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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 (AIHA), 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.

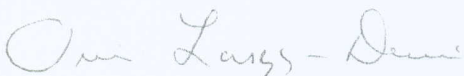
Cal-OSHA Regulatory Authority

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.

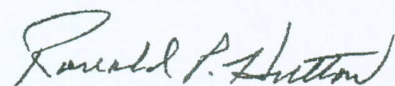
Recommendation: Under the leadership of the Environmental Policy Council, conduct a multimedia evaluation of adverse impacts to ensure that all aspects of the regulations are addressed and that the regulatory architecture does not lend itself to duplication or contradiction.

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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