

**** Updated - June 14, 2013****

TO: Members, California State Legislature

**SUBJECT: TRAILER BILL LANGUAGE - FEE AUTHORITY FOR THE SAFER CONSUMER PRODUCTS INITIATIVE
OPPOSE**

Dear Members of the California State Legislature:

Late last week the below-listed organizations received word that fee authority is being sought, likely as part of a budget trailer bill, that would grant the Department of Toxic Substances Control (DTSC) authority to impose a fee to fund its responsibilities related to the Safer Consumer Products Regulations (Proposal or Proposed Regulations), sometimes referred to as the Green Chemistry Initiative. For the reasons detailed below, we **OPPOSE** this proposal and ask that you vote "No" if and when it comes before you.

FEE AUTHORITY IS PREMATURE BECAUSE DTSC HAS NOT FINISHED DRAFTING THE FULL REGULATORY PROGRAM ENVISIONED BY THE LEGISLATURE.

On May 21, 2013, DTSC released an updated economic impact assessment and Std. Form 399 for the Proposed Regulations, along with two supporting documents. Nowhere in these documents did the Department mention that businesses might be required to pay a fee. Instead, DTSC stated that nearly all of the impacts the Proposal would have on businesses are unknowable at this time. At the same time, DTSC asserted that any costs businesses would incur complying with the regulation would be minimal. For example, the Department stated:

- "The only impacts to the private sector are that DTSC may request businesses to provide existing information or generate new information necessary to implement the regulations."
- "The proposed SCP regulations are process regulations and do not have any direct impacts on any chemical or product, therefore this regulation will not make it more costly to produce goods or services here."
- "the costs to generate the data is expected to be minimal because businesses are not required to provide the information and would not do so if the costs were too high."
- "...there are no significant costs or benefits associated with these regulations."

The reason DTSC does not know what the economic impacts of the Proposal are at this time, and the reason the Proposal imposes a minimal cost on businesses, is because the Proposed Regulations do not fully effectuate the intent of the Legislature set forth in the authorizing statute. Instead, the Department intends to engage in additional rounds of rulemaking at a later date, filling out the details of the regulatory program as it goes. It is inappropriate to grant an agency fee authority before the agency has finished crafting the program that fee will help fund.

THE PROPOSED EXACTION IMPOSED ON BUSINESSES WOULD LIKELY BE A TAX REQUIRING A TWO-THIRDS VOTE ACCORDING TO PROPOSITION 26.

In its own words, the Proposed Regulations the Department is seeking to finalize this summer, "establish a process for identifying and prioritizing chemical and product-chemical combinations and a process by which chemicals of concern in products and their potential alternatives are eventuated to determine how best to limit exposure or reduce the level of hazard posed by a chemical of concern." Through subsequent rulemaking efforts, DTSC will decide which product-chemical combinations and which businesses will be subject to regulation, and what the details of that regulation will be. DTSC, under such a regulatory scheme, will bear costs related to:

- Later rounds of drafting and rulemaking

- Evaluating information manufacturers provide upon request, prior to the Alternatives Analysis
- Evaluating information manufacturers provide in their Alternative Analyses and other analytical reports
- Selecting and enforcing Regulatory Responses

Without trailer bill language in front of us, it is impossible to know exactly how the Department proposes to determine the amount of the exaction or who it will be imposed on, but it is safe to assume that regulated manufacturers will be asked to pay the bulk of the exaction, if not all of it, and that the revenue will be used to cover costs associated with some or all of the activities listed above.

Proposition 26 states that an administrative exaction imposed by the state is a tax requiring approval by two-thirds of the Legislature unless it is *“imposed for the reasonable regulatory costs to the State incident to issuing licenses and permits, performing investigations, inspections, and audits enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.”* In addition, Proposition 26 requires that, to be a fee, the amount of the exaction be, *“no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity.”*

Based on the language of Proposition 26, the only activity DTSC will engage in when implementing the Proposed Regulations that even arguably meets the definition of an administrative fee is the enforcement of regulatory responses, which could involve “investigations, inspections, and audits” depending on which regulatory response is selected by the Department. All of the other activities fall outside of this definition. Thus, should the Legislature see fit to authorize DTSC to impose an exaction on manufacturers or other businesses, it must do so with a two-thirds vote of the Legislature.

