



INDEPENDENT LUBRICANT MANUFACTURERS ASSOCIATION

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November 9, 2009

Acting Director Maziar Movassaghi
Department of Toxics Substances Control
1001 I Street
P.O. Box 806
Sacramento, CA 95812-0806

RE: Straw Proposal for Safer Alternatives Regulation (October 1, 2009)

Dear Director Movassaghi:

The Independent Lubricant Manufacturers Association (“ILMA”) has serious concerns with the “Safer Alternatives Regulation Straw Proposal” (“Straw Proposal”) as currently drafted. Although we understand the Straw Proposal is not a formal regulation, if the program described is formalized, it will have sweeping ramifications on virtually all industry sectors that manufacture or sell a consumer product in California and appears to outstrip the intent of the enacting legislation under AB 1879 (Feuer, 2008).

Introduction of ILMA

ILMA, established in 1948, is a national trade association of 135 manufacturing member companies, some of which are headquartered in California. As a group, ILMA member companies blend, compound and sell over 25 percent of the United States’ lubricant needs, including many private-brand label products, such as motor oils and automatic transmission fluids, that are sold in California in various outlets such as auto parts stores, discount stores and grocery stores, and over 75 percent of the metalworking fluids (“MWFs”) utilized in the machine shops across the country.

Independent lubricant manufacturers by definition are neither owned nor controlled by companies that explore for or refine crude oil to produce lubricant base stocks. Base oils are purchased from refiners, who are also competitors in the sale of finished products. Independent lubricant manufacturers succeed by manufacturing and marketing high-quality, often specialized, lubricants. Their success in this competitive market also is directly attributable to their tradition of providing excellent, individualized service to their customers.

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ILMA's Concerns with the Straw Proposal

Under the framework laid out in the current proposal, manufacturers and importers of consumer products for sale in California would be required to identify whether their product contains a "chemical of concern" and, if so, would require a costly and onerous alternative assessment process. If a consumer product manufacturer/importer could not identify or chose not to implement a safer alternative, the consumer product containing the chemical of concern would be banned in 2 to 20 years. Further, if the manufacturer/importer chose to implement a safer alternative that, while incrementally better than the identified chemical of concern, has other specified hazard traits it too would be subjected to a ban in 2 to 20 years. The current Straw Proposal contains no consideration of potential or severity of exposure; rather, it would place roughly 10,000 chemicals on the path for eventual phase-out.

The current Straw Proposal is overly broad and fails to focus on consumer products that present the greatest risk to human health and the environment. This is partially attributed to a very broad definition of "consumer product" that could conceivably include not only finished traditional consumer products, but individual chemicals and component parts as well. This is further complicated by the inclusion of four different pathways into the process:

1. 11 consumer product categories that are not well defined;
2. 16 designated "chemicals of concern;"
3. Chemicals identified by 29 different state, federal and international sources; and
4. 13 hazard criteria.

The broad pathways would result in an enormous number of chemicals and products being covered and subject to a costly and onerous alternative assessment. Moreover, it is not clear how we as manufacturers could establish compliance given the number of chemicals covered and ongoing changes to chemical lists and hazard data, with the potential outcome of having to defend their good faith efforts at compliance in the courts.

We support the Green Chemistry Alliance's ("GCA") approach laid out in its regulatory proposal that was provided to the Department on June 24, 2009. The GCA proposal provides the Department an opportunity to implement Green Chemistry in an efficient, cost-effective and impactful manner by first prioritizing chemicals for review, evaluating how those chemicals are used in consumer products, assessing whether they pose a potential risk to public health, examining potential alternatives and instituting a regulatory action, if necessary.

Lubricants usually contain greater than 90% highly refined mineral oil with the balance being various additives to provide the technical performance standards needed to ensure high fuel efficiency and protect advanced engines, transmissions and other devices from wear. These additives are contained at very low percentages. These products should be low on a priority list for review because of the low exposure to consumers and the environment. There are many products which consumers have potential exposure on a daily basis that should certainly be examined with a higher priority than lubricants. The Department should implement phase in and de minimis criteria that would be less

onerous to manufacturers of products that are intuitively low risk.

If the Department fails to implement an approach that is scientifically based and manageable in scope, we fear that the original (and commendable) policy objectives may very well be obscured and be placed out of reach. The GCA proposal, as an alternative, is a thoughtful, workable proposal that should be given serious consideration.

For these reasons, the Department should start over in its development of the Safer Alternatives Regulation and should look to the GCA proposal as a workable solution.

Sincerely,

A handwritten signature in black ink that reads "Celeste Powers". The signature is written in a cursive, flowing style.

Celeste M. Powers, CAE
Executive Director

cc: Cindy Tuck, Undersecretary, California Environmental Protection Agency
Dan Pellissier, Deputy Cabinet Secretary, Office of the Governor
Peggy Harris, Chief of Intergovernmental Policy, DTSC
ILMA Board of Directors
ILMA SHERA Committee
Dr. Richard C. Kraska