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December 29, 2011

Department of Toxic Substances Control  
Attn: Heather Jones – Safer Consumer Products Regulations, MS-22A  
P.O. Box 806  
Sacramento, CA 95812-0806

**Re: Draft Regulations for Safer Consumer Products, Chapter 55, Division 4.5, 22CCR**

Dear Ms. Jones:

On behalf of the California Industrial Hygiene Council (CIHC) and its stakeholders ([www.cihconline.com](http://www.cihconline.com)), we respectfully submit the following comments regarding the draft regulations for Safer Consumer Products, Chapter 55 of Division 4.5, Title 22, California Code of Regulations.

By way of background, the CIHC was founded in 1990 to establish a legislative presence in California to represent the Industrial Hygiene profession. The field of Industrial Hygiene is dedicated to the anticipation, recognition, evaluation, and control of occupational and environmental health hazards. CIHC, representing the five Local Sections of AIHA in California, views its mission as bringing good science to the legislative and/or regulatory process which impacts the health of both workers and the public. Its members represent a broad cross section of labor, industry, consulting, academia and government. It is affiliated with the National American Industrial Hygiene Association (NAIHA), a 12,000 member organization, as well as the International Occupational Hygiene Association (IOHA), which represents the global community of Occupational Hygiene organizations in over 27 countries.

The following comments are provided for your consideration:

**Limiting the Scope of Initial Priority Product Identification:**

As CIHC commented previously (see attached CIHC comment letter dated November 1, 2010), DTSC should consider an initial beta-test phase for implementation, using a smaller set of chemicals and products subject to initial regulation, in order to identify and resolve data management and administrative issues which arise. This is critical from the standpoint of optimizing resources and ensuring the regulation does in fact accomplish its desired objectives.

Furthermore, DTSC has indicated in Section II, paragraph (C)(5) of the referenced Summary Document that the Department anticipates the initial list of Priority Products will include two to five products. However, nowhere within the draft regulations is this



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intended limited Priority Product identification “test phase” referenced or stated, suggesting that the Agency can, anytime it wishes, identify hundreds (or even thousands) of Priority Products, without appreciation for its implementation and ability to achieve risk mitigating outcomes. ***It is recommended that the Department incorporate its intentions (initial limited scope of Priority Product identification) directly into the regulatory language to avoid possible confusion and to insure that the scope of implementation is clear to all.***

### **Identification of Priority Products:**

CIHC is pleased to see that the Department has now included the assessment of “exposure” to Chemicals of Concern in the determination of health impact risks and associated identification of Priority Products. Section 69503.2 of the draft regulations now includes assessment of potential adverse impacts, as well as exposures to Chemicals of Concern for product prioritization and identification. The “exposure aspects” will include issues related to market presence, occurrence of or potential for public or environmental exposure, types of uses that could result in public exposure, frequency and duration of anticipated exposures, and exposure control and mitigation measures, among others.

However, a major concern exists with the transparency of the process for transitioning from the estimated 3,000+ Chemicals of Concern to the initial list of Priority Products (estimated at two to five). While the list of factors to be considered as identified in paragraphs (1) through (3) of Section 69503.2 appear to be appropriate, the methodology using these considerations to identify Priority Products from the several thousand Chemicals of Concern is far from clear. This lack of transparency as to how thousands of Chemicals of Concern will be filtered to identify an initial few products (estimated at 2-5) is of major concern, and appears to provide extraordinary latitude in allowing DTSC to do whatever it wants with respect to the listing of Priority Products.

This issue would be eased if there were a formally identified process for narrowing the number of “Chemicals of Concern” to a smaller number initially. ***The Department should identify an appropriate process to improve the transparency of how it will determine Priority Products from the several thousand chemical substances currently proposed as Chemicals of Concern.***

### **Key Prioritization Criteria:**

As stated above, the criteria described in Section 69503.2 used to identify and prioritize Priority Products appear to be generally appropriate. However, Section 69503.2(b) – Key Prioritization Criteria, should be modified to reflect that all five listed criteria are critical in the prioritization process. The current language “the Department shall give priority to products meeting one or more of the following criteria” should be changed to read “the Department shall give priority to products meeting the following criteria”. Products



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determined to meet only one of these criteria (e.g. “product is widely distributed in commerce and widely used by customers”) may not adequately reflect overall health risk due to lack of detail regarding adverse health impacts and potential for exposure. **We recommend that the language reflect that Priority Products be selected on the basis of all five key criteria, not just one.**

### Alternatives Assessment Process:

We are pleased that the Department has agreed to allow companies the ability to conduct internal Alternatives Assessments without the need for third party assessors to conduct, manage or review the Alternatives Assessment process. In addition, the criteria for identifying certified assessor qualifications and core competency training requirements are clearly identified in Section 69508.

