

October 11, 2012

Ms. Krysia Von Burg
Safer Consumer Product Alternatives Regulation Coordinator
Regulations Section
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Via e-mail: gcregs@dtsc.ca.gov

Re: Safer Consumer Product Alternatives Regulation, Chapter 55 of Division 4.5 of Title 22 of the California Code of Regulations (Z-2012-0717-04) (July 2012)

Dear Ms. Von Burg:

On behalf of the National Association of Chemical Distributors (NACD), I respectfully submit the following comments relative to the Department of Toxic Substances Control's ("Department" or "DTSC") proposed Safer Consumer Product Alternatives Regulation ("regulation") of July 2012.

NACD is international association of 400 chemical distributors and their supply-chain partners. NACD represents more than 85% of the chemical distribution capacity in the nation and 90% of the industry's gross revenue. Members of NACD operate in every region of the country through approximately 1500 facilities. As leaders in their communities, NACD members are predominantly small regional businesses. The typical member has 26 employees and \$26 million in annual sales.

NACD members meet the highest standards in safety and performance through mandatory participation in Responsible Distribution, NACD's third-party verified environmental, health, safety, and security (EHS&S) program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations. Through Responsible Distribution, NACD members have achieved a strong safety record. Member companies' safety rating is 80 percent better than non-member companies in the Chemical & Allied Merchant Wholesale Industry and more than twice as good as all manufacturing combined.

As a member of the Green Chemistry Alliance (GCA), NACD appreciates the considerable effort DTSC has once again invested in its latest effort to develop an efficient and effective chemicals management system.

We are pleased that the Department has opted to focus the program initially by only identifying up to five Priority Products. This is a practical approach that will enable the Department to pilot this unique program in order to determine what works and does not work and to make adjustments accordingly. However, beyond this, NACD believes that the DTSC is proposing a regulatory scheme far in excess of what is necessary to conduct the initial phase. NACD, in concurrence with GCA, strongly recommend DTSC consider a more focused program concentrating on the substances in consumer products that pose true risks for human health and the environment, based on hazard, exposure and the likelihood of harm. We believe that a more focused approach in the regulation would address the practical problems raised by the scope and complexity of the draft.

NACD is gravely concerned that the Safer Consumer Product Alternatives Regulation as proposed falls well short of meeting the practical, meaningful and legally defensible objectives that DTSC Director Raphael set out when she was appointed to implement this monumental initiative. The Department has proposed requirements that go beyond being necessary, clear, consistent, or legally valid based on the enacting legislation (AB 1879 and SB 509, 2008). The intent of the underlying statute is to minimize the potential for exposure to hazardous chemicals of concern in consumer products and to encourage the innovation of safer consumer products; however, the proposed approach will create an unpredictable framework that will increase uncertainty in the business community.

Regulatory uncertainty is one of NACD's most serious concerns about the proposed regulation. As currently drafted, the proposal gives the DTSC unprecedented latitude to implement the program, providing the Department with discretion at every decision point without providing sufficient clarity for the regulated community to understand what they must do to comply. The current proposal would establish an all-encompassing program that far exceeds the more modest intent of a practical approach. Indeed, in addition to everyday consumer products, virtually all commercially available products and their packaging will be subject to the regulation.

Because this entire regulatory program builds off of each of the prior regulatory actions, it is critically important to assure that each step in the process is necessary, clear, consistent, practical, meaningful, and legally defensible. Serious error is compounded with each successive step when the preceding actions are themselves defective. In order to implement a workable, science-based program, we, in concurrence with GCA and its coalition members, strongly believe a comprehensive solution must be found rather than simply addressing one or two industry concerns at the expense of the others. This piecemeal approach to addressing concerns only exacerbates the tremendous uncertainty within the regulated community.

The first step of the regulation implementing AB1879/SB509 must be to identify and prioritize chemicals of concern in consumer products. Consistent with the statute, NACD, in agreement with GCA, are firm in our belief that the prioritization and evaluation process must be based on exposure and hazard, and it **must avoid duplication and conflicting regulatory requirements**.

- DTSC's draft Safer Consumer Products (SCP) regulations propose to use a list-of-lists approach to selecting Chemicals of Concern (CoC). DTSC has chosen certain lists prepared by global authoritative bodies as their starting point. Upon removal of statutorily exempt chemicals and duplicates, they predict a list of some 1200+ chemicals will result. Unfortunately DTSC stops at this point and (without further distinction or prioritization of the respective hazard traits, or environmental or toxicological endpoints that caused the chemical to be listed in the first place) identifies all of those 1200+ chemicals as CoCs. ***This approach is seriously flawed unless a subsequent prioritization is undertaken to identify a discrete subset of the highest priority chemical in that group of 1200+ which should rightly be identified as Chemicals of Concern.*** No other state, federal or international jurisdiction apart from California has sought to begin with 1200+ actionable chemicals.
- GCA supports a two-step approach that begins with "chemicals under consideration" and then proceeds to "chemicals of concern." In this regard, NACD concurs with GCA's recommendation that DTSC begin by identifying their list of 1200+ chemicals of "Chemicals Under Consideration." DTSC should next craft a manageable process focusing on chemicals that exhibit the greatest hazards, such as substances known to cause cancer or developmental or reproductive harm (CMR) and substances known to be persistent, bioaccumulative and toxic (PBT) in the environment as designated by the U.S. Environmental Protection Agency (EPA) and others. ***A discrete subgroup of these chemicals with expected exposures in California should be identified as Chemicals of Concern.***

It is difficult to reconcile the costs and complexity of the proposed regulation with the marginal improvement in health and environmental safety it is likely to advance. Full implementation of the regulation as drafted would result in exorbitant costs to all entities doing business in California and would necessitate a huge new government program with a substantial budget requirement. This would only exacerbate California's economic and budgetary challenges.

To date, DTSC has failed to clearly identify potential compliance costs for businesses and individuals, the number of businesses impacted, the number of small businesses that will be impacted, nor the number of businesses and jobs that will be created or eliminated as a result of the regulation. This is unconscionable for such a far-reaching regulation, particularly in a weak economy.

For these reasons, NACD urges the DTSC to delay implementation of the Safer Consumer Products Regulations until a clearer and more reasonable regulatory approach is developed and a more thorough assessment of the economic impacts is completed.

Thank you for the opportunity to comment on this issue. NACD appreciates your consideration of our concerns. If you have any questions or need additional information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer C. Gibson". The signature is fluid and cursive, with the first name being the most prominent.

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CC: The Honorable Matt Rodriguez, Secretary, CalEPA
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