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The Dow Chemical Company  
Midland, MI 48674  
U.S.A.

2040 Dow Center  
October 11, 2012

California Department of Toxic Substances Control  
Ms. Krysia Von Burg  
Regulations Coordinator, Regulation Section  
P.O. Box 806  
Sacramento, CA 95812-0806

**Re: Comments on Proposed Safer Consumer Products Regulations**

Dear Ms. Von Burg:

The Dow Chemical Company (Dow) appreciates the opportunity to provide comments on the final draft regulations for Safer Consumer Products (SCP) released on July 2012 by the California Department of Toxic Substances Control (DTSC or Department).

With over 700 employees and contractors at four manufacturing facilities in California, Dow has a vested interest in these regulations and has been actively engaged in the statutory and regulatory process since its inception. Dow is a diversified company with an industry-leading portfolio of specialty chemicals, advanced materials, agricultural sciences and plastics businesses. Dow delivers a broad range of technology-based products and solutions to customers in approximately 160 countries and in high-growth sectors such as electronics, water, energy, coatings and agriculture. Dow both manufactures and imports chemicals, products and raw materials that are potentially in the scope of this proposed regulation.

As a world leader in using science and technology to shape chemicals management improvements, Dow is well positioned to use green chemistry to address the needs and challenges of a more demanding world. Our commitment to California's Green Chemistry Initiative has been evident with Dow's direct representation on both the DTSC's Science Advisory Panel and the Green Ribbon Science Panel. Dr. Neil Hawkins, vice president of Sustainability & EHS and Dr. Anne Wallin, director of Sustainability & EHS, Europe, Middle East & Africa served for several years on those two deliberative panels, respectively. Dow applauded DTSC's initial goal to incentivize innovation by stimulating principles of green chemistry while minimizing consumers' potential exposure to hazardous chemicals of concern in consumer products.

However, as currently drafted, the SCP Regulations will do little to encourage the innovation of safer consumer products. Instead, it will foster an environment of uncertainty where consumers and participants in the value chain struggle to make

credible, informed choices. The attached addendum outlines specific comments on the proposed regulations. However, Dow's concerns primarily focus on a fundamental premise: the SCP regulations lack clear, objective standards upon which predictability and compliance can be derived.

While Dow recognizes and appreciates the numerous revisions to make the regulations more workable for industry, we urge DTSC to give thoughtful consideration to the areas where the Department could further clarify and simplify the requirements to make them more implementable. As noted in our comments on the initial proposed regulation, we are interested in working with the Department to further optimize the implementation of the regulations for Safer Consumer Products. In addition to our attached comments, we are a member company of the Green Chemistry Alliance (GCA), and we support their comments by reference here.

It is imperative that DTSC be successful with this regulation so that it doesn't collapse under its own weight or add an undue burden on our ailing economy. We look forward to working with DTSC to ensure the effective implementation of this regulation.

Regards,



Connie L. Deford  
Director, Product Sustainability & Compliance

**Addendum:**  
Specific Comments on SCP Regulations

**Cc:**  
The Honorable Matt Rodriguez, Secretary, CalEPA  
Miriam Ingenito, Deputy Secretary, CalEPA  
Kristin Stauffacher, Assistant Secretary, CalEPA  
Nancy McFadden, Cabinet Secretary, Office of the Governor  
Mike Rossi, Senior Business & Economic Advisor, Office of the Governor  
Cliff Rechtschaffen, Senior Advisor, Office of the Governor  
Martha Guzman-Aceves, Deputy Legislative Affairs Secretary, Office of the Governor

## Specific Comments on SCP Regulations

### I. Chemicals of Concern

Dow supports the design of regulations that truly focus on limiting exposure to, and adverse impacts posed by, Priority Products that contain Chemicals of Concern (COCs) in consumer products. This targeted approach encourages the evaluation of chemicals and products of concern where there is a reasonable or foreseeable pathway for exposure. The current Safer Consumer Products (SCP) regulations appropriately recognize that chemicals are to be evaluated based on their individual use in specific products and for identifying a further prioritization process for chemicals found in the initial priority products. However, these regulations do not specify objective criteria by which chemicals might be identified, nor does it state which of the ~1200 chemicals will be listed as COCs.

#### A. Identification of Chemicals of Concern

The objective of identifying and characterizing COCs is to focus on chemicals used in consumer products that meet specific hazard criteria and have exposure and use patterns that may pose risks. However, by identifying a broad list of COCs compiled by a variety of governmental, intergovernmental and academic interests, it is difficult to truly identify high-priority chemicals. When every chemical is a priority, none will be a priority. The substances on this very large list of COCs will likely remain listed indefinitely, even if they are used safely in consumer products, or even if they are not used in consumer products at all.

