

MEETING
STATE OF CALIFORNIA
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

JOE SERNA, JR. BUILDING
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
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SACRAMENTO, CALIFORNIA

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Mr. Jeff Wong

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DTSC STAFF

Ms. Hortensia Muriz

Ms. Sue Patel

Ms. Euelia Rodriguez

Ms. Krysia Von Berg

Mr. Randy Woods

ALSO PRESENT

Ms. Kathryn Alcantar, Center for Environmental Health, and Californians for a Healthy and Green Economy Coalition

Mr. Matthew Allen, Western Growers Association

Mr. Bill Allayaud, Environmental Working Group

Ms. Sarah Amick, Rubber Manufacturers Association

Mr. Curt Augustine, Auto Alliance

Mr. Davis Baltz, Commonweal & Change Coalition

Mr. Geoff Brosseau, CASQA

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Robert Callahan, Tech America

Mr. Andrew Cham, CA Foundation for Commerce and Education

Ms. Brenda Coleman, Cal Chamber

Ms. Teresa Cooke, CA Travel Association

Mr. Jerry Desmond, Desmond & Desmond

Mr. Doug Fratz, CSPA

Ms. Jennifer Gibbons, Toy Industry Association

Mr. Grey Gorder, Technology Sciences Group

Ms. Maurine Gorsen, Alston

Ms. Ann Grimaldi, McKenna, Long & Aldridge

Ms. Stephanie Hammel, UC Irvine

Ms. Maria Jack, Grocery Manufacturers Association

Mr. Ton Jacob, Chemical Industry Council of CA

Mr. Fred Jones, Professional Beauty Federation of
California

Ms. Caryn Kelly, AMEC

Ms. Dawn Koepke, Green Chemistry Alliance

Ms. Melody LaBella, Central Contra Costa Sanitary District

Mr. Jack Linard, Unilever

Mr. Gene Livingston, ACI

Mr. Bob Lucas, CCEEB

Ms. Bridgett Lutler, Cradle to Cradle Products Innovation
Institute

APPEARANCES CONTINUED

ALSO PRESENT

Ms. Kathy Lynch, ATPA

Mr. Jim Lyons, Sierra Research

Ms. Karin North, City of Palo Alto

Ms. Annie Pham, Sierra Club California

Mr. Norman Plotkin, AAIA

Ms. Julia Rege, Association of Global Automakers

Mr. Jeff Robinson, CA Attraction & Parks Association

Ms. Leslie Rodriguez, JI

Mr. Mike Rogge, CMTA

Ms. Gretchen Salter, Breast Cancer Fund

Ms. Bridgett Sharpe, Professional Beauty Association

Mr. Tim Shester, ACC

Mr. Colin Sueyres, Andrew Chang & Co.

Ms. Stacey-Ann Taylor, American Coatings Association

Ms. Cara Welch, NPA

INDEX

PAGE

Ms. Rege	7
Ms. Grimaldi	11
Ms. Sharpe	15
Mr. Linard	19
Ms. Amick	21
Mr. Baltz	25
Mr. Jones	29
Mr. Chang	31
Mr. Plotkin	35
Ms. Gorsen	39
Mr. Livingston	43
Mr. Callahan	46
Ms. Welch	51
Ms. Lynch	55
Ms. Koepke	58
Ms. Jack	62
Ms. Salter	66
Mr. Jacob	69
Ms. North	72
Ms. La Bella	74
Ms. Pham	78
Mr. Allayaud	80
Mr. White	83
Mr. Brosseau	85
Ms. Luther	90
Mr. Robinson	93
Ms. Cooke	95
Ms. Gibbins	96
Mr. Lyons	99
Mr. Rogge	104
Ms. Coleman	107
Ms. Alcantar	109
Mr. Lucas	113
Mr. Desmond	117
Ms. Taylor	120
Mr. Fratz	122
Mr. Livingston	124
Ms. Gorsen	126
Adjournment	130
Reporter's Certificate	131

1 stairs, you will be directed to a protected vestibule
2 inside a stairwell.

3 The rest rooms are located to the left of this
4 room's entrance. And if you would like a beverage, there
5 is a cafeteria on the first floor immediately below us
6 that is open until 3:30. I'm hoping we're not here until
7 3:30.

8 So for the record, today is September 10th, 2012.
9 And the time is 10:06 a.m.

10 Under the provisions of the Administrative
11 Procedures Act, this is the time and place set for the
12 presentation of statements, arguments, and contentions,
13 orally and in writing, for or against the Department of
14 Toxic Substances Control's proposed regulations for Safer
15 Consumer Products, which propose to add Chapter 55 to
16 Division 4.5 of Title 22 of the California Code of
17 Regulations.

18 The entire proceedings today will be recorded by
19 tape and transcribed. The tape, as well as any exhibits
20 or evidence presented at this hearing, will be
21 incorporated into the rulemaking file and will be reviewed
22 prior to final approval of the regulations by the
23 Department and the Office of Administrative Law.

24 In addition, the audio recording of this
25 proceeding will be available on our website at

1 www.dtsc.ca.gov.

2 The purpose of today's hearing is to accept oral
3 and written public comments, which will be part of the
4 official rulemaking files for these regulations.

5 Witnesses presenting oral testimony at the hearing will
6 not be sworn in, nor will we engage in cross-examination
7 of the witnesses.

8 You may also present written comments to us
9 today. Comments made today will not be responded to at
10 this time, but will be addressed in writing in the Final
11 Statement of Reasons for this rulemaking. We ask that you
12 restrict your comments to the regulations being considered
13 today.

14 In addition to the comments received today,
15 additional written comments will be accepted up until 5:00
16 p.m. on October 11th, 2012. As you may know, the original
17 public notice, which we provide copies of, has the comment
18 period closing tomorrow, September 11th, but we have
19 posted on our website an extension to October 11th.

20 After the close of this hearing, you may submit
21 additional written comments on those proposed regulations
22 through any of several methods, as long as you do so by
23 5:00 p.m. on October 11th.

24 So here are the different ways you can submit
25 written comments:

1 You may deliver your written comments to DTSC's
2 Regulation Section on the 22nd Floor of this building, 101
3 I Street, Sacramento, California, 95814.

4 I'm sorry. Last time I made the same mistake.

5 It's 1001 I Street, Sacramento, California,
6 95814.

7 You may fax your comments to 916-324-1808.

8 You may e-mail them to jcregs@dtsc.ca.gov.

9 You may mail them to Krysia Van, Regulations
10 Coordinator, Regulations Section, Department of Toxic
11 Substances Control, PO Box 806 Sacramento, California,
12 95812-0806.

13 Mailed comments must be postmarked no later than
14 5:00 p.m. on October 11th, 2012. And all of these methods
15 of providing comments are provided in the public notice
16 for these regulations.

17 If you wish to submit written comments during
18 today's hearing, you may do so at any time during the
19 hearing. Please hand them to Krysia, who is seated at
20 this table here to my right.

21 The proposed regulations are included in the
22 Department's Exhibit A at the table in front of the
23 entrance of this room. This exhibit includes the public
24 notice for these regulations, the text of these
25 regulations, and the Initial Statement of Reasons. These

1 regulations were duly noticed in the California Regulatory
2 Notice Register and copies of the notice, proposed
3 regulations, and the Initial Statement of Reasons were
4 posted on the Department's website and made available to
5 interested parties upon request. Additional copies of
6 Exhibit A are available upon request by contacting our
7 Regulations Section.

8 Persons wishing to speak at this hearing should
9 be registered witnesses. If you have not yet registered
10 and wish to speak, we ask that you do so now at the table
11 outside the entrance to this room.

12 Testimony will be heard in the order of
13 registration and will be limited to five minutes.

14 Any other persons wishing to speak who have not
15 registered will be afforded an opportunity after the
16 registered witnesses have been heard. There is also a
17 sign-in sheet at the table outside the entrance to this
18 room for persons wishing to indicate their presence at
19 this hearing but who are not necessarily going to testify.

20 The sign-in sheet, along with the list of
21 registered witnesses and those submitting written comments
22 today, will be used to notify interested parties of any
23 post-hearing changes to the proposed regulations.

24 Please note that unless you specifically request
25 notification by mail, we will be using the e-mail

1 addresses provided on the sign-in and registration sheets
2 and e-mail addresses provided with written comments to
3 notify interested parties of any post-hearing changes to
4 the proposed regulations.

5 To enable the audience to hear and to ensure your
6 comments are entered into the record, we can ask that
7 speakers come to the front and speak into the microphone
8 when called. It would be helpful if you begin by stating
9 your name and the organization you represent. Please do
10 spell out your last name for the reporter. Please then
11 indicate the proposed regulatory section or sections that
12 each comment addresses, if applicable.

13 In order to ensure that everyone registered has
14 the opportunity to testify, we ask that you limit your
15 comments to five minutes. If you wish to make additional
16 comments, you will be given the opportunity to do so at
17 the end of the hearing. You will be given a one-minute
18 warning when your time is about up.

19 Randy has an orange one-minute warning card for
20 you. We also ask if you have written comments to submit
21 with your oral comments that you either limit your oral
22 comments to those items not covered in your written
23 comments or you summarize your written comments.

24 Additionally, I ask that you please word your
25 comments as comments and not as questions. As I

1 indicated, we will not be responding to questions today
2 nor will we under the Administrative Procedures Act be
3 responding to questions in the Final Statement of Reasons.
4 If you're ensure about something in the regulations, you
5 may word your comment along the lines of "If this is what
6 this regulation means, then here's my comment."

7 With that, let us begin to hear comments on the
8 proposed regulations.

9 The first witness who has registered to testify
10 is Julia Rege.

11 MS. REGE: Good morning. I'm Julia Rege,
12 R-e-g-e. I work for the Association of Global Automakers.
13 Global Automakers represents international vehicle
14 manufacturers, original equipment suppliers, and other
15 automotive related trade association.

16 I appreciate this opportunity to provide input on
17 the safer consumer product regulations.

18 We recognize DTSC has been working hard to
19 balance, not only the requirements of the law, but also
20 the input from a wide array of interested and important
21 stakeholders. We recognize that considerable progress has
22 been made in a number of areas, such as the initial focus
23 on a limited number of products and chemical combinations
24 and hazard traits. We would like to make clear that we
25 support the overarching goals of the law and regulations,

1 but as drafted, many provisions will create an unworkable
2 system.

3 We urge DTSC to work toward regulatory
4 consistency with other regulatory schemes in the following
5 areas of concern:

6 First, replacement parts. Broad exemption for
7 replacement parts can be found in Europe's REACH Program
8 and end-of-life vehicles directive to prepare products as
9 produced, as well as multiple other US federal and State
10 environmental regulations, including a clear and
11 comprehensive exemption for replacement parts is critical
12 to ensuring that customers can their automobile serviced
13 and repaired to enable continued safety, performance, and
14 reliability.

15 The current exemption for historic product is
16 inadequate to achieve that end because it limits the
17 exemption to parts manufactured prior to the date the
18 product is listed as a priority product.

19 As a consequence, replacement parts to repair
20 historic products will not be exempted if they are
21 manufactured between the listing date of a priority
22 product and completion of the regulatory response process
23 or after completion of the regulatory response process.

24 Thus, the proposal would divert resources from
25 investing in greener technology for future products and

1 would detract from DTSC's goal to implement
2 forward-looking regulations. If the exemption stands as
3 written, the availability of replacement parts is likely
4 to be disrupted. Consumer's warrantees or repairs in
5 general may not be able to be fulfilled. And consumers
6 will bare the cost of buying new automobiles before the
7 useful life of their vehicles has been reached.

8 This is why we believe any replacement parts
9 purchased to repair historic products should be exempted.

10 Second, SB 509 states the Department shall not
11 duplicate nor adopt conflicting regulations for product
12 categories already regulated or subject to pending
13 regulation. To meet both the spirit and the letter of the
14 statute, we believe that DTSC should exempt chemical and
15 product categories that are already regulated or pending
16 regulation in the US.

17 DTSC's proposal to adjust the prioritization of
18 the product does not meet the standard in SB 509 nor AB
19 1879's direction to use to the maximum extent feasible
20 available information from other regulatory bodies. If
21 DTSC's overall intent is to develop a preemptive strategy
22 that reduces the use of toxic substances in the design of
23 products, then focusing any resources on already regulated
24 products is duplicative and will create regulatory
25 uncertainty for any sector already regulated. Such action

1 would undermine the continued investment in green
2 technology, causing a wait-and-see approach that is
3 counter-productive.

4 Third, we remain concerned that any alternative
5 analysis threshold of 0.1 percent is inconsistent and
6 conflicts with other regulatory schemes. We request that
7 DTSC adopt a 0.1 approach originally proposed in 2010, as
8 well as added definitions based on the scientific
9 measurable limit of a chemical.

10 Rather than focus on hazards and exposures of
11 concern, a threshold below 0.1 percent will shift focus to
12 negligible risk, rather than potentially real risk.

13 DTSC has offered limited justification for why
14 the threshold should be lower than the accepted standard
15 at the international, federal, and State levels. While
16 DTSC has deemed the chemical list generated at these
17 levels to be appropriate for wholesale adoption, DTSC
18 appears to have determined these same organizations are
19 using inadequate threshold levels. By adopting a lower
20 threshold, DTSC will make databases used by the auto
21 industry to gather information about the product's
22 content, ineffective and will preclude the utilization of
23 risk assessment information developed outside --

24 HEARING OFFICER MADRIAGO: One minute.

25 MS. REGE: -- of the DTSC setting.

1 In addition, we ask why DTSC is opposing an
2 approach that will require a significant resource
3 investment from both DTSC and the regulated community
4 without a discernable environmental benefit.

5 We will be submitting detailed written comments
6 on these topics, as well as other topics. Thank you for
7 your consideration of our comments.

8 HEARING OFFICER MADRIAGO: Thank you.

9 Next speaker, Ann Grimaldi.

10 MS. GRIMALDI: Good morning. My name is Ann
11 Grimaldi, G-r-i-m-a-l-d-i. I am attorney in the
12 San Francisco office of the McKenna, Long & Aldridge. I'm
13 testifying today on behalf of the Complex Durable Goods
14 Coalition. Thank you for this opportunity to provide the
15 Coalition's testimony.

16 The Coalition represents the interest of a wide
17 range of industries. Our members currently include the
18 Boeing Company, the California Building Industry
19 Association, the Association of Home Appliance
20 Manufacturers, the Alliance of Automobile Manufacturers,
21 Global Automakers, and the Automotive Aftermarket Industry
22 Association, and the Motor and Equipment Manufacturers
23 Association.

24 The companies represented by the Coalition are
25 crucial to the economy of California and the nation.

1 Aside from the economic contributions that flow from the
2 sale of purchase of their goods, these companies directly
3 employ provide hundreds of thousands of jobs in California
4 and nationwide and indirectly support the employment of
5 millions of other individuals.

6 Although the Coalition's membership is diverse,
7 its voice is united here. While we acknowledge the
8 efforts DTSC has made in developing the SCP regulations,
9 we have significant concerns about how the regulations
10 which are overbroad, impractical, and unworkable will
11 effect the manufacturing of complex durable goods.

12 Complex durable goods are not the proverbial
13 widgets. They are not rubber ducks. They are not baby
14 bottles. They include cars, aircraft, washing machines,
15 and houses. These are a few examples. They are composed
16 of hundreds, even thousands, of individual components.
17 The lead time necessary for product design, development,
18 and validation is on the order of years, not months, not
19 weeks.

20 These products are designed to last for several
21 years, or in many cases, decades. These and other unique
22 aspects of complex durable goods manufacturing have not
23 accounted for adequately in the proposed regulations. I
24 describe here six of the Coalition's concerns.

25 First, the regulations inappropriately allow DTSC

1 to superimpose its authority in already regulated areas,
2 with a significant potential to undermine the safety of
3 these goods. Such authority is inconsistent with AB 1879
4 and SB 509. The regulation, therefore, should explicitly
5 exempt products from duplicative regulation.

6 Second, the current definition of manufacturer
7 seems to appear in alteration activities, but contains a
8 qualifying phrase that begins with the word "unless" and
9 goes onto reference COCs. As it stands now, the
10 definition can transform the owner of a repair shop, a
11 local repair shop, into a manufacturer. What is the point
12 of that? The qualifying phrase in the definition will
13 result in confusion and uncertainty in the marketplace,
14 ultimately to the detriment of California's economy by
15 encouraging businesses both large and small to exit
16 California for more predictable business climate. The
17 definition of manufacturer should contain the exemption
18 for repairs and alterations, but DTSC must eliminate that
19 qualifying phrase.

20 Third, the term "component" remains vague and
21 unconcern. Let me give an example. There is a clear
22 difference between a radio and rubber floor mat. Under
23 the proposed definition of component, each could be
24 considered the component of a complex durable good, and
25 each could be subject to an alternatives analysis. But

1 the radio itself is composed of hundreds of different
2 components, assemblies, and systems. Conducting an
3 alternatives analysis from a radio is much more complex
4 and extensive than an alternative analysis for a rubber
5 mat, but a proposed regulations treat them as equivalent.
6 In order for the term "components" to be meaningful and
7 fair in this emissions sector, it must be refined to refer
8 to homogenous materials and eliminate references to
9 assemblies, sub-assemblies, systems, and sub-systems.

10 Beyond this definitional issue, the Coalition
11 proposes that no more than three components be identified
12 in a priority product in a three-year period.

13 Fourth, the proposed regulation does not
14 explicitly exempt spare parts and repair and maintenance
15 of existing products. They must. Nor do the regulations
16 go far enough in the definition of historic products to
17 address the unique aspects of complex durable goods. We
18 can either spend money on R&D and making future products
19 better or go back and re-invent products that present
20 little --

21 HEARING OFFICER MADRIAGO: One minute.

22 MS. GRIMALDI: -- to human health and the
23 environment.

24 The proposed regulations inappropriately embrace
25 the concept of exempting existing products. It is

1 entirely consistent to include an exemption for service
2 parts in that same spirit and for the same reason.

