AUTO ALLIANCE

DRIVING INNOVATION

September 9, 2013

VIA EMAIL
gcregs@dtsc.ca.gov

VIA U.S. MAIL
Ms. Manpreet Singh
Regulations Coordinator
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-2806

Re: Comments on Additions to the Rulemaking File (R-2011-02/OAL
File Nos: Z-2012-0717-04/ 2013-0718-03 S)

Dear Ms. Singh:

On behalf of the Alliance of Automobile Manufacturers ("Alliance"), I am pleased to submit the following comments in response to the latest revisions to the Department's rulemaking file for the Safer Consumer Product regulations (the "Proposed Regulations").

The Alliance is supportive of the change to section 69509.1(c) that would provide notice by certified mail to a company of the Department's decision regarding its trade secret claim. Trade secrets are critically important intangible assets that require continuous efforts to maintain protection and prevent infringement. Thus, it is essential that the Department give notice of a decision to potentially release a company's trade secret to its competitors and the public.

However, we are still concerned that 30 days is insufficient time to file an action in court to prevent disclosure of a trade secret in the event there is a difference of opinions between the Department and the company. With only a 30 day window in which the decision can be made, the Department is in effect forcing more lawsuits by not allowing for a thorough evaluation and vetting before that decision can be made. We request that the period of time be at least 90 days between the Department's notice and the deadline/obligation of the company to assert its rights in court.

Finally, we are not clear on what will be required by the addition of subsection (b) to section 69501.3. The new language states that "[a]ll documents . . . must be generated and submitted in a manner and in an electronic format accessible to the Department." Given that failure to do so would subject a company to allegations of non-compliance and the possibility of fines, penalties or worse, it is important that the regulations be clear on which formats will be accessible to the Department. We request that this subsection specify the format, or provide examples of formats that the Department can access.

As always, thank you for your time and consideration of our comments. If you have any questions, please feel free to contact me at frio@autoalliance.org or (202) 326-5551.

Sincerely,

Filipa Rio
Director, Environmental Affairs

September 9, 2013

Manpreet Singh, Regulations Coordinator
Regulations Section
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806
Submitted via: gcregs@dtsc.ca.gov

RE: 15-DAY PUBLIC NOTICE AND COMMENT PERIOD
NOTICE OF PUBLIC AVAILABILITY OF
CHANGES TO PROPOSED REGULATIONS TEXT
SAFER CONSUMER PRODUCTS

Department Reference Number: R-2011-02
Office of Administrative Law Notice File Number: Z-2012-0717-04
Office of Administrative Law File No: 2013-0718-03 S

Dear Ms. Singh:

The American Chemistry Council ("ACC") appreciates the opportunity to provide comments on the changes to the Safer Consumer Product Regulations (the "Regulations."). ACC [1] is an active member of the Green Chemistry Alliance.

The Department of Toxic Substance Control ("DTSC"), in its public notice, states that DTSC submitted the final rulemaking package for the Regulations to the Office of Administrative Law in July 2013. Based on feedback received from the Office of Administrative Law, DTSC has determined that the changes to the Regulations that are the subject of this notice are therefore necessary.

[1] The American Chemistry Council (ACC) represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy is designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a $720 billion enterprise and a key element of the Nation's economy. It is one of the Nation's largest exporters, accounting for ten cents out of every dollar in U.S. exports. Chemistry companies are among the largest investors in research and development. Safety and security have always been primary concerns of ACC members, and they have intensified their efforts, working closely with government agencies to improve security and to defend against any threat to the Nation's critical infrastructure.

Although ACC is not concerned with the substance of the specific changes, ACC does have concerns with the process DTSC has used to enact the Regulations. In addition, the changes now proposed do not address any of the serious concerns ACC and others have previously articulated regarding the treatment of trade secrets under the Regulations.

The Legislative findings contained in §11340 of the California Administrative Procedure Act contains pronouncements of how "the language of many regulations is frequently unclear and unnecessarily complex… [and] often confusing to the persons who must comply with the regulations." Therefore, the Legislature established an Office of Administrative Law and administrative procedures to, as APA §11340.1 states, "improve the quality of those regulations that are adopted." The California courts have articulated the purpose for administrative procedure as well. The Court, in *Morales v. CA Dept. of Corrections and Rehabilitation (App. 1 Dist. 2008, 85 Cal. Rptr. 3d 724)* stated, "[a] major purpose of the Administrative Procedures Act is to provide a procedure for persons or entities affected by a regulation to be heard on its merits in its creation…" It is clear the intent underlying California administrative procedure law is that affected entities be able to understand the what, how, when, and why of any proposed regulation.

DTSC, by continuing its pattern of taking a piecemeal approach to rule-making, has denied entities effected by the Regulations the opportunity to comment on the entirety of the regulatory proposal. Instead, comment had to be submitted on different components of the proposed Regulation at different times. This approach, which in effect never allowed any entity to comment of the entirety of the Regulation, with all of the supporting documentation required by law, does not comport with the spirit of the California Administrative Procedures Act, and perhaps not the law itself.

Second, DTSC's approach to trade secret claims in the Regulations, and to confidential chemical identity in particular, is contrary to the Agency's objective to promote innovation in consumer products and to reduce or replace the presence of substances, in those products, considered to pose a risk of harm. As proposed, the regulation could actually hinder innovation. ACC reiterates that DTSC should address the concerns previously submitted[2] and specifically ensure that the proposed Regulations conform to the California Uniform Trade Secrets Act.

ACC appreciates the opportunity to comment and express our concerns about these changes. We remain committed to working with both the Executive and Legislative Branches of California State government in the development of Safer Consumer Products regulations that are practical, meaningful, and legally defensible.

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[2] ACC Comments on Proposed Additional Post-Hearing Changes of the Safer Consumer Products Regulation (R-2011-02), filed and dated April 25, 2013 (see attachment).

Please contact me at Emily_Tipaldo@americanchemistry.com or 202-249-6127, if you have any questions or require clarification on any aspect of our comments.

Sincerely,

Emily V. Tipaldo
Manager
Regulatory and Technical Affairs

Attachment: ACC Comments on Proposed Additional Post-Hearing Changes of the Safer Consumer Products Regulation (R-2011-02) April 25, 2013

CC: The Honorable Matt Rodriquez, Secretary, CalEPA
Nancy McFadden, Senior Advisor, Office of the Governor

ACC COMMENTS ON THE ADDITIONAL POST-HEARING CHANGES TO THE SAFER CONSUMER PRODUCTS REGULATION APRIL 2013

A. The revisions to the definitions of "chemical" and "reliable information" require further clarity.

ACC questions the elaboration of the definition of "molecular identity" in the revised proposed regulation. Would any variation in the properties listed in the definition give rise to a new molecular identity? For example, if mean particle density were to vary among batches of the same substance, would DTSC treat each batch as if it had a new molecular identity? ACC notes that it is well understood that many, if not most, of the characteristics listed in the new definition are strongly influenced by environmental conditions and may change in dynamic ways depending on ambient conditions. As a simple example, many of the listed characteristics will be irrelevant once a substance is dissolved. How will DTSC consider this dynamic in identification of molecular identity? ACC cautions that the inclusion of such factors creates an obligation on DTSC's part to develop guidance that will help responsible entities understand DTSC's thinking about which properties are relevant to which states of matter under what conditions for the purposes of making hazard and exposure determinations. Finally, ACC questions the scientific rationale for the elaboration of factors. It is our understanding that the phrase "physicochemical properties and structure" would cover everything.

Additionally, it is unclear why the definition of "reliable information," which had been marginally improved, has since been edited to eliminate references to independent review and independent confirmation or replication. We are left to conclude that DTSC disagrees with the notion that reproducibility is a cornerstone of the scientific method and will instead base its decisions on studies that though attempted to be, cannot be reproduced. A sound definition of "reliable information" that includes independent review and independent confirmation or replication would enhance the scientific credibility of the complex regulatory proposal. ACC encourages DTSC to reinstate the previous language, adding a provision for weight-of-the-evidence assessment as part of the standard protocol.

B. DTSC should focus its efforts only on chemicals and products subject to the requirements of the regulation.

DTSC should focus its efforts on chemicals in consumer products that have the highest hazard and exposure to Californians. Similarly, the Department should also concentrate its efforts on those chemicals and products that are explicitly subject to the proposed regulation. It is questionable whether DTSC currently has authority under Health and Safety Code Sections 25252-25255, and 25257, to require manufacturers, importers, assemblers, and retailers "of any product" to provide information regardless of whether these chemicals or products are subject to the regulation.[1] DTSC must focus the scope of the regulation on chemicals and products that are subject to the proposed rule.

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[1] Proposed revised, post-hearing changes Safer Consumer Products Regulation, §69501.4(a)(2).

C. DTSC should correctly characterize chemical lists and should not rely upon European lists still under development as the basis of candidate chemical listing.

In revisions to the citations for the "Candidate Chemical" list sources in Section 69502.2(a)(1), items (B), (C), (G) and (I) are cited as being classified by or included as Substances of Very High Concern (SVHC) candidates for REACH "by the European Commission." While these processes are conducted under European Union laws, both classification and SVHC approaches are conducted by the European Chemicals Agency (ECHA), which works together with Member States, but has ultimate responsibility for both regulations. The proper citation would be "...by the European Chemicals Agency." In addition, the revision to (C) indicates that there are "Category 1" endocrine disruptors on the SVHC Candidate list. The SVHC process has no "Category" designation, and therefore "Category 1" should be deleted. The official REACH rationale for these SVHC listings is, "[e]quivalent level of concern having probable serious effects to human health or the environment under Article 57(f)."[2] There are presently 16 chemicals and groups that are candidates under this rationale, some but not all of which are based on endocrine disruption issues. Because the ECHA candidate listing and designations are subject to authorization decisions, which could change their designations, DTSC should not rely on these in developing their own Candidate Chemical list.

D. The distinction between intentionally added chemicals and contaminants is appropriate, but will likely be inefficient in practice.

ACC is encouraged that DTSC differentiates between intentionally added chemicals and contaminants, proposing to allow manufacturers to have a dialogue with the Department regarding appropriate "Alternatives Analysis Thresholds" for intentionally added chemicals. However, contaminants continue to be subject to the alternatives assessment (AA) process. As part of the regulatory process, manufacturers would be required to measure the contaminants in the Priority Product, down to the Practical Quantitation Limit (PQL). The "practical quantitation limit" is defined as the "lowest concentration of a chemical that can be reliably measured within specified limits of precision and accuracy using routine laboratory operating procedures."[3]

The PQL is an analytical term. For any material, PQL is subject to change with instrumental technology and methods development. It is in no way related to the potential harm that could be caused by chemicals present in products, at such low levels as to be barely observable, and has no bearing on whether these barely detectable materials could migrate from the product and if so whether such migration results in any detectable exposure for users of the product. To keep from indefinitely chasing molecules of contaminants, ACC suggests that DTSC treat intentionally added chemicals and contaminants in a manner that incentivizes efforts to limit them throughout

[2] Article 57(f) of Regulation (EC) No 1907/2006.
[3] §69501.1(a)(52).

the manufacturing process. DTSC should strike the proposed requirement to measure contaminants down to the PQL. Instead, DTSC could recognize manufacturing due diligence to mitigate contaminants in the final consumer product. Washington State has adopted such an approach in implementing its Children's Safe Product Act, (Chapter 70.240 RCW). Washington allows product manufacturers the option of not reporting contaminants if they demonstrate that they execute a program to minimize contaminants in their products.

E. Public review and comment on Final AA Reports, coupled with DTSC's review is a more practical process.

ACC supports the change made regarding public review and comment of AA reports. It is preferable for the public to provide comments on the Final AA Report, rather than during the middle of the process, and, it is appropriate for DTSC to collect, review, respond to comments at that time, and to propose an "AA Addendum" if necessary. The comment review process should be more consistent when handled by the Department, rather than each manufacturer posting, collecting, reviewing, and responding to public comments directly.

F. The proposed regulation to protect confidential chemical identities is inconsistent with California trade secret law and should be changed.

The proposed revised regulation fails to adequately protect confidential chemical identity, which is critical to companies' ability to innovate and develop new and improved products and formulations – including "greener" or "safer" substances. Although the revised proposal attempts to expand protection to confidential chemical identity by allowing trade secret protection when a patent application is pending for a chemical or its use in a product, the proposal actually confuses two distinct types of intellectual property protections (patents and trade secrets), and threatens to erode existing federal and California statutory trade secret law protections.

Broadly speaking, intellectual property rights relate to legal protection for ideas. A **copyright** protects works of authorship (not relevant to a chemical identity). A **trademark** distinguishes the goods of one party from those of others, and a service mark does that for services (not relevant to a chemical identity). A **patent** is a limited duration property right relating to an invention in exchange for public disclosure of the invention (potentially relevant to a chemical identity). These intellectual property protections are all federal rights.

A trade secret is a formula, pattern, or device which is used in business and which provides an opportunity to obtain an advantage over competitors who do not know or use it. A chemical identity may be a trade secret. A key aspect is that the subject must remain a secret, and must not be readily ascertainable. If it is disclosed publicly, it is lost. State law generally governs trade secrets.

Under the California Uniform Trade Secrets Act (CUTSA), modeled after the Uniform Trade Secrets Act (UTSA), a trade secret is information, including a formula, pattern, compilation, program, device, method, technique or process that:

(1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[4]

Patents are inadequate to protect confidential chemical identities. A trade secret chemical identity may not qualify for a patent. To be patentable, an invention must meet strict requirements for novelty and utility, plus it cannot be obvious to relevant experts. A chemical identity or its use in a mixture may not meet those requirements. To be patented, an invention must be an advance upon the prior art. Novelty and non-obviousness are measured against the prior art. For a trade secret, however, the prior art is irrelevant. A trade secret need only provide economic value from not being generally known to or readily ascertainable by competitors. For example, the identity of a new chemical may be a logical development from previous chemicals that were known to experts, and therefore not patentable. It may be a trade secret, however, if it provides an actual or potential economic advantage over others.

A patent freezes technology, but a trade secret builds on it. A patent covers technology as it exists at the time the patent application is filed. Subsequent incremental improvements are not covered by the patent. Even if a chemical identity or its presence in a formula for a mixture is covered by a patent, improvements to the chemical structure or formula through additional research and development may qualify as trade secrets.

A patent may not provide adequate protection because it is difficult to enforce. Both patents and trade secrets seek to prevent competitors from using the information (at least without authorization). A trade secret does this by keeping the information from competitors through secrecy. A patent does this by disclosing the information to competitors but granting the patent holder right to sue for unauthorized use.

A patent may not protect against foreign competitors. A patent is good only in the country for which it is granted. A U.S. patent, for example, would not prevent foreign competitors from using the patented information to their own advantage.

Requiring disclosure of trade secret product formulations without imposing an affirmative obligation on the receiving party not to disclose the trade secret to any third party automatically triggers the loss of trade secret protection. The only way trade secret information can be disclosed without forfeiting its trade secret status and its competitive economic advantage is via a confidentiality agreement or submission to a government agency pursuant to a statute that

[4] Cal. Civ. Code §3426.1(d).

guarantees confidentiality. Absent such a requirement, DTSC's proposed disclosure requirements would expose valuable trade secrets to foreign and domestic competitors, causing significant economic harm.

ACC strongly recommends that DTSC conform its proposed regulations to the CUTSA and protect confidential chemical identities from disclosure as trade secrets.

September 9, 2013

SUBMITTED VIA GCREGS@DTSC.CA.GOV

Manpreet Singh, Regulations Coordinator
Regulations Section
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Re: Safer Consumer Products Regulations; 15-Day Notice of Public Notice and Comment; Notice of Public Availability of Changes to Proposed Regulatory Text

Dear Mr. Singh:

The Technical Affairs Committee of the Association of Global Automakers, Inc.[1] (Global Automakers) appreciates the opportunity to provide comments to the California Department of Toxic Substances Control (DTSC) on the changes that have been made to the regulatory text of the Safer Consumer Products (SCP) regulations, which were released on August 23, 2013.[2]

Global Automakers and its members have consistently supported the development and use of safe chemicals and products available for use in the automotive industry. Through the application of green chemistry principles and sound scientific methods, Global Automakers believes that the design and development of new chemistries and technologies will continue to provide innovative solutions to current and emerging environmental challenges. Our goal is to ensure that our members have the opportunity to provide high quality, environmentally sound, safe products and services. With these goals in mind, we look for ways to provide tools to our members to facilitate continuous improvement and to ensure that wherever possible we assist them to not only meet but exceed safety and environmental standards.