It is gratifying to see that the Department has incorporated provisions to allow applicants who meet the specified competency requirements or possess on-the-job experience equivalent to that referenced in 69508.2(c)(4A-E) to take a challenge test in lieu of classroom training and written/practical testing. Many Certified Industrial Hygienists (CIHs) have developed proficiency in risk assessment and alternatives assessment based on knowledge and experience in chemistry, physiology, engineering, industrial hygiene, community health issues, hazard/risk analysis and product stewardship and sustainability.

As the draft regulations become formalized, it would be helpful if prototype Alternative Assessments were held for public consideration, input and education. While flexibility in the Alternative Assessment process is important, flexibility can also lead to varying approaches, interpretations and outcomes. **We recommend that a workable and understandable process yardstick against which Assessments are to be generally performed would be helpful to those implementing this regulation.**

The California Industrial Hygiene Council (CIHC) is available to assist in the scientifically sound development of this Initiative’s goals. At the end of the day, our charters remain the same—to protect our workers and the public!

Sincerely,

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**Attachments:**

CIHC November 1, 2010 Submittal to DTSC

CIHC September 12, 2011 Submittal to DTSC

**CC. [GCRegs@dtsc.ca.gov](mailto:GCRegs@dtsc.ca.gov)**

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Honorable Debbie Raphael, Director, DTSC

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November 1, 2010

Mr. Jeff Woled, Regulations Coordinator  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812-0806

**Re: Safer Consumer Product Alternatives – Proposed Regulations  
R-2010-05 (September 13, 2010)**

Dear Mr. Woled:

The California Industrial Hygiene Council (CIHC) respectfully submits the following comments regarding the final draft regulations for Safer Consumer Product Alternatives, Chapter 53 of Division 4.5 of Title 22, California Code of Regulations.

By way of background, the CIHC was founded in 1990 to establish a legislative presence in California to represent the Industrial Hygiene profession. The field of Industrial Hygiene is dedicated to the anticipation, recognition, evaluation, and control of occupational and environmental health hazards. CIHC, representing the five Local Sections of AIHA in California, views its mission as bringing good science to the legislative and/or regulatory table which impacts the health of both workers and the public. It is affiliated with the National American Industrial Hygiene Association (NAIHA), a 12,000 member organization, as well as the International Occupational Hygiene Association (IOHA), which represents the global community of Occupational Hygiene organizations in over 27 member countries.

The following comments are provided for your consideration (these are in addition to those submitted on April 14, 2009, July 13, 2009, November 17, 2009 and July 12, 2010).

**Definition of Consumer Product**

**Concern:** The term "consumer product", as defined in California Health and Safety Code 25251(e) and as used in the "Safer Alternatives" regulations is over-expansive and will lead to regulation of chemicals which was unanticipated in the enabling statutes. The current definition of "consumer product" as "a product or part of the product that is used, brought, or leased for use by a person for any purposes" will conceivably extend applicability of the regulations to any chemical substance (including components of mixtures) used for any purpose in the state of California. This would extend applicability of the regulations into the workplace, requiring extensive and unnecessary assessments

and alternatives evaluations to be conducted by employers for "chemicals under consideration" or "chemicals of concern", even though such uses do not involve chemical substances commonly considered to be "consumer products". Application of the "Safer Alternatives" regulations to any chemical substance used in the state greatly exceeds the scope of activity originally envisioned in the statutes, and will make the implementation of the regulations virtually unworkable.

