



AmericanCoatings

ASSOCIATIONSM

November 16, 2015

Ms. Barbara Lee, Director
California Department of Toxic Substances Control
1001 I Street
Sacramento, CA 95814
Submitted via California Safer Products Information Management System (CalSAFER)

RE: DTSC Draft Stage 1 Alternative Analysis Guide; ACA Comments

Dear Ms. Lee,

The American Coatings Association (ACA)¹ appreciates the opportunity to submit the following comments on the Safer Consumer Products (SCP) program Draft Stage 1 Alternative Analysis Guide. ACA has worked with the California Department of Toxic Substances Control (DTSC or the Department) over the last five years as it promulgated the Safer Consumer Products Regulations and we hope to continue to assist the Department by providing constructive input during the regulatory process. ACA represents paint and coatings manufacturers, raw materials suppliers, and distributors, including many of the leading companies offering products specifically cited in the Priority Product Work Plan – paint, coatings, adhesives, and sealants – and products specifically proposed for listing in March of 2014. Consequently, we have a strong interest in the Alternative Analysis process and we appreciate the opportunity to provide comments.

A. Alternative Analysis Guidance

ACA appreciates that DTSC has acknowledged that the Guide is not a regulation and creates no legal obligations. As the SCP program continues to expand, we fully expect that DTSC and industry will continue to refine and improve the Alternatives Analysis process. DTSC should continue to allow flexibility in the Alternatives Analysis process as envisioned by the regulations, and should not interpret this guide to be anything other than the Department's best current advice on the publication date. The Guide states that this document is a "resource not only for AA analysts, preparers, practitioners, and responsible entities, but also for the Department when it evaluates submitted AA reports and supporting documentation."² While we agree that the Guide is a useful resource for the Department as well, DTSC should reaffirm that the regulations are the touchstone for conducting an Alternatives Analysis under the SCP program and the Guide will not be used as a checklist to determine the adequacy of Alternatives Analyses.

¹ The American Coatings Association (ACA) is a voluntary, nonprofit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services.

² Draft Stage 1 Alternatives Analysis Guide, Department of Toxic Substances Control Safer Products and Workplaces Program (Sep. 2015), page 9.

B. Identifying Relevant Factors & Alternatives

ACA agrees that Alternative Analysis needs to focus on all relevant factors across a priority product's life cycle, including the chemicals function and possible regulatory and legal requirements. However, ACA believes that more guidance is needed to assist manufacturers in understanding how the Department will determine which factors are and are not relevant.

DTSC and the Guide should offer ways to streamline the Alternatives Analysis process to reduce the burden on responsible entities. Conducting an Alternatives Analysis is a significant undertaking and takes substantial resources. Responsible entities should not be compelled to consider any and all alternatives, and generate information on these alternatives. Further, DTSC should not expect responsible entities to exhaust their resources explaining why they eliminated most of the relevant factors from consideration. The Guide should encourage responsible entities to allocate their resources to other aspects of the Alternatives Analysis, and offer ways to reduce the burden of conducting an Alternatives Analysis.

C. Function & Performance

The Guide should encourage responsible entities to consider the function and performance of the product and the alternatives during stage one when determining which factors and life cycle segments are relevant. Considering a product's function, performance, and durability is a key step in the Alternatives Analysis. For many products and alternatives, these criteria will impact all of the life cycle segments. Example 3-1 on page 36 of the guide assumes that these considerations will not come into play until the second stage. We believe it is important to consider the function and performance in stage one to determine which life cycle segments are relevant.

Let us assume that a Product and Alternative A have the same impacts for packaging, transportation, and distribution for the same quantity of material, meaning there is no material difference in the impacts during these life cycle segments. If the original Product performs twice as well as Alternative A (i.e., it only requires half as much material to achieve the same function as Alternative A), the life cycle impacts of Alternative A during packaging, transportation, and distribution are twice as much as the Product. Therefore, these life cycle segments and relevant factors are important for purposes of the Alternatives Analysis. Ignoring these aspects during stage one will require responsible entities to reconsider everything in stage two and duplicate their efforts

D. Data Gaps

The Guide should include more guidance regarding how to deal with data gaps. Simply suggesting the use of analogs can be problematic given the number of chemicals unique chemicals that may or may not have similar characteristics or toxicity profiles. The Guide should include a better explanation as to how a responsible entity should account for data gaps.

E. Information Sources

ACA has concerns with the mix of sources cited in the Guide. DTSC cites robust, well-established regulatory sources alongside untested tools such as GreenScreen and Pharos. The Guide includes an assessment of what each source covers but fails to explain that certain toxicity assessments and sources are much more rigorous, transparent, and better tested than other sources. It is inappropriate to mix

vetted, regulatory sources, developed in an open stakeholder process, with third-party sources that were developed by private entities outside a defined process. We suggest striking references to GreenScreen and Pharos or, at the very least, clarifying that these programs offer available tools but are not definitive sources of information for conducting the Alternatives Assessment.

F. Suggested Changes

ACA recommends the following specific changes:

Page 16 – Under the Step 1 considerations, the Guide states that responsible entities should “Evaluate removing the Chemical of Concern.” This should state “Evaluate removing the Chemical of Concern, if appropriate” or something similar to clarify that this requirement is only necessary if the responsible entity determines that the Chemical of Concern is not necessary to meet the Priority Product’s requirements.

Page 29 – On the list of bulleted questions, there are two references to identifying products offered for sale that are “safer” alternatives. The term “safer” should be removed from these questions. The responsible entity is required to identify alternatives first, whether or not they are considered “safer” on their face, to conduct the Alternative Analysis. The point of the Alternative Analysis is to then determine whether the alternatives are safer.

Page 32 – Under the “Output” section in the shaded box, responsible entities are expected to document their rationale for determining which factors are not relevant. We recommend that DTSC include a statement clarifying that this rationale does not need to be in-depth so long as it is well supported.

Page 42 – In the second paragraph, the Guide should state that the responsible entity “should” look at the exposure factors and gather exposure information instead of “will” in two instances. This slight clarification would reaffirm that the Guide is a set of tools and suggestions for responsible entities as opposed to mandatory steps that a responsible entity is required to follow.

Thank you for your consideration of our comments. Please do not hesitate to contact us if you have any questions regarding our comments.

Sincerely,

/s/

Stephen Wieroniey
Director, Occupational Health and Product Safety

/s/

Timothy Serie, Esq.
Counsel, Government Affairs