

TESTIMONY of Megan R. Schwarzman, MD, MPH

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before

The Assembly Committee on Environmental Safety and Toxic Materials
Honorable Bob Wieckowski, Chair

Oversight Hearing on the Safer Consumer Products Draft Regulations and the Implementation of the California Green Chemistry Initiative

December 8, 2011 – Room 4202, State Capitol Building, Sacramento, CA

Chairman Wieckowski, and members of the Committee, thank you very much for the opportunity to be here today. My name is Megan Schwarzman. I am a family physician and an environmental health scientist at the University of California, Berkeley, in the Centers for Occupational and Environmental Health. I also serve as Associate Director of Health and Environment for the UC Berkeley Center for Green Chemistry.

My involvement in green chemistry and chemicals policy began in 2007, when I authored –with colleagues at UC Berkeley and UCLA—a report commissioned by DTSC, in which we examined the critical role of green chemistry in protecting public health, our state’s economy, and our natural resources. In short, how to assure that the production of goods and services does not come at the expense of public or environmental health. The analysis in that report to DTSC built on an earlier report our center produced, commissioned in 2004 by this Committee under the leadership of John Laird and by the Senate Environmental Quality Committee with Chairperson Byron Sher.

In 2009, I was appointed to the Green Ribbon Science Panel. I’m speaking today from this experience with California’s Green Chemistry initiative, and from my knowledge as a physician and an environmental health scientist, but my comments are of course my own and do not necessarily reflect the views of other members of the Panel, the Berkeley Center for Green Chemistry, or the University of California.

I’d like to address the Committee on three topics: First, the Green Ribbon Science Panel’s activities and its interaction with DTSC; second, the current informal draft Safer Consumer Products Regulations; and third, the opportunities the Legislature now has for advancing California’s Green Chemistry Initiative as a whole.

I. I’ll begin by addressing the role of the Panel and its interactions with the Department

Over the past year, DTSC’s charge to, and interactions with, the Panel have significantly improved our ability to contribute to the implementation process. DTSC formed subcommittees prior to full Panel meetings in May and July that generated concrete and detailed input for the Department on two topics: how best to identify and prioritize chemicals of concern; and how to structure an effective process for alternatives analyses. DTSC staff posed questions to the subcommittees, had us follow up with written input, and summarized the subcommittee discussions in the form of options that DTSC subsequently presented to the full Panel for deliberation.

With the caveat that the Panel is not a consensus-based body, we don't vote, and we are not tasked with developing a unified set of recommendations, I can say that I *have* experienced a convergence of views during the Panel's discussions. And I think these discussions have helped the Department get what it needs from the Panel.

Some of these changes probably reflect the natural progression of the regulation-writing process; as the regulations are honed, the questions to the panel have become more specific, and the staff has been better able to incorporate feedback.

But it also reflects an evolution in leadership. As Director Raphael has described to this Committee, her staff – as well as the Panel—now have organizing principles to work with: that is, designing a program that is legally defensible, practical, and meaningful. She has solicited the input of DTSC's sister Boards, Departments, and Offices within Cal/EPA, as well as the Department of Public Health. These conversations are a new phenomenon for DTSC in the Green Chemistry Initiative, and their positive influence is evident in the informal draft regulations. She is also the first Director to actively participate in the entirety of a two-day Panel meeting.

I can't speak more highly of the leadership Director Raphael has provided in this process—first as a Co-Chair of the Panel, and now in her position with the Department. DTSC appears to have found its footing

II. I'd like to move now to discuss the current Informal Draft Safer Consumer Product Regulations that the Department issued on October 31st. While I'll provide most of my substantive comments in writing to Director Raphael and her staff, I'd like to highlight a couple of issues for this Committee—first some key improvements that appear in this draft, followed by some of the changes that still need to be made for the program to succeed.

Overall, this draft is notable for its clarity, and internal consistency. Where previous proposals were complex without being any more effective, the present draft outlines a discrete process, providing clear deadlines and a reasonably expedient timeline. This is essential for the businesses who will need to interpret new regulatory requirements and who depend on the predictability of the process.