Global Automakers has been actively engaged in the development of the SCP regulations from the outset of this effort. Beginning in 2010, we have invested in review and comment for each of the iterations of these regulations; we have participated in public meetings and listened intently to the debates and discussions of

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[1] The Association of Global Automakers represents international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. Our Technical Committee members include: American Honda Motor Co., Aston Martin Lagonda of North America, Inc., Ferrari North America, Inc., Hyundai Motor America, Isuzu Motors America, Inc., Kia Motors America, Inc., Maserati North America, Inc., McLaren Automotive Ltd., Nissan North America, Inc. Peugeot Motors of America, Subaru of America, Inc., Suzuki Motor of America, Inc., ADVICS North America, Inc., Delphi Corporation, Denso International America, Inc., and Robert Bosch Corporation. We work with industry leaders, legislators, and regulators in the United States to create public policies that improve motor vehicle safety, encourage technological innovation, and protect our planet. Our goal is to foster an open and competitive automotive marketplace that encourages investment, job growth, and development of vehicles that can enhance Americans' quality of life. For more information, visit www.globalautomakers.org.

[2] Reference Number: R-2011-02; Office of Administrative Law Notice File Number: Z-2012-0717-04; Office of Administrative Law File No: 2013-0718-03 S.

GlobalAutomakers

the Green Ribbon Science Panels. We have provided constructive input at each stage of development of these regulations.

Global Automakers supports the changes that DTSC has made to the regulatory text of the SCP regulations in this revised language, because they provide clarity and certainty.[3] Specifically we support the changes to Section 69501.3(b) that require that documents submitted to DTSC under the regulations be in English and be provided in an electronic format accessible to DTSC. We agree that this provision is necessary to ensure that the information provided to DTSC (on either a mandatory or a voluntary basis) can be reviewed, evaluated, and processed by DTSC as effectively and efficiently as possible.

We also support the changes to Sections 69509.1(a) and (c). We believe it is imperative that DTSC review a trade secret claim for information submitted under the regulations, along with the information provided in support of the trade secret claim, before disclosing the information that is the subject of the trade secrecy claim. As we have offered in previous comments submitted to DTSC, it is critical that DTSC does not release to the public information for which a valid trade secrecy claim has been filed.

Equally critical is the need for a process that allows a timely challenge of a DTSC determination to deny a claim of trade secrecy. We support the modified regulatory text that requires that if DTSC determines that the information submitted in support of a trade secrecy claim does not establish that the information claimed to be trade secret meets the definition of trade secret, DTSC will notify the submitting party of its determination by certified mail and provide that during the 30-day period the submitting party may seek judicial intervention by bringing an action for a preliminary injunction and/or declaratory relief to prevent disclosure of the information claimed as trade secret.

Global Automakers will continue to provide input to DTSC as these regulations are implemented. We look forward to the opportunity to review the Alternative Assessment guidance that DTSC is preparing and to ensure that we offer concrete and real world recommendations as these regulations become operational. If you have any questions, please contact me at jrege@globalautomakers.org or (202) 650-5559.

Sincerely,

Julia M. Rege
Senior Manager, Environment & Energy

[3] Although we support the changes proposed today, Global Automakers continues to have concerns about the application of the rules to complex durable goods and replacement parts, as we have expressed in our previous comments submitted to DTSC.

AAIA® Automotive Aftermarket Industry Association

DRIVING THE AFTERMARKET INDUSTRY

TEL 301 654 6664
FAX 301 654.3299
WEB www.aftermarket.org
E-MAIL aaia@aftermarket.org

September 6, 2013

Manpreet Singh
Regulations Coordinator
Regulations Section
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

RE: Comments on Revisions to Text of Safer Consumer Product Regulations Released on August 23, 2013 (R-2011-02/OAL Notice File No: Z-2012-0717-04/OAL File No: 2013-0718-03 S)

Dear Regulations Coordinator Singh:

On behalf of the Automotive Aftermarket Industry Association (AAIA) and CAWA-Representing the Automotive Parts Industry (CAWA), we would like to provide comments regarding the most recent revision of the proposed text of the Safer Consumer Product Regulations (SCP) (22 CCR, div 4.5, ch. 55).

AAIA is recognized as the pre-eminent trade association and voice for the $297.5 billion motor vehicle aftermarket, which employs four million people and contributes more than two percent of the U.S. gross domestic product. AAIA's more than 23,000 member and affiliates manufacture, distribute and sell motor vehicle parts, accessories, service, tools, equipment, materials and supplies across the country. Through its membership, AAIA represents more than 100,000 repair shops, parts stores and distribution outlets nationally.

CAWA is a non-profit trade association representing 450 automotive aftermarket parts manufacturers, jobbers, warehouse distributors and retailers in California, Nevada, and Arizona. The Association was formed in 1955 and serves as the voice of the aftermarket parts industry in the West. CAWA prides itself on quality customer service to its members and the industry.

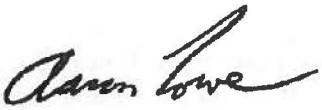
Our organizations remain opposed to the finalization and implementation of the proposed SCP regulations as they are currently written and believe more thorough revisions are necessary in order to avoid severe harm to the automotive aftermarket industry in California. We appreciate the additions of sections Section 69501.3(b), Section 69509.1(a), and Section 69509.1(c) to the draft which are necessary to make the current regulation function properly. However, these revision are not nearly enough to remedy the potential harm that these rules will cause to our industry if no other changes are made to the draft proposal.

7101 WISCONSIN AVE / SUITE 1300 / BETHESDA, MD 20814

Our organizations believe the SCP regulation should go under further review and be re-submitted to the public for additional comments in order to address concerns of the industries doing business in California. The automotive aftermarket previously suggested several changes to the draft proposal and we have included those recent comments for the record here (attachment).

Thank you for the opportunity to comment on the suggested additions to the SCP proposed regulations. We look forward to continuing to work with the Department of Toxic Substance Control to find solutions that fit the goals of the agency as well as boost innovation and the health of the automotive aftermarket industry in California.

Sincerely,



Aaron Lowe
Vice President, Government Affairs
AAIA

Attachment

AAIA® Automotive Aftermarket Industry Association

DRIVING THE AFTERMARKET INDUSTRY

TEL 301.654.6664
FAX 301.654.3299
WEB www.aftermarket.org
E-MAIL aaia@aftermarket.org

April 25, 2013

Jackie Buttle
Acting Regulations Coordinator
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

RE: Comments on Revisions to Text of Safer Consumer Product Regulations Released on April 10, 2013 (R-2011-02/OAL File No:Z-2012-0717-04)

Dear Ms. Buttle:

On behalf of the Automotive Aftermarket Industry Association (AAIA) and CAWA- Representing the Automotive Parts Industry (CAWA), we would like to provide comments regarding the most recent revision of the proposed text of the Safer Consumer Product Regulations (SCP) (22 CCR, div 4.5, ch. 55). AAIA, as a member of the Complex Durable Goods Coalition, also supports the comments of that group and has included those as an extension of this document.

AAIA is recognized as the pre-eminent trade association and voice for the $297.5 billion motor vehicle aftermarket, which employs four million people and contributes more than two percent of the U.S. gross domestic product. AAIA's more than 23,000 member and affiliates manufacture, distribute and sell motor vehicle parts, accessories, service, tools, equipment, materials and supplies across the country. Through its membership, AAIA represents more than 100,000 repair shops, parts stores and distribution outlets nationally.

CAWA is a non-profit trade association representing 450 automotive aftermarket parts manufacturers, jobbers, warehouse distributors and retailers in California, Nevada, and Arizona. The Association was formed in 1955 and serves as the voice of the aftermarket parts industry in the West. CAWA prides itself on quality customer service to its members and the industry.

Statement of Concern:

Comments on behalf of our organizations have previously stated on multiple occasions the unworkable structure of the draft Safer Consumer Product Regulations. We recognize that the Department of Toxic Substances Control (DTSC) has made several attempts to address industry concerns; however, the current draft continues to include areas that are capable of demonstrating measurable harm to the automotive aftermarket. Our industry in California accounts for $33.8 billion in sales, employs more than 194,000 people, and is a significant contributor to State tax revenue.

In addition to those stated in the comments submitted by the Complex Durable Goods Coalition, AAIA and CAWA have the following concerns:

- The proposed regulation still does not properly address the treatment of repair, maintenance and refurbishment parts. These types of parts are created with specific functionality considerations in order to extend the useful life motor vehicles while helping reduce their environmental impacts. Many of these repair and maintenance items are also generated from recycled or reused vehicle components. Including these types of products in the SCP could ultimately create more waste,

7101 WISCONSIN AVE • SUITE 1300 • BETHESDA, MD 20814

increase energy use, and potentially further damage the environment. Repair, maintenance, and refurbishment parts for motor vehicles should be exempted from this regulation.

- Businesses that perform repair, maintenance, and refurbishment activities and automotive parts retail establishments are ill-equipped to fulfill the requirements of any position within the responsible entity hierarchy created by the regulation. Therefore, we urge that repair, maintenance and refurbishment-based automotive aftermarket entities and automotive parts retailers should be exempted from the regulation as a responsible entity.

Further details and recommendations for these items are below:

Recommendations:

The AAIA and CAWA recognize the effort by DTSC to address the confusion over unclear definitions for entities within the regulatory response hierarchy. However, including activities to "repair, refurbish, maintain" within the definition of "assemble" remains problematic for the automotive aftermarket industry. The fundamental concern is that businesses offering these services, along with motor vehicle parts retailers, have no control over the previous manufacturing processes and, therefore, have no control over the levels of chemicals of concern contained within those items.

Moreover, the proposed regulation should be aimed at the manufacturing processes and the manufacturers of consumer products being the primary entities responsible for the regulation. Therefore, the goal of the regulation should not be to target business that provide a service, but do not actually provide a consumer with a product. Repair, maintenance, and refurbishment organizations are service companies, not product manufacturers and should not face the same potential consequences.

Additionally, motor vehicle repair, maintenance, refurbishment and parts retail locations are, for the most part, small businesses that will struggle to adhere to the overly burdensome inventory reporting standards, let alone the potential full regulatory response process. Leaving these companies open to the threat of millions of dollars in testing and analysis will seriously harm and possibly destroy small businesses and the automotive aftermarket in the state.

Motor vehicle repair, maintenance, and refurbishment parts are not single-use products with brief lifespans. These products are intended for long-term use in order to extend the life of motor vehicles. These services further help reduce emissions of greenhouse gases and toxic pollutants by maximizing fuel efficiency of the vehicle as well as maintaining the performance of emissions control systems. Further, the repair and maintenance also helps cut down on environmental waste due to the reuse by our industry of many components from a vehicle. This remanufacturing process results in a reduced depletion of resources and in the energy used to produce replacement components. Any harm done by the SCP regulation to the automotive aftermarket may have the unintended opposite effect of the DTSC's original goal.

Therefore, we recommend that activities including repair, refurbishment, maintenance of vehicles and motor vehicle parts retailers be exempted from the proposed SCP regulation through the following:

1. *Revise Section 69501.1(a)(43)*:

"Manufacture" means to make or produce. "Manufacture" does not include:

(A) acts that meet the definition of "assemble;" or

(B) repair or refurbishment of an existing consumer product; or

(C) installation of components to an existing consumer product; or

(D) making non-material alterations to an existing consumer product.

2. *Revise Section 69501.1(a)(15)*:

"Assemble" means to fit, join, put or otherwise bring together components to create~~, repair, refurbish, maintain or make non-material alterations to~~ a consumer product. "Assemble" does not include activities to repair, refurbish, maintain or make non-material alterations to a consumer product.

3. *Revise Section 69501.1(a)(24) to add:*

(D) "Consumer product" does not mean replacement parts used to repair, refurbish or maintain existing consumer products.

4. *Revise Section 69501.1(a)(61) to add:*

"Retailer" means a person to whom a product that is subject to the requirements of this chapter is delivered or sold for purposes of sale or distribution by that person to a consumer. "Retailer" does not include entities selling only products intended for the repair, maintenance, or refurbishment of motor vehicles as defined in California Vehicle Code §415(a) – (c).

The AAIA and CAWA again thank the DTSC for the opportunity to comment on the revised draft of the SCP regulations. We hope these comments, along with the included extension from the Complex Durable Goods Coalition are helpful in guiding the agency to a workable regulation that helps satisfy the goals of both the DTSC and the automotive aftermarket industry.

Sincerely,

Aaron Lowe
Vice President, Government Affairs
AAIA

Enclosure

Albany
Atlanta
Brussels
Denver
Los Angeles
Miami
New York

McKenna Long & Aldridge LLP

101 California, Floor 41
San Francisco, CA 94111
Tel: 415.267.4000
mckennalong.com

Northern Virginia
Orange County
Rancho Santa Fe
San Diego
San Francisco
Seoul
Washington, DC

ANN G. GRIMALDI
415.267.4104
Direct Fax: 415.267.4198

EMAIL ADDRESS
agrimaldi@mckennalong.com

April 25, 2013

VIA EMAIL AND OVERNIGHT MAIL

Debbie Raphael
Director
Department of Toxic Substances Control
1001 "I" Street
Sacramento, CA 95812

Re: Comments of the Complex Durable Goods Coalition on the April 2013 Revised Proposed Safer Consumer Products Regulations

Dear Ms. Raphael:

I am pleased to submit the comments of the Complex Durable Goods Coalition (the "Coalition")[1] on the revised proposed Safer Consumer Products ("SCP") Regulations (sometimes referred to as the "Proposed Regulations") released by the Department of Toxic Substances Control ("DTSC") on April 10, 2013 for public comment.

The Coalition acknowledges DTSC's attempts to render the SCP Regulations more practicable, including revising the scope of the Alternatives Analysis Threshold Exemption to encompass intentionally added ingredients. However, too many aspects of the Proposed

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[1] The Coalition is a group of trade organizations representing broad and diverse industry interests. Its mission is to engage in strategic planning, and regulatory and technical advocacy, regarding state and federal chemical initiatives that may impact the manufacturers of complex durable goods, their suppliers and other related entities such as those that may distribute or sell such goods and/or sell or use their replacement parts. For the Coalition's purposes, "complex durable goods" are manufactured goods composed of 100 or more manufactured components, with an intended useful life of five or more years, where the product is typically not consumed, destroyed, or discarded after a single use. For purposes of this comment letter, the Coalition consists of the following members: the Alliance of Automobile Manufacturers, the Association of Global Automakers, the Automotive Aftermarket Industry Association and the Motor and Equipment Manufacturers Association.

Regulations remain uncertain and confusing and, overall, the Proposed Regulations remain unworkable.

DTSC's proposed program is the first of its kind in the United States, with the ambitious goals of promoting "benign by design" approaches to consumer product design and manufacture, and of creating a new green economy in California. The program's implementation will be scrutinized closely by the public and executive level agencies in this and other jurisdictions. The Coalition is perplexed that four years into this regulatory process the SCP Regulations remain an unwieldy muddle. If DTSC does not revise, improve and incorporate real-world guidance from numerous industry experts charged with complying with the Proposed Regulations, its program is destined to very publicly fail.

The Coalition has five key concerns:[2]

- The failure of the SCP Regulations to address replacement parts and the inappropriate inclusion of repair/refurbishment/maintenance activities in the definition of "assemble";
- The failure of the SCP Regulations to address appropriately the importation of components and assembled complex durable goods;
- The continued lack of clarity about the Alternatives Analysis Threshold Exemption, including the absence of any criteria by which DTSC will develop an Alternative Analysis Threshold, and the continued use of the Practical Quantitation Limit as a cap on the maximum level of a chemical of concern ("COC") as a contaminant in a Priority Product;
- The continued deficiencies in the proposed public comment process for Final and Abridged Alternatives Analysis ("AA") Reports; and
- The confusing revisions to the definition of "Replacement Candidate Chemical" and "replacement chemical."

The Coalition discusses its five concerns in greater detail below.

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[2] The Coalition attaches and hereby incorporates by reference its prior comments on earlier versions of the Proposed Regulations, submitted on October 10, 2012 and February 28, 2013.

I. THE SCP REGULATIONS STILL FAIL TO ADDRESS REPLACEMENT PARTS AND INAPPROPRIATELY INCLUDE PERSONS WHO REPAIR, REFURBISH AND/OR MAINTAIN CONSUMER PRODUCTS WITHIN THE SCOPE OF RESPONSIBLE ENTITIES

In each of its prior comments to the iterations of the Proposed Regulations, the Coalition has pointed out the critical need to allow the continued manufacture of replacement parts for complex durable goods, and the critical need to ensure that persons undertaking repair, refurbishment and maintenance activities are not deemed "responsible entities." Those persons have no involvement in developing products and merely come in contact with those already in existence – at a point where chemical composition control is long past. Rather than ensuring such persons will not bear the burdens of DTSC's proposed program, the Proposed Regulations do precisely the opposite, thereby threatening California's economy, environment and consumer choice.

