May 9, 2022

The Honorable Chris Holden, Chair
Assembly Committee on Appropriations
State Capitol
Sacramento, CA 95814

RE: AB 2247 (Bloom) – as amended April 20, 2022: OPPOSE

Dear Chair Holden:

The undersigned organizations have taken an **OPPOSE** position on AB 2247 (Bloom), legislation proposing the creation of a new database to house information submitted by manufacturers relative to perfluoroalkyl and polyfluoroalkyl (PFAS) substances.

Collectively, we support the responsible production, use and management of fluorinated substances, including regulatory requirements that are protective of human health and the environment, taking into consideration the diversity of physical and chemical properties and the environmental and health profiles of these substances.

With respect to AB 2247, the bill imposes a significant new reporting requirement on businesses but delegates virtually all the implementation activities including creating a database and managing the information collected to a 3rd party entity. AB 2247 simply requires the Department of Toxic Substances Control (DTSC) to "work" with this 3rd party but provides no other engagement by the state, including no requirement that future implementing regulations be developed.

The bill is silent on the process by which manufacturers must report, how trade secret/proprietary information would be managed and protected, or how potential disputes might be resolved. Legislation that imposed new requirements on cookware manufacturers (AB 1200 – Ting) passed last session was similarly silent on any specific role for DTSC or another department. Manufacturers that have compliance questions have no implementing regulations to help provide guidance.

If California believes imposing a new reporting requirement is important, then it has an obligation to provide the business community with regulatory certainty, even if that results in a fiscal impact to the state.

Other issues we have identified with this bill include:

- An overly broad definition of PFAS that does not consider differing health/safety profiles, uses or potential for exposure.
- Overlap and redundancy with new PFAS reporting requirements underway at the U.S. Environmental Protection Agency (USEPA).
- Ability for DTSC to address these types of issues under existing authority and the potential for expanded authority under legislation (SB 502 – Allen) currently moving in the Legislature.
- Lack of clarity on how this information will presented to the public to ensure information is presented in an unbiased, scientifically sound manner that does not cause unnecessary concern.
- Lack of any confidential business information/trade secret protections.
- Impractical implementation timelines.

Background

PFAS, or fluorotechnology, are a diverse group of chemistries characterized by the strong bond between fluorine and carbon. Because of this strong bond, PFAS provides products with strength, durability, stability, and resilience. These properties are critical to the reliable and safe function of a broad range of products that are important for industry and consumers, such as smart phones, tablets, and telecommunications systems; aircraft; solar panels and turbines critical to alternative energy development; medical devices and technology such as MRI imaging devices and pacemakers; lithium batteries, including those for electric vehicles, and engine wirings and gauges. In fact, PFAS are critical to our nation's supply chain resiliency.

Additionally, it is important to note that all PFAS chemistries are not the same. Individual chemistries have their own unique properties and uses, as well as environmental and health profiles. According to the USEPA, "approximately 600 PFAS are manufactured (including imported) and/or used in the United States."[1] Among these 600 are substances in the solid (e.g., fluoropolymers), liquid (e.g., fluorotelomer alcohols) and gaseous (e.g., hydrofluorocarbon refrigerants) forms. The fundamental physical, chemical, and biological properties of solids, liquids and gases are clearly different from one another.

The very distinct physical and chemical properties of the three types of commercial PFAS described demonstrate how varied they are and how imposing a new reporting requirement regardless of these differences would be inappropriate. The use of such a broad definition could needlessly impose new requirements on products and technologies.

[1] https://www.govinfo.gov/content/pkg/FR-2019-12-04/pdf/2019-26034.pdf

USEPA Adds PFAS to Toxic Release Inventory and TSCA Reporting

Congress and the Biden Administration recently authorized significant legislation with new rules regulating PFAS.[2] Subsequently, under the Toxic Release Inventory (TRI) program companies or federal facilities that release 100 or more pounds of the 179 identified PFAS substances must collect and publicly report information on the amount that is released into the air, water, or land, and the quantities managed through disposal, energy recovery, recycling, or treatment. Additionally, the EPA is undergoing rulemaking under the Toxic Substances Control Act (TSCA) Section 8 that would require those who manufacture (including import) any identified PFAS to report information regarding PFAS uses, disposal, exposures, hazards, and production volumes.[3]

Testing for and identifying what is defined as PFAS is already a complex process. Additional reporting requirements at the state level will lead to multiple testing requirements with multiple definitions of PFAS. At a minimum, California can utilize the TRI data to better inform and prioritize any necessary policy options. We urge the Legislature to avoid the redundant use of state resources and support the EPA's efforts to comprehensively identify PFAS substances.

