



June 30, 2014

BY ELECTRONIC MAIL

Dr. Meredith Williams
Deputy Director
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 98512-0806
SaferConsumerProducts@dtsc.ca.gov

RE: Comments and suggestions on the Safer Consumer Products Regulation initial draft Priority Products release and selection methods (June 30 deadline)

Dear Dr. Williams:

The American Chemistry Council (ACC)¹ submits the following comments on the Department of Toxic Substances Control's (Department; or DTSC) initial draft Priority Product selections pursuant to the Safer Consumer Products Regulation.

Throughout the development of the Safer Consumer Products Regulation (SCPR) ACC appreciated DTSC's willingness to meet with industry stakeholders. The Department's approach to identifying the initial draft Priority Products stands in sharp contrast, however, and did not benefit from industry stakeholder consultation. Our comments highlight issues that we believe require substantial consideration and clarification before moving forward with the Priority Product rulemaking processes and the release of the Three-Year Work Plan. As described more fully in these comments, ACC urges DTSC to reconfigure the Priority Product identification process to:

¹ *The American Chemistry Council (ACC) represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is an \$812 billion enterprise and a key element of the nation's economy. It is one of the nation's largest exporters, accounting for twelve percent of all U.S. exports. Chemistry companies are among the largest investors in research and development. Safety and security have always been primary concerns of ACC members, and they have intensified their efforts, working closely with government agencies to improve security and to defend against any threat to the nation's critical infrastructure.*



- Improve the transparency and quality of research leading to draft Priority Product selection and announcements through industry stakeholder engagement, in order to bolster the credibility of the process and to ensure that accurate information is conveyed.
- More accurately reflect the Department's research and the intent of the Safer Consumer Products Regulation in communications by DTSC related to draft Priority Products.

A. DTSC must improve the quality of research leading to draft Priority Product selection and announcement, engaging industry stakeholders at the outset.

The foremost lesson to be learned from the release of the three initial draft Priority Products is that, prior to identifying draft Priority Products and releasing the Three-Year Work Plan, it is imperative that DTSC improve the quality of research required for product-chemical selection. For example, the identification of Spray Polyurethane Foam (SPF) containing unreacted diisocyanates as an initial draft Priority Product does not reflect the implementation of a robust, objective, and transparent research process. As stated in a letter to the Department from the ACC Center for the Polyurethanes Industry (April 28, 2014), numerous inaccuracies in the Priority Product Profile, which is posted to DTSC's website, detract from DTSC's ability to proceed constructively.² More importantly, DTSC's communication has notable negative market effects. It is troubling when a foundational piece of a regulatory process is incorrect, and in this instance mischaracterizes the chemistry associated with SPF. DTSC must conduct thorough research on potential Priority Products and their chemistries and accurately identify the product-chemical combinations.

In order to enhance the credibility of the Priority Product listing process, ACC recommends the following improvements:

- DTSC should engage industry stakeholders directly – particularly product manufacturers – to review and improve upon product-specific exposure and composition information prior to the release of the draft Priority Products and the associated documentation. Industry consultation beforehand is critical to understanding the product value-chain, parties involved/ “responsible entities,” chemistries, uses, product stewardship activities, potential exposures, breadth of toxicological data available, current voluntary and/or regulatory programs, and market impacts.
- DTSC has options available in order to gather data on potential Priority Products and Chemicals of Concern, and the Department should utilize options such as data call-ins to obtain actual exposure data, versus analog or surrogate data, for example. Data call-ins could also enable DTSC to better identify the potential responsible entities for the draft Priority Products.

² Lee Salamone to Ms. Deborah O. Raphael, April 28, 2014. See enclosure.



- Either as part of a broader stakeholder consultation process or separately, DTSC should coordinate with other State and Federal regulatory agencies, especially California agencies (e.g., Cal-OSHA, California Energy Commission, CARB, etc.).
- DTSC should clearly define and explain the relationship between, the phrases “potential public/aquatic exposure,” and “significant or widespread adverse impacts.” Currently these undefined phrases are causing confusion. DTSC should be comprehensive and transparent in the assessment of potential product hazards and exposures as part of the assessment and inclusion of products in the program.
- To minimize the potential for inaccuracies, DTSC should consider a peer-review process for Product Profiles before releasing them to the public, or at a minimum make clear that Product Profiles are drafts subject to change. DTSC should update Product Profiles and other related materials when the Department becomes aware that critical information is missing or misstated.
- DTSC should limit its discussion of alternative chemicals and/or products in the Profile or other public documents in the absence of a thorough alternatives analysis to avoid the dissemination of confusing or erroneous information.
- DTSC should provide public access to the material upon which the draft Priority Product selections were made. Currently the Priority Product Profiles contain incomplete citations or have broken reference links (e.g., <http://www.irta.us/PaintStrippers06.pdf>, and <http://toxnet.nlm.nih.gov/cgi-bin/sis/htmlgen?hSDB>). References used in the Profiles must meet the definition of “reliable information” as defined in the SCPR.³ The present lack of transparency unnecessarily tarnishes DTSC’s credibility.
- DTSC should approach Priority Product selection using a risk-based approach. Products with low risk due to low exposure should have a lower priority than products with a higher risk profile.

