

Asian Communities for
Reproductive Justice

Bayview Hunters Point Community
Advocates

Black Women for Wellness

Breast Cancer Action

Breast Cancer Fund

California Healthy Nail Salon
Collaborative

California Pan-Ethnic Health
Network

Californians for Pesticide Reform

Center for Environmental Health

Clean Water Action

Coalition for Clean Air

Commonweal

Communities for a Better
Environment

Environment California

Environmental Working Group

Green Schools Initiative

Healthy 880 Communities

Healthy Child, Healthy World

Healthy Children Organizing
Project

Just Transition Alliance

Movement Strategy Center

Pesticide Action Network North
America

Physicians for Social Responsibility-
LA

Science Environmental Health
Network

Silicon Valley Toxics Coalition

Worksafe

July 14, 2010

The Honorable Arnold Schwarzenegger, Governor
California State Capitol
Sacramento

Dear Governor Schwarzenegger:

Californians for a Healthy and Green Economy (CHANGE) is a statewide coalition of environmental, public health and worker safety advocates working to ensure that the state's ambitious Green Chemistry Initiative fulfills its promise of innovative approaches to protect Californians from toxic chemical exposures and to foster the development of safer alternative substances. During development of the Initiative, we have appreciated the opportunity to provide input and submit comments. While we appreciate the time and effort that has been expended to draft these regulations, we are gravely concerned that the Draft Regulations for Safer Consumer Product Alternatives issued June 23 fall far short of meeting the worthy goals of the Initiative.

If implemented, these Draft Regulations will perpetuate the most serious flaws of the current, and notoriously ineffective regulatory regime. Instead of a streamlined and open program that acts decisively to get rid of dangerous chemicals and develop safer, greener substitutes, the regulatory process will be too slow, secretive and timid to produce the bold, groundbreaking advances that California can achieve. Nor does it meet the objectives envisioned by AB 1879 and by the 2006 report from the University of California to the state legislature entitled "Green Chemistry in California: A Framework for Leadership in Chemicals Policy and Innovation." Specifically:

- **The process will be dominated by industry with little transparency and limited public participation.**

Chemical makers and consumer product manufacturers will be allowed to do their own Alternatives Assessments, or hire approved consultants to do them, with virtually no public oversight. In addition, each manufacturer will receive a customized and individual timeline. This level of customization will require the state to waste its limited resources managing several different deadlines for just one type of product and one chemical. Such a program will likely only be able to assess one or two chemicals per year.

Once assessments are finally submitted, manufacturers will be allowed to hide many details of their products under trade secret claims, preventing the public and public interest community from independently assessing the veracity of industry claims about chemical effects and safer alternatives. The Alternative Assessments themselves will not be made public, even in redacted form. The companies subject to regulation will even be allowed to suggest to the Department of Toxic Substances Control the “appropriate” regulatory response to a chemical or product. We appreciate that independent third parties will be required to verify assessments, but the nature of alternatives assessments requires that independent parties actually conduct the assessment themselves due to the number of assumptions built into every decision and comparison. Third party “verification” is simply not sufficient to ensure unbiased alternatives assessments.

The draft regulations appropriately allow any person to petition the Department to use the Chemical of Concern or Priority Product processes to prioritize a chemical or product for review. However, according to the regulations, the opportunity for public input abruptly stops there. The draft regulations make no provisions for public participation or comment on the alternatives assessment process. Likewise, when the Department reaches a decision about a safer alternative or other regulatory response, there is no opportunity for public comment before the decision takes effect. Without public participation at every stage of the process, the Green Chemistry Initiative will become a closed conversation between industry and the Department. This will unfairly stack the deck in favor of industry, which will have far greater opportunity to influence, delay or appeal the Department’s decision. Inasmuch as the objective of the Green Chemistry Initiative is to protect public health by promoting safer alternatives for chemicals in consumer products, it seems a fundamental error to limit the opportunities for consumers to participate in the decisions that are supposed to protect them and their families.