Existing DTSC Authority

Under the Safer Consumer Products (SCP) statute, DTSC has broad authority to request information from manufacturers and others. Specifically, California Code of Regulations, title 22, section 69501.4(b) authorizes DTSC to request information from product or chemical manufacturers, importers, assemblers, or retailers that it determines necessary to implement the Safer Consumer Products Program's framework regulations, via an information call-in. DTSC may use the information obtained through call-ins for several purposes, including identifying product-chemical combinations to evaluate as potential Priority Products; identifying and analyzing alternatives to eliminate or reduce potential exposures and adverse impacts; and filling data gaps to improve understanding and reduce research time.

In addition, the Legislature is currently considering SB 502[4], legislation by Senator Ben Allen that would grant DTSC expanded authority enabling the department to require manufacturers provide specific information including:

- information on ingredient chemical identity, concentration, and functional use;
- existing information, if any, related to the use of the products by children, pregnant women, or other sensitive populations; and
- data on state product sales, or national product sales in the absence of state product sales data.

[2] S.1790 - National Defense Authorization Act for Fiscal Year 2020

[3] https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0549-0001

[4] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB502

Furthermore, as part of a Budget Change Proposal (BCP)[5], DTSC is requesting 37 new positions and $7.2 million to support the SCP program. These additional resources are aimed at, among other things accelerating the identification of Priority Products, expanding chemical and data analysis, and enforcing requirements, "including notifications and regulatory responses."

Finally, DTSC is utilizing other means to identify chemical ingredients in products. Late last year, the department announced a new partnership[6] with tech platform Clearya to identify chemicals used in consumer products. In making the announcement, DTSC suggested the partnership will enable the department to "screen products for candidate chemicals and understand more about market presence in ways we've never been able to do before. This will save time, make us more efficient, speed up our process."

We urge your committee to consider the array of existing laws, regulations, and tools available at both the state and federal level before imposing a sweeping new data reporting requirement.

Database Information/Trade Secret Protections

AB 2247 directs DTSC to work with the Interstate Chemicals Clearinghouse[7] (IC2) to create a database that would house an array of information but there appears to be no requirements or guidelines that would ensure information collected is presented to the public in an un-biased, scientifically sound manner. A program presenting such technical and nuanced information should allow manufacturers to be able to review how the data is presented or accompanying statements prior to it being published. Furthermore, the program should have a formal process to allow a company to address information published in a misleading or inaccurate manner.

The mere presence of a PFAS substance in a product does not mean that the product is harmful or that a consumer is at risk. Clear guidelines and safeguards are necessary to ensure the public is presented with fact-based information.

Additionally, some of the information that may be submitted could be proprietary. AB 2247 does not appear to provide for the protection of trade secret information. Under TSCA section 8 reporting regulations, those submitting information may assert a confidentiality claim.

Impractical Deadlines

The requirement that a database be up and running by July 1, 2024 and that manufacturers must begin to report information by that date seems impractical.

For these reasons, we must respectfully oppose AB 2247. We look forward to continuing to engage on this important issue. Should you have any questions, please do not hesitate to contact me at 916-448-2581 or tim_shestek@americanchemistry.com.

[5] https://esd.dof.ca.gov/Documents/bcp/2223/FY2223_ORG3960_BCP5200.pdf
[6] https://dtsc.ca.gov/2021/10/19/news-release_t-19-21/
[7] https://theic2.org/members#gsc.tab=0

Sincerely,

Tim Shestek
American Chemistry Council

On behalf of the following organizations:

Advanced Medical Technology Association (AdvaMed)
Alliance for Automotive Innovation
American Apparel & Footwear Association
American Chemistry Council
American Coatings Association
American Forest & Paper Association
Association of Home Appliance Manufacturers
California Chamber of Commerce
California Manufacturers & Technology Association
Chemical Industry Council of California
Consumer Technology Association
Fluid Sealing Association
Household & Commercial Products Association
Industrial Environmental Association
Juvenile Products Manufacturers Association
National Association of Chemical Distributors
National Council of Textile Organizations
National Electrical Manufacturers Association
Pine Chemicals Association International
Plastics Industry Association
Rockwell Automation
The Rechargeable Battery Association
The Toy Association