



October 31, 2010

Mr. Jeff Woled, Regulations Coordinator
Regulations Section
California Department of Toxic Substances Control
Via email: gcregs@dtsc.ca.gov

**SUBJECT: *Public Comment for the Proposed Rulemaking
Safer Consumer Product Alternatives
Department Reference # R-2010-05
OAL# Z-2010-0908-01***

Dear Mr. Woled:

JDMT, Inc. supports the Green Chemistry Initiative for California, and applauds the long collaborative effort directed by the Department of Toxic Substances Control (DTSC) to develop the proposed regulations. We appreciate the opportunity to provide our comment to the draft.

We choose to submit our comments directly in written form rather than using the Department's online response template. We appreciate the latitude given to utilize either format. We would note first that the Public Notice uses one framework for presentation of the proposed regulations for public consideration, while the online form simply follows the order of Articles in the law. DTSC's Public Notice outline offers the better choice for developing comments¹...

Our understanding of DTSC's Mandate:

Assembly Bill 1879 and Senate Bill 509 were promulgated to implement two key recommendations of DTSC's *California Green Chemistry Initiative Final Report*, released December 2008: *Recommendation #4: Create an Online Toxics Clearinghouse*, and *Recommendation #5: Accelerate the Quest for Safer Products*. DTSC's proposed regulations respond only to the second of the two mandates, implementation of *Recommendation #5*.

The draft regulatory language proposes only **process**, and does not address any specific chemical or product. Three process steps are presented as Specific Objectives:

- Establish a process to identify and prioritize those chemicals or chemical ingredients in consumer products that may be considered as being a chemical of concern,
- Establish a process for evaluating chemicals of concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by priority chemicals, and
- Specify the range of regulatory responses that DTSC may take following the completion of the alternatives analysis.

¹ Note that the comment form is not directly accessible by the web link as indicated on the Department's circulated Public Notice:

http://www.dtsc.ca.gov/PollutionPrevention/GreenChemistryInitiative/gc_draft_regs_comment_form.cfm is not functional; the form must be accessed via the Submit Comments tab on www.dtsc.ca.gov/PollutionPrevention/GreenChemistryInitiative/proposed-regulation.cfm

Comments

1. In forming the language of the proposed regulations, DTSC has concentrated on **What** the proposed process would analyze, prioritize and either encourage or discourage in the broad range of “consumer products placed into the stream of commerce in California”. **Who** is regulated seems less clear; if essentially all “commercial products” are to be considered, then everyone who makes anything must be impacted.
2. The process very effectively directs all who are engaged in “placing products” in California to assume a defensive position, rather than incenting and accentuating the positive. Programmatic aspects of the proposed regulations need to be brought forward and emphasized that can provide *positive reinforcement* for companies to bring new, safer chemicals and formulations to California. Indeed, “bad” chemicals are only proposed to be replaced with “green” alternatives when these become economically available; it follows that more emphasis should be placed on attracting these commodities to our state’s marketplace, than on banning the less desirable one.
3. The structure of the proposed information demands and categorical exemptions unduly impacts smaller, younger companies that have neither the funds to afford the expensive protections of full patenting and protection, nor the entrenched position afforded older, already-regulated sectors of the industrial marketplace.
4. We believe that the proposed structure for implementation, the process itself, will unduly impact emerging companies who have not had sufficient funds or time to consider and implement standard industry practices that provide the legal protection afforded, especially given the dramatic economic decline we have all recently faced. To expect these legally afforded measures to be put in place for the very market sector the “Green Chemistry Initiative” propounds to support is both unrealistic and unsupported by analysis.
5. It is not the *chemical* that is inherently good or bad, any more than it is the gun that causes crime. It is the *impact* of that chemical in use, and this is dependent as much upon the manner of use, as on the characteristics of composition. Of primary concern is the intentional and/or inadvertent discharge to the environment (internal or external to the human body) resulting from the life-cycle attributes of a specific use. It is only the life-cycle *adverse impacts* of that specific path of use, that the DTSC has been mandated to assess. From that point forward, the assessment becomes a consideration of human behavior, and thus the DTSC regulatory *process* approach needs to most resemble a Best Practices Manual.
6. There may well be chemicals for which there is no use that may be considered safe for public health and/or the environment. And we recognize that there may well be commercial product formulations that are inherently unsafe, yet perform *exactly* the function intended with no effective substitute. These assumptions warrant DTSC’s on-going analysis, and we believe are the core of the legislative intent. It is the extent of control considered for application that concerns us most, as this appears to be designed without constraints on that purview.

Recommendations

1. Examine, on a life-cycle basis, the full range of potentially significant socio-economic impacts that the *process* being proposed might have, prior to implementation.

2. Define a milestone-based timeline upon which the public and the market can depend. All phases of DTSC's consideration will impact Business, from the moment regulations are passed. Fore-knowledge reduces risk, and ample time must be provided between any decision point and the first compliance date.
3. Define *who* is to be brought under the regulations and in what order. Clearly make public the on-going cases where Industry petitions DTSC for exemption. Examine market-unbalancing forces that such exemptions create, weighting the impact upon sectors remaining regulated yet in direct competition with sectors receiving exemption or other forms of exclusion.
4. Expand upon the outreach and educational aspects of the process, to include careful and transparent examination of how and where information a company may feel is proprietary, might be divulged as a result of these processes. Provide sufficient assistance and time between notification of impending mandate to divulge sensitive information and the first incidence of compliance, based upon the company's own determination of that sensitivity. A simplified process for claiming an interim confidentiality status would be of value.

We appreciate the opportunity to provide our comments, and are available for further exploration should this prove valuable to DTSC. Please contact me at mtheroux@jdm.net or (530) 823-7300 if you have any questions.

Sincerely,

JDMT, Inc



Michael Theroux
Vice President