, the joint USEPA/industry High Production Volume Challenge Program, ACS's Green Chemistry Institute, etc.), program requirements, the number of participants and the public or private sectors they represent (e.g., small business, commercial, industrial, academic, etc.), program results and other factors necessary to assess their effectiveness. Determine whether one or more of these programs can serve as models for the Cal-EPA Initiative.

5. *The Special Report mentioned the efforts of some California companies to institute environmental management systems, sustainability programs, and green chemistry principles and concepts into their businesses. However, it was not comprehensive in its evaluation of pollution prevention and risk reduction measures implemented through such programs. To accurately ascertain the magnitude of any gaps in chemical policies and controls, DTSC must also consider ongoing efforts to evaluate and undertake programs affecting the acquisition, use, production and disposal of chemicals in industrial processes. DTSC should also develop an objective understanding of challenges and constraints facing various industry sectors when considering chemical substitutions, process or production changes.*

Recommendation: Survey a statistically significant sample of California businesses to determine if they have adopted strategies or programs to implement environmental management systems, sustainability or green chemistry in their facilities. Convene a panel of business/industrial stakeholders to work with DTSC to develop a realistic understanding of current practices, potential gaps and viable models that can be used to improve California's current chemical management framework.

By compiling and analyzing the information noted above, DTSC will be better able to identify any gaps and any duplication or overlap in the current system. Further, the agency should gain insight into many of the ongoing efforts and challenges facing businesses in implementing "green chemistry" programs. Using the knowledge and information gained from this baseline assessment, DTSC should develop a report that clearly and precisely describes current gaps, potential significant adverse health or environmental impacts associated with those gaps, and practical opportunities and constraints associated with developing a statewide chemical management initiative. This report should be subject to stakeholder review and comment before any recommendations are developed through the Green Chemistry Initiative.

Furthermore, as DTSC embarks on its Green Chemistry Initiative, WSPA urges the agency to place *risk* at the forefront of its deliberations. *Risk is the chance that a chemical will cause*

unacceptable adverse effects following exposure of susceptible individuals. Chemicals are not inherently risky. Rather, the risk of any given chemical depends upon the dose received through various types of exposures. It is vital, therefore, that DTSC acknowledge and appreciate the old adage “the dose makes the poison.” That is, an apparently non-toxic chemical can be very harmful at high doses, and many highly toxic chemicals (e.g., pharmaceuticals) can be exceptionally beneficial at low doses. It is also essential to recognize that there are a wide range of acceptable risk management options ranging from using alternative substances to applying technological controls or personal protective equipment. During the initial baseline evaluation and in future program development, WSPA encourages DTSC to focus its Green Chemistry Initiative on identifying risks scientifically, recognizing existing risk management efforts, and concentrating new activities on significant risks presented by gaps in the current system.

WSPA very much appreciates this opportunity to comment on Cal-EPA’s Green Chemistry initiative and we look forward to working with you and other stakeholders to address any identified shortcomings in existing chemical management policies and regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Brausch". The signature is fluid and cursive, with a large initial "R" and "B".

cc: Maureen Gorsen, Director, DTSC
Joan Denton, Director, OEHHA
Patty Zwarts, Cal-EPA
Rick Brausch, DTSC
Dan Dunmoyer, Governor’s Office
John Moffat, Governor’s Office