

October 21, 2014

Department of Toxic Substances Control  
1001 I Street  
P.O. Box 806  
Sacramento, CA 95812-0806

Re: Safer Consumer Products DRAFT Priority Products Work Plan, Three Year Work Plan, September 2014

## **I. Introduction**

RMA is the national trade association representing major tire manufacturers that produce tires in the United States, including Bridgestone Americas, Inc., Continental Tire the Americas, LLC; Cooper Tire & Rubber Company; The Goodyear Tire & Rubber Company; Michelin North America, Inc.; Pirelli Tire North America; Toyo Tire Holdings of Americas Inc. and Yokohama Tire Corporation. RMA members thank the Department of Toxic Substances Control (DTSC) for your consideration of these comments on the Safer Consumer Products, DRAFT Priority Product Work Plan; Three Year Work Plan, September 2014 (“DRAFT Three Year Work Plan”).

RMA has been actively engaged in the development and implementation of the California Safer Consumer Products Regulations (“SCPR”). We are encouraged that DTSC has provided opportunities for stakeholder engagement at workshops and via comments on the DRAFT Three Year Work Plan. However, RMA members are concerned about the short time frame DTSC provided for stakeholders to provide data and information on the DRAFT Three Year Work Plan and we are also concerned about the lack of transparency in the prioritization, decision making process.

## **II. Stakeholder Engagement**

RMA supports opportunities to provide input on the implementation of the SCPR and ask that DTSC continue to provide opportunities for stakeholder engagement. DTSC provided two public workshops and an opportunity for public comment on the DRAFT three year work plan. These opportunities for stakeholder engagement enable interested parties to better understand DTSC’s approach in creating the work plan and also provide opportunities for stakeholders to express concerns and suggestions to DTSC on implementation of the SCPR.

At the public workshop in Sacramento, CA on September 25<sup>th</sup>, 2014 and in Cypress, CA on September 29<sup>th</sup>, 2014, DTSC mentioned that as they identify Priority Product/ chemical combinations from the DRAFT three year work plan, they plan to reach out to product

manufacturers for additional information. RMA strongly encourages DTSC to reach out to consumer product manufacturers before adding a product to the Priority Products list.

Section 69503.2(b)(1)(C) of the SCPR specifies that DTSC shall consider “the extent and quality of information that is available to substantiate the existence or absence of potential adverse impacts, potential exposures, and potential adverse waste and end-of-life effects.” Product manufacturers may have data and information on chemicals in products that is considered confidential business information and therefore is not available in the public domain. DTSC specified in the DRAFT three year work plan that they “relied exclusively on publicly available information” to create the work plan. DTSC also stated that they will seek input from manufacturers as they implement the work plan and make future selections of Priority Products. RMA strongly supports DTSC gathering input and starting a dialogue with product manufacturers before selecting Priority Products for inclusion on the work plan.

### **III. Timing**

DTSC released the DRAFT three year work plan on September 12, 2014, and provided just over 30 days for interested stakeholders to provide input and comments on the work plan. On October 10, 2014, DTSC extended the public comment period until October 21<sup>st</sup>, 2014. A roughly thirty-five day comment period is a short amount of time for manufacturers of products, listed in product categories on the work plan, to submit data and information to DTSC on the chemicals of concern in their products. Product manufacturers may have data or information which demonstrates that a chemical is no longer used in a product or presents no exposure to the human health or the environment as contained in the product. This information will assist DTSC in prioritizing product/chemical combinations for selection as Priority Products and ensure that the Department focuses its time and resources on the product/chemical combinations that pose the greatest risk to human health and the environment in the state of California.

Additional time to provide data and information to DTSC on the DRAFT three year work plan is also needed for manufacturers to substantiate claims for Trade Secret Protection. Section 69509 of the SCPR outlines the information that must be submitted to DTSC to support a claim for Trade Secret Protection. Under the SCPR, the burden is on manufacturers to substantiate Trade Secret Protection claims at the time information is submitted to DTSC. Manufacturers need time to gather the information, outlined in section 69509 of the SCPR, and submit it to DTSC. RMA recommends that DTSC provide at least 90 days to provide comments or information on the DRAFT 3 year work plan and on proposed revisions to the work plan.

