

**OVERSIGHT HEARING ON THE
CALIFORNIA SAFER CONSUMER PRODUCTS
INFORMAL DRAFT REGULATIONS**

ASSEMBLY COMMITTEE ON ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

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**Testimony of Davis Baltz
Commonweal and the CHANGE Coalition**

dbaltz@igc.org 510-848-2714

Good afternoon, Mr. Chairman and members of the Committee. Thank you for the opportunity to testify today.

I am Davis Baltz, here today representing my organization – Commonweal, a health and environmental research and service institute in Bolinas California; and the CHANGE coalition – Californians for a Healthy and Green Economy, a statewide coalition of environmental and environmental justice groups, health organizations, labor advocates, community-based groups, parent organizations, faith groups, and others who are concerned with the impacts of toxic chemicals on human health and the environment. We have closely tracked the development of the regulations for Mr. Feuer’s AB 1879 from the beginning.

The first thing to say is that these regulations are historic in their own way. This is the first time an agency is attempting to regulate chemicals, and the consumer products that contain them, by focusing first on intrinsic hazard traits rather than exclusively relying on risk assessment. Exposures will be considered, but the intention is to reduce exposure to hazardous chemicals rather than justify exposures through risk assessment.

This is the first time an agency is building a regulatory structure that mandates an analysis of alternatives. This is the first time regulations are addressing cumulative exposures, which are a key public health concern and as well as a long-standing demand from environmental justice communities. And this is the first time manufacturers of consumer products will be required to formally answer the question, “Is the use of this hazardous chemical necessary in my product?”

This approach represents a long-overdue paradigm shift in how we should manage chemicals. There are many provisions in the draft that public interest groups support. For example, a large Chemicals of Concern list posted from the get-go is smart and will prompt forward-thinking entrepreneurs and businesses to voluntarily act before subsequent regulation compels them to. DTSC will require manufacturers to provide useful supply chain information to the Department in their Alternative Assessment

reports, as well as identify “unavailable reliable information.” The regs will require manufacturers to fund, establish, and maintain an end-of-life management program.

The regulations should go further in some areas to strengthen California’s leadership within this new regulatory environment. For example, DTSC should adopt the strictest possible de minimis standard of zero for chemicals we already know are harmful such as carcinogens, mutagens, and reproductive toxicants (CMRs), persistent bioaccumulative toxins (PBTs), and endocrine disruptors (EDs). The regs should make clear throughout the document that “economic impacts” include costs to families, the environment, public health, government, and the taxpayer. Workers should be afforded the same degree of protection as other populations. Better oversight of Alternative Assessment reports that will be generated by industry is needed. More defined criteria need to be developed for how and when regulatory responses that have real consequences will be triggered.

Like everyone in this room, the CHANGE coalition wants to support the successful implementation of AB 1879. We are heartened by new leadership at CalEPA and in particular by the appointment by the Governor of Debbie Raphael as DTSC Director, who has served with dignity and professionalism. The deeper utilization of the state’s Green Ribbon Science Panel by DTSC is a very positive development. These informal draft regulations have put the train back on the tracks after the unacceptably weak and failed draft regs hastily put out a year ago in the 11th hour of the Schwarzenegger Administration.

But the regs are not perfect. It will be a heavy lift to do it right. These Safer Consumer Products Regulations should be viewed as an important step on the road to sustainability, one piece of the solution. What is needed now are additional planks in California’s Green Chemistry Initiative, and this is where the legislature can help.

As you have heard repeatedly today, DTSC does not have the resources to undertake this in a sustained way. We have heard from DTSC that only 2-5 product categories will be identified to start, and a final alternative analysis report will take three years if all goes smoothly. Providing DTSC with the means to implement this program, which will ultimately save the state millions of dollars in avoided health care costs and environmental remediation, should be a top priority for the legislature. Otherwise, even with excellent regulations, there won’t be sufficient resources for DTSC to assume responsibility for the many functions it will need to take on for this program to succeed.