B. Communications by DTSC related to draft Priority Products should accurately reflect the Department’s research and the intent of the Safer Consumer Products Regulations.

³ “Reliable information,” defined in Section 69501.1(a)(57) of the Safer Consumer Products Regulations as, “a scientific study or other scientific information that meets the criteria in subparagraphs (A) and (B):

(A) The study of scientific information was:

1. Published in a scientifically peer reviewed report or other literature;
2. Published in a report of the United States National Academies;
3. Published in a report by an international, federal, state, or local agency that implements laws governing chemicals; and/or
4. Conducted, developed, submitted, prepared for, or reviewed and accepted by an international, federal, state, or local agency for compliance or other regulatory purposes.

(B) With respect to a scientific study, the study design was appropriate to the hypothesis being tested, and sufficient to support the proposition(s) for which the study is presented to the Department.



Public communications about the Safer Consumer Products regulatory activities and decisions have direct effects on the public, the regulated communities, the commercial market in California and beyond, and the success of the overall program. Realizing DTSC's goals of advancing innovative materials and conducting alternatives analyses will require the cooperation of industry, government and other stakeholders. However, if DTSC's messaging pre-determines the outcomes of Priority Product decisions it will be difficult to meet the stated objectives.

Language used by DTSC in the public documents (e.g., fact sheets, Priority Product Profiles, and DTSC presentations) associated with the draft Priority Products should reflect the draft nature of the process. Before a Priority Product is finalized and an alternatives analysis is completed, DTSC must refrain from using language such as "avoid using X product, and, "...or minimize exposure to X," which may be misinterpreted as a product ban.

DTSC should instead encourage cooperation and dialogue. The Department's reliance on communications to initiate "market signals...[to] motivate manufacturers...to preemptively phase out Candidate Chemicals in products..."⁴ could be in conflict with the Department's attempts to avoid "regrettable substitution," especially at the early stage in the process when Priority Products are first identified. Moreover, these "market signals" have maligned legitimate and legal products that are made and used in California. DTSC should work with product manufacturers, encouraging them to participate in the regulatory process that was designed to be "thoughtful, [and] science-based...creat[ing] a mechanism to avoid regrettable substitutions, which is the alternatives assessment [process]," according to the former Director, Debbie Raphael.⁵

Therefore, rather than directing manufacturers to merely reformulate away from any and all Candidate Chemicals prior to the regulatory process, the Department should seek to work with stakeholders to evaluate product risks and identify possible alternatives in a manner that is consistent with the enacting statute. Bear in mind that existing law specifically directs DTSC to "establish a process for evaluating chemicals of concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern" (emphasis added).⁶ DTSC's role as a governmental agency that regulates chemicals and products is to utilize the best available science regarding both exposures and hazards to evaluate and regulate in order to protect human health and the environment, not to select "winners" and "losers" in the marketplace.

⁴ Background Memo: Approaches to Product Category Identification for the 3 Year Priority Products Work Plan, Green Ribbon Science Panel June 25, 2014, http://www.dtsc.ca.gov/SCP/upload/Work_Plan_Memo_GRSP_June2014.pdf.

⁵ Inside CalEPA Vol. 25, No. 15, April 11, 2014, Inside CalEPA Interview, "DTSC Director Raphael Defends Strategy for Green Chemistry, Reforms," p. 6.

⁶ California Health and Safety Code § 25253(a)(1).



As DTSC prepares for the release of the Three-Year Work Plan and subsequent Priority Product selections, ACC urges the Department to engage potential affected industries early in the process, in order to foster a mutually beneficial dialogue. Greater industry stakeholder consultation, thoughtful communications, and thorough product-chemical research will help to ensure more meaningful implementation of the Safer Consumer Products Regulation.