### **IV. Transparency in the Prioritization Process**

#### **A. Product Category Selections**

RMA understands that the SCPR provides DTSC discretion in selecting product/chemical combinations for prioritization. However, we recommend that DTSC disclose to the public it’s rational or decision making process for selecting product/ chemical combinations. This information will assist product manufacturers in understanding DTSC’s interest in a chemical of concern in a product and also provide an understanding of what data and information

manufacturers should provide to DTSC to address specific concerns for a chemical of concern in the product.

During the public hearing on the DRAFT three year work plan in Cyprus DTSC stated that they considered eighty product categories for inclusion on the work plan. DTSC also indicated that they then used a screening process to narrow the list of eighty product categories to seven product categories. DTSC did specify at the public hearing that they considered the following criteria in prioritizing products: dermal ingestion, inhalation exposure pathways, biomonitoring results, chemicals in indoor air monitoring, sensitive population impacts, aquatic resource impacts, and water quality monitoring evidence. While RMA appreciates the disclosure of the criteria DTSC used to narrow the list of product categories, DTSC did not disclose how these criteria were applied, nor did they disclose the broader list of eighty product categories and the process for how the broader list was comprised. RMA recommends that DTSC disclose the criteria or balancing approach used to select product categories/ chemical combinations that were included on the 3 year draft work plan and those that will be included on future on work plans.

## **B. Chemical Selection**

DTSC also stated at the public hearing in Cyprus that they have expanded the list of chemicals of concern from roughly 150 chemicals to 1,100 chemicals. DTSC indicated that this expanded list of chemicals would soon be available to the public. According to DTSC, the chemicals contained in the product categories included on the work plan, were selected from the broader list of 1,100 chemicals. RMA recommends that DTSC disclose the chemicals they add to the list of chemicals of concern before issuing future revisions to the work plan.

## **C. Chemical categories included in the DRAFT three year work plan**

Several product categories included on the work plan have chemical classes listed as potential candidate chemicals. However, some of the chemicals within a chemical class are not found in the product categories included on the work plan. This provides information to the public that is not accurate. RMA recommends that DTSC should not list a chemical class as a potential candidate chemical for product categories that do not contain all chemicals in a chemical class.

## **V. Regulatory Gaps**

DTSC includes categories of products in the DRAFT three year work plan that are regulated by other federal laws. Under SCPR section 69503.2(b)(1)(C), DTSC must consider other regulatory programs in prioritizing products. Specifically, section 69503.2(b)(1)(C) specifies: “If a product is regulated by another entity with respect to the same potential adverse impacts and potential exposure pathways, and potential adverse waste and end-of-life effects, the Department may list such a product-chemical combination as a Priority Product only if it determines that the listing would meaningfully enhance protection of public health and/or the environment with respect to the potential adverse impacts, exposure pathways, and/or adverse waste and end-of-life effects that are the basis for the listing.”

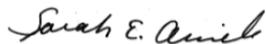
Several of the product categories/ chemical combinations included in the DRAFT three year work plan may be regulated by other federal laws. However, DTSC has not identified the regulatory gap to justify listing the product category/ chemical combination on the work plan. RMA recommends that DTSC should identify all regulatory gaps when including a product category/ chemical combination on the work plan to assist manufacturers in identifying data and information that will be helpful to submit to DTSC on a specific end point or area of concern.

**VI. Conclusion**

RMA thanks DTSC for this opportunity to comment on the DRAFT three year work plan and ask that additional opportunities for comment are provided as they relate to implementation of the SCPR.

Please contact me at (202) 682-4836 if you have questions or require additional information.

Respectfully Submitted,



Sarah E. Amick  
Senior Counsel  
Rubber Manufacturers Association