



October 11, 2012

Ms. Debbie Raphael, Director  
c/o Krysia Von Burg  
Regulations Section  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812-0806  
*Submitted via email to gcregs@dtsc.ca.gov*

111 New Montgomery Street, Suite 600  
San Francisco, CA 94105  
415-369-9160 (P) 415-369-9180 (F)  
[www.cleanwateraction.org](http://www.cleanwateraction.org)

**Re: Safer Consumer Products Regulations**

Dear Ms. Raphael,

On behalf of Clean Water Action, I wish to commend the Department of Toxic Substances Control (DTSC) for the years of hard work and dedication expended on developing the Safer Consumer Products (SCP) regulations mandated by the California Legislature under AB 1879 (Feuer). Clean Water Action has participated in the Department's stakeholder process since the beginning and has been impressed by the willingness of your staff to bring a wide array of voices to the table and to consider all points of view as part of their decision making. As with all such complex regulations, there are things that we believe can and should be improved. **However, on a whole we see the proposed SCP regulations as a positive step toward driving innovation that will result in safer products and economic growth.** We therefore urge DTSC to finalize and adopt the regulations with all expediency.

CWA is a national organization dedicated to ensuring that all people have access to clean water, a safe environment, and decision-making processes that impact the quality of their lives. We, and our over one million members (60,000 in California), see environmental protections as essential in and of themselves, as well as critical in protecting human health and safety. As wastewater, stormwater, and drinking water agencies struggle to address known and emerging chemical contaminants resulting from the use of products in the home and workplace, we find that too often these chemicals impair aquatic life and water quality, as well as threaten humans who drink the water, eat contaminated fish from polluted waters, and/or are exposed through recreation, tribal traditions, and other means. Consequently, environmental and human protections go hand in hand.

**While we remain committed to the state's swift adoption of the SCP regulations, Clean Water Action is deeply concerned that environmental endpoints are not being prioritized to the degree that they should be.**

The assurance that we consistently received from DTSC that environmental endpoints, including water and air quality, would be prioritized along with public health impacts such as

cancer and endocrine disruption has been a core reason for CWA's long-term commitment to the Green Chemistry Initiative stakeholder process and our support of the regulatory process. However, in reading the formal draft released for public comment, we find two issues that virtually ensure that important water quality and other environmental problems will not be addressed. We strongly urge the Department to rectify these serious flaws before formally adopting the rules.

1. Omission of California's 303 (d) list

Clean Water Action supports the regulation's robust list of Chemicals of Concern (CoCs) and DTSC's intent to not rank the chemicals on the list given discrepancies in the amount of data available on various substances and the difficulty in comparing the types of harm that they may cause. Given DTSC's commitment to a comprehensive CoC list, Clean Water Action and our allies in the water stewardship community were very surprised to find that California's 303 (d) list of impaired waterways and their related contaminants is not included. This is a serious omission that goes beyond the simple concern of which CoCs will be prioritized (such as human health impacts vs. environmental impacts). Without the 303 (d) list, the Department will not be able to even identify and take action on many key CoC/Priority Product combinations that impact aquatic ecosystems and/or cause water quality violations in California under the federal Clean Water Act and California's Porter-Cologne Water Quality Control Act. **For this reason, we strongly urge DTSC to add California's 303 (d) list to the list of lists by which CoCs will be identified and to review revisions made by the State Water Resources Control Board every few years.**

2. Section 69503.3(g)

Clean Water Action strenuously opposes Section 69503.3(g) which limits the CoCs considered when establishing CoC/Priority Product combinations for the first round of regulatory action. While this may not have been the intention, by requiring that the chemicals chosen in this first round must meet criteria described in both sections 69502.2(a)(1) and (2), DTSC is sending a message that environmental contaminants that do not appear on PBT and CMR lists are not a priority and can be easily disregarded. **This is not acceptable and we urge the Department to delete Section 69503.3(g) entirely.**

The reality, as we've mentioned in previous comments, is that there are no ecotoxicity lists for water and other environmental chemical contaminants that are equivalent to those for human health impacts. While chemicals that do comply with sections 69502.2(a)(1) and (2) may also contaminate water or other environmental strata, there are many that will not be initially eligible for action under the SCP regulations. This includes numerous "emerging" water contaminants for which there is evidence of harm to aquatic life, but little data on human health impacts. It also includes metals causing water quality violations in water. That these can be important to address is clearly demonstrated by the example of copper in brake pads. The environmental impacts of this chemical/product combination were considered so serious that the legislature took action to phase out the metal's use. Such a situation would not be addressed by the SCP regulations with the limitation that DTSC is proposing.

Clean Water Action respectfully disagrees with the argument that this restriction is temporary and thus acceptable. While we understand that the list of CoC/Priority Products to be acted upon in the first years of the program will be small, there is absolutely no reason for limiting the lists of chemicals and products from which DTSC will choose. In fact, it is our expectation that in order to set the appropriate precedents, at least one of the first combinations selected will respond to an environmental endpoint.

We have heard section 69503.3(g) justified as a way to provide manufacturers with some assurance as to what to expect initially. We do not see how this actually does this. What it does do, however, is take away assurances to the environmental and environmental justice communities, as well as local agencies who are responsible for complying with environmental standards that chemical/product combinations that interfere with meeting water quality requirements, impair aquatic life, or impact air will ever be chosen for regulatory action, unless a distinct connection to a public health impact can be made. This view is further substantiated by the fact that by omitting the 303 (d) list, the Department will be unable to address many critical water polluting chemicals.

Fortunately, rectifying these serious shortcomings is not onerous and can be done without delaying adoption of the regulations. That remains of paramount importance. As we said at the beginning of this letter, these regulations are the result of 4 years of discussion and input by a diverse groups of stakeholders. It is time to move forward and get the program up and running. Delay only diminishes the potential of the SCP regulations to fulfill their promise of safer products, economic growth founded on green chemistry based innovation, and job development.

Thank you again for the effort DTSC has made in developing these regulations and for considering our comments.

Sincerely,

A handwritten signature in cursive script that reads "Andria Ventura".

Andria Ventura  
Toxics Program Manager