



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

Submission via electronic means – GCRegs@dtsc.ca.gov

Dear Ms. Jones:

The American Industrial Hygiene Association (AIHA) expresses its appreciation to the California Department of Toxic Substances Control (DTSC) for the opportunity to comment on the draft regulations for Safer Consumer Products, Chapter 55, Division 4.5, Title 22 California Code of Regulations.

AIHA, and its 10,000+ members, is the premier association serving the needs of professionals involved in occupational and environmental health and safety practicing industrial hygiene in industry, government, labor, academic institutions, and independent organizations. The AIHA mission is to promote healthy and safe working environments by advancing the science, principles, practice, and value of industrial hygiene. A healthy workforce is essential to the success of American industry, our economic recovery, and our future position in the global economy.

These comments are in addition to the comments submitted by the California Industrial Hygiene Council and are the board approved comments of the national AIHA. Comments on this draft were developed by the AIHA Stewardship and Sustainability Committee.

AIHA offers the following comments on this Draft:

**Comments for the Proposed
DTSC Safer Consumer Products Regulation**

This proposed regulation has been reviewed by members of the AIHA Stewardship and Sustainability Committee and comments are based from the perspective of the AIHA position paper “Integrating Stewardship and Sustainability Considerations in Chemical Management Reform and Innovation”. AIHA promotes the development of science-based public policy to better inform the potential risks and benefits of chemicals. Effective Chemical policy reform

should drive effective prioritization of chemical risks based not exclusively on their intrinsic hazards, but also on the potential for occupational exposures in the workplace, during consumer use, and through “end-of-life” management or disposal. While AIHA supports the movement toward safer chemicals that this regulation attempts to promote, the committee has several concerns with the framework and implementation of this proposed rule which are detailed below:

Priority Products Prioritization (Section 69503.3)

This proposed rule wrongly presumes that the presence of chemical in a product which makes the chemicals of concern (COC) list, and is above an arbitrary de minimus levels at the component level, should be evaluated for substitution. The criteria to determine whether a chemical moves onto a list of “chemicals of concern” must be scientifically and technologically sound. This determination should not be based solely on the intrinsic hazard of a chemical without consideration of the product life cycle, exposure potential, and application (intended use). This approach also fails to consider the societal value of a material. In addition, the inclusion of a chemical to the list of “priority products” based on broad de minimus level is of concern. There are maximum concentration levels (MCLs) for many materials that would not fit any of the criteria for concern. These include disinfectants, copper, and nitrate to mention a few. For instance, if a consumer product contains copper over the de minimus level, would it need to be removed?

Chemicals of Concern Identification (Section 69502.2) The list that identifies a chemical of concern under section 69502.2 is too broad and not well prioritized. For example, the inclusion of the following lists pose problems: bodies of water in California, pollutants requiring monitoring (L) and all of the (2) lists. Some of these lists like the Oslo/Paris convention for the protection of the marine environment of the northeast Atlantic (OSPAR) List of Substances of Possible Concern may include chemicals for which there is no actual reason for their presence on this list other than a structural similarity to a chemical of concern. The “authoritative” bodies are far too wide and includes very questionable lists (i.e., Center for Evaluation of Risks to Human Reproduction (CERHR) no longer exists).

Alternatives Assessment (AA) (69505.1, 69505.2)

The methods/models used and qualifications needed to conduct a sound alternatives assessment are not clear in these sections and are subject to abuse. Established Life Cycle Assessment methods should be used to evaluate potential environmental and health impacts in order to make informed risk based decisions through comparative analysis of chemicals and substitutes. This responsible and robust evaluation is necessary to assure that burdens are not simply shifted or result in unintended consequences. It is unclear how the AA process addresses how one would weigh categories if alternatives proved beneficial in one endpoint category but worse in another category when compared to the priority list chemical. It is critical the use/application of the chemicals and alternatives must be carefully considered in such evaluations. For example, the precautionary purchasing efforts in San Francisco used a robust AA process to determine that the selection of a less toxic pressure treated wood could be used in playgrounds (replacing the carcinogenic chromated copper arsenate with a less toxic copper compound). However, this copper alternative would be detrimental for marine species and thus not used in aquatic environments. Thus, the AA did not lead to an automatic ban of the chemical of concern. How would this rule assure that all AA processes follow a robust evaluation as to avoid making potentially devastating decisions on chemical use? How is this managed?

Alternative Assessor Certification

This requirement is severely flawed. How can anyone have four years of professional experience performing an assessment that this regulation invented? How would competency be measured? What experience and knowledge is needed? It is vital that this assessment be conducted by a qualified person who understands life cycle assessment (LCA) modeling and the complexities of such studies (i.e., data quality, uncertainty in end point analysis, interpretation of results, potential rebound effects, etc.). The qualifications for accreditation bodies are also of concern. For instance, the ability to teach maternal and child health would qualify you to be an accrediting body?

General Comments of the Overall Framework

- The regulation needs to shift the burden of the identification and reporting of consumer product risks from the regulating bodies to the manufacturer/producer of the product. This was the major paradigm shift caused by the EU's Registration, Evaluation, Authorization and Restriction of Chemical Substances (REACH) directives. This proposed regulation by the California Department of Toxic Substances Control keeps this burden at the regulatory level. This has been one of the major criticisms of the Toxic Substance Control Act (TSCA) and a key reason why TSCA has been such a regulatory failure.
- The proposed regulation is flawed in that DTSC is proposing to take on the role of other agencies. For example: Section 69502.3 Chemicals of Concern list – The chemicals of concern identification (section 690502.20) includes lists from international, State and Federal environmental and health agencies. This is a very comprehensive list which includes a wide range of chemicals of concern. This raises the question as to why DTSC needs to take on the role of the identification of additional chemicals of concern. At the State level this role is already played by the Office of Environmental Health Hazard Assessment (OEHHA). OEHHA has this role for the Prop 65 list which is one of the referenced lists in the proposal. Why create another regulatory body when there are more than a sufficient number of listed chemicals where more chemicals continue to be added.
- Priority Product Prioritization – Once again the DTSC is taking on the role that should be that of the manufacturer/producer of the product. Rather than taking on this role DTSC should look to existing LCA schemes for this evaluation and require the manufacturer/producer to follow these schemes.
- Insufficient staff and budget to effectively enact this proposed regulation – The current proposed regulation would require the addition of significant staff and budget. The current financial budget crisis creates insurmountable hurdles to the enactment and implementation of this proposed regulation as it is currently written.

As DTSC moves forward, AIHA offers its breadth of experience as a resource to assist the DTSC with this initiative. Providing sound science to the policymaking process remains a goal of AIHA and our members. AIHA appreciates the opportunity to work with DTSC to help

achieve the mutual goal of protecting American workers and we look forward to further opportunities to work with the DTSC on this and similar issues and regulatory priorities.

If AIHA can be of any further assistance, please contact me. Thank you.

Sincerely,

Aaron K Tripler
(signature)

Aaron K Tripler
Director, Government Affairs
AIHA

cc: Chair, AIHA Stewardship and Sustainability Committee
California Industrial Hygiene Council - Officers