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October 21, 2014

Miriam B. Ingenito
Acting Director
Department of Toxic Substances Control
1001 "I" Street
P.O. Box 806
Sacramento, CA 95812-0806

RE: Safer Consumer Products Draft Priority Product Work Plan

Dear Acting Director Ingenito,

On behalf of the American Apparel & Footwear Association (AAFA), I am submitting the following comments in response to the request for public comments by the California Department of Toxic Substances Control (DTSC) on the Safer Consumer Products (SCP) Draft Priority Product Work Plan.

AAFA is the national trade association representing apparel, footwear, and other sewn products companies, and their suppliers, which compete in the global market. Our membership consists of over 300 American companies which represent one of the largest consumer segments in the United States. Of these companies, 70 are headquartered in California and represent thousands of jobs in the state. Most others, although not headquartered in California, retain employees in California in retail, distribution, design, and other roles.

Thank you for this opportunity to submit comments, and for the DTSC's stated intent to seek valuable input from industry players. As we have noted in previous comments, we wish to stress our association's support for California's Green Chemistry Initiative to reduce public and environmental exposure to chemicals of concern in consumer products.

The apparel industry has taken the lead in positioning itself to make informed chemical decisions regarding the health and environmental impacts of textile products and processes, thus driving and maximizing product safety and industry sustainability. Through the use of AAFA's chemical management tools such as the AAFA Restricted Substances List (RSL)ⁱ and the Voluntary Product Environmental Profile (VPEP),ⁱⁱ our members have demonstrated their continued commitment to develop safe, and sustainable consumer products.

AAFA and its members are aware that with the inclusion of clothing as a product category in the SCP Draft Priority Product Work Plan, the apparel industry has been served notice that it may be required to evaluate the feasibility of removing certain chemicals from its products. We look forward to engaging with DTSC on behalf of the apparel industry. AAFA and its

members believe the comments offered here warrant reconsideration of the inclusion of clothing as a product category in the draft work plan.

As such, we offer the following comments:

1. Delist potential candidate chemicals in the draft work plan that are regulated by existing federal and state regulations.

Section 25257.1(c) of the California Health and Safety Code provides that DTSC “[t]he department shall not duplicate or adopt conflicting regulations for product categories already subject to pending regulation consistent with the purposes of this article.” Therefore, we strongly urge DTSC to recognize existing federal or state regulations that address potential candidate chemicals named in the draft work plan. Specifically the following potential candidate chemicals in clothing products should be delisted for the reasons identified.

FORMALDEHYDE

Formaldehyde has been thoroughly reviewed at the federal level and is actively regulated in textiles and apparel. The formaldehyde chemistry used in dyeing and finishing has been extensively studied by the Consumer Product Safety Commission (CPSC) under the Federal Hazardous Substances Act (15 U.S. Code 1261-1278). These studies, conducted at Oak Ridge National Laboratory and other locations, determined that formaldehyde content in textiles does not pose acute or chronic health problems for consumers. Based on this research and other work, CPSC has decided that no regulatory standard is necessary for formaldehyde in textiles and apparel.

TRICLOSAN

Triclosan, an antimicrobial active ingredient contained in a variety of products, acts to slow or stop the growth of bacteria, fungi, and mildew. The use of triclosan in textiles and apparel as a materials preservative is regulated by the U.S. Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Additional information to support the exemption of triclosan from the draft work plan is discussed below.

PHTHALATES

Phthalates have also been thoroughly reviewed at the federal level and are regulated quite extensively in textiles and apparel. Under section 108 of the Consumer Product Safety Improvement Act (CPSIA), phthalate restrictions apply to specified phthalates in child care articles and toys.

Specifically, there are permanent restrictions on the sale of children’s toys and child care articles with concentrations of more than 0.1 percent of di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP) or benzyl butyl phthalate (BBP). The CPSIA also placed temporary (interim) restrictions on the sale of children’s toys that can be placed in a child’s mouth, and on child care articles that contain more than 0.1 percent of diisononyl phthalate (DINP), diisodecyl phthalate (DIDP) or di-n-octyl phthalate (DnOP).

