NEW YORK STATE
CHEMICAL
ALLIANCE

October 14, 2010

TO: Anne Phillips, Co-Chair
EO 4 Sustainability and Green Procurement Subcommittee
New York State Office of General Services

The New York State Chemical Alliance appreciates having the opportunity to submit the following comments relevant to the Subcommittee's consideration of the EO4 Advisory Council's recommendation that it adopt a list of chemicals to avoid in products purchased by the State ("Green Procurement Chemical Avoidance List").

We offer the following points for the Subcommittee's consideration:

1. **The presence of a chemical in a product or process is not in of itself evidence of actual risk:**
We agree with the statement in the Subcommittee's draft statement on *Consideration of Chemicals in the Development of Green Specifications* that "the identification of chemicals to consider in green procurement should not be construed as a ban on the purchase of commodities, services or technology containing and/or using such chemicals."

This statement appropriately reflects the fact that the mere presence of a chemical as a constituent in a product or process is *not* evidence of any actual risk to human health or the environment, and therefore should not be the basis upon which procurement policies are established.

That said, the Subcommittee's draft then goes on to suggest that determining whether sufficient alternatives exist in the marketplace is a simple matter of applying procurement specifications that "may restrict or allow considered chemicals to be used or contained in certain commodities, services or technologies" (e.g. mercury in fluorescent lamps)."

Doesn't this sentence conflict with and undermine the first statement cited above?

2. **Alternatives analysis is not a simple exercise:**
Alternatives analysis should be driven by risk-based consideration of the chemical in its intended uses and the impact of that use in products and processes throughout the value chain. Alternatives analysis should not be driven solely by the principle of hazard alone or by the inclusion of a chemical on a list.

New York State Chemical Alliance
99 Washington Avenue, Suite 701 • Albany, New York 12210
(518) 426-9516 • FAX (518) 426-2276 | www.nyschemalliance.org

Chemical substitution (replacing one chemical with another) does not in of itself inherently make a safer product. There are always tradeoffs that must be judged in the context of life-cycle considerations.

Any consideration of alternatives analysis must include overall product performance, worker and consumer safety, health and environmental impacts, and the economic impacts associated with a potential alternative.

3. **Lists of chemicals developed for certain purposes should not be taken out of context for the purposes of procurement policy purposes:**
The EO4 Subcommittee's draft statement references existing lists of chemicals that were never intended to drive procurement policies. Instead, they were developed for various purposes such as waste minimization; science-based identification of potential carcinogens; or evaluation of potential risk management actions.

These lists were *not* designed to identify "chemicals of concern" in consumer products, processes, or technologies.

For example, the purpose of the U.S. EPA's Chemical Action Plans (CAPs) is to identify chemicals that EPA will evaluate to determine if existing regulatory and non-regulatory risk-management actions are appropriate from a health or environmental perspective. *This is all they are* – work plans outlining what the Agency will do to determine if any action is warranted. The EPA's Chemical Action Plans are *not* regulatory actions in of themselves, and do not reflect the agency's final regulatory assessment of a chemical.

Further, we continue to have concerns about the lack of transparency surrounding how chemicals were and will be selected for CAPs generally, and more specifically, with the approach taken in the CAPs themselves.

Transparency promotes accountability in a scientific dialogue that can instill confidence that the process and system employed is scientifically sound. We had hoped the EPA would publish detailed information regarding the criteria used to select the chemicals for CAPs, as well as the methodology used in the CAPs to determine whether and what further action might be warranted on any given chemical or category of chemicals. Unfortunately, neither has been made public since the release of the first four CAPs on December 30, 2009.

The criteria used to select the chemicals subject to CAPs describe factors that determined the selection of chemicals only in the vaguest of terms – none of which give a science-based indication that the chemicals pose a risk to either human health or the environment.

Specifically, the CAPs state that the EPA identified an initial list of "widely recognized chemicals" for action based on factors that vary and are rather imprecise. It is unclear what is meant by "widely recognized chemicals", and why mere recognition would be considered a legitimate scientific basis upon which to select a chemical for a Chemical Action Plan and possible regulatory action.

In addition, it is important for the EO4 Subcommittee to recognize that the EPA CAPs do not indicate what weight is accorded by that agency in its consideration of data, studies, and information. The EPA is required to provide a 'weight of evidence' analysis under its Data Quality Act obligations, and that weight of evidence assessment should be clearly stated so that stakeholders and the scientific community can evaluate and comment constructively on both the proposed approach, and EPA's basis for that approach.

Unfortunately, to date, stakeholders have not been provided any evidentiary analysis nor have they been enlisted to provide EPA any information to inform that agency's evaluation of chemicals for the CAPs.

For all of these reasons, the NYS Chemical Alliance believes that relying on the list of chemicals chosen for the EPA's Chemical Action Plans (CAPs) as an abridged method of identifying chemicals to be targeted for possible exclusion under New York's Development of Green Procurement Specifications is inappropriate.

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