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California Department of Toxic Substances Control
Office of Legislation & Regulatory Policy
Attn: Jeff Woled, MS 22A
P.O. Box 806
Sacramento, CA 95812

(Submitted electronically to Gcregs@dtsc.ca.gov and separately to the online comment website)

RE: Comments to the Safer Consumer Product Alternatives Regulations

Dear Mr. Woled:

The purpose of this letter is to provide both support and comment for the Department of Toxic Substances Control's (DTSC) proposed Safer Consumer Product Alternatives regulations that were made available for public comment on September 17, 2010.

Tri-TAC is a technical advisory group for publicly-owned treatment plants (POTWs) in California. It is jointly sponsored by the California Association of Sanitation Agencies, the California Water Environment Association, and the League of California Cities. The constituent base for Tri-TAC collects, treats, and reclaims more than two billion gallons of wastewater each day and serves most of the sewer population of California.

Tri-TAC supports the proposed Safer Consumer Product Alternatives Regulations because we believe they will provide a framework and process that will prevent certain harmful discharges to municipal wastewater treatment plants. Such discharges result, in part, from the disposal of some consumer products at the end of the product's useful life.

In instituting a program to evaluate Priority Products, DTSC will be setting in place a regulatory program that will be more efficient and cost-effective for the State and its citizens than the time-consuming and inefficient process of sponsoring legislation to deal with products or chemicals of concern on an individual basis. Such products may contain Chemicals of Concern that can threaten the proper operation of a wastewater treatment facility, and/or result in the discharge of Chemicals of Concern to the environment.

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Wastewater treatment facilities use a variety of physical, biological, and chemical processes to treat wastewater including activated sludge treatment, trickling filter treatment, anaerobic digestion, and composting of biosolids produced in the treatment process. If a Priority Product containing a Chemical of Concern is discarded down-the-drain to the sewer and makes it way to a wastewater treatment facility, it has the very real potential to interfere with the proper operation of wastewater treatment process or cause a violation of the aquatic life protection components of our NPDES permits. For example, if the Chemical of Concern were toxic to the microorganisms in the activated sludge treatment process, the rate of biological treatment would be inhibited or completely inactivated. This will result in operational problems with the treatment of the wastewater, and may lead to pass-through of the toxic compound to the effluent discharging to the receiving waters or to the biosolids that are later used in composting or land application processes.

Our colleagues from Bay Area Clean Water Agencies and Bay Area Pollution Prevention Group have also provided comments to you. We echo these and included some of their concerns about the proposed regulations in this letter, to emphasize their importance.

Finally, the State's need to protect consumers and the environment from pollutants in products will require sufficient funding for DTSC to establish and maintain this program. We encourage DTSC to work with the legislature to develop mechanisms to provide funding for full implementation of these regulations.

Detailed comments about specific issues are provided below.

Comment #1 – Additional Adverse Environmental Impact – Section 69302.3(d)

Tri-TAC recommends that interference with biological waste treatment processes be included on the list of adverse environmental impacts given in Section 69302.3(d) (modifications are indicated with bold italic font):

(5) Any other factors that relate to adverse impacts on the environment, including, but not limited to, the release of heat, odor or radiation.

(6) Interference with the performance of biological processes used in municipal wastewater treatment, biological processes that treat septic system discharges, and biological processes used to manage municipal solid waste, including but not limited to composting, digestion, and other types of biological energy production.

Municipal wastewater treatment operations and waste management activities involve biological processes that can be adversely impacted by chemicals in products. These environmental impacts appear to have been inadvertently omitted from the list of adverse environmental impacts in section 69302.3(d), which will be the basis for selection of Chemicals under Consideration and which will define the scope of the environmental impacts evaluated in Tier I and Tier II-A Alternatives Assessments.

Comment #2 – Existence of Data on Exposure to the Chemical – Section 69302.3(g)(4)

Section 69302.3 lists prioritization factors that the DTSC may use to place chemicals on the list of Chemicals under Consideration. One factor that should be considered is the threat of Priority Chemicals to the proper operation of a wastewater treatment plant or a solid waste management facility. Tri-TAC recommends that Section 69302.3(g)(4) be modified as follows (modifications are indicated with bold italic font):

- (4) Data that meet the definition of reliable information and that indicate that the chemical or its degradation products are showing up in California solid waste, wastewater or storm water streams collected or managed by California State or local agencies in concentrations or volumes that present public health or environmental threats, or that require the significant expenditure of public funds to mitigate public health or environmental threats, or that significantly increase the costs of reusing or recycling materials containing the chemical, ***or that present a threat to the proper operation of solid waste, wastewater, or storm water treatment facilities.***

Household chemicals, personal care products, and industrial chemicals may contain Chemicals of Concern in Priority Products and their alternatives. Use and disposal of the Priority Products and their alternatives down-the-drain may cause pass-through or interference with the proper operation of wastewater treatment facilities, and/or may result in environmental impacts from discharges of Chemicals of Concern to the environment.

