June 6, 2013

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

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

RE: DTSC Reference Number R-2011-02, OAL File Number Z-2012-0717-04

Dear Ms. Buttle:

On behalf of the Green Chemistry Alliance we wish to comment on Form 399 and provide specific citations and examples to help DTSC understand why the Economic Impacts Analysis is inadequate. The Department is required to file a Std. Form 399 - Attachment to the Economic and Fiscal Impact Statement for proposed regulations. Unfortunately the statement filed by the DTSC for the Safer Consumer Products Regulation is once again devoid of any substantive information and therefore inadequate by any measure. The recurring theme throughout the document is that the economic and fiscal impact of the proposed regulation will only be quantifiable after the regulation is implemented and operating, or in other words, "Ready, Fire, Aim."

Given that DTSC has afforded the Proposed SCP Regulations "landmark" status, the Economic and Fiscal Impact Statement for proposed regulations is even more inadequate. DTSC appears to have failed to even attempt to provide meaningful data, choosing instead to rely on: Attachment 1 "*Attachment to the Economic and Fiscal Impact Statement (Std. Form 399)*"; and (2) *"Economic Analysis for California's Green Chemistry Regulations for Safer Consumer Products,"* prepared by Matthew E. Kahn, Ph.D for the economic analysis.

The fundamental rationale cited time-and-again throughout both the Form 399 and Attachment 1 is that the regulation merely creates a process whose the impacts cannot be quantified until it is implemented. In an absolute sense, this is certainly true. However, the aim of such an impact analysis is not an absolute *ex-post* quantification of effects. Rather it is an attempt to anticipate the ways in which its implementation could result in economic effects, and to give informed judgments regarding the potential scale and consequences of such effects. By that measure, this "Economic and Fiscal Impact Statement" is

an abdication that threatens to establish a highly damaging precedent for the State. It fails to make any reasonable attempt to anticipate the extent or nature of its potential impacts, and similarly fails any attempt at gauging the potential scale of such impacts. As a precedent potentially applying to any State regulation or legislation aimed at new "process," it would essentially nullify any utility of impact assessments, regardless of how consequential such a new process may be.

With regard to Attachment 2 *"Economic Analysis for California's Green Chemistry Regulations for Safer Consumer Products,"* prepared by Matthew E. Kahn, Ph.D., we find the tone of the economic analysis negatively portrays industry with unsubstantiated generalizations that characterize industry as "profit seeking" with "agendas" that do not align with the spirit and intent of the regulations. Much of the economic and social benefits that are purported to arise from the implementation of the proposed regulations are based on the supposition that industry does not currently take responsibility for the composition and safety of its products. Not only are these generalized assumptions grossly inaccurate, their inclusion in a document being used to justify a complex regulation to implement a law broadly supported by industry is offensive. For multiple reasons presented in these comments by the Green Chemistry Alliance, we conclude that Kahn's economic analysis is sufficiently replete with bias, unsubstantiated supposition, and outright erroneous conclusions as to render it absolutely useless as a supporting document for DTSC's Std. Form 399.

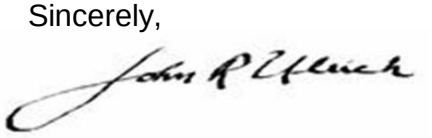
Moreover, the Kahn analysis, originally prepared in 2010 and updated in 2012, is a year old and obviously based upon review of regulations as then-proposed. The proposed regulations have been altered significantly since then, including in some significant aspects that would seem to undermine many of Kahn's conclusions upon which DTSC rests many of the limited judgments it chooses to make. In particular, Kahn repeatedly cites the competitiveness of industry innovation in adapting to challenges such as those posed by the SCP. Importantly, he notes an obvious caveat that presupposes the competitive dynamics which drive innovation must remain in place. Specifically, he notes:

