July 21, 2025

Katherine M. Butler, MPH
Director
Department of Toxic Substances Control
1001 I Street
Sacramento, California 95812-0806

Re: Proposal to amend the Safer Consumer Product Regulations implementing SB 502(2022)
DTSC Ref No: R-2023-15R
Submitted via SCP Information Management System, CalSAFER at: https://calsafer.dtsc.ca.gov

Dear Mrs. Butler,

The American Coatings Association (ACA) is a voluntary, nonprofit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The Association's membership represents 90% of the U.S. paint and coatings industry, including downstream users of chemicals, as well as chemical manufacturers. Our membership includes companies that manufacture paint, coatings, sealants and adhesives and their raw materials. ACA is eager to assist DTSC in developing an effective system for the identification of chemical alternatives, as needed. ACA appreciates the opportunity to submit comments regarding DTSC's proposed changes to *Safer Consumer Products Regulations* implementing SB 502(2022). We look forward to working with DTSC during this process.

I. Introduction

ACA is concerned that recognizing one or more studies in lieu of an alternatives analysis may not adequately address factors critical to identifying a viable chemical substitute,

some of which are outlined in DTSC's alternatives analysis process in Sections 69505.5-69505.7.[1]

SB 502 (2022) authorized DTSC (the Department of Toxic Substances Control) to amend regulations implementing the *California Safer Consumer Products Program*. The act (SB 502) allows DTSC to rely on all or part of one or more applicable publicly available studies or evaluations of alternatives in lieu of an Alternatives Analysis to proceed directly to regulatory response. Individuals can also petition DTSC to recognize one or more available studies and move directly to a regulatory response.

For a study to meet *reliability criteria*[2] the study must:

> be published in a scientifically peer reviewed report or other literature, published in a report of the U.S. National Academies, or published in a report by an international, federal, state, or local agency that implements laws governing chemicals. The evaluation or study must also include a study design appropriate to the hypothesis being tested and be sufficient to support the study propositions.
>
> (See also *Notice of Proposed Action*, p. 3)

The proposal references the existing definition of *reliable information*[3] as the standard for DTSC to evaluate a study or studies when deciding whether to proceed directly to a regulatory response, noting the factors cited above.

Any petition to proceed to regulatory action must address how the study or studies meet the reliability criteria, addressing factors related to publication. DTSC's proposed changes to regulations, implementing SB 502, do not *clearly* require consideration of viability of a potential alternative. In a petition to proceed directly to regulatory action, the petitioner must analyze a *candidate chemical* against factors such as adverse impacts, costs, etc. as articulated in Section 69504(b)(1)(D). However, the petitioner is not required to address factors related to the viability of an alternative.

If DTSC grants a petition, it will publish a rulemaking proposal to list a Priority Product and proceed directly to a regulatory response. This proposal would be open to public comment. Presumably, commentors could address concerns regarding the viability of an alternative at this stage, although it is unclear how DTSC would factor this information into its decision-making process. When issuing a proposed rule to proceed to a regulatory

[1] California Code of Regulations, Title 22, Div. 4.5, Ch. 55, Sections 69505.5-69505.7.
[2] California Code of Regulations, Title 22, Div. 4.5, Ch. 55, Article 1, Section 69501.1(a)(57)(A)(1)-(3)
[3] California Code of Regulations, Title 22, Div. 4.5, Ch. 55, Article 1, Section 69501.1(a)(57)(A)(1)-(3)

response, DTSC would be authorized to request additional information articulated in Section 69506(c), including costs and ability of the regulated community to comply with a regulatory response.

II. DTSC may not be able to sufficiently evaluate a potential alternative when limited consideration to one or a few studies.

ACA is concerned that DTSC's reliance on one or a few studies may not address the complexities of chemical substitution and viability of an alternative. A more accurate approach would involve consideration of the body available scientific literature addressing a candidate, incorporating a "weight of the evidence" approach. Recognizing that SB 502 authorizes DTSC to recognize one or more studies in lieu of an alternatives analysis, it is critical that DTSC's implementing regulations require consideration of how a study addresses viability of an alternative, prior to further consideration when DTSC issues a proposed rule to list a Priority Product and move to a regulatory response.

III. DTSC should consider factors critical to alternatives assessment when evaluating petitions to proceed to regulatory action.

ACA requests DTSC to identify critical factors affecting alternatives assessment in its petition process (Section 69504) and its decision-making process (Section 69504.1) when determining whether to recognize a study (or studies) and move directly to the regulatory phase. These factors should be considered when determining whether the study is fit for the purpose of identifying a viable substitute, subject to public comment when DTSC issues a proposed rule to move to a regulatory response. Identification of these factors would not be exhaustive of all elements relevant to the regulatory phase. It would provide an important procedural step to promote adequacy of data necessary during the regulatory phase to evaluate an alternative.

ACA suggests that reasonably available alternatives must meet criteria for 1) environmental and health effects associated with substitution; 2) reasonable costs of substitution; and 3) technical feasibility of alternatives, including performance characteristics and availability of supply.

When considering whether to proceed directly to a regulatory response, DTSC must consider environmental and health effects of a potential substitute against the characteristics of the candidate chemical at issue. As DTSC is aware, in some instances, substitution comes with a high risk of replacing a chemical with a substitute of potentially unknown or greater hazard. Petitioners and/or DTSC must consider relevant information when determining whether to proceed to a regulatory response.

DTSC must also consider costs associated with substitution when considering whether to proceed to the regulatory response. Industry anticipates significant costs associated with developing viable substitutes for complex products. This is true of all industry sectors. In the coatings sector, coatings are used across a variety of demanding conditions, such as pipelines, defense equipment and infrastructure, bridges, buildings, etc. In many instances, "drop-in" substitutes are not available for high-performance coatings. As such, costs will be associated with R&D and product development. Efficacy of substitution must also be factored into a cost analysis. A less effective coating results in greater costs over time from more frequent coating.

DTSC's consideration of technical feasibility of alternatives, including performance and availability of supply, is critical to identification of viable substitutes. ACA members have faced situations where state regulators identify an alternative raw material that is not readily available on the market and/or does not perform in the same manner. In effect, where a regulation intended to phase out a potentially hazardous chemical, state implementation would have functioned as a broad product ban affecting critical industry sectors.

IV. Conclusion

ACA emphasizes the importance of identifying viable substitutes, while avoiding regrettable substitution. To this end, ACA requests that DTSC adopt related criteria into regulations addressing petitions to proceed to a regulatory response. ACA requests that such petitions and DTSC's decision-making process include preliminary consideration of: 1) environmental and health effects associated with substitution; 2) reasonable costs of substitution; and 3) technical feasibility of alternatives, including performance characteristics and availability of supply. These critical factors can be further evaluated during the rulemaking process.

Please contact Riaz Zaman (rzaman@paint.org) with questions or comments.

Sincerely,

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