Ensuring that replacement parts remain available for complex durable goods is critical. Numerous unique factors interact to make the supply of replacement parts a challenge in any scenario, and the constraints to be imposed by the SCP Regulations promise to make those challenges insurmountable. Some of these unique factors are described below:

- Complex durable goods typically are intended to last several years, even decades. As a result, such goods require repair, refurbishment and/or maintenance services and replacement parts with which to provide such services. Replacement parts must remain available for years, even for products that are no longer being manufactured.

- Frequently, replacement parts must meet specific legal requirements and/or regulatory approvals or certifications. In these circumstances, it is not possible to simply substitute newly designed parts – not without substantial investment of time and resources, and certainly not in the short time frames contemplated by the SCP Regulations. As evidenced by multiple global COC-type regulations, replacement parts are designed and manufactured to the relevant regulatory requirements in effect at the time in which the product originally was sold. These other regulatory programs recognize that there is no feasible scenario in which resources could be adequately allocated to the re-engineering and re-development of parts associated with legacy products no longer being manufactured. Further, such efforts would drain resources from other efforts to "green" current and future products currently or imminently entering commerce – contrary to DTSC's stated goal.

- The lead-time necessary for product design, development and validation of complex durable goods is on the order of years, not months or weeks. At a minimum, this means that design changes to replacement parts also require substantial lead-time. And, for complex durable goods no longer being manufactured, there may be little

incentive to invest the resources for re-design of replacement parts to comply with the SCP Regulations. While DTSC's intentions may be noble, no evidence exists that DTSC understands the timing, design, sourcing, manufacturing or sale of complex durable goods, nor the inherent regulatory and timing roadblocks in the Proposed Regulations, which virtually assure failure. This apparent lack of understanding is made even more perplexing because multiple industries and associations have spent nearly five years working with DTSC to explain the unique issues surrounding the assembly of durable goods and to provide workable solutions toward a successful program. DTSC, to this day, either ignores or skews those solutions.

- With the multi-tiered, multi-faceted global supply chain inherent in the assembly of complex durable goods, replacement parts may be available only from overseas manufacturers. Such manufacturers may not provide re-designed replacement parts to fulfill demand for a single market, i.e., California, within the constraints of the SCP Regulations. In such circumstances, severe supply chain disruptions will result, with the ultimate victims being California's consumers and economy.

If implementation of the Proposed Regulations results in the unavailability of replacement parts meeting all applicable requirements, the net and ironic result could very well be detrimental impacts on the environment and sustainability. Greater waste will be generated as consumers discard broken and (now) unrepairable complex durable goods and buy new ones (also unnecessarily draining their financial resources); those broken goods will end up in landfills. With the repair of goods being discouraged by DTSC's proposed program, more virgin material will be used to manufacture goods to meet supply needs and comply with the program. These consequences will be exponentially exacerbated by the Proposed Regulations' inclusion of contaminants as triggers for the new program's burdensome regulatory requirements. The Coalition does not believe that DTSC intends the SCP Regulations to result in such environmentally detrimental consequences.

Nor does the Coalition believe that DTSC intends to encompass, within the hierarchy of responsible entities, persons who are ill-equipped to take leading roles in the sophisticated and costly AAs required by the SCP Regulations. Yet that is precisely the consequence of including repair, refurbishment and maintenance activities in the definition of "assemble." With this new definition, businesses that merely offer repair and maintenance services will be captured as assemblers within the hierarchy of responsible entities.

Aside from the fact that such businesses do not even sell or lease ***consumer products*** within the meaning of the authorizing statute, but merely offer ***services***, these entities are primarily small business owners that lack the expertise and financial resources to undertake AAs. The Coalition fails to see the logic in causing such damage to businesses, many of them part of a multi-billion dollar industry in California, whose only actions, at worst, would be to replace an existing part with a similar one. These businesses' only recourse may be to stop purchasing parts

– which will put them out of business. This will have an enormous economic impact and will create an uneven playing field vis-à-vis non-California businesses. DTSC has undertaken no economic analysis that would demonstrate otherwise and again has demonstrated a lack of understanding of industry and business needs within its own state.

The Coalition acknowledges that DTSC may have intended the new definition of "assemble" to clarify that persons providing repair, refurbish and maintenance services are not "manufacturers." The Coalition agrees that such persons should not be in the highest tier of responsible entities. Indeed, because such entities sell services rather than consumer products, it is far from clear that DTSC has ***any*** authority to regulate such persons under AB 1879. Aside from that threshold issue, DTSC's proposed approach would impose on a family-owned repair shop the same resource-intensive regulatory burdens as are imposed on national and global corporations. DTSC's approach has created a new problem that must be fixed by clearly removing from the responsible entity hierarchy altogether those persons offering such services.

The Coalition urges DTSC to make all of the following revisions (additions in underline; deletions in strikethrough):

1. *Revise Section 69501.1(a)(43)*:

   "Manufacture" means to make or produce. "Manufacture" does not include:

   (A) acts that meet the definition of "assemble;" or

   (B) repair or refurbishment of an existing consumer product; or

   (C) installation of components to an existing consumer product; or

   (D) making non-material alterations to an existing consumer product.

2. *Revise Section 69501.1(a)(15)*:

   "Assemble" means to fit, join, put or otherwise bring together components to create~~, repair, refurbish, maintain or make non-material alterations to~~ a consumer product. "Assemble" does not include activities to repair, refurbish, maintain or make non-material alterations to a consumer product.

3. *Revise Section 69501.1(a)(24) to add:*

(D) "Consumer product" does not mean replacement parts used to repair, refurbish or maintain existing consumer products.

II. THE SCP REGULATIONS MUST APPROPRIATELY ADDRESS ASSEMBLERS OF COMPLEX DURABLE GOODS

The Coalition previously has described to DTSC the challenges arising from the global nature of supply chains for complex durable goods, and acknowledges DTSC's effort to appropriately assign the regulatory obligations of assemblers to a lower tier in the responsible entity hierarchy. Nevertheless, the SCP Regulations miss the mark regarding the importation of assembled complex durable goods and their components.

Assemblers of complex durable goods sometimes may import the components that they assemble and/or in some cases may import the assembled product. In these importing contexts, these entities have little access to information pertaining to the components' constituents and have little control over the components' composition. Yet, if such assemblers are considered "importers," they will be more likely to be called upon to conduct the sophisticated and resource-intensive alternatives analyses for the assembled products or components that they import. It is unrealistic to assume that these entities can acquire and maintain the level of chemical ingredient knowledge which DTSC apparently believes is readily available.

If the goal of the responsible entity hierarchy is to ensure that the most knowledgeable entity conducts the AA, then the SCP Regulations in their current form fail to achieve it. The Coalition therefore urges DTSC to adopt all of the following revisions (additions in underline; deletions in strikethrough):

1. *Move the definition of "complex durable product" now contained in Section 69503.5 (c)(2) to new Section 69501.1(a)(23), and renumber subsequent sections accordingly.*

2. *Revise current proposed Section 69501.1(a)(39):*

"Importer" means a person who imports a product that is subject to the requirements of this chapter. "Importer" does not include:

A. A person that imports a product solely for use in that person's workplace if that product is not sold or distributed by that person to others; or

B. A complex durable product assembler.

III. THE SCP REGULATIONS MUST CLARIFY THE ALTERNATIVE ANALYSIS THRESHOLD EXEMPTION

The Coalition acknowledges the changes to DTSC's treatment of the "Alternatives Analysis Threshold" ("AAT") Exemption, e.g., including intentionally added ingredients within its scope. However, many uncertainties remain and DTSC must clarify its approach to this component of the SCP Regulations.

At the outset, the Coalition makes one more attempt to urge DTSC to adopt a clear numerical value to the AAT, such as 0.1%. A "hard" number approach has been successfully used in the global regulations from which DTSC itself has drawn inspiration. A "hard" number provides clarity and certainty to the regulated community and vastly improves supply chain communications regarding product and ingredient specifications. Such clarity and certainty are key factors to the success of DTSC's program.

In addition, the continued inclusion of contaminants as a category of chemicals targeted under the overall SCP Regulations is the wrong approach for achieving the goals of DTSC's proposed program. Targeting contaminants results in confused priorities for eliminating "chemicals of concern" in California commerce. In a program as broadly scoped as this one, it is a better investment of resources to target intentionally added ingredients. Targeting contaminants in any manner also threatens the viability of recycling efforts and undermines other legitimate approaches to protecting the environment and promoting sustainability. Had sound, science-based reasoning been the primary driver for an effective regulatory solution, this proposition would be self-evident. Otherwise, the SCP Regulations may the first regulatory program in history that discourages reuse, recycling and recoverability. The Coalition cannot discern any rationale justifying such a result.

Beyond that, the Coalition is very concerned that the Proposed Regulations specify no criteria at all by which DTSC will develop AATs. No member of the public has any understanding of how DTSC will implement this aspect of its program. This is far from the transparent process that DTSC has aimed to create in the SCP Regulations and that is mandated by statute under Health & Safety Code section 25253(c). ***DTSC must identify objective, science-based criteria for developing AATs, and must allow the public another chance to provide input on those criteria via another round of public comments.***

Finally, the Coalition remains concerned about the viability of using the Practical Quantitation Limit ("PQL") as an AAT alternative for contaminants. PQLs are a moving target. They depend on the analytical method, the instrumentation, and even the laboratory in which a PQL is developed. PQLs rely primarily on the substrate being tested. Reliance on PQLs as AATs will cause inconsistent regulatory outcomes affecting responsible entities manufacturing, importing, assembling and/or selling the same Priority Products. Relying on a PQL based on the capability of a testing methodology, rather than the reality of testing a sample's unique

properties, continues to highlight that a science-based understanding and approach to the SCP Regulations is lacking. If PQLs are to be used at all as a component of AATs, they should set a widely accepted, science-based floor, rather than the cap, for the level of contaminants in Priority Products.

IV. THE PROPOSED PUBLIC COMMENT PROCEDURE FOR AA REPORTS STILL IS DEFICIENT

The Coalition understands that, through the public comment process set out in proposed Section 69505.8, DTSC seeks to establish a transparent quality assurance procedure for Final and Abridged AA Reports that shifts some burdens away from the agency. The Coalition also acknowledges DTSC's revisions to the public comment process for AA Reports, so that DTSC takes the lead role in collecting and reviewing public comments, rather than the private responsible entity. This lead role is the correct and appropriate one for any regulatory agency. However, the revisions to Section 69505.8 do not go far enough because the responsible entity, rather than DTSC, must respond to public comments via an Addendum.

The Coalition cannot find any precedent for a California public comment process in which a regulated private entity, rather than the regulatory agency, directly responds to public comments in a regulatory proceeding like the one being proposed. This procedure is not a lawful one under the Administrative Procedures Act and is contrary to Health & Safety Code section 25253(c) (requiring that tools for evaluating chemicals of concern be "in a form that allows ease of use and transparency of application"). DTSC must revise Section 69505.8 so that DTSC, and not the responsible entity, responds to public comments.

Proposed Section 69505.8 also fails to establish any criteria by which DTSC will filter what public comments warrant a response. It falls short of the statutory mandate that the tools for evaluating chemicals of concern be "in a form that allows...transparency of application." *See* Health & Safety Code section 25253(c). ***DTSC must identify objective, science-based criteria for reviewing and responding to public comments on Final and Abridged AA Reports, and must allow the public another chance to provide input on those criteria via another round of public comments.*** In this regard, DTSC must provide more than 15 days for comments on a proposal that will have such an extensive potential impact on the AA process. Indeed, this current 15-day comment period was insufficient to fully digest this new approach.

Finally, the Coalition remains concerned that this public comment procedure establishes an AA process with no finality discernible at the front end of the AA exercise. AAs already will be resource-intensive and time-consuming to prepare. The proposed public comment proceeding at the back end of the AA process will add more uncertainty and will increase the resources and time to necessary to finalize AAs – with as-yet-unknown benefits, if any.

V. THE REVISED DEFINITION OF "REPLACEMENT CANDIDATE CHEMICAL" AND "REPLACEMENT CHEMICAL" MUST BE CLARIFIED

Proposed Section 69501.1(a)(59) is incomprehensible. That section now defines "Replacement Candidate Chemical" and "replacement chemical" completely opposite to its original meaning. In light of the significant impact of this definition on implementing the Proposed Regulations and, particularly, the AA process to be undertaken by responsible entities, DTSC must revise the definition to make its meaning clear and must provide the public with a further opportunity to comment on the revised definition. If DTSC keeps the definition as is, DTSC must explain its rationale in detail and provide illustrations of its application in DTSC's final statement of reasons. This is critical for regulated entities to properly understand and implement the program's requirements.

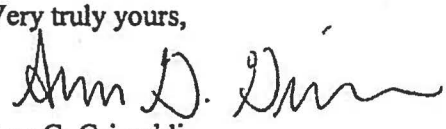
VI. OTHER ISSUES

Beyond what is described above, the Coalition remains concerned that the implementation of the AA process is still unclear. Among other things, DTSC has not clarified whether the AA guidance materials it posts will be mandatory requirements, whether they will establish some sort of baseline level for AAs, or whether they are merely recommendations. *See* Section 69505. And there is little confidence that the AA process will be a disciplined, science-based one that still contains sufficient flexibility to appropriately encompass the vast spectrum of products it will address. The AA process apparently will be an iterative one, with each round revealing its strengths and weaknesses. As implementation of the SCP Regulations proceed, the Coalition strongly urges DTSC to heed the voices of those actually in the trenches and undertaking these AAs.

Finally, once again the Coalition expresses its disappointment in the piecemeal approach of this entire regulatory process. The fragmented process has made it difficult for members of the public, and members of the regulated community in particular, to provide meaningful input.

Thank you for this opportunity to comment on the Proposed Regulations.

Very truly yours,



Ann G. Grimaldi

AGG

cc: Matthew Rodriquez, Cal/EPA Secretary (via first class mail and email: matthew.rodriquez@calepa.ca.gov)
Cliff Rechtschaffen, Senior Advisor to Governor Brown (via first class mail)
Martha Guzman-Aceves, Deputy Legislative Affairs Secretary, Office of the Governor (via first class mail)
Odette Madriago, Deputy Director (via email: omadriago@dtsc.ca.gov)
Jeff Wong, Chief Scientist (via email: jwong@dtsc.ca.gov)
Jackie Buttle, Acting Regulations Coordinator (via first class mail and email: gcregs@dtsc.ca.gov)

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ATTACHMENT 1

Albany
Atlanta
Brussels
Denver
Los Angeles

McKenna Long
& Aldridge LLP
Attorneys at Law

101 California Street • 41st Floor • San Francisco, CA 94111
Tel: 415.267.4000 • Fax: 415.267.4198
www.mckennalong.com

New York
Philadelphia
San Diego
San Francisco
Washington, D.C.

ANN G. GRIMALDI
(415) 267-4104

EMAIL ADDRESS
agrimaldi@mckennalong.com

February 28, 2013

VIA E-MAIL (DRAPHAEL@DTSC.CA.GOV) AND
BY FEDERAL EXPRESS

Debbie Raphael, Director
California Department of Toxic Substances Control
1001 "I" Street
Sacramento, CA 95812

Re: Comments of the Complex Durable Goods Coalition on Revised Proposed Safer Consumer Products Regulations

Dear Ms. Raphael:

I am pleased to submit the comments of the Complex Durable Goods Coalition (the "Coalition") on the Revised proposed Safer Consumer Products Regulations (the "Revised SCP Regulations"), released by the Department of Toxic Substances Control ("DTSC") on January 29, 2013 for public comment. As described further in this letter, the Coalition is pleased to see some of the revisions made by DTSC. Nevertheless, many of the revisions are so substantial and unexpected that the Revised SCP Regulations should be released as a new regulatory proposal with a Statement of Reasons, a new 45-day comment period and a public hearing pursuant to the California Administrative Procedures Act ("APA"), Government Code sections 11340 *et seq*. In addition to this overarching issue, the Coalition remains extremely concerned that the overall regulatory scheme remains unworkable and unpredictable.