3 Two things. The definition of historic products
4 must be broadened and service parts explicitly included.

5 Fifth, numerous terms and requirements in
6 proposed regulations do not fully -- they fail to account
7 for existing requirements to obtain other government
8 certifications or approvals prior to making changes to a
9 product or its components. And they fail to take account
10 of other specific product characteristics, including
11 intangibles, such as aesthetics.

12 Finally, the Coalition is concerned about the
13 criteria used in proposed Section 69503.2 to evaluate the
14 scope of products. Market presence, statewide sales, and
15 the like are inadequate surveys of a product's exposure.
16 These problems must be --

17 HEARING OFFICER MADRIAGO: Thank you.

18 MS. GRIMALDI: -- fixed. Thank you.

19 HEARING OFFICER MADRIAGO: Next speaker is
20 Bridgett Sharpe.

21 MS. SHARPE: Hello. My name is Bridgett Sharpe,
22 and I am with the Professional Beauty Association.
23 S-h-a-r-p-e.

24 The Professional Beauty Association is a
25 nonprofit trade association that represents the interests

1 of the professional beauty industry in the United States.
2 PBA is the largest organization of salon professionals
3 with members representing salons and spas, distributors,
4 manufacturers, and beauty professionals. Thank you so
5 much for this opportunity to provide our testimony.

6 The professional beauty industry is an important
7 component of the economy of California and the
8 United States, representing more than 900,000 total
9 establishments and annual sales of nearly 40 billion
10 nationwide generated in large part by small businesses.
11 PBA has significant concerns with the acceleration of the
12 rulemaking process in the face of the uncertainty on the
13 part of DTSC on the economic impact of the regulations on
14 businesses, both large and small, not only in California,
15 but throughout the United States.

16 The DTSC has acknowledged that this regulation
17 may have a significant statewide impact directly affecting
18 businesses and that it is unable to quantify the economic
19 impact on businesses.

20 DTSC further recognizes that the regulations will
21 affect and reduce jobs in both in-state and out-of-state
22 businesses, including chemical and product producers,
23 brand name manufacturers, importers and retailers, and the
24 supply chain for a priority product.

25 Although the regulation provides for a process to

1 petition DTSC to add or remove a chemical of concern or a
2 product or chemical combination to or from the priority
3 products list, the scientific basis for determining
4 chemicals of concern and priority products is not clear.

5 The assertion that a product contains a chemical of
6 concern or is a priority product casts as unsubstantiated
7 cloud on the integrity of the chemical producer, product
8 producer, or brand name manufacturer concerning the
9 substantiation of the safety on their products.

10 The petition process, including the adequacy of the
11 protection of trade secrets, must be further publicly
12 vetted and assessed.

13 Alternative assessments must take into
14 consideration 13 factors of eventual chemical exposure for
15 products still in product development and need capturing.
16 The time needed to develop alternative assessments and
17 implement them into existing and new products is not
18 certain and may take years.

19 Under the proposed regulatory scheme, should the
20 DTSC exercise its discretion not to grant an extension of
21 time, a product producer or brand name manufacturer has no
22 choice but to opt out and take the product off the market
23 or face a failure to comply.

24 The adverse economic impact at that point is
25 compounded and that is not only incurred by the chemical

1 producer, product producer, or manufacturer, it is also
2 incurred by the distributors, salons, spas, and
3 independent salon professionals who can no longer obtain
4 the product.

5 Product and inventory which cannot be sold in
6 California represents a loss in sales revenue to
7 California businesses.

8 In the last week, President Obama has stated that
9 small businesses have been the hardest hit by the nation's
10 recession. Indeed, the DTSC has recognized that the
11 adverse economic impact of the Green Chemistry Initiative
12 will affect not only small businesses, but a broad range
13 of others as well, including the loss of jobs.

14 Speculation on the part of the DTSC concerning
15 the possible creation of new businesses at some
16 undetermined time in the future will not deter or solve
17 the adverse economic impact the regulations will impose.
18 We are confident that the DTSC does not knowingly want to
19 take responsibility for a regulatory scheme that it
20 acknowledges will adversely affect a significant component
21 of the California and US economy.

22 Accordingly, DPA respectfully submits that the
23 DTSC further postpone this initiative and publication of
24 final regulations until it can adequately assess the
25 economic impact of implementation on businesses, both

1 inside and outside of California, and provide notice and
2 an opportunity for hearing from stakeholders on this
3 critical action from the Green Chemistry Initiative.

4 Thank you for your consideration of our comments.

5 HEARING OFFICER MADRIAGO: Thank you.

6 Jack Linard.

7 MR. LINARD: Good morning. Jack Linard,
8 Unilever. Linard, L-i-n-a-r-d.

9 Unilever is a major manufacturer of consumer
10 products and has a long history of providing safe
11 value-added products that are desired by consumers. We
12 supported the original legislation and are working hard to
13 ensure its workability.

14 I just have two quick points. I'm a formulator
15 myself, chemist by training. I've been making consumer
16 products for nearly three decades now. So I speak from my
17 own experience.

18 In Section 69501.1A56. The definition of safer
19 alternative means an alternative that in comparison with
20 existing priority product reduces, avoids, or eliminates
21 the use of and/or exposures to one or more chemicals of
22 concern so as to reduce adverse public health and
23 environmental impacts.

24 In reality, this statement is not entirely true.
25 Safer chemicals help. But in fact, their use could

1 increase adverse public health and impacts if
2 microbiological protection is not adequate or the product
3 is manufactured in a non-hygenic manner.

4 There are five types of safety assessments that
5 every formulator should be doing. All must be evaluated
6 when assessing the safety of a product. It's not just the
7 safety of each individual ingredient. The assessments
8 include human health, environmental safety, occupational
9 safety, microbiological safety, and physical safety. All
10 of these must be evaluated on the final product in a risk
11 assessment type of process.

12 The other comment I had just on certified
13 assessors, their role needs to be clarified as to whether
14 they conduct the alternative assessment or whether they
15 just review the assessment to ensure that the proper steps
16 have been taken. The requirement is that you need at
17 least two years of training in alternatives assessments.
18 Speaking from experience, two years is just not enough to
19 know all the ins and outs.

20 The only other requirement I would add for an
21 assessor or an accreditation program is that you need to
22 understand the legal ramifications. Patents are not
23 mentioned. If a patent is preventing you from using a
24 desired alternative, you are not allowed to use it, unless
25 you can figure out a way to get a license to use that

1 patent. So I think you need to make sure that patent
2 regulations as well as anti-trust regulations are
3 considered when doing an alternative assessment.

4 Thank you.

5 HEARING OFFICER MADRIAGO: Thank you.

6 Sarah Amick.

7 MS. AMICK: I'm Sarah Amick from the Rubber
8 Manufacturers Association. My last name is spelled
9 A-m-i-c-k. RMA is the national trade association
10 representing companies that manufacture tires in the
11 United States. Our eight member companies operate 30 tire
12 manufacturing plants, employ thousands of Americans, and
13 produce over 90 percent of the original equipment tires
14 and 80 percent of the replacement tires sold in the
15 United States.

16 We thank DTSC for the opportunity to provide
17 comments at this public hearing. And we also plan to
18 submit for detailed written comments as well.

19 We have three main points we'd like to raise at
20 the hearing this morning.

21 First, RMA supports the inclusion of a de-listing
22 petition process for chemicals of concern and priority
23 products in the proposed rule. The rule includes language
24 that enables a person to petition the Department to
25 evaluate a claim that a chemical or product that contains

1 a chemical should be de-listed as a chemical of concern or
2 a priority product.

3 As with most products available for sale in
4 California, tires contain chemicals. However, the process
5 of manufacturing a tire involves vulcanization, which
6 changes the chemical composition of the chemicals
7 formulated into the tire in the initial stages of the
8 manufacturing process.

9 As a result, the risk for exposure to chemicals
10 in tires is reduced, as the chemicals in tire formulations
11 undergo a chemical reaction during the vulcanization or
12 heating of a tire during the manufacturing process. RMA
13 recommends that certain consumer products, such as tires,
14 ad chemicals present in consumer products at levels that
15 pose no meaningful risk of adverse environmental or health
16 impacts should be removed from the list of chemicals of
17 concern or the list of priority products.

18 The inclusion of a petition process that can
19 provide an early offramp will enable the Department to
20 focus time and resources on the chemicals of concern and
21 priority products that pose the greatest risk to the
22 public.

23 While we support the inclusion of this petition
24 process, we have concern about the timing for the
25 Department to make the determinations about whether to

1 grant or deny the petition. The proposed rule indicates
2 that the Department shall make its determination no later
3 than the next regulatory update of the chemicals of
4 concern or priority products list. However, the proposed
5 rule specifies the chemicals of concern list shall be
6 updated periodically and the priority products list shall
7 be updated at least once every three years. This creates
8 a situation where an entity may have to complete the
9 preliminary and final alternatives analysis before
10 determination to grant or deny the petition has been made.

11 We recommend that a responsible entity should not
12 be required to complete an alternatives assessment until
13 the Department has issued a notice of their decision to
14 grant or deny the de-listing petition.

15 Second, RMA recommends that the DTSC should
16 explicitly consider federal tire safety regulations
17 required by the National Highway Transportation Safety
18 Administration, NHTSA. The proposed rule specifies a
19 responsible entity may request and receive an exemption
20 from the requirements of the rule if the required or
21 proposed regulatory response would conflict with federal
22 requirements. However, the proposal also specifies that
23 if the exemption request or the Departments granting the
24 exemption based solely on conflict with another federal
25 program, the Department may require implementation of a

1 modified regulatory response.

2 RMA has concern that if tires are not granted an
3 exemption from the requirements of the rule based on
4 conflict with federal law that the requirements for
5 chemical substitution could jeopardize tire safety
6 standards as established by NHTSA. The chemical
7 ingredients in tires are present because, in part,
8 critical functions and the composition of tires cannot be
9 modified without great care.

10 As a matter of good business practice, all RMA
11 members make tires that are safe. Changes in tire
12 composition could affect stopping distance of tires, tire
13 ware, tire fuel efficiency, and possibly other
14 safety-related components. NHTSA requires all tire
15 manufacturers self-certify the tires sold in the US meet
16 National Highway Transportation Safety Administration
17 federal motor vehicle safety standards. Any change in the
18 composition of tires typically requires feasibility
19 studies and multiple tests to ensure the tires continue to
20 meet NHTSA safety standards.

21 HEARING OFFICER MADRIAGO: One minute.

22 MS. AMICK: RMA also has concern that the time
23 frames to complete a preliminary and final alternatives
24 analysis in light of the NHTSA safety standards do not
25 provide tire manufacturers adequate time to conduct safety

1 or performance testing on the use of alternative
2 chemicals.

3 Last, RMA has concern about the level of
4 protection that is provided to confidential business
5 information. NHTSA and EPA provide blanket exemptions for
6 confidential business information for tire manufacturers.
7 Trade secret protection is crucial for this industry to
8 maintain competitiveness.

9 We recommend that the rule provide an exemption
10 from the disclosure of ingredients in tires that are trade
11 secrets. And specifically, we recommend that tires should
12 have a categorical exemption as EPA and NHTSA allow and
13 that the regulation include explicit language that exempts
14 the chemical composition of tires as CDI.

15 Thank you for the opportunity to provide comments
16 at today's public hearing, and we will also provide
17 written testimony as well.

18 HEARING OFFICER MADRIAGO: Thank you very much.

19 Next speaker is Davis Baltz.

20 MR. BALTZ: Good morning. Davis Baltz
21 representing Commonweal of Bolinas, California and the
22 statewide coalition of Change California for Healthy and
23 Green Economy. My last name is B-a-l-t-z.

24 We'll be submitting detailed written comments.
25 And obviously five minutes won't be sufficient to give

1 guidance on all of our points. So just limiting to a
2 couple of things today.

3 The first and probably one of the most important
4 is it's extremely important from our point of view that
5 DTSC retain the large chemicals of concern list from the
6 beginning of the regulations. And one of the reasons for
7 this is that I think everyone agrees who has been
8 following this process that under the best circumstances,
9 DTSC is not going to be able to look at very many priority
10 products in the near future. It will be a long process
11 before many consumer products that we should be concerned
12 about will come on the radar screen.

13 So the large chemicals of concern list is
14 important to start to stimulate market forces that will
15 remove problematic chemicals from consumer products more
16 quickly than DTSC can do under these regulations. And I
17 think that listing large chemicals of concern lists will
18 result in a lot of manufacturers taking steps to replace
19 problematic chemicals that are on this chemicals of
20 concern list more quickly.

21 The chemicals of concern list that's being
22 proposed in the regs, they are not being put on there
23 because there is no evidence. These are lists of lists by
24 authoritative bodies that have under rigorous scientific
25 review determined that the chemicals have hazards. And so

1 it's important that authoritative bodies that have already
2 determined hazardous characteristics of chemicals be
3 included and that they continue to be called chemicals of
4 concern because they have been vetted by authoritative
5 bodies.

6 Second point I would like to make today concerns
7 the alternative analysis thresholds, also known in other
8 circles as diminimous exemptions. We are very pleased
9 that the new draft has eliminated any blanket threshold
10 that would exempt chemicals from being considered and that
11 DTSC will set a case-by-case alternative analysis
12 thresholds based on the scientific evidence that these
13 chemicals may pose. A blanket 0.1 or 0.01, which went
14 further than other previous bodies have stated, is
15 important because chemicals have different affects at
16 different concentrations. And even the lower originally
17 proposed threshold of 0.01 percent would miss many
18 chemicals for which we know there are harmful effects
19 below that level. You don't want to miss some problematic
20 chemicals by orders of magnitude. So DTSC's decision to
21 take this on on a case-by-case basis is welcome and we
22 support that.

23 Occupational exposure, protection of workers in
24 the regs is very important. We've seen progress over the
25 various drafts and pleased to see that workers are now

1 included as a sensitive population. But I think the regs
2 need to go further in ensuring that occupational exposures
3 and people who work with chemicals in California are
4 afforded the same level of protection as other consumers.

5 Final point I'll make today concerns cumulative
6 exposures. This is a difficult concept to build into a
7 regulation --

8 HEARING OFFICER MADRIAGO: One minute.

9 MR. BALTZ: I think we all recognize that.

10 However, DTSC is to be commended for trying to
11 grapple with the fact that we are exposed to many
12 chemicals every day and that they can work together to
13 have synergistic or additive effects. And while it would
14 be very hard to determine exactly how to regulate this,
15 it's an important precedent for a regulatory agency to
16 recognize the cumulative effects are a real phenomenon in
17 the world and we need to take steps to address that. And
18 we reduce exposures where we can.

19 As I said, we'll be submitting detailed comments
20 by the October 11th deadline. And thank you for all your
21 work through these past years.

22 HEARING OFFICER MADRIAGO: Thank you.

23 Fred Jones.

24 MR. JONES: My name is Fred Jones, J-o-n-e-s.

25 And I represent the Professional Beauty Federation of

1 California.

2 You heard a few moments ago our national
3 counterpart, the Professional Beauty Association, and they
4 listed some concerns. Most of those focused on the
5 manufacturers of beauty products. I want to focus,
6 therefore, my time on the small business men and women
7 that run about 50,000 salons in California. There are
8 about 453,000 individuals in California licensed with the
9 State Board of Barbering and Cosmetology. And I would
10 venture to guess less than 40 have or will ever read this
11 regulation package. And yet, according to Section
12 69501.2, entitled "Duty to Comply and Consequences of
13 Noncompliance," those salon owners and individuals will be
14 considered "responsible entities if manufacturers and/or
15 distributors fail to comply." And they will have to
16 regularly check at least every 90 days the DTSC website to
17 see if there are any chemicals that are in their products
18 that are on your list. And if there are, they have to
19 within 90 days fill out a fairly extensive form yet to be
20 drafted identifying themselves, all of their salons, their
21 manufacturers and importers, information about the
22 products and chemicals and so forth.

23 Furthermore, retailers, if manufacturers do not
24 provide disclosures on labels, will have to post detailed
25 information about products in their salons. If a salon

1 has at least 11 employees in California, they are
2 currently required to post 19 different notifications in
3 their salons in the state. So we're going to add a 20th
4 to salons.

5 I'm not sure any consumers or stylists will be
6 able to read 20 posters every day or when they come in for
7 a haircut.

8 Speaking just briefly to manufacturers' issues,
9 according to Section 69506.9, the advancement of green
10 chemistry and green engineering, "The Department may
11 require a manufacturer to initiate a research and
12 development project or fund challenge grants pertinent to
13 the priority product uses."

14 Very interesting use of government authority to
15 require a private business to fund grants.

16 And finally, I'll just conclude with the overall
17 concern we had with further government red tape. In the
18 worst economic times of our nation in any of the lives of
19 those sitting in this room, arguably since the Great
20 Depression, is this really good time to initiate a
21 regulation package that will be applicable to my industry
22 that actually is almost as long as the entire State Board
23 of Barbering and Cosmetology regulations currently
24 governing salon licensing and operations.

25 The more red tape you put on small businesses,

1 the less efficacy your rules will be and will have. You
2 will be undermining the rule of law by simply deluging
3 less sophisticated salon owners with laws they won't
4 understand, won't read, and often will not be able --

5 HEARING OFFICER MADRIAGO: One minute.

6 MR. JONES -- to comply with.

7 How will DTSC notify our nearly half-million
8 licenses about this regulatory package? Whenever the
9 State Board sends out a regulatory package to our 50,000
10 salons, it costs them about \$47,000 to mail them. Are you
11 prepared to send this package to a half a million
12 individuals who will have to comply? Again, this is a
13 pretty poor time to put an incredible amount of red tape
14 burden on small businesses in California.