CPSC staff has declared children’s pajamas are considered to be a child care article under the CPSIA phthalate limitations. The practical result of these decisions is sleepwear (and,

presumably, related garments including loungewear) is subject to testing and certification requirements for certain phthalates.

In addition to federal enforcement, the clothing industry has also been heavily regulated for phthalates through California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which has in effect put in place the same 0.1 percent standard as stated in the CPSIA. The lead agency for Proposition 65, the Office of Environmental Health Hazard Assessment ("OEHHA"), has for years regulated the use of phthalates in all consumer products sold in California.

2. Provide Clarity on Chemical Classes

AROMATIC AMINES AND AZO DYES

Table 5 Potential Candidate Chemicals in Clothing Products lists the chemical class "Aromatic Amines and Azo Dyes" with the functional use of colorant, dye, pigments as a chemical category for evaluation in the work plan. Azo dyes are a large class of effective synthetic dyes used for coloring a variety of consumer products such as foods, cosmetics, carpets, clothes, leather and textiles. A small proportion of azo dyes contain, or can break down to form, a class of chemical substances referred to as aromatic amines. Only limited and select azo dyes are problematic; the majority do not result in exposure to hazardous aromatic amines. DTSC should specially identify those dyes that have the potential to degrade to hazardous aromatic amines so that industry can then ascertain and provide specific information in response to such concerns.

3. Provide clarity to stakeholders across all affected industries by being more transparent about the DTSC's selection process

During the public stakeholder meeting offered by DTSC to discuss the draft work plan, DTSC revealed that internally its staff had started with about 80 product categories. With the input of toxicologists and chemists, and using a variety of filters, DTSC's staff narrowed these 80 product categories down to the seven product categories named in the draft work plan. However, when questioned by several stakeholders to describe the selection, filtering and winnowing process in more detail and identify data sources relied upon for each filtering, DTSC replied that it used its subjective discretion and applied the factors and criteria for Priority Product selection required by the SCP regulations.

As DTSC is aware, the implementation of the California Green Chemistry Initiative will have serious impacts on industries from which product categories are selected and eventually chosen as priority products. It is therefore incumbent for DTSC to provide clarity to stakeholders across all affected industries by being more transparent about the agency's selection process. For example, DTSC can provide clarity to stakeholders on the informational basis of the agency's decision-making by fully disclosing the list of 80 products with which the internal filtering team started and the studies DTSC staff relied upon to winnow down to the 7 products.

4. Identify a California-specific problem that warrants the inclusion of clothing as a product category in the draft work plan.

According to the draft work plan, clothing was selected as a product category for evaluation due to the presence of two factors: dermal exposure and aquatic resource impacts from wearing and washing clothing containing PBT (persistent, bioaccumulative, toxic) candidate chemicals used for color fastness, wrinkle and stain resistance, and water repellency.

DTSC cites studies that specifically address two potential candidate chemicals in clothing named in the work plan, Swedish Chemicals Agency, (2012) *Antibacterial substances leaking out with the washing water- analyses of silver, triclosan and triclocarban in textiles before and after washing*, and Environment Agency, (2013) *Nonylphenol ethoxylates (NPE) in imported textiles* as sources for the basis of DTSC's identification of clothing as a product category. AAFA and its members are concerned that the above-mentioned studies have been used as justification in naming clothing as a product category without scientifically verifying the research or relevance in identifying a California-specific problem related to the use of the aforementioned chemicals.

For example, the foreword of the Swedish Chemicals Agency study states:

"The use of antibacterial substances may be associated with health and environmental risks. The Swedish Chemical Agency has not, however conducted any risk assessment based on the results of the studies but represents here the problems and fears that have been identified on the basis of the properties of the of the substances posing a hazard to the environment and health."

