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February 25, 2019

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ACC'S APPEAL OF DTSC'S DENIAL OF REQUEST FOR WITHDRAWAL OF THE LISTING REGULATION DESIGNATING SPF SYSTEMS WITH UNREACTED MDI AS A PRIORITY PRODUCT AND AN ENFORCEABLE CONSENT AGREEMENT

Dear Ms. Salamone:

In December 2018, the Department of Toxic Substances Control (DTSC) denied the American Chemistry Council's (ACC) request, pursuant to the informal dispute resolution process in the Safer Consumer Products Regulations (Cal. Code Regs., tit. 22, section 69501 et seq.), that DTSC withdraw the final regulation designating Spray Polyurethane Foam (SPF) Systems with Unreacted Methylene Diphenyl Diisocyanates (MDI) as a Priority Product (the Listing Regulation) and enter into an enforceable consent agreement with the ACC. On January 2, 2019, the Director of DTSC received a letter from the ACC appealing DTSC's December 2018 decision pursuant to the Safer Consumer Products Regulations.

In accordance with California Code of Regulations, title 22, section 69507.2, subsection (c), the ACC's appeal may be decided by either the Director of DTSC or a designee of the Director. Dr. Meredith Williams issued DTSC's December 2018 final decision in her previous role as the Deputy Director of DTSC's Safer Products and Workplaces Program. Dr. Williams was subsequently appointed Acting Director of DTSC. In order to maintain an impartial process, Dr. Williams has designated me to render the final decision on the ACC's appeal pursuant to California Code of Regulations, title 22, section 69507.2, subsection (c).

This letter is to inform you that the relief sought by the ACC is denied. In accordance with California Code of Regulations, title 22, section 69507.2, subsection (c)(1), a short and plain description of the basis for this denial is provided below.

In making my final decision on the appeal, I reviewed the following documents:

- June 6, 2017, letter from Ms. Lee Salamone, ACC, to Director Barbara Lee submitting comments on the Listing Regulation.
- May 30, 2018, letter from Ms. Lee Salamone, ACC, to DTSC Director Barbara Lee requesting an informal dispute resolution regarding DTSC's Listing Regulation.
- September 25, 2018, letter and attachment from Ms. Lee Salamone, ACC, to Dr. Meredith Williams, Deputy Director, Safer Products and Workplaces Program, memorializing a September 5, 2018, meeting between ACC and DTSC representatives.
- December 3, 2018, letter from Dr. Meredith Williams, Deputy Director, Safer Products and Workplaces Program, to Ms. Lee Salamone.
- December 3, 2018, Appendix ("December 3 Appendix") to the December 3, 2018, letter from DTSC to ACC.
- January 2, 2019, Letter from Ms. Lee Salamone, ACC, to DTSC.

In the December 3 Appendix, DTSC responded to each of the factual, regulatory, and procedural issues raised by the ACC in its May 30, 2018, letter. Neither the January 2, 2019, ACC letter nor the earlier documents provided by the ACC, listed above, provide any new information that refutes the scientific, regulatory, and procedural record discussed by DTSC in its December 3 Appendix.

The letters and supporting information provided by the ACC do not contain any information that demonstrates that there exists no potential for exposure, or no potential for significant or widespread adverse impacts, associated with SPF Systems with Unreacted MDI. As stated in DTSC's December 3 Appendix, the scientific basis for DTSC's conclusions regarding SPF Systems with Unreacted MDI were confirmed by the External Scientific Peer Reviewers.

DTSC previously determined that the Safer Consumer Products Regulations do not authorize DTSC to enter into an enforceable consent agreement, and confirmed that determination in its December 3, 2019, letter to the ACC. The ACC's January 2, 2019, letter does not provide information that changes that determination.

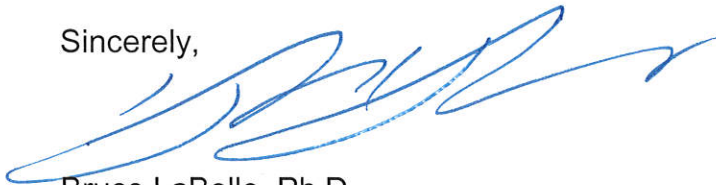
With regards to its procedural objections, the ACC's submittals do not provide information that refutes DTSC's determination regarding the scope and adequacy of its economic analysis, its consideration of alternatives to the listing, and its conformance to federal and California law.

This letter constitutes DTSC's final decision under California Code of Regulations, title 22, section 69507.2, subsection (d), and is not subject to an additional administrative dispute resolution process under the Safer Consumer Products Regulations. In

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accordance with California Code of Regulations, title 22, section 69507.2, subsection (c)(2), the stay of regulatory requirements during the pendency of this administrative dispute is therefore lifted. Responsible entities are required to submit Priority Product Notifications to DTSC pursuant to California Code of Regulations, title 22, section 69503.7, within 60 days of the date of this letter.

Sincerely,



Bruce LaBelle, Ph.D.
Chief
Environmental Chemistry Laboratory

cc: (VIA E-MAIL)

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