



August 16, 2010

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

Dear Director Movassaghi:

The purpose of this letter is to recommend additions and modifications to the language of the Safer Consumer Products Alternatives regulations that your department is developing pursuant to AB 1879 in order to improve the process for alternatives assessment (AA) in Article 5.

As we testified on August 3, the establishment of a public AA option for chemicals of concern (COCs) in Priority Products, led by DTSC, would greatly improve California's ability to achieve the public policy goals of AB 1879 by providing a scientifically rigorous, peer-reviewed, transparent, multi-stakeholder AA on which regulatory decisions can be made and incentives for safer products can be built.

Our proposed modifications of the draft regulations include the following:

Add Section 69305 (a)(3) such that it establishes a DTSC-led AA program

(3) Once a chemical is added to the COC list and determined by the Department to be present in Priority Products, the Department shall perform an AA for the major use(s) of that COC in the Priority Products.

(A) The AA shall be open to participation by any interested stakeholder, including manufacturers, distributors, retailers, non-governmental organizations, academic institutions, manufacturer consortia, trade associations, and individuals.

(B) The Department shall conduct the AA such that it meets the requirements of section 69305.8.

(C) Any manufacturer of a Priority Product that participates in the AA shall not be required to submit a separate AA Work Plan, AA Work Plan Executive Summary, AA report, or AA Report Detailed Executive Summary as described in sections 69305 (b), 69305.1, 69305.3, 69305.4, 69305.8, and 69305.9.

(D) Participation in the AA shall not limit a manufacturer from performing a separate AA as described in section 69305 (b).

(E) Participants in the AA shall be subject to data call-ins by the Department pursuant to completing the AA, and with provisions for protection of trade secrets as per section 69310.

(F) If more than one COC shares a similar chemical function and can be found in the same Priority Products, they may be grouped together to be included in the same AA, at the discretion of the Department.

(G) The AA must be completed within 270 days of the date for AA Work Plan submissions per 69303.2 (e)(2)(C)). The Department may extend this deadline if the AA is not yet completed. Such an extension shall not exceed 90 days.

(H) The Department shall post on its website in a timely manner for each AA:

1. The list of participants.
2. The objective and scope.
3. The approach and methodology.
4. The schedule and deliverables.
5. The final report.
6. Any significant work products related to the AA.

Modify 69305 (b) to clarify that manufacturers that choose to participate in the public AA are relieved of the obligation to perform a separate AA

(b) A manufacturer of a product that is listed as a Priority Product, **that chooses not to participate in the AA led by the Department**, shall perform an AA for the Priority Product, except as provided in section 69305.1.

Add section 69305 (j) to clarify that collaborative AAs within industries are still allowed, in addition to the public AA option

As used in this section, the term “manufacturer” includes “manufacturers” as defined in section 69301.2, and other entities that may perform AAs on behalf of manufacturers with which the entity is affiliated, including, but not limited to, manufacturer consortiums, trade associations, and manufacturer parent corporations and subsidiaries.

Clarify section 69303.2 (e)(2)(C) to set the date for manufacturers to join the public AA(C) For each Priority Product, the date by which each manufacturer of that product shall **either enroll in the public AA or** submit an AA Work Plan and Detailed Executive Summary to the Department, pursuant to sections 69305.3 and 69305.4.

Clarify section 69303.5 (c)(3) to allow manufacturer participation in the public AA to be included as part of the required retailer notifications

(3) The date when an AA Work Plan is due for Priority Product, **or a statement that the manufacturer will participation in the public AA;**

This approach would substantially address many of the non-governmental and academic stakeholder concerns about transparency and peer-review of the AAs. It would also make it easier to ensure that the best practices in AA are being broadly applied.

We also believe these proposed changes would be good for business because of the significantly greater efficiency. Public AAs would drive innovation by recognizing producers of safer alternatives, and would be especially helpful to small businesses because of the automatic compliance offered by participation.

From an administrative perspective, conducting these AAs will require staffing, however, the lower burden of overseeing individual AA Work Plans should provide ample resources to support the public AAs. Also, if DTSC leads the program, it would allow the department to set appropriate timelines to meet public policy goals.

And finally, creation of a state-of-the-art public AA program would establish California as a leader in the drive toward safer chemicals and products.

Thank you for the opportunity to provide comments and feedback to improve the regulations. We look forward to continuing to work with DTSC on this issue. If you have any questions, feel free to contact us at any time.

Sincerely,

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cc. John Moffatt, California Office of the Governor

Business-NGO Working Group (BizNGO) Note on Policy Positions
Participants in BizNGO are all working towards the use of safer chemicals in commerce. Reflecting the diversity of participants in BizNGO, we have a diversity of perspectives on government, NGO and industry initiatives. While BizNGO strives for consensus on all of its policy positions and all participants agree on the need for effective solutions, we may not achieve consensus on the specifics of every BizNGO policy statement.