Specifically, these draft regulations have new elements that make the program more scientifically rational and defensible. These include: the robust, longer list of chemicals of concern, and a critical addition to the process of alternatives analysis: for chemicals of concern in certain products, businesses will be asked to look beyond the questions of, "Can it sell?" or, "Is it legal?" and ask, "Is it necessary?"

Is it necessary, for example, to have nonylphenol ethoxilates (whose degradedates are linked to sex-changes in fish) in laundry detergent designed to go down the drain? Is it necessary to have perchloroethylene –a Prop 65 carcinogen- in the clothes that come back from the dry cleaner, not to mention the consequences for the workers who spend 10 hours a day in that environment? Is it necessary to have endocrine disrupting chemicals in furniture, IV bags, electronics, cash register receipts, shower curtains? How about formaldehyde-releasing chemicals in baby shampoo?

This is different than asking if shampoo is necessary, or furniture, or electronics, or clean clothes. It simply asks whether we need to rely on hazardous chemicals to do those jobs, or *whether our businesses are innovative enough to make those products safe*—for consumers, for the environment, and for the workers who produce the goods and services on which our society depends.

Other improvements in this draft include the provision that enables the Department to consider *aggregate* exposure to a chemical from multiple sources, as well as the *cumulative* effects of exposure to *different* chemicals that nevertheless act on the same organ system or have similar health effects. In fact, this is the most scientifically valid way to address the issue of chemical exposure and risk.

To turn to some critical changes still needed in this draft:

Some overarching limitations arise from systemic issues, such as the lack of data requirements, and the state's trade secrecy laws. These issues are in the Legislature's reach, and I'll discuss them in a moment.

Other changes are within the Department's reach and, if made, could help align the industry's economic interests with the goals of this regulation. These include, for example:

- 1) On the dispute process: The proposed dispute provisions would permit companies to put all regulatory actions on hold while they dispute any activity DTSC takes under the regulations. These could include such actions as listing a chemical of concern, or identifying a priority product. This needs to be revised.
- 2) On the criteria for selecting safer alternatives: In this draft, companies could disqualify a safer alternative that they deem to be less competitive, economically. Creating a phase-in period would instead provide the time during which safer alternatives are brought to scale—and *become* economically feasible.
- 3) Regarding accountability in the alternative assessment process: Instituting a multi-stakeholder technical peer review process could dramatically improve the quality and reliability of alternatives analyses that companies submit.

For each of these points, and several others—including critical elements such as insufficient protection of workers—I'll be submitting detailed comments to the Department, along with the regulatory alternatives I envision.

Overall, though, the program DTSC has proposed is getting much closer to the best that can be done under the AB 1879 Statute. Addressing the issues I've raised here (and a few others) will move us closer to a regulatory program that supports the growth of a sustainable business sector; one that contributes to the health and well being of all Californians and to our environment.

With some fixes, this program could succeed in *word*. But for it to succeed in *deed*, the Department needs Legislative support.

III. Which brings me to my final topic: opportunities that the Legislature—this Committee—now has to fulfill the promise of the GCI as a whole by strengthening DTSC's hand, and by advancing the other planks of the GCI that will together create a more comprehensive chemicals policy. DTSC—and really, the state of California—need three things from the legislature: First, sufficient resources to implement the ambitious program that the Safer Consumer Products Regulations could be; second, authority to collect data from chemical producers and product manufacturers; and third, addressing problems with the state's trade secrecy laws. Because of these additional needs, there is a fourth: back-up—in the form of ongoing oversight of hazardous chemicals.

I'll address each of these in turn.

First, on resources: the AB 1879 Statute granted the Department authority to create a broad, far-reaching program, and the bill's authors—not to mention the world at large—are expecting something grand. And yet, what the Department can accomplish with its current resources may not live up to these expectations. In fact, some of the shortcomings I see with the proposed program are the direct result of DTSC anticipating the need to operate a program within its statutory and financial limits. It has therefore built in self-implementing elements, and other creative 'work-arounds' that nevertheless risk reducing the program's ultimate impact.

I realize that the current economic climate makes the plea for funding a difficult ask, but in the long term, no matter how good the final regulations may be, it will be difficult to create a program that fulfills the scope provided for by the Statute without additional resources.