There does not appear to be a dedicated public comment period for this initial list of chemicals based on other authoritative bodies. The net effect is that over 1200 chemicals will be on the initial list of COCs without a proper chance for the public to comment on them. The draft thus stigmatizes chemicals and products containing those chemicals from the outset before the regulatory process of alternatives analysis and regulatory response have taken place. This will likely result in unwarranted market impacts because the market will move quicker to product deselection while DTSC struggles to keep pace with the COC identifications. Since the regulations do not include a clear or science-based process by which the DTSC will select which chemicals and products it regulates, the inclusion of such a broad list of COCs does not provide predictability and certainty to companies.

#### B. Tailored Approach to Chemicals of Concern

Dow supports regulations that are based on established scientific principles that define safe conditions for use and impose requirements to assure that use is controlled within predefined safe conditions. Such a system must rely on risk assessment and risk management principles that are predictable, flexible and

capable of responsibly addressing society's economic, environmental and safety requirements.

Dow suggests that DTSC develop a risk-based chemical management system that screens chemicals to develop a narrower, focused list of COCs that actually represent the greatest potential risk. Such an approach will allow DTSC to conduct a step-wise, methodical evaluation of chemicals of concern in priority consumer products, provide appropriate notice and information to the public, enhance health and environmental protection, minimize the potential burden to both the State and the regulated community, leverage the considerable work already done by other governments (which is required by statute), and avoid unwarranted negative impacts on the market.

Dow is concerned that an initial list of some ~1200 COCs will unduly alarm the public without simultaneously providing the public with the confidence needed to ensure timely resolution or disposition of the products that contain those chemicals. DTSC may well be identifying hundreds of chemicals that have little or no use in consumer products, or which pose no risk of harm in those uses.

## **II. Priority Products**

Considering the magnitude of the proposed COC list, Dow believes it is appropriate for DTSC to only designate 2-5 priority products for the first 3-5 years of this program. This approach provides an opportunity for both industry and DTSC to better understand the regulatory challenges of the proposed framework. While Dow supports this approach, this portion of the regulations presents significant concerns for industry.

Dow appreciates that the Priority Products list is apparently intended to be risk-based, as it requires some consideration of exposure and the potential for harm. However, the current regulation identifies a vague process by which DTSC will prioritize and establish a list of Priority Products. It is unclear, however, how DTSC will objectively utilize the "Key Criteria" to assess and prioritize products based on a list of ~1200 potential chemicals of concern. An objective, step-by-step process should be constructed, based on credible, scientifically valid criteria that clearly outline the process by which DTSC will identify priority products. The use of a highly subjective process based on a narrative standard is not acceptable from a scientific or public policy standpoint.

### **A. Key Prioritization Factors**

The proposed prioritization process creates significant uncertainties. Although DTSC has indicated its goal is to prioritize a small number of products for review, the draft does not articulate a clear, step-by-step process for doing so. The draft indicates that DTSC may rely on information developed or received under the regulation, but is not limited to such information in reaching a prioritization decision. The lack of explicit description raises questions about the nature and type of information DTSC, in fact, might use to reach a decision.

## B. Aggregate & Cumulative Risks

The success of the product prioritization process hinges on the evaluation of aggregate and cumulative risks. As it is currently written, it is unclear when, how often and through what process DTSC will conduct an evaluation of a chemical's aggregate and cumulative effects. It is also unclear whether this refers to a human health or an environmental assessment of aggregate and cumulative risks, or perhaps both. Dow is not convinced that such an analysis is necessary for all chemicals of concern, all priority products or all potential alternatives.

Assessing aggregate effects and risks from the total exposure to a specific chemical from all different sources and routes requires considerable data and information that manufacturers of individual products do not have and cannot readily obtain. Manufacturers and/or sellers of a given consumer product would need information on each individual consumer's occupational exposures, medication and diet, information that would surely raise privacy concerns.

The lack of a process not only presents a challenge of predictability for industry, but it also poses significant challenges for actual implementation. Cumulative risk assessment is far from settled science. Scientific bodies do not yet agree on an accepted cumulative risk assessment methodology. Individual companies cannot possibly know all of the possible sources and uses of any given chemical outside of their own control, thus rendering cumulative risk analysis impossible. In the context of the consumer product regulation, cumulative assessments would quickly become an onerous exercise with little practical meaning.

