July 15, 2024

Safer Consumer Products Program
California Department of Toxic Substances Control (DTSC)
1001 I Street
Sacramento, CA 95814-2828
CalSAFER Public Comment Portal: https://calsafer.dtsc.ca.gov/workflows/comment/?cpid=12771

Subject: Comments on DTSC's Draft 2024-2026 Priority Product Work Plan

Dear Safer Consumer Products Program, DTSC

On behalf of the Bay Area Clean Water Agencies (BACWA), we thank you for the opportunity to provide comments on DTSC's Draft 2024-2026 Priority Product Work Plan ("Work Plan") for the Safer Consumer Products Program (SCP). BACWA is a joint powers agency whose members own and operate publicly-owned treatment works and sanitary sewer systems that collectively provide sanitary services to over seven million people in the nine-county San Francisco Bay Area (Bay Area). We take our responsibilities for safeguarding receiving waters seriously.

Every day, BACWA members provide wastewater treatment for millions of gallons of wastewater that is discharged to fresh or saltwater bodies, including local creeks and rivers, bays, and the Pacific Ocean. These waterways provide crucial habitat to a wide array of aquatic species and waterfowl, including several endangered species. In some cases, waters receiving discharges of treated wastewater ("receiving waters") may be effluent-dominated in that there is little to no dilution, either because the receiving water is small or there is a lack of mixing at certain times due to thermal or saline stratification. In addition, pesticides in wastewater effluent also pose a serious challenge to potable reuse, rendering such projects technologically or economically infeasible.

BACWA supports the potential for DTSC's Draft 2024-2026 Priority Product Work Plan to reduce the flow of toxic substances to wastewater treatment facilities and waterways. In particular, we appreciate the level of attention to PFAS-containing products. Below we provide specific feedback responding directly to the questions provided in the Instructions to Submitters.

Response to Question 1. ***Are there product categories that SCP should consider adding, modifying, or removing from the Work Plan? If so, why?***

1) BACWA suggests a slight modification of the Pet Care Products description.

BACWA appreciates that DTSC has added pet care products to the latest Work Plan, defined as those "used in the care of household animals, including to maintain their health and well-being.

Examples include toys, litter, odor-control products, pet food packaging, wipes, pads, pet beds, and pet bandages."

We suggest that DTSC slightly modify the description to include an on-pet example. There are numerous products that are applied directly onto pets (e.g. apparel, shampoos, conditioners, grooming sprays, and even perfumes and nail polish).

In February 2023, the U.S. Environmental Protection Agency (EPA) and U.S. Food and Drug Administration (FDA) notified the public of a possible change in regulatory jurisdiction from EPA to FDA for on-pet topicals and collars commonly used for endo- and ecto- parasite control.[1, 2] Should that occur, it appears that these products would no longer be under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) regulation, meaning that the California Department of Pesticide Regulation (DPR) would no longer be the regulating body for on-pet pesticide uses in California. BACWA has an interest in DTSC being positioned to step in if DPR loses such authority.

2) BACWA requests that DTSC products reviews include biocide ingredients.

Biocides (antimicrobials) are commonly added into consumer products, often to protect people using the products from the unwanted growth of viruses, fungi, bacteria, or other microorganisms. Examples include preservatives in eye drops, cosmetics and other personal care products. Many of these biocides are already on DTSC's Candidate Chemical List (such as quaternary ammonium compounds, QACs), and are found in products in the following Work Plan categories:

- Beauty, personal care, and hygiene products
- Cleaning products
- Building products and materials used in construction and renovation
- Children's products
- Paints
- Food contact articles
- Pet care products
- Sporting and athletic equipment

Despite widespread use and documented human and environmental exposure (including for children), many biocides have not been fully assessed for human or environmental impacts.[3,4] Because many biocide-containing products do not make a pesticidal claim on the label, they are

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[1] U.S. EPA and U.S. FDA, *WHITEPAPER: A Modern Approach to EPA and FDA Product Oversight*, February 17, 2023, EPA Docket ID No.: EPA-HQ-OPP-2023-0103 at https://www.regulations.gov

[2] Topically applied pesticides are used to control endoparasitic microorganisms, including hookworm larvae and the microfilaria that cause heartworm, as well as ectoparasitic organisms like fleas and ticks.

[3] Arnold, W. A., et al., Quaternary Ammonium Compounds: A Chemical Class of Emerging Concern, *Env. Sci. & Tech.*, 2023, 57 (20), 7645-7665. https://doi.org/10.1021/acs.est.2c08244.

[4] Lundov, M. D., et al. Emission of Isothiazolinones from Water-Based Paints. *Env. Sci. & Tech.*, 2014, 48(12), 6989–6994. https://doi.org/10.1021/es500236m

not regulated by DPR. Toxic chemicals found in these products can be discharged into the sewer system from cleaning or showering. Therefore, BACWA asks that DTSC include a review of biocide ingredients when assessing these products.