> *Requiring companies to reveal their "secret sauce" is a necessary step for discovering what chemicals are embodied in the products but the transfer of this information raises the possibility of firms losing valuable trade secrets. This is surely a low probability event but it would be very costly for those firms who have made enormous up front R&D investments to design a product that competes with similar differentiated products. If such blue prints could be accessed, then other producers could easily enter that firm's product niche. Anticipating this low probability risk, DTSC has built into the regulations substantial trade secret protections to limit the likelihood that a costly information leakage could happen.(p. 15).*

Unfortunately, one of the most far-reaching changes introduced in the proposed regulations subsequent to Kahn's analysis is the elimination of trade-secret protection precisely for such innovation in chemicals (the regulations would allow protection only for chemical formulations being patented, which by definition, commits them to public access). How ironic that DTSC should now turn around and re-introduce this analysis in supposed defense of its proposal. We urge DTSC to strike the Kahn economic analysis in its entirety.

GCA encourages DTSC to continue to work with industry to evaluate the true costs of the proposed Safer Consumer Products Regulation to California. For further information or questions regarding the Green Chemistry Alliance, its members, or the attached comments contact John Ulrich (916) 989-9692 or Dawn Koepke (916) 930-1993. You may also visit GCA's website www.greenchemistryalliance.org.

Sincerely,



John Ulrich
Co-Chair
Chemical Industry Council of California

Dawn Koepke
Co-Chair
McHugh, Koepke & Associates

Attachment

CC: The Honorable Matt Rodriguez, Secretary, CalEPA
Miriam Ingenito, Deputy Secretary, CalEPA
Kristin Stauffacher, Assistant Secretary, CalEPA
Nancy McFadden, Cabinet Secretary, Office of the Governor
Mike Rossi, Senior Business & Economic Advisor, Office of the Governor
Cliff Rechtschaffen, Senior Advisor, Office of the Governor
Martha Guzman-Aceves, Deputy Legislative Affairs Secretary, Office of the Governor

APPENDIX 1

GCA Comments on Std. Form 399 - Attachment 1 entitled, "Attachment to the Economic and Fiscal Impact Statement"

DTSC's Claims that an Economic Analysis Is Not Possible are Without Merit and DTSC Must Create a Regulatory Requirement for Economic Evaluation if Deferring to Future Triggers.

The Department has taken a very narrow perspective concerning the proposed regulation for purposes of the Economic Impact Statement and supplemental information. DTSC claims that the regulations are simply a process and therefore will have only a minimal impact on the economy that is currently unknowable. According to DTSC, it is the subsequent listing of Priority Products that will create the economic impacts and therefore trigger additional actions. The excerpt below from Attachment 1 (page 1) to the Economic Impact Statement (Std. Form 399) indicates that when Priority Products are identified for alternatives analysis, an Economic Impact Statement will be a part of that administrative process.

> *Using the process and prioritization factors set forth in these SCP regulations, DTSC will adopt a list of Priority Products for which manufacturers or other responsible entities must perform an alternatives analysis or take an alternate course of action. Whenever it lists Priority Products, DTSC will go through the rulemaking process pursuant to the Administrative Procedure Act (APA) (commencing with Government Code section 11340), including completion of an Economic and Fiscal Impact Statement (Std. Form 399) for those product-chemical combinations proposed to be listed as Priority Products. At the time that DTSC proposes specific Priority Products it will have sufficient information to provide much more specific responses to the questions asked in the Std. Form 399 (e.g., private sector impacts and benefits of the regulations) than is possible for these SCP process regulations.*

The April 2013 draft of the Safer Consumer Products Regulation states only that the listing of Priority Products will be subjected to public comment. It does not specifically state that an Economic Impact Statement will be included as a part of that rulemaking process.

> From Section 69503.5 - Priority Products List (April 2013 version of the Proposed Safer Consumer Products Regulation)
>
> *(2) The Priority Products list shall be established and updated through rulemaking under the Administrative Procedure Act (commencing with Government Code section 11340). Except as provided in section 69503.6, the Department shall hold one or more public workshop(s) to provide an opportunity for comment on candidate product-chemical combinations prior to issuing a proposed Priority Products list.*

If the proposed Safer Consumer Products Regulation is truly a "process" regulation, then all steps within that process – especially a step that is as important as an Economic Impact Statement – should be clearly identified within the regulation. This will prevent any misinterpretation of the requirements of the regulation relative to the listing of Priority Products.

