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October 21, 2014

Miriam B. Ingenito, Acting Director
California Department of Toxic Substances Control
1001 I Street
Sacramento, CA 95814
(via [California Safer Products Information Management System \(CalSAFER\)](#) and e-mail)

RE: ACI comments on DTSC Draft Priority Product Work Plan

Dear Ms. Ingenito:

The American Cleaning Institute (ACI) appreciates this opportunity to provide comments to the Department of Toxic Substances Control (DTSC) on its Safer Consumer Products (SCP) Draft Priority Product Work Plan released on September 12, 2014. The Work Plan is of particular interest to us because *cleaning products* have been identified as one of the product categories included in the Work Plan, and ACI is the trade association representing the \$30 billion U.S. cleaning products market with about \$3 billion associated with business in the State of California. ACI members include the formulators of soaps, detergents, and general cleaning products used in household, commercial, industrial and institutional settings; companies that supply ingredients and finished packaging for these products; and oleochemical producers. ACI and its members are dedicated to improving health and the quality of life through sustainable cleaning products and practices. ACI's mission is to support the sustainability of the cleaning product and oleochemical industries through research, education, outreach and science-based advocacy.

The Cleaning Products Industry is a Leader in Product Stewardship

We note that the Work Plan states that “[t]he SCP program is designed to encourage market shifts towards a green economy.” We would like to highlight some of the accomplishments of our industry in recent decades in continually improving the sustainability profile of our products going beyond the DTSC focus on improved chemical safety to also include other life cycle aspects such as reduced energy consumption, reduced water usage and reduced waste. Cleaning products have been the focus of numerous environmental certification programs for decades and the cleaning products industry has responded to the demand of customers. One program, the US Environmental Protection Agency’s Design for the Environment (DfE) Safer Product Labeling program, boasts more than 2,500 DfE labeled products, most of which are cleaning products.¹ At the American Cleaning Institute, we have been engaged in measuring and improving the safety and sustainability attributes of our members products for years. We recently published a scientific review article covering over 250 published and unpublished studies on the environmental safety of major, high-

¹ <http://www.epa.gov/dfe/pubs/projects/formulat/saferproductlabeling.htm>

volume surfactant classes used in cleaning products.² ACI and its members have spent more than \$30 million on the assessment and reporting of the environmental safety of the major surfactants over the past five decades. Likewise, we are in the process of completing our commitments under the USEPA and OECD High Production Volume Chemical Challenge programs which has resulted making publicly available hazard data sets (Screening Information Data Sets) for nearly 300 chemicals. This effort by ACI has put a wealth of hazard and exposure data for cleaning product ingredients in the public domain while avoiding the unnecessary sacrifice of hundreds of thousands of additional laboratory animals and hundreds of millions of dollars in duplicative testing by compiling data for categories of chemicals. Beginning in 2012, we have taken this approach one step further and applied it to all of the chemicals used in our members' consumer cleaning products. As part of our Cleaning Product Ingredient Safety Initiative,³ we surveyed our members' consumer cleaning products and identified over 900 ingredients used in their formulation as part of our Ingredient Inventory which is publicly available on the ACI website.⁴ Next, we consolidated in our Hazard Data Portal publicly available human health and environmental hazard data set(s) for the chemicals on the Ingredient Inventory.⁵ Over the next two years we plan to report on exposure assessments and screening level risk assessments for those chemicals on the Ingredient Inventory. Likewise, many of our member companies have their own transparency initiatives where ingredients in products may be readily determined by consumers at the point of sale on the product itself or by means of a smartphone application.

One advantage of our Ingredient Inventory is that we can use it as a tool to screen for chemicals that are being highlighted by regulators, retailers and consumer advocates. When we compared our Ingredient Inventory to the Safer Consumer Products list of Candidate Chemicals, we found very little cross-over, and when we did, it was for chemicals that were used in very few products. We believe this is the result of decades of innovation and continuous improvement by our members in the development of cleaning products. Moreover, our members have looked beyond chemical safety and have provided innovations which reduce water use, energy use and waste disposal associated with cleaning product use. We have measured industry-wide improvements in those metrics in recent years that demonstrate innovations in high efficiency washers (and associated detergents),⁶ cold water washing and compacted cleaning products which have reduced consumers' water use, energy use, greenhouse gas emissions and waste generation. ACI would be happy to share this information with DTSC as you move forward to consider the next rounds of Priority Products.

