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December 3, 2010  
*Sent via e-mail*

Mr. Maziar Movassaghi  
Acting Director  
California Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812

Re: Safer Consumer Products Alternatives Regulations (Green Chemistry)

Dear Mr. Movassaghi:

The purpose of this letter is to express serious concern about the changes made to the Department of Toxic Substances Control's (DTSC) proposed Safer Consumer Product Alternatives regulations.

We were pleased to support the prior direction of the regulations, but are dismayed by many of the changes that have now been incorporated and the narrowing of focus. The revisions are so dramatically different and ill-focused on the needs of the environment as we see it that we can no longer support the proposed regulations. In addition, the 15-day comment period was not sufficient for the kinds of changes presented in the revision and we believe they should be re-noticed per state regulation with a 45-day comment period to enable real review and appropriate comment.

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 sewered population of California. We have incorporated some points of a comment letter coming to you from BACWA and BAPPG, our colleagues in the San Francisco Bay Area.

Our members have noted with alarm the increase in consumer products that contain antimicrobial compounds, toxic metals and nano-constituents. These are likely to compromise effluent quality, treatment plant operations, biosolids management options, and the compliance of our agencies and municipalities with their NPDES permit requirements. We have few tools to use in keeping such potentially harmful chemicals out of the waste streams coming to us for treatment, and we have generally supported the concept of green chemistry in hopes it could stem the tide of harmful chemicals now available in the marketplace.

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However, the Revised Safer Consumer Products Alternatives Regulation will not lead to safer products with regard to environmental effects. While we appreciate several revisions made by DTSC, such as inclusion of chemicals and pollutants identified in Sections 303(c) and (d) of the Clean Water Act, we have numerous specific concerns about the regulation.

#### Notice Period

Per Government Code Section 11346.8(c) and California Code of Regulations Title 1, Division 1, Chapter 1, Article 2, Section 42, the 15-day comment period was insufficient for the scope of the revisions. The scope of these changes could not have been reasonably anticipated. Instead, a 45-day comment period should have been noticed, because the changes presented were not "sufficiently related" to the original regulatory notice. We strongly encourage you to re-open the comment period for a full 45 days so as to comply with state regulation and provide adequate time for stakeholder review and comment.

#### Narrowing of Eligible Product Categories

In limiting the eligible products for inclusion in the Priority Products until 2016 to just those that are personal care products, children's products or household cleaning products, a large number of known consumer products will not be addressed. Examples include mercury, professional cleaning products, paint that contains PCBs. Nanomaterials are present in many new household and other products and very little is known about their environmental effects. Much more will be known in the next five years, but your hands will be tied if these proposed regulations are enacted.

#### Consideration of Environmental Harm

It appears that DTSC will be limited to responses to documented environmental impacts, rather than having the ability to prevent such impacts in the first place. The strong focus on human health leaves out consideration of environmental harm. Many pollutants, such as mercury, are known to be harmful to aquatic life at very low concentrations - small fractions of the concentrations that affect humans. Consideration of these pollutants was effectively removed by deletion of the *de minimis* level provisions that were replaced by the default 0.1% of the hazardous waste standard. In water quality, typical standards for protection are 100 to 1,000 times lower than hazardous waste standards.

#### Cost of Compliance and Treatment

There is little chance that the revised regulations will provide protection to the biological processes of wastewater treatment and the biosolids that result from that treatment and the management of that resource. While the proposed regulations now include pollutants in 303(d) or receiving water toxicity listings, the compliance and treatment costs would now no longer be included as factors in DTSC's decision to regulate a product.

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**Regrettable Substitutes**

Changes in the section of the alternatives assessment requirements of the proposed regulations have made the use of "regrettable substitutes" now possible.

This letter does not contain all of our concerns. As mentioned, the abbreviation of the comment period has made it necessary for us to capture several important issues and hope that the process is extended so that these important regulations get the attention they deserve.

Thank you for considering our concerns. We in the wastewater community support the goals and the spirit of Green Chemistry, and we are ready to assist DTSC in developing a better regulation that will protect human and environmental health. Please contact Gail Chesler at 925-229-7294 or [gchesler@centralsan.org](mailto:gchesler@centralsan.org) if you have any questions or seek clarification.

Sincerely yours,



Ben Horenstein  
Tri-TAC Chair

cc: Regulations Coordinator, Department of Toxic Substances Control