Additionally, § 69503.6d. Initial Priority Products List of the April 2013 version of the proposed SCP Regulations identifies *Procedural Exceptions.*

> *(1) Priority Product Work Plan. Section 69503.4 does not apply to the adoption of the initial list of Priority Products.*
> *(2) Workshops. The provisions of section 69503.5(a)(2) requiring the Department to hold one or more public workshop(s) prior to issuing the proposed Priority Products list do not apply to the initial list of Priority Products.*

It would appear from this wording that the procedures previously stated in Attachment 1 are not being followed.

> *. . . the rulemaking process pursuant to the Administrative Procedure Act (APA) (commencing with Government Code section 11340), including completion of an Economic and Fiscal Impact Statement (Std. Form 399) for those product-chemical combinations proposed to be listed as Priority Products.*

Therefore, the Initial Priority Product List must be subjected to the same rulemaking process to ensure that all appropriate and necessary steps are followed in the "process," including the filing of an Economic Impact Statement/Std. Form 399. Otherwise there is no guarantee that the Initial Priority Products list will receive a proper evaluation and be consistent with the stated position in the Economic Impact Statement. As an alternative, DTSC could file the Economic Impact Statement on the Initial List at this time.

The Discussion in Attachment 1 is Simplistic and Replete with Misleading Notions.

The notion that the proposed SCP Regulation, once adopted will be a landmark development in the evolution of health and environmental protection has been a recurrent theme throughout its long development. It is indeed a pioneering approach, in its promise to sift through the confusing array of supposed chemical threats, isolate those consumer products posing serious threats to Californians as a result of exposure to chemical hazard, and require systematic reduction in those threats by a broad array of regulatory responses. However, DTSC begins section after section with statements implying the regulation really does very little. For example:

> *The proposed SCP regulations do not require the private sector to take any actions specific to any chemicals or products and these process regulations do not have any physical impacts to public health or the environment. (p. 2)*

The presumption behind this extraordinary statement seems to be that nothing really happens unless and until specific products are prioritized, and that only businesses directly affected undertake an alternatives analysis. Even though such analyses are extraordinarily complex, DTSC seems to argue that their impact will be minimal. The Department argues that costs for many products will be spread over industry consortia, seemingly ignoring, for example, the enormous complications which have ensued from efforts within the European Union to establish Substance Information Exchange Fora (SIEFs) which merely facilitate consolidation of data gathering for common chemicals under the EU REACH Program.

This seems to defy the fundamental challenge of enabling cooperation in finding marketable substitutes for particular products. DTSC's analysis fails to pay any attention to the experience of the US EPA in pursuing such industry collaborative efforts through its voluntary Design for Environment Program (DfE). Examination of the DfE program could yield valuable insights into both the circumstances necessary to induce cooperation and the sizable costs that ensue

despite that cooperation.[1]

The Department's analysis also argues that because most major companies already have R&D capabilities, the competitive forces previously referred to will contain any price impacts associated with additional work, even if the ultimate outcome is a product ban:

> *However, many of the elements contained in an Alternatives Analysis …are typically already undertaken by the manufacturers of products as part of research and development of new products or improvements to existing products. (p. 8)*
>
> *DTSC does not expect the future priority product regulations to result in cost increases given the wide variety of products readily available at competitive prices. Product competition will provide the incentive for companies that redesign their products to keep prices for the redesigned products competitive.(p. 21)*
>
> *Even if DTSC ends up banning a product as regulatory response for a product listed in its future priority product regulations, significant cost impacts are not expected because comparable safer products should be readily available at competitive prices, and because economic feasibility is one of the key findings DTSC must make before imposing a ban on a priority product for which an alternative is not selected.(p. 21)*

These simplistic views anticipate that implementation of this law will result in prioritizing a series of "easy fixes" for which a simple chemical substitution will do the job, and all that is needed to bring this to pass is a regulatory spur. Nothing could be further from the truth.

