

October 21, 2014

Meredith Williams, Ph.D.
Safer Products and Workplaces Program
Department of Toxic Substances Control
California Environmental Protection Agency
P.O. Box 806
Sacramento, California 95812-0806

Re: Safer Consumer Products DRAFT Priority Product Three-Year Work Plan (September 2014)

Dear Dr. Williams:

The North American Flame Retardant Manufacturers Alliance (NAFRA) of the American Chemistry Council appreciates the opportunity to comment on the Department of Toxic Substances Control's (DTSC or Department) draft 3-year Priority Product Work Plan for the California Safer Consumer Product (SCP) regulations (Work Plan). We are encouraged by DTSC's early engagement of stakeholders and provide the following comments for your consideration as DTSC continues to refine the Work Plan.

General Comments

Greater transparency regarding the selection process for the various product and chemical combinations identified in the Work Plan is necessary. Although the Work Plan outlines the approaches used by the Department to select the seven product categories, it provides little detail on how the identified products and chemical classes were chosen. In several cases, the product-chemical identifications appear to be based on outdated information (e.g., children's pajamas). Greater transparency on why and how the product and chemical combinations were chosen will encourage knowledgeable stakeholders to supply relevant information, improve the overall accuracy of the information available to the Department, and ensure greater benefit to the people and businesses of California.

The DTSC claims that the Work Plan's general descriptions of priority products and chemicals provide a "higher level of predictability" or "clear market signals" for stakeholders. On the contrary, we believe the draft Work Plan creates greater uncertainty about the safety of the identified "candidate" priority products for manufacturers, retailers, and consumers. Recent public comments by Department staff about DTSC's interest in affecting the marketplace broadly through implementation of the SCP regulation, moreover, raise concerns about DTSC's commitment to implement a science-based approach



to regulation.¹ We encourage the Department to add greater clarity and specificity in its Work Plan descriptions to minimize undue speculation and confusion.

NAFRA is concerned with the implied indictment of whole classes of chemical compounds cited in the document (e.g., brominated or chlorinated organic compounds, halogenated compounds, and organophosphates). DTSC fails to differentiate among various chemistries or to consider the vast physical and chemical differences in the characteristics of the chemicals included in these overly broad classes described in the Work Plan. The suggestion that every member of a particular chemical class should be avoided is both misleading and counter-productive. This approach could result in flawed decision making and potentially regrettable substitutions. Taken to the extreme, for example, typical multi-vitamins for humans contain “halogenated compounds,” which are safe for consumption and in fact are essential for metabolism. We encourage the Department to be as specific as possible in describing its plans and to refrain from implying that every constituent of a chemical class should be a candidate for substitution.

The Work Plan indicates the DTSC intends to rely heavily on publicly available literature in evaluating candidate chemicals. Such reliance potentially excludes vital information from chemical manufacturers and their supply chain partners that, for legitimate commercial reasons, may not be in the public domain. It discounts a vast data set developed by chemical manufacturers for the purposes of satisfying regulatory requirements of the U.S. Environmental Protection Agency (EPA), the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) regulation in the European Union, and agencies throughout the world. The studies performed by chemical manufacturers are often more extensive than those found in the public domain.² We encourage the Department to develop specific strategies to directly engage the owners of this rich data set.

Flame Retardant-Specific Comments

With specific regard to flame retardants, the Work Plan lists classes of flame retardant compounds in three of the seven product categories – building products, household and office furniture and furnishings, and clothing. For building products, the Work Plan provides a number of examples of building materials, but offers no details as to which of these materials may include certain flame retardants or how their use may result in consumer exposure to flame retardants. In fact, the only justification for including flame retardants in the Work Plan is based on their use in home furnishings. We recommend that the Department amend this reference to focus on specifics to avoid confusion.

As the Department is no doubt aware, changes to the flammability requirements for residential furniture sold in California³ were intended to discourage the use of flame retardants in those products.⁴

¹ Introductory comments of Dr. Meredith Williams at the September 25 workshop on the September 2014 Work Plan.

² While identity of the chemical may be withheld, the other information can be made publicly available.

³ Bureau of Electronic and Appliance Repair, Home Furnishing and Thermal Insulation (BEARHFTI). [Technical Bulletin 117-2013](http://www.bearhfti.ca.gov/about_us/tb117_2013.pdf). Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture. (http://www.bearhfti.ca.gov/about_us/tb117_2013.pdf.)



Passage of SB 1019 earlier this year, creates an additional incentive to discontinue the use of flame retardants in furniture by requiring that all furniture sold in the state be labeled to indicate the presence of flame retardants. Unfortunately, these changes will have the effect of discouraging further investments in research and development of products that could significantly advance the policy objectives of consumer fire safety and public health/environmental sustainability. In light of these recent changes, it is difficult to see what additional insight can result from DTSC's review of this particular application under the SCP regulation.

The Work Plan similarly provides several examples of clothing products, but provides no insight into how the Department reached its conclusion that flame retardants are a concern in this product category. Although flame retardants were used historically in sleepwear, particularly children's sleepwear, the US Consumer Product Safety Commission (CPSC) eliminated flame retardants of concern in these applications in the 1970's.⁵ Further, nearly two decades ago, the CPSC modified the regulation such that the use of flame retardants in sleepwear was virtually eliminated.⁶ We suggest the Department provide greater clarity on its current concerns about flame retardant in clothing. If this cannot be accomplished, then the reference should be removed.

NAFRA looks forward to working with DTSC to ensure that the Department has access to the most current set of scientific information on flame retardants. We would welcome the opportunity to discuss these issues with you in greater detail.

Sincerely,

Steve Risotto

Stephen P. Risotto
Senior Director

⁴ Press Release. Governor Brown Directs State Agencies to Revise Flammability Standards, June 18, 2012. (<http://gov.ca.gov/news.php?id=17598>.)

⁵ <http://www.cpsc.gov/en/Newsroom/News-Releases/1977/CPSC-Bans-TRIS-Treated-Childrens-Garments/>.

⁶ http://www.ameriburn.org/advocacy_safechildrenssleepwear.php

