

Motor & Equipment Manufacturers Association

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Via CALSAFER.DTSC.CA.GOV

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Barbara A. Lee, Director
California Department of Toxic Substances Control (DTSC)
1001 I Street
P.O. Box 806
Sacramento, California 95812-0806

RE: Opposition of Lead-acid Batteries as a Product Category and Priority Product

Dear Director Lee:

The Motor & Equipment Manufacturers Association (MEMA) offers the following comments in response to California's Department of Toxic Substances Control (DTSC) consideration of the Draft 2018-2020 Priority Product Work Plan (Draft Work Plan). MEMA opposes DTSC including lead-acid batteries in the Draft Work Plan as a product category and as a potential priority product.

MEMA represents more than 1,000 companies that manufacture motor vehicle systems and component parts for use in the light- and heavy-duty vehicle original equipment and aftermarket industries including lead-acid batteries.¹ Motor vehicle component manufacturers are the largest sector of manufacturing jobs in the U.S. and directly employ over 871,000 workers in all 50 states, including 31,190 in California.

MEMA strongly urges the DTSC to remove lead-acid batteries from the Draft Work Plan as a product category and not list lead-acid batteries as a priority product under the DTSC SCP program. A priority product listing, especially the early stage of the SCP program, should be reserved for products that have the greatest impact on benefiting human health or the environment, provides the SCP program the best chance of success, and is a legitimate use of DTSC's resources and the resources of the industry that manufactures the product. Lead-acid batteries do not pose a high risk of potential exposure, or a high risk that potential exposure could cause significant adverse impacts to human health or the environment. Further, lead-acid batteries are already well regulated in state and federal regulations and therefore the listing of lead-acid batteries

¹ MEMA represents its members through four divisions: Automotive Aftermarket Suppliers Association (AASA); Heavy Duty Manufacturers Association (HDMA); Motor & Equipment Remanufacturers Association (MERA); and, Original Equipment Suppliers Association (OESA).



would not meaningfully enhance protection of public health and the environment. Safer alternatives are not available or would not be functionally acceptable given the multitude of safety and performance regulations to which lead-acid batteries would be subject.²

Lead-Acid Batteries Do Not Meet the Two Primary Criteria for a Priority Product

The SCP regulation outlines two main criteria for products being listed as a priority product: (1) there must be potential exposure to the chemical in the product, and (2) there must be potential for exposures to contribute to or cause significant or widespread adverse impacts.³ Lead-acid batteries do not meet these two criteria necessary for a priority product listing.

Vehicle lead-acid batteries do not have a high risk of potential to expose consumers to lead during normal conditions of product use. Because lead-acid batteries are enclosed in durable, complex cases, lead and lead compounds are physically isolated from the consumer, there is no clear pathway for consumer exposure to the lead. Because lead-acid batteries provide a minimal potential for consumer exposure to lead, the product does not meet these criteria outlined in the SCP regulation for a priority product.

Vehicle lead-acid batteries do not have a high risk of potential for the lead to be emitted into the environment. The 2016 budget request summary stated that “a comprehensive approach is called to protect Californians and our environment from threats posed by lead exposures from lead acid battery use, management, recycling, and disposal.”⁴ Yet the lead-acid battery industry has an extremely safe, market-based, closed-loop disposal and recycling system. The industry is proud that lead-acid batteries are one of the most recycled consumer product in the world with more than 99 percent of all lead in batteries used in North America is recycled.⁵ This recycling system has been a success story for the lead-acid battery industry, not only in California, but nationwide. The lead-acid battery recycling process is well established and the recycle facilities use advanced technologies to deliver recycled material for the production of new batteries. This closed loop recycling system minimizes the potential for the lead to be emitted into the environment. Further, these lead-acid batteries manufacturing and recycling facilities comply with multiple federal and state lead emissions standards. Lead-acid battery manufacturers continue to be committed to assuring that spent batteries are disposed of and recycled safely to assure a healthy environment for our communities and workers.

Because of the proactive management of vehicle lead-acid batteries at every point of their lifecycle, they do not provide a high risk of potential for exposure to cause

² Title 22, California Code of Regulations Chapter 55, Safer Consumer Products, Section 69503.2

³ Title 22, California Code of Regulations Chapter 55, Safer Consumer Products, Section 69503.2(a)

⁴ <http://www.dtsc.ca.gov/GetInvolved/ReviewPanel/upload/DTSC-May-Revision-for-FY-2016-17-Safer-Consumer-Products-Lead-Acid-Batteries.pdf>

⁵ The recovery rate between 2009 – 2013.

significant or widespread adverse impacts to human health or the environment. Risk of adverse impacts are contingent on high potential of exposure. Because of the reasons listed above – durable product casing, closed-loop recycling and recycling rate near 100 percent and strict emissions standards, lead-acid batteries would not cause widespread adverse impacts to health or the environment. Current air emissions data demonstrates that these stringent emissions standards are highly effective including a 99 percent decrease in national average lead emissions nation-wide.⁶

Lead-Acid Batteries Are Already Well Regulated by State and Federal Law

The SCP regulation explicitly states that DTSC is not authorized to duplicate or adopt conflicting regulations for products and chemicals already regulated or subject to pending regulation.⁷ Further, that DTSC’s proposed regulatory response on priority products should not duplicate requirements of another California State or federal regulatory program without conferring additional public health or environmental protection benefits.⁸ As drafted, the Draft Work Plan exceeds DTSC’s legal authority by listing lead-acid batteries as a priority product category.

