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October 9, 2012

Kryisia Von Burg
Regulations Coordinator
Department of Toxic Substances Control (DTSC)
P.O. Box 806
Sacramento, CA 95812-0806

Re: Green Chemistry Proposed Safer Consumer Products Regulations

Dear Ms. Von Burg:

On behalf of Tri-TAC, thank you for the opportunity to comment on the Proposed Safer Consumer Products Regulations (proposed regulations). We commend you and the DTSC staff for their systematic, science-based efforts to develop a robust process to improve product safety.

Tri-TAC is jointly sponsored by the California Water Environment Association, the League of California Cities, and the California Association of Sanitation Agencies. The constituency base for Tri-TAC collects, treats and reclaims more than 2 billion gallons of wastewater each day and serves most of the sewered population of California. Wastewater agencies must meet increasingly strict regulatory standards to protect our water resources for a broad array of beneficial uses. We take our responsibilities for safeguarding receiving waters seriously and are very concerned about discharges of certain chemicals into wastewater systems. The growing tide of unregulated chemicals has the potential to compromise effluent quality, biosolids management options, and compliance with National Pollution Discharge Elimination System (NPDES) permit requirements.

Support for Proposed Regulations

Tri-TAC generally supports the concept of green chemistry and these proposed regulations, which have a solid scientific foundation and practical framework. We believe that in time, these regulations will help reduce harmful chemicals in consumer products and thereby assist wastewater treatment agencies in protecting receiving waters. In particular, we appreciate DTSC's efforts to include consideration of adverse impacts to wastewater treatment processes, water quality and aquatic life.

While Tri-TAC supports the proposed regulations and urges DTSC to move forward with them, we also have some suggestions for improvement, which are detailed below, that would strengthen the proposed regulations and have a beneficial impact on water quality.

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Incorporate Water Boards' Highest Priority Water Pollutants – 303(d) List

Tri-TAC is pleased that the Proposed Regulations define “adverse water quality impacts” to include introduction or increases in pollutants that impair water bodies listed under section 303(d) of the federal Clean Water Act (p. 7, line 6). However, in the section “Chemicals of Concern Identification,” only pollutants listed under section 303(c) of the Clean Water Act are included (p. 22, line 35). A different list, developed by the Water Boards every few years under Section 303(d) of the Clean Water Act, lays out the state’s priority water pollution problems. This is the list of California’s most important water pollution problems. The 303(d) list meets all of DTSC’s stated criteria for inclusion among the lists of chemicals of concern and will help ensure that the most relevant pollutants from a water quality standpoint are considered as chemicals of concern are selected. We request that DTSC include 303(d) pollutants in Chemicals of Concern Identification.

While there is significant overlap between pollutants in section 303(c) and pollutants that have resulted in 303(d) impairments, there are some important differences in how these lists are developed. Water bodies may be deemed impaired under section 303(d) for virtually any pollutant, not just those listed under 303(c). The section 303(c) pollutant list does not change frequently and does not necessarily reflect pollutants affecting California waters. Including both 303(c) pollutants and the 303(d) pollutants in the “Chemicals of Concern Identification” will ensure that the highest priority water pollution problems in the state are addressed.

Incorporate High Priority Environmental Pollutants in Initial Priority Products List

Tri-TAC understands that the proposed regulations must prioritize the vast number of consumer products; however, we are concerned that only products linked to human health concerns will be included in the initial Priority Products List. As currently proposed, the regulations do not allow DTSC to prioritize products containing chemicals that do not impact human health but may have environmental impacts. There are products, like copper-containing vehicle brake pads, that do not directly adversely impact human health, but may have significant impacts on water quality and the environment. We urge DTSC to consider incorporating the 303(c) and 303(d) pollutants into §69503.3. Possible language may be added as follows to p. 29, line 12:

- 12 (3) The chemical is identified as a priority toxic pollutant for California under section 303(c) of the federal Clean Water Act or is a pollutant that has been identified as a cause of impairment of one or more water bodies in California under Section 303(d) of the federal Clean Water Act.