• The list of chemicals to be regulated under the program is too limited.

Only those carcinogens and reproductive toxins listed under Proposition 65 will fall under the Initiative. This provision is shortsighted and not consistent with the statute which requires the department to utilize and build on work already done by other governments. The European Union’s REACH program has begun generating volumes of new data on thousands of chemicals, based on the newest and best science; Canada has already characterized many chemical hazards; and several other states have adopted programs similar to California’s Green Chemistry Initiative. If California aims to be a leader and innovator, we cannot afford to ignore these valuable founts of information. DTSC’s argument that the Proposition 65 list is the only list of carcinogens and reproductive toxicants in the state and that the state cannot have multiple lists ignores the facts. Drinking water standards, workplace Permissible Exposure Limits (PELs) and air quality standards all regulate carcinogens that are not on the state’s Proposition 65 list. Limiting this program in such a way and tying the department’s hands is unsupportable and inconsistent with other state law.

• The program will act too slowly in getting rid of known bad actor chemicals and allow products with alarmingly high levels of hazardous chemicals to be considered safe.

The draft regulations do not establish a fast-track process for dealing quickly with known bad actor chemicals, even those for which safer alternatives already exist. Instead, all chemicals must

go through the full regulatory process with its lengthy and inconsistent timelines, meaning it could be years before even notoriously harmful chemicals like lead and cadmium are acted on.

The proposed regulations will require only products containing more than the “*de minimis*” quantity of a “chemical of concern” to undergo an Alternatives Assessment, with *de minimis* defined as a concentration of 0.1%. This means that consumer products containing fewer than 1,000 parts per million of hazardous chemicals would be presumed “safe.” This presumption runs counter to accepted science and well-established safety standards in other regulatory arenas. For example, a 1,000 ppm standard is between 22 and 2,000,000 times greater – and an average of 300,000 times greater – than the state’s standards for chemicals in drinking water. Declaring a “one size fits all” standard will fail to address known harmful levels of the vast majority of chemicals that would fall under the Initiative. Instead “safe” levels must be determined by the hazard traits of the chemical itself and *de minimis* levels should not apply to chemicals intentionally included in the product.

In summary, the proposed regulations read like a chemical manufacturer’s wish list:

- Industry can easily manipulate the process with customized deadlines and assessment requirements;
- Industry conducts, or hires consultants to conduct, its own Alternatives Assessments;
- Industry is not subject to public oversight, input or review of either Alternatives Assessments or the resulting regulatory response;
- Industry is allowed to keep secret the data it submits on a product’s safety and the availability of safer alternatives;
- Companies are allowed to suggest the regulatory response their products will be subject to;
- The list of carcinogens and reproductive toxicants is limited to Proposition 65, resulting in a vastly smaller list of chemicals of concern than already established by the State, the U.S. Environmental Protection Agency, the European Union, and other authoritative bodies as stipulated by AB 1879;
- The program allows certain levels of known hazardous chemicals to remain in consumer products, despite ample peer-reviewed scientific evidence about the public health and environmental dangers of low doses and cumulative exposures;
- Lack of a fast track for bad actor chemicals allows industry to delay and draw out the regulatory process;
- Green Chemistry will bestow a “seal of approval” for products that will tell consumers they are “safe,” without any way for the public to verify the claim.

AB 1879 was passed with promises of a new, more effective and efficient way to protect the public from toxic chemical exposures. It has been embraced by many lawmakers and regulators as a preferred alternative to dealing with hazardous chemical exposures through legislation. The state is essentially putting all of its eggs for regulating chemicals into the Green Chemistry basket. Therefore, it is essential that we get it right.

We urge you to direct the DTSC to revise the Draft Regulations to support balance, transparency, public participation and the best science from all sources. That is the only way we can ensure that the Green Chemistry Initiative achieves its goals.

Thank you for your consideration.



Anse Miller
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