15 Thank you for your time.

16 HEARING OFFICER MADRIAGO: Thank you.

17 Next speaker -- I can't quite read the last name.
18 I hope I get this correct. Andrew Chang.

19 MR. CHANG: Andrew Chang, C-h-a-n-g. I'm with
20 the California Foundation for Commerce and Education.

21 My name is Andrew Chang. I'm managing director
22 of a fiscal and economic firm in Sacramento. Served in
23 various functions in the California State governing
24 commerce and Governor's office, Chief Deputy Director of
25 Department of General Services, and Assistant Secretary of

1 State and Consumer Services Agency where my
2 responsibilities include overseeing the agency's fiscal
3 and economic assessments for proposed regulations.

4 On behalf of the Foundation, I'm here to comment
5 on DTSC's fiscal and economic assessment of the safer
6 consumers products regulations. Based on my experience,
7 DTSC's compliance is sufficient for administrative and
8 content issues.

9 First, DTSC's filings appear to be a work in
10 progress and are marked preliminary. From my experience,
11 filings must be in the final format when they're submitted
12 to the Office of Administrative Law.

13 Second, DTSC submission contradicts itself on
14 numerous issues. Section one of form 399 fails to note
15 this regulation will impact complex competitiveness and
16 imposes significant reporting requirements, contradicting
17 the assessment in Attachment 2 of that very same filing.

18 Furthermore, DTSC's form 399 fails to note that
19 the effect on State expenditures, even though Attachment 3
20 states the regulation will require millions of dollars to
21 implement.

22 Third, DTSC fails to provide the information
23 specified in statute. Specifically, Government Code
24 states that the proposing agencies shall assess the
25 potential for adverse economic impact and shall provide

1 information in regards to impact on California
2 competitiveness, jobs, and businesses.

3 Moreover, DTSC is administratively required to
4 provide the following information: Net cost benefit
5 information, impact on industries, reporting burdens,
6 impact on housing, guidance on alternatives, and State and
7 local fiscal impact.

8 DTSC notes that its too difficult to assess the
9 economic impact and overlooks existing studies on these
10 efforts. Our preliminary review of the literature on
11 Europe's REACH program suggests there may be indeed
12 significant costs. The Commission on European Communities
13 notes administrative costs for its REACH program could
14 total \$8 billion yearly over 15 years.

15 A study by Michael Guesta indicates that the
16 direct and indirect costs could cost over two billion
17 dollar euros for Austria alone.

18 A study by Jan Vernon indicates that REACH cost
19 for registration, testing, and reporting alone could cost
20 27 billion euros over 15 years. An industry study found
21 one-time product costs could be as high as 20 percent of
22 the product.

23 DTSC further fails to adequately assess the total
24 State fiscal impact. DTSC estimates that personnel costs
25 associated with the limited number of classifications will

1 cost the State approximately \$16 million per year.

2 Based on my experience in State government
3 operations, this figure appears to understate the total
4 cost. The classifications specified by DTSC do not
5 account for the specification analysis that will be
6 required to renew the regulation.

7 Also, DTSC fails to account for significant costs
8 associated with developing the program infrastructure
9 which protects trade secrets, establish IT assistance, and
10 consult and studies and meet other operational needs.

11 More importantly, DTSC further fails to provide
12 adequate analysis regarding the phase in of costs and
13 benefits. This is a critical component of this particular
14 assessment. The literature suggests that the costs will
15 overwhelmingly be front-loaded and benefits will not
16 materialize until years later. When we remove a chemical,
17 the benefits of what the cost materialize at some point in
18 the future.

19 Our preliminary analysis indicates that the cost
20 of the regulation would exceed the benefits by more than
21 \$70 billion the first 20 years of implementation.

22 In conclusion, the other goals to this regulation
23 are laudable and the evidence suggests there is potential
24 for significant economic harm. DTSC has failed to
25 diligently assess the potential for adverse impacts on the

1 California economy as it's required.

2 HEARING OFFICER MADRIAGO: One minute.

3 MR. CHANG: The preliminary analysis should be
4 returned to DTSC, and DTSC should perform a thoughtful
5 analysis that is required.

6 HEARING OFFICER MADRIAGO: Thank you.

7 Norman Plotkin.

8 Mr. PLOTKIN: Good morning. Norman Plotkin
9 representing the Automotive Aftermarket Industry
10 Association. Plotkin, P-l-o-t-k-i-n. I'm used to the
11 stingy Air Board, so I'm not quite sure what to do with
12 five minutes, so I'll do my best.

13 AAIA is recognized the trade association, the
14 voice for the \$300 billion motor vehicle aftermarket for
15 car care industry. Employs four million people,
16 contributes more than two percent of the US gross domestic
17 product. Here in California, it's a \$30 billion industry
18 employing 250,000 Californians.

19 AAIA is more than 23,000 member and affiliates,
20 manufacturers, distributing and selling motor vehicle
21 parts, accessories, service, tools, equipment, materials
22 and supplies. Through its membership, AAIR represents
23 more than 100,000 repair shops, parts stores, and
24 distribution outlets.

25 AAIA members appreciate the goal of the green

1 chemistry and safer consumer product regulation be
2 considered in the proceeding. However, if the current
3 draft of the proposed regulation becomes final, AAIA
4 members will experience severe adverse effects that could
5 damage their businesses, the economy, and potentially
6 weaken automotive safety.

7 AAIA is a member of the Complex Durable Goods
8 Coalition, and we would like to associate ourselves with
9 Ann's earlier testimony. In our testimony, AAIA would
10 like to emphasize some elements of concern within the
11 draft proposed regulation that could have a significant
12 negative impact on the automotive aftermarket in
13 California.

14 To begin, the definition provided in 69501.140
15 for a manufacture should not include the de-listed action
16 of A, B, and C under any circumstances.

17 The majority of automotive aftermarket entities
18 involved in the business of repairing vehicles or
19 returning them to working order under DMV regulations do
20 not possess the capabilities to manufacture consumer
21 products in a generally understood sense of the term.
22 These businesses rely upon an a network of organizations
23 within the aftermarket supply chain to provide them with
24 necessary tools, equipment, parts, consumer products to
25 operate their businesses.

1 The manufacturing of items required to undertake
2 automotive repair have occurred long before and by several
3 other entities prior to reaching their repair-focused
4 businesses. Identifying activities such as repair,
5 refurbish, installation of standardized components and
6 making non-material alterations could hold repair-focused
7 businesses accountable for the content of chemicals of
8 concern in products after having no control over the
9 initial methods of production that dictated the product's
10 make up. This would be similar to holding homeowners who
11 prefer do-it-yourself activities and repairs accountable
12 for the chemical content of the paint they purchase from
13 their local hardware stores.

14 The automotive repair focused entities are
15 typically small- to medium-size businesses that simply
16 cannot shoulder the cost burden of the alternatives
17 analysis and regulatory process outlined in the current
18 proposed regulation.

19 The threat of such expense could be crippling to
20 the future automotive repair businesses in California and
21 ultimately weaken the availability of convenient,
22 reasonably priced vehicle service and locations within the
23 state.

24 Secondly, the definition of component in
25 69501.121 is far too broad and should be more narrowly

1 focused to address the specific material within a consumer
2 product that causes immeasurable significant and threat to
3 public health. The inclusion of the entire assembly,
4 sub-assembly, systems, or sub-systems creates an
5 unnecessary burdensome scope for responsible entities to
6 address when working to respond to the requests of the
7 proposed regulation, should they be identified as a
8 priority product.

9 AAIA believes the definition of component should
10 be narrowed to only homogeneous material within one piece
11 of an overall product more narrowly focusing the
12 definition and streamlining the process to achieve the
13 desired outcome of the safer consumer products regulation.
14 This would allow both identifiers of priority products and
15 entities responsible for addressing the chemicals of
16 concern within those products to immediately address the
17 public health, threat, and a minimum burden to business.

18 Thirdly, while this --

19 HEARING OFFICER MADRIAGO: One minute.

20 MR. PLOTKIN: Thirdly, while historic products
21 are exempted from the definition of consumer product or
22 products has found that 69501.122(b)(1), AAIA would like
23 to have that exemption extended to service parts or
24 historic products. Parts to repair historic products will
25 develop based on certain parameters generated around those

1 historic items. The proposed regulation defines an
2 historic product as no longer being in production,
3 therefore significant concern exists around the ability to
4 re-engineer service products that continue to perform
5 properly as part of an original product that is no longer
6 in production.

7 We'll be providing longer written comments and
8 more details for the record outlining additional issues.
9 We appreciate the opportunity to present today.

10 HEARING OFFICER MADRIAGO: Thank you.

11 Maureen Gorsen.

12 MS. GORSEN: Hi. My name is Maureen Gorsen,
13 G-o-r-s-e-n. I'm a partner in the Law Firm of Alston &
14 Bird collocated in Los Angeles and Sacramento. And I'm
15 here on behalf of the Alliance of Automobile
16 Manufacturers.

17 Briefly, the Alliance is an association of twelve
18 vehicle manufacturers, including BMW, Chrysler, Ford,
19 General Motors, Jaguar, Land Rover, Mazda, Mercedes-Benz,
20 Mitsubishi, Porsche, Toyota, Volkswagen, and Volvo.

21 The Auto Alliance is deeply concerned that we are
22 four years into the development of regulations to
23 implement the laws, and yet we can still not ascertain the
24 workability of the regulations or whether compliance can
25 practically and feasibly be achieved. While the draft

1 regulations contemplate a robust analysis and procedures
2 for industry to follow, it is disappointing that the
3 department has given such short shrift to the procedures
4 and analysis it is required to comply with under the APA,
5 CEQA, and the multi-media analysis requirements.

6 The Department has deprived stakeholders of the
7 ability to meaningfully comment by bifurcating the
8 implementing regulations into separate segments. This
9 rulemaking improperly defers compliance details, such as
10 what chemicals and which products are to be selected, how
11 hazard traits are defined, and how the Department will
12 require an AA so as to prevent stakeholders from
13 understanding how they are impacted and how to provide
14 meaningful input into the crafting of this regulatory
15 program.

16 While the department will post alternatives on
17 its website in the future, that industry will be compelled
18 to analyze. The Department has not itself considered
19 alternative regulatory designs to implement this statute.

20 In addition to its failure to comply with the
21 APA, the Department should have prepared a master EIR to
22 compare the reasonably foreseeable changes in the
23 environment. While the economic analysis identifies
24 future changes in the environment on which it bases its
25 economic forecast, the Department is under a CEQA

1 obligation to consider those same reasonably foreseeable
2 changes and prepare a master EIR to create a framework for
3 decision making in AAs and in the selection of regulatory
4 responses for the inevitable trade-offs between
5 environmental impacts.

6 We have been participating diligently, providing
7 solutions to problems with practicality and workability of
8 the language for four years. We are frustrated that many
9 of our minor language changes that would enable the entire
10 regulatory structure to be workable, have been repeatedly
11 ignored. While we still have many concerns, we have
12 identified top five revisions that, if made, could go a
13 very long way to ensuring these regulations are practical
14 and meaningful.

15 First, the draft regulation should eliminate
16 duplicative regulation by following the statute and
17 ensuring that products regulated by another federal or
18 State program are not subject to these regulations.

19 Second, the draft regulation should revise the
20 regulatory response to be practical. The regulatory
21 responses should be tailored to address the chemical of
22 concern in the priority product, and provisions allowing
23 for imposition of the financial guarantee and compensation
24 to retailers collecting used products should be
25 eliminated, as they are not authorized by statute, nor do

1 they relate to the statute's purpose, which is to identify
2 safer substances.

3 Third, the draft regulation should be revised to
4 achieve an achievable project scope. In no case should a
5 highly durable product composed of any requirements be
6 required to conduct more than five searches for safer
7 substances in three years. Five safer chemical
8 substitutions in three years is an extraordinarily
9 ambitious schedule. Spare parts for existing products
10 should also be exempt.

11 Fourth, the draft regulation should set an
12 achievable chemical scope. We urge the Department to
13 adopt PQL for intentionally added ingredients.

14 Fifth and last, the draft regulation should set
15 an achievable reporting scope. There are far too many
16 notifications that will would only add clutter and
17 administrative burden and detract from the statute's
18 purpose of finding safer substitutes.

19 Moreover, requiring each of these notifications
20 to be signed by corporate officer is overkill. Will the
21 Director of the Department be signing off on every single
22 notification in AA or allow delegated staff to do so?
23 Large organizations cannot function if its officers are
24 required to become administrative notaries.

25 Without significant change to these five and

1 multiple areas, other areas in the draft regulations, the
2 Department will be frustrated in its ability to implement
3 them. Industry will be facing compliance uncertainty.
4 And the statute's laudable goals will be thwarted.

5 Thank you.

6 HEARING OFFICER MADRIAGO: Thank you.

7 Jane Livingston.

8 MR. LIVINGSTON: I'm Gene Livingston,
9 L-i-v-i-n-g-s-t-o-n. I'm with the Law Firm of Greenberg
10 Traurig, and I'm here today on behalf of the American
11 Cleaning Institute.

12 In the time allotted, I'd like to focus on the
13 trade secret provisions right now. The statute that you
14 are purporting to implement, interpret, and make specific
15 requires that the Department shall protect trade secrets.
16 And in looking at the regulation and some of the
17 requirements that you have included in here and looking at
18 your Initial Statement of Reasons, I think I understand
19 where some of the confusion has arisen with what you have
20 required and the law.

21 But first, let me just the Civil Code sets out in
22 the Uniform Trade Secret Act the definition of a trade
23 secret. It's information that derives independent
24 economic value, actual or potential, for not being
25 generally known to the public or to other persons who can

1 obtain economic value from its disclosure or use, and is
2 the subject of efforts that are reasonable under the
3 circumstances to maintain its secrecy.

4 The Uniform Trade Secret Act authorizes people
5 whose trade secrets have been misappropriated to bring
6 lawsuits to seek injunctive relief for damages. So there
7 are cases out there that contain a number of factors
8 relating to entities bringing lawsuits under this Act.

9 But that's not your role. Your role is not to
10 address misappropriation. Your role is to protect trade
11 secrets. And so in Section 69510(a), you set out a number
12 of paragraphs where you require specific information. For
13 example, paragraph 6 requires that the value of the
14 information be provided to the Department. Well, the
15 statute talks about that it has derived independent
16 economic value. The fact that a trade secret ingredient
17 is used in a product that has commercial value and that
18 that manufacturer of that product is competing with
19 somebody else in the same area demonstrates that it has
20 economic value. You don't need to know the precise amount
21 of that value.

22 Moreover, that provision raises the inference
23 that you're saying, well, if it's more than X amount, then
24 we will find it to be a trade secret. But perhaps if it's
25 less than that amount, we will conclude it's not a trade

1 secret.

2 Similar comments could be made with respect to
3 paragraph 7. The estimated amount of the effort that was
4 expended in developing the information. Again, that's not
5 relevant in determining whether it derives independent
6 economic value. It may be evidence to show what that
7 value is or what the harm was to the entity whose trade
8 secret was misappropriated. But again, that's not your
9 function.

10 Then paragraph 8 says how easy is it to reverse
11 engineer. And your Initial Statement of Reasons says,
12 well, the definition talks about how that is a legitimate
13 way of acquiring trade secret information. Yes, that's
14 true. But that's not relevant to what you're doing here.
15 Whether somebody could reverse engineer and discover what
16 a chemical is by spending millions of dollars and taking
17 several years or whether it could be done perhaps if
18 somebody got lucky, first of all, it's not even something
19 that's really knowable. What is the manufacturer to do to
20 say in the document that it's led to, we think if somebody
21 were to make these kinds of efforts, they could reverse
22 engineer this ingredient. And you're providing the
23 roadmap for somebody to do that. Again, that's just a
24 very impractical provision and it's not related to the
25 second provision --

1 HEARING OFFICER MADRIAGO: One minute.

2 MR. LIVINGSTON: -- whether sufficient efforts
3 have been made to protect the secrecy.

4 Let me jump to Subdivision F and G of that
5 section. It's true that the statute says that the hazard
6 trait submissions are not to be protected. What you have
7 said is that the chemical associated with that cannot be
8 protected either. And that is inconsistent with the
9 statute. I'm aware that for many, many years COSTA has
10 separated the two. There is a debate now to require the
11 disclosure. And that's part of the reform effort that's
12 being made in Congress, but it's not been implemented.
13 And the law today under the statute that you're
14 implementing requires protection of the trade secret. And
15 that is the chemical information, and that's not the
16 hazard and trade submission. So I submit that's
17 inconsistent with the statute. Thank you.

18 HEARING OFFICER MADRIAGO: Thank you.

19 Robert Callahan.

20 MR. CALLAHAN: Good morning. Thank you for the
21 opportunity to comment.

22 My name is Robert Callahan, C-a-l-l-a-h-a-n. I'm
23 with Technology Association of America, a national
24 organization representing nearly 1,000 technology
25 companies across the country, nearly half of which are

1 based in California.

2 My comments today are also shared by the
3 Information Technology Industry Council, with whom we will
4 be providing joint written comments before the deadline on
5 behalf of the tech industry.

6 Our members have long been leaders in innovation
7 and sustainability. Often taking measures to exceed
8 regulatory measures on environmental design, energy
9 efficiency, and product stewardship. We've been eager to
10 help develop a safer product regulation that would expand
11 on the environmental efforts of our leading companies. We
12 drive improvements in environmental protection and
13 performance and would ensure California's continued
14 leadership in technological innovation.

15 Unfortunately, this regulation at this point
16 falls well short of these goals in several areas.

17 First, when AB 1879 was signed into law by
18 Governor Schwarzenegger, he specifically noted that AB
19 1879 and the subsequent regulations developed by DTSC were
20 to draw on lessons learned in other jurisdictions and to
21 take into account programs in other states, countries, and
22 regions, such as EU and to build upon their experience,
23 data, and expertise.

