



December 1, 2014

Barbara A. Lee
 Director
 California Department of Toxic Substances Control
 1001 "I" Street
 P.O. Box 806
 Sacramento, CA 95812

Re: Safer Consumer Products Draft Priority Product Work Plan (September 12, 2014)

Dear Ms. Lee:

The undersigned organizations welcome you to your new role as Director of the Department of Toxic Substances Control (DTSC). As you may know, many of our organizations and individual companies have been actively engaged with DTSC during the implementation of the Safer Consumer Products (SCP) regulations. We want to reiterate our commitment to working with you and your staff to ensure the regulatory program meets the objectives as outlined in the enacting statute while not unnecessarily and negatively impacting economic growth.

Collectively, our organizations represent a wide array of companies and products. As a result, we are keenly interested in the categories of product/chemical combinations outlined in the SCP Draft Priority Product Work Plan dated September 13, 2014. We certainly appreciate DTSC's proposed commitment to further engage industry and other stakeholders at the outset based on the lessons learned from the initial draft priority products announcement in March. In particular, we are hopeful that, going forward,

DTSC will gather information from and work with chemical and product manufacturers prior to announcing draft Priority Products. In that spirit, we offer the following core principles that we believe should form the foundation for decision-making going forward.

1. Engage chemical manufacturers and trade organizations early.

A commitment to conversations with and the collection of data and information from “the people who design, manufacture and use these products¹,” can help to improve the upfront process in the selection of future Priority Products. Consumer product value chains are complex, resembling more of a web rather than a direct line from the manufacturer to the point of sale. Therefore, industry consultation can provide an understanding of the value chain, including manufacturing processes, chemistries, uses and potential exposures, product stewardship activities, toxicological data, voluntary programs, and market impacts.

2. Refine product prioritization to address meaningful risks to California.

The Work Plan introduction states that it is a mechanism to provide “a level of predictability to potential manufacturers, importers, retailers, and other stakeholders regarding the types of products that can be considered for evaluation over the next three years.” Yet, at present, the seven product categories identified encompass thousands of products, making it difficult for stakeholders to engage and plan ahead, contrary to its stated purpose.

3. Provide clarity to stakeholders across all affected industries by being more transparent about the selection process.

Missing from the initial draft Priority Products announcement and subsequent discussions were the criteria used for the selection of the initial three products. In order for the public to have sufficient confidence in the Department and its process, and for manufacturers to participate usefully and comprehensively in the process, it must be clear how decisions are made.

4. Delist potential candidate products and chemicals in the draft Work Plan that are regulated by existing federal and state regulations.

To the greatest extent possible, DTSC should work with other California departments and federal agencies to utilize existing information, avoid duplication, and leverage expertise on those products/chemicals under consideration. By doing so, DTSC can more effectively allocate resources and time and address needs that are not being met by other agencies/departments.

5. The Work Plan likewise requires “a note to readers.”

Inclusion of the *Note to Reader*²s was a positive addition to the initial draft Priority Product websites and profiles and should be added to the Work Plan document. It provides necessary context for the documents and, importantly, identifies that it is a living document which may be modified as the Department receives information after the initial publication or posting.

¹ Safer Consumer Products Draft Priority Product Work Plan: Three Year Work Plan September 2014, Section 1.0 Introduction and Work Plan Overview, p. 2-3, <http://www.dtsc.ca.gov/SCP/PPWP.cfm>.

² For example, “1. These documents are not regulatory documents and have no force of law. 2. The department is not asserting that the product cannot be used safely, on that there is a potential for exposure of people or wildlife to the Chemical of Concern in the Priority Product and that such exposure has the potential to cause or contribute to significant or widespread adverse impacts;” http://www.dtsc.ca.gov/SCP/Spray_Polyurethane_Foam.cfm (accessed October 6, 2014).

Public communications about the SCP regulatory activities and decisions have direct effects on the public, the regulated communities, the commercial market in California and beyond, not to mention the success of the overall program. We encourage DTSC to be mindful of any public comments regarding individual chemicals or product/chemical combinations. Public statements by state agencies can have profound impacts on the marketplace. It is critical that DTSC publishes accurate, well researched information.

6. All evaluations must rely on the best available science.

During the public stakeholder meetings offered by DTSC to discuss the draft Work Plan, DTSC stated that it used its subjective discretion and applied the factors and criteria for Priority Product selection required by the SCP regulations. We would encourage DTSC to focus on the best scientific studies and criteria available to remove any subjectivity from the process which could be interpreted as personal bias. All evaluations must rely on the best available scientific information regarding possible hazards of substances, and must employ consistent, objective methods and models to derive realistic determinations of risks at environmentally relevant levels of exposure. Ultimately, prioritizations should reflect risk-based consideration of impacts to Californians and the California environment that are quantitatively as well as qualitatively defined.

7. Ensure regulations implement the enacting statute.

The SCP regulations should reflect the intent of the enacting statute as passed by the Legislature. AB 1879 (stats. 2008) clearly states that DTSC should establish a process “for evaluating chemicals of concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern.” To date, actions surrounding the initial Priority Products, DTSC appear to focus exclusively on assessing the potential hazard, while not considering options that may limit or reduce exposure consistent with its statutory mandate. Adherence to the enacting statute should result in regulations that are reasonable and cost-effective while still meeting the goal of protecting public health.

Although our individual organizations might have additional points for consideration, we have tried to formulate a set of principles that can be applied universally across our varied industries. We would appreciate the opportunity to meet with you in the coming weeks to discuss these principles in more detail and learn more about your vision on the implementation of this regulatory program.

We thank you in advance for the opportunity to share these comments and look forward to working with you. Should you have any questions, please contact me at 916-448-2581; tim_shestek@americanchemistry.com

Sincerely,



Tim Shestek
American Chemistry Council

On behalf of the following organizations:

Adhesive and Sealant Council
American Architectural Manufacturers Association
American Cleaning Institute
American Coatings Association
American Forest & Paper Association
American Home Appliance Manufacturers
American Wood Council
Automotive Specialty Products Alliance
California Building Industry Association
California Chamber of Commerce
California Manufacturers & Technology Association
Can Manufacturers Institute
Consumer Specialty Products Association
Flexible Packaging Association
Grocery Manufacturers Association
Industrial Environmental Association
Metal Finishing Association of Northern California
Metal Finishing Association of Southern California
Plumbing Manufacturers International
Resilient Floor Covering Institute
Spray Polyurethane Foam Alliance
The Vinyl Institute
Toy Industry Association
Western Plant Health Association
Wallcoverings Association
WD-40

cc: Secretary Matthew Rodriguez, California EPA
Dr. Meredith Williams, DTSC
Mr. Karl Palmer, DTSC
Mr. Cliff Rechtschaffen, Office of the Governor
Mr. Kish Rajan, Governor's Office of Business and Economic Development
The Honorable Luis Alejo, Member of the Assembly
The Honorable Jerry Hill, Member of the Senate