**Recommendation:** In order to avoid confusion and be consistent with the intent of the enabling legislation, the definition of the term "consumer product" as used in these regulations should, while being inclusive of the language of Section 25251 of the California Health and Safety Code, be consistent with language already used in existing California regulatory language. In Section 94508 of Title 17 of the California Code of Regulations (Public Health), the term "consumer product" is defined as "a chemically formulated product used by household and institutional consumers including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; aerosol paints; and automotive specialty products; but does not include other paint products, furniture coatings, or architectural coatings. As used in this article, the term "consumer product" shall also refer to aerosol adhesives, including aerosol adhesives used for consumer, industrial, and commercial uses." Use of this definition as already established in closely related California regulations, or at least similar regulatory language, will help to avoid confusion and will enable promulgation of workable regulations consistent with enabling statutory intent.

### **Lead Assessor Certification and Training**

**Concern:** Under section 69308.3 of the proposed regulations, persons accredited as "Lead Assessors" must meet rigorous requirements of education and experience, including three years conducting alternatives assessments. Under the regulations as proposed, accreditation as a Lead Assessor would also require completion of a training program and exam delivered by a "designated accrediting body". The training program for Lead Assessor accreditation conceived includes "training and case studies on principles and practices of Chemical Hazard Assessment, Exposure Potential Assessment, and Multimedia Life Cycle Evaluation, using life cycle thinking and life cycle assessment tools", training on "identification of alternatives for consideration in a Tier II AA", and "Training needed for the attainment of expertise in specific fields necessary to the performance of Tier II AAs".

Persons who currently hold the title "Certified Industrial Hygienist" (as defined in Chapter 7 of the California Business and Professions Code) already meet many or most of these training criteria, particularly those pertaining to chemical hazards assessment, exposure potential assessment and multimedia life cycle evaluation using life cycle assessment tools. They also are well versed in evaluation and identification of alternatives to mitigate chemical hazards, including identification and substitution using feasible chemical alternatives.

**Recommendation:** Persons designated as Certified Industrial Hygienists (CIH) by, and in current good standing with, the American Board of Industrial Hygiene should be exempted from the training program requirements specified in section 69308.3 of the regulations, or should at least be exempted from those portions of the training dealing with the above-listed areas of expertise already attained under the education, training and experience requirements needed to attain certification as a CIH.

### **Beta-Test Phase**

**Concern:** While implementation of 'green chemistry principles' is an important goal, it is expected that the significant data collection, analysis, and reporting, as well as the required projections of resource consumption for each priority product, priority product component, and each alternative to be considered may well place a huge financial and resource burden on both manufacturers and the Department (in its anticipated review/audit role), while providing an unquantifiable public health benefit. The required projections of resource consumption requiring significant data collection, analysis and reporting include, among others--water consumption and conservation; production, in-use, and transportation energy inputs; energy consumption and efficiency; and reusability and recyclability.

**Recommendation:**

In order to ensure successful implementation of the regulations, DTSC might consider a beta test phase of implementation, using a smaller set of selected chemicals and products before the full roll out of the program. During this beta test phase, any problems could be addressed and resolved.


### **Cal-OSHA Regulatory Authority**

**Concern:** There appears to be some inconsistency and lack of clarity regarding the scope of the proposed regulation. Even though the proposed regulation attempts to circumvent the occupational safety & health workplace impact, the "regulatory creep" occurs under Life Cycle Analyses, Alternative Assessments and Exposure Assessments. The Legislature has directed DTSC to conduct, as part of its rulemaking process, a "multimedia evaluation of adverse impacts" the proposed regulations could have on public health or the environment. Thus, in its effort to comprehensively regulate products sold in California to keep consumers of those products safe, DTSC must also consider the possible impacts such expansive regulations could have on other media such as air, water, waste disposal, worker health or public health. The Legislature did not leave responsibility for this important holistic analysis to DTSC alone, however, but specifically drafted the new law to expand the role of the Environmental Policy Council, thereby enlisting the expertise of the directors of the state's key environmental agencies. This legislative expansion of the Council's role is almost unprecedented, having occurred only once in the Council's nearly 20-year existence.

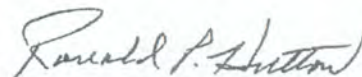
**Recommendation:** Under the leadership of the Environmental Policy Council, conduct a multimedia evaluation of adverse impacts to ensure that all aspects of the regulations are addressed and that the regulatory architecture does not lend itself to duplication or contradiction.

Thank you for the opportunity to review and comment on these draft regulations. If you have questions or would like to discuss any of this further, please feel free to call either one of us.