24 Unfortunately, there is little opportunity for
25 comparing regulatory requirements across jurisdictions and

1 learning from these experiences apparent in these
2 regulations. The lack of harmonization with other
3 programs and the vast opportunity for duplicative
4 regulation created by these rules is a very big concern
5 for us.

6 Here's one example. Worldwide chemicals
7 management programs and regulations, such as the global
8 harmonized system for chemical reporting on the material
9 safety data sheets, the EU REACH directive for reporting
10 of chemicals and articles, and the Consumer Product Safety
11 Improvement Act, also incorporate a diminimous threshold
12 below which no action is required.

13 In addition, specifically for the electronics
14 industry, the EU Ross directive and the electronics
15 product management method from China, known as China Ross,
16 both have diminimous thresholds for restricted chemicals
17 and electronic products. The process in the current Safer
18 Consumer Products Proposal requires manufacturers to
19 submit a significant amount of data to demonstrate that
20 certain chemicals are not present in a product above the
21 alternatives analysis threshold and requires the
22 Department to commit significant resources to review this
23 data.

24 The evidentiary burden is significant. Every
25 company that is below the threshold and seeking to notify

1 the Department as such would have to, for example, include
2 a notification in their notification analytical laboratory
3 testing protocols and results used in reaching their
4 determination, as well as information regarding quality
5 control, quality assurance protocol and information,
6 concerning the testing laboratory.

7 This is an extremely resource intensive
8 compliance obligation for a company that is simply
9 notifying the Department that they are below the threshold
10 limit. We understand that the Department would prefer
11 more information rather than less. But remember, the
12 intent of such threshold in all other jurisdictions is not
13 to let harmful things slide under the radar, but rather to
14 establish a value below which there is typically no
15 evidence of harm and to best focus regulators on the
16 situations where there is a significant risk of harm.

17 Requiring manufacturers that otherwise would not
18 be wrapped up in the regulatory process to file such
19 information or requiring substantial resources of the
20 Department to presumably review all this information is
21 counter to the spirit and intent of such thresholds and
22 will distract the Department from the central program.

23 Furthermore, as currently written, any priority
24 product, whether it has a chemical of concern or not, will
25 be subject to this process. So products that never had

1 the chemical of concern or have been re-designed to use
2 different chemicals or technologies or materials but
3 perform the same task will be subject to submitting such
4 information in order to properly notify the Department of
5 their exemption.

6 Given the apparent burden of proof to demonstrate
7 the chemicals are not present, any listed priority product
8 may have to be tested for any chemical of concern that may
9 be present, even if the chemicals of concern are not
10 intentionally added or not expected to be present, even at
11 trace levels. This seems to be a significant distraction
12 from the statutory purpose of the program.

13 We also feel the regulations need to be less
14 subjective and more focused on process. Currently, the
15 regulations are overly flexible in several areas, mostly,
16 but not exclusively, in the prioritization and regulatory
17 response areas. While the Department may be looking for
18 flexibility to allow for changes in science and the
19 response to new information in chemicals management, in
20 many cases, the overly flexible language will leave the
21 regulated community confused as to what and will happen.
22 While the Department currently is assuring industry that
23 it will be consistent across individual cases, future
24 administration may take different approaches if given the
25 regulatory ability to do so. This presents serious

1 concerns for regulatory predictability, especially when
2 considering the amount of discretion provided to the
3 Department leaves the regulation itself vulnerable to
4 outside public or political influence, rather than
5 insulating the Department from such pressure by providing
6 a clear and objective science-based process.

7 Finally, I'll mention a few more points in eleven
8 seconds, that we are concerned about the 1200 chemicals of
9 concern. This will create public confusion and fear that
10 is unnecessary and actually harm the efforts of the
11 program.

12 HEARING OFFICER MADRIAGO: Thank you.

13 MR. CALLAHAN: Chemicals of interest would be
14 better. Thanks.

15 HEARING OFFICER MADRIAGO: Cara Welch.

16 Ms. WELCH: Thank you for the opportunity to
17 comment.

18 I'm Cara Welch, W-e-l-c-h, Senior Vice President
19 of Scientific and Regulatory Affairs for the National
20 Products Association.

21 NPA was founded in 1936 to promote and protect
22 unique values and shared interests of retailers and
23 suppliers of national products. We represent almost 800
24 suppliers of dietary suppliments, nutritional foods,
25 personal care products and other natural remedy products,

1 as well as over 1200 retailers of those products.

2 While NPA has many comments, there are two points
3 I'd like to cover now.

4 The petition process offers the possibility of
5 abuse. Therefore, the process should be suspended for
6 several years.

7 Second, the retailer obligation should not attach
8 until an alternatives analysis had been completed by
9 non-retailers.

10 And third, the AA process is still far too
11 burdensome for small manufacturers and an alternative is
12 needed.

13 So first, the petition process allows persons to
14 circumvent the careful linear process DTSC put together
15 based on their evaluation of priorities. What would
16 prevent 100 petitions from being filed during the first
17 week? This would place an unnecessary burden on DTSC to
18 review the petitions within the 60-day deadline.

19 Petitions would derail the limited approach DTSC
20 now advocates and could be filed for any reason, such as
21 to attack the reputation of competitive products to create
22 an adverse public record, or as a result of misinformation
23 or sensationalism in the press.

24 We recommend the petition process be suspended
25 for five to seven years to allow the priorities DTSC put

1 in place to unfold without the distraction of petitions.
2 We also recommend petitioners be required to document
3 technical qualifications pertinent to the subject of the
4 petition and to certify they have no direct personal
5 financial stake in the outcome of the petition process.

6 Retailer burdens are unreasonably heavy and
7 inevitably will lead to negative consequences. Not all
8 retailers can continuously monitor websites for priority
9 products and other proceedings due to the lack of
10 resources.

11 Additionally, as DTSC forces retailers to
12 identify themselves as sellers of priority products, we
13 predict many retailers simply will remove those products
14 from the shelves. Thus, DTSC's designation of a priority
15 product is effective and immediate product sales ban.
16 Consumers may well be denied safe and lawful products
17 simply because retailers will not take on the burdens of
18 the law. We recommend no retailer's responsibility of any
19 sort until the AA process is complete. Retailers should
20 never be charged with conducting AAs. If products are
21 later banned or recalled, DTSC can send notice to the
22 public in an effort to cover all such items.

23 Third, the AA process is very complex,
24 cumbersome, and certainly beyond the financial and
25 technical ability of small/medium manufacturers. The

1 notion that similar parties can band together to have
2 group AAs is likely to be unworkable due to intellectual
3 products or other confidential information that
4 distinguishes one product from another on the market.

5 There is also the issue of free riders, which can
6 arise which some parties fund an AA, but many more rely on
7 the results.

8 Due to the overall complex and costly AA process,
9 the likely result will be to go through all the products
10 before there is proof of products as anything other than
11 safe and lawful.

12 We'd recommend a streamlined AA option be
13 developed for small- to medium-size manufacturers.

14 Finally, the regulations as currently written are
15 burdensome on both DTSC and the regulated community and we
16 believe industry can timely submit and DTSC can timely
17 evaluate AAs. This inherent complexity renders the rule
18 inoperative from day one, practical effect. Why not start
19 with a small pilot? DTSC could evaluate one product for
20 one chemical concern to give an example of how the rules
21 actually work.

22 The NPA will be submitting formal comments closer
23 to the October 11th deadline on this topic as well as
24 others. Thank you for your time today.

25 HEARING OFFICER MADRIAGO: Thank you.

1 MS. LYNCH: Good morning. And thank you for the
2 opportunity to present comments.

3 I'm Cathy Lynch, L-y-n-c-h. I'm representing the
4 American Forest and Paper Association. AFAPA is the
5 national trade association representing pulp, paper,
6 packaging, and wood products manufacturers and forest land
7 owners in California. Our industry employs more than
8 54,000 individuals and operates 489 manufacturing
9 facilities.

10 The estimated State and local taxes paid by the
11 forest product industry total \$318 million annually. I
12 want to focus my comments today on our recycling
13 operations and the impact these operations will have on
14 recycling.

15 Paper recycling is one of the nation's greatest
16 American and environmental success stories. AFAPA is a
17 leader in promoting paper recycling and recovery. In
18 2011, a record high 66.8 percent of the paper consumed in
19 the US was recovered by recycling. Paper and paper board
20 recovery has increased 81 percent since 1990 and 2011.

21 In addition, in 2011, the amount of paper that
22 was recovered for recycling saved 174 million cubic yards
23 of landfill space. The industry has set a very ambitious
24 goal to increase paper recycling to 70 percent by 2020,
25 well ahead of actually California's goal.

1 In addition to supporting the Green Chemistry
2 Alliance's comments, I want to focus on two particular
3 points today. The proposed safer consumer products
4 regulations largely ignore the input of those who design,
5 manufacturer, and sell recycled content products in
6 California. The draft proposal explains that DTSC may
7 specify a less stringent alternative analysis threshold
8 level if the source of the chemical of concern is a
9 contaminant in recycled materials and meets other
10 criteria, including the chemical cannot reasonably be
11 removed from the product.

12 We appreciate the proposal includes an option
13 that the DTSC may ease the threshold level for recycled
14 feedstock. However, we do believe that it creates a
15 concern with a disproportionate burden on those who use
16 recycled feedstock. Will create a disincentive for using
17 recycled feedstock and will be counterproductive to
18 recycling programs.

19 AFAPA requests an exemption for recycled
20 feedstock to ensure that manufacturers will not be
21 discouraged from selling recycled content products in
22 California. Added cost to the manufacturing of recycled
23 content products creates by this regulation can lead to
24 more material being landfilled, reduce demand for recycled
25 content, and will hinder Californian's ability to achieve

1 its 75 percent recycling goal without creating any public
2 health benefits.

3 Exempting unintentionally added chemicals from
4 the regulation's requirement is consistent with other
5 California, federal, and international chemical regulatory
6 policies. In addition, we would like to point out that we
7 believe the food packaging is also a regulatorily
8 duplicative effort. We would like to see an exemption for
9 this. Food content materials are also fully regulated by
10 the US Food and Drug Administration and California
11 agencies to protect public health and the environment from
12 potential exposures to food content materials throughout
13 the full life cycle.

14 Further regulation of these materials by DTSC
15 under the Green Chemistry Initiative would be duplicative
16 and in conflict with the existing federal regulatory
17 scheme as the Green Chemistry Initiative specifically
18 prohibits regulatory duplication. Modern food packaging
19 is already designed to preserve the quality and safety of
20 the food and extend the shelf life of products preventing
21 food waste, including food content materials, within the
22 scope of the California's Green Chemistry Initiative may
23 impede our industry's development of new food packaging
24 materials that can improve --

25 HEARING OFFICER MADRIAGO: One minute.

1 MS. LYNCH: -- the safety and environmental
2 profile of these materials as well as the safety, quality,
3 and availability of the food supply.

4 In closing, we respectfully ask you to re-examine
5 the process for these regulations with particular emphasis
6 on looking at the recycling component.

7 We want to thank you for the opportunity to
8 provide these comments. I won't provide these written
9 comments to you today and further comments before the
10 October 11th deadline. Thank you.

11 HEARING OFFICER MADRIAGO: Thank you.

12 Dawn Koepke.

13 MS. KOEPKE: Thank you. Good morning.

14 Dawn Koepke with McHugh, Koepke and Associates.
15 Also Co-Chair of the Green Chemistry Alliance. Thank you
16 for the opportunity to speak today.

17 The Green Chemistry Alliance, as I know you all
18 well know, but for the purposes of the record, is a very
19 diverse and very large coalition of manufacturers as well
20 as associations and a variety of industries in the supply
21 chain who all came together after the 2008 legislation was
22 passed in an effort to work together to find middle ground
23 on a number of issues related to this effort and to work
24 closely with the Department administration and Cal/EPA as
25 a whole to ensure these regulations would be implemented

1 in a balanced, fair, strong, scientific manner.

2 And we've continued to operate in that way, tried
3 to be very solutions-oriented over the last four years
4 that we worked in this regard. And the Coalition as a
5 whole represents well over 300 trade associations,
6 individual companies, and ultimately is really actually
7 growing by the week.

8 Of note is that you've noted there are a number
9 of different industries represented here today, many who
10 have spoken, many that are here not going to speak, and
11 many that are not able to be present today, that not only
12 are based here in California but based in other parts of
13 not only in the United States, but internationally that
14 will be impacted by these regulations. And they've all
15 voiced very serious concerns, whether through their trade
16 association or individually, about these regulations and
17 the fact there are concerns relative to lack of clarity,
18 unrestricted just authority by the Department over supply
19 chain, consumer product manufacturing, sale, and so on.

20 Also grave concerns that although various very
21 detailed requirements and science-based decision-making is
22 required by manufacturers and those required to comply
23 with the regulation, highly concerned about whether those
24 decisions that are made by the Department are also based
25 in sound science. There seems to be a lack of clarity

1 regarding those decision-making points and what those
2 decisions would be made upon.

3 Also these various trade associations and
4 companies have voiced serious concerns and have enacted
5 those specifically in a letter that was delivered to the
6 Governor personally and signed by over 170 individual
7 companies and over 70 trade associations, totaling over
8 240 signatures, voicing the desire for reasonable and
9 balanced regulations and voicing concerns over the current
10 proposal that fails from their perspective to meet those
11 standards.

12 And we believe we've been really quite diligent
13 in trying to address some of the concerns, not only in
14 this particular proposal, but in prior versions trying to
15 encourage a program that is workable and science-based.
16 And that's something that we, as manufacturers, and as
17 trade associations working with our companies, can easily
18 understand and really know what it takes to be compliant
19 and to meet the standards and regulatory requirements.

20 But in doing that, we're really concerned about
21 whether that's going to impact not only the economy as a
22 whole, but also innovation when it comes down to looking
23 at trade secret and confidential business information
24 issues and protections and generally whether the various
25 industries are able to meet the requirements and conduct

1 those analyses.

2 In this regard, over the last four years, we
3 provided very detailed fixes and solutions related to each
4 of the concerns that we've noted, ranging from everything
5 in the process from the initial start of chemical and
6 prioritization all the way to confidential business
7 information trade secrets, to regulatory responses, and
8 every bit of the regulation in between.

9 We continue to be concerned --

10 HEARING OFFICER MADRIAGO: One minute.

11 MS. KOEPKE: -- and frustrated that many of the
12 concerns have still yet to be addressed. And while we do
13 acknowledge a number of areas there have been changes to
14 attempt to address our concerns, as we noted and our
15 Coalition members have also noted, is that the fixes can't
16 just be here and there. That ultimately all of the
17 different components and parts to the regulation build
18 upon one another and as a whole make it a really
19 challenging and really concerning regulatory framework.

20 Nonetheless, we, and our Coalition members,
21 remain absolutely committed to continuing to work with
22 Department, not only just through this final piece of this
23 regulatory process but also upon implementation.

24 With that, I thank you.

25 HEARING OFFICER MADRIAGO: Thank you.

1 Maria Jack.

2 MS. JACK: Thank you for this opportunity to
3 provide the following testimony.

4 My name is Maria Jack, J-a-c-k. And I'm Director
5 of Science Policy at the Grocery Manufacturers
6 Association.

7 GMA represents the leading food, beverage, and
8 consumer product companies. We make safe, quality, high
9 value products that meets consumer needs, provides them
10 with choices, and ultimately improves their lives.

11 GMA was one of the supporters of California's
12 enabling legislation on safer consumer product
13 alternatives and is very much interested in assisting the
14 Department to create a regulatory framework that is
15 workable, practical, and meaningful.

16 In keeping with the goals of California's Green
17 Chemistry Initiative, significantly reducing adverse health
18 and environmental impacts of chemicals used in commerce by
19 encouraging the redesign of consumer products, GMA submits
20 that a clear and objective science-based process still
21 needs to be reflected in the draft regulations to
22 identify, prioritize, and evaluate chemicals of potential
23 concern in products.

24 Although some revisions in the current draft have
25 added some specificity to California's Green Chemistry

1 Program compared to prior iterations, more improvements
2 are still necessary to implement a workable, pragmatic,
3 and meaningful program.

4 In these formal public comments, I'll address the
5 following: Prioritization, alternatives analysis
6 thresholds, and alternative analysis.

7 So in order to significantly reduce adverse
8 impacts to health and the environment, it is essential to
9 prioritize those chemical product use scenarios that are
10 of real concern and contribute most to the adverse impacts
11 on health and the environment for which a viable
12 alternative would actually benefit the overall health of
13 Californians and avoid unintended consequences.

14 The draft regulations as currently written do not
15 make clear the process by which the Department will select
16 only five priority products containing chemicals of
17 concerns from the universe of products and commerce and
18 the hundreds of chemicals of concerns consolidated from
19 the list of lists, nor does it try to appropriately rank
20 in order of severity those impacts to human health and the
21 environment that are the most critical.

22 Relying on the quantity of information rather
23 than the quality of information pertaining to a chemical
24 product pair, an associated impact as suggested in Section
25 69503.(2)(a)(2) is not science based. The Department

1 needs to establish objective uniform criteria for
2 assessing method validity, data quality, and study
3 reliability to provide a systematic and transparent
4 approach for assessing the overall weight of evidence for
5 purported adverse impacts.

6 The approach described in this current draft does
7 not provide the necessary predictability to the regulated
8 community to ensure compliance. The regulations need to
9 address most serious chemicals of concern by identifying
10 the most likely sources of these chemicals. A more
11 predictable approach would be the Tier 1 in which
12 chemicals of concern with the highest hazards are
13 identified first and identified with an exposure-based
14 approach to identify relatively and multiply ranked
15 products of concern contributing most to consumer exposure
16 through reasonable and foreseeable use. This suggested
17 approach is much more focused and will help the Department
18 achieve its statutory mandate to significantly reduce
19 adverse impacts to health and the environment.