Comment #3 – Priority Chemicals - Section 69302.4

Tri-TAC recommends that the following water quality priorities be added to the list of priority chemical given in Section 69302.4(d) (modifications are indicated with bold italic font):

- (d) In preparing the initial list of Priority Chemicals, pursuant to subsection (a), the Department shall only consider chemicals that are one or more of the following:
- (1) Chemicals that are carcinogens or reproductive toxins, or both, as defined in section 1969301.2(a)(9).
 - (2) Chemicals that are listed as having mutagenic properties in the European Union Category 1A or 1B under Annex VI, part 3 of the Regulation.
 - (3) Chemicals that have been determined by the United States Environmental Protection Agency to be persistent bioaccumulative toxic chemicals.
 - (4) ***Pollutants listed by California or the United States Environmental Protection Agency for one or more water bodies in California***

pursuant to section 303 (d) of the federal Clean Water Act, specifically copper, lead and mercury.

We understand that DTSC seeks to focus its first list of Priority Chemicals on the state's highest priorities. In setting priorities, DTSC has selected only lists of chemicals that are problematic for human health. Some chemicals that are harmful to aquatic life are not particularly harmful for humans, such as copper. In selecting only human health based lists, DTSC would inadvertently close the door on prioritizing chemicals that are California's highest water pollution priorities.

Comment #4 - Guidance Materials – Section 69305(a)

The DTSC plans to prepare and make available on its website guidance materials to assist persons in performing Tier II Alternative Assessments, and to post on its website alternative assessments (AA) that are available in the public domain and are supported by reliable information. Tri-TAC recommends that Section 69305(a) be modified as follows (modifications are indicated with bold italic font):

- (a) Before finalizing the initial list of Priority Chemicals pursuant to section 69302.2, the Department shall prepare, and make available on its website, guidance materials to assist persons in performing Tier II AAs in accordance with the requirements of this chapter. ***The guidance materials shall include examples of Tier II AAs.*** The Department shall periodically revise and update the guidance materials.

The list of impacts to be evaluated in an Alternative Assessment is long, and the full extent of the effort needed is unknown until the first few Alternative Assessments are performed. A sample or model Alternative Assessment will also help to clarify how the different chemical properties, public health and ecological factors, and chemical traits are handled and balanced in the assessment. As part of implementing the regulations, Tri-TAC recommends that DTSC, In-House, and Third-Party Assessment Entities prepare sample Alternative Assessments for three Priority Products that contain Priority Chemicals representing each of the three chemical groups listed under Section 69302.4(d), Parts (1) through (3). It is also recommended that each of the sample Tier II Alternatives Assessments include an Alternatives Assessment Work Plan, a Chemical Hazard Assessment, an Exposure Potential Assessment, and a Multimedia Life Cycle Evaluation. Tri-TAC offers our support in this task.

Comment #5 – Alternatives Assessment Notifications – Section 69305.1(c)

Tri-TAC recommends that Section 69305.1(c) be modified as follows (modifications are indicated with bold italic font):

- (c) The requirements of subsection (a) do not apply if the manufacturer of the product has submitted a Chemical Removal Confirmation Notification or a Product Removal Confirmation Notification to the Department ***and has not***

placed into the stream of commerce a substantially similar new product.

Once DTSC issues its lists of Chemicals under Consideration and Priority Chemicals, manufacturers are likely to reformulate products to avoid the need to complete detailed Alternatives Assessments. We appreciate that DTSC has designed the regulations to require that alternative formulations receive a basic screening (Tier I Alternatives Assessment) to avoid selection of regrettable substitutes. However, as drafted, the regulations contain a loophole that could be used to avoid the Tier I AA. To close the loophole, DTSC should require a Tier I AA for any product that is substantially similar to products exempted through filing of Product Removal Confirmation Notifications.

