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From: Elizabeth Hurst <ehurst@npainfo.org>  
To: <fkammerer@oehha.ca.gov>  
Date: 9/13/2010 1:18 PM  
Subject: NPA Comments on Green Chemistry Pre-Regulatory Draft

September 13, 2010

Fran Kammerer

Staff Counsel

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RE: Comments to the Office of Environmental Health Hazard Assessment,  
California Environmental Protection Agency on the Green Chemistry  
Pre-Regulatory Draft

Dear Ms. Kammerer,

The Natural Products Association, is submitting this letter as general comment to the OEHHA Green Chemistry Pre-Regulatory Draft. The Natural Products Association was founded in 1936 to promote and protect the unique values and shared interests of retailers and suppliers of natural nutritional foods and natural products. The Natural Products Association is a non-profit 501(c)(6) association whose mission is to unite a diverse membership, from the smallest health food store to the largest natural products supplier. We champion consumers' freedom of choice in our marketplace. We strengthen and safeguard retailers and suppliers and we build strong markets to fuel industry growth. We are the oldest and largest trade association in the Natural Products industry representing over 10,000 members. Thank you very much for the opportunity to comment.

We felt it was appropriate to comment on the following positions regarding the Green Chemistry regulation of OEHHA:

Considering the importance of the pre-regulatory draft and its potential far and wide reach, we feel it would be more appropriate to allow for at least a 90-day comment period to thoroughly respond to all aspects of the report

We appreciate the opportunity to comment on the Green Chemistry pre-regulatory draft. First, the regulation draft is a complex and diverse report covering many areas of chemistry and a large collection of products; however, the comment period is less than 30-days. It is difficult to conceive any benefit in denying a request to extend the comment period for a rule with such far-reaching implications. Without a scrupulous analysis and response to the issues raised in this pre-regulatory draft, the final regulation will not be fully informed. It would seem that if OEHHA truly wishes to have substantive and thorough comments on the Green Chemistry regulation, a 90-day comment period would be more appropriate and warranted to do such.

We feel the OEHHA classification system for chemicals as toxic needs to be clarified; as it is currently written, it lacks precision and subsequently could be used to unnecessarily classify chemical substances as toxic.

The OEHHA classification system is currently written in excess of the "known to cause" standard of Proposition 65. This seems redundant when the Prop 65 standard has been classifying chemical substances for 23 years and redundancy - especially in a budget crisis that is affecting the nation and, specifically, the state of California - is a waste of resources. In light of "the daunting slope" of federal debt (The Washington Post, 2010), any surplus system puts an undue burden on California's, and subsequently, the entire nation's citizens. As Governor Schwarzenegger wrote in his August 10 op-ed piece, "For California, the reality is that for decades government has been racking up debt by making promises it could not afford," and these new regulations are simply more promises that the state of California will be forced to make good on in the future (Los Angeles Times, 2010).

The sources and methodologies for identifying and classifying hazard traits listed in subsection 4 of the Green Chemistry pre-regulatory draft does not truly evaluate a substance's potential for human exposure. Instead the classification system only looks at content, not actual exposure, which can inaccurately identify chemical substances as toxic without scientific basis. A strong scientific basis to identification and classification of chemical substances is absolutely necessary when dealing with all the aspects covered in green chemistry. Without the science backing determinations, this repetitive system for classifying compounds implies a desire to have freedom to implement biases for the green chemistry regulation over another.

We believe the listed precursor markers are too broadly identified, unreasonably expanding the category of toxic chemical substances.

The proposed regulation uses open-ended determinations for what constitutes a precursor marker for hazardous traits in a chemical substance. In multiple statements, the pre-regulation draft states:

"3. Specific Hazard Traits, and Endpoints and Other Relevant Data - Hazard traits are defined in this subsection within the following groupings: Toxicological (human health) hazards, environmental hazards, exposure potential hazards and physical hazards. A specific chemical substance may be identified as having a specific hazard trait of Class One, or Class Two type, or there may be inadequate information on the chemical available to make an identification, in which case the chemical would be viewed as not classifiable. Criteria for assigning a chemical substance a Class One or Class Two designation for a specific hazard trait are set out in subsection 4.

a. Toxicological hazard traits - these hazard traits affect human health. These include, but are not limited to the following:

b. Environmental Hazard Traits - these hazard traits affect the environment. These include, but are not limited to the following:

c. Exposure potential hazard traits

d. Physical hazard traits - these hazard traits may affect human health or the environment. These include, but are not limited to the following: "

(OEHHA, 2010, italicized emphasis added).

This indicates the toxicological, environmental and physical hazard traits are not fully established at this point in the regulation. A thorough commentary on the proposed regulation for Green Chemistry, with the capacity to influence products not just in California but across the nation, needs to be clearly defined.

Thank you for your time and consideration of NPA's comments.

Best regards,

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References:

Schwarzenegger, Arnold. "Fixing California's budget for good." Los Angeles Times August 10, 2010.

"CBO's deficit forecast shows need for early action." The Washington Post July 31, 2010.

Office of Environmental Health Hazard Assessment, California Environmental Protection Agency. Pre-Regulatory Draft. Green Chemistry: Hazard Traits, Endpoints, and Other Relevant Data. August 10, 2010.