20 On alternatives analysis threshold exemption,
21 below which a chemical product para would not be subject
22 to alternatives assessment, it is not clear how a product
23 threshold could be set should there be multiple chemicals
24 of concern identified as the basis for listing the product
25 as priority, as each chemical may have distinct hazards

1 which may be or may not be synergistic or antagonistic.
2 It is not clear or obvious which potency would serve as a
3 basis to derive the appropriate threshold for the priority
4 product in which multiple chemicals of concerns are
5 present. Much of the science on cumulative risk is still
6 being reserved and limited in most cases to pesticide with
7 common modes of action. Rather than draw out this lengthy
8 process, that becomes even more complicated --

9 HEARING OFFICER MADRIAGO: One minute.

10 MS. JACK: -- moving from one chemical of concern
11 as the basis for listing a product as priority, it may be
12 worthwhile for the Department to initially set a .1
13 percent default threshold so it can be adjusted as
14 necessary. This will make it more practical and workable.

15 Now regarding alternative assessment, there is
16 some positive changes. Consumer acceptance is
17 acknowledged. However, performance should not be
18 compromised. And the current definition for functionally
19 unacceptable alternatives regarding relevant parameters,
20 the department has specified that any change, any
21 demonstrable change, would pull into the analysis the
22 comparative assessment of the various parameters and
23 various alternatives. And we submit that it should focus
24 rather on significant changes and differences.

25 In terms of time frames, currently, it appears as

1 though it's a desk study, but we submit that
2 experimentation is required.

3 HEARING OFFICER MADRIAGO: Thank you.

4 MS. SALTER: Hello. My name is Gretchen Lee
5 Salter, L-e-e, S-a-l-t-e-r. I'm with the Breast Cancer
6 Fund. I'm also with Californians for a Healthy and Green
7 Economy.

8 I commend the work of the Department and staff.
9 This new draft represents a lot of work, a lot of hard
10 thinking, and we really appreciate the time the Department
11 has taken in drafting this new version. We will be
12 providing more detailed comments in writing, but today
13 I'll try to keep my comments pretty general.

14 So first, we commend the Department for the
15 chemicals of concern list. It is both comprehensive and
16 unranked, which is both scientific and consistent with the
17 statute. Yes, it may be long. But when looked at as a
18 proportion of the chemicals that are actually registered
19 for use on today's market, it is actually quite small. It
20 only comprises about one percent of those chemicals that
21 are registered for use. These chemicals are known hazards
22 established by authoritative bodies and we recommend the
23 chemical of concern list not be altered.

24 We also recommend that the title of the list stay
25 the same. It is consistent with the law to call it

1 chemicals of concern. Calling the list anything else --
2 calling this list anything other than a chemical of
3 concern list is inconsistent with the statute.

4 We also commend the department for the petition
5 process as well.

6 We applaud that workers have been included as a
7 sensitive sub-population in the draft. We are very
8 appreciative of that, but we also note that this draft
9 still has an exemption for products that are made here but
10 that are not sold here. This is inconsistent with the
11 letter of the law and the spirit of the law. This would
12 expose populations living close to those manufacturing
13 facilities, as well as those working manufacturing
14 facilities to potential hazards and would not offer them
15 any protection under this law. We recommend this clause
16 be stricken.

17 The alternatives analysis threshold is both
18 scientifically accurate and consistent with the statute.
19 0.1 percent is not a negligible risk, as has been said
20 earlier today. Many chemicals are toxic at much lower
21 levels than 0.1 percent. Heavy metals,
22 endocrine-disrupting chemicals, and other chemicals have
23 toxic effects at much lower levels, sometimes in the parts
24 per billion or parts per trillion range. DTSC's approach
25 in the current version of the regulations is both

1 scientific and consistent with the statute.

2 Fourth, we are concerned that the alternatives
3 analysis are still being conducted by manufacturers who
4 have a vested interest in the status quo. While the AA
5 reports are going to be public, there is no process to
6 provide comments on the alternative analysis. AAs are
7 qualitative in many ways. And really by nature, they are
8 qualitative exercise. If the only oversight that's going
9 to be provided by the Department, the Department with
10 limited resources, then the public must play an oversight
11 role. There needs to be some point where the public can
12 provide comments to DTSC on the alternatives analysis if
13 there is any problems with the AAs that the public can
14 see.

15 We are also concerned with the time line. But we
16 understand it may take some time to conduct these
17 alternative analyses. But it may take from as long as
18 four years from the time the product is prioritized to the
19 time a regulatory response is issued.

20 When the statute went into effect, I don't think
21 any of us envisioned it would take almost four years for a
22 product to be regulated if it has a chemical of concern, a
23 chemical that's known to cause cancer in its product.

24 Lastly, I want to talk about the human element,
25 which is often ignored in this debate. I represent those

1 who have been touched with breast cancer, but I also speak
2 who those who have been touched with learning
3 disabilities, those who are pregnant, those who suffer
4 from infertility. We understand that businesses want some
5 predictability, but so do consumers. Consumers want to go
6 into a store and know they cars they are buying are safe.
7 They want to buy cars knowing they aren't bringing in
8 toxic solvents when we drive. We want to drink water --

9 HEARING OFFICER MADRIAGO: One minute.

10 MS. SALTER: -- knowing it hasn't been
11 contaminated by toxic chemicals, even from the
12 manufacturer, use, or disposal of such products.

13 Finally, this regulation may not be great for the
14 dinosaurs of industry who are opposing it, but it is good
15 for those forward-thinking businesses who make products
16 without those chemicals. And many of those businesses are
17 located here in California. They may not be able to be
18 here today because they're investing their resources in
19 actually making products of the future instead of
20 defending those of the past. Thanks so much.

21 HEARING OFFICER MADRIAGO: Thank you.

22 Tom Jacob.

23 Mr. JACOB: Thank you. I'm Tom Jacob, J-a-c-o-b.
24 I'm speaking here today on be of half of the Chemical
25 Industry Council of California. We will provide more

1 detailed comments and appreciate the extension of time to
2 enable that.

3 Today, however, I'd like to offer an initial
4 reaction, perhaps a gut reaction. Many in industry
5 supported the green chemistry laws in 2008. We could
6 breathe into their structure the fundamental reality of
7 chemistry, namely, that chemicals have traits that if not
8 managed carefully can pose hazards. But it's precisely
9 those traits that enable chemistry, properly managed, to
10 be harnessed and yield extraordinary benefit.

11 The vision was a systematic effort to filter
12 through the myriad of chemical and product combinations to
13 identify and focus upon those specific ones where the
14 chemistry is not being properly managed, to then isolate
15 on those posing the greatest threat, and compel systematic
16 application of green chemistry.

17 The aim was to deliver the product's utility
18 while greatly reducing its threat. And thus, to
19 systemically ratchet down the risk associated with the
20 greatest threats to our population and environment.

21 This regulatory proposal, however, offends that.
22 It focus compulsively on designating as many chemicals as
23 possible as chemicals of concern and seems driven by the
24 potential for unintended consequences that may ensue from
25 trying to use or even trying to eliminate anything on that

1 broad list.

2 Any product that uses any of these is thrust into
3 a bureaucratic labyrinth. It seems to declare to the
4 marketplace need to avoid products containing these, but
5 without regard to the range of productive uses to which
6 they may be put, or whether those products pose any real
7 threat to society or the environment.

8 The underlying impulse seems to be to declare
9 these chemical properties, these traits, to be off limits,
10 discouraging society from exploring the potential utility
11 and benefits that could come from safely harnessing them.

12 This is taking the promise of the surgical
13 scalpel and targeting those most significant threats and
14 transforming it into a meat ax that threatens to
15 indiscriminate market impacts without consideration of
16 whether there are real threats.

17 In the process, it threatens the most significant
18 unintended consequence of all: It would undermine the
19 incentive to innovate by limiting the opportunity to
20 safely harness the properties of the natural world around
21 us.

22 Thank you.

23 HEARING OFFICER MADRIAGO: Thank you.

24 Karin North.

25 MS. NORTH: My name is Karin North, N-o-r-t-h.

1 I'm with the City of Palo Alto. I'm also representing the
2 Bay Area Pollution Prevention Group, a consortium of 43
3 wastewater agencies throughout the San Francisco Bay Area.

4 We want to formally thank the Department staff
5 for their work on the draft regulations for safer consumer
6 product. Really appreciate their hard work.

7 Wastewater treatment plants are extremely
8 effective at removing many kinds of biological and
9 chemical pollutants from municipal wastewater before the
10 water is discharged into our local water bodies.

11 However, as many of you know, some of these
12 pollutants will pass through the treatment plant unchanged
13 where they may harm aquatic life.

14 We appreciate that the draft regulations include
15 potential adverse impacts to the wastewater treatment
16 plant process, water quality, and aquatic life. However,
17 we have a couple of suggested changes that we believe will
18 enhance the regulations.

19 In the definitions sections, the 303(d) list was
20 explicitly mentioned. However, this list was not included
21 in the chemicals of concern identification list. We hope
22 that this was just an oversight since the regulations
23 specifically mentioned 303(c). By including the 303(d)
24 list, the Department will engage staff from water boards,
25 local wastewater and stormwater programs, and nonprofits

1 that are concerned with water quality issues by including
2 the highest priority water pollution problems in the
3 state.

4 Many of these pollutants cannot be addressed in
5 the near term as the regulations are currently structured.

6 We hope that both the 303(c) and 303(d) list will
7 be included in the chemicals of concern list to include
8 pollutants that harm the non-human environment.

9 Our second suggestion is in regards to the
10 alternative assessment. As we run through the
11 regulations, it appears the alternative assessment process
12 is not transparent enough. We believe that this should be
13 an open process with the formal comment period on
14 preliminary alternative assessments.

15 From our experience, the open process leads to
16 greater results since people are engaged from the start.
17 We truly appreciate DTSC's efforts to create a systematic
18 science-based process to evaluate the chemicals of concern
19 and identify safe alternatives to ensure product safety.

20 We would like to be part of the process once
21 these regulations are passed. And we thank you again for
22 your hard work. And we will submit detailed comments by
23 the October deadline.

24 As a personal note, I'm a mother of two young
25 boys. And I really would like to see these regulations

1 and these products get analyzed before they're going into
2 college.

3 So thank you again for all your hard work.

4 HEARING OFFICER MADRIAGO: Thank you.

5 Melanie LaBella.

6 MS. LA BELLA: Good morning. I have comments on
7 behalf of the Bay Area Clean Water Agencies. And I also
8 have comments I would like to make personally, if that's
9 okay.

10 So Melody La Bella, L-a, B-e-l-l-a. And I'm here
11 today representing Central Contra Costa Sanitary District
12 and the Bay Area Clean Agency Agencies, 55 wastewater
13 treatment agencies in and around the Bay Area.

14 I would also like to applaud staff for all their
15 work on this regulation and for your work today to provide
16 this opportunity for public comment.

17 As stewards of the water environment, wastewater
18 treatment plants are painfully aware of the many
19 pollutants of concern used in today's consumer products.
20 We are grateful for this regulation, as for the first time
21 it provides a way to prevent water pollution from consumer
22 products at the source. Many thanks again to DTSC for
23 their hard work in drafting this regulation.

24 My comments will focus on two topics: Cost and
25 schedule.

1 Regarding cost, we understand and we've heard
2 today industry has been expressing concerns about much
3 this regulation will cost them. So I'd like to talk cost
4 from our perspective.

5 Wastewater treatment plants are designed to
6 remove two things: Human waste and toilet paper.
7 However, everything that gets dumped or rinsed down indoor
8 drains or flushed down toilets comes to our treatment
9 plants. That includes soap, shampoos, conditioners,
10 toothpaste, mouth washes, lotions, deodorants, makeups,
11 and I could use the rest of the five minutes on that list.
12 It goes on and on.

13 Being at the proverbial end of the pipe, we've
14 learned over and over that it is far less expensive to
15 prevent pollutants from entering the water environment in
16 the first place, rather than removing them with treatment
17 afterwards. As a result, wastewater treatment agencies
18 invest heavily in source control and pollution prevention
19 programs to stop water pollution at its source.

20 I want to just clarify that when I say treatment,
21 what wastewater treatment really do is shift pollutants
22 from one media to another. They don't just go away.
23 During treatment, some pollutants are broken down, some go
24 into the air, some absorb to biosolids, some pass through
25 some recycled water supplies and into waterways that we

1 discharge to.

2 At my own agency, upgrading to the next level of
3 treatment would require a \$100 million capital investment
4 with double our annual O&M cost and energy consumption
5 that still would not remove the many pollutants present in
6 wastewater from consumer products. Extrapolating that
7 cost to the over 300 wastewater treatment plants in
8 California could mean hundreds of billion dollars in
9 capital and hundreds of millions in annual O&M cost to
10 treat at the end of the pipe.

11 So when industry complains about the cost of
12 implementing this regulation, we ask that you keep in mind
13 the cost of their inaction. When it comes to water
14 quality, it's always cheaper to stop pollution at its
15 source.

16 And then on schedule, safer consumer products
17 seem far off under the proposed regulations. In
18 particular, the time frames in Section 69505.5 for
19 submitting alternative analysis reports are too long and
20 there is too much flexibility given to extend the process.
21 Many consumer products contain hundreds of chemicals,
22 giving manufacturers the ability to delay submittal of
23 these reports by allowing them to propose scheduling
24 extensions for each ingredient seems far too generous. As
25 well, an extension of three years is offered for

1 conducting safety testing of multiple alternatives.
2 Building an offer like that into the regulation at the
3 onset will not motivate industry to complete alternative
4 assessments any sooner than that.

5 Rather than offering time extensions for
6 alternative analysis reports, we suggest requiring any
7 flexibility in extending the schedule be accompanied by
8 specific findings that DTSC must make to grant such an
9 extension.

10 Lastly and most importantly, the regulatory
11 response selection principles in Section 69506 needs to be
12 modified to make timely action a priority. The product
13 selected for assessment under this regulation will be
14 significant known human health and/or environmental
15 threats. Timeliness is not being considered at all.
16 Rather than focusing on regulation --

17 HEARING OFFICER MADRIAGO: One minute.

18 MS. LA BELLA: Rather than focusing on regulatory
19 responses that result in the greatest level of inherent
20 protection, we suggest favoring responses that result in
21 the most effective reduction in risk in the shortest time
22 frame. We will be following these comments up with a more
23 detailed comment letter in response of the October
24 deadline. And we appreciate the opportunity to comment
25 today.

1 And now I wanted to please give my comments as a
2 resident of California, resident of Pleasant Hill,
3 California, and in fact a mother of a 16-year-old.

4 HEARING OFFICER MADRIAGO: You have 30 seconds.

5 MS. LA BELLA: I would personally like to thank
6 DTSC for their efforts in drafting these regulations. I
7 know industry has been putting a lot of pressure on
8 everyone in this process, from staff to the governor, and
9 every layer in between to minimize the impact of this
10 regulation and slow the pace of its implementation.

11 I encourage you all to stand strong. The public
12 thought industry was already doing the right thing. We
13 thought the chemicals in our consumer products were safe
14 and thoroughly understood. We've learned that's mostly
15 not the case. Scientists are learning more every day
16 about health and environmental impacts.

17 HEARING OFFICER MADRIAGO: Thank you.

18 MS. LA BELLA: Thank you.

19 HEARING OFFICER MADRIAGO: Annie Pham.

20 MS. PHAM: Good morning. My name is Annie Pham
21 P-h-a-m. I'm with Sierra Club California. Thank you for
22 the opportunity to provide comments today. And I would
23 like to first thank DTSC Director and staff for all the
24 hard work they put into this.

25 Sierra Club California supports the adoption of

1 the safer consumer products regulation and can cannot
2 stress enough how important this is for California.

3 Safer consumer products safeguard our
4 environmental communities from pollution and harm and
5 specifically in communities that are currently
6 experiencing the lack of access in non-toxic products.
7 The regulation will also set a pathway for the rest of the
8 country.

9 In its new form, we strongly support the large
10 list of chemical of concerns, but we do see some room for
11 inclusion of the environmental contaminants. We suggest
12 DTSC add the Water Board's 303(d) list, the list of
13 impaired water bodies, to the list of lists.

14 In addition, we need the program to be robust in
15 order to address all the products and toxic chemicals that
16 are currently in commerce. DTSC should address more than
17 three to five priority products per year within the first
18 three years and -- DTSC should address more than three to
19 five products within the first three years and should not
20 limit itself to ten more components in manufactured
21 products every three years.

22 There are a great number of products needing to
23 be addressed and each of the products might have thousands
24 of parts. And by limiting to ten components per
25 manufacture products is just unreasonable.

1 We think that it would be more reasonable to set
2 a percentage versus a number of components in each
3 products.

4 Also, implementation will need to happen quickly
5 because California cannot afford the delays.

6 Lastly, we've heard a lot from previous
7 commentators about weakening of the regulations, and we
8 would discourage against that effort. The regulation has
9 room for strengthening and need to be as tough as was
10 called for in the law itself.

11 And lastly, I'm here to advocate for the
12 environment and to represent Sierra Club California. I'm
13 here to represent myself and as a mother. It's
14 disheartening to think that my son, who's one year old
15 right now, will be in grade school before something will
16 happen. For me as a mother, that's unacceptable.

17 Thank you.

18 HEARING OFFICER MADRIAGO: Thank you.

19 Bill Allayaud.

20 MR. ALLAYAUD: I'm Bill Allayaud, spelled
21 A-l-l-a-y-a-u-d with the Environmental Working Group.
22 We're also part of the Change Coalition. We'll be
23 submitting comments as part of that.

24 No big written script here, but it seems like
25 we're in different worlds than industry, mostly industry

1 represented today and the environmental health groups
2 working on this. We see it as previous speakers mentioned
3 years and years before we get to addressing significant
4 numbers of consumers products. But I heard industry
5 coming up here saying we're going to worry about planes
6 and cars, things that we know DTSC won't get to for
7 possibly decades. Meanwhile, in the Capitol industry is
8 fighting any robust funding for DTSC to get that consumer
9 products sooner. Yet, they're saying it's sort of a
10 paradox that's going on. They're fighting at funding
11 saying we'll worry about that. But I understand they have
12 to do their due diligence and these will be regulations in
13 black and white and writing so you have to make sure. I
14 heard some good suggestions from industry today and some
15 bad ones, too.