Comment #6 - Waste and End-of-Life Impacts - Section 69305.5(d)(3)(D)

The DTSC has included waste and end-of-life impacts as one of the environmental impacts to be reviewed to determine if they are pertinent for inclusion in the Multimedia Life Cycle Evaluation as part of the Tier II AA Evaluation and Comparison Process and Factors. The draft language for this section on waste and end-of-life impacts focus on waste and byproducts generated in production of the Priority Product, and does not appear to include adverse impacts associated with end-of-life disposal. Tri-TAC recommends that Section 69305.5(d)(3)(D) be modified as follows (modifications are indicated with bold italic font):

- (D) Waste and end-of-life impacts. This includes adverse impacts associated with the amount of waste and byproducts generated, and any special handling required for the waste and byproducts, during the life cycle of the Priority Product or component and each alternative being considered. This also includes an assessment of disposal, treatment or use of waste and byproducts, including solid waste, wastewater, and storm water discharge streams. ***This further includes adverse impacts associated with end-of-life disposal of the Priority Product in the trash, down the sewer, or down the storm drain that presents a threat to the proper operation of solid waste, wastewater, or storm water treatment facilities, and may result in the discharge of Priority Chemicals or components to the environment.***

Household chemicals, personal care products, and industrial chemicals may contain Chemicals of Concern in Priority Products and their alternatives. Use and disposal of the Priority Products and their alternatives down-the-drain may cause pass-through or interference with the proper operation of wastewater treatment facilities, and/or may result in environmental impacts from discharges of Chemicals of Concern to the environment.

Comment #7 - Product Information for Consumers – Section 69306.3(a)(5)

Section 69306.3 states that for selected alternative analyses that contain a Priority Chemical at a level that exceeds the de minimis level or for a Priority Product or

component for which an alternative is not selected, the responsible entity shall ensure that all of the proper information is made available to the consumer. Tri-TAC recommends that Section 69306.3(a)(5) be modified as follows (modifications are indicated with bold italic font):

- (5) Any safe handling procedures needed to protect public health or the environment during the useful life of the product and proper end-of-life disposal or management, ***including precautions against end-of-life disposal in the trash, down the sewer, or down the storm drain that presents a threat to the proper operation of solid waste, wastewater, or storm water treatment facilities, and may result in the discharge of Priority Chemicals or components to the environment;*** and

Use and disposal of the Priority Products and their alternatives down-the-drain may affect the proper operation of wastewater treatment facilities and/or may result in the discharge of Priority Chemicals to the environment.

Comment #8 - Product Information for Consumers – Section 69306.3(c)(1)(D)

Section 69306.3 states that a product subject to the above requirements of subsection (a) shall be permanently marked or labeled with a list of information. Tri-TAC recommends that Section 69306.3(c)(1)(D) be modified as follows (modifications are indicated with bold italic font):

- (D) Any safe handling procedures needed to protect public health or the environment during the useful life of the product and proper end-of-life disposal or management, ***including precautions against end-of-life disposal in the trash, down the sewer, or down the storm drain that presents a threat to the proper operation of solid waste, wastewater, or storm water treatment facilities, and may result in the discharge of Priority Chemicals or components to the environment;***

Use and disposal of the Priority Products and their alternatives down-the-drain may affect the proper operation of wastewater treatment facilities and/or may result in the discharge of Priority Chemicals to the environment.

Comment #9 - End-of-Life Management Requirements – Section 69306.4(2)(A)(5)

Section 69306.4 lists several requirements that are to be met by the responsible entity if the Priority Product is to be managed as a hazardous waste at the end of its useful life. Tri-TAC recommends that Section 69306.4(2)(A)(5) be modified as follows (modifications are indicated with bold italic font):

5. End-of-life management information, including what steps will be taken to ensure environmentally-sound management that complies with all applicable federal and California State and local laws, ***including precautions against end-of-life disposal in the trash, down the sewer, or down the storm***

drain that presents a threat to the proper operation of solid waste, wastewater, or storm water treatment facilities, and may result in the discharge of Priority Chemicals or components to the environment;

Use and disposal of the Priority Products and their alternatives down-the-drain may affect the proper operation of wastewater treatment facilities and/or may result in the discharge of Priority Chemicals to the environment.

Tri-TAC appreciates the opportunity to comment on the draft Safer Consumer Product Alternatives regulations. If you have any questions or would like further information, please contact Chris Herbeck at (562) 908-4288 x2958 (cherbeck@lacsdsd.org) or Dr. Gail Chesler at (925) 229-7294 (gchesler@centralsan.org).

Sincerely,



Ben Horenstein
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