american apparel & footwear association

February 28, 2017

RE: The Continued Use of Nonylphenol Ethoxylates in Clothing Products

On behalf of the American Apparel & Footwear Association, I am writing in response to the request for public comments by the California Department of Toxic Substances Control (DTSC) on the continued use of nonylphenol ethoxylates in clothing products.

AAFA is the national trade association representing apparel, footwear, and other sewn products companies, and their suppliers, which compete in the global market. Representing more than 1,000 world famous name brands, our membership includes 340 companies, drawn from throughout the supply chain. AAFA is the trusted public policy and political voice of the apparel and footwear industry, its management and shareholders, its four million U.S. workers, and its contribution of more than $361 billion in annual U.S. retail sales.

The apparel and footwear industry has taken the lead in positioning itself to make informed chemical decisions regarding the health and environmental impacts of textile products and processes, thus driving and maximizing industry sustainability. Through the collaborative efforts of organizations such as AAFA, the Apparel and Footwear RSL Management (AFIRM) Group, and the Zero Discharge of Hazardous Substances Foundation (ZDHC), the apparel and footwear industry has made significant progress toward the phase out and replacement of NPEs with safer alternatives throughout the supply chain.

Thank you for this opportunity to submit comments, and for DTSC's stated intent to seek valuable input from industry stakeholders. Answers to the questions presented under "Theme 1. Nonylphenol ethoxylates in cleaning and clothing products" of the Safer Consumer Products (SCP) Priority Product Work Plan – including specific examples of the apparel and footwear industry's progress are as follows:

What are the challenges associated with removing NPEs from the clothing supply chain?

- Multiple supply chain pathways for NPEs contamination

The versatility, outstanding performance characteristics, affordability, and widespread availability of NPEs meant they were preferred by manufacturers throughout the apparel and footwear supply chain for many years. Their ubiquitous presence coupled with a lack of transparency into their use in many different production processes have presented challenges for industry in working towards quick replacements.

Historically, the most common uses of NPEs in apparel and footwear manufacturing were as industrial surfactants and scouring agents. When used for these purposes, NPEs may be introduced at multiple points in the supply chain, often making it difficult to identify the party or process responsible for their presence in finished products. Less obvious uses of NPEs include but are not limited to: ingredients in lubricants for fabric, yarn, and fiber manufacturing, emulsifiers/dispersing agents for dyes and prints, and as de-gumming agents for silk production.

In addition, NPEs may be found in onsite cleaning agents and fire extinguishers used in manufacturing facilities, resulting in unpredictable contamination of apparel and footwear materials and products.

Given their wide use, eliminating every possible source of NPEs in the supply chain has been and continues to be a challenging task. The challenge is not only in identifying where NPEs are being used in the value chain, but also in reworking diverse chemical formulations to eliminate their use without introducing regrettable substitutions or adversely affecting product quality and performance. Each process utilizing NPEs requires its own unique solution, and what works in one formulation and process does not necessarily work for other formulations and processes. There are rarely simple "drop-in" replacements that work across multiple, varied uses of NPEs. Success is dependent on having sufficient time to educate manufacturers up and down the supply chain on the need to replace NPEs as well as time to allow them to adjust and optimize manufacturing processes to accommodate safer alternatives.

- **Complexity of the Global Supply Chain**

Another challenge faced by apparel and footwear brands working diligently to remove NPEs and other substances of concern from product manufacturing is the complexity of the global supply chain.

Apparel and footwear products typically go through multiple tiers of manufacturing with materials and parts sourced from or processed in different facilities separated not only by function but also geographic location. A single product may include materials from multiple countries and be shipped across national borders for assembly and finishing.

For example, one AAFA member as of 2013, sourced from about 600 facilities in more than 40 countries globally. While the company has an individual action plan toward zero discharge of hazardous chemicals, there is still a challenge to ensure compliance and understanding by its suppliers when the regulatory requirements in these countries do not prohibit the use of NPEs.

What progress has been made to remove NPEs from the clothing supply chain, given the recent restriction in the European Union (EU)?

There has been substantial progress removing NPEs from the apparel and footwear supply chain largely due to progressive, voluntary efforts of industry leading brands and collaborative efforts of organizations such as AAFA, AFIRM, and ZDHC. The forthcoming restriction on NPEs in the EU will only apply to textile products beginning February 2021, however this pending regulation is already assisting the greater effort to phase out these substances as more and more brands across the industry adopt restrictions on NPEs in preparation. In non-textile products, such as leather goods, the phase out of NPEs is still being exclusively led by progressive, voluntary efforts since these are not within scope of the EU restriction.

AAFA Efforts:

- Progress toward removing NPEs from the clothing supply chain through education

Ninety-eight percent of apparel and ninety-nine percent of footwear worn in the United States is produced offshore, therefore direct education and training of overseas apparel and footwear manufacturers and their supply chains is highly important. Since 2009, AAFA has hosted over

twenty international product safety conferences in the top apparel supplying countries to the U.S. market such as China, Vietnam, Bangladesh, India, and Indonesia to ensure manufacturers and suppliers have the latest information on eliminating chemicals of concern from the supply chain.

