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# Assembly California Legislature



**MIKE FEUER**  
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YOUTH VIOLENCE PREVENTION

December 3, 2010

California Department of Toxic Substances Control  
Office of Legislation & Regulatory Policy  
Jeff Woled, MS 22A  
P.O. Box 806  
Sacramento, CA 95812

Re: Revised Proposed Regulations for Safer Consumer Products – Green Chemistry

I am writing to express my profound disappointment with the revisions to the proposed regulations, "Safer Consumer Product Alternatives," to implement Assembly Bill 1879 (Feuer), Chapter 559, Statutes of 2008. While I joined some of my colleagues in expressing my concern with deficiencies in the initial proposed regulations, that proposal was substantially better than the revised approach that is the subject of the 15-day comment period that concludes today. The earlier approach -- despite some serious flaws (see the attached October 29<sup>th</sup> letter) -- would have taken California a significant step forward in how we address dangerous chemicals in consumer products. The revised proposal not only fails to address the flaws of the earlier version but compounds them by fundamentally altering the approach called for under the legislation I authored. I cannot support the revised proposal. A proposal that resembles the initial proposed regulations would have a much better chance of achieving my support and a real opportunity to bring about the change envisioned by my legislation.

I must say that I am also troubled by the speed with which these substantial revisions have been made and the very limited time that has been provided for public comment on the revisions. The Department has made great effort throughout the process to provide public input and transparency. However, a 15-day comment period on these far-reaching changes is both inadequate and likely inconsistent with the requirements of the Administrative Procedures Act. Given the short amount of time that I have had to review and evaluate the revisions I simply cannot comment on the full range of problems that have emerged with this revised proposal. Accordingly, I will focus on just a few.

The 42nd Assembly District includes all or parts of the city of Los Angeles neighborhoods of Sherman Oaks, Studio City, North Hollywood, Valley Village, Valley Glen, Toluca Lake, Universal City, Griffith Park, West Los Angeles, Brentwood, Bel Air, Holmby Hills, Beverly Glen, Westwood, Century City, Hollywood, Fairfax, Hancock Park, Los Feliz, and the cities of Beverly Hills and West Hollywood.



### Chemicals of Concern List and Prioritization

The revised proposal has the effect of taking what were two separate actions (the identification of CoCs and the prioritization of CoCs) and conflating them into one action, so that only priority chemicals are chemicals of concern. This is inconsistent with the legislation, which clearly called for a two-part process. The approach presented in the revised proposal is an approach that is certain to limit the universe of chemicals to be identified as chemicals of concern. Certainly, it has always been understood that due to limited resources the Department, at least early on, would have to focus its assessment and regulatory functions on chemicals and products that qualified as the worst of the worst. However, it was also understood and much discussed that an integral part of the program would be to identify the broader universe of chemicals of concern. The benefit of identifying these problematic chemicals, even though they would not be initially targeted for action, would be to inform consumers and send a signal to the market that alternatives are needed. One of the fundamental goals of the green chemistry effort has been to fill in the blanks about the thousands of chemicals we know little or nothing about. Conflating these two actions undercuts that essential objective.

### Third-Party Verification

A robust third-party verification system has long been contemplated as an essential component of the green chemistry program. While the revised proposal retains third-party verification and includes appropriate conflict of interest provisions, it fails to establish standards for expertise that are critical to ensuring the credibility of the verifier. While it may be difficult to develop very specific standards or certification programs given the still-evolving nature of alternative analysis methodology, regulations must at a minimum require that the third-party possess appropriate training, experience and qualifications.

### Hazards-Based vs. Impacts-Based

The green chemistry effort represents a fundamental paradigm shift. Whereas in years past the approach to toxics in consumer products has been based on a very high threshold and a difficult-to-prove assessment of whether a specific chemical in a specific product is causing a specific harm, the paradigm underpinning green chemistry is that we should identify chemicals that carry any hazard traits and seek safe alternatives for them. The revised proposal gives me great concern because it will fail to make the shift from an impacts-based approach to a hazards-based approach as anticipated by AB 1879.

### Trade Secrecy

The trade secrecy provisions of AB 1879 were among the most well-defined provisions of the bill. So it is with considerable dismay that I read the revised proposal to adopt an expansive definition of trade secrecy. AB 1879 contemplated a narrower definition and in fact specifically

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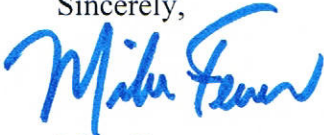
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referenced Section 6254.7 of the Government Code. The statute did not grant the Department authority to deviate from this definition.

Conclusion

I want again to strongly urge the Department to make further changes and to return to an approach more consistent with the initial proposal. Done correctly, green chemistry will protect consumers and the environment while promoting confidence in the market place in a manner that will benefit our economy in the long run. As was the case with the legislation, the regulations should be something that consumers, environmental and public health advocates and industry can support.

Sincerely,



Mike Feuer

Encl: October 29<sup>th</sup> letter

cc: Linda Adams, Secretary, California Environmental Protection Agency  
cc: Maziar Movassaghi, Acting Director, Department of Toxic Substances Control  
cc: John Moffatt, Chief Deputy Legislative Secretary, Office of the Governor