The Coalition is a group of trade organizations representing broad and diverse industry interests. Its mission is to engage in strategic planning, and regulatory and technical advocacy, regarding state and federal chemical initiatives that may impact the manufacturers of complex durable goods, their suppliers and other related entities such as those that may distribute or sell such goods and/or sell or use their replacement parts. For the Coalition's purposes, "complex durable goods" are manufactured goods composed of 100 or more manufactured components, with an intended useful life of five or more years, where the product is typically not consumed, destroyed, or discarded after a single use. For purposes of this comment letter, the Coalition consists of the following members: the Aerospace Industries Association, the Alliance of Automobile Manufacturers, the Association of Global Automakers, the Automotive Aftermarket Industry Association and the Motor and Equipment Manufacturers Association.

The Coalition appreciates the efforts made by DTSC to respond to a wide spectrum of concerns raised by DTSC's July 2012 version of the proposed SCP Regulations (the "2012 SCP Regulations"). The Coalition is gratified to see some of the revisions that DTSC has made, including the elimination of the certified assessor requirement, the introduction of the concept of economic feasibility in key provisions, and the introduction of "assembler" as a new category of responsible entities.

However, many of the problems in the 2012 SCP Regulations remain, and many new problems and uncertainties are introduced, in DTSC's revisions. In order for the SCP Regulations to achieve the goal of a workable, consistent and fair chemical/product regulatory program, these problems must be fixed and the uncertainties must be eliminated. And, as discussed further in this letter, the broad and unanticipated nature of many of the revisions requires DTSC to release these revised regulations as a new regulatory proposal subject to another formal public participation process under Government Code sections 11346.4 and 11346.5 of the APA.

Many of the remaining problems in the Revised SCP Regulations present particularly difficult obstacles to manufacturers of complex durable goods and to the entities that manufacture or sell replacement parts for such goods. The Coalition's comments to the 2012 SCP Regulations, which the Coalition attaches and incorporates herein by reference, described in detail the unique aspects of complex durable goods.[1] Because these unique aspects have a great impact on the application of the SCP Regulations, we repeat them here:

- The global supply chain for these goods is multi-tiered and multi-faceted, from foundational raw materials to finished systems' components for final assembly and installation.

- The lead-time necessary for product design, development and validation is on the order of years, not months or weeks.

- These products are designed to be in service for several years, or in many cases, decades.

- Because these products are designed to last for years, replacement parts to support their repair and maintenance likewise must be available for years.

[1] *See* Attachment 1 hereto. The Coalition's comments also may be found at http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/upload/SCP_Comments_A_J.pdf. Although the Coalition does not physically include with this letter the attachments to its October 10, 2012 comments, it incorporates those attachments herein by reference.

- These products already are subject to stringent legal, governmental and industry requirements, including safety, environmental, product performance and other certification standards.

- Changes in design and/or chemical composition nearly always require significant analysis, validation and performance testing. Such requirements can range from failure-mode analysis to actual field testing to specific methodologies of testing mandated by any number of regulatory outlets in the global markets in which products are sold. Timing, especially when prior regulatory approval is required, is unpredictable, potentially unachievable, and often in the magnitude of years, assuming that the chemical substitute even meets the performance criteria originally intended.

- These products must perform and function reliably in very specific ways.

- Consumers and customers have specific expectations and requirements for these products.

The Coalition discusses below its primary concerns with the Revised SCP Regulations. We observe here that the absence of any Statement of Reasons accompanying DTSC's revisions creates difficulties in understanding their basis; if the Coalition's comments are based on misunderstandings of the revisions discussed below, we ask that DTSC provide clarification in its Final Statement of Reasons.

I. THE NEW TERMS "ASSEMBLE" AND "ASSEMBLER" CREATE CONFUSION IN THE CONTEXT OF MANUFACTURING COMPLEX DURABLE GOODS.

A. *Explanation of concern*

The Coalition and many of its individual members previously provided detailed comments and recommendations to DTSC outlining the challenges imposed by the proposed SCP Regulations on the manufacturers of complex durable goods. DTSC has taken this input to mean that such manufacturers fundamentally only assemble many components when they manufacture such goods. The Revised SCP Regulations now include "assemblers" as responsible entities, allocating to them a role similar to that of retailers. The Coalition appreciates DTSC's revision in this regard, in that it is an attempt to appropriately allocate the regulatory burdens of DTSC's proposed program.

However, the complex global supply chain inherent in the assembly of complex durable goods means that many of these entities nevertheless will fall under the category of "importer" and be subject to the complex and burdensome aspects of the regulatory program. That is because these entities sometimes may import the components that they assemble and/or in some cases import the assembled product. In these importing contexts, these entities have little access to information pertaining to the components' constituents and have little control over the

components' composition, in order to fulfill the regulatory obligations imposed by DTSC's proposed program.

In short, it appears that in some cases assemblers of complex durable goods would be deemed to be covered by the higher tier of responsible entity, *i.e.*, importer. To promote DTSC's goal in creating the new "assembler" category, DTSC should revise the definition of "importer" as the Coalition proposes below, and thereby appropriately allocate the regulatory obligations among responsible entities.

In addition, the terms "assembly" and "subassembly" in the definition of "component" renders the new terms "assemble" and "assembler," and their respective definitions, unnecessarily confusing. This is particularly troublesome because of the prominent role played by components in the assembly of complex durable goods; indeed, complex durable goods fundamentally are complex assemblies of components. These two terms should be removed from the "component" definition and the definition should clarify that it pertains to components in assembled consumer products.

B. *Proposed revisions to regulatory language (additions in underline; deletions in strikethrough)*

The Coalition proposes that DTSC adopt all of the following revisions.

1. *Move the definition of "complex durable product" now contained in Section 69503.5 (c)(2) to new Section 69501.1(a)(23), and renumber subsequent sections accordingly.*

2. *Revise Section 69501.1(a)(23)(A)*:

"Component" means a uniquely identifiable homogeneous material, part, or piece~~, assembly, or subassembly~~ that is a necessary or intended element of an assembled consumer product.

3. *Revise Section 69501.1(a)(39)*:

"Importer" means a person who imports a product that is subject to the requirements of this chapter. "Importer" does not include:

A. A person that imports a product solely for use in that person's workplace if that product is not sold or distributed by that person to others; or

B. A complex durable product assembler.

II. DTSC'S REVISIONS FAIL TO ADDRESS REPAIR, REFURBISHMENT AND PRODUCT MAINTENANCE ACTIVITIES AND FAIL TO ADDRESS REPLACEMENT PARTS.

A. *Explanation of concern*

Complex durable goods typically are intended to last several years, even decades. As a result, such goods require repair, refurbishment and/or maintenance services – and replacement parts with which to provide such services. Replacement parts may be associated with products that are no longer being manufactured. Frequently such parts must meet specific legal requirements and/or regulatory approvals or certifications.

The Coalition previously commented on the 2012 SCP Regulations' definition of "manufacture" and those Regulations' treatment of replacement parts. The Coalition urged DTSC to exclude repair, refurbishment and maintenance activities from the definition of "manufacture" because persons and entities conducting such activities are ill-positioned to conduct the complex and costly alternatives assessments ("AAs") required under the proposed program. The Coalition also urged DTSC to exclude replacement parts from the definition of "consumer product." The Revised SCP Regulations fail to address the Coalitions' concerns.

DTSC previously has stated its position that repair, refurbishment and maintenance activities are not considered "manufacture" activities within the meaning of these regulations. *See, e.g.*, Revised Statement of Reasons ("SOR") at 31 ("...activities such as replacing worn, or depleted parts, repairing defective or nonworking components, or restoring or rebuilding a product would not represent the manufacture of a product. A "manufacturer" would not include persons engaged in these restoration activities."). Yet, the new definition of "manufacture" now contains no exclusion for repair, refurbishment or maintenance activities in any form. DTSC may have intended the "assemble" exclusion, contained in that definition, to encompass such activities. However, the definition of "assemble" does not achieve that goal for two primary reasons. First, by referencing the ***creation*** of a consumer product, that definition could be interpreted as not reaching repair, refurbishment or maintenance activities for ***existing*** products. Second, the term "responsible entity" under the Revised SCP Regulations includes assemblers – a definition that would thwart the goal of excluding altogether from the AA process those persons and entities merely conducting repair and maintenance services.

We recognize that DTSC has included new language under the Regulatory Response section that allows DTSC to consider replacement parts in establishing the scope of a regulatory response. *See* Section 69506.1(f)(4) (referencing "Priority Products ordered by a retailer prior to the effective date of the Priority Product listing, and still for sale..." and "Priority Products manufactured after the effective date of the Priority Product listing, but before the date of the final regulatory response determination notice."). But this provision does not go far enough. First, it is too narrow in scope, in that: (1) it seems designed to allow retailers to exhaust existing inventory, and not necessarily to allow continued manufacture of replacement parts; and (2)

insofar as it relates to manufacture of replacement parts, it covers a very narrow time window of manufacture.

Second, while this revision allows DTSC to select how to address these types of products, which may – or may not – include replacement parts, there is no certainty that replacement parts actually will be excluded. As the Coalition explained in its previous comments, replacement parts are a necessary and critical aspect of ensuring the full useful life of complex durable goods and there must be certainty that these replacement parts can continue to be offered as needed. We continue to urge DTSC to explicitly exclude from this regulation replacement parts used to repair and maintain products.

B. *Proposed revisions to regulatory language (additions in underline; deletions in strikethrough)*

The Coalition proposes that DTSC adopt all of the following revisions.

1. *Revise Section 69501.1(a)(43):*

"Manufacture" means to make or produce. "Manufacture" does not include:

(A) acts that meet the definition of "assemble;" or

(B) repair or refurbishment of an existing consumer product; or

(C) installation of components to an existing consumer product; or

(D) making non-material alterations to an existing consumer product.

2. *Revise Section 69501.1(a)(24) to add:*

(D) "Consumer product" does not mean replacement parts used to repair, refurbish or maintain existing consumer products.

III. THE ALTERNATIVES ANALYSIS THRESHOLD EXEMPTION IS OVERLY NARROW.

A. *Explanation of concern*

DTSC previously has acknowledged that an AA should not be required for all Priority Products, and that appropriate criteria must be established for those circumstances in which a responsible entity is relieved of the obligation to conduct an AA. *See, e.g.*, Revised SOR at 112-116 (describing the Alternatives Analysis Threshold Exemption). This is consistent with

DTSC's legislative mandate to "identify and ***prioritize***" chemicals in consumer products. Health & Safety Code § 25252(a) (emphasis added).

In establishing the Alternatives Analysis Threshold Exemption (the "AAT Exemption"), DTSC recognized that an "off-ramp" from the AA process, based on the amount of the chemical of concern ("COC") in the Priority Product, is necessary for a workable and scientifically defensible regulatory program. DTSC further has explained that the criteria for such an "off-ramp" must be "scientifically appropriate." Revised SOR at 114. Significantly, DTSC previously has stated that any exemption based on the amount of the COC in the Priority Product should encompass both intentionally added chemicals and contaminants because the "risk to public health and the environment are the ***same*** for intentionally and unintentionally added chemicals." Revised SOR at 112-113 (emphasis added).

This concept is hardly new. Numerous federal and California environmental programs, such as the California Drinking Water Program, establish specific levels for chemicals, above which a regulated entity must take specific action, and below which it need not, in accordance with the relevant law and regulations. These specific levels are calculated using standard risk assessment methods and in many cases (such as for Maximum Contaminant Levels) also incorporate technical and economic feasibility concepts.

But DTSC's proposed revisions associated with the AAT Exemption fail to achieve the goal of creating a reasonable, scientifically well-founded "off-ramp" from the AA process for those Priority Products that contain minimal amounts of COCs and present little or no risk to human health or the environment. Two key deficiencies of DTSC's AAT Exemption proposal undermine its intent: (1) the failure to include intentionally-added chemicals and (2) reliance on the "Practical Quantitation Limit" ("PQL") as the sole scientific measure to trigger the exemption.

These deficiencies must be cured. They are inconsistent with legislative intent, which makes clear that AB 1879 is intended to address chemical-product combinations that pose significant risk:

> AB 1879 represents a balanced, ***science-based approach*** to addressing the ***danger*** of hazardous chemicals contained in consumer products....The bill provides an open and transparent process for identifying and prioritizing the ***most dangerous chemicals*** and for determining what the department should do about these chemicals contained in products.

Report of Senate Committee on Environmental Quality dated August 20, 2008 (http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_1851-1900/ab_1879_cfa_20080821_111017_sen_comm.html) at 6 (emphasis added).

There is no scientifically justifiable reason to exclude intentionally added chemicals from the AAT. DTSC itself has acknowledged that the exemption should not differentiate between the two categories of chemicals, as the 2012 SCP Regulations and the Revised Statement of Reasons demonstrate. Yet, in a complete reversal of its prior position, DTSC inexplicably has narrowed the AAT Exemption in an artificial distinction between contaminants and intentionally added chemicals that yields no benefit to public health or the environment.

DTSC's AAT Exemption proposal also suffers because of its exclusive reliance on the PQL. The proposed definition of the PQL is too vague to provide sufficient guidance to the regulated community.[2] PQLs depend on the analytical method, the instrumentation, and even the laboratory in which a PQL is developed. At a minimum, the PQL must incorporate statistical rigor in order for it to have practical meaning in DTSC's proposed program.

Thus, the AAT Exemption must be revised in at least two important ways: (1) it must encompass intentionally added chemicals and (2) the PQL definition must incorporate statistical rigor.

Finally, DTSC's use of the PQL in the proposed regulation also fails to account for the potential for risk to human health or the environment resulting from the presence of a COC in a Priority Product. This means that responsible entities will invest substantial resources to conduct complex and burdensome AAs for products that have little or no potential for adverse impacts. This similarly means that DTSC will be inundated with AA reports for products presenting little or no risk of adverse impacts. Such a result does not seem to be a wise investment of resources, and is contrary to the Legislature's intent that DTSC "***prioritize***" chemicals in consumer products and target "***the most dangerous***" chemicals. The Coalition urges DTSC to adopt a risk-based AAT Exemption.

B. *Proposed revisions to regulatory language (additions in underline; deletions in strikethrough)*

The Coalition proposes that DTSC adopt all of the following revisions.

1. *Revise Section 69501.1(a)(12):*

"Alternatives Analysis Threshold" means the Practical Quantitation Limit for a Chemical of Concern that is present in a Priority Product ~~solely as a contaminant~~.

[2] PQLs also may change over time. That is because a PQL depends on the particular analytical method, which itself may change over time. Thus, an exemption based exclusively on a PQL offers no consistency or certainty in application, even for the same COC in the same Priority Product.

2. *Revise Section 69501.1(a)(52):*

"Practical Quantitation Limit" or "PQL" means the lowest concentration of a chemical that can be precisely quantified (percent relative standard deviation within ± 10 percent) with an acceptable bias (percent recovery within 90-110 percent) ~~reliably measured within specified limits of precision and accuracy~~ using routine laboratory operating procedures.

3. *Revise Section 69505.3(a)(4):*

A statement certifying that ~~the Chemical(s) of Concern are present in the manufacturer's Priority Product only as contaminants and~~ the concentration of each Chemical of Concern in the manufacturer's Priority Product does not exceed the Alternatives Analysis Threshold for that chemical;

IV. SUBJECTING THE PRELIMINARY AA REPORT, THE DRAFT ABRIDGED AA REPORT AND THE ALTERNATE PROCESS AA WORK PLAN TO PUBLIC COMMENT, TO WHICH THE RESPONSIBLE ENTITY MUST RESPOND, IS AN UNNECESSARILY BURDENSOME METHOD OF ENSURING TRANSPARENCY.

A. *Explanation of concern*

The Coalition appreciates that DTSC intends the AA process to be as transparent as possible. However, subjecting the Preliminary AA Report, the draft Abridged AA Report and the Alternate Process AA Work Plan to public comment, with the requirement that the responsible entity (rather than DTSC) collect and respond to such comments, is an unprecedented and unnecessarily burdensome method of achieving that goal. This provision must be eliminated.

DTSC's proposal would require the responsible entity to invest substantial resources in establishing the necessary infrastructure for this public process and in responding to an as-yet-unknowable, but likely large, number of public comments. By thrusting on the regulated community's shoulder the responsibility to engage the public in a formal public participation process, DTSC's proposal ironically threatens the integrity of public participation in the AA process altogether. Such a radical revision of the 2012 SCP Regulations could not possibly have been anticipated by the public.

The AA process is a highly technical and complex one. DTSC itself has conducted numerous workshops to identify appropriate technical approaches for conducting AAs, inviting experts in academia and in the regulated community to provide input. DTSC also is working on developing guidelines for conducting AAs, which presumably will provide significant assistance to responsible entities. Yet, this proposed provision in the Revised SCP Regulations would invite any comment, no matter how scientifically ill-founded, and require the responsible entity to invest the resources necessary to respond. DTSC's proposal fails to establish specific criteria

for public comments to ensure the scientific integrity of the AA and to minimize the use of the responsible entity's resources to respond to irrelevant and scientifically unfounded comments.