A continuing, critical problem is the stunning lack of information about chemicals available to the public and the marketplace. We know either very little or often nothing at all about the toxicity of the chemicals in everyday use which we voluntarily bring into our homes and apply directly to our bodies and those of our children. But the draft regulations are timid about requiring data to be provided or produced by industry.

If we review how AB 1879 and California’s Green Chemistry Initiative came into being, we’ll recall its genesis was the 2006 Special Report by the University of California titled, “Green Chemistry in California: A Framework for Leadership in Chemicals Policy and

Innovation.” This report was requested in 2004 by this committee together with the Senate Environmental Quality Committee.

The report pointed to three specific “gaps” which have created a broad set of problems for public and environmental health, for industry and business, and for government in our state. By now, we are all familiar with these as a “Data Gap,” a “Safety Gap,” and a “Technology Gap.”

These gaps need to be filled and the informal draft regs fall short of doing it. It would be another highly significant and important contribution by the legislature to provide CalEPA with the prerogative to bring needed information into the public sphere. A legislative effort to create a “no data, no market” mechanism is needed to level the playing field.

This will drive chemicals with bad profiles off the market as they will be de-selected by the public and downstream business users of chemicals. Market forces, if supplied with the necessary information, can drive innovation as smart companies invest in safer alternatives. This will create jobs.

But for this to happen, excessive trade secret provisions must be limited so that information about the health and safety properties of chemicals and consumer products is publicly available; and the public understands how alternative analyses are conducted and approved. Without this transparency, there is a substantial risk that the program won’t be seen as credible by the people of California.

One of the key rationales for AB 1879 was to stop the flow of chemical-by-chemical ban bills. What has California done to restrict the use of known toxic chemicals since AB 1879 was signed into law in 2008? It is a somewhat bitter irony that the goal of “no more chemical bills” has essentially been achieved but we still don’t have a plan in place to retire problematic chemicals. The number of chemical ban bills has fallen to a trickle as everyone waits for green chemistry to answer all questions. Yet we know now that the Safer Consumer Products regulations will be modest in the best of current circumstances. In the last legislative session, only one bill made it to the Governor’s desk that would restrict a chemical of concern (AB 1319 eliminating bisphenol A in baby bottles and sippy cups). The previous year, there were only about 5 bills that sought to reduce exposure to specific chemicals. The Legislature has gotten its wish: no more chemical ban bills. But I know you will agree with me that it was not the intent of the Legislature to ignore public and environmental health threats from toxic materials.

Since 2008, more than 500,000 babies have been born each year in California. For these new Californians, successful chemical ban bills since 2008 would at least have protected them from substances we already know are harmful. To be meaningful, the Safer Consumer Products regulations, once finalized, would certainly need to deal with these chemicals for which we already have more than enough information to act. We’ve lost three years of opportunity to restrict chemicals we know are dangerous without putting a dent in harmful exposures to a million and a half children born since then.

This is the final challenge and responsibility for the legislature: to recognize that there is still an important role for chemical-specific bans that protect Californians quickly and hold DTSC's feet to the fire to move as fast as possible through the new regulatory framework.

Finally, I call your attention to a recent opinion piece published in the Huffington Post by Kathryn Alcántar, who is Policy Director at the Center for Environmental Health. As a pregnant woman, she points out that the baby girl in her womb already has all the eggs she will ever have in her lifetime for her own children. Think about this: the chemicals that Kathryn is exposed to now can impact her grandchildren whose mother has not been born yet. It is our responsibility to ensure that Kathryn's children and grandchildren to-be are protected so they can reach their full potential.

In conclusion, the regulations under development today have much that is worthy of support. Despite their limitations, it's important to launch this program. But this is only one piece of the work. The legislature now has the important responsibility of building out our state's green chemistry initiative so toxic chemicals and products are expeditiously retired from commerce and replaced by safer alternatives. This will entail ensuring that DTSC and other agencies have the resources to fulfill their statutory mandates; that adequate information about chemicals reaches the public; and there is a duty for the legislature to take faster action on toxic chemicals when evidence warrants.

I would like to thank the committee again for convening this hearing and for its continued close oversight of the development of green chemistry in California.

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