Response to Question 2. Are there policy priorities that SCP should consider adding, modifying, or removing from the Work Plan? If so, why?

BACWA supports the six priorities identified for the three-year Work Plan: (1) environmental justice, (2) protecting children and workers, (3) reducing releases to indoor air and dust, (4) reducing releases of microplastics, (5) protecting water resources and aquatic ecosystems, and (6) leveraging other CalEPA efforts (summarized from pages 4-5 of the Work Plan).

Protecting wastewater treatment plants from toxic discharges to the sewer will support the first goal of fostering environmental justice by minimizing the need for costly treatment upgrades (for example, the cost of removing PFAS from wastewater and drinking water). Treatment costs are inevitably passed down to members of the community, and wastewater ratepayers are already facing affordability concerns. BACWA's dedicated pollution prevention committee, the Bay Area Pollution Prevention Group, advocates for pollution prevention as a better – and often cheaper -- alternative.

Protecting wastewater treatment plants from toxic discharges to the sewer will also directly support the fifth goal, which reads in full: "Protecting California's valuable and limited water resources and aquatic ecosystems from consumer product-derived chemical contamination." In addition to harming public health and sensitive environments like San Francisco Bay, chemical contamination can prove costly for municipal wastewater agencies due to the potential for such chemicals to cause or contribute to wastewater treatment process interference and NPDES permit compliance issues, degrade recycled water quality, create barriers to potable reuse and the beneficial reuse of biosolids, and expose wastewater agencies to third party lawsuits under the federal Clean Water Act.

Response to Question 3. This Work Plan highlights environmental justice as an SCP policy priority over the coming three years. How can SCP effectively identify and prioritize consumer products in our Work Plan categories that may have disproportionate impacts on certain communities?

BACWA encourages an expansive interpretation of the term "disproportionate impacts" to include cost in addition to chemical exposures. In April 2024, USEPA adopted new drinking water standards for PFAS. The cost of removing PFAS from drinking water and wastewater is likely to pose a significant burden on public utilities, and existing authorities to limit wastewater loading from industrial sources is unlikely to solve the problem. Much of the PFAS flowing to wastewater treatment plants is from residential and commercial sources, based on a recently completed BACWA-funded study conducted by researchers at the San Francisco Estuary

Institute[5]. Unless PFAS is removed from consumer products, the public will likely be forced to pay for costly treatment upgrades to remove PFAS from wastewater. The cost of these treatment upgrades may result in disproportionate impacts on low-income and smaller communities. BACWA supports DTSC's to identify consumer products containing PFAS so that source control solutions can be found. This approach will minimize the cost burden on public utilities and our ratepayers.

Response to Question 4. ***SCP proposes adding a new Paints category to the Work Plan. a) Is the proposed definition and scope of this product category appropriate? b) Are there any specific products in this category that SCP should prioritize in its evaluation?***

BACWA strongly supports the addition of a Paints category to the Work Plan. As noted in response to Question 1, paints have down-the-drain pathways to the sanitary sewer.

Response to Question 5. ***SCP proposes adding a new Products that Contain or Generate Microplastic category to the Work Plan. a) Is the scope of this product category appropriate? b) Are there any specific products in this category that SCP should prioritize in its evaluation?***

BACWA strongly supports the addition of a new category, "Products that Contain or Generate Microplastics." When assessing microplastics, we expect conveyances to stormwater to be of greater concern than wastewater conveyances. Following the congressional passage and implementation of the Microbead-Free Waters Act of 2015, it appears that wastewater is not the dominant source of microplastics in the aquatic environment. According to a 2021 study of the San Francisco Bay estuary watershed, it appears that the concentrations and annual loads of microplastics are much greater in stormwater than in wastewater effluent.[6] As DTSC assesses the cradle-to-grave issue of microplastics, BACWA suggests allocating resources to prioritize stormwater.

Thank you for your consideration of our comments. If you have any questions, please contact BACWA's Project Managers:

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Respectfully Submitted,

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[5] Study of PFAS in Bay Area Wastewater (2024). Study summary available at https://bacwa.org/wp-content/uploads/2024/02/BACWA-PFAS-Study-Summary-2024-02-07.pdf. Complete study report available upon request.

[6] Werbowski, L. M., et al., Urban Stormwater Runoff: A Major Pathway for Anthropogenic Particles, Black Rubbery Fragments, and Other Types of Microplastics to Urban Receiving Waters. *ACS ES&T Water* 2021 1 (6), 1420-1428, https://doi.org/10.1021/acsestwater.1c00017

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