Increase Transparency

Alternatives Assessments. While we understand that DTSC wants to expedite the Alternatives Assessment (AA) process, Tri-TAC believes the proposed regulations should include a formal comment period on preliminary AAs and any revisions to work plans. A formal comment period provides greater transparency, ensures higher quality AAs, and leads to better results since stakeholders may provide insights that may be

overlooked by both certified assessors and DTSC staff. In addition, a formal comment period will provide necessary transparency given that Certified Alternatives Assessors may be employees of the same companies required to conduct an AA.

Invite Public Comment on Product Stewardship Plans. Tri-TAC believes that proposed Product Stewardship Plans for end-of-life management of products should be posted to the DTSC website and DTSC should invite public comment prior to approval of the plans.

Publish All Comments & Correspondence on Website. We also urge DTSC to incorporate language into the regulations (in §69501.5) that requires all notices, public comments, and correspondence with stakeholders to be published on the DTSC website.

Consider Costs Incurred by Other Types of Entities

Wastewater agencies may be heavily impacted by chemicals in consumer products. Consumer products may contain chemicals in quantities that would lead to exceedances of effluent limitations at POTWs and/or water quality objectives in the State's waters. For example, if a chemical enters a municipal wastewater treatment plant in sufficient quantities, it is possible it could harm the crucial microorganisms used to treat wastewater, causing "process interference," or a plant "upset" where wastewater is no longer able to be treated properly before discharge. Process interference and upsets can result in costly NPDES permit violations. In addition, when surface water bodies become impaired by pollutants, wastewater agencies may be subject to additional requirements established as part of Total Maximum Daily Loads (TMDLs). The cost to wastewater facilities and other dischargers to comply with effluent limits and TMDLs can be millions of dollars. In some cases, treatment plant upgrades may be necessary to comply with TMDLs, at enormous cost to the public served by the treatment facility.

To address this, Tri-TAC encourages DTSC to make two changes:

- (1) add language to the Regulatory Response Selection Principles in §69506 (p.52, lines 17-26) so that costs and other burdens (§69506 (a) (4)) incurred by wastewater agencies are considered when selecting a regulatory response.
- (2) add language to provide explicit direction for DTSC to consider these costs as one of the product prioritization factors (§69503.2).

Incorporate Exposure Pathways Information in Preliminary Alternatives Assessments

Tri-TAC appreciates that the proposed regulations require an assessment of exposure pathways from a Chemical of Concern in a Priority Product. However, we believe that the responsible entity should provide this information in the First Stage of the AA, rather than in the Second Stage. Early identification of exposure pathways is important so that any inadvertent omissions or inaccuracies can be addressed at the beginning of the AA process. In our experience with pesticide regulatory processes, certain exposure pathways are often inadvertently overlooked by manufacturers and regulatory entities.

If DTSC incorporates our comment above to invite public comment on Preliminary AAs, then any omitted exposure pathways can be identified by interested stakeholders.

Consider Other “Unique Burdens”

We urge DTSC to consider other “unique burdens” in its regulatory responses, and propose modification of §69506 (p.52, lines 24-25) as follows:

- (4) Any unique or additional burdens that would be imposed by the regulatory response upon sensitive subpopulations, environmentally sensitive habitats, endangered and threatened species listed by the California Department of Fish and Game, and environments in California that have been listed as impaired by the State or any federal regulatory agency.

Once again, Tri-TAC would like to commend DTSC’s efforts in developing these proposed regulations. With our suggested changes, we believe these regulations will help prevent pollution at the source and will better enable municipal wastewater agencies to meet their obligations to protect water quality and human health. Timely and robust implementation of these regulations is critical – without it, we expect that water quality problems that can only be solved by product reformulation will continue to require legislative solutions on a case-by-case, product-by-product basis, which is inefficient and politicizes the issues. California needs strong Safer Consumer Products Regulations that address problematic hazardous chemicals in consumer products, and that promote the creation and use of non-hazardous alternatives.

Thank you for your consideration of our comments. We look forward to participating in the process of advancing green chemistry and safer consumer products in California.

Sincerely,



Jacqueline Kepke, P.E.
Tri-TAC Vice-Chair