Lead-acid batteries are among the most stringently regulated products in the state and nation. California and every other state in the country have regulations on lead-acid batteries that cover requirements for disposal, incentives for recycling, or codifies responsibilities of retailers and wholesalers.⁹ All of these state laws for lead-acid batteries are designed to encourage recycling and prevent lead exposure to consumers and release to the environment. As discussed above, lead-acid battery recycling facilities are subject to strict federal and local lead emissions standards. The U.S. EPA also covers lead-acid battery manufacturing area sources under the National Emission Standards for Hazardous Air Pollutants (NESHAP) and regulates lead-acid battery hazardous waste under Resource Conservation and Recovery Act (RCRA). Therefore, lead-acid batteries are already well regulated under state and federal law.

Because there are a number of existing regulations that address the proper management of lead-acid batteries and DTSC is not authorized to duplicate regulation, MEMA urges DTSC to remove lead-acid batteries from the Draft Work Plan. However, if DTSC does not remove lead-acid batteries, the agency should include language similar to language included under other product categories, emphasizing that it will “consider other regulatory authorities and whether or not they are providing adequate protection to people and the environment.”¹⁰ This should be clearly indicated in the Draft Work Plan.

⁶ U.S. Environmental Protection Agency’s Report on the Environment: Lead Emissions here <https://www.epa.gov/air-trends/air-quality-national-summary>

⁷ Health & Safety Code, §25257.1(b) and (c)

⁸ Title 22, California Code of Regulations Chapter 55, Safer Consumer Products, Section 69506.9(b)(6)(B).

⁹ https://batteryCouncil.org/?page=State_Recycling_Laws

¹⁰ DTSC Draft Three Year Priority Product Work Plan (2018 – 2020) at page 19.

Listing Lead-Acid Batteries as a Priority Product Would Not Enhance Protection of Health or the Environment

The SCP regulation states that if the product is regulated by a state or federal agency, the DTSC may list “a product-chemical combination as a priority product only if it determines that the listing would meaningfully enhance protection of public health and/or the environment with respect to the potential adverse impacts ... that are the basis for the listing.”¹¹ An additional regulation on lead-acid batteries under the SCP program would be extremely unlikely to increase the protection of public health and the environment. As outlined above, the lead-acid battery industry is one of the most regulated industries in the U.S. As explained, air emissions data demonstrates that lead emissions controls are extremely effective and the existing closed loop recycling system, with a recovery rate close to 100 percent, minimizes potential for lead from the battery to be released to the environment. Listing lead-acid batteries as a priority product and regulating them would not meaningfully enhance protection of public health or the environment.

Safer Alternatives Are Not Available

When DTSC determines whether to list a product-chemical combination as a priority product, it is directed by the regulation that it may consider whether there is a “readily available safer alternative that is functionally acceptable, technically feasible, and economically feasible.”¹² After extensive research, the European Commission has repeatedly concluded that there are no suitable alternatives to lead-acid batteries in vehicles.

The European Commission conducted a comprehensive alternative analysis in their End-of-Life Vehicles Directive in 2000.¹³ The Directive mandated that every few years lead-acid batteries be reviewed to determine whether there is an availability of alternatives for replacement in vehicles. Hence, there has been a review of whether there is a viable alternative for lead-acid batteries in 2002, 2005, 2008, 2010, 2011, 2013, and 2016. The latest report, set to be published later this year, concludes that there is no current or reasonably foreseeable replacement for lead-acid batteries in the majority of automotive applications.¹⁴ Further, the report recommends that European Commission extend the exemption for lead-acid batteries for another four years based on the lack of safer alternatives available. The next evaluation is scheduled by the European Commission for 2021 to assess if future safer alternatives for volume production will be available.

¹¹ Title 22, California Code of Regulations Chapter 55, Safer Consumer Products, Section 69503.2(c)(5)(2).

¹² Title 22, California Code of Regulation Chapter 55, Safer Consumer products, Section 69503.2(b)(C)(5)(3).

¹³ Directive 2000/53/EC of the European Parliament and of the Council.

¹⁴ The report was conducted by the Oeko-Institute to independently evaluate the pertinent consideration and to solicit and review industry input.

Further, it is important to note that even if there were technically safer alternatives for lead-acid batteries for the environment, there are a whole host of safety and performance laws and standards through U.S. Department of Transportation's National Highway Traffic Safety Administration and SAE for vehicle batteries. There is currently no safety or performance standard approved for lithium starter batteries. DTSC should take care to avoid forcing a shift to an alternative technology before those alternative life cycle impacts are well understood and the industry is forced to make a regrettable substitution.

The SCP regulations state that DTSC when listing a priority product that it must consider "one or more of the factors listed" above.¹⁵ DTSC should consider all the relevant criteria together to make a sound decision determining that lead-acid batteries do not meet the required criteria to be listed as a priority product. Therefore, MEMA strongly urges the DTSC to remove lead-acid batteries from the Draft Work Plan as a product category and not list lead-acid batteries as a priority product.

In conclusion, these facts provide strong evidence against listing lead-acid batteries as a priority product or including lead-acid batteries as a product category in the Draft Work Plan. We urge DTSC to shift its focus to products that the SCP regulation would likely have positive impact on human health and the environment. MEMA welcomes the opportunity to work further with DTSC on this important issue. Please contact me at (202) 312-9247 or lholmes@mema.org if you have questions or require further information on these comments.

Respectfully Submitted,



Laurie Holmes
Senior Director, Environmental Policy

¹⁵ Title 22, California Code of Regulations Chapter 55, Safer Consumer Products, Section 69503.2(b).