

February 27, 2013

VIA EMAIL

Secretary Matthew Rodriquez, Chair
Environmental Policy Council
1001 I Street, P.O. Box 2815
Sacramento, CA 95812
cepc@calepa.ca.gov

RE: Comments for February 28, 2013 CEPC Meeting

Dear Secretary Rodriquez,

Orange County Business Council (“OCBC”) appreciates the opportunity to comment on the California Environmental Policy Council’s (“CEPC”) decision regarding whether to require a multimedia evaluation of the Department of Toxic Substances Control’s (“DTSC”) Safer Consumer Products Regulations (the “Regulations”).¹ OCBC is a section 501(c)(6) non-profit organization under the Internal Revenue Code that represents and promotes the business community. OCBC represents the business community, working with government and academia, to enhance Orange County’s economic development and prosperity and to preserve a high quality of life. Its members employ over 200,000 people within the County and over 2,000,000 people worldwide. OCBC aspires to be the voice of business for America’s sixth largest county, which has a population larger than 22 states.

California Health and Safety Code section 25252.5 requires the DTSC to coordinate the preparation of a multimedia life cycle evaluation of the Regulations and submit it to the CEPC for review. For a regulatory program as broad and complex as the one created by the Regulations, this comprehensive evaluation is a necessary safeguard to ensuring that the Regulations do not result in unexpected and significant adverse impacts. As the plain text of the statute requiring the evaluation states, a multimedia life cycle evaluation is a deliberative process that includes the “identification and evaluation of a significant adverse impact on public health or the environment, including air, water, or soil, that may result from the production, use, or disposal of a consumer product or consumer product ingredient.” Cal. Health & Safety Code § 25252.5(g). This evaluation must “be based on the best available scientific data, written comments submitted by interested persons, and information collected by [DTSC] in preparation for adopting the regulations...” Cal. Health & Safety Code § 25252.5(b). The statute also lists several possible impacts that should be examined, including: air pollutant emissions, water contamination, byproduct usage and waste disposal, and worker safety and public health. Cal.

¹ CEPC, Notice of Public Meeting: Department of Toxic Substances Control's Safer Consumer Products Draft Regulations, Need for a Multimedia Evaluation, available at <http://www.calepa.ca.gov/cepc/2013/Feb28/Notice.pdf> (last visited Feb 26, 2013).

Health & Safety Code § 25252.5(b). As explained below, these potential impacts from the Regulations may well be significant and deserve to be given the analytical scrutiny envisioned by the statute that authorizes DTSC to promulgate them.

Failure to conduct a multimedia life cycle evaluation would be an abuse of discretion, contrary to law, and arbitrary and capricious. The only exception to the requirement to conduct the evaluation is “if the council, following an initial evaluation of the proposed regulation, conclusively determines that the regulation will not have any significant adverse impact on public health or the environment.” Cal. Health & Safety Code § 25252.5(f). For the reasons discussed below, this exception does not apply to the present situation.

DTSC can avoid the multimedia evaluation only where the CEPC conclusively can determine that the Regulations will not have any significant adverse impact on the public health or the environment. DTSC’s recommendation against a multimedia evaluation punts on the question of whether there will be significant adverse impacts because it states that the Regulations merely set up a “process” that does not “focus on any specific product-chemical combination.”² Similarly, the CEPC’s draft Resolution recommending no multimedia evaluation states that the “DTSC’s adoption of the proposed regulations will not affect any specific chemicals or products, and therefore will not result in any direct physical impacts to public health or the environment.”³ In fact, the Regulations are not merely a process. As just one example, under the Regulations, DTSC must impose regulatory responses (including restrictions on the use of “Chemicals of Concern”) for Priority Products “when the [DTSC] determines such regulatory responses are necessary to protect the public health and/or the environment.” Draft Regulations, Sections 69506, 69506.4. The Regulations seek a fundamental restructuring in how consumer products are made, which has significant implications for manufacturing materials and waste, patterns of use and disposal, and other aspects that will affect the physical environment.

Consumer products are ubiquitous and have the potential to affect every type of media. If ever there was a regulatory program requiring multimedia evaluation, this is it. There are potential impacts from sending consumer products to landfills or recycling centers. Surface waters or publicly owned treatment works could be impacted by rinsing or cleaning consumer products with water. Off gassing from consumer products could result in impacts to indoor air quality or inhalation of chemicals in consumer products. Dermal contact with consumer products, or even young children ingesting consumer products by licking their toys, could lead to public health impacts. Disposal of consumer products may impact soil and potentially groundwater.

Just because DTSC may intend the Regulations to improve public health and the environment and may have as a goal reducing the hazard of chemicals used in consumer products does not mean the Regulations will not have a significant adverse impact on public health or the environment. The law of unintended consequences counsels a harder look—particularly for a program with such a sweeping scope and impact on the very complex web of product demand, manufacture, use and disposal. A dramatic example of the potential for significant adverse

² Department of Toxic Substances Control, Recommendation on Need for a Multimedia Evaluation of the Safer Consumer Products Regulations, at 2 (Feb. 2013), available at <http://www.calepa.ca.gov/cepc/2013/Feb28/Report.pdf> (last visited Feb. 26, 2013).

³ California Environmental Protection Agency, Draft Resolution, at 2 (Feb. 19, 2013), available at <http://www.calepa.ca.gov/cepc/2013/Feb28/Resolution.pdf> (last visited Feb. 26, 2013).

impacts is when, in an attempt to avoid the hazards of trihalomethanes, health officials in South America resisted use of chlorination of water to control a cholera outbreak, with the result that the epidemic was widespread and prolonged, resulting in many deaths.⁴

It is easy to think we would never make such an obvious mistake in this country, but we do not know what we do not know. While we understand water disinfection, we could be as blind as the South American health officials to significant adverse impacts caused by substituting or eliminating various chemicals in consumer products. The purpose of a multimedia evaluation is to probe for such a possibility before the damage is done. Such an evaluation is certainly warranted here. The proposed Regulations are without precedent in California and insert the government into the manufacturing business in a novel and fundamental fashion. While the program may have the best of intentions, it is important not to let laudable objectives prevent a careful examination of what negative, as well as positive, effects the program may have. A multimedia evaluation, as specified in the statute, is called for here.

Respectfully submitted,



Lucy Dunn
President and CEO
Orange County Business Council

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⁴ See F. Reiff, *The Precautionary Principle Under Fire: Detractors Continue to Challenge Chlorination as a Safe Water Solution for Developing Nations*, available at <http://www.waterandhealth.org/drinkingwater/precaution.html> (last visited Feb. 26, 2013).