- Progress toward removing NPES from the clothing supply chain through industry resources such as the AAFA Restricted Substance List (RSL) and the Voluntary Product Environmental Profile (VPEP)

In response to the growing number of global regulatory requirements AAFA has developed resources to assist its members in achieving regulatory compliance and promoting supply chain transparency.

The AAFA Restricted Substances List (RSL) serves as a practical tool to help those individuals in textile, apparel, and footwear companies, and their suppliers who are responsible for environmental compliance throughout the supply chain, to become more aware of various national regulations governing the amount of substances permitted in textile, apparel and footwear products. NPEs have been included on the list with a limit of 100 ppm since the EU adopted its restriction on NPEs in textile articles coming into effect in 2021. The AAFA RSL is in its 17th iteration and continues to be a go-to industry resource. Every six months, the publication is reviewed and updated to reflect the latest global regulatory changes. The RSL can be found here: https://www.wewear.org/assets/1/7/RSL_Round_17_April_2016.pdf

Additionally, AAFA's Voluntary Product Environmental Profile (VPEP), a supplier disclosure form, allows suppliers and buyers to easily exchange vital information on the chemical makeup of products and the environmental impact of apparel and textile products and processes. Developed by a group comprised of dyestuff and chemical suppliers, apparel and textile manufacturers, and professional staff of academic institutions and trade associations representing the chemical, dyestuff, and apparel and textile industries, VPEP can be used by apparel and textile companies and chemical suppliers to facilitate the efficient exchange of information necessary to make decisions regarding the environmental impact of textile products and processes. The tool will allow information on the chemical make-up of products to be accessible at every point along the supply chain and increase traceability and transparency. AAFA has partnered with software-solution company, TEXbase, to launch a web-based platform to facilitate the easy exchange of information: www.vpepxchange.com.

- AAFA Member Progress

At least one AAFA member began focusing on phasing out APEOs in 2008 and required manufacturing suppliers to assess the scope of their usage within their own supply chains. In 2010, the member wanting to further deliver on the phase outs of APEOs completed a global survey to assess: (1) the status of APEO awareness with their manufacturing partners and (2) its usage within their supply chain. A large majority of their global suppliers responded to the survey and most those participants indicated they were in favor of implementing a phase-out policy. Additionally, the member has been monitoring the phase-out of APEOs within its supply chain by organizing random sample testing since 2009. Sample selection was based on market as well as on manufacturing locations. The testing conducted from 2009 to 2011 indicated a positive response from the supply chain, with mostly undetected or trace levels of APEOs. In 2012, the member implemented a full APEO usage ban, which applies to all its finished products, in addition to all materials, parts, chemicals, and other goods and sundries used in the production of its products.

Other AAFA members have substantially eliminated NPE use within their supply base through product and formulation testing coupled with education where there is a risk that APEOs may enter into the undocumented contamination of chemical supplier formulations.

AFIRM Group Efforts

- AFIRM Brand Restrictions

Since as early as 1999, some AFIRM brands have been leading industry efforts to restrict the use of NPEs through supply chain education, guidance documents, and progressively tighter limits on NPEs in apparel and footwear materials. In 2003 NPEs were prohibited in chemical formulations used within the EU for textile and leather processing with a de minimis concentration limit of 0.1% (1000pm) and exemptions for facilities not discharging wastewater or that fully treat process water before it goes to wastewater treatment.[1] Many AFIRM brands voluntarily applied this 1000ppm limit to apparel and footwear materials and have been gradually lowering the limit with a goal of consistently achieving 100ppm over time. AFIRM determined 100ppm to be an aspirational yet feasible limit within a few years' time that would safely eliminate intentional use of NPEs while allowing for unintended byproducts, impurities, and contaminations that exist for the reasons stated above.[2] AFIRM brands have been working diligently as industry leaders to remove NPEs from manufacturing processes despite their wide use, and this includes working with commercial testing laboratories to develop a validated method for properly measuring NPEs in apparel and footwear products. This method was developed several years before the EU proposed restricting NPEs in textile articles or began the process of approving an official standardized method.

- AFIRM Group Supplier Seminars

Since its founding in 2004, AFIRM has held six major seminars in Hong Kong, Shanghai, New Delhi, and Ho Chi Minh City to educate the supply chain on the need to phase out and properly manage restricted substances including NPEs. Thousands of suppliers have attended these seminars at the invitation of the multinational brands who comprise AFIRM's membership and a significant percentage of the global market for sourcing apparel and footwear.

- AFIRM Guidance List

In 2011 AFIRM published a Guidance List of restricted substances which included the lowest substance of all AFIRM members, the goal of which was to provide a tool for the supply chain to use for purposes of meeting all AFIRM member brand requirements. The broader class of APEOs, including NPEs, OPEOs and their degradation products, were restricted on this list.

