



CAL DOOLEY
PRESIDENT AND CEO

November 3, 2009

Stephen A. Owens
Assistant Administrator
OPPTS
USEPA Headquarters
Ariel Rios Building, Mail Code 7101M
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460

Re: TSCA Chemical Action Plans

Dear Steve:

The American Chemistry Council (ACC) is encouraged that EPA's recently announced principles for modernization of the Toxic Substances Control Act (TSCA) and the Enhanced Chemical Management Program generally align with ACC's approach to TSCA implementation and modification. We look forward to continuing the industry's work with EPA as the principles and the program are further developed.

ACC and its member companies do have some concerns about the new Chemical Action Plans (CAPs) that will target the Agency's risk management efforts on "chemicals of concern." As a result of my staff's recent discussion with Wendy Cleland-Hamnett and other OPPT staff, I wanted to share with you some observations and questions we have on the CAPs, as well as several suggestions based on our experience with EPA's procedures during the ChAMP program. We hope these prove useful to you as EPA further develops the program.

First, we urge you to be sensitive to the potential and foreseeable negative effect on the marketplace when EPA identifies specific chemicals as chemicals "of concern" in action plans. It is our understanding that the action plans will outline the risks each chemical may present (based only on a preliminary risk assessment) and the specific steps the Agency will take to address those risks. The market impact on bisphenol A demonstrates this is a serious and real concern. One way of avoiding these impacts is to consult with the affected companies as the action plans are developed, and certainly prior to their public release. We strongly recommend that the Agency be precise and transparent in communicating the objectives of the action plans, the data or other evidence on which the action is taken, and whether proposed actions are made on the basis of a risk assessment or some other approach.

Second, we urge EPA to identify and clearly articulate the jurisdictional boundaries existing among the various federal agencies, such as the Food and Drug Administration (FDA) and the Consumer Product Safety Commission (CPSC), when issuing the CAPs. As you are no doubt aware, CPSC is convening a Chronic Hazard Advisory Panel to review the potential health effects of exposures to phthalates and their alternatives in soft vinyl toys and child care articles that will produce a report in

mid-2011. In ACC's view, it is critical that the CAPs focus on actions that fall within the Agency's jurisdiction.

We have many questions about how the new program will operate, the extent of stakeholder involvement, and how and in what order the chemicals slated for CAPs will be selected. We understand that the CAPs will be issued as "working documents," and that EPA will not seek or accept comments on the CAPs until after they are issued. However, it is unclear what effect, if any, comments subsequent to their release will have on individual CAPs or on the program more generally. EPA may wish to consider posting comments on its website, and outline how the Agency will respond to comments. Given the speed by which EPA plans to issue CAPs, ACC is concerned that the Agency will have little time to accommodate public input and to revise the CAPs accordingly. Many of the elements of EPA action plans might be addressed more efficiently and effectively if the public, including affected manufacturers, had an opportunity to review and comment on the draft action plans in advance of their being made final.

We offer here several suggestions based on our experience with EPA's Chemical Assessment and Management Program (ChAMP). If implemented before the first set of CAPs is issued, these recommendations will facilitate a more transparent risk management program.

- Publish a definition and criteria for the selection of chemicals "of concern" for which CAPs will be developed.
- Establish and publish in advance the chemicals for which CAPs will be prepared and at what intervals (e.g., in batches at regular intervals with advance notice to the public, similar to Canada's Chemical Management Plan), and a brief indication of the area of interest/concern to the Agency.
- Allow stakeholders to provide information to EPA relevant to the identified area of interest/concern, within a specific timeframe.
- Actively engage stakeholders, including industry, to identify data needs and a range of possible options to support the CAPs, soliciting relevant information, resources and ideas that can facilitate EPA's development of well-constructed work plans.
- Establish a public docket or webpage for electronic submission of comments on the program generally and individual CAPs specifically that organizes the comments in a coherent manner and is readily accessible by the public.
- Publish the methodologies EPA intends to use for preliminary risk assessments.

ACC would welcome the opportunity to meet with you and your staff to discuss the Enhanced Chemical Management Program and our respective principles for TSCA modifications. I will contact your office in the near future to schedule a meeting. In the interim, please let me know if we can be of any assistance as EPA implements the program.

Sincerely,

A handwritten signature in black ink that reads "Cal Dooley". The signature is written in a cursive, slightly slanted style.

Cal Dooley