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Assembly California Legislature



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July 15, 2010

Maziar Movassaghi, Director
Dept. of Toxic Substances Control
1001 "T" Street
P.O. Box 806
Sacramento, California 95812-0806

Dear Director Movassaghi:

The purpose of this letter is to recommend four significant improvements to the Safer Consumer Product Alternatives regulations your department is developing pursuant to AB 1879, the legislation I authored to reduce the threat toxic chemicals pose to Californians' health.

At the outset, however, I want to express my gratitude for the long hours of dedicated work you and your staff continue to invest to make this essential program as robust as possible. If we implement this program properly it will protect the health of Californians, create new opportunities for California business and be the catalyst for sweeping, beneficial changes to national chemicals policy.

Improving how chemicals of concern are prioritized

The regulatory language regarding chemical prioritization suggests that the department will consider a wide array of hazard traits and toxic endpoints in establishing its list of chemicals of concern. Unfortunately, the language setting forth the characteristics of the initial list, as well as language limiting determinations of carcinogenicity and reproductive toxicity, relies on a flawed Proposition 65 process and is otherwise at odds with the clear directive of AB 1879.

AB 1879 requires that the identification and prioritization processes include the volume of the chemical in commerce, the potential for exposure and the effects on sensitive subpopulations. While the statute allows for other prioritization factors to be considered, prioritizing an initial list based on Proposition 65, EU-defined mutagens, and US EPA persistent, bioaccumulative toxicants (PBTs) ignores at least two, if not all three, of the criteria delineated in the law. The reliance on these lists also suggests that the department will not evaluate chemicals based on the full range of hazard traits and environmental and toxicological endpoints as anticipated in Section 25256.1. This inconsistency between your draft regulations and the statute is very troubling and would prevent accurate

The 42nd Assembly District includes all or parts of the city of Los Angeles, neighborhoods of Sherman Oaks, Studio City, North Hollywood, Valley Village, Valley Glen, Toluca Lake, Universal City, Griffith Park, West Los Angeles, Brentwood, Bel Air, Holmby Hills, Beverly Glen, Westwood, Century City, Hollywood, Fairfax, Hancock Park, Los Feliz, and the cities of Beverly Hills and West Hollywood.



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determinations of both the worst chemical threats to public health and the highest and best use of scarce departmental resources.

The exclusion of carcinogens and reproductive toxicants from the list of chemicals of concern unless they also appear on the Proposition 65 list is contrary to the intent of the legislation. The statute explicitly directs the department to evaluate information from a wide array of authoritative bodies at the state, federal and international level. The fact that it took until 2006 to list second-hand smoke, an obvious carcinogen, on the Proposition 65 list belies any notion that AB 1879 should so heavily rely on such a flawed and inadequately protective statute.

Improving the alternatives assessment process

The regulations regarding alternatives assessments have much to commend them. In particular, the requirement that all data be independently verified by an assessment entity that is free of conflicts of interest is essential to the program. Given the paucity of funding for data generation by the department and the concomitant requirement that industry provide much of the relevant information, ensuring that the conclusions reached in these assessments are not simply the product of business interests is critical to the integrity of subsequent departmental actions. To better ensure the independence of the third party assessors I strongly urge you to include a mechanism by which the department selects the assessor for the manufacturer. The potential for shopping around for the right assessment entity by a manufacturer – akin to the investment banks playing ratings agencies off of each other – must be eliminated.

I also urge you to build in suitable timelines for the alternatives assessment process. While I understand the inclination to provide extended timelines for manufacturers who seek the safest and most sustainable product formulations, the fact that all regulatory action is delayed until alternatives assessments are completed means that the public would continue to be exposed to chemicals of concern in these products while assessments are pending. The department should set shorter timelines, no longer than six months, for preliminary alternatives assessments to be completed so that regulatory action may commence, while allowing a more thorough alternatives assessment with a longer timeline – but in no case more than an additional 12 months – to inform future departmental actions, i.e. revisions to the initial regulatory action. Additionally, once alternatives assessments are completed, the department should include both the summary and a link to the full report on its website to inform the public and the market on the alternatives available to priority products.

De minimis determinations

The regulations would establish an arbitrary concentration of 0.1% as a *de minimis* level for a chemical of concern and, therefore, the chemical would not be subject to regulation. The regulations also stipulate that the department may, at its discretion, alter the 0.1% determination for specific chemicals. Given that every chemical in every application will have its own unique characteristics that determine the appropriate *de minimis* – which

could, in fact, be zero – concentration, the department should set no standard in the regulation and simply address each of the unique circumstances for each chemical considered. For example, the very idea of permitting a *de minimis* level for a chemical of concern that is deliberately included in a product is inconsistent with the intent of AB 1879. The objective is to get dangerous chemicals out of consumer products not to just reduce them by some marginal level.

Improving the trade secrecy provisions

Finally, your department appears to have given a great deal of thought to the topic of trade secrecy and confidential business information. In particular, the criteria for determining the propriety of trade secrecy claims are well-considered. In accordance with the statute, the regulations require trade secrecy claims be made upon submission, and the department has explicit authority to request support of such claims from manufacturers.

To prevent manufacturers from being tempted to liberally and casually claim submitted information as a trade secret, the department should use its authority under the statute to request support for all such claims upon the submission of the information. Claims of confidential business information should be treated similarly. This should not be problematic for manufacturers, who should be able to explain why their interests require such data be withheld.

You and your department have made significant strides in formulating the regulations that will govern the Safer Consumer Product Alternatives process. I am encouraged by the collaborative approach you have adopted and look forward to continuing our dialogue as we finalize the implementation of this essential program.

Sincerely,

A handwritten signature in black ink that reads "Mike Feuer". The signature is written in a cursive, flowing style.

Mike Feuer
Assemblymember, 42nd District

cc: Linda Adams, Secretary, Environmental Protection Agency
John Moffatt, Chief Legislative Deputy, Office of the Governor