Sincerely,



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September 12, 2011

Ms. Fran Kammerer  
Staff Counsel  
Office of Environmental Health  
Hazard Assessment  
1001 I Street  
Sacramento, CA 95812

**RE: Proposed Regulation for Green Chemistry Hazard Traits (July 2011)**

Dear Ms. Kammerer:

On behalf of the California Industrial Hygiene Council (CIHC) and its stakeholders ([www.cihconline.com](http://www.cihconline.com)), we respectfully submit the following comments and concerns relative to the Office of Environmental Health Hazard Assessment's (OEHHA) Revised Proposed Regulation for Green Chemistry Hazard Traits (regulation released July 29, 2011).

By way of background, the CIHC was founded in 1990 to establish a legislative presence in California to represent the Industrial Hygiene profession. The field of Industrial Hygiene is dedicated to the anticipation, recognition, evaluation, and control of occupational and environmental health hazards. CIHC, representing the five Local Sections of AIHA in California, views its mission as bringing good science to the legislative and/or regulatory table which impacts the health of both workers and the public. It is affiliated with the National American Industrial Hygiene Association (AIHA), an 11,000 member organization, as well as the International Occupational Hygiene Association (IOHA), which represents the global community of Occupational Hygiene organizations in over 26 countries.

Our comments include those of our California membership, as well as comments from the national AIHA's Stewardship and Sustainability, as well as Risk Assessment Committee science experts. While in concept we are in favor of a hazard trait identification proposal and its efforts to include both occupational and environmental full life cycle hazard traits, three primary concerns remain:

- The Hazard Trait Criteria and the (future) companion Toxic Clearinghouse Inventory should focus on an inventory of chemicals, traits and potential risks that are comprehensive and accessible by all. The required ecological/toxicological /epidemiological information that manufacturers and governments alike will be responsible for providing and accessing should leverage existing scientific data sets that are internationally available and recognized as being scientifically reliable. While there has been much effort placed into crafting the toxicity definitions, the proposed July 2011 Hazard Trait Criteria Regulation does not align with well established, internationally recognized systems and principles for determining chemical hazards. This is a major problem!

To propose a framework that differs from the best science frameworks today sub-optimizes California's ability to comprehensively, efficiently and cost effectively implement the regulation's overarching purpose by leveraging existing, internationally recognized resources to protect workers and the public alike. Given California's economy and impact in the global market, we would suggest that this proposed regulation could benefit from a peer review by a broader based global science organization (National Academy of Sciences, NAS, is one such body).

- The existing proposal appears to accept any level of “evidence” (whether right, wrong, potential or suspect) as acceptable hazard trait data. There is no discussion of a “weight of evidence” process to decipher the strength of data when assigning toxicity hazard traits. Without such a process, this proposed regulation lacks the ability to consider all relevant and reliable information in light of its strength to develop a scientifically valid decision regarding chemical hazards. This runs counter to what scientists do globally.
- And finally, the proposed regulation’s purpose is to identify hazard traits of a chemical that will influence potential adverse risk. In general, the characteristics of a chemical which drive high potential risk are influenced not only by inherent human and/or environmental potency, but by usage, dose, volume and working/living environments. None of these potential considerations and potential exposure evaluations are factored into this proposed regulation. This is a serious flaw in the proposed regulation. It reflects a basic misunderstanding of hazard traits and why it is important to characterize them.

In summary, the California Green Chemistry Initiative (and its companion regulations) has the potential to strengthen efforts geared to protecting California workers and the public. However, in order to accomplish this, the proposed Hazard Trait Regulation must: a.) leverage toxicity definitions and a systems architecture that align with internationally recognized systems; b.) integrate a “weight of evidence” process that discerns reliable data from that not considered to be so; and c.) incorporate potential exposure characteristics into the dialogue on hazard traits which drive risk potential.

The California Industrial Hygiene Council (CIHC), comprised of members dedicated to the anticipation, identification, evaluation and control of occupational and environmental health risks, is available to assist in the scientifically sound development of this Initiative’s goals. At the end of the day, our charters remain the same—to protect our workers and the public! For questions or further information, please contact Chris Laszcz-Davis at (925)-330-1774.

Sincerely,

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CC: The Honorable Matt Rodriguez, Secretary, Cal-EPA  
The Honorable Debbie Raphael, Director, DTSC  
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