The Revised SCP Regulations also fail to establish any criteria for the method by which the responsible entity is to collect public comments. This failure may subject even the most well-intentioned responsible entity to claims that the method of submitting public comments for a particular AA document is inadequate. Such issues will distract from the goal of ensuring that the AA process is transparent and that the AA document at issue is grounded in scientific integrity.

DTSC's proposal also may exceed the agency's authority under AB 1879, in violation of the APA. Regulations promulgated under AB 1879 must be "consistent and not in conflict" with the authorizing statute. Gov't Code §11324.2. AB 1879 requires DTSC to "ensure that the tools available are in a form that allows for ease of use...." Health & Safety Code § 25253(c). As already described above, the proposed public review process is not a tool that "allows for ease of use," as AB 1879 requires, and therefore DTSC's proposed regulation may violate the APA.

Regulations promulgated under AB 1879 also must be "reasonably necessary" to effectuate its purpose. Gov't Code §11342.2. As is relevant here, AB 1879 requires DTSC to "establish a process for evaluating chemicals of concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern." Health & Safety Code § 25253. Requiring private entities to lead formal public participation proceedings, collecting and responding to public comments on the AA documents required by DTSC's own regulatory program, is not "reasonably necessary" to effectuate this purpose. In this round of the regulatory process, DTSC has provided the public with no rationale that may otherwise establish the "reasonably necessary" prong for validity of this regulation under the APA.

Ultimately, DTSC's proposal subverts DTSC's role in implementing the SCP Regulations. It is DTSC, not the responsible entity, that should be the lead in collecting and responding to comments pertaining to reports required under DTSC's own regulatory program. It is DTSC, not the responsible entity, that possesses the existing infrastructure and experience to collect and respond to comments. Indeed, the Revised SCP Regulations already require DTSC to post a notice on its website regarding the availability of the particular AA document for public review and comment, reflecting the agency's acknowledgement of its own role in the public participation process. The SCP Regulations must eliminate the proposed regulation requiring the responsible entity preparing the subject AA documents to collect and respond to public comment.

The Coalition observes that this proposed regulation is not necessary to achieve DTSC's apparent goal. If DTSC's motivation for its proposal is the conservation of agency resources, then DTSC may request the responsible entity submitting the AA document to assist DTSC in preparing responses to public comments, rather than abdicating this regulatory role. There is

precedent for this collaborative approach, insofar as under other regulatory programs it is not uncommon for state agencies (including DTSC) to work with regulated entities in responding to public comments. For example, Remedial Action Plans ("RAPs") for contaminated property cleanups are required to be published for public notice and comment under Health & Safety Code section 25356.1. RAPs frequently are prepared, under DTSC's oversight, by the private entity conducting the cleanup. In these circumstances, such private entities also frequently work with DTSC in responding to public comments. Similarly, draft Environmental Impact Reports ("EIRs") under the California Environmental Quality Act frequently are prepared by the project proponent under the oversight of the lead agency. Draft EIRs are required to be published for public notice and comment and, again, it is not uncommon for the project proponent to assist the lead agency in the preparation of responses to public comments.

B. ***Proposed revisions to regulatory language (additions in underline; deletions in strikethrough)***

The Coalition proposes that DTSC make the following revision.

Revise Section 69505.1(d):

(d) Consideration of information~~ and public comments~~.

~~(1)~~ A responsible entity conducting an AA shall consider all relevant information made available on the Department's website~~, including any relevant public comments,~~ and any additional information or technical assistance the Department may provide regarding alternatives analysis. The responsible entity shall summarize these efforts in the Final AA Report or final Abridged AA Report, whichever is applicable.

~~(2) The Department shall post on its website a notice regarding the availability for public review and comment of each Preliminary AA Report, draft Abridged AA Report, and Alternate Process AA Workplan submitted to the Department. The notice shall include the time period, not to exceed forty-five (45) days, during which the public may submit comments, and the methods for submitting comments. Any public comments on these documents must be submitted to the entity that submitted the document to the Department with a copyt submitted simultaneously to the Department.~~

V. THE AA GUIDELINES ARE REGULATIONS SUBJECT TO THE FORMAL PUBLIC PARTICIPATION PROCESS OF THE APA.

Section 69505 of the proposed regulations requires DTSC to make AA guidelines available prior to the initial list of Priority Products. These guidelines are intended to assist persons in performing AAs "in accordance with this article." DTSC's Revised SOR for this section further explains that "Since this is a new endeavor for most regulated entities, DTSC's guidance is ***essential*** to ensuring that the AAs are performed and reported in a manner that is timely and ***in compliance with the regulations***." Revised SOR at 130 (emphasis added).

These guidelines must be promulgated in accordance with the APA's requirements because the guidelines effectively are regulations. Failure to comply with the APA's public participation requirements will render the "guidelines" invalid underground regulations.[3] Yet, nothing in the proposed regulations states or even suggests that the guidelines will be subject to public notice and comment.

Under Government Code section 11342.600, a "regulation" means "every rule, regulation order or standard of general application ... adopted by any state agency to implement, interpret or make specific the law enforced or administered by it, or to govern its procedure." All regulations are subject to the public participation requirements of the APA.

The guidelines described in Section 69505 of the proposed regulations are standards to be applied to entities regulated under AB 1879 and DTSC's proposed program implementing the law; they are to be adopted by DTSC, a state agency; and they will be promulgated to make specific AB 1879 – *i.e.*, the law administered and enforced by DTSC – as well as to govern the AA process imposed by DTSC's regulatory program. The guidelines are therefore "regulations" within the meaning of the APA. DTSC's reference to them as "guidelines" cannot change the fact that they must be adopted pursuant to the procedure calling for notice and opportunity to be heard. *See Union of American Physicians and Dentists v. Kizer* (1990) 223 Cal.App.3d 490. Failure to subject the guidelines to formal public participation under the APA will render them invalid underground regulations.

DTSC must issue the AA guidelines as regulations subject to the formal public participation requirements of the APA, and DTSC must clarify, in the current proposed regulations, that the guidelines shall be posted on DTSC's website after the public participation proceeding has been completed in accordance with the APA.

[3] The Office of Administrative Law's regulations define the term "underground regulation" as:

> any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

1 Cal.Code Regs. § 250(a).

VI. THE BROAD AND UNANTICIPATED NATURE OF DTSC'S REVISIONS REQUIRES DTSC TO RELEASE THE REVISED REGULATIONS AS A NEW REGULATORY PROPOSAL WITH A STATEMENT OF REASONS, A NEW 45-DAY COMMENT PERIOD AND A PUBLIC HEARING UNDER GOVERNMENT CODE SECTIONS 11346.4 AND 11346.5.

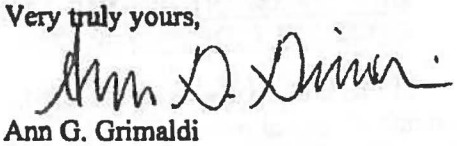
DTSC's extensive revisions of the proposed SCP Regulations render them subject to a new round of formal public participation proceedings under the APA. Contrary to Government Code section 11346.8(c), the revisions are neither "nonsubstantial or solely grammatical in nature," nor "sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action." Among these changes:

- The requirement for the responsible entity, rather than DTSC, to receive and respond to public comments on a Preliminary AA, a draft Abridged AA or an Alternate Process AA Work Plan completely turns on its head the agency's statutorily mandated responsibility to inform and engage the public in regulatory decision-making. Aside from the improper abdication of a public agency's duty to solicit, receive and respond to public comments, this provision places significant burdens on the responsible entity, especially in terms of establishing a clear and reliable method for the public to submit comments to it, all in the complete absence of any criteria for the method for such communication. Nothing in the July 2012 version of the SCP regulations could have put the public on notice of this unprecedented shift, to the regulated community, of DTSC's responsibility to solicit, receive and respond to public comments.
- DTSC's apparent current position on whether "manufacture" includes repair, maintenance and refurbishment activities is an unprecedented reversal of its former position.
- Trade secret protection under Article 9 appears to have been narrowed substantially, with, *e.g.*, protection now tied to a patent application and only temporarily masked.
- The expansion of the information call-in subject matter to include even products not encompassed by Health and Safety Code section 25251 is unprecedented and likely unlawful.

Accordingly, the Revised SCP Regulations are not revisions subject to Government Code section 11346.8(c). Rather, they constitute a new regulatory proposal required to comply with Government Code sections 11346.4 and 11346.5. The Coalition therefore asks that DTSC release the Revised SCP Regulations as a new regulatory proposal with an accompanying Statement of Reasons for a full public notice and comment proceeding with a hearing.

Thank you again for this opportunity for the Coalition to comment on the Revised SCP Regulations.

Very truly yours,



Ann G. Grimaldi

cc: Matthew Rodriquez, Cal/EPA Secretary (via first class mail and email: matthew.rodriquez@calepa.ca.gov)
Cliff Rechtschaffen, Senior Advisor to Governor Brown (via first class mail)
Martha Guzman-Aceves, Deputy Legislative Affairs Secretary, Office of the Governor (via first class mail)
Odette Madriago, Deputy Director (via email: omadriago@dtsc.ca.gov)
Jeff Wong, Chief Scientist (via email: jwong@dtsc.ca.gov)
Krysia von Burg, Regulations Coordinator (via first class mail and email: gcregs@dtsc.ca.gov)

SF:27562451.5

ATTACHMENT 2

Albany
Atlanta
Brussels
Denver
Los Angeles

McKenna Long
& Aldridge LLP
Attorneys at Law

101 California Street • 41st Floor • San Francisco, CA 94111
Tel: 415.267.4000 • Fax: 415.267.4198
www.mckennalong.com

New York
Philadelphia
San Diego
San Francisco
Washington, D.C.

ANN G. GRIMALDI
(415) 267-4104

EMAIL ADDRESS
agrimaldi@mckennalong.com

October 10, 2012

VIA E-MAIL (DRAPHAEL@DTSC.CA.GOV) AND
BY FEDERAL EXPRESS

Debbie Raphael, Director
California Department of Toxic Substances Control
1001 "I" Street
Sacramento, CA 95812

Re: Comments of the Complex Durable Goods Coalition on Proposed Safer Consumer Products Regulations

Dear Ms. Raphael:

I am pleased to submit the comments of the Complex Durable Goods Coalition (the "Coalition") on the proposed Safer Consumer Products Regulations released by the Department of Toxic Substances Control ("DTSC") on July 27, 2012 (the "Regulations"). We appreciate the extension of time DTSC granted to submit comments.

The Coalition is a group of trade organizations representing broad and diverse industry interests. Its mission is to engage in strategic planning, and regulatory and technical advocacy, regarding state and federal chemical initiatives, as such initiatives may impact the manufacturers of complex durable goods, their suppliers and other related entities such as those that may distribute or sell such goods and/or sell or use their service parts. For the Coalition's purposes, "complex durable goods" are manufactured goods composed of 100 or more manufactured components, with an intended useful life of five or more years, where the product is typically not consumed, destroyed, or discarded after a single use.

Ten trade organizations comprise the Coalition, and membership continues to expand. Current members include the Aerospace Industries Association, the California Building Industry Association, the California Automotive Wholesalers Association, the Association of Home Appliance Manufacturers, the Outdoor Power Equipment Institute, the Truck and Engine Manufacturers Association, the Alliance of Automobile Manufacturers, the Association of Global Automakers, the Automotive Aftermarket Industry Association and the Motor and Equipment Manufacturers Association.

The companies represented by the Coalition are crucial to the economy of California and the nation. Aside from the economic contributions that flow from the sale and purchase of their goods, these companies in the aggregate directly provide hundreds of thousands of jobs in California and nationwide, and indirectly support the employment of millions of other individuals.

Notwithstanding the diversity of the Coalition's membership, Coalition members are uniform in their concern that the Regulations are overbroad, impractical and unworkable for manufacturers of complex durable goods, their suppliers and other entities which distribute, sell or use them and/or their service parts. Stated in the simplest way, the Regulations do not adequately account for the unique characteristics of complex durable goods. Among these unique characteristics:

- The global supply chain for these goods is multi-tiered and multi-faceted, from foundational raw materials to finished systems' components for final assembly and installation.

- The lead-time necessary for product design, development and validation is on the order of years, not months or weeks.

- These products are designed to last for several years, or in many cases, decades.

- Because these products are designed to last for years, service parts to support their repair and maintenance likewise must be available for years.

- These products already are subject to stringent legal, governmental and industry requirements, including safety standards.

- Changes in design and/or chemical composition nearly always require significant analysis, validation and performance testing. Such requirements can range from failure-mode analysis to actual field testing to specific methodologies of testing mandated by any number of regulatory outlets in the global markets in which products are sold. Timing, especially when prior regulatory approval is required, is unpredictable, potentially unachievable, and often in the magnitude of months and years, assuming that the chemical substitute even meets the performance criteria originally intended.

- These products must perform and function reliably in very specific ways.

- Consumers have specific expectations and requirements for these products.

Below I describe the Coalition's top concerns regarding the Regulations, and set forth the Coalition's proposed revised regulatory language and other recommendations to address those concerns.

Before turning to those top concerns, however, the Coalition joins in the comments of other entities pointing out the deficiencies in DTSC's economic impact analysis required under the California Administrative Procedures Act, and in DTSC's attempt to comply with the California Environmental Quality Act ("CEQA"). The Coalition agrees with those commenters that DTSC's analyses do not meet the legal requirements of those respective laws. The Coalition also points out that CEQA requires, among other things, an analysis of alternatives to the Regulations, yet despite the fact that DTSC has drafted numerous informal iterations of the Safer Consumer Products Regulations, DTSC has failed to analyze any of these. In these comments, the Coalition attaches and incorporates herein by reference two reports that discuss these analyses' shortcomings in greater detail: "The Consumer Impact of California's Green Chemistry Initiative," authored by the California Foundation for Commerce and Education and dated October 3, 2012; and the October 11, 2012 letter from Jim Lyons of Sierra Research.

The Coalition also joins in the concerns expressed by the Enterprise and Industry Directorate-General of the European Commission in the September 11, 2012 email communication from Mr. Giuseppe Casella to the TBT Enquiry Point of the United States (the "EU Comments"). That communication is attached and is incorporated herein by reference. As the EU comments point out, the Regulations are not even-handed and will not establish a level playing field among and within regulated industries. The Coalition agrees with the EU Comments regarding the inadequacy of DTSC's economic analysis, the limited time frame provided to responsible entities for conducting the complex alternatives analyses required, and the potential for conflict with the Technical Barriers to Trade Agreement.

I. TIME FRAMES FOR COMPLIANCE ARE WHOLLY INADEQUATE.

A. *Explanation of concern*

Complex durable goods require years of design, research and development, testing and validation. Changes in design and/or chemical composition affect each phase of the product lifecycle and require substantial lead-time: materials development alone can require five or more years, with design and development an additional four or more years, and potentially longer for aerospace products. Changes in design and/or chemical composition often require prior regulatory approval from other state and federal agencies. The timelines for such prior regulatory approvals are unpredictable, and potentially unattainable. Further, the supply chains for these products' raw materials and components are extremely complex. The Regulations must build in sufficient time to accommodate these challenges.

The time required to determine, for example, if the Priority Product contains the Chemicals of Concern ("COCs") at the Alternatives Analysis ("AA") Threshold (or, indeed, *any* level) will depend on whether the necessary information exists at the time the Priority Product is listed. If the necessary information is not available at that time, it could take several months to navigate through the complex supply chain network to obtain the necessary information. Even more challenging is the ability to make a decision regarding Priority Product removal or

replacement in the 60-day time frame established by the Regulations, for such decisions necessarily require the foundational knowledge, which takes time to obtain, that a Priority Product contains the COC. It would be virtually impossible for a manufacturer of a complex durable good to make a decision about Priority Product removal or replacement in that 60-day time period.

Further, the time to complete the extremely complex AA process is much too short. The EU Comments identify this problem in their comparison of the Regulations to the EU's REACH program. *See* EU Comments at p. 8. In addition, the time to complete an AA depends in significant part on how many alternatives are being analyzed. It takes little prognosticative ability to predict that the more alternatives are analyzed, the longer the analysis will take. Arbitrarily compressing the time frame to conduct the analysis could mean that alternatives that otherwise may be beneficial to human health and the environment will be discarded early in the process, to the detriment of the goals of AB 1879 and SB 509.