Competitive forces of innovation are definitely at work in the global marketplace, and much of the innovative effort is already aimed at understanding and overcoming the hazards of chemicals. What DTSC evidently fails to understand is that the science of chemistry is about harnessing the properties of chemicals and putting those to beneficial use. Many of those properties that can and do yield benefits are the very "hazards" that can cause environmental or health risk if not properly managed. The chemical industry has advanced by managing such risk in order to deliver utility.

Rather than simple fixes involving substitution of a "non-hazardous" chemical for a hazardous one, DTSC is much more likely to encounter far more complex challenges where the "hazardous" trait is also the key to unlocking the utility sought. In such cases, they will encounter highly competitive forces already at work searching for alternatives – where the task is enormously complex and the costs in terms of both R&D and potential lost utility are far higher than they seem to assume.

Indeed, DTSC's Std. Form 399 Attachment 1 analysis does include cost projections, but primarily just for the conduct of the formal alternatives analysis, and then with perhaps overly simplistic assumptions. While it is conceivable that the simple situations in which the costs run in the thousands or tens of thousands of dollars, the more complex challenges that are key to lucrative markets are likely to dominate, and the "hundreds of thousands" of dollars which DTSC cites may well prove to be only a fraction of what will actually be spent. It would not be uncommon for millions of dollars to be invested over years pursuing such "green chemistry" objectives where major markets are at stake.

[1] See also GCA Comments, p.10, re: the role of trade association research in light of Department of Justice ("DOJ") and the Federal Trade Commission ("FTC") guidance

Such high-stakes, high-cost challenges may well be more the norm for these regulations, yet the Department concludes:

> *DTSC cannot estimate the costs of the future priority product regulations to California businesses …until specific product-chemical combinations are identified for proposed listing as Priority Products. Therefore, DTSC does not know at this time if those future regulations will result in costs to California businesses in excess of $10 million. (p. 18)*

This, of course, is tantamount to estimating the total cost of these regulations being less than $10 million. As a serious look at the experience of programs such as EPAs DfE (see above) will likely demonstrate, this too is a grossly misleading "estimate."

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GCA Comments on Std. Form 399 - Attachment 2 entitled,
"Economic Analysis for California's Green Chemistry Regulations for Safer Consumer Products"
prepared by Matthew E. Kahn, Ph.D.

It is disappointing and most unfortunate that the Department has once again relied on the subject analysis prepared by Matthew. Kahn, Ph.D., and includes it as Attachment 2 to Std. Form 399. This study from July 2012 has been critically reviewed by various stakeholders and found to contain serious errors and emissions. A careful review of this document reveals that Kahn's analysis is based on a biased and largely unsubstantiated perspective.

"New Rules of the Game"

Numerous times throughout the economic analysis, there is reference to the phrase "new rules of the game." It is suggested that it is not already incumbent upon manufacturers to manufacture products that are safe for their intended use and to provide hazard information to consumers. There is a supposition that through the proposed regulation this will now be realized.

The concept of manufacturing products safe for their intended use is not a "new rule" to industry. What will be new to industry is a regulatory framework which if exercised to the full extent of its authority, allows regulators to arbitrarily choose winners and losers in the marketplace under the guise of protecting public health and/ or the environment. The proposed SCP regulation, in fact, provides many rules for manufacturers, yet provides for very few rules for the regulators who are given unfettered authority to determine what is compliant and "safer" and what is not.

On page 27 of the analysis Kahn makes the following statement:

> *The DTSC has anticipated that the regulated firms and the regulator may not have aligned incentives. The DTSC will hope that firms hire the best assessor in judging the firm's options. In contrast, the firm may seek out consultants who are low cost and have a reputation for embracing the firm's agenda.*

The justification for this statement is unknown as it receives no further discussion or substantiation in the document. The statement appears to be an editorial comment and one which is inappropriate and not germane to an economic analysis of the proposed regulation. The tone and implication of the statement is further evidence of an economic analysis that was constructed on a false, biased and unsubstantiated premise that industry does not care about the safety of its products.

