

October 26, 2010

Secretary Linda S. Adams, Chair
Environmental Policy Council
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SUBJECT: COMMENTS FOR OCTOBER 27, 2010 CEPC HEARING – ON NEED FOR A MULTIMEDIA EVALUATION OF THE SAFER CONSUMER PRODUCT ALTERNATIVES REGULATIONS

Dear Secretary Adams:

The California Chamber of Commerce (CalChamber) submits these comments on the need for the Department of Toxic Substances Control (DTSC) to prepare a multimedia evaluation of the Safer Consumer Product Alternatives (SCPA) regulations, as required by Health and Safety Code section 25252.5, on behalf of its 15,000 member businesses throughout the state.

We have serious concerns with the recommendation made to the Environmental Policy Council (EPC) by DTSC, which states that EPC should relieve DTSC of its statutory obligation to prepare and submit a multimedia lifecycle evaluation of the SCPA regulations simply because the regulations are designed to “have no significant adverse impact on public health or the environment.”

We believe that, on its face, the SCPA regulation does in fact have the potential to adversely impact the environment and public health. The scope and complexity of the regulations alone present the potential for unintended adverse impacts. Thus, further analysis is not only merited, but required by Health and Safety Code 25252.5(a)-(g), which states that a multimedia lifecycle evaluation is required unless, pursuant to subsection (f), the EPC can “conclusively determine” after an initial evaluation that “the regulation will not have any significant adverse impact on public health or the environment.” This is a very narrow exception to the presumed obligation of DTSC to ensure the regulations do not lead to adverse impacts on the environment or public health through preparation of a multimedia lifecycle evaluation. Indeed, it would require a series of extremely optimistic, under-informed assumptions and a complete dismissal of the possibility for any unintended adverse impacts for EPC to say, after only an “initial review”, that the SCPA regulation “will not” have “any” significant adverse impact on public health or the environment.

Were EPC to follow DTSC’s recommendation, the public would be needlessly denied the benefit of a significant regulatory oversight mechanism intended to help ensure that the proposed green chemistry rules do indeed avoid any adverse impacts on the environment and public health. Additionally, such a decision would represent a failure by EPC to appreciate the potential for unintended adverse impacts on public health or the environment that are naturally presented by a regulation of this size and scope.

For the following reasons, we believe EPC should reject DTSC's recommendation and find instead that the SCPA regulation could have significant adverse impacts on the environment and public health, thus requiring a multimedia lifecycle evaluation be prepared by DTSC and submitted to EPC for review.

1. DTSC's recommendation to EPC relies on cursory justifications and ignores indirect impacts

When recommending that EPC "conclusively determine that the proposed SCPA regulations will not have any significant adverse impact on public health or the environment", DTSC relies solely upon the more obvious, direct benefits that the program is designed to achieve in order to support its argument. However, by doing so, DTSC ignores outright any potential indirect impacts on public health and the environment that may result from a command-and-control regulatory regime of the size and scope envisioned by the SCPA regulations.

For example, the Department points to the fact that the regulations will lead to the removal of certain harmful chemicals from consumer products in California, and that removing harmful chemicals from consumer products does not have an adverse impact on the environment or public health. While this seems true intuitively, it is an oversimplification of a process that is designed to significantly change the conditions in which a "responsible entity" can do business in California. These new rules will spur market behaviors that cannot be easily predicted and, as rational actors are forced to reassess business models and make business decisions on the basis of a new regulatory status quo, it is likely that some new health or environmental externalities will result.

Thus, we believe DTSC's conclusory assertion that "the end result of the combined prioritization / alternatives assessment / regulatory response processes ... will be either no change, or in most cases, a reduction (if not elimination) of significant adverse impacts on public health and the environment" is unpersuasive. Rather, EPC should consider the very real potential for broader, indirect impacts that may occur, as outlined below.

2. Negative economic impacts can have significant adverse impacts on public health

The SCPA regulations can be interpreted as implicating every chemical known to science as a toxic threat, and thus would allow for the regulation of virtually any chemical and any product in commerce in California. The sheer size and scope of DTSC's new authority over the California marketplace suggests the potential for negative economic consequences, including layoffs, which in turn could lead to adverse impacts on public health.

Income and financial resources have long been understood as important to health, as individuals are more able to obtain health insurance, pay for medical care, afford healthy food, safe housing, and access to a variety of other basic goods¹. If poverty were considered a cause of death in the United States, it would have ranked among the top 10 causes of death in 1991².

¹(<http://www.countyhealthrankings.org/health-factors/income>) referencing *Subramanian SV, Kawachi I. Income inequality and health: What have we learned so far? Epidemiol Rev. 2004;26:78-91.*

² (<http://www.countyhealthrankings.org/health-factors/income>) referencing *Krieger N, Williams DR, Moss NE. Measuring social class in US public health research: Concepts, methodologies, and guidelines. Annu Rev Public Health. 1997;18:341-378.*

Insomuch as job losses and other potential negative economic impacts have an adverse impact on public health and could potentially result from the SCPA regulations, the recommendation by DTSC should be rejected by EPC pursuant to Health and Safety Code 25252.5(f).