² Environmental Safety of the Use of Major Surfactant Classes in North America. 2014. Christina Cowan-Ellsberry, Scott Belanger, Philip Dorn, Scott Dyer, Drew McAvoy, Hans Sanderson, Donald Versteeg, Darci Ferrer, Kathleen Stanton. *Critical Reviews in Environmental Science and Technology*, vol. 44(17): 1893-1993.
<http://dx.doi.org/10.1080/10739149.2013.803777>.

³ <http://www.cleaninginstitute.org/CPIS/>

⁴ http://www.cleaninginstitute.org/science/ingredient_inventory.aspx

⁵ http://www.cleaninginstitute.org/hazard_data_portal/

⁶ <http://www.cleaninginstitute.org/sustainability2013/>

Focus on Laggards, not Leaders

Beyond identifying Priority Products, the DTSC Safer Consumer Products program and the Draft Priority Product Work Plan also should acknowledge and highlight leadership among members of a product category industry. We believe leadership in product stewardship and sustainability is the norm in the cleaning products industry and Priority Products are the exception. However, we are aware that not all products in the marketplace conform to the high standards of ACI members and we welcome the opportunity to assist in improving the profile of our entire industry. None the less, we note the example given in the Beauty, Personal Care and Hygiene Products section of the Work Plan (p. 8) of a manufacturer illegally mislabeling their product which required the California Attorney General to take action. The Priority Product selections should not be justified solely based on illegal activity by unscrupulous manufacturers, nor should the Safer Consumer Products program be predicated on the activity of a few laggards in a product category while failing to acknowledge global leadership in safety and sustainability by the majority of the firms in an industry sector.

Areas of Agreement

ACI acknowledges the thoughtfulness and diligence of DTSC staff in assembling the Draft Three Year Work Plan. There are a number of areas where we are largely in agreement. We believe the attributes used by the Department to prioritize and select the product categories are quite sensible (p. 6). We appreciate the use of the nomenclature and hierarchy of the Global Product Classification systems. We believe it will serve to effectively communicate within supply chains the products that are being evaluated by DTSC. We have no objection to the product categories identified, even the cleaning products category.

Examples Should be Accurate and Within Scope of the Regulation

Our criticisms of the Draft Work Plan stem largely from inaccuracies and extrapolations associated with the examples used among the various Potential Candidate Chemicals for each of the product categories. We note that the Department repeats several times in the document that “any Candidate Chemical could be considered as we evaluate our product categories to identify Priority Products.” Consequently, we believe there is no reason for those Potential Candidate Chemical examples to *not* be completely accurate and within the scope of the regulation.

Avoid Regulatory Duplication – Focus on Gaps

The Department has selected numerous examples among its Potential Candidate Chemicals where there is an existing state or federal regulatory program currently addressing those chemicals and products. For example, the California Air Resources Board (CARB) has an aggressive program to eliminate volatile organic compounds from chemically formulated consumer products including cleaning products. We do not believe that DTSC should attempt to duplicate the activities of CARB in this area, and we believe that the Safer Consumer Products program does not apply to any such products under § 69501(a)(3)(A) of the regulations.

Likewise, we believe DTSC should not be duplicating regulatory efforts for the examples of triclosan cited by DTSC as an antimicrobial agent in personal care products, an antimicrobial agent in cleaning products and as a material preservative in clothing. First, we are unaware of any uses of triclosan in cleaning products. However, we understand there may be some confusion as triclosan is found in some multi-function hand dish detergents/hand wash products where it is an antimicrobial agent associated with the hand hygiene function. These latter hand hygiene uses are regulated by the U.S. Food and Drug Administration (FDA) as an over-the-counter consumer antiseptic drug product and should be considered under the Beauty, Personal Care and Hygiene Products category. More importantly, FDA's authority provides a level of public health that is equivalent to or greater than the protection that would potentially be provided if the product were listed as a Priority Product. In fact, FDA published a proposed rule in December 2013 where it presented a framework for judging the safety and efficacy of active ingredients, including triclosan, used in OTC consumer antiseptic wash drug products. Also, with respect to clothing, the use of triclosan as a material preservative in clothing is regulated by the U.S. Environmental Protection Agency as a pesticide exempted from the definition of "consumer product" specified in Health and Safety Code section 25251. Therefore, citing triclosan use in cleaning products and clothing is inaccurate and out of scope in the former case and out of scope in the latter case.

The Department should focus its energy and its examples in the Draft Work Plan on those products for which there is a regulatory gap resulting in an inadequate level of public health or environmental protection.

Provide Greater Clarity

We note a number of inaccuracies in the Work Plan, especially associated with the examples in the tables regarding Potential Candidate Chemicals.

