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ENVIRONMENTAL SAFETY AND
TOXIC MATERIALS
INSURANCE

April 21st, 2009

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

Dear Director Movassaghi:

The purpose of this letter is to offer my perspectives on next steps the Department of Toxic Substances Control should take as it implements SB 509 (Simitian) and AB 1879 (Feuer), legislation designed to diminish the threats posed by toxic substances.

The overarching goal in authoring SB 509 and AB 1879 was to give state scientists and regulators comprehensive authority to protect the public from harmful chemicals found in everyday consumer products. This legislation created a framework for an ambitious paradigm shift which you have begun building through a series of important workshops. I very much appreciate the Department's efforts so far.

Having watched the unfolding of this process as the author, I offer the following guidance to ensure that the programs established by these bills have the necessary tools and enforcement options to keep Californians safe. Just as important to the success of these programs is that they are respected by all stakeholders, so that our state may rise above our current approach of regulating chemicals one at a time, one product category at a time. I hope this guidance will help ensure that, as well.

I will organize these views using the four categories the Department identified in its workshops:

Chemicals of Concern. While working to set up a program that identifies and prioritizes chemicals of concern, the Department should cast a wide net. Chemicals with known hazards, as determined by academic studies or by determinations made by state, federal, or international agencies, should naturally be included. However, it is also essential that chemicals for which no data or incomplete data exist be considered a chemical of concern until a complete dataset is available showing no hazardous or toxic properties.

Additionally, the legislation itself defines consumer products broadly so as to allow the Department not only to regulate those products on store shelves but products used solely by workers in producing a new product or service. Indeed, the program must ensure strong protection for workers as well as the general public.

Prioritization. Once this broad list of chemicals of concern is established, the Department should prioritize on which chemicals it takes action based upon the volume of the chemical in commerce; the products in which the chemical is used and whether it is designed for vulnerable populations; the volume of the chemical in the environment; the presence of the chemical in the umbilical cord blood and other biomonitoring samples; and the potential threat of the chemical to future generations. The Department should have the flexibility, however, to start with chemicals that pose imminent concern for human or environmental health.

The following three categories should be used for prioritizing chemicals of concern: 1) chemicals established as being toxic or hazardous (e.g., they appear on toxicity databases, other statutes requiring the regulation of such a chemical, or other evidence suggesting threat to human or environmental health) 2) chemicals for which toxicity data is limited and 3) those for which no data exists. Each of these three categories will require different prioritization and action.

Alternatives Assessment and Life Cycle Assessment Tools. The alternatives assessments should be conducted by fully independent third-parties. All assessments should be publicly available, with strong oversight by the Department, and trade secrecy claims should be strictly limited. To avoid paralysis by analysis, each analysis should be conducted in a specified timeframe – no more than six months – and incorporate an assessment of lifecycle issues without being dominated by them. The alternatives assessment should include non-chemical alternatives, including changes in feedstock, changes in production, or changes in basic materials. Finally, human and environmental health considerations should take priority over economic considerations.

Regulatory Response. When the Department deems that a chemical poses an immediate threat to human or environmental health, the Department should take expedited regulatory action without having to wait for the completion of an alternatives assessment. A subset of chemicals should be identified for immediate phase out based on their level of hazard as well as their exposure to vulnerable populations.

If an alternatives assessment finds that there are viable, safer alternatives, the Department should be obligated to phase out the use of the chemical of concern for that particular use. If an alternatives assessment finds that there are *not* safer or viable alternatives, however, the department may then take any of the actions listed in the legislation – requiring, for example, a period of time when the alternatives are re-assessed to determine if viable, safer alternatives have been developed.

Finally, if there is insufficient data about a chemical, the Department should incorporate a “no-data-no-market” policy, requiring companies to provide, by a date certain, a minimum mandatory dataset for chemicals on the market or in development.

I strongly urge that the Department include these key components in the regulation and implementation of SB 509 and AB 1879. I commend the Department for its dedication to protecting the public’s health and safety as the Green Chemistry Initiative moves forward. I look forward to continuing to work together on this important project.

Sincerely,

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MIKE FEUER
Assemblymember, 42nd District