Regulated entities that manufacture complex durable goods also must be given sufficient time to build, test and validate prototypes. This process is time-consuming and resource intensive, and cannot feasibly be conducted on numerous alternatives. Moreover, entities must establish a reliable supply chain for the manufacture of complex durable goods; with new designs and/or chemical composition, establishing the necessary supply chain may require substantial time. The Regulations must accommodate the need for the prototype process and its timelines. The Regulations also must build in time to obtain necessary regulatory approvals following the prototype build, testing and validation process, so that the manufacturer may lawfully produce the final alternative. And, as part of implementing this prototype process, the Regulations must allow the Final AA report to make a recommendation regarding what alternative(s) will go through the prototype build, test and validate process, along with a recommendation regarding the time frame for such work, before any regulatory response is imposed.

DTSC can find an example of a regulatory approach that addresses the need for this post-AA process by looking to Washington State. Washington's brake friction material law requires a reduction of copper in brake friction materials, since the copper is released from the material during use and enters waterways, with the potential to harm aquatic organisms. Under the law, if Washington's Department of Ecology concludes that an alternative brake friction material may be available, it must convene a brake friction material advisory committee, consisting of representatives from industry, regulators and non-government organizations, and consult with that committee regarding the potential alternative. Revised Code of Washington ("RCW") section 70.285.040. Notably, and in obvious recognition of the lead-time necessary to test, validate and implement a change in brake friction material design and chemical composition, the law requires full implementation of the alternative ***eight years*** after the Washington's Department of Ecology concludes that a viable alternative exists, following its consultation with the advisory committee. RCW section 70.285.050.

The time frames for compliance under the Regulations are insufficient to accommodate the challenges described here. The Regulations must provide additional time for the initial notifications required to be submitted to DTSC, must build in more flexibility for the preparation and submission of the AA reports and work plans and must include a post-AA prototype testing and validation period prior to the imposition of any regulatory response, if one is to be imposed.

If, indeed, the goal of green chemistry is the design of new and "better" chemistries, the complex durable goods industry must be afforded sufficient time to develop them. And, as important as it is to avoid regrettable chemical substitutions that may adversely impact human health and the environment -- one of DTSC's oft-stated concerns -- it is equally important to avoid regrettable ***products*** that do not provide the necessary functionality, durability, safety and other characteristics upon which users rely. The Coalition therefore urges DTSC to adopt its recommendations.

B. *Proposed revisions to regulatory language and timeframe recommendations (additions in underline; deletions in strikethrough)*

1. *Revise Section 69503.4(g) as follows, with consistent changes in Sections 69503.7, 69503.6, 69501.2(b) and 69505.1(g):*

(g) Each responsible entity for a product listed on the Priority Product list shall provide to the Department one of the following notifications within ~~sixty (60)~~ one hundred eighty (180) days after the product is listed as a Priority Product, or ~~sixty (60)~~ one hundred eighty (180) days after the product is first placed into the stream of commerce in California, whichever is later:

* * * * * * * *

2. *Revise Section 69505.2(c)(3)(C) as follows:*

(C) The work plan must be submitted to the Department no later than ~~sixty (60)~~ one hundred eighty (180) days after the product is included on the Priority Products list. Upon receipt of a work plan under this subsection, the Department shall follow the steps specified for the review of Preliminary AA reports in section 69505.6(a).

3. *Decouple the deadline for submitting the Preliminary AA Report, the Abridged AA Report and the Chemical of Concern Removal Notification, from the date the Priority Product list is published:*

   a. The deadline for submitting the Preliminary AA report, the Abridged AA Report or the Chemical of Concern Removal Notification should be eighteen (18) months after the responsible entity submits the Priority Product Notification.

   b. An extension of up to ninety (90) days should be made available as per Section 69505.1(d)(1).

4. *Revise the deadline for the Final AA Report:*

   a. Section 69505.1(c)(3)(B):

Except as provided in subsection (d)(1), the responsible entity shall submit the Final AA Report no later ~~than twelve (12)~~ thirty-six (36) months after the Department issues a notice of compliance for the Preliminary AA Report....

   b. Section 69595.5(k)(1)(A):

The work plan and implementation schedule must specify the proposed submission date for the Final AA Report, and must ensure that the Final AA Report will be submitted to the Department no later than ~~twelve (12)~~ thirty-six (36) months after the Department issues a notice of compliance for the Preliminary AA Report.

   c. Section 69505.1(d)(1):

A responsible entity may request, and the Department may grant, a one-time extension of up to ninety (90) days to the submission deadline for ~~either~~ the Preliminary AA Report or up to thirty-six (36) months to the submission deadline for the Final AA Report~~, or both~~.....

   d. Section 69505.2(c)(3)(D):

The due date for the Final AA Report shall be ~~eighteen (18)~~ thirty-six (36) months after the date the Department issues a notice of compliance for the work plan, unless the responsible entity requests, under Section 69505.5(k)(1), and the Department approves, under Section 69505.6(a)(3), a longer period of time. ~~The additional time shall not exceed thirty (30) months after the Department issues a notice of compliance for the work plan.~~

5. *Establish a post-AA prototype process*:

   a. The Regulations must allow responsible entities to identify, in the Final AA Report, one or more alternatives that will undergo prototype building, testing and validation. In the Final AA Report, the responsible entity also would identify what other regulatory approvals are necessary for a successful prototype to be rolled out commercially.

   b. DTSC would issue a Compliance Notification Regarding Prototype, and the deadline to complete the prototype process would be based on the date of the notification.

   c. At least twenty-four (24) months must be provided for completion of the prototype process. In some cases, further development time may be required.

   d. At the end of the prototype process, the responsible entity shall submit a Notification Regarding Prototype which identifies which alternative, if any, will be rolled out commercially and makes recommendations regarding regulatory responses, if any.

6. *Add new subsection in Section 69506:*

   (d) No regulatory response shall be imposed on any product for which prototype building, testing and validation has not been completed and for which necessary regulatory approvals have not been obtained.

II. THE TERM "HISTORIC PRODUCT" IS TOO NARROW.

A. *Explanation of concern*

The Regulations' current definition of "historic product" suggests that industry will be forced to make difficult choices regarding a limited amount of financial and human resources. Ultimately, AB 1879 requires DTSC to develop a prioritization process that adequately accounts for the risk and liability of products. The prioritization process should be transparent, objective and focused on the intent of the regulations, which includes economic feasibility.

As applied to the concept underlying the definition of "historic products," service parts represent, in large part, components that are no longer being manufactured or distributed in significant quantities. Further, such service parts are predominantly associated with products that are no longer being actively manufactured. In essence, industry can either be forward-

looking and dedicate funds and human resources on research and development and making future products better, or it can go back and reinvent products that have little impact on human health or the environment. The latter is contrary to DTSC's oft-stated intentions.

The Regulations already, and appropriately, embrace the concept of exempting existing products by the definition of "historic products." However, the definition is too narrow to accommodate the regulatory realities of complex durable goods. In addition, the Regulations do not explicitly exempt spare parts for repair and maintenance of existing products. It is entirely consistent to include an exemption for service parts in the same spirit as "historic products" and for the same reasons. The definition of "historic" products therefore must be broadened, and service parts for such products must be explicitly included within the exemption.

B. *Proposed revision to regulatory language*

Revise definition of "historic product" in Section 69501.1(a)(22)(B)2 as follows (additions in underline; deletion in strikethrough):

"Historic product" means ~~a product that ceased to be manufactured prior to the date the product is listed as a Priority Product~~ one of the following:

(i) A product that ceased to be manufactured prior to the date the product is listed as a Priority Product; or

(ii) A product manufactured in accordance with a certification or approval by a federal or state regulatory agency or the Department of Defense prior to the date the product is listed as a Priority Product; or

(iii) A product that is used as a spare part or component for repair or maintenance of a product identified in (i) or (ii) regardless of when it was manufactured.

III. THE DEFINITION OF COMPONENT IS VAGUE AND UNCERTAIN AS APPLIED TO COMPLEX DURABLE GOODS.

A. *Explanation of concern*

Complex durable goods are composed of hundreds, even thousands of components, which themselves may be composed of many other components. In their current form, the Regulations acknowledge the difficulty in undertaking alternatives analysis on an entire complex durable good like a washing machine or a car. *See* Section 69503.4(a)(1)(B). But in order for the Regulations to be workable and provide predictability, the Regulations must be much more precise in defining what "components" may be identified in a Priority Product that is a complex durable product.

The Regulations also must be more specific about, and must limit the number of, "components" that may be identified in a Priority Product in a given time period, and must account for the cumulative impact, on the responsible entities charged with conducting AAs, of multiple component or materials listings. Alternatives analyses will be extremely complex, costly and time-consuming to undertake. DTSC's proposed limit of ten components every three years is unworkable.

B. ***Proposed revision to regulatory language***

1. *Revise Section 69503.4(a)(2)(B) to add new subsection 4 (addition in underline; with subsequent subsections renumbered accordingly):*

4. For purposes of subparagraph 2, "component" means a uniquely identifiable material within a single identifiable part or piece, not comprised of subparts, of a highly durable product.

2. *Revise second sentence of Section 69503.4(a)(2)(B)2 (addition in underline; deletions in strikethrough):*

For each listed highly durable product, the Department shall specify no more than ~~ten (10)~~ three (3) components ~~and/or homogeneous materials~~ per product every three (3) years.

3. *Strike the definition of "homogeneous material" in Section 69505.1, and remove all references to "homogeneous material" throughout the Regulations.*

IV. ANY REGULATORY RESPONSE TO BE IMPOSED MUST APPLY ONLY TO PRODUCTS MANUFACTURED DURING THE NORMAL MANUFACTURING CYCLE THAT BEGINS AFTER THE EFFECTIVE DATE OF THE REGULATORY RESPONSE.

A. ***Explanation of concern***

Products identified as Priority Products may continue to be manufactured as they undergo the alternatives assessment process. Service parts for such products necessarily also must be manufactured -- not only during this interim period before the effective date of a regulatory response, if any, but also after the effective date of any regulatory response. That is because Priority Products that are complex durable goods will continue to be used, and will require service and maintenance, for years after their manufacture. The Regulations, however, fail to explain how regulatory responses will apply to such interim products and their service parts, thereby generating uncertainty in the regulated community.

The Regulations also fail to account for product manufacturing cycles, which typically manifest themselves as model years (for vehicles) or equivalents in other industries. Disruptions of normal manufacturing cycles are economically detrimental to the affected manufacturing entities and, ultimately, to the consumer.

Regulatory responses must be forward-looking and must not interfere with normal product manufacturing cycles. If DTSC expects regulatory responses to apply after-the-fact to such products and their service parts, DTSC will create a cumbersome, expensive and unworkable regulatory approach that will lead to substantial economic harm with no countervailing public benefit. Accordingly, the Regulations must ensure that regulatory responses will apply only to products, and the service parts of such products, manufactured during a product manufacturing cycle that begins after the effective date of the regulatory response, taking into account the necessary lead-time that manufacturers will require to implement any regulatory response.

B. *Proposed revisions to regulatory language*

Revise Section 69506.1 to add new subsection (b) (with subsequent subsections renumbered accordingly):

> (b) Regulatory responses shall be imposed only on products, and the service parts of products, manufactured during the course of the manufacturer's normal product manufacturing cycle (*e.g.*, model or model year) that begins after the effective date of the regulatory response, taking into account lead-time necessary for manufacturers to implement the regulatory response(s).

V. THE DEFINITION OF "MANUFACTURE" IS OVERBROAD.

A. *Explanation of concern*

The current definition of "manufacture" exempts repair, refurbishing and alteration activities, but unnecessarily narrows the exemption. The qualifying phrase in the definition that begins with the word "unless" will capture entities that have not been considered "manufacturer" in any other regulatory context and that very likely are ill-equipped to manage manufacturer responsibilities. This unnecessary narrowing of the "manufacture" exemption will result in confusion and uncertainty in the marketplace, ultimately to the detriment of California's economy by encouraging businesses, both large and small, to exit California for a more predictable business climate. At the same time, the Coalition sees no counterbalancing benefit to human health or the environment resulting from this expansive definition. The definition of "manufacture" should retain the exemption for repairs, refurbishment and alterations of consumer products, but DTSC must eliminate that qualifying phrase.

B. ***Proposed revision to regulatory language***

Revise the definition of "manufacture" in Section 69501.1(a)(40) as follows (proposed deletion in strikethrough):

"Manufacture" means to make, produce, or assemble. "Manufacture" does not include any of the following actions~~, unless the action results in the addition, or increased concentration of, a Chemical of Concern, or replacement in a Chemical of Concern, in a product~~:

(A) Repair or refurbishment of an existing consumer product;

(B) Installation of standardized components to an existing consumer product; or

(C) Making non-material alteration to an existing consumer product.

VI. THE REGULATIONS IMPERMISSIBLY ATTEMPT TO SUPERSEDE AND/OR DUPLICATE OTHER REGULATIONS.

A. ***Explanation of concern***

Health & Safety Code section 25257.1(b) prohibits DTSC from superseding the regulatory authority of *any* other department or agency. This section contains no other qualifying language. Health & Safety Code section 25257.1(c) separately prohibits DTSC from duplicating or adopting conflicting regulations for product categories already "regulated or subject to pending regulation consistent with the purpose of this article." By separating the two concepts of superseding "any" other regulatory authority, on the one hand, and duplication/conflicting regulations, on the other, in Section 25257.1, the Legislature clearly expressed different concerns, and clearly intended any implementing regulations to account for these separate concerns.

But the Regulations gloss over this distinction and violate both of these prohibitions. The result is unnecessary and duplicative regulation that interferes with industry compliance with other regulatory schemes.

By focusing exclusively on Health & Safety Code section 25257.1(c), the Regulations do not adequately account for the existence of "the regulatory authority of any other department or agency" as required by Health & Safety Code section 25257.1(b). Further, the Regulations do not adequately address the prohibition contained in Health & Safety Code section 25257.1(c). These prohibitions should not be merely factors in Priority Product prioritization or in regulatory responses. Rather, in order to effectuate legislative intent, they explicitly should frame the applicability of the Regulations to exclude consumer products over which "any other department or agency" exercises authority and/or for which regulations already exist.

DTSC appeared to incorporate at least some aspects of this concept in its October 31, 2011 draft informal regulations. However, it is now far from clear that DTSC intends to abide by the prohibitions set forth in the authorizing statute. The Initial Statement of Reasons ("ISOR") identifies an example of a "component" that DTSC may regulate: catalytic converters due to their ability to release nitrous oxide. ISOR at p. 22. This subject matter falls squarely in the realm of federal regulation under the Clean Air Act. Only the California Air Resources Board has been delegated authority in this area in California, and only to the extent allowed by federal law. Yet, the ISOR makes clear DTSC's intent to regulate – impermissibly – in this area.

Absent clear language regarding the limits of DTSC's authority, there is no reason to believe that DTSC would not improperly invade other areas of regulation. The Coalition urges DTSC to revisit its approach and adopt the revision set forth below.

B. *Proposed revision to regulatory language*

Revise to add new Section 69501(b)(4) (addition in underline):

> (b)(4) This chapter does not apply to a consumer product that is regulated by one or more federal and/or other California regulatory program(s), and/or applicable international trade agreement(s) ratified by the United States Senate, to the extent that such other regulatory program(s) or international trade agreement(s) address(es) any of the factors identified in Health & Safety Code section 25253(a)(2)(A)-(M).

VII. THE DEFINITION OF "FUNCTIONALLY ACCEPTABLE" IS INADEQUATE.

A. *Explanation of concern*

The Regulations' definition of "functionally acceptable" does not adequately address the unique nature of complex durable goods. As the Coalition explained in its testimony at the September 10, 2012 public hearing, complex durable goods are not the proverbial widget. Characteristics such as durability; safety (stemming from legal requirements and industry and company standards); performance consistent with product brand; consumer expectations with respect to the product brand; functional performance with respect to the product's designated use; and aesthetics, including "look and feel" aspects of the product -- these all must be accounted for in the Regulations. Because the term "functionally acceptable" is critical in the prioritization of products, in evaluating alternatives and in the imposition of product sales prohibitions, the Regulations must be more comprehensive to be workable.

B. ***Proposed revision of regulatory language***

Revise Section 69501.1(a)(31) as follows:

"Functionally acceptable" means that an alternative product meets ~~both~~ all of the following requirements:

(A) The product complies with all applicable legal requirements; ~~and~~

~~(B) The product performs the functions of the original product sufficiently well that consumers can be reasonably anticipated to accept the product in the marketplace.~~

(B) The product complies with all applicable safety standards in the relevant industry and with all internal safety standards implemented by the manufacturer of the product; and

(C) The product meets other applicable product criteria, taking into account the specific nature of the product and other relevant factors.

