



November 29, 2010

Mr. Jeff Woled, Regulations Coordinator
Regulations Section
California Department of Toxic Substances Control
Via email: gcregs@dtsc.ca.gov

**SUBJECT: Public Comment for Post-Hearing Revisions & Added Document
Safer Consumer Product Alternatives
Department Reference Number: R-2010-05
OAL Notice File Number: Z-2010-0908-01**

Dear Mr. Woled:

JDMT, Inc supports California's Green Chemistry Initiative, and we are pleased to have the opportunity to comment on the Department of Toxic Substances Control (DTSC) post-hearing changes made to the proposed Safer Consumer Product Alternatives regulations.

We submitted written comment to the formal record of the proposed changes in advance of the November 1, 2010 Hearing, and wish to now focus upon how the DTSC's most recent revisions impact our prior comment elements. Our comments below consider if and how the post-hearing revisions addressed our original concerns

- 1. What is included versus Who is impacted.** Our original concern focused on a lack of clarity regarding who fell under the new regulatory purview: if everything considered a "consumer product" was included, then everyone selling such products would be subject to enforcement.

We appreciate the added reference clarification regarding the DTSC's source for the "consumer product" legal terminology, and agree that not everything is by default under the purview of this proposed regulation. Revisions to Section 69301 provide sufficient clarity regarding what is and is not currently proposed for coverage, and to a degree have clarified who makes this determination. We are concerned that it is still nearly impossible for a manufacturer to determine with certainty that their product is not subject to the rigors of the regulations. We would hope that the DTSC is well prepared for the onslaught of requests for written clarification, since such will frequently be necessary for a manufacturer to satisfy determination of risk for banking and permitting purposes.

- 2. Incentives versus Disincentives.** Little attention was given in the original proposed regulations to the negative impact upon California "green chemistry" manufacturers, nor upon the economic down-turn that such overt disincentives would have upon our State's progressive improvement of available "green" consumer products.

Pursuant to Health & Safety Code 25252(b)(2) as the DTSC has itself noted, the proposed regulations must "minimize costs and maximize benefits for the State's economy". We continue to believe that a preemptive positive program of education and substantive

incentives for development and commercialization of Green Chemistry alternatives would be of greater immediate economic benefit than a punitive disincentive approach, and that the post-hearing revisions did little to assuage this concern, other than attempt to justify the DTSC's own proposed actions.

- 3. Undue Impact on California's Emerging "Green Chemistry" Industry.** In our comments to the original proposed regulations, we stated that alternatives to established chemicals are being brought forward by recently-commercialized businesses, in competition with deeply established market dominance of the very chemicals the Green Chemistry Initiative attempts to replace. Further, the proposed regulations by their structure will favor the entrenched industrial sector, providing protection for proprietary information that in practice requires years and great expense to secure.

Modifications to Section 69301.6 appear to mollify much of the above noted concern. We would ask that there be an assistance mechanism established whereby on a no-fault basis, a company could find certainty regarding the applicability of the regulations to their intended or already-in-commerce products.

- 4. Chemical versus Mechanism of Use.** We previously emphasized that it is the intended application, the use of a chemical, which should be under the DTSC's scrutiny.

The DTSC continues to address both the chemical and the product. For the chemical, clarification that there must be an identifiable pathway of exposure is a welcome revision. Further, the symmetry with OEHHA and the agency's occupational exposure rules appear to shift focus appropriately toward tracking a chemical of concern along its varied paths and enforcing upon the application where inadequately controlled, rather than creating a blanket ban on the chemical itself. We would cautiously agree with this programmatic re-focusing, but question the rigorous burden placed upon all entities along that path from manufacturer to agency to consumer.

- 5. Inherently Unsafe yet Effective Chemicals.** We previously noted that in many cases, no alternative exists for a specific chemical, in a specific application.

We continue to question the overall policy of protecting us from ourselves. The DTSC is proposing to determine whether in each specific application, an alternative chemical composition to a product is acceptable. That choice within reason should be left to the consumer, not abrogated to the authority of agency oversight. It is the impact of the application that should be of primary concern. Is this solely a potential hazard to the User, or is there unavoidable collateral damage to the environment, including non-user public in the vicinity of that application? The revisions do nothing to clarify this concern, again only emphasizing the DTSC's mandate as justification for its approach.

Recommendations

1. Provide an easily-accessible mechanism to request written clarification of purview with a timely response, such that a manufacturer can satisfy determination of risk due diligence for banking and permitting purposes.

2. Create and implement in advance of regulatory enforcement, a preemptive positive program of education and substantive incentives for development and commercialization of Green Chemistry alternatives.
3. Determine and make public the impacts upon all entities along the pathways from the entry of a chemical of concern into the marketplace, to its final use by a consumer. Identify the economic burdens placed upon all entities along that path, from manufacturer to agency to consumer. This should include the relative cost and complexity of data management on the proposed on-going basis of collection, collation and control.
4. Increase emphasis on the impact of the application. Clarify that regulatory focus should be on reducing collateral damage to the environment, including non-user public in the vicinity of that application, rather than on the isolated protection of the willing and informed user.

Please contact me at mtheroux@jdmt.net or (530) 823-7300 if you have any questions.

Sincerely,

JDMT, Inc



Michael Theroux
Vice President