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December 28, 2011

Via Electronic Submission

California Department of Toxic Substances Control  
Office of Legislation & Regulatory Policy  
1001 I Street  
Sacramento, CA 95814-2828

**RE: Informal Draft Safer Consumer Products Regulation**

IPC – Association Connecting Electronics Industries® appreciates the opportunity to comment on the Department of Toxic Substances Control’s (DTSC) informal draft regulation for Safer Consumer Products (hereafter referred to as proposed regulation). IPC is a strong advocate of environmental regulations that provide an environmental and economic benefit and protect human health. IPC is seriously concerned that the proposed regulation will fail to improve the health and safety of California’s citizens because the proposed scope is unwieldy and unimplementable. IPC believes a targeted, prioritized approach will allow industry and DTSC to effectively use available resources. Should DTSC wish to expand the scope of covered products and chemicals, a phased-in approach would ensure that all products and chemicals of concern are eventually covered in the regulation. IPC is also concerned that the proposed time frame for alternatives assessments is impractical for companies to comply with and DTSC to enforce. The citizens of California, DTSC and industry would all be better served by a more manageable approach to a green chemistry regulation.

**I. About the IPC**

IPC, a U.S. headquartered global trade association, represents all facets of the electronic interconnection industry, including design, printed board manufacturing and electronics assembly. Printed boards and electronic assemblies are used in a variety of electronic devices that include computers, cell phones, pacemakers, and sophisticated missile defense systems. IPC has over 3,100 member companies, including over 250 member companies located in California. As a member-driven organization and leading source for industry standards, training, market research and public policy advocacy, IPC supports programs to meet the needs of an estimated \$1.7 trillion global electronics industry.

IPC is committed to a number of voluntary environmental initiatives including several of EPA’s Design for the Environment partnership projects, the development of the Electronic Product

Environmental Assessment Tool (EPEAT) standard<sup>1</sup>, and the green chemistry standard through the American Chemical Society and National Standards Foundation.

## **II. DTSC Should Adhere to the Original Plan for a Green Chemistry Regulation**

IPC strongly encourages DTSC to adhere to its original science-based, lifecycle approach to evaluating chemicals under a green chemistry regulation. The California legislature initially envisioned a regulation that would move California toward a cradle-to-cradle economy, which focuses on a product's lifecycle and attempts to ensure minimal waste or pollutants are produced at any stage of a product's life. DTSC's proposed regulation directly undermines this goal by proposing to publically list chemicals of concern and priority products prior to conducting an alternatives assessment. Listing chemicals of concern and priority products for unknown reasons and/or undefined impacts prior to fully evaluating the environmental, social and economic impacts of potential alternatives will create de facto black lists and could have detrimental unintended environmental consequences. Electronics manufacturers use certain chemicals of concern because of their unique energy efficiency, safety or performance characteristics when no viable or environmentally-preferable substitutes exist. For example, review of the U.S. Environmental Protection Agency (EPA) Lead Free Solder project<sup>2</sup> illuminates the environmental trade-offs inherent in chemical substitutions. The study evaluated the environmental impacts of tin-lead solder versus lead free alternative solders. According to the study, the increased energy use associated with the higher operating temperatures required for manufacturing lead free soldered electronics was projected to cause higher air pollution, acid rain, stream eutrophication, and global warming impacts than tin-lead soldered electronics. In addition, adverse impacts to waste water were caused by nickel compounds and cyanides in lead free solders that are not contained in tin-lead solders. Listing chemicals and products to be banned without conducting thorough, comprehensive alternatives assessments will inevitably lead to inadvertent negative environmental impacts.

## **III. DTSC Will be Challenged in Attempting to Implement and Enforce Such a Far-Reaching Regulation**

The proposed regulation places a great deal of responsibility on the state of California. Given California's limited resources, IPC is concerned that complete, appropriate enforcement and implementation of this proposed regulation may be beyond the current capacities of the state. In order to ensure an effective regulation, DTSC will need to hire a number of additional technical staff to evaluate the voluminous amount of information that will be received. Under the proposed regulation, DTSC staff must:

- Prioritize Chemicals of Concern (COCs) and Priority Products.
- Evaluate and approve alternative assessment work plans and reports received from hundreds of manufacturers in a timely manner.
- Carry out enforcement action against manufacturers who do not obey any part of the regulation once implemented.

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<sup>1</sup> <http://www.epeat.net/>

<sup>2</sup> U.S. Environmental Protection Agency. August 2007. *Solders in Electronics: A Life Cycle Assessment*. Available at <http://epa.gov/dfe/pubs/solder/lca/index.htm>.