- Table 1 includes the Chemicals or Chemical Class "Aldehydes, formaldehyde". Aldehydes is a very broad chemical class and it appears there are only about a dozen Candidate Chemicals which might be a member of that class. The Work Plan should only specify those aldehydes which are Candidate Chemicals and for which the Department has reason to believe should be considered among its Priority Products.
- The Chemical/Chemical Class "alkyl phenol and ethoxylates" with the functional use "Surfactant" is found as an example for several of the product categories.
 - It appears that the intent here is to identify *only* alkyl phenol ethoxylate surfactants as the Candidate Chemical of Concern. There are dozens of other ethoxylated surfactants available on the market which are not found on the Candidate Chemical List. The Department should clarify that it is only focused on alkyl phenol ethoxylate surfactants and not other ethoxylated surfactants.
 - The only alkyl phenol ethoxylate surfactant present on the Candidate Chemical List is nonylphenol ethoxylate surfactants. Any reference to alkyl phenol ethoxylate surfactants should be restricted to nonylphenol ethoxylate surfactants.

- The only alkyl phenol present on the Candidate Chemical List is nonylphenol. However, nonylphenol is not an ingredient or material used in the manufacture of *any* consumer product. It is an intermediate chemical used in the manufacture of nonylphenol ethoxylate surfactants. It also occurs in the environment as a result of the degradation of nonylphenol ethoxylate surfactants and it is the environmental hazards associated with nonylphenol that give rise to concerns. None the less, given that nonylphenol is not an ingredient in any of the three product categories where “alkyl phenol and ethoxylates” is identified, the example should be restricted to nonylphenol ethoxylate surfactants.
- In the Clothing product category, the Work Plan includes a discussion of the use of nonylphenol ethoxylate (NPE) surfactants during clothing manufacture. While traces of NPE surfactants may remain on finished clothing sold to a consumer, concerns associated with NPE surfactants in the apparel industry are largely site specific and related to releases at particular manufacturing facilities. While the State of California has the right to regulate commercial activity within its boundaries it may not impose those regulations beyond its border. We believe that the impact on DTSC regulating NPE surfactant use in the clothing industry will largely fall outside of California’s border and therefore is a poor example which should not be used in the Draft Work Plan.
- The discussion for Fish and Angling Equipment, states “[p]roducts in this category contain a variety of chemicals that appear on the Candidate Chemicals List, including metals such as lead, zinc and copper.” However, the Potential Candidate Chemicals table (Table 6) states “Metals”. The table should be revised to specify copper, lead and/or zinc or any other metal which may be a Potential Candidate Chemical.

Engage Partners Early

We believe there are opportunities for DTSC to engage industry partners and other regulatory agencies early in the Priority Product selection process to better understand what products are in commerce in California and how they are designed. For example, the California Air Resources Board (CARB) is in the midst of a significant survey of consumer and commercial products sold in California for the purposes of understanding the volatile organic compounds contained within them. The survey will include a wealth of information regarding consumer product formulation and DTSC should collaborate with CARB to better understand products sold in the state. In addition, the California Safe Cosmetics Program at the California Department of Public Health collects information on ingredients in cosmetic products sold in California. DTSC should utilize all resources with publicly available information regarding ingredients in consumer products in order to avoid unnecessary and duplicative reporting by regulated industries.

In closing, we would like to restate our commitment to working with DTSC so that you better understand the workings of the cleaning products industry. We believe it would be helpful for the Department to provide procedural clarity regarding Priority Product selection going forward. Notwithstanding the “growing pains” of the Initial Priority Products selection, we believe the process DTSC used in the spring of 2014 was largely successful. That is, development and release

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of a Priority Product Profile with subsequent workshop(s) to solicit public input in advance of any rulemaking. The Department has acknowledged that a primary deficiency with the Initial Priority Product selection was the lack of consultation with the affected industries in advance of the release of the Priority Product Profiles. The Department has committed to engaging regulated industries impacted by the SCP regulations and we would like to initiate that engagement as an industry named in the Work Plan. We believe there is potential tremendous benefit for both the Department and regulated industries in collaborating to better understanding Priority Products. We believe such collaboration will enhance public trust in the Safer Consumer Products program and in consumer products on the market in California.

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Once again, we appreciate the opportunity to comment on the Work Plan and hope you will find our comments useful. We look forward to working with you more closely in the future and wish you continued success with the Safer Consumer Product program.

Sincerely,

A handwritten signature in cursive script that reads "Paul C. DeLeo". The signature is written in black ink and is positioned above the typed name and title.

Paul C. DeLeo, Ph.D.
Associate Vice President, Environmental Safety

cc: Dr. Meredith Williams, DTSC
Mr. Karl Palmer, DTSC