Dear Governor Schwarzenegger,

We are writing to express our concern over the final draft of the Safer Consumer Products Alternatives Regulations (R-2010-05) and to encourage you to withdraw the draft as soon as possible. We propose a means by which the Center for Green Chemistry at UC Berkeley can be of assistance in taking subsequent steps.

In 2007, with the support of your Office, the Department of Toxic Substances Control (DTSC) launched the Green Chemistry Initiative, an ambitious effort to improve the safety of chemicals in products sold in California. The 5th plank of the Initiative—to “Accelerate the quest for safer products”—received implementing legislation (AB 1879, Feuer, D-LA) and your signature, which launched a two-year process to gather input from an array of stakeholders and from the Green Ribbon Science Panel—a scientific advisory group established by the statute.

On September 10, 2010, DTSC produced a working draft of the Safer Consumer Products Alternatives Regulations. On November 16, 2010, however, DTSC published extensive revisions to the draft, which, if adopted as written, would fail to implement AB 1879 and would not achieve the basic goal of the Green Chemistry Initiative: to promote the development and adoption of safer chemicals, products and manufacturing processes, according to the principles of green chemistry.

In January, 2008 a joint UC Berkeley, UCLA report commissioned by DTSC and endorsed by 130 University of California faculty and researchers, identified three critical gaps in chemicals policy (the Data Gap, Safety Gap and Technology Gap) and recommended means by which California could address those gaps.1 The latest

---

1 2008 report and references available at http://coeh.berkeley.edu/greenchemistry/briefing/default.htm
For more complete analysis of the three chemicals policy gaps, see Wilson and Schwarzman, Toward a New US Chemicals Policy: Rebuilding the foundation to advance new science, green chemistry and environmental health. Environmental Health Perspectives. 117(8):1202-1207. 2009.

http://bcgc.berkeley.edu
revisions to the proposed regulations, unfortunately, would perpetuate the data
gaps, severely restrict DTSC's ability to systematically identify and address chemicals
in products that pose threats to human and environmental health (perpetuate the
safety gap), and do little to nothing to promote the innovation of safer products
(perpetuate the technology gap).

While previous versions of the Safer Consumer Products Alternatives Regulations
would not, on their own, have definitively closed the gaps, they would have at least
initiated a process of developing a more comprehensive approach to chemical
management and product innovation. The current draft ensures that a very small set
of chemicals will be subject to classification as chemicals of concern. An equally
limited number and range of products will be subject to the regulation. Extensive
confidential business information (CBI) claims will likely render the process opaque
to the market and to the public. Together, these factors would remove the market
signals that drive producers to proactively replace hazardous substances with safer
alternatives.

Ironically, the process as proposed would likely encourage the use of toxic
substances that fall outside the narrow jurisdiction of the regulation, resulting in the
regrettable substitutions that AB1879 and the Green Chemistry Initiative set out to
prevent.

We are also concerned that the revised regulations reflect no recognizable
recommendations of the Green Ribbon Science Panel—the scientific advisory group
legally charged with advising DTSC in implementation of AB1879. Its 26 members
were not advised of the revisions, nor were they allowed to provide input on them
outside of the short 15 day public comment period.

In an effort that we have fully supported, California EPA Secretary Linda Adams
declared the Green Chemistry Initiative a "far-reaching market-driven strategy with
an ambitious aim—the launch of a new chemicals framework and a quantum shift in
environmental protection."\(^2\) We believe that the revised regulations, unfortunately,
would undermine Cal/EPA's ability to accomplish this objective; in short, they will
not generate the market structure necessary to promote the innovation of safer
substances, according to the principles of green chemistry.

In assessing these concerns as whole, we conclude that the draft regulations
represent a set-back in California’s Green Chemistry Initiative. For this reason, we
urge you to withdraw them and allow the parties to convene in 2011 to reconsider
another proposal.

To that end, the Berkeley Center for Green Chemistry is organizing a Consortium on
Green Chemistry to facilitate dialogue and action among businesses, universities,
state and local government, NGOs, labor unions, and professional associations in
advancing green chemistry and chemicals policy in California. Re-framing the key

---

\(^2\) California Green Chemistry Initiative, Final Report, December 2008
http://www.dtsc.ca.gov/PollutionPrevention/GreenChemistryInitiative/upload/GREEN_Chem.pdf
elements of these regulations would seem to be a worthwhile endeavor of the Consortium, and we stand ready to do so.

Thank you for your efforts to protect the people and natural resources of California from exposure to toxic substances. We fully support your vision of California leadership in green chemistry innovation, and we are working alongside your Office and the Legislature to achieve that objective.

Respectfully Submitted,

Professor John Arnold
Director

Robert Bergman
Professor Robert Bergman
Associate Director of New Chemistries

Alastair Iles
Professor Alastair Iles
Associate Director of Law and Policy

Dr. Martin Mulvihill
Associate Director of Curriculum

Christine Rosen
Professor Christine Rosen
Associate Director of Business and Economics

Megan R. Schwarzman
Dr. Megan R. Schwarzman
Associate Director of Health and Environment

Dr. Michael Wilson
Associate Director of Integrative Sciences

cc. Assemblymember Mike Feuer, D-LA