IPC encourages DTSC to implement the changes suggested in these comments to ensure the draft regulation is implementable and enforceable.

#### **IV. The Proposed Regulation Subject to Review Under Other State Legislation**

As currently written, the proposed regulation would be subject to review under S.B. 517. S.B. 517 requires all major regulations to undergo a rigorous economic analysis before they can be adopted. The proposed regulation qualifies as a major regulation because it would cost industry over \$50 million. IPC commends Governor Brown for signing an important piece of legislation that, if implemented and enforced, would reduce regulatory burdens on California's businesses.

#### **V. Prioritizing Chemicals of Concern is Essential for an Effective Regulation**

IPC believes that DTSC has taken on an enormous, unmanageable task by proposing to initially list thousands of COCs. DTSC needs to prioritize COCs in order to have a manageable, effective regulation. If DTSC attempts to regulate thousands of chemicals all at once, the agency will not be able to enforce the regulation. DTSC will be inundated by the thousands of alternatives assessments for each use of each of the thousands of regulated chemicals. By addressing thousands of COCs at once, the extremely hazardous chemicals will be lost in the shuffle and may not be adequately addressed. Using a prioritized list of COCs based on actual risks will allow DTSC to phase-in additional chemicals at an orderly, manageable pace, resulting in an efficient and effective green chemistry regulation.

Listing COCs prior to thoroughly evaluating their potential risk to human health and the environment will create a de-facto black list of chemicals. Prior to listing a COC, DTSC should ensure that each COC listed in a final regulation has been thoroughly evaluated to ensure they pose a substantial risk to human health and the environment. Failing to do so will create a black list of chemicals and could cause regrettable substitutions. A list of COCs will force companies to quickly replace those chemicals without first conducting comprehensive alternatives assessments to ensure the replacement chemical is better for human health, the environment, and product functionality. DTSC should implement a phase-in approach for identifying COCs rather than initially listing thousands of chemicals in order to avoid regrettable substitutions.

While IPC believes COCs should be listed individually rather than referencing lists, the lists of chemicals cited in the proposed regulation that would be considered COCs should be reevaluated. The lists referenced in a final regulation should be authoritative lists from public regulatory bodies. However, all of the lists referenced in the proposed regulation are not from authoritative bodies. For example, Proposition 65 contains several chemicals because they were included on other lists. COCs identified in a final regulation, whether it is individually or on a list, should have strong scientific evidence to support that they are harmful to human health and the environment. COCs from sources without any supporting scientific basis should be ignored. DTSC should review the lists of chemicals included in the proposed regulation to ensure they are lists from authoritative bodies.

#### **VI. The Criteria for Prioritizing Priority Products Should Include Risk**

The criteria for prioritizing Priority Products should include risk. In order to include risk in and streamline the prioritization process, DTSC should use the following criterion for prioritizing Priority Products: Significant potential for public and environmental exposures to the COC(s) in quantities that can result in adverse public health or environmental impacts. This criterion incorporates the other proposed criteria and takes both hazard and risk into consideration. Furthermore, DTSC should not determine that a product is a Priority Product solely based on its wide distribution in commerce and use by consumers. There is no correlation between the quantity of a product in commerce and its toxicity or potential to cause adverse health and environmental impacts. DTSC should use the criterion proposed above in order to efficiently identify products that pose the greatest risk to human health and the environment.

#### **VII. The Contents of a Petition to Include Additional Chemicals/Products Must Be Robust In Order to Ensure Efficiency**

The supporting information for a petition to add additional COCs and/or Priority Products must contain strong scientific evidence. DTSC should set a high level of completeness and quality for all petitions received. DTSC should require the same quality of information as an EU REACH dossier. This level of completeness and quality would help DTSC ensure they are receiving quality information and that their resources are efficiently used. Requiring quality information would help DTSC focus on important chemicals and products not already included. DTSC should set rigorous qualifications for the information contained in all petitions submitted for review.

#### **VIII. A De Minimis Threshold Should Be Included in a Final Regulation**

IPC commends DTSC for establishing a de minimis threshold. A de minimis threshold will help ensure that the significant uses of COCs are addressed. COCs used in trace amounts typically do not cause significant adverse impacts to human health and the environment. IPC supports establishing a de minimis threshold in a final regulation.