Closing the "Information Gap"

There is a supposition that manufacturers of both consumer product and ingredients/components know little about the composition of the products they make. The term "profit-seeking" is used as a pejorative to describe manufacturers as though having this objective is mutually exclusive with manufacturing products that are safe for their intended uses. This is an extreme generalization of the manufacturing industry that is biased, unfair and unsubstantiated.

Kahn assumes there will be economic benefit to the State of California and consumers if industries, as a result of the proposed SCP Regulations, are forced to understand the composition of their products better than they do today. This too is an unsubstantiated

assumption. Most manufacturers already have a good understanding of what is in their products and use this information to provide information to consumers for the safe handling and use of the product.

It is presumed that information from a "trusted source" will drive consumers to change their behaviors. Based on established consumer behavior, the presumption that more information about product composition will change consumer behaviors is false. As an example, despite the warning labels on products such as cigarettes and alcohol as well as the widespread awareness that some fast foods can be unhealthy under some circumstances, consumers still use and/or consume all of these products.

Furthermore, where substantial compositional and hazard information is made readily available to consumers through product and point of purchase labeling and public education programs, consumers can currently make informed, but possibly unhealthy choices.

This unsubstantiated benefit of closing the "Information Gap" is at best highly speculative and should not be included as an economic benefit.

Inclusion of Workplace Exposures in Scope of Regulation

GCA has repeatedly argued the scope of the proposed regulation encompassing workplace exposures borders on inappropriate regulatory duplication. However, Professor Kahn clearly discusses economic benefits (p. 37) that will result from this expansion of scope. The benefits are not related to exposure to consumer products while using such products in the workplace. Instead, they are focused on potential exposures during the upstream manufacture of the consumer products and no explanation of the economic benefits – subjective or otherwise – are stated. We believe this is in large part due to the fact that these benefits are already driven by existing occupational health and safety regulations that address this concern. As such, this inclusion of workplace exposures in the proposed regulation duplicates existing obligations to prevent workplace exposures to hazardous chemicals and to warn workers of the potential hazards of the products they encounter in the workplace. Furthermore, because such protections already exist, the inclusion of workplace exposures will yield no economic benefit.

Proposed Regulation Will Not Foster "Capitalist Competition"

The analysis suggests that firms that are nimble enough to identify alternative "green" products through innovation will thrive and enjoy a high rate of return on their investments. However, since intellectual property, trade secrets and confidential business information are not adequately protected by the proposed regulations the disclosure required by the proposed regulations is in fact a disincentive to innovate in California. Innovative firms will not risk disclosing their intellectual property to existing and future competitors. In fact, under the proposed regulations there is a negative incentive to being first to market with an alternative. Innovation will not occur when a company's return on innovation is marginalized and its most guarded intellectual assets become community property.

Kahn's economic analysis is further flawed by downplaying the likelihood that the loss of trade secrets will occur. In fact, he suggests that there is a low probability for such events. The Green Chemistry Alliance has repeatedly argued that the loss of trade secrets for affected companies seeking to innovate in California is a high probability, and we do not agree that there are substantial trade secret protections afforded by the proposed regulations.

Kahn also suggests that to reduce costs, "A group of firms who produce similar products could contribute money to a collective pot to finance the overall analysis." Although GCA agrees that there may be a role for trade association research, DTSC should consider the Department of Justice ("DOJ") and the Federal Trade Commission ("FTC") guidance set forth in 2000[2] outlining concerns with industry collaboration as well as guidance for when it may be in the consumer interest to do so and under what conditions it may be acceptable. In Section 2.2, the FTC guidance outlines potential anticompetitive harms:

> *Competitor collaborations may harm competition and consumers by increasing the ability or incentive profitably to raise price above or reduce output, quality, service, or innovation below what likely would prevail in the absence of the relevant agreement. Such effects may arise through a variety of mechanisms. Among other things, agreements may limit independent decision making or combine the control of or financial interests in production, key assets, or decisions regarding price, output, or other competitively sensitive variables, or may otherwise reduce the participants' ability or incentive to compete independently.*
>
> *Competitor collaborations also may facilitate explicit or tacit collusion through facilitating practices such as the exchange or disclosure of competitively sensitive information or through increased market concentration. Such collusion may involve the relevant market in which the collaboration operates or another market in which the participants in the collaboration are actual or potential competitors.*