16 One was first saying you should only look at
17 chemicals that have substantial risk, keeping a blanket
18 diminutive level. That's really absurd. If you know
19 anything about chemical policy where tiny amounts of a
20 chemical can pose a substantial risk than opposed to
21 saying a blanket substantial risk.

22 Another one saying any product regulated by
23 another agency should be exempted.

24 But then another one from the car people, the
25 Complex Durable Goods Association saying you ought to be

1 able to differentiate between rubber mats and a radio and
2 an automobile, if and when DTSC ever got to saying a
3 consumer -- a car is a consumer product and will be in the
4 list here of things of doing AAs on. That's not a bad
5 suggestion. When I get in the car, I don't worry about
6 the radio oozing chemicals onto me, but I certainly think
7 about the plastic smells in there, whether they're coming
8 from that phthalates in the rubber mat or something else
9 in there. So that's a reasonable suggestion.

10 But I also trust that DTSC, given their extremely
11 limited resources, won't be messing around looking at
12 radios inside a GM car. Why this threat is being made and
13 especially I work in a political world in the Capitol. I
14 heard that the building industry is starting to say that
15 new houses could be called a consumer product and
16 regulated by these things. I guess potentially, but
17 that's the kind of scare tactics that are being tried at
18 the Capitol to keep this program bogged down, slowed down.
19 And we certainly hope industry doesn't say immediately on
20 the regs saying you need a master EIR to slow this down
21 another year or two. So we're looking at a law passed in
22 2008 and getting a trickle of products in the middle of
23 this decade and that could be even further delayed.

24 So we hope you stay the course and make the
25 adjustments necessary to be legally tight but keep going.

1 I think you're doing a good job. We've come a long way
2 since the proposals. Thank you.

3 HEARING OFFICER MADRIAGO: Thank you.

4 Chuck White.

5 MR. WHITE: Thank you very much.

6 Chuck White with Waste Management. Last name is
7 White, W-h-i-t-e.

8 Waste Management, Republic Services, and Recology
9 submitted a letter back in February raising concerns about
10 how these proposed regulations would deal with recycled
11 materials. Through discussions we've had with the staff
12 with the Department and others, we don't think it's your
13 intention to regulate recycled materials, although we do
14 have many of the same concerns that Kathy Lynch raised
15 earlier. And we would hope that further language would
16 indicate that recycled feed stocks are not covered by
17 these regulations.

18 Our industry receives materials that are
19 discarded or intended for recycling from users or
20 consumers of the original product. While we attempt to
21 find efficient and cost effective methods to recover the
22 economic value of the recyclable and renewable products
23 that might otherwise being be disposed, we face a lot of
24 challenges in doing this. We think that many of these
25 recycled materials would likely contain at some point in

1 time chemicals of concern or priority products as so
2 defined in your regulation. And our concern is would we
3 become a regulated party or have some responsibility under
4 these regulations to the extent we accept and recover and
5 reuse and possibly resell the materials or component
6 parts.

7 We actually think you did attempt to address this
8 issue, I think. Although we haven't had conversations
9 with you since this latest draft came out. But in your
10 definition of consumer product, you do have a term two
11 exemptions or two things that consumer products are not.
12 That is an historic product. That seems to be one that's
13 been ceased to be manufactured prior to the date the
14 product is listed as a priority product.

15 And also you indicate consumer product is not
16 previously owned or leased by someone other than the
17 manufacturer, importer, distributor, or retailer of the
18 product. So if it's been transferred to a consumer and
19 that consumer is recycling the material, it seems like we
20 do not have any responsibility because it would no longer
21 be a consumer product.

22 I'm concerned about if a manufacturer, importer,
23 or distributor or retailer recycles the material and then
24 we take that material and make components parts that are
25 then sent to recycling, if we sell some of that component

1 parts, are we suddenly a retailer as well if we are
2 accepting these materials that are intended to be recycled
3 or sent from a manufacturer, importer, distributor, or
4 retailer.

5 So we think there needs to be a little more
6 clarification in these regulations other than what you've
7 already done. We will be submitting comments on this and
8 making some suggestions, but we do appreciate the
9 attention you've given to -- apparently, the attention
10 you've given to the concerns we raised earlier this year.

11 Thank you very much.

12 HEARING OFFICER MADRIAGO: Thank you.

13 Geoff Brosseau.

14 MR. BROSSEAU: Good morning. My name is Geoff
15 Brosseau. I'm the Executive Director for the California
16 Stormwater Quality Association, or CASQA. Thank you very
17 much for the opportunity to comment this morning.

18 CASQA is composed of stormwater quality
19 management organizations and individuals, including
20 cities, counties, special districts, and industries
21 throughout California. Our membership provides stormwater
22 quality management services to over 22 million
23 Californians.

24 It's also important to note our members hold
25 stormwater discharge permits that are issued by your

1 sister agencies, the Water Boards in California. Those
2 discharge permits set very low limits on the amount of
3 chemicals we can discharge into the State's waters.

4 Why are these regulations so important to
5 stormwater quality agencies run by our cities and county?
6 The basic issue is that controlling pollutants at the
7 source is in many cases, for us, the most cost-effective
8 way to reduce pollution. And in some cases, the only way
9 to reduce pollution from entering our waterways because
10 unlike the wastewater treatment systems you heard about
11 earlier this morning, stormwater systems do not have
12 treatment at the end of the pipe. It's a big pipe to move
13 water quickly from people's homes and property and people
14 themselves.

15 We realize that the DTSC director and staff has
16 been working diligently on this program for the last
17 several years. And we very much appreciate the progress
18 shown in the last draft, which will allow the program to
19 invest in products that result in pollutants that are
20 impairing streams and waterways in the state and sometimes
21 in the ocean is.

22 We appreciate the program can invest in products
23 when the degradation or reaction products, the byproducts
24 cause the environmental damage rather than the original
25 constituents of concern.

1 We have three significant concerns. And
2 obviously, we'll be submitting comments by the deadline as
3 well as in written form. Our first major concern is the
4 inability to address many waterway pollutants in the first
5 phase of the program, as you've already heard this
6 morning. The current draft constrains the initial product
7 list to during the period 2016 and could go beyond that,
8 it's my understanding. This constraint means that key
9 water pollutants causing problems in California waterways
10 now cannot be addressed during this initial phase.

11 So what we would request is that the pollutants
12 identified in the State Water Board 303(d) list be added
13 to the chemicals of concern list and also request that the
14 regulations be modified such that chemicals on the 303(d)
15 list are able to be addressed in the initial group of
16 priority products.

17 When we think about your initial phase here, it's
18 kind of a pilot test of the concepts and the regulation
19 themselves. It seems prudent and more effective and
20 efficient to look at a range of pollutants of concern to
21 test the system and not have to go backwards and do it
22 later. So we recommend at least one of the five
23 pollutants of concern be an environmental pollutant of
24 concern.

25 Our second concern is that the program as

1 constructed will take too long. You heard this already.
2 We understand the funding constraints. But in our world,
3 it just takes too long for many of the current chemicals
4 to be addressed.

5 We hope the evaluation procedures can be
6 accelerated and optimized. Delays in addressing these
7 contaminants in waterways means that public agencies,
8 taxpayers may have to make significant expenditures to
9 build treatment controls essentially on stormwater
10 systems, which is the whole technical challenge thing of
11 itself, and will be in non-compliance with those waste
12 discharge processes I mentioned earlier and subject to
13 lawsuits from third parties and potentially penalties from
14 the water Boards.

15 And the third concern is that -- significant
16 concern is that economic impacts on cities and counties
17 and State agencies we heard about this a little bit
18 already. There is a significant cost to taxpayers of
19 reducing water pollution and trying to move these
20 pollutants from waterway systems. Removing chemicals from
21 products means taxpayers will not need to provide
22 treatment to remove these chemicals from stormwater
23 sewage.

24 HEARING OFFICER MADRIAGO: One minute.

25 MR. BROSSEAU: It is very expensive. And some in

1 cases, it is almost impossible to actually move pollution
2 to the level it has to be to be protective of aquatic life
3 in our waterways.

4 The cost savings could be in the billions of
5 dollars of taxpayers' money. And some of these chemicals
6 are difficult and maybe even impossible to remove from
7 treatment.

8 We also concerned that economic analysis of the
9 regulations which identifies social and economic benefits
10 and Initial Statement of Reasons overlooks a tremendous
11 financial benefit and cost savings to public agencies.

12 In summary, we are very much appreciative of the
13 progress of the draft. And we firmly support the efforts
14 to control pollutants at the source. Thank you.

15 HEARING OFFICER MADRIAGO: Thank you very much.

16 It's new noon. However, based upon the number of
17 registered witnesses left I think we can wrap up in about
18 an hour. However, I'm sure some people would appreciate a
19 short break. We're going to take a brief break and resume
20 at 12:15.

21 (Whereupon a recess was taken.)

22 HEARING OFFICER MADRIAGO: Our first speaker is
23 Bridgett Luther.

24 MS. LUTHER: I'm Bridgett Luther, L-u-t-h-e-r. I
25 am the President of the Cradle to Cradle Products

1 Innovation Institute.

2 The Institute's mission is to provide a
3 continuous improvement quality standard to guide product
4 manufacturers in making safe and healthy products for our
5 world through cradle to cradle certification.

6 Cradle to cradle certification is a multi entity
7 program that assesses products for safety to human and
8 environmental health designed for future use cycles and
9 sustainable manufacturers process.

10 The cradle to cradle certified program was
11 founded in 2005 by William McDunna and Dr. Michael
12 Brunguard in order to recognize products that have made
13 strides in implementing cradle to cradle principles based
14 on the thinking found in their book, "Cradle to Cradle,
15 Rethinking the Way We Make Things."

16 Since that time, nearly 500 products and various
17 industries and over 125 companies worldwide have engaged
18 in the cradle to cradle certified program.

19 In 2010, the nonprofit institute was launched to
20 manage and administer the previously private certification
21 program. The program provides guidelines to help
22 businesses implement cradle to cradle framework, which
23 focuses on using safe materials that can be disassembled
24 and reused as technical nutrients or composted as
25 biological nutrients.

1 Unlike single attribute standards, the
2 certification program takes a comprehensive approach to
3 evaluating the design of the product, the practices
4 employed in manufacturing the product.

5 Each product is evaluated in five categories:
6 Material health, material reuse, renewable energy use,
7 water stewardship, and social responsibility.
8 Furthermore, it's a continuous improvement program and
9 products can be cradle to cradle certified at one of four
10 levels: Basic, silver, gold, or platinum based on
11 achievement against criteria in all five categories.

12 So how do we do this and how do we step stack up
13 against the alternative analysis outlined in the
14 regulations we're discussing today?

15 I believe our cradle to cradle certification
16 process builds on the alternative analysis and provides a
17 platform for getting to the new materials and products of
18 the future. It builds on the 20-plus work with hundreds
19 of companies whose combined sales represent billions of
20 dollars around the world. This program is recognized as a
21 global standard.

22 Our optimization plan, required as part of the
23 certification, is extremely close to requirements outlined
24 as part of AB 1879 and goes one step further. The
25 certification optimization plan incentivizes continuous

1 improvement, because as soon as the company knows what's
2 in their product, down to the parts per million across
3 multiple supply chains, then they work with their assessor
4 to start replacing all unsafe materials or unknown
5 materials with health and safe substitutes into defined
6 cycles. This process becomes part of their commitment as
7 a move from less bad products and processes to more good
8 ones.

9 I'd like to quote Adam Lowry, the founder of
10 Method. He made these observations after reading their
11 book. "My God, chemistry is the key to great design and
12 design is the key to great chemistry. Cradle to cradle is
13 how we make environmental design about value creation
14 rather than risk mitigation."

15 Our organization will be sending our thoughts
16 about how regulations could be tweaked to give more
17 support to innovative programs like ours.

18 Finally, today, I would like to propose a cradle
19 the cradle certification case studies be added to the
20 October workshop. And I challenge all the industries here
21 to work together starting now to create alternatives for
22 the chemicals of concern through the use of green
23 chemistry principles. And let's move together to the
24 world we all imagined four years ago when the bill was
25 signed.

1 Thank you.

2 HEARING OFFICER MADRIAGO: Thank you.

3 John Robinson.

4 MR. ROBINSON: I'm John Robinson,
5 R-o-b-i-n-s-o-n, President of the California Attractions
6 and Parks Association, CAPA, a trade association which
7 represents all the State's theme, water, and amusement
8 parks. We directly employ 125,000 employees. We produced
9 more than \$12 billion in commerce in the state each year.
10 And we're responsible for the financial well-being
11 throughout the state.

12 I'd like to say we agree with most of the
13 comments made by members of the Green Chemistry Alliance
14 and look forward to a process which is sensitive to both
15 the needs and realities of business, as well as protecting
16 the consumers.

17 Our ARRA members sell thousands of retail
18 products, all manners of souvenirs, clothing,
19 entertainment platforms. We're very concerned about the
20 process that's of green chemistry, concerned about its
21 scope and how far-reaching it will be in our ability to do
22 business both in California and with our companies that
23 have multiple parks in different states.

24 One point I'd like to make is that the regulatory
25 burden of California's consumer products regulation should

1 not be borne by retailers. We feel retailers should not
2 be included in the group of responsible entities under the
3 regulations.

4 Currently, the SCP regulations sets up a tiered
5 joint and liability scheme where manufacturers have the
6 primary responsibility to control specifications, design,
7 or use of the materials in the product.

8 The importer has responsibility if the
9 manufacturer fails to comply. And the retailer must
10 comply. If the manufacturer/importer failed to comply and
11 the DTSC lists the non-compliance on the failure to comply
12 list. However, retailers do not have the resources or
13 capabilities to comply with SCP regulations. Retailers do
14 not know the chemical composition of the various products
15 they sell. They have no visibility to the supply chain or
16 the manufacturer and cannot specify what chemicals or
17 components will be included in the product.

18 It simply places an unfair and impossible burden
19 on retailers to look at the entire chain and chemical
20 composition, especially those small businesses in small
21 parks. They just don't have the ability or the financial
22 resources to follow the regulations.

23 I'd like to hope that you keep that in
24 consideration when looking at this. Thank you.

25 HEARING OFFICER MADRIAGO: Thank you.

1 Teresa Cooke.

2 MS. COOKE: Good afternoon. Teresa Cooke on
3 behalf of the California Travel Association. Thank you
4 for letting us all register our public comments today.

5 And again, that's spelled C-o-o-k-e.

6 Our trade association represents nearly
7 everything that pertains to travel and tourism in
8 California. That includes the hospitality industry, the
9 amusement, and theme parks, most recent speakers, retail
10 as well as restaurants, attractions, museums, so on, so
11 forth.

12 We would really like to reiterate most of the
13 comments made here today by the business community. A lot
14 about the great concern that is coming from our members
15 with regards to uncertainty, especially with the scope of
16 the program. The burdens that the program will likely put
17 on each individual sector, as well as the general
18 competitiveness that California has. We really would
19 argue that at this point the regulations would threaten
20 that.

21 Lastly, Cal Travel will be submitting further
22 comments, but we do appreciate the opportunity to register
23 early ones today. Thank you.

24 HEARING OFFICER MADRIAGO: Thank you.

25 Jennifer Gibbins.

1 Ms. GIBBINS: Jennifer Gibbons with the Toy
2 Industry Association. That's G-i-b-b-o-n-s.

3 The Toy Industry Association is the
4 not-for-profit trade association representing more than
5 550 toy makers, marketers and distributors, both large and
6 small, located throughout North America.

7 I'd like to -- I think it's worth noting that
8 toys are heavily regulated. And we currently comply with
9 numerous federal, international, and local jurisdictions
10 environmental and safety regulations.

11 The Toy Industry Association does support the
12 concept of green chemistry. And we've worked closely with
13 other states who have developed similar regulations, but
14 we cannot support these regulations as we see them as
15 currently proposed as being fundamentally flawed.

16 The proposed regulations focus on hazards, but
17 ignore exposure and risk. Every substance exhibits hazard
18 traits and levels at which exposure can cause harm. Even
19 substances considered innocuous such as water, table salt,
20 vinegar, Vitamin A, for example, can be toxic at the
21 correct dose of exposure.

22 Additionally, the proposed regulations focus only
23 on chemical concerns. A consumer product must be designed
24 and manufactured in a manner that addresses all aspects of
25 safety: Mechanical, physical, electrical, thermal,

1 flammability, and chemical risk. All of these factors are
2 of concern to consumers, and the alternatives assessment
3 process should not force a change to a safer alternative
4 based simply on the presence of an allegedly hazardous
5 chemical alone.

6 Consideration must be given to risk and exposure,
7 impact of the substitution on other safety characteristics
8 and trade-offs which might be created.

9 TIA strongly believes that significant and
10 substantive re-drafting is needed to create a truly
11 effective and workable regulation program.

12 Specifically, DTSC should take the most effective
13 and least burdensome approach to meeting its mandate to
14 adopt regulation. This could be done by looking at areas
15 such as the following: Inaccessible components are not an
16 exposure concern. DTSC acknowledges in their Initial
17 Statement of Reasons there is little to no exposure to a
18 chemical of concern from an inaccessible component. In
19 order to provide appropriate focus to the prioritization
20 process, there is a need to design inaccessible component
21 and remove these components from prioritization. This
22 approach is consistent with California statute and similar
23 laws regulating the presence of chemicals in children's
24 products in Washington state and on the federal level
25 under Federal Hazardous Substances Act and the Consumer

1 Product Safety Improvement Act.

2 Reasonable and foreseeable exposure. The
3 regulation gave consideration to intended product uses.
4 However, when determining priority products based upon
5 exposure, it is essential that the regulation specifically
6 stipulate that the exposure evaluations apply to
7 reasonable and foreseeable exposures from a product during
8 reasonable and foreseeable processing use and end-of-life
9 management of the product.

