

Albany
Atlanta
Brussels
Denver
Los Angeles

McKenna Long
& Aldridge^{LLP}
Attorneys at Law

101 California Street • 41st Floor • San Francisco, CA 94111
Tel: 415.267.4000 • Fax: 415.267.4198
www.mckennalong.com

New York
Philadelphia
San Diego
San Francisco
Washington, D.C.

ANN G. GRIMALDI
(415) 267-4104

EMAIL ADDRESS
agrimaldi@mckennalong.com

February 27, 2013

**VIA E-MAIL (CEPC@CALEPA.CA.GOV) AND
BY FEDERAL EXPRESS**

Secretary Matthew Rodriquez, Chair
Environmental Policy Council
1001 I Street, P.O. Box 2815
Sacramento, CA 95812

Re: Comments for February 28, 2013 CEPC Meeting

Dear Secretary Rodriquez:

I am pleased to submit the comments of the Complex Durable Goods Coalition (the "Coalition") on the need for a multimedia life cycle evaluation of the proposed Safer Consumer Products ("SCP") Regulations released by the Department of Toxic Substances Control ("DTSC") pursuant to AB 1879. The Coalition's fundamental concern is that DTSC's rationale for not conducting a multimedia life cycle evaluation of the proposed SCP Regulations is based on circular logic by which DTSC *never* will consider itself obligated to comply with its statutory obligations and by which this new regulatory program will never be examined for potential adverse impacts by DTSC's sister agencies and the Environmental Policy Council (the "Council"). This faulty rationale ultimately will inure to the detriment of California citizens. The Council should reject DTSC's conclusory recommendation and require DTSC to undertake a multimedia life cycle evaluation, and present it to the Council for review, in accordance with the law.

The Coalition is a group of trade organizations representing broad and diverse industry interests. Its mission is to engage in strategic planning, and regulatory and technical advocacy, regarding state and federal chemical initiatives that may impact the manufacturers of complex durable goods, their suppliers and other related entities such as those that may distribute or sell such goods and/or sell or use their service parts. For the Coalition's purposes, "complex durable goods" are manufactured goods composed of 100 or more manufactured components, with an intended useful life of five or more years, where the product is typically not consumed, destroyed, or discarded after a single use. For purposes of this comment letter, the Coalition

consists of the following members: the Aerospace Industries Association, the Alliance of Automobile Manufacturers, the Association of Global Automakers, the Automotive Aftermarket Industry Association and the Motor and Equipment Manufacturers Association.

AB 1879, codified (along with SB 509) at Health & Safety Code sections 25251 *et seq.*, requires DTSC to adopt regulations: (1) establishing a process for identifying and prioritizing chemicals of concern in consumer products; (2) establishing a process for evaluating chemicals of concern in consumer products, and their potential alternatives, as well evaluating the availability and potential hazards posed by potential alternatives; and (3) specifying a range of regulatory responses that DTSC may take following the alternatives analysis. Health & Safety Code §§ 25252, 25253(a), (c).

AB 1879 also requires DTSC, in consultation with other state agencies, to prepare a multimedia life cycle evaluation of the regulations it intends to adopt. Health & Safety Code § 25252.5(a), (e), (g). This evaluation must be submitted to the Council for review. Health & Safety Code § 25252.5(a). The evaluation must address impacts to human health and the environment. Health & Safety Code § 25252.5(b). Based on the Council's review of the evaluation, DTSC may be required to adopt revisions to the proposed regulations. Health & Safety Code § 25252.5(c), (d).

Preparation of a multimedia life cycle evaluation and its review by the Council is a vital component part of AB 1879. The statutory requirement demonstrates the Legislature's intent that this new, expansive and complex regulatory program be scrutinized closely by DTSC's sister agencies and by the Council, particularly as to unintended effects.