DTSC must keep in mind that there is conflict between the purported benefits of industry collaboration on Alternative Assessments as part of compliance with the proposed regulations and the DOJ and FTC enforcement responsibilities to avoid anticompetitive company actions under various statutes.[3] Any time competitors work together there exists at least some degree of antitrust risk. Principled manufacturers would seek to avoid even the appearance of such behavior given the increased enforcement activities of the DOJ in recent years.[4]

Higher Short Run Costs Justified Based on Lower Long Run Costs

The economic analysis suggests that higher short run costs are justified by lower long run costs. What it has failed to acknowledge is that companies that cannot tolerate the short run financial impact will not benefit from lower long run costs because such companies will no longer be in business. They will be forced to abandon the California market or possibly discontinue their business altogether.

Contradictory statements are made in Kahn's Executive Summary regarding the potential impacts to California employment. It is suggested that short run costs will be minimal since most product manufacturing takes place outside of California; but in the next paragraph, it suggests that California firms will have an advantage in gaining market share. If most manufacturing takes place outside of California, it is unclear how the proposed regulations will make it possible for

[2] Department of Justice and Federal Trade Commission, "Antitrust Guidelines for Collaborations among Competitors", 2000.

[3] Some of the statutes enforced by the DOJ Antitrust Division include: Sherman Antitrust Act, 15 U.S.C. §§1-7; Wilson Tariff Act, 15 U.S.C. §§8 – 11; Clayton Act, 15 U.S.C. §§12 – 27; Antitrust Civil Process Act, 15 U.S.C. §§ 1311-14; and the International Antitrust Enforcement Assistance Act of 1994, 15 U.S.C. §§ 6201-12.

[4] Recent DOJ Antitrust Case Filings are available for review on DOJ's website: http://www.justice.gov/atr/

companies to be able to gain market share in California or Europe, as is also suggested in the economic analysis. The potential negative impact on the economy will be particularly hard felt by small captive manufactures located throughout California which may not be able to invest the resources to comply with such complicated regulation.

Social Benefits Are At Risk Based on Proposed Regulation

Section 6 of the economic analysis indicates that the essential factors in realizing the social benefits of the proposed regulations are: 1) how well DTSC prioritizes chemicals; 2) how many Priority Products DTSC identifies and how quickly they do so; 3) how motivated firms are to test their products and develop safer alternatives; and 4) whether consumers will use the new risk information to reduce exposures.

Unfortunately, none of these key factors are well conceived within the proposed regulation. There is insufficient clarity for how DTSC will prioritize chemicals and identify priority products. The author himself made the following statement when discussing those key factors relative to employment impacts:

> *Given the fundamental uncertainty about the details of how DTSC will implement the regulations in terms of choosing priority products and the decisions it will make in the alternatives analysis, it is impossible to offer precise predictions concerning how California jobs will be affected.*

The "fundamental uncertainty" he references applies to all aspects of the purported benefits, including the social benefits. Furthermore, for the numerous reasons outlined above, the regulation creates a negative incentive that will hinder the development of safer alternatives. Finally, as detailed above, consumers do not have a track record of making "healthier" choices to reduce exposures, even when provided information about the risks of the products available to them. The economic analysis presumes that the information provided to consumers today is insufficient and that the huge volume of highly technical and complex information proposed to be provided will somehow simplify and enhance consumers' current level of decision making. The analysis failed to provide any compelling or substantiated evidence to support this presumption. As a result, it is unlikely that the rule will result in either true societal benefits or corresponding economic benefits.