The **second** logical place for additional legislative action is in the area of data collection. The size of the gaps in publicly available information on chemicals in products, their uses, and their hazardous properties has been widely described as one of the largest barriers to effective regulation and the greening of the chemical enterprise. And yet, there is no authority within the AB 1879 Statute itself for DTSC to require companies to routinely submit chemical information.

There is a tremendous demand for this transparency; the public wants to know what they're buying, retailers want to know what they're selling, manufacturers want to know what's in the components they purchase; company shareholders want assurances that their investments aren't in jeopardy; and investors want to know where to put their capital. While some companies with large market share are able to obtain ingredient information from their suppliers, little of this information is available to regulators, much less to the public. Hazard and use data are even harder to come by.

Granting DTSC the authority to request this basic information would greatly improve the Department's ability to (1) make accurate decisions on chemical prioritization, and (2) efficiently identify safer alternatives based on *a much more complete picture* of the science.

Completing these tasks without the authority to require product manufacturers to submit the requisite information creates inefficiencies and challenges that the Department should not have to surmount. Meanwhile, DTSC has devised some creative approaches, but their success depends primarily on companies stepping forward to do the right thing.

This brings me to the **third** area that lends itself to legislative action: the potential that the state's trade secrecy laws could produce extensive claims of confidential business information; claims that extend beyond legitimate protections for the early adopters of safer technologies, to ones that effectively shield from public view the identity of hazardous substances, their alternatives, and even the methods used to make that determination. Addressing the issues posed by the state's trade secrecy laws, as they apply to this program, could be a useful topic for future Panel subcommittees. But it will also require action from the Legislature.

These three issues—slim resources, insufficient statutory authority regarding data requirements, and the prospect of extensive trade secrecy claims—mean that the program's success will depend on the good will and honest efforts of the regulated industry. This could work in only two cases: either the regulated community is altruistic and sees the overall good of the program, or the program's requirements create the market conditions that align industry's economic interests with the regulatory goal of an economy built on safer, more sustainable products.

Some industry leaders are already doing the right thing, motivated by an ethic of social responsibility and by new norms created by dramatic policy changes in the European Union. Others, however, are heavily invested in maintaining the status quo. And in the middle, there is probably a large proportion of businesses awaiting the signals that will point them down one of those two paths.

While we want to tap into new expectations for industry's product stewardship, it may not be prudent to depend on them; we may not have the same good fortune –or sufficient charm—to do as Blanche duBois did in *Streetcar named Desire*, when she admitted, "I have always relied on the kindness of strangers."

Finally, given the limitations I've discussed, the Legislature must not cede all action on chemicals and products to DTSC. Cognizant of resource constraints, and aiming to phase-in the new program to work out the wrinkles, the Department projects that this program will be able to identify only 2-5 priority products in the first year, and maybe as many each subsequent year. With 74 billion pounds of chemicals produced/imported in the U.S. each day, and 23,000 chemicals identified by Canada as requiring further investigation or action, the Legislature will have to consider additional legislation focused on chemicals of concern in products, in workplaces and in the environment.

We should acknowledge that the Safer Consumer Products program will not –on its own—comprise the comprehensive chemicals policy that this state needs. As we have frequently noted, such a complex and overdue undertaking will require a multi-pronged approach, and both the Legislature and the Administration should resist the temptation to declare that DTSC and the GCI have it all wrapped up.

In conclusion, since this Committee's last oversight hearing on the GCI, DTSC has hit its stride. A dedicated internal team of staff has improved the proposed regulations with each iteration. This year's process of creating subcommittees has made the Panel's input to the Department more relevant, and the Department has -in turn- been increasingly responsive to that input.

The University of California's reports to both the California Legislature and DTSC have concluded that to create a sustainable future, California's industrial development will have to *solve*, not exacerbate, existing health and environmental problems. That's of course an enormous challenge, but if DTSC can produce a strong set of smart regulations, and with the support of the Legislature, California could very well put the state on the path to meeting this critical objective.

As both the Legislature and DTSC proceed with implementation of the GCI's six planks over the coming years, I offer the resources of the Berkeley Center for Green Chemistry and my own personal commitment to the Panel.

Thank you for your ongoing support of this effort in California as well as the opportunity to testify here today.

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