#### **IX. The Process for Performing an Alternatives Assessment is Complex and Burdensome**

IPC believes that DTSC has grossly underestimated the amount of resources needed to conduct an alternatives assessment and substitution, if necessary. Finding viable alternatives that provide the same level of functionality and reliability takes a great deal of time (years) and effort. For example, the EPA's Design for the Environment (DfE) Flame Retardant in Printed Circuit Boards Partnership<sup>3</sup> has been working for five years to evaluate alternatives for certain flame retardants found in printed circuit boards. When evaluating alternatives, it often requires consideration of the entire product, a process that often takes several years, because drop-in replacements are rare. Manufacturers must conduct an analysis of each potential alternative to determine whether it is better for human health and the environment than the substance being removed. If the determination is made that the alternative is better, the manufacturer must produce a small number of products that contain the alternative chemical and those products must go through several rounds of requalification testing to ensure the product is reliable,

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<sup>3</sup> <http://www.epa.gov/dfe/pubs/projects/pcb/index.htm>

functions properly and meets the same product specifications. If the newly formulated product does not meet the performance specifications then the manufacturer must repeat the entire process.

We urge DTSC to outline an implementation timeline of no less than four years for manufactures to complete an alternatives assessment of chemicals or products that pose an actual risk. This time frame is similar to the time frame set forth in the European Union Restriction of Hazardous Substances (RoHS) Directive, which allows manufactures enough time to ensure that their product can function properly and reliably without the restricted substance. IPC members are still dealing with issues with lead-free electronics resulting from the RoHS ban on lead in electronics since that directive became effective on July 1, 2006. Giving manufacturers at least four years to conduct an alternatives assessment will ensure that consumer products manufactured and sold in California will function properly and reliably.

DTSC should allow manufacturers to continue using a COC in a Priority Product if the alternative provides the same level of human health and environmental protection. COCs in a Priority Product should only be replaced if the alternative provides an increased human health and environmental impact. Replacing a COC with an alternative that does not provide an increased human health and environmental benefit would waste resources without providing a commensurate benefit.

IPC commends DTSC for proposing partnerships to aid in compliance. Partnerships have the ability to bring the best resources and expertise together so that the alternatives assessment will provide valuable information that industry and DTSC can use. Partnerships will significantly reduce the amount of resources expended by both industry and DTSC because duplicative alternatives assessments will be eliminated. DTSC should include the establishment of partnerships in in a final regulation.

#### **X. Completed Alternatives Assessments Should Not Be Posted on DTSC's Website**

DTSC should not post completed alternatives assessments (AA) on their website. Based on the proposed scope of an AA, manufacturers will spend a significant amount of resources to complete an AA and posting the final AA for some else to use, free of charge, puts the manufacturer that conducted the AA at a competitive disadvantage. DTSC should consider an alternative approach to making a final AA publicly available. DTSC could implement a provision that would require a manufacturer to release an AA upon request from an interested stakeholder. DTSC could also consider requiring manufacturers to register with the agency in order to have access to final AAs. IPC strongly urges DTSC to consider an alternative approach to making final AAs publicly available in order to avoid putting manufacturers at competitive disadvantages.

#### **XI. The Proposed Regulation Appears to Violate Existing State Legislation**

The proposed regulation fails to comply with AB 1879 because the proposed regulation does not establish simple, readily available tools to assist with compliance. In particular 25253 (c) states:

The department, in developing the processes and regulations pursuant to this section, shall ensure that the tools available are in a form that allows for ease of use and transparency of application. The department shall also make every feasible effort to devise simplified and accessible tools that consumer product manufacturers, consumer product distributors, product retailers and consumers can use to make consumer product manufacturing, sales, and purchase decisions.

In the proposed regulation, DTSC has not ensured that tools are available, simple, and accessible to aid manufacturers in decision-making and compliance. While the proposed regulation states that guidance materials will be made available, IPC believes these guidance materials should be available now, so that manufacturers can review them to determine how they will meet the requirements. DTSC must ensure that simple, accessible tools for compliance to the proposed regulation are available to the regulated community prior to finalizing the regulation in order to ensure compliance with AB 1879.

## **XII. Conclusion**

IPC is a strong advocate for scientifically-based environmental regulations that improve environmental conditions, protect human health, and stimulate the economy. It is essential for DTSC to scale down the scope of the proposed regulation in order to implement a feasible regulation. If DTSC attempts to take on too much at one time, the entire program may fail. DTSC, industry and citizens of California would be better served by an incremental program that implements a phased-in approach to chemicals regulations. Finding viable alternatives takes a great deal of resources to ensure that the alternatives are better for human health and the environment and provide the same level of functionality and reliability. IPC urges DTSC to allow ample time for manufacturers to complete alternatives assessments. Simplifying the draft regulation will enable DTSC to more easily implement and enforce the regulation.

IPC appreciates the opportunity to comment and encourages the agency to take our suggestions into strong consideration.

Sincerely,



Stephanie Castorina  
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