Flawed Comparisons between the Proposed Regulation and REACH

Throughout the economic analysis, Kahn draws parallels between the proposed regulations and the European REACH framework (the EU regulation Registration, Evaluation, Authorization and Restriction of Chemical Substances (EC 1907/2006) referred to herein as "REACH"). It is suggested that alternatives to existing products will be available from manufacturers who are complying with REACH which will result in negligible impacts to consumers in terms of the availability of alternatives to products that must be phased out under the proposed regulations. This demonstrates a clear lack of understanding on the part of the author concerning the REACH regulation as implemented and the proposed regulations as drafted and negates any mitigation of the economic impacts of the proposed regulations that rely upon these flawed assumptions.

Specifically, DTSC has described the costs of the SCP regulation as "minimal" in the economic impact statement, although the SCP regulation is more demanding for industry than REACH on several fronts. The EU Commission noted in its latest review in February 2013 that 1) REACH is considered by SMEs as one of the 10 most burdensome pieces of EU legislation and 2) the

costs for the first registration period (2010) have been estimated at $2.76 billion (industry estimates are even higher considering all internal costs). Given this, how can the Department describe the economic impact of the SCP as "minimal" when it includes the potential for full, robust alternative assessments?

Additional flaws in the comparison of REACH to the SCP regulation include (but are not limited to) the following:

- Chemicals that are present in the product but do not contribute to the hazard of the product do not drive restrictions or bans of the product under REACH. If a component, impure or otherwise, is present but does not influence the outcome of the classification, it is not regulated. In Europe, 1.0% and 0.1% de minimis concentrations are applied. Conversely, the proposed regulations give the regulators the latitude to set concentration limits on a case-by-case basis which leaves open the possibility for those limits to be set lower. As such, the assumption that REACH compliance will equal compliance with the proposed regulations is incorrect as is the assumption that this somehow would mitigate the economic impact of the proposed regulations for California consumers and retailers.

- Compliance with the Substance of Very High Concern (SVHC) provisions of REACH does not automatically exclude presence of SVHCs or candidate SVHCs in consumer products. The obligation to comply (related to SVHC) in the case of the import of articles into Europe is to provide information to the consumer about the presence of the SVHC upon request if the SVHC is at levels > 0.1%. The same obligation applies to the manufacture of articles containing candidate SVHCs.

- The REACH framework allows for the demonstration of negative exposure even where a SVHC may be known to be present in a finished article. This is in stark contrast to the proposed regulations where the mere presence of a substance in a product is presumed to result in exposure and triggers an alternatives analysis.

- The analysis also includes a presumption that "drop in" alternatives are readily available from within the European market. However, polymers and articles – common components of consumer goods – are not directly regulated under REACH so they would not have the same safety standard applied to them. Within the REACH framework, there is shared responsibility for compliance where the end user is responsible for ensuring its use is consistent with the way the product has been registered. This allows for establishing safe use conditions that are communicated to end users in order to mitigate their risk of exposure to the substances in the product. The proposed regulations fail to provide any provision for this shared responsibility concept that has been incorporated into REACH which plays a significant role in mitigating human health and environmental exposure concerns.

- The exposure and risk assessments under REACH try to determine what the exposure is and what the risk is likely to be over the life cycle of the product. If that risk is found to be acceptable, there is no reason not to include hazardous substances into articles used by consumers. In this regard, REACH is a risk based approach vs. the strictly hazard-based approach that is contemplated by the proposed regulations.

GCA also reminds DTSC that the European Union filed comments critical of the proposed regulation as well as a Technical Barrier to Trade (TBT) petition with the World Trade Organization[5]

GCA Summary Comments regarding Kahn Economic Analysis

The Kahn Economic Analysis is not effective as a supporting document for DTSC's Std. Form 399 or for the proposed Safer Consumer Products regulations in general. The analysis is rife with bias, unsubstantiated supposition, and outright erroneous conclusions. We urge DTSC to strike the document in its entirety.

# # #

[5] G/TBT/N/USA/727 - Draft Regulation of the Californian Department of Toxic Substances Control (DTSC) ON "SAFER CONSUMER PRODUCTS" - EU comments; available through the TBT Information Management System, http://tbtims.wto.org/Default.aspx?Lang=0.