- AFIRM Toolkit

Also in 2011, AFIRM published the second version of its Supplier Toolkit, a collection of resources for the apparel and footwear industry to use in implementing a restricted substance management program within their brands and supplier manufacturing facilities. The Toolkit includes information on the use of NPEs in apparel and footwear manufacturing along with

[1] See Entry 46 of Annex XVII to REACH

[2] AFIRM submitted two rounds of comments to the European Commission during the consultation phase of the proposal to restrict NPEs in textile articles now included as Entry 46a of Annex XVII to REACH. The AFIRM recommended limit of 100ppm and timeframe for adoption were accepted by the EU Commission.

recommendations and helpful tools for phasing them out. The toolkit can be found here: http://afirm-group.com/toolkit/

- AFIRM Restricted Substances List (RSL)

In 2015 AFIRM published an industry best practice RSL that many of its members have subsequently adopted in place of their own RSLs, an important step for eliminating barriers to compliance across the shared supply chain. Updated in 2017, this list restricts the broader class of APEOs, including NPEs, OPEOs, and their degradation products, to 100 ppm. The list can be found here: http://afirm-group.com/wp-content/uploads/2016/12/2017-AFIRM_RSL_2016_1214.pdf

- AFIRM Progress

At least one major AFIRM brand with detailed information on NPE use throughout its extended supply chain has seen a 90% decrease in NPE use in the production of its products based on statistically significant testing data dating back to 2009. This has been achieved through product testing coupled with education of vendors on safer alternatives and corrective action plans. Similar efforts have been underway at multiple other AFIRM brands for many years.

ZDHC Efforts

The Zero Discharge of Hazardous Substances Program was launched in 2011 with a mission to advance towards zero discharge of hazardous chemicals in the apparel and footwear supply chain and act to improve the environment and people's wellbeing. Elimination of APEOs (including NPEs) has been a top priority of the group's 22 brand contributors and multiple supply chain affiliates since its founding. Specific efforts include:

- Manufacturing Restricted Substance List (MRSL)

In 2014, ZDHC published the first version of its Manufacturing Restricted Substances List (MRSL), which banned intentional use of NPEs in chemical formulations used in the production of textile apparel and footwear products. Unlike a product RSL, which sets substance restrictions in materials and finished products with verification conducted via material and product testing, a MRSL sets limits on restricted substances in the chemical formulations used to produce apparel and footwear materials with conformity assessed through testing, declarations, and 3rd party certification systems. Input chemistry control systems, such as the MRSL, support product RSL programs by providing greater clarity to manufacturers on the substances and formulations which cannot be used in the production of apparel and footwear. The ZDHC MRSL was subsequently updated in 2015 to cover chemical formulations used in leather processing. Among the brands, industry associations, and suppliers who have adopted the MRSL, NPEs are banned from use in all textile and leather production processes with a goal of complete elimination of intentional use by the year 2020. The MRSL can be found here: http://www.roadmaptozero.com/fileadmin/pdf/MRSL_v1_1.pdf

- ZDHC Guidance Sheet and Safer Alternatives

In 2014 ZDHC published a Guidance Sheet on NPEs which includes actionable instructions for brands and suppliers to use to replace them with safer alternatives. The Guidance sheet includes a list of Safer Alternatives provided by the U.S. Environmental Protection Agency Design for the Environment Program. The NPE Guidance sheet has been widely disseminated

throughout the supply chain and can be found here:
http://www.roadmaptozero.com/fileadmin/layout/media/downloads/en/NPEO.pdf

- Progress

ZDHC has engaged international chemical, textile, leather, and apparel and footwear associations as well as chemical suppliers and apparel and footwear manufacturers in production countries to educate them on MRSL requirements and the prohibition on NPEs. This work has contributed to global awareness of the need to replace NPEs with safer alternatives and the accelerating downward trend in their use witnessed by brands who perform regular testing for them in apparel and footwear materials.

Recommendation for the SCP Prioritization Process re: NPEs

Since the stated goal of DTSC in implementing the SCP Regulations is to enable a robust alternative assessment process to identify safer alternatives – followed by a transition by industry to those safer alternatives facilitated by regulatory responses DTSC has at its discretion – it is unnecessary and duplicative to focus additional efforts on substituting for NPEs in clothing products.

Under the SCP Regulations, DTSC's decision to identify and list a product-chemical combination as a Priority Product shall be based on an evaluation that includes consideration of:

- The extent to which other regulatory programs regulate the product; and
- "Whether there is a readily available safer alternative that is functionally acceptable, technically feasible, and economically feasible" (CA Health and Safety Code § 69503.2).

NPEs are already being voluntary driven out of the supply chain, will be regulated in the EU in 2021, and functionally acceptable, technically feasible, and economically feasible alternatives are already being used in their place – including those assessed by the United States Environmental Protection Agency's Design for the Environment program. AAFA therefore recommends that DTSC focus resources on substances that do not already have known safer alternatives available on the market that industry is transitioning to. DTSC, Californians, and the apparel and footwear industry would benefit from regulatory focus on seeking safer alternatives for other hazardous substances.

Thank you for your time and consideration in this matter. Please contact Kristen Kern of my staff at 202.853.9358 or by email at kkern@aafaglobal.org if you have any questions or would like additional information.

Sincerely,

Steve Lamar
AAFA Executive Vice President

cc’ Nathaniel Sponsler, Director, AFIRM Group
Scott Echols, Technical Director, ZDHC Programme