In addition, the proposed exaction is also apt to run afoul of the second portion of Proposition 26 requiring that 1) the amount charged be no more than necessary to cover the reasonable costs of the regulatory activity and 2) that the costs be allocated to a payor such that they bear a fair and reasonable relationship to the payor’s burdens on the governmental activity. Since the Department has not, according to its responses on the Std. Form 399 and supporting documents, identified how many businesses will be impacted by the Proposed Regulation or what product-chemical combinations it plans to regulate, there is no way to properly evaluate what costs the agency will incur implementing the Proposal or determine how to allocate that cost regulated entities. As such, the proposed fee is actually a tax, and as mentioned above, is also premature because DTSC does not yet know what its costs will actually incur or who to pass those costs on to.

For these reasons, we **OPPOSE** the proposed fee authority and ask you to vote “No” should it come before you for a vote.

Sincerely,

Mira Guertin



Policy Advocate, California Chamber of Commerce

On behalf of the following organizations:

- A.G. Layne, Inc.
- Alliance of Automobile Manufacturers
- American Apparel & Footwear Association
- American Chemistry Council
- American Cleaning Institute
- American Coatings Association

American Forest and Paper Association
Association of Home Appliance Manufacturers
Art and Creative Materials Institute
Automotive Aftermarket Industry Association
BASF Company
Behr Process Corporation
Berjé, Inc.
California Attractions and Parks Association
California Cascade Fontana, Inc.
California Chamber of Commerce
California Healthcare Institute
California Manufacturers and Technology Assoc.
California Metals Coalition
California League of Food Processors
California Paint Council
California Travel Association
Can Manufacturers Institute
Chase Products Co.
Chemical Industry Council of California
Coalition for Safe & Affordable Childrenswear
Coast Wood Preserving, Inc.
Consumer Healthcare Products Association
Consumer Specialty Products Association
Defoamer Industry Trade Association
Dow Chemical Company
Du Pont
Eaton and Cooper Lighting
Edson Industries
Fashion Accessories Shippers Association
Fashion Jewelry & Accessories Trade Assoc.
Flexible Vinyl Alliance (FVA)
Florida Chemical Company
Fontana Wood Preserving, Inc.
General Electric Company
Grocery Manufacturers Association
Halloween Industry Association, Inc.
Henkel Consumer Goods Inc.
Industrial Environmental Association
Information Technology Industry Council
International Fragrance Assoc., North America
International Franchise Association
IPC – Assoc. Connecting Electronics Industries
J.H. Baxter & Co.
Juvenile Products Manufacturer Association
LA Chemical
Metal Finishing Assoc. of Northern California
Metal Finishing Assoc. of Southern California
Metals Company of America, Inc.
National Aerosol Association
National Association of Chemical Distributors
National Candle Association
National Electrical Manufacturers Association
Oregon Women in Timber
PABCO Building Products, LLC
Pacific Water Quality Association
Personal Care Products Council

Pharmaceutical Researchers and Manufacturers of America
Pine Chemicals Association
Plumbing Manufacturers International
Procter & Gamble
Renegade Candles
Rubber Manufacturers Association
Searles Valley Minerals
Society of Chemical Manufacturers & Affiliates
SPI, the Plastics Industry Trade Association
Styrene Information & Research Center
TechAmerica
The Vinyl Institute
Toy Industry Association
Travel Goods Association
Treated Wood Council
Tri-iso, Inc.
Water Quality Association
West Coast Lumber & Building Material Assoc.
Western Plant Health Association
Western States Petroleum Association
Western Wood Preservers Institute
Wild Berry Incense, Inc.
Writing Instrument Manufacturers Association

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