## C. Weight of Evidence

The SCP regulations do not currently include any "weight of the evidence" approach for evaluating the toxicity of chemical substances and other scientific questions pertaining to human health and the environment. It is a general principle of hazard assessment that all available data must be considered and the totality of relevant and reliable information integrated in order to arrive at a scientifically-defensible decision regarding chemical hazard. These regulations do not currently have a process to evaluate credible hazard trait data in a manner that addresses the relevance, quality and significance of the data. Dow supports the integration of exposure-based traits that will allow for the prioritization of chemicals based on widely-perceived objective, scientifically-based studies that have been vetted in an open, deliberative and transparent scientific process.

## D. Alternatives Analysis Exemptions

Having clearly-defined criteria for evaluating hazard traits and exposure around environmental and health concerns is integral to the success of chemicals management regulations. It appears that the approach to Alternatives Analysis Exemptions currently defined in the regulations will be arbitrary and inconsistent.

Dow supports a reasonable de minimis threshold, or alternatives analysis threshold of 0.1% (1,000 ppm). This is a threshold that has considerable precedent in the Globally Harmonized System for Classification and Labeling (GHS) and the European Union's REACH program. More importantly, it is a practical threshold that will avoid unnecessary assessments and reformulations based on the mere presence of trace amounts of a chemical of concern. DTSC should limit application of the regulation to intentionally added constituent chemicals.

While Dow appreciates DTSC's attempt to establish a unique approach to threshold limits, or lack thereof, the inconsistency with other federal and international bodies will create an unnecessary level of confusion for implementation. What criteria will DTSC use to trigger the need to establish a different de minimis level? Also, what standards will be used to evaluate the "available information" to warrant a higher or lower level? Dow recommends that DTSC carefully consider clarifying the process for establishing Alternatives Analysis Exemptions.

#### E. Minimum Detectable Concentration

The initial intent of the SCP regulations focused on minimizing potential exposure to COCs while spurring the innovation needed to select safer consumer products. Unfortunately, the current regulations are focused less on safe use and more on product deselection. Draft language indicates that DTSC will defer to the "minimum detectable concentration" level for the COC in the product. Dow is concerned that reliance on the limit of detection, in conjunction with precautionary language such as may "contribute to" adverse public health and environmental effects, and, deference to regulatory responses that provide the greatest level of "inherent protection," is establishing a framework focused on chemical elimination rather than safe use. A minimum detectable concentration cannot function as an exemption threshold, nor can it be used to document incremental improvement.

### **III. Alternatives Analysis**

The second stage of the alternatives assessment focuses on the comparison of alternatives. However, the criteria for determining a "demonstrable contribution" or a "demonstrable difference" are unclear. DTSC should define the process that will be used to evaluate factors relevant to the comparison of Priority Products and the alternatives. Dow would support the use of quantitative analysis tools like QSAR models to facilitate the comparison. These types of quantitative tools will help identify situations where there are other categories for which the alternatives are no better and possibly worse for potential toxicity or environmental hazards. Conducting comparative analysis under this rubric allows DTSC to conduct a more comprehensive review instead of merely relying on available qualitative information. Reliance on existing available information in this context presents a challenge because two purportedly "reliable" sources may not yield the

same results or enjoy the same level of scientific standing. Dow recommends the use of quantitative tools that will enhance comparative assessment around exposure potential for consumer products.

#### **IV. Duplication of Worker Exposure Standards**

The overarching intent of the Safer Consumer Products regulations is to focus on exposure risks associated with consumer products. Thus, focusing on workers exposure in a retail setting seems to be an appropriate consideration for these regulations. Dow strongly believes that the scope of these regulations should focus on conventional consumer products in retail settings. There are OSHA exposure standards already in place for worker safety in industrial settings, and it would be unnecessary and duplicative for DTSC to appropriate its very limited resources in this manner. As just one of many examples, it seems reasonable to assume that the statute did not intend to contemplate additional regulations for an industrial worker filling railcars for shipment. Furthermore, some raw materials and intermediates may be “consumer products” under the regulations, and DTSC will have no authority to regulate the use of these materials outside of California. This creates a disincentive for California-based businesses, jobs, and operations. A manufacturer will actually be motivated to move out of state and sell back into California to avoid this duplicative regulation of the workplace. Not contemplated in this regulation is this “leakage” of jobs out of the state.

#### **V. Confidential Business Information**

The protection of confidential business information (CBI) and trade secrets are considered sacrosanct among all business partners and industry representatives. DTSC continuously references its adherence to the existing legal framework for CBI and trade secrets laws and states that these regulations will not conflict with this existing framework. However, Dow believes that DTSC’s goal of transparency may be undermined by the regulations because they compound the complexity of DTSC’s trade secret determinations. Several of the requirements for substantiation of trade secret claims are unnecessary and unauthorized by the statute (AB 1879) or other relevant trade secret statutes. The current framework outlines excessive requirements that should be revised.