



December 3, 2010

Maziar Movassaghi
Acting Director
Department of Toxic Substances Control (DTSC)
P.O. Box 806 MS 12A
Sacramento, CA 95812-0806

RE: Safer Consumer Product Alternatives Regulations, November 2010 Revisions

Dear Maziar:

As a member of DTSC's Green Ribbon Science Panel, I have joined experts from across the nation in an effort to provide you with independent scientific advice to support implementation of the Cal-EPA Green Chemistry Initiative, to share insights from my two decades of professional experience managing pollution associated with consumer products, and to identify practical solutions to the challenges faced by DTSC in designing the regulatory programs authorized by AB 1879 and SB 509. Like the others on the panel, I am personally and professionally committed to assisting you with implementing a successful regulatory program. As such, the November version of the regulations, which jettisoned most of the carefully thought out recommendations of our Science Panel, was very difficult to read—and this letter is very difficult to write.

The November version of the regulations was a complete surprise to me. The changes were more than revisions—the regulatory program was completely redesigned. Until November, it was a program that would have prevented pollution from consumer products. The November proposal is fundamentally different. It can only address existing impacts—products that are already harming Californians and our environment. Although solving existing environmental problems will be an important function of this regulation, this change would prevent the regulatory program from achieving DTSC's oft-stated goals of promoting California's move toward a clean, green, sustainable economy and accelerating the quest for safer consumer products.

The redesign of the regulatory program would make it impossible to initiate regulation based on readily documented facts like non-compliance with regulatory requirements, government costs for managing pollution from a product, or monitoring data showing a pollutant exceeds water quality standards. Instead, the redesign regulatory proposal requires expensive, time-consuming (and currently unfunded) scientific studies to prove the harm that is occurring—and prevents any response action until the harm is fully scientifically documented.

Another surprise change in the November regulation was the elimination of the Assessor certification program. This program would have ensured that manufacturers and DTSC would receive only high-quality assessments, thus reducing DTSC's costs for reviewing compliance documentation. It also would have been the means by which DTSC could ensure that its guidance—or equivalently thorough alternatives assessment procedures—would have been followed. Given the strong support for this regulatory element among the Science Panel, I am confident that we could have found a willing group of panelists to set up the professional oversight group necessary to implement the certification and training program in a highly professional manner. Establishing a training and certification program is not particularly difficult. As an example, I note the recent speedy establishment of construction stormwater water pollution prevention training and preparer certification program by the California Stormwater Quality Association to support a requirement of the State Water Board construction stormwater runoff permit.

While I have many other major concerns and have identified a number of drafting problems with the revised regulation,¹ I feel it particularly important to call your attention to my concerns about the selection of the three product categories for initial regulation. If you had asked the Science Panel for recommended priorities, I doubt that we would have advised you to prioritize household cleaning products and personal care products. Harmful products are much more likely to be found in the hardware store or the automobile supply store than they are at the cosmetics counter or the drugstore.

Over the last 15 years, I have tackled environmental pollution problems from dozens of consumer products—examples include: mercury-containing products (thermometers, light bulbs, thermostats, switches, medical devices), vehicle brake pads (copper and lead) and tires (zinc and dioxins), roofing materials (zinc, copper, and biocides), biocidal clothing and linens (silver and copper), unwanted pharmaceuticals, various pesticides (aquatic toxicity and metals), zinc-containing commercial floor wax, cooling water additives (tributyltin, copper, and aquatic toxicity), photographic film (silver), imported cotton clothing (dioxins from pentachlorophenol treatment of raw cotton), and building sealants and paint (historic and current use of PCBs). Not one of these types of products could be tackled in the next 5 years under the revised regulatory framework. If DTSC adopts this regulation, it will be sending efforts to address our most pressing product-related pollution back to the legislature. A simple solution would have been to allow DTSC to establish product priorities on the basis of petitions received under Section 69304.

I remain committed to assisting you and DTSC with your efforts to make this program a success. It is my professional opinion that the program will not be successful in achieving its goals and meeting California's most pressing needs if the November version of the regulation is adopted. I would be pleased to discuss my concerns with you, either

¹ For example, I found oversights that I am sure were unintentional, such as under Section 69301.1 (71), actual surface water monitoring data documenting water quality standard exceedances cannot be used as "reliable information" demonstrating the occurrence, or potential occurrence of environmental exposures.

Mr. Maziar Movassaghi
December 3, 2010
Page 3

individually or as part of a Science Panel meeting. I would also be pleased to be part of a process to find ways to revise the regulations to address the challenges that caused DTSC to generate the November revisions.

California has access to a team—including DTSC’s talented staff team—that I am confident can successfully address identified challenges to implement a practical, yet effective consumer product regulatory program for our state. Let’s use those talents to create a regulation that really works!

If you have any questions, please call me at 650-627-8690.

Sincerely,

/s/

Kelly D. Moran, Ph.D.
President

cc: Regulations Coordinator, DTSC (gcregs@dtsc.ca.gov)