10 An understanding of real world concentrations,
11 routes of exposure, and existing mechanisms to prevent
12 harm must be built into these regulations.

13 The alternatives analysis threshold exemption:
14 This overly cumbersome process for filing an alternative
15 analysis threshold exemption is counter to the spirit and
16 intent of this provision, which intends to acknowledge
17 there is no concern with such extremely small levels of
18 chemicals in a product.

19 The department --

20 HEARING OFFICER MADRIAGO: One minute.

21 MS. GIBBONS: -- will be overwhelmed with
22 unnecessary paperwork.

23 We also believe that DTSC should develop a
24 transparent and predictable regulatory framework in order
25 to establish an effective and workable program. The

1 approach that DTSC has taken to give itself maximum
2 flexibility has also created -- has eliminated the
3 necessary predictability from those who will be subject to
4 the regulations.

5 I would like to endorse the comments that were
6 previously made regarding the AA threshold by the Grocery
7 Manufacturers, as well as their comments on the
8 alternatives analysis. And we would also endorse the
9 comments made by the Auto Alliance and others related to
10 regulatory duplication.

11 TIA will be submitting more detailed comments and
12 suggested language in our written comments before the
13 October 11 deadline and again --

14 HEARING OFFICER MADRIAGO: Thank you.

15 MS. GIBBONS: We urge the Department to give
16 serious consideration to these issues.

17 HEARING OFFICER MADRIAGO: Thank you.

18 Jim Lyons.

19 MR. LYONS: Good afternoon. And thank you for
20 the opportunity to testify. I'm Jim Lyons, L-y-o-n-s, a
21 senior partner at Sierra Research, a Sacramento-based
22 environmental consulting company.

23 I'm here on behalf of the Alliance of Automobile
24 Manufacturers to address the California Environmental
25 Quality Act, or CEQA, and its applicability to the

1 proposed consumer products alternatives regulation.

2 DTSC has asserted that the proposed regulations
3 are exempt from CEQA. DTSC contends that a common sense
4 exemption applies and that no further environmental review
5 is necessary. DTSC provides a laundry list of reasons
6 supporting this position that essentially boil down to the
7 following:

8 DTSC was directed by the Legislature to adopt
9 regulations for safer consumer products, so CEQA doesn't
10 apply.

11 The proposed regulations are intended to reduce
12 adverse public health and environmental impacts, so CEQA
13 doesn't apply.

14 And it's not possible to fully analyze the
15 environmental impacts of the proposed regulations now so
16 DTSC will do it later, so CEQA doesn't apply to the
17 proposed regulation.

18 DTSC is simply wrong in asserting that CEQA does
19 not apply to the proposed regulations.

20 First, the common sense exemption applies only
21 where it can be seen with certainty that there is no
22 possibility that the activity in question may have a
23 significant effect on the environment. As outlined next,
24 it's crystal clear the proposed safer consumer products
25 regulations do not satisfy this criteria. In order to see

1 that the proposed safer consumer products regulations do
2 not satisfy this criteria, one needs to look no longer
3 than the ISOR, or Initial Statement of Reasons, and the
4 economic analysis that's been prepared to support the
5 regulations.

6 In the ISOR, DTSC states, based on the economic
7 analysis, that the proposed regulations may result in the
8 creation of and growth of businesses in California. The
9 economic analysis further indicates that the proposed
10 regulations will fundamentally change how and where
11 consumer products are manufactured with many of those
12 impacts occurring in California.

13 DTSC cannot claim on one hand that the fact of
14 the proposed regulations will be to create economic
15 benefits, while on the other hand ignoring the fact these
16 impacts can cause reasonably foreseeable fiscal changes in
17 the environment, which must be analyzed under CEQA.

18 Impacts that DTSC identifies in the economic
19 analysis that have potential adverse environmental impacts
20 include:

21 Increases of energy consumption due to new
22 production of processes and product distribution systems
23 that could result in increased greenhouse gas emissions.

24 Use of alternative feed stocks, such as bio-based
25 materials which may be more energy intensive to produce.

1 And may be associated land use change impacts
2 again, which could effect greenhouse gases as well as many
3 other environmental factors.

4 Accelerated disposal of hazardous materials
5 currently in production and use.

6 There could be land use planning impacts
7 associated with closure of facilities and opening and
8 construction of new production facilities.

9 Increases in animal testing due to alternatives
10 analysis.

11 Increases in emissions of air pollutants and
12 associated air quality impacts due to construction of new
13 facilities, process operations, and the use of alternative
14 consumer products.

15 Impacts on water supplies and water quality due
16 to production processes themselves.

17 Generation of hazardous materials and production.

18 Public service impacts created by new facilities
19 and new products.

20 Transportation and traffic impacts associated
21 with production facilities, as well as feedstock and
22 product distribution, as well as aesthetic and noise
23 impacts, to name a few.

24 In addition to being wrong, DTSC's position on
25 CEQA is fundamentally at odds with the normal rulemaking

1 process as it's conducted by other California agencies.

2 HEARING OFFICER MADRIAGO: One minute.

3 MR. LYONS: -- recognize CEQA demands the
4 preparation of programmatic EIRs in cases where a series
5 of actions can be characterized as one large project and
6 are related in conjunction with the issuance of rules,
7 regulations, or other general criteria to govern the
8 conduct of a continuing program. There is many examples
9 of how CEQA should be addressed here. I would point to
10 the ARB's AB 32 climate change scoping plan as a great one
11 for DTSC to follow.

12 The bottom line is that DTSC has not performed a
13 programmatic CEQA analysis it needs to before these
14 regulations can be implemented.

15 I'd also note in closing that Section 24252.5 of
16 the Health and Safety Code also required a multi-media
17 analysis, unless it was conclusively determined the
18 regulations would not have any significant adverse impact
19 on public health or the environment. This analysis hasn't
20 been performed. As I've outlined above, you can't reach
21 that conclusion.

22 HEARING OFFICER MADRIAGO: Thank you.

23 Mike Rogge.

24 MR. ROGGE: Mike Rogge with the California
25 Manufacturers and Technology Association. That's Rogge,

1 R-o-g-g-e.

2 CMTA is a trade association with a mission to
3 improve and preserve a strong business climate for
4 California's 25,000 small and large manufacturers,
5 processors, and technology-based companies. California
6 manufacturers employ 1.5 million Californians and
7 contribute billions of dollars to the state's economy.

8 CMTA membership includes over 750 businesses
9 representing chemical, aerospace, high tech, bio tech,
10 pulp and paper, glass, oil, steal, and others.

11 When I look at the title of these regulations,
12 "Safer Consumer Products," I cringe. The title alone
13 implies consumer products are not safe. I maintain that
14 that is 99-plus percent false and strictly fear mongering.

15 Four years ago, the Director of DTSC approached
16 me and stated she was about to introduce gut and amend
17 legislation to implement a Green Chemistry Program under
18 DTSC's leadership. She asked that we not oppose it and if
19 possible support it. We were told their vision was not of
20 a large bureaucratic program. They could do it with their
21 present staff and would only be addressing one or two
22 products a year, which had a significant negative impact
23 on public health and/or the environment.

24 On that basis, we have members who did support AB
25 1879 and SB 509. However, that is not what we see before

1 us today.

2 This regulation gives DTSC unbridled power to
3 regulate the manufacturing of all but the most benign
4 products in the marketplace.

5 Last week, I held a conference call with our
6 membership. And the number of concerns they had with this
7 regulation were astronomic. Just to name a few of the
8 topics: Inclusion of naturally occurring intentionally
9 added; lack of meaningful trade secret protection; broad
10 data gap requirement; too short an alternative analysis
11 time frame; alternative analysis cost; federal contracts;
12 potential for third-party lawsuits; cost of the diminous
13 determination; anti-trust concerns; lack of guidelines at
14 this point; end-of-life responsibilities; open-ended
15 response action; no process for prioritization of
16 chemicals or products; duplication with OSHA and FDA;
17 inclusion of intermediate and bold chemicals.

18 These have all been discussed ad nauseam in
19 earlier hearings by the Green Chemistry Alliance to no
20 avail. You've not been listening to those legitimate
21 concerns in contradiction to our economic impact analysis,
22 you will and already have negatively impacted the economic
23 recovery of this state by issuing such a broad and costly
24 regulation.

25 We have been contacted a number of times by

1 manufacturing companies considering expanding into
2 California, but they want to know what is the safer
3 consumer products regulation. And although I try to
4 address their concerns positively, none have ultimately
5 set up operations here.

6 We have data which shows that investment in new
7 and expanded manufacturing facilities in California
8 dropped from an average of 5.6 percent per year from 1977
9 to 2000, versus the US as a whole to 1.9 percent from 2001
10 to 2010. That's a 66 percent drop.

11 Companies and investors want certainty that their
12 investment will result in an anticipated return. This
13 regulation assures uncertainty that will plague the
14 California market for consumer products for years.

15 While CMTA membership includes most of the major
16 manufacturers in the state, it is the small and medium
17 manufacturers, if they have the privilege of having their
18 products singled out, that will be out of business. I've
19 heard a figure from --

20 HEARING OFFICER MADRIAGO: One minute.

21 MR. ROGGE: -- from knowledgeable sources that
22 the alternatives assessment alone could easily cost a
23 company a million-dollars-plus, but no assurances you will
24 accept the outcome.

25 I want to leave you with one question: Why would

1 a manufacturer expand, move, or even produce in the state
2 if they have a choice? Thank you.

3 HEARING OFFICER MADRIAGO: Thank you.

4 Brenda Coleman.

5 MS. COLEMAN: Good afternoon. Brenda Coleman
6 here on behalf of the California Chamber of Commerce.
7 That's C-o-l-e-m-a-n. And here again on behalf of the
8 California Chamber of Commerce.

9 We are here on behalf of the over 13,000 members
10 that will be both directly and indirectly impacted by the
11 safer consumer product regulations. And while we, too,
12 will be providing in-depth comments, we appreciate the
13 opportunity to provide to you today our initial brief
14 comments.

15 I think a word that describes and sums up Cal
16 Chamber's concern is really what Mr. Rogge just
17 highlighted; that is uncertainty.

18 The problem with the latest and the eighth
19 iteration of the regulations is that DTSC retains so much
20 discretionary power over every aspect of the regulation
21 from the chemical of concern list all the way down to the
22 regulatory responses and actions that the Department may
23 impose that it is without contention that the range and
24 scope of these regulations are wide and will no doubt
25 impact every manufacturer or business and consumer in the

1 state of California, and beyond.

2 Adding to this significant concern and in
3 addition to all those comments and concerns you've heard
4 from previous commentators today is DTSC's economic analysis
5 and its lack of real answers. The economic and fiscal
6 impact statement that the Department released with the
7 regulations lists unknown, from major elements that will
8 directly impact business and the economy at large.

9 To answer a known questions statements such as
10 the total number of businesses impacted, the businesses
11 impacted that will be small businesses, and the number of
12 businesses that will be eliminated is simply unacceptable
13 for regulations of this magnitude. Responses are
14 necessary if we are going to meet the goals of green
15 chemistry without further impacting the business climate
16 in the state. We cannot expect California's economy and
17 jobs climate to improve if the state did not measure the
18 impact of its action. So we ask -- we urge that the
19 Department provide the answers to all of these unknowns.

20 Second, I'd like to highlight a point this was
21 raised earlier by Ms. Gorson on the APA point and just
22 wanted to highlight that. The Chamber sent a letter to
23 DTSC that was dated August 20th asking for the Department
24 to clarify -- or asking the Department's clarification
25 regarding the applicability of the APA process to future

1 activities described in the draft regulations, so that our
2 members could effectively participate in the rulemaking
3 process and make meaningful comments to future actions.

4 To date, however, Cal Chamber has not received a
5 response. Therefore, I ask again on behalf of Cal Chamber
6 for clarification as to whether DTSC intends to subject
7 the excessive step and regulations to public review and
8 comment and the full requirements under the APA.

9 Answers to our request is imperative if DTSC is
10 to adhere to the laws clear direction that the Department
11 device simplified and accessible tools for ease of use and
12 transparency of application for industry.

13 In closing, we urge the DTSC to work toward a
14 process that is reasonable, workable, and that creates
15 certainty for all businesses in the consumer product
16 supply chain without jeopardizing the health and
17 environmental quality or create greater burdens that
18 further delay the State's economic recovery. Thank you.

19 HEARING OFFICER MADRIAGO: Thank you.

20 Kathryn Alcantar.

21 MS. ALCANTAR: Thank you for the opportunity to
22 speak today. My name is Kathryn Alcantar spelled
23 A-l-c-a-n-t-a-r. And I'm here on behalf of the Center for
24 Environmental Health and Californians for a Healthy and
25 Green Economy Coalition.

1 First off, I'd like to just thank the Department
2 for taking the time and to commend the Department in all
3 of their efforts to improve the regulations, the draft
4 regulations. We have definitely noticed some big
5 improvements and are happy to see them.

6 Overall, we do support the Department's large
7 initial list of the chemicals of concern. We feel like
8 having a larger list will really provide industry the
9 perspective to look forward and figure out what chemicals
10 are coming down the pipe lines, which will help in this
11 long-term process of moving towards safer chemicals.

12 However, we are concerned that in this draft of
13 the regulations the 303(d) list of contaminants in water
14 has been removed, as has been noted earlier in comments.

15 And also that there continues to be an exclusion
16 of chemicals that are important in workplaces,
17 specifically, sensitizers and asthmagens.

18 We are also concerned that no product/chemical
19 combination will be selected in the next two years from
20 the environmental contaminants list, if it does not yet
21 already demonstrate a human health impact.

22 The removal of the 303(d) list takes away from
23 the premier list of water contaminants, which will impair
24 DTSC's ability to address such issues.

25 As for the later point, we understand this has

1 been done to provide industry with a sense of what to
2 expect in the short term. However, while providing one
3 group of stakeholders with assurances, you have taken it
4 away from others such as water agencies and other
5 government water stewards as well as impacted communities.

6 There is no reason to restrict your potential
7 choices for regulation in the short term. Doing so sets a
8 danger precedent.

9 We also support the elimination of any default
10 alternative assessment threshold exemption. We believe
11 this is more scientific, since there are some chemicals
12 that have an impact at much lower levels and in line with
13 comments made beforehand.

14 There are a few other problems that we do see and
15 we will be submitting very specific comments to the
16 Department before the October 11th deadline. But we still
17 feel there is no real independence of alternative
18 assessment reports that will be developed since they'll be
19 developed by manufacturers of products who have a
20 financial vested interest in the status quo.

21 As we understand, DTSC plans to provide more than
22 administrative review. But in view of resource
23 constraints and trade secrets claims that will reduce
24 transparency, we are concerned about the public's ability
25 to engage in this process and have a fair transparency and

1 opportunity to assess those, the alternatives assessments.

2 DTSC is also limiting data that will be
3 considered in the alternatives assessment and in the goal
4 of the regulatory response to showings that chemicals of
5 concerns or products have "the ability to cause or
6 contribute to adverse effects." This is an extremely high
7 burden of proof that we believe is contrary to the statute
8 itself, which calls for the DTSC to reduce "potential"
9 harm, not just the ability to cause harm.

10 Again, this is an element that we see problematic
11 throughout the regulations and we will be providing very
12 specific comments as to where to replace the word
13 "ability" to

14 HEARING OFFICER MADRIAGO: One minute

15 MS. ALCANTAR: -- "potential" to.

16 And then lastly, I just wanted to reiterate a
17 comment that was made before about Section 69501(e)(3)
18 which explicitly excludes the regulation of consumer
19 products manufactured or stored in California solely for
20 the use outside of California.

21 We find it both legally and morally indefensible
22 that the Department would consider allowing protecting
23 Californians but not protecting workers in California,
24 which as comments before alluded to. This not just
25 impacts workers that are selling those products, but the

1 communities that surround those factories or manufacturing
2 facilities where those products are being developed.

3 So with that, I just once again thank you for
4 your hard work in moving this forward. We hope to really
5 see a final version by the end of the year.

6 Thank you so much.

7 HEARING OFFICER MADRIAGO: Thank you.

8 Okay. With that, that concludes those who signed
9 up during the pre-registration period that ended at 11:30.

10 I'm next going to open it up to anybody who has
11 not spoken yet who would like to speak. Following that,
12 we've follow it up to those of you who have spoken and
13 would like to speak again.

14 So if you would state your name and your
15 affiliation for the record and spell your last name.

16 MR. LUCAS: Thank you. My name is Bob Lucas.
17 I'm here today representing the California Council for
18 Environmental and Economic Balance. My last name is
19 L-u-c-a-s.

20 CCEEB appreciates the amount of work/effort
21 that's gone into this regulation. I'm here today to let
22 you know that we think a lot more needs to be done before
23 this product is ready for adoption.

24 Let me give you a few illustrations of this.

25 Leakage is a word used quite often in this room in front

1 of one of your sister agencies, the Air Resources Board,
2 to talk about the potential for job losses because of an
3 island of regulation in a single state may cause people to
4 move outside of the state boundaries.

5 CMTA raised this issue in the context of product
6 manufacturers. I'd like to raise it in the issue of bulk
7 chemical manufacturers. As this regulation marches up the
8 manufacturing process to improve chemical manufacturing,
9 that entire industry is now at risk. That practice, by
10 the way, is very well regulated right now from the
11 standpoint of worker safety by OSHA. We do not need to
12 bring in another State regulatory body and another State
13 regulatory program. The result we are concerned is that
14 if this will chase those manufacturers and those jobs
15 outside of the State borders where they will not be
16 affected by the regulation.