VIII. THE TERM "EXPOSURE" IN SECTION 69503.2 IS INCONSISTENT WITH THE SCIENTIFIC DEFINITION OF "EXPOSURE"

A. ***Explanation of concern***

The Coalition is concerned that the criteria used in proposed Section 69503.2, to evaluate "exposure" in prioritizing products, erode the scientific concept of exposure to the detriment of the goals of AB 1879 and SB 509. The Regulations' criteria of market presence, statewide sales and the like are inadequate surrogates for the scientific concept of "exposure." Thus, the criteria in Section 69503.2 effectively break the link between the COC and the consumer product -- the link that is at the very core of what AB 1879 and SB 509 intend to target. Instead, the Regulations must incorporate the scientific concept of exposure -- *i.e.*, the fact that exposure requires the chemical to come into contact with, and be absorbed by, the body in some way.

B. *Proposed revision to regulatory language*

Revise Section 69503.2(a)(1)(B) to delete current subsection 1.a - b, and replace with the following (additions in underline; deletions in strikethrough):

~~1. Market presence information for the product, including all of the following:~~

~~a. Statewide sales by volume;~~

~~b. Statewide sales by number of units; and~~

1. Human exposures to the Chemical(s) of Concern in the product, considering:

a. The amount(s) of the Chemical(s) of Concern in the product;

b. The ability of the Chemical(s) of Concern in the product to come into contact with, and be absorbed by, the body of the intended user during reasonably foreseeable use of the product;

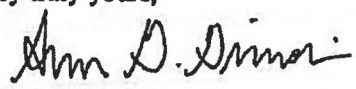
c. The amount of time that the Chemical(s) of Concern in the product is/are in contact with the body of the intended user during reasonably foreseeable use of the product; and

d. Intended product use(s), and types and age groups of targeted customer base(s).

In their final form, the Safer Consumer Products Regulations must be forward-looking in order to provide industry consistency with global regulations and implementation timing -- and, ultimately, in order to achieve the goals of AB 1879, SB 509 and, more broadly, the Green Chemistry Initiative. But in an attempt to craft a comprehensive chemical/product regulatory mechanism, California has pursued a course that not only makes compliance and enforcement unworkable, but also hinders other global efforts whose outcome would surely provide ancillary benefit to the State. Creating rules that make real-world compliance virtually impossible, combined setting with unrealistic expectations, perpetuates industry uncertainty and expenditure of resources that, in the end, fail to benefit the environment or the people of California. The Coalition urges DTSC to heed the Coalition's concerns and to incorporate the proposed revisions described above.

Thank you again for this opportunity for the Coalition to comment on the Regulations.

Very truly yours,



Ann G. Grimaldi

Attachments

cc: Matthew Rodriquez, Cal/EPA Secretary (w/ attachments, via first class mail and email: matthew.rodriquez@calepa.ca.gov)
Cliff Rechtschaffen, Senior Advisor to Governor Brown (w/ attachments, via first class mail)
Martha Guzman-Aceves, Deputy Legislative Affairs Secretary, Office of the Governor (w/ attachments, via first class mail)
The Honorable Michael Rubio, California State Senate (w/ attachments, via first class mail)
Odette Madriago, Deputy Director (with attachments, via email: omadriago@dtsc.ca.gov)
Jeff Wong, Chief Scientist (with attachments, via email: jwong@dtsc.ca.gov)
Krysia von Burg, Regulations Coordinator (with attachments, via first class mail and email: gcregs@dtsc.ca.gov)

Representing Household & Institutional Products

Aerosol - Air Care - Cleaners - Polishes
Automotive Care - Antimicrobial - Pest Management

September 9, 2013

Via E-Mail: GCRegs@dtsc.ca.gov

Manpreet Singh
Regulations Coordinator
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Re: Revised Safer Consumer Products Regulation (Z-2012-0717-04)
August 23, 2013 Revisions to Regulations Text

Dear Ms. Singh:

The Consumer Specialty Products Association (CSPA)[1] appreciates the opportunity to provide comments on the August 23, 2013 revisions to the Safer Consumer Products Regulation. CSPA and our member companies have participated throughout the years-long regulatory development process through with submission of written comments, and participation in public hearings and workshops/seminars.

CSPA members are committed to manufacturing and marketing safe products that are protective of human health and the environment while providing essential benefits to consumers. As stated in previous submissions regarding the Safer Consumer Products Regulation, CSPA and our members support the broad goals of the Green Chemistry Initiative and will continue to work with the Department and other stakeholders in the state to help spur green chemical innovation and continue to ensure that products are safe.

CSPA offers the following comments on the August 23, 2013 revisions to the proposed Safer Consumer Products Regulation:

[1] The Consumer Specialty Products Association (CSPA) is the premier trade association representing the interests of companies engaged in the manufacture, formulation, distribution and sale of more than $80 billion annually in the U.S. of familiar consumer products that help household and institutional customers create cleaner and healthier environments. CSPA member companies employ hundreds of thousands of people globally. Products CSPA represents include disinfectants that kill germs in homes, hospitals and restaurants; candles, and fragrances and air fresheners that eliminate odors; pest management products for home, garden and pets; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used every day. Through its product stewardship program, Product Care®, and scientific and business-to-business endeavors, CSPA provides its members a platform to effectively address issues regarding the health, safety and sustainability of their products.

1667 K Street, NW, Suite 300, Washington, DC 20006 | www.cspa.org | p.202-872-8110 f. 202-223-2636

Section 69501.3(b)
It is unclear how and when DTSC will define which electronic formats are considered accessible and how the regulated community will be made aware of which electronic formats DTSC will accept. We suggest detailed information and stakeholder involvement in determining the specification of electronic formats to ensure that submitted data is "easily accessed, understood, compiled and processed" before incorporation into databases by DTSC.

In addition, we request clarification that while documents submitted to DTSC must be in English, any supporting documents (i.e., labels or similar types of examples) can include representative sections in multiple language(s) as long as one of the languages is English.

Section 69509.1(a)
It bears repeating that CSPA remains concerned about confidential business information and trade secret information protections in the Safer Consumer Products Regulation.

We request clarification that "disclosure" refers to disclosure to the public at large.

Section 69509.1(c)
Specific to this revision, we request the addition of an option by which a submitter of trade secret information can request the information be returned to the submitter by the Department. As responsible entities consider their compliance options after reviewing priority products/chemicals of concern combinations and following the data generation required by an alternatives assessment, manufacturers will be faced with difficult choices with respect to continued sales in the State of California. There may be instances where the California market share may not justify the release of confidential business information/trade secret information. In which case, a responsible entity should be afforded the opportunity to prevent any accidental release of such information by requesting the return of any such information submitted to the Department.

We also request clarification as to whether judicial review must be concluded or simply commenced within the 30 day timeframe.

Summary and Conclusion
CSPA appreciates the opportunity to comment on the August 23, 2013 revisions to the Safer Consumer Products Regulation and the efforts by DTSC to engage stakeholders in the regulatory development process. We remain committed to working with DTSC and other stakeholders in the implementation of the regulation and again offer our continued assistance in the drafting of guidance to assist the regulated community with compliance.

Respectfully submitted,

Steven Bennett, Ph.D.
Senior Director, Scientific Affairs & Sustainability

Kristin Power
Director, State Affairs – West Region

cc: CSPA Scientific Affairs Committee Green Chemistry Task Force
CSPA State Government Affairs Advisory Committee
Laurie Nelson, Randlett/Nelson/Madden

From: Sudeep Motupalli Rao [mailto:sudeep@mail.epea.com]
Sent: Monday, September 09, 2013 5:01 PM
To: GCRegs@DTSC
Subject: Appreciate DTSC's effort to safeguard trade secrets of clients

Thank You to DTSC for extended efforts to protect trade secrets of clients.

Sudeep Motupalli Rao, PhD
Regional Director, EPEA San Francisco

[redacted]

Authorized Representative for:

EPEA Internationale Umweltforschung GmbH
Trostbrücke 4, D - 20457 Hamburg, Germany
www.epea.com

Information Technology Industry Council

TechAmerica
WHERE THE FUTURE BEGINS

CEA
Consumer Electronics Association

Electronics Industry Comments on Revisions to Proposed Regulations (Safer Consumer Products) (August 2013)

The Information Technology Industry Council (ITI), TechAmerica, and the Consumer Electronics Association (CEA) are pleased to provide these comments on behalf of the information technology and consumer electronics industries in response to the Revisions to the Proposed Regulation for Safer Consumer Products that were proposed on August 23, 2013. Our associations are longstanding stakeholders in the California Green Chemistry process, and we hope to continue to work with the Department as these regulations are finalized and implemented.

The electronics industry believes that while the proposed changes are positive, they are minor and technical changes to the regulation and do not change the industry's overall concerns, as itemized in our previous comments, that the regulations are overly complex and burdensome and will mandate significant and costly testing and paperwork requirements.

Specific Comments on the Proposed Revisions

Section 69501.3. Information Submission and Retention Requirements.

We appreciate the flexibility that the Department is affording submitters in determining the format for information submission, which will provide flexibility and allow for potentially different submission formats rather than formats that are specified by the Department.

The electronics industry is concerned with the requirement that all documents be submitted in English. There may be certain supporting documents, such as journal articles, lab test results, foreign regulations and directives, and other documentation that will be submitted with the Alternatives Analysis (AA) that may be prohibitively expensive to translate in whole. While we agree that the AA and any first-tier documents must be in English, we suggest the regulations allow for limited translations of portions of documents based on relevance determination and prioritization.

Section 69509.1. Department Review of Claims of Trade Secret Protection.

While we remain concerned with the proposed rule's Trade Secret Protections, ITI, TechAmerica and CEA support the requirement that the Department review all trade secret claims prior to their release so that the regulations mirror the requirements of the Uniform Trade Secrets Act and Public Records Act. However, it is not clear how affected parties will

know when DTSC will review claims or the factors DTSC will consider in determining whether or not to review a claim.

The electronics industry suggests that a new requirement be added to subsection (c) that would require the Department to also send notice to the manufacturer contact via e-mail. Certified mail is often slow, and many companies have internal mail and security practices that may significantly delay the in-person delivery of an article of mail, whereas e-mail is typically accessed on a continual basis. Requiring both an electronic mail and a certified mail notification will satisfy the legal requirements for sufficient notification, but will also ensure a more timely response from manufacturers.

Conclusions

ITI, TechAmerica and CEA thank the Department for its ongoing work on the Proposed Safer Consumer Product regulation and we hope that the Department is still open to suggestions for further improvement. If you have any questions, please do not hesitate to contact Chris Cleet at (202) 626-5759 or ccleet@itic.org; Robert Callahan at (916) 443-9088 or robert.callahan@techamerica.org,; or Allison Schumacher at (703) 907-7631 or aschumacher@ce.org

Sincerely,

Chris Cleet, QEP
Director, Environment and Sustainability
Information Technology Industry Council (ITI)
1101 K Street, NW Suite 610
Washington, DC 20005
202.626.5759
www.itic.org

Robert Callahan
Director, State Government Affairs
TechAmerica
1107 9th Street, Suite 850
Sacramento, CA 95814
916.443.9088
www.techamerica.org

Walter Alcorn
Vice President, Environmental Affairs and
Industry Sustainability
Consumer Electronics Association
1919 South Eads Street
Arlington, VA 22202
(703) 907-7765
www.ce.org

About ITI

The Information Technology Industry Council (ITI) is the premier advocacy and policy organization for the world's leading innovation companies. ITI navigates the relationships between policymakers, companies, and non-governmental organizations, providing creative solutions that advance the development and use of technology around the world. Visit itic.org to learn more.

About TechAmerica

TechAmerica is the leading voice for the U.S. technology industry – the driving force behind productivity growth and job creation in the United States and the foundation of the global innovation economy. Representing premier technology companies of all sizes, we are the industry's only trade association dedicated to advocating for the ICT sector before decision makers at the state, federal and international levels of government. With offices in Washington, D.C., Silicon Valley, Brussels and Beijing, as well as regional offices around the U.S., we deliver our members top-tier business intelligence and networking opportunities on a global scale. We are committed to expanding market opportunities and driving the competitiveness of the U.S. technology industry around the world. Learn more about TechAmerica at www.techamerica.org.

About CEA

The Consumer Electronics Association® ("CEA") represents more than 2,000 companies involved in the design, development, manufacturing, distribution and integration of audio, video, in-vehicle electronics, wireless and landline communications, information technology, home networking, multimedia and accessory products, as well as related services that are sold through consumer channels. CEA also sponsors and manages the International CES – The Global Stage for Innovation – the largest annual trade event in the U.S. (www.ce.org).

KOCH INDUSTRIES INC

ENVIRONMENT, HEALTH AND SAFETY

September 6, 2013

Manpreet Singh, Regulations Coordinator
Regulations Section
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Via US Mail and Email: gcregs@dtsc.ca.gov

RE: 15-Day Public Notice and Comment Period, Safer Consumer Products

DTSC Reference Number: R-2011-02
OAL Notice File Number: Z-2012-0717-04
OAL File Number: 2013-0718-03 S

Dear Ms. Singh:

On behalf of Koch Industries, Inc. (KII) and its affiliate companies we provide these comments on DTSC's Safer Consumer Products Proposed Regulations, R-2011-02 ("Proposed Regulation"). KII owns a diverse group of companies involved in refining and chemicals; process and pollution control equipment and technologies; minerals; fertilizers; polymers and fibers; commodity trading and services; and forest and consumer products. KII companies have a presence in nearly 60 countries with approximately 70,000 employees – over 1,400 of which are in California. KII has been working with the Green Chemistry Alliance (GCA) and our trade associations, and supports the comments submitted on behalf of GCA, AFPA, ACI and GMA to DTSC on this important issue.

Of the limited changes to the Proposed Regulation the most important change is the addition of Section 69509.1(c). This new subsection provides an opportunity for companies to appeal a determination by DTSC that information will not be protected as trade secret. This is an important appeal right due to the sensitive nature of much of the information that is being requested by the Proposed Regulation. Where a government agency requires a company to disclose commercial or financial information, such as is the case with the Proposed Regulation, such information should be exempt from disclosure if disclosure will "cause substantial harm to the competitive position of the person from which the information was obtained." National Park

P.O. Box 2256 ▪ Wichita, Kansas 67201 ▪ 316/828-5500 ▪ FAX 316/828-5074

and Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974). As KII and several other businesses and trade associations have reiterated throughout the development of this regulation, the information that DTSC intends to require under the Proposed Regulation will be sensitive commercial and financial information that should be afforded every protection from disclosure to avoid substantial competitive harm.

While the changes to Section 69509.1(a) and (c) represent a positive step, they fail to address the unpredictable and logistically unstable foundations of the Proposed Regulation. That flaw is the unfettered discretion that DTSC has granted itself in evaluating trade secret claims. The changes to Section 69509.1(a) suggest that DTSC will not release the information claimed as trade secret until reviewing the validity of the trade secret claim. However, DTSC again failed to address the criteria or decision-making process it will use to establish the validity of the trade secret claim. A regulated entity can submit a thoroughly researched, highly principled trade secret claim only to have it rejected by DTSC for any reason it chooses. While the modifications to Section 69506.1(c) allow for the regulated entity to seek judicial intervention, it places additional cost and resource burdens on the regulated community to argue for relief from an ambiguous and highly subjective review process.

KII also continues to be disappointed in the lack of any other substantive changes to the Proposed Regulation given the extensive comments that have been submitted by the regulated community. The Proposed Regulation continues to set forth an unworkable and fundamentally flawed set of rules. KII reiterates that the Proposed Regulation continues to suffer from at least four major fundamental flaws:

a. Lack of Clarity: DTSC has reserved unprecedented discretion in the decision making process. This broad discretion, coupled with a lack of criteria upon which the regulated companies can determine how DTSC will evaluate submissions or what DTSC may consider to be "safer" as a part of the alternatives analysis, creates enormous confusion and uncertainty for the regulated community. Based on the plain reading of the Proposed Regulation, there is no way for a regulated company to understand what is required, how to comply, and when in the process or even if DTSC will make final determinations.
b. Conflict with Existing Authorities and Laws: As described in previous submissions to the docket by KII, GCA and other trade associations, DTSC's Proposed Regulation is in conflict with existing occupational safety laws at the state and federal levels, EPA's chemical inventory and review process established by the Toxic Substances Control Act (TSCA), and the authorities provided to the U.S. Consumer Product Safety Commission under the Consumer Product Safety Improvement Act (CSPIA) of 2008. GCA and several trade associations have also pointed out in comments to DTSC that the Proposed Regulations are in conflict with or attempt to supersede other authorities such as those provided under the Food, Drug, and Cosmetic Act administered by the Food and Drug Administration.