3. Consumers may lose access to existing products or chemicals that are beneficial to public health

The sheer size and scope of the SCPA regulations create significant potential for unpredictable changes in the marketplace of consumer products in California. While some of these impacts will likely be positive given the goals of the green chemistry program, there is equal potential for adverse impacts as well. One can imagine a scenario in which a currently available consumer product that provides significant safety benefits to humans is made unavailable through the SCPA regulatory process. For example, DTSC could conceivably require companies to remove flame-retardant chemicals from consumer products or have those products pulled from store shelves through the SCPA process, as the Legislature has attempted repeatedly to do in recent years. This would raise the potential for significant adverse impacts on public health given the reduced availability of flame resistant chemicals for use in key consumer products. Due to this potential for significant adverse impacts on public health, the recommendation by DTSC should be rejected by EPC pursuant to Health and Safety Code 25252.5(f).

4. The regulations may stifle innovation of new products and technologies that are beneficial to the environment and public health

Investors and innovators will face a regulatory regime in California that has substantial power over not just the existing marketplace of products, but the developed alternatives which are presumably safer. The regulatory obstacles and expense associated with bringing “safer alternatives” to market will likely create significant disincentives to investment. Add to this the potential for exposure of trade secrets and confidential business information, and entrepreneurs are left with a green chemistry program where the costs and risks associated with innovation may outweigh potential benefits.

This could limit the delivery of cleaner, safer technologies and products to the marketplace that would otherwise have provided significant benefits to public health and the environment. For example, a company poised to invest in the innovation of a more environmentally-friendly widget may choose to abandon such a venture due to the command-and-control regulatory regime presented by the SCPA regulations. Similarly, a company looking to improve the safety of its product through design innovation may be unable or unwilling to invest the time and resources to do so, given the SCPA’s new regulatory requirements. Because of this potential for significant adverse impacts on the environment and public health, the recommendation by DTSC should be rejected by EPC pursuant to Health and Safety Code 25252.5(f).

5. As companies are required to spend more of their limited resources on green chemistry compliance, they will have less available for other activities that enhance environmental safety and public health

Responsible entities that are captured by the SCPA regulatory process may have to commit significant resources to ensure they are compliant with the new rules, including but not limited to providing and/or generating large amounts of data for DTSC, researching and testing the viability of alternative formulations and product designs, and complying with burdensome

regulatory responses such as extended producer responsibility or product bans. Because the cost of compliance with the program for responsible entities has the potential to be very significant, it logically follows that fewer resources will be available for other activities unrelated to green chemistry that enhance environmental safety and public health.

For example, a company may be poised to expend the resources necessary to voluntarily upgrade its manufacturing facility to include more energy-efficient boilers. This activity would result in improvements to the environment and public health. However, with the added expense associated with SCPA compliance, those upgrades may no longer be financially tenable. Because of this potential for significant adverse impacts on the environment and public health, the recommendation by DTSC should be rejected by EPC pursuant to Health and Safety Code 25252.5(f).

6. Business relocations to other states with lower environmental standards could have an adverse impact on public health and the environment

As mentioned above, the SCPA rules will spur market behaviors that cannot be easily predicted and, as rational actors are forced to reassess business models and make business decisions on the basis of a new regulatory status quo, it is likely that some new health or environmental externalities will result. For example, it is possible that a manufacturing company currently located in California and subject to the state's strict environmental standards, could choose to abandon the California market and relocate to a state with lower environmental standards. Alternatively, with the added weight of yet another layer of environmental regulation, a California company that is poised to expand its operations may choose to do so in other states where regulatory compliance is less burdensome. Under either scenario, new business operations would be forming in states with lower environmental standards than California as a result of the SCPA regulations. Because of this potential for significant adverse impacts on the environment and public health, the recommendation by DTSC should be rejected by EPC pursuant to Health and Safety Code 25252.5(f).

7. Accelerated replacement of extensively-studied chemicals with lesser-studied chemicals could lead to unforeseen negative impacts on public health and the environment

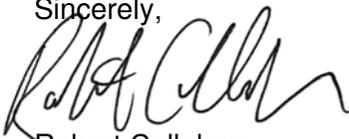
Under the SCPA regulations, companies and regulators will be engaged in a process where the objective is to replace existing hazardous chemicals with replacement chemicals that are "safer alternatives". While the regulatory process requires extensive analysis of alternatives in order to avoid replacement of a given chemical with a substitute chemical that is less safe, the possibility for such unfortunate replacements remains. For example, extensively studied chemical X may exhibit various hazard traits that leads through the SCPA process to its replacement by chemical Y. Chemical Y is less-studied but, under the parameters of the SCPA rules, exhibits much less worrisome hazard traits and appears to be a perfectly suitable alternative. However, with time and further study, chemical Y turns out to be a reproductive toxicant. This potential scenario could have a significant adverse impact on public health and the environment. Because of this potential, the recommendation by DTSC should be rejected by EPC pursuant to Health and Safety Code 25252.5(f).

8. Conclusion

Even though the proposed regulations are designed to benefit public health and the environment, there remains the potential for unintended and significant adverse impacts. These significant adverse impacts must not be discounted by EPC when making its determination required by Health and Safety Code 25252.5. We ask that EPC fulfill its role in this vitally important process and require a full multimedia lifecycle evaluation be prepared so that EPC, DTSC and the public can become better-informed about the impact on public health and the environment of the SCPA regulations and what options are available to regulators for mitigating any of the adverse impacts that may result.

Thank you for your consideration of our comments.

Sincerely,



Robert Callahan
Policy Advocate

CC: Cindy Tuck, Undersecretary, Cal/EPA
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The Honorable Joe Simitian, California State Senate
The Honorable Mike Feuer, California State Assembly