17 Another point is that the guidelines that are
18 going to be used for the alternative assessment process
19 need to be in this regulation. The State Chamber raised
20 the issue of Administrative Procedures Act, issues of how
21 are you going to develop these ancillary processes that
22 are absolutely essential to the implementation of the
23 program. The current process sets in place now where
24 stand-alone guidelines are purportedly being developed in
25 the state of Washington under a very small EPA grant and a

1 consultant there. In some cooperation with seven other
2 states, it is entirely inappropriate for application in
3 California. If those guidelines are finished and they do
4 become stand alone guidelines that are expected to be used
5 in California, you expect to be challenged these be
6 underground regulations in violation of the Administrative
7 Procedures Act. That is a critical set of guidelines to
8 make this process work.

9 Another item is there is no diminimous levels to
10 trigger alternative assessments. The suggestion that
11 detection levels might be used for this purpose is
12 absolutely unworkable. The detection levels vary by
13 chemical, and they are so low at this point that they are
14 far below any potential actionable level.

15 I think it's also been mentioned there is no
16 distinction in the regulations between intentionally added
17 substances and those that are present unavoidably. This
18 is another issue we think needs to be addressed.

19 There is also no exception in the proposed
20 regulation for any accessible components. This has
21 already been shown in other instances in the federal
22 process to influence their program.

23 We are also concerned that the assessors are not
24 required to have product development or manufacturing
25 experience. This is another issue that we think is

1 important to address since any recommendation coming from
2 an assessor that's registered for this work in California
3 is going to have a potentially major impacts on
4 manufacturing products in this state. We think that
5 product development experience or manufacturing experience
6 is essential.

7 We also believe that there has not been a
8 sufficient examination of the legal implications of this
9 rule as yet. And we urge your attention to that.

10 We think there are going to be some stop-over
11 implications to Prop. 65 lawsuits. We think while the
12 CEQA issue has already been raised, the Administrative
13 Procedures Act issues have already been raised, these are
14 all very serious concerns, not to mention product
15 liability issues.

16 HEARING OFFICER MADRIAGO: One minute.

17 MR. LUCAS: Not only do they effect the
18 manufacturers and may cause other manufacturers to want to
19 leave the state because of product liability, but also
20 potential for State liability, if it turns out at the end
21 of the day that the State directs the manufacturers to
22 make a change to their product. At that point, the State
23 would assume responsibility similar to the stringfellow
24 responsibility. And you may have additional liability you
25 haven't accounted for.

1 Finally, I'd like to make the point that the
2 definition of manufacturer is too vague and may bring in
3 people who are not actually manufacturers into the system
4 because they may have some product requirements that they
5 pose or ask the product supplier to meet. And we will
6 file written comments.

7 Thank you very much.

8 HEARING OFFICER MADRIAGO: Thank you.

9 Is there anyone else who's not yet spoken that
10 would like to speak?

11 MR. DESMOND: Good afternoon. My name is Jerry
12 Desmond, D-e-s-m-o-n-d. I'm here on behalf of Plumbing
13 Manufacturers International. PMI is a trade association
14 whose members supply the majority of plumbing products and
15 fixtures sold in the United States. And we are a member
16 of the Green Chemistry Alliance and support the comments
17 that are being provided there.

18 We will also be providing formal comments by the
19 deadline of October 11th and appreciate the extension of
20 the deadline to enable us and others to do so.

21 I think as many others have testified so far, I
22 think we share a common objective that the regulations
23 that are being considered today be reasonable, balanced,
24 and achievable, and that the regulatory program that would
25 be established is science-based, clear, and objective. We

1 look at those objectives and standards. Unfortunately
2 today, we have to say in our view they're not being met.

3 We would like to highlight a couple of the key
4 items that we think worthy of further consideration and
5 review in support of more elaborate comments we'll submit
6 later.

7 Number one is regulatory duplication, a
8 recognition and addressing the fact if there are
9 regulatory requirements for a particular consumer product,
10 either the federal or State level, that that be clear for
11 the manufacturers that there will be an acknowledgement
12 and they won't be subject to these regs.

13 In addition, number two, the alternative analysis
14 threshold. We believe there should be a threshold that is
15 both practicable and workable and it be based on standards
16 that are clear for manufacturers and consumers in other
17 regions and internationally.

18 In terms of components, we also agree that
19 inaccessible components are not a risk and that should be
20 acknowledged within the regulatory structure. Recognition
21 is held of the complexities to a manufacture where you
22 have products that would have numerous chemicals of
23 concerns within a product and the challenges there for
24 them.

25 In terms of replacement and service parts, we

1 believe that the regulation should acknowledge and should
2 allow for the service parts to be exempt from the
3 regulatory structure.

4 Confidential business information has been talked
5 to in advance. That is a key provision to advance
6 innovation and economic viability. And further attention
7 to that provision of the regulation is critical if we are
8 going to allow for those to continue to occur and be a
9 benefit of this program.

10 And of course, the procedure requirements of the
11 Administrative Procedures Act and the California
12 Environmental Quality Act, APA and CEQA, think it's
13 essential that the regulatory program follow those
14 requirements explicitly.

15 And then in terms of regulatory responses, we do
16 share the view that so much flexibility has been built in
17 that we're lacking the clarity that would be important for
18 all the stakeholders and there wouldn't be undue influence
19 in terms of shaping the regulatory responses.

20 And in conclusion, we believe it's essential that
21 the regulations be reviewed again with a view towards
22 obtaining a program that is achievable both in terms of
23 the scope for prioritization of products, for
24 identification and prioritization of chemicals of concern,
25 for alternative analysis, and for the reporting.

1 Thank you.

2 HEARING OFFICER MADRIAGO: Thank you.

3 Is there anyone else who would like to come
4 forward?

5 MS. TAYLOR: Yes. Thank you very much. Good
6 afternoon. My name is Stacy Ann Taylor, T-a-y-l-o-r.

7 I'm here on behalf of the American Coatings
8 Association. The American Coatings Association represents
9 at this point probably about 400 or so manufacturers,
10 distributors, raw material suppliers for the paints,
11 adhesives, sealants, general coatings industry.

12 And actually, my comments will be very brief. We
13 will, of course, submit detailed written comments by the
14 October 11th deadline that you have gratefully extended.

15 I'd just like to point your attention to actually
16 Section 69506.8, which deals with end-of-life management
17 requirements. Specifically, these requirements are
18 supposed to be imposed on selective alternative for
19 priority products that have been named by the Department.

20 I'd like to bring your attention specifically to
21 I guess section small (c) which states that essentially a
22 responsible entity that is subject to the requirements for
23 the end-of-life management section may request the
24 Department's approval to substitute an alternative
25 end-of-life management program that essentially achieves

1 the same thing that's outlined by the Department.

2 And then the section goes on to state that a
3 responsible entity may not substitute an end-of-life
4 management program for the program specified in the
5 section, unless it receives advanced written approval from
6 the Department.

7 And we note that these revisions to the
8 regulations may be in response to some previous comments
9 that we and others have made regarding an existing
10 statutory end-of-life management programs in the state of
11 California. And I'd actually just like to reiterate that
12 point. We believe very strongly that if there is a
13 product that has statutory -- essentially a statutory
14 program created to manage the end-of-life product, end of
15 life for that product, that that statutory program should
16 be the default. There just seems no rational reason for
17 DTSC to get to the business of creating end-of-life
18 management programs for products that already have those
19 in statute.

20 And if you actually think about the universe, I
21 mean, this must be many, many, many thousands -- hundreds
22 of thousands, may be even millions of consumer products
23 that are sold in the state of California. If you think
24 about the very small number, very, very small number that
25 have existed statutory requirements for end-of-life

1 disposal, it just -- if they were created in statute to
2 have an end-of-life disposal requirement, there is
3 probably a very good reason and in our community, the
4 Department should default to that. Thank you.

5 HEARING OFFICER MADRIAGO: Thank you.

6 Anyone else who's not spoken who wishes to speak?

7 MR. FRATZ: Good afternoon. I'm Doug Fratz with
8 the Consumer Specialty Products Association in Washington,
9 D.C.

10 CSPA represents a very broad range of consumer
11 products. And we worked with DTSC since the beginning
12 seeking a workable and science-based regulation throughout
13 the process.

14 We are disappointed that we haven't gotten
15 farther. We think there is a lot of work to do. As
16 you've heard from the comments from other industry
17 sectors, there is a need for more transparency here. We
18 need to comment on all of the aspects of this rule. We
19 need to know how the several thousand chemicals that are
20 on the list chosen will be narrowed down to 1200. We need
21 to comment both on the criteria for that and also the
22 application of those criteria. We need to review what the
23 criteria are for new COCs. We need to review the
24 criteria -- the specific criteria on how prioritization
25 will occur for priority products. There needs to be a lot

1 more efficiency and cost effectiveness in the rule.

2 Right now, it is wide open. Anything can occur,
3 even if it's not cost effective or efficient. There needs
4 to not be requirements that where we spend a lot of money
5 on analytical tests where they aren't needed. There needs
6 to be ways where AAs can be shown to be not needed because
7 all of the alternatives are actually safe for human health
8 and the environment. That shouldn't force a lot of work
9 in the broad AAs. They go across looking at the factors
10 that aren't really relevant to the products.

11 There needs to be a focus here on being not only
12 efficient, but being reliable instead of fast. The
13 frequency or the deadlines here are not flexible enough,
14 even with the extensions that have been added, to look at
15 the kinds of variabilities of combinations that could
16 occur in this rule.

17 Time must be provided for accurate and
18 science-based assessments.

19 The categories of priority products need to be
20 carefully defined and very narrowly defined so that this
21 process is workable.

22 And the addition of requiring certified assessors
23 before there is even a program to certify assessors,
24 before there is even example AAs to know what they'll be
25 certified to do, this should be put off until these

1 programs can be brought up.

2 We will file comprehensive comments by your
3 deadline and lay out what we hope can be done to make this
4 rule workable. And we look forward to trying to keep
5 working with you.

6 HEARING OFFICER MADRIAGO: Thank you.

7 Anyone else who's not spoken who wishes to speak?

8 All right. Anyone who has spoken who would like
9 to speak again?

10 MR. LIVINGSTON: Thank you. I'm still Gene
11 Livingston. And that's still L-i-v-i-n-g-s-t-o-n.

12 And I'd like to make four quick points to follow
13 up on the trade secret issue and I'm emphasizing this
14 issue because this is of fundamental importance to
15 business. I think it's a fundamental importance to
16 encouraging and promoting innovation. Your regulation in
17 my view stifles regulation and I think will not serve the
18 overall purposes of green chemistry.

19 Let me just follow up with where I dropped off in
20 my earlier comments.

21 Again, Section 659510 Subdivision A, paragraph 10
22 asks the person claiming trade secret protection to
23 describe the nature and the amount of harm if trade
24 secrets were released. In your Initial Statement of
25 Reasons says that's in there to deal with whether the

1 information is of minimal value.

2 Again, let me just emphasize your role is to
3 protect trade secrets. It's not to determine whether the
4 value of that trade secret is minimal value or not. And
5 again, it implies you have some sort of standard. If you
6 don't meet that standard, it will not be deemed to be a
7 trade secret. If you do meet it, it is a trade secret.

8 Paragraph 11 of that same subsection talks about
9 how the claim has to be signed by the General Counsel
10 under penalty of perjury. By requiring someone to sign
11 under penalty of perjury, you're saying that if there is
12 something in that claim is false, then that person can be
13 prosecuted criminally. Well, this is creating a crime in
14 the state of California. This Department does not have
15 the authority to create crimes. That is really limited to
16 the Legislature to make that determination. And I urge
17 you to strike that.

18 I talked briefly before about Subsections F and
19 G. F says that if there is a chemical associated with
20 hazard trade submission, that chemical has to be
21 identified. G creates an exception to that. Your Initial
22 Statement of Reasons says that is a very limited
23 exception. And basically, what you have provided is that
24 you can create an exception if it is for a proposed
25 alternative to a chemical of concern in a priority

1 product, if it's a new chemical or new use of the existing
2 chemical and it's substantially safer than the existing
3 chemical of concern and that those factors have to be
4 demonstrated to DTSC's satisfaction that you had to
5 convince DTSC of that.

6 Well, I submit that you have modified the
7 definition of a trade secret. There is none of that,
8 those restrictions, spelled out in the Civil Code that
9 defines what a trade secret is. Your Initial Statement of
10 Reasons also says that you're basically imposing a
11 balancing test. Whether the need to encourage innovation
12 outweighs the desire to maximum the information to the
13 public, you're not in the position of engaging in a
14 balancing test. Your role is to protect trade secrets.
15 And I urge you to correct these regulatory provisions to
16 be consistent with that role and the law. Thank you.

17 HEARING OFFICER MADRIAGO: Thank you.

18 Anyone else who has spoken and would like to
19 speak again?

20 MS. GORSEN: My name is Maurine Gorsen,
21 G-o-r-s-e-n, partner at Alston & Bird collocated in Los
22 Angeles and Sacramento offices. I'm here on behalf of Dr.
23 John Warner, President and Chief Technology Officer of the
24 Warner Babcock Institute for Green Chemistry.

25 As many of you know, Dr. John Warner is the

1 father of Green Chemistry, he wrote the principle textbook
2 in 1998 on green principles. He also has over 200 green
3 chemistry patents in his name. And his life is currently
4 dedicated to the development of non-toxic environmentally
5 benign and sustainable technological solutions for
6 society. He's excited, and he believes that California
7 has a tremendous opportunity to advance the development of
8 green chemistry globally. He's e-mailed me several times
9 during this hearing. He's riveted and at the edge of his
10 seat.

11 He was very honored and pleased to have had the
12 opportunity to serve as the Chair of the Green Chemistry
13 Initiative Science Advisory Panel, which was convened in
14 the fall of 2007 and finalized its recommendations and
15 submitted its report to the Department in May 2008. Many
16 of those recommendations incorporated into the safer
17 chemicals laws that California enacted in November 2008.

18 Dr. Warner urges the Department to re-visit those
19 initial recommendations, as many are absent from the
20 current regulatory proposal. The Department's proposed
21 regulations are too heavily focused on demand side
22 considerations and give short shrift to supply side
23 considerations that are necessary to bring the promises of
24 a future that is benign by design.

25 The alternatives analysis contained in the

1 Initial Statement of Reasons does not indicate that much
2 thought was given to supply side considerations, nor
3 alternative regulatory designs considered that could bring
4 about the beneficial changes envisioned by the statute.

5 In the intervening years since the Science
6 Advisory Panel issued its recommendations, Dr. Warner has
7 given this problem of appropriate regulatory design much
8 thought and reflection. And I will briefly outline an
9 alternative regulatory design that he believes strongly is
10 necessary to implement the statute and accelerate the
11 development of green chemistry and to focus the efforts of
12 industry and societal resources to those activities that
13 will be of greatest benefit to the state of California and
14 bring to fruition its ambitious aims to rethink the way we
15 make things.

16 It has five elements.

17 Element one is to move from a list-based system
18 to an assay-based system.

19 He proposes three Committees: A Committee of
20 diverse stakeholders formed to create a set of tests and
21 assays that quantify toxicity and environmental impact,
22 called the Assay Committee.

23 A second group should be formed, the Compliance
24 Committee, that will describe how testing protocols and
25 data management will be certified and documented.

1 And the third group, the Approval Committee,
2 should be formed to determine how materials that perform
3 unacceptably in the assays should be handled. These
4 groups should meet on a regular basis to perform reviews
5 and updates.

6 Element two: To move from a molecule-based
7 system to a product-based system. The first test of
8 product should be the product itself. The product testing
9 should be performed in a way to allow the entire product
10 to be subject to the various assays identified in element
11 one above. If the testing of the product provides
12 acceptable results, it is approved.

13 Element three: Identify and disclose hazardous
14 materials. When a product fails an assay, the company
15 should be required to identify the components molecules
16 that produced the negative impact. The company should
17 perform an assessment of impacts if the one manufacture
18 use and disposal of the product and document plans to
19 mitigate impacts. The Approval Committee should evaluate
20 this information and decide if the risk to the public is
21 accepted. Appropriate labeling and communication of the
22 materials of concern are determined.

23 Element four, focus on long-term solutions.
24 When a product fails an assay from element one, the
25 company should document that a thorough terms analysis has

1 been performed to determine the best available materials
2 are being used. Simultaneously, the company should
3 document long-term plans to invent safer substitutes.

4 Lastly, element five, focus on jobs creation and
5 workforce development.

6 HEARING OFFICER MADRIAGO: One minute.

7 MS. GORSEN: The State of California should set
8 up several workforce development centers for high school
9 graduates and displaced workers, should be trained in the
10 competitive high tech schools in analytical bio technology
11 industries. This hands-on training should involve the
12 execution of assays listed in element one. Sufficient
13 oversight and redundancy will be necessary to ascertain
14 quality. The center should be fee-based.

15 He is interested in working with the
16 development's regulatory staff to develop the technical
17 and regulatory language necessary to implement this
18 alternative regulatory design. And we hope it will give
19 it your serious consideration.

20 HEARING OFFICER MADRIAGO: Thank you.

21 Anyone else who has or hasn't spoken who would
22 like to speak?

23 Let the record show that no one is coming forward
24 to speak. Therefore, I'm closing the oral testimony
25 portion of this hearing.

1 Let me remind you that written comments will be
2 accepted until 5:00 p.m. on October 11th, 2012. If anyone
3 wishes to submit written comments today that has not done
4 so, please do so at this time by submitting your comments
5 to Kryisia down here.

6 I do notice a number of you seem to be reading
7 from scripts, as am I. If you would like to, feel free to
8 hand those to Kryisia.

9 So is anyone going to present any additional
10 written comments? Seeing no one coming forward with
11 written comments, this concludes the submission of written
12 comments.

13 This hearing for the proposed safer consumer
14 product regulation is now closed. Let the record show
15 that the time is approximately 1:11 PM. We are off the
16 record.

17 (Whereupon the hearing adjourned at 1:11 p.m.)
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