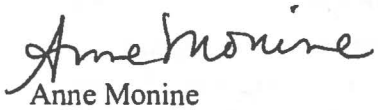
c. DTSC Involvement: The Proposed Regulation represents an unwarranted and unauthorized intrusion into the business decision making process and negatively impacts protection of innovation, trade secrets and proprietary information. Requiring business decisions to be approved by DTSC is not appropriate and fails to recognize the complexity in the decisions-making process about going to market and customer acceptability. DTSC does not have the knowledge, skill, personnel or contacts necessary to make sound marketing decisions for the myriad of consumer products identified for undergoing an alternative assessment, nor is that part of DTSC's statutory authority. Similar complexity exists in the development of scientific data for product specifications, where companies rely on numerous field-specific scientists and technical support, and decades of product experimentation and customer validation. As written, these regulations imply that DTSC understands how to identify the need for a specific product-chemical substitution or alternative, and by extension, how to propose a reasonable timeline and methodology for the substitution or alteration, and without DTSC having a definable and scientifically-based evaluation procedure. The DTSC will be using subjective determinations without the business experience and product-specific technical knowledge that is possessed by the entities it is regulating, to demand scientific progress and innovation.
d. Exceeding Authority Granted by Underlying Statute: DTSC has exceeded the authority granted to it by the legislature in the drafting of the Proposed Regulation. Not only are the regulations approximately two years overdue from the date that the legislature mandated regulations be promulgated, there are several areas where DTSC has ignored the direction of the statute and gone beyond the authority granted. Specific instances of overreach have been identified in previous submissions by several companies and trade associations on the Proposed Regulation.

DTSC continues to ignore that the Proposed Regulation does not meet the requirements of the Administrative Procedures Act nor the California Environmental Quality Act. It is further concerning that the vast majority of the full Safer Consumer Product regulatory proposal has been approved by the Office of Administrative Law (OAL) on August 28, 2013 and filed with the Secretary of State while this 15 day comment period is pending on important provisions of the overall regulatory proposal. The adoption of part of the Proposed Regulation without following required procedures for the proposed revisions violates the APA as well as OALs implementing regulations. Specifically, the proposed revisions circulated for public review and comment failed to include the "full text of the regulation as originally proposed," as required by Government Code Section 11346.8(c) and 1 CCR Section 44. Moreover, adoption of the Proposed Regulation and filing of it with the Secretary of State violates the APA, given that the regulation deleted key requirements relating to trade secret protection rights, such as the 30-day notice period prior to releasing information to the public. Due to its inconsistency with Health & Safety Code Section 25257 and the Public Records Act, OAL should have withheld approval of the entire regulatory proposal pending correction of the trade secret provisions in a manner that

fully satisfies both the clarity and consistency criteria set forth in Government Code Section 11349.1.

California's general lack of respect for, or inability to comply with, the APA is indefensible. Further, the finalization of the Proposed Regulations, viewed to be unsound based on the reasons described above, is untenable. KII encourages DTSC and OAL to repeal the finalization of the Proposed Rule and instead work with industry to develop a meaningful, practical and legally defensible Proposed Regulation. Should you have any questions, KII would welcome the opportunity to provide further clarification. Please contact our regional government affairs manager, Calli Daly (503-378-1576, or Calli.Daly@kochps.com), for further information.

Sincerely,



Anne Monine

KII Environmental Excellence

From: Froelicher, Julie <froelicher.jm@pg.com>
Sent: Monday, September 09, 2013 11:06 AM
To: GCRegs@DTSC
Cc: Rodriquez, Matthew@EPA; Percynski, Beth; Ingenito, Miriam@EPA; Mike.Rossi@gov.ca.gov; Stauffacher, Kristin@EPA; Rechtschaffen, Cliff; McFadden, Nancy; martha.guzman-aceves@gov.ca.gov
Subject: Procter & Gamble Comments on Safer Consumer Products Regulation
Attachments: PG comments 15-day notice final SCP Reg 130909.pdf

Attached please find written comments from The Procter & Gamble Company that we submit to the California Department of Toxic Substances Control in response to the revised Safer Consumer Products Regulation, released on August 23, 2013, for a 15-day public comment period. While we have no objection to these most recent changes, Procter & Gamble remains seriously concerned about the regulation's failure to provide adequate trade secret protection for the regulated community. We believe this serious deficiency will do very little to promote the type of sustainable innovation that the original Green Chemistry Initiative sought to accelerate in the state.

Should you have any questions about these comments, please contact me at froelicher.jm@pg.com or Beth Percynski in our P&G Sacramento office at Percynski.ba@pg.com.

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Respectfully submitted,

Julie Froelicher
NA Regulatory & Technical Relations
The Procter & Gamble Company

Global Product Stewardship
Safety • Sustainability • Regulatory • Technical Relations

Julie Froelicher I NA Regulatory & Technical Relations Manager I Global Product Stewardship I The Procter & Gamble Company I One Procter & Gamble Plaza I Cincinnati, OH 45202 I P: 513.983.2531 I froelicher.jm@pg.com

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The Procter & Gamble Company
NA Regulatory & Technical Relations
One Procter & Gamble Plaza (C-6)
Cincinnati, OH 45202
www.pg.com

September 9, 2013

Via e-mail GCRegs@dtsc.ca.gov

Manpreet Singh, Regulations Coordinator
Regulations Section
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Re: 15-day Public Notice Changes to the Safer Consumer Products Regulation (August 23, 2013)
Department Reference Number: R-2011-02
Office of Administrative Law Notice File Number: Z-2012-0717-04
Office of Administrative Law File No: 2013-0718-03 S

Dear Ms. Singh:

The Procter & Gamble Company (P&G)[1] appreciates this opportunity to comment on the revisions to the Safer Consumer Products Regulation[2] ("regulation") released on August 23, 2013, by the California Department of Toxic Substances Control ("DTSC" or "Department") for a 15-day public comment period. P&G has filed comments on all prior informal and formal proposals of this regulation, including our most recent comments submitted on April 25, 2013, which we incorporate by reference.

General Comments

P&G continues to fully support what we believe was the original vision for California's inception and development of the Green Chemistry Initiative; that is, to create the opportunity and incentives to accelerate and promote sustainable innovation while making meaningful improvements in the protection of the environment and health of California consumers and their children. We recognize the considerable effort DTSC has once again invested in this latest effort to develop an effective regulatory system to implement the Green Chemistry Initiative in the state.

P&G has expended significant resources over the last five years sharing our scientific expertise in consumer product safety and alternatives analysis with DTSC -- from the genesis of the Green Chemistry Initiative,

[1] The Procter & Gamble Company is the world's leading consumer products company with on-the-ground operations in more than 80 countries and sales in more than 180 countries worldwide. Our strong portfolio of recognized, quality, and leadership brands includes numerous household, industrial, and personal care products. Procter & Gamble is fully committed to helping solve sustainability challenges, which is embedded in our Company Purpose "to improve the lives of the world's consumers, now and for generations to come." Please visit http://www.pg.com for the latest news and in-depth information about P&G and our brands.
[2] http://www.dtsc.ca.gov/SCPRegulations.cfm

through the legislative enrollment of AB 1879 and SB 509 and the numerous informal draft regulations, by George Daston's participation on the Green Ribbon Science Panel and lectures by our top scientists at DTSC symposia, to engagement in the formal rulemaking process. Throughout this entire journey, we've demonstrated the significant attention to product safety that we, and other leading industry partners, apply to our trusted brands. Green Chemistry thinking has shaped our ingredient choices from the very start of the product design process for decades. At P&G, we were evaluating life cycle impacts of our products to identify opportunity areas long before "life cycle analysis" became a recognized practice in the industry. We've freely shared with DTSC our science, expertise and learnings collected through trial, error and discovery to help shape the implementation of the Green Chemistry Initiative. We congratulate DTSC on completion of this rulemaking journey and thank the Department for your willingness to invest in stakeholder outreach during the regulation's development.

Comments on August 23, 2013, Revisions

Based on feedback received from the Office of Administrative Law, DTSC determined that the following changes to the Safer Consumer Products Regulation are necessary:

Section 69501.3(b)

P&G supports DTSC's requirement for submission of documents in English and in an electronic format. We ask that the Department clearly specify to the regulated community which electronic formats are "accessible to DTSC" to eliminate confusion.

Section 69509.1(a)

P&G fully supports the addition of this provision in the regulation to require DTSC's review of a trade secret claim and supporting documentation before disclosing the information to the general public. However, we again assert that there are serious problems with the treatment of confidential business information and trade secret information in the Safer Consumer Products Regulation, none of which are addressed by the changes now proposed.

Section 69509.1(c)

Specific to this revision, we request the addition of an option by which a submitter of trade secret information can request that the Department return the information to the submitter to prevent any accidental release of such information. When faced with inevitable loss of protection for valuable trade secret information under the Safer Consumer Products Regulation, business decision-making may conclude that removal of a particular technology from the California marketplace is a preferred option.

We remain greatly concerned with the fundamental misunderstanding of trade secret protection and the patent process evident in the Safer Consumer Products Regulation and the virtual elimination of a manufacturer's ability to maintain confidential information as a trade secret. As explained in our April 25, 2013, comments, many companies rely on a combination of trade secret and patent protection in order to protect their technologies and inventions. In some cases, where the trade secret is not readily discernible from the product, electing for trade secret protection is the preferred intellectual property protection scheme. A

manufacturer may never file a patent for a particular technology. Patents provide limited overall protection due to the following considerations:

- Patents require full disclosure of the manufacturing process and product composition in the patent application, which is disclosed once the patent is published;
- Patent protection exists for a finite period of time (usually 20 years) during which the patent owner has exclusive use of the technology;
- Patent rights are limited to the geography in which the patent is initially filed; and
- The strength of the patent protection depends on whether a manufacturer actively enforces against cases of infringement, which can often be difficult to investigate and prove.

Under federal Uniform Trade Secrets Act and California state law, a manufacturer may claim as a trade secret any non-publicly disclosed information from which the manufacturer derives or may derive an economic advantage. Importantly, the manufacturer may claim trade secret for as long as reasonable measures are taken by the manufacturer to maintain the information as a secret. There is no requirement under federal statute for the holder of the trade secret to seek patent protection in order to maintain ownership interest in the trade secret. **Thus, the requirement in this section of the proposed regulation to file a patent application in order to obtain trade secret protection is inconsistent with federal and state law.**

We strongly oppose the regulation's refusal to protect precise chemical identity unless the manufacturer can demonstrate that a patent application is pending. This is problematic in multiple ways. As previously discussed, there are reasons a manufacturer may not pursue a patent and instead rely on trade secret protection. The regulation not only fails to acknowledge trade secret protection as a means for protecting confidential information, but also disregards chemical identity as legitimate intellectual property worthy of trade secret protection. As we have discussed in previous written comments, chemical identities are often a core trade secret, the disclosure of which is unnecessary considering that the public can interpret hazard trait information with provided generic chemical names independent of a specific chemical identity.

* * *

P&G is a member of, and active participant in, the Green Chemistry Alliance (GCA), a group of major trade associations and companies that represent numerous broad industrial sectors in California. We support the written comments of the Green Chemistry Alliance, as well as those of our individual Industry trade associations, including the American Chemistry Council (ACC), the American Cleaning Institute (ACI), the Consumer Specialty Products Association (CSPA), the Grocery Manufacturers Association (GMA) and the Personal Care Products Council (PCPC). P&G incorporates the written comments of these trade associations by reference.

P&G remains committed to working collaboratively with DTSC, industry partners, and other key stakeholders to implement the Safer Consumer Products Regulation. We strongly encourage DTSC to carefully consider the comments and recommendations presented by the regulated community to make the right decisions in this rulemaking process for California's consumers, the state's natural environment, the state's economy, and the

future of sustainable innovation in the United States. The Safer Consumer Products Regulation will be the landmark framework against which other U.S. states and geographies model; we entreat the Department to undertake this responsibility thoughtfully and with full consideration of the implications for innovation flexibility of the consumer product industry.

Should you have any questions about these comments, please contact me directly at (513) 983-2531 or froelicher.jm@pg.com or contact Beth Percynski in P&G's Sacramento office at (916) 442-3135 or percynski.ba@pg.com.

Sincerely,

Julie Froelicher
NA Regulatory & Technical Relations Manager
The Procter & Gamble Company
One Procter & Gamble Plaza Cincinnati, OH 45202
(513) 983-2531
froelicher.jm@pg.com

cc: The Honorable Matt Rodriguez, Secretary, CalEPA, MRodriquez@Calepa.ca.gov
Miriam Ingenito, Deputy Secretary, CalEPA, mingenito@calepa.ca.gov
Kristin Stauffacher, Assistant Secretary, CalEPA, kstauffacher@calepa.ca.gov
Nancy McFadden, Cabinet Secretary, Office of the Governor, Nancy.McFadden@gov.ca.gov
Mike Rossi, Senior Business & Economic Advisor, Office of the Governor, Mike.Rossi@gov.ca.gov
Cliff Rechtschaffen, Senior Advisor, Office of the Governor, Cliff.Rechtschaffen@gov.ca.gov
Martha Guzman-Aceves, Deputy Legislative Affairs Secretary, Office of the Governor, martha.guzman-aceves@gov.ca.gov

RUBBER
manufacturers
association

1400 K Street, NW • Washington, DC 20005 • tel (202) 682-4800 • fax (202) 682-4854 • www.rma.org

September 9, 2013

Deborah O. Raphael
Director
Department of Toxic Substances Control
1001 I street
P.O. Box 906
Sacramento, California 95812

Re: Safer Consumer Products Proposed Regulation, August 2013 Revised Proposed Regulations; Cal. Code Regs. Tit. 22, § 55

I. Introduction

RMA is the national trade association representing major tire manufacturers that produce tires in the United States, including Bridgestone Americas, Inc., Continental Tire the Americas, LLC; Cooper Tire & Rubber Company; The Goodyear Tire & Rubber Company; Michelin North America, Inc.; Pirelli Tire North America; Toyo Tire Holdings of Americas Inc. and Yokohama Tire Corporation. RMA members thank the Department of Toxic Substances Control (DTSC) for your consideration of these comments on the August 2013 Safer Consumer Products Proposed Regulations. Cal. Code Regs. Tit. 22, § 55 (August 2013).

RMA has been actively engaged in the rulemaking process for the California Safer Consumer Products Regulations. We support the changes made in the August 2013 Safer Consumer Products proposed regulations; however, we have continued concern with several provisions in the final regulations.[1]

The August 2013 Safer Consumer Products proposed regulations include two clarifications to section 69509.1 "Department Review of Claims of Trade Secret Protection." First this section now includes language that the Department shall review a claim for trade secret protection before disclosing the information that is the subject of the trade secret claim. This clarifying language in section 69509.1(a) implements the requirements of the California Public Records Act. Second, this section also includes language that specifies the Department shall provide notice to the submitter via certified mail, if a claim for trade secret protection is denied. Notice to the submitter will specify that the information claimed to be trade secret will be considered a public record and subject to disclosure by the Department 30 days after the notice is mailed. During the 30 day time period, the submitter of the trade secret claim can seek judicial

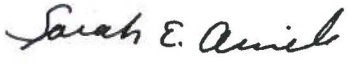
[1] http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/upload/Text-of-Final-Safer-Consumer-Products-Regulations-2.pdf (September 5, 2013 at 9:15am)

review. This provision implements California Health and Safety Code section 25257(c)(3) which requires DTSC to provide the submitter of the trade secret claim a 30 day notice before the information that is the subject of the claim for trade secret protection is made public, and also specifies judicial remedies that may be sought.

While RMA supports the changes made in the August 2013 proposed Safer Consumer Products regulations, RMA has additional concerns with the Safer Consumer Products regulations that were not addressed in the August 2013 draft regulations or in the final regulations that were recently posted to DTSC website.[2] Therefore we incorporate by reference the comments the Rubber Manufacturers Association submitted on the April 2013 Safer Consumer Products Regulation for DTSC's consideration.

RMA again thanks the California Department of Toxic Substances Control for this opportunity to comment on the August 2013 SCP proposed regulation. Please contact me at (202) 682-4836 if you have questions or require additional information.

Respectfully Submitted,



Sarah E. Amick
Senior Counsel
Rubber Manufacturers Association

[2] http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/upload/Text-of-Final-Safer-Consumer-Products-Regulations-2.pdf (last visited September 5, 2013 at 9:15am)