Subsection (f) of Health & Safety Code section 25252.5, however, allows DTSC to adopt regulations without a multimedia life cycle evaluation if the Council conclusively determines that the regulations will not have any significant adverse impact on human health on the environment. DTSC has prepared a Recommendation on Need for a Multimedia Evaluation of the Safer Consumer Products Regulations, dated February 2013 (the "Recommendation"). In its circular logic, DTSC implies that because the proposed regulations are intended to safeguard human health and the environment, no significant adverse impacts can occur based solely on the regulations' implementation. *See* Recommendation at 6-7. DTSC further concludes that because the regulations do not target specific chemical-consumer product combinations, no meaningful multimedia life cycle evaluation is possible. Recommendation at 7.

Significantly, the Legislature does not seem to have assumed that only regulations pertaining to specific chemical-consumer product combinations would be subject to the evaluation and review requirement:

Before being adopted, the two sets of regulations described above [*i.e.*, regulations identifying and prioritizing chemicals of concerns in consumer products, and regulations pertaining to evaluating them and their alternatives] would have to be submitted to the

Environmental Policy Council, along with a "multimedia lifecycle evaluation" that is prepared by affected agencies and that appear to allow an independent process for public comment.

Report of Senate Committee on Environmental Quality dated August 20, 2008

([http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_1851-](http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_1851-1900/ab_1879_cfa_20080821_111017_sen_comm.html)

[1900/ab_1879_cfa_20080821_111017_sen_comm.html](http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_1851-1900/ab_1879_cfa_20080821_111017_sen_comm.html)) at 9. Inasmuch as the statute does not require the described regulations to identify *specific* chemical-consumer product combinations, the language quoted above strongly suggests that the evaluation and review be required even for DTSC's currently proposed regulations.

DTSC also seems to assume that its obligations extend only to this round of regulatory proceedings. *See* Draft Resolution at 2 ("WHEREAS, if DTSC, in *finalizing* its Safer Consumer Products regulations, fundamentally alters the regulations in such a manner that the regulations directly affect specific consumer products, DTSC shall re-submit its regulations to the Council." (emphasis added)). Yet, the Recommendation's conclusion omits the key fact that when actually implementing the Safer Consumer Products Regulations, DTSC indeed will identify specific chemical-consumer product combinations, will require the preparation for alternatives assessments for them, and will impose regulatory responses – all actions which are regulations within the meaning of the California Administrative Procedures Act (although DTSC may or may not designate them that way) requiring preparation and review of a multimedia life cycle evaluation. Thus, with DTSC's logic, its specific implementation of its program may entirely escape the legislative mandate of Health & Safety Code section 25252.5(a).

Although key aspects of the new program do require a multimedia life cycle evaluation, those evaluations are undertaken by the responsible entities and by DTSC as part of specified regulatory actions. DTSC's allocation of the responsibility for such evaluations within its own program does not fulfill the legislative mandate of Health & Safety Code section 25252.5(a) for closer scrutiny by DTSC's sister agencies and the Council. Nothing in the proposed Safer Consumer Products Regulations states, or even suggests, that DTSC will prepare and submit for review an evaluation for any of these regulatory actions. Again, DTSC's implementation of AB 1879 may entirely escape this legislatively mandated requirement.

The Coalition appreciates that the preparation of multimedia life cycle evaluation for DTSC's proposed regulatory program may present a challenge. But the difficulty of the process is no reason to avoid the Legislature's mandate. The Council should reject DTSC's Recommendation and require the agency to conduct a multimedia life cycle evaluation, and submit it to the Council for review, as the law requires.

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Thank you again for this opportunity for the Coalition to comment on the need for DTSC to conduct a multimedia life cycle evaluation of the proposed SCP Regulations.

Very truly yours,



Ann G. Grimaldi

cc: Cliff Rechtschaffen, Senior Advisor to Governor Brown (via first class mail)
Martha Guzman-Aceves, Deputy Legislative Affairs Secretary, Office of the Governor
(via first class mail)
Debbie Raphael, DTSC Director (draphael@dtsc.ca.gov)

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