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February 28, 2013

Kryisia Von Burg
Department of Toxic Substances Control
Regulations Section
PO Box 806
Sacramento, CA 95812-0806

Dear Ms. Von Burg:

COMMENTS REGARDING PROPOSED DRAFT REGULATIONS FOR SAFER CONSUMER PRODUCT ALTERNATIVES

The Los Angeles County Integrated Waste Management Task Force (Task Force) would like to express our support for, and appreciates the opportunity to comment on, the proposed regulations for Safer Consumer Product Alternatives (Regulations) that the Department of Toxic Substances Control (DTSC) is currently developing. The Regulations are an integral part of California's Green Chemistry Initiative, and the Task Force appreciates the involvement of affected stakeholders and the general transparency of the process and would like to offer the following comments:

Section 69501 Purpose and Applicability:

- 1. Definitions** –The terms “recycling,” “recyclability,” and “capture rate” should be clearly defined for the purposes of these regulations.
- 2. Applicability and Non-Duplication** – Section 69501(b)(3)(A) should be deleted. It is imperative that household hazardous waste products are not excluded from these regulations. DTSC's ability to regulate discarded products that may contain water pollutants or other constituents should not be thwarted. As presently written, the section appears to imply exclusion based solely on regulation of emissions/discharges rather than regulation of the product itself. Products with any pollutants or constituents which would cause them to be deemed household hazardous waste should not be allowed to be excluded from these regulations.

Section 69506.7. End-of-Life Management Requirements:

- 3. Program Performance Goals** – Product Stewardship program performance goals should be set by the State in consultation with affected stakeholders including manufacturers and local governments that bear an enormous cost

burden associated with the current end-of-life management of the products. Additionally, due to the fact that not all hazardous consumer products are recyclable, end-of-life management requirements should not exclude or prohibit the beneficial use of hazardous waste/materials, including but not limited to energy production, and should encourage source reduction. As such, we suggest the following language starting at Section 69506.7(c)(2)(H):

Program performance goals established by the Department in consultation with the manufacturers or stewardship organization and affected stakeholders, which shall be quantitative to the extent feasible, for: 1. Increasing the capture rate of covered products at the end-of-life; and 2. Increasing recyclability, and recycling rate, and beneficial use; and 3. reducing waste generation. (I) A description of how each program performance goal will be achieved by the manufacturer or stewardship organization.

- 4. Annual Reports** – With transparency in mind, producer responsibility systems should require audited financial statements in the annual reports. This is especially critical to make certain that funds raised to implement the end-of-life management plan are not used to fund litigation against DTSC or other State departments. Therefore, we suggest the following language for Section 69506.7, starting at Section 69506.7(c)(5):

The report must include, ~~by total tonnage~~: (A) The quantity, by total tonnage, of products placed into the stream of commerce in California over the previous one-year period; ~~and~~ (B) The quantify, by total tonnage, of products recovered over the same one-year period; and (C) an independent financial audit of the end-of-life management program. The audit should be conducted in accordance with auditing standards generally accepted in the United States of America and standards set forth in Government Auditing Standards issued by the Comptroller General of the United States or other auditing standards as approved by the Department.

- 5. Alternative End-of-Life Programs** – In order to allow effective, flexible, and diverse programs with consumer convenience in mind, producer responsibility systems should not be limited to retail take-back as the sole collection mechanism. As such, we suggest the following language beginning at Section 69506.7(d):

Alternative End-of-Life Programs. A manufacturer subject to compliance with requirements of this section may request the Department's approval to substitute an alternative end-of-life management program that

achieves, to the maximum extent feasible, the same results as the program required by this section. ~~A manufacturer may not propose an in-store take back program as part of an alternative program unless the manufacturer provides in the plan evidence that a sufficient number of retailers have agreed in writing to participate~~ If a manufacturer's alternative end-of-life program relies on other persons to achieve its capture or recycling rates be it retailers, contractors, or others, manufacturers must provide written substantiation of their participation to insure successful implementation of the plan as proposed.

- 6. Sales prohibition** – The section implies but does not explicitly state that non-compliant manufacturers are prohibited from selling relevant products in the State. In order to clarify the intent, we suggest adding the following statement to the end of Section 69506.7(a):

A manufacturer of a product subject to compliance with requirements of this section that is not in compliance with this section must cease placing the subject product into the stream of commerce in California directly or indirectly.

- 7. Management of products that retain a Chemical of Concern** – The end-of-life management section seems to preclude DTSC from requiring management of products that retain a Chemical of Concern during a long phase out period. Specifically, Section 69506.7(a) seems to conflict with Section 69506.1(a)(3). To clarify, we suggest the following language to Section 69506.7(a):

Applicability. A manufacturer of a selected alternative, a Priority Product that will remain in commerce in California pending development and distribution of a selected alternative, or a Priority Product for which an alternative is not selected...shall comply with the requirements of subsection (c) except as otherwise provided under subsections (d) and (e).

Section 69509. Assertion of a Claim of Trade Secret Protection:

- 8. Trade Secret Protection** – This Chapter should not allow a manufacturer's private, non-disclosure agreement to prevent disclosure of information to the Department. ~~Allowing two private parties to agree to hide information would set a dangerous precedent.~~ We recommend the following changes to Section 69509(c):

Documentation. A person who asserts a claim of trade secret protection shall also at the time of submission provide the Department with both of

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the following: (1) Except where expressly prohibited by federal law, ~~or by a nondisclosure agreement whose relevant text is provided to the Department,~~ a complete copy of the documentation being submitted, which shall include the information for which trade secret protection is claimed and (2) A redacted copy of the documentation being submitted, which shall exclude the information for which trade secret protection is claimed.

Again, thank you for the consideration of our comments and the transparent nature of the development of these important regulations. We look forward to continue working constructively with DTSC on this and other related issues. If you have any questions, please contact Mr. Mike Mohajer of the Task Force at MikeMohajer@yahoo.com or (909) 592-1147.

Sincerely,



Margaret Clark, Vice-Chair
Los Angeles County Solid Waste Management Committee/
Integrated Waste management Task Force and
Council Member, City of Rosemead

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cc: Debbie Raphael, Director, Department of Toxic Substances Control
Matt Rodriguez, Secretary of the California Environmental Protection Agency
Each Member of the County of Los Angeles Board of Supervisors
California State Association of Counties
California Product Stewardship Council
League of California Cities, Los Angeles Division
Southern California Association of Governments
San Gabriel Valley Council of Governments
South Bay Cities Council of Governments
Gateway Cities Council of Governments
Each City Recycling Coordinator in Los Angeles County
Each Member of the Los Angeles County Integrated Waste Management Task Force