ACC appreciates the opportunity to comment and looks forward to working with DTSC in the future on SCPR implementation. If you have any questions related to our comments, please contact me at Emily_Tipaldo@americanchemistry.com or 202-249-6127.

Sincerely,



Emily V. Tipaldo
Director
Regulatory and Technical Affairs

Enclosure: Lee Salamone to Ms. Deborah O. Raphael, April 28, 2014.





Center for the
Polyurethanes Industry

April 28, 2014

Ms. Deborah O. Raphael
Director
California Department of Toxic Substances and Control
1001 I Street
Sacramento, CA 95814-2828

Dear Ms. Raphael:

Thank you for meeting with members and staff of the American Chemistry Council on April 15, 2014, to discuss the Department's recent listing of *Spray Polyurethane Foam Systems Containing Unreacted Diisocyanates* as an initial Priority Product under the Safer Consumer Product Regulations. We appreciate the opportunity to learn more about the Department's process and to provide you with some information about spray polyurethane foam (SPF) and unreacted isocyanates.

During the meeting, we identified many topics for further discussion and look forward to additional opportunities to meet with you and your staff to provide technical information regarding the manufacture, safe use, and benefits of the products as well as the extensive body of product stewardship, research and training programs that exist.

In response to the Department's offer to consider and correct factual errors in the March 2014 Priority Product Profile, we have identified important inaccuracies in the Priority Product Profile that was posted to your website in March 2014. As written, the Priority Product Profile unnecessarily distracts from the Department's ability to proceed constructively. In addition, these errors have resulted in marketplace confusion resulting in unjustified damage to the industry in California and beyond. A timely revision to the March version of the document will help focus the discussion.

Below are four points of misinformation currently included in the Priority Product Profile that we believe must be addressed promptly. A markup of the Priority Product Profile accompanies this letter to highlight the corresponding information that is inaccurate and demonstrate how these errors can be easily corrected (mostly via deletion of unrelated or inaccurate text).

1. TDI and HDI are not Used in SPF Systems

MDI and its oligomers are the only diisocyanates used in SPF systems. TDI and HDI are *not* used in and are *not* present in SPF systems. All references to these chemicals should be removed from the Priority Product Profile to avoid confusion and the dissemination of misinformation resulting from the discussion of irrelevant environmental, health and safety concerns.



2. Non-SPF Products Should be Eliminated from the Priority Product Profile

The scope of the Priority Product Profile document includes products and materials that are not SPF. It is misleading and incorrect to include products such as truck bed liners, coatings, and adhesives in the scope of this document and such references should be removed. Furthermore, by eliminating incorrect references and appropriately focusing the scope of review, the public workshops are likely to be more effective and targeted.

3. Airborne Concentrations of MDI are Non-Detectable Shortly After Application

Studies on two-component systems have shown that airborne concentrations of MDI are non-detectable within thirty minutes to two hours after application. For one-component foam in aerosol cans, industrial hygiene monitoring has shown airborne concentrations of MDI are non-detectable at the time of application. While it may take up to 24 hours for SPF to cure or develop all of its physical characteristics, MDI is generally non-detectable within 2 hours (air) and 15 minutes (surface) of application. It is not correct to equate the entire period of “curing time” to a time when people could be exposed to MDI. As can be seen in the attached, we recommend clarifying or deleting the statement on page 4.

4. Asthma Rates in the Polyurethanes Industry are Declining, Not Increasing

Although diisocyanates have been listed as one of the leading attributable causes of asthma in the workplace, various national data collection programs on worker exposure and disease incidence present a consistent picture showing a reduction of diisocyanates-related asthma cases over the last decade due to improved work practices and better medical surveillance programs. It is therefore *not* accurate to state that the asthma rates have remained stable. We request that this statement be deleted.

We are developing a more detailed set of technical comments discussing these and other areas of the Priority Product Profile, including supporting information and references. In the interim, please find attached our edits to the Priority Product Profile (March 2014). We have indicated text we suggest deleting in order to correct or eliminate the factual errors described above.

We appreciate your willingness to address these factual inaccuracies in the Priority Product Profile. We look forward to further constructive engagement with you and your staff. If you have any questions regarding this letter or the attachment, please feel free to contact me at (202) 249-6604 or my colleague Sahar Osman-Sypher, Director of the ACC Diisocyanates and Aliphatic Diisocyanates Panels at (202) 249-6721.

Regards,



Lee Salamone
Senior Director
ACC Center for the Polyurethanes Industry / Spray Foam Coalition