This statement stands in contrast to the fundamental tenet of California's Green Chemistry Initiative to maintain a scientific foundation for policy recommendations and decisions. The use of data cited in emotionally driven studies based on fear has no place in the regulatory process.

Furthermore, DTSC emphasizes that the agency will continue to rely on scientific, peer-reviewed, authoritative publications in researching product-chemical combinations drawn from the categories in the work plan.

Based on this statement, we would expect DTSC to reference and weigh other sources in its decision to list product-chemical combinations in the Work Plan, such as the U.S. EPA. As recent as August 2014, the EPA updated the following information regarding the antimicrobial triclosan:

"The EPA performed consumer environmental modeling for triclosan, which demonstrated that estimated concentrations of triclosan in surface water do not exceed concentrations of concern for acute risk for aquatic organisms.

Considering the low probability of triclosan being released into household water and surface waters from EPA-regulated microbial uses, the Agency also concluded that chronic aquatic risks are unlikely originating from consumer uses of triclosan- treated plastic and textile items. Therefore, the Agency can reasonably conclude that the anti-microbial uses of triclosan (e.g., triclosan treated plastic and textile items in households) are unlikely to contribute to significant quantities of triclosan into household wastewater and eventually in surface water."

The EPA's findings contradict the Swedish Chemicals Agency report regarding triclosan. As stakeholders directly affected by DTSC's interpretation of this study, we are concerned about DTSC's decision (without explanation) to rely on the Swedish Chemicals Agency report over the findings of the EPA in its selection of triclosan as a potential candidate chemical for evaluation.

Additionally, DTSC references the Environment Agency, 2013 Nonylphenol ethoxylates (NPE) in imported textiles study in its decision to include clothing in the draft work plan. The study cites:

“Research has been on-going to determine the source of NP/ NPE in the UK’s rivers, and it is proposed that one possible source is the presence of NPE on imported cotton textiles.”

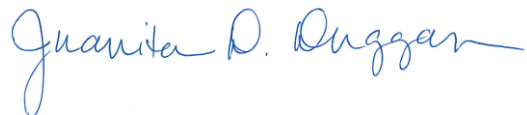
While the study identifies NP/NPEs are present in and continue to be discharged in UK waterways, AAFA and its members are unclear how the relevance of this study identifies a specific problem related to California. Please clarify how this study was used in DTSC’s decision to list NP/NPEs in the draft work plan? Additionally, how much consideration will be given to studies or data that contradict sources cited in the draft work plan?

Conclusion

We wish to again express our association’s support for California’s Green Chemistry Initiative; however, we believe our comments and recommendations should give DTSC pause before proceeding. AAFA and its members also request an additional comment period before finalization of the work plan to allow further input and dialogue with relevant stakeholders.

Thank you for your time and consideration in this matter. Please contact Danielle Iverson of my staff at 703.797.9039 or by email at diverson@wewear.org if you have any questions or would like additional information.

Sincerely,

A handwritten signature in blue ink that reads "Juanita D. Duggan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Juanita D. Duggan
AAFA President & CEO

ⁱ The RSL is intended to provide apparel and footwear companies with information related to regulations and laws that restrict or ban certain chemicals and substances in finished home textile, apparel, and footwear products around the world.

ⁱⁱ The Voluntary Product Environmental Profile (VPEP) is a supplier disclosure form that allows suppliers and buyers to easily exchange vital information on the chemical makeup of products and the environmental impact of apparel and textile products and processes. Developed by a group comprising of dyestuff and chemical suppliers, apparel and textile manufacturers, and professional staff of academic institutions and trade associations representing the chemical, dyestuff, and apparel and textile industries, VPEP can be used by apparel and textile companies and chemical suppliers to facilitate the efficient exchange of information necessary to make decisions regarding the environmental impact of textile products and processes.