



February 28, 2011

Joseph Martens, Acting Commissioner
NYS Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, NY 12233

Re: DEC Draft Proposal and Request for Additional Information

Dear Acting Commissioner Martens:

On behalf of Earthjustice and the undersigned 43 organizations, let me thank the Department of Environmental Conservation ("DEC" or the "Department") for its steady progress toward securing meaningful disclosure of cleaning product ingredients. As you can see from the list of signatories, DEC's effort to enforce New York's chemical right-to-know law has generated excitement not only in this state but also across the nation. We appreciate receiving the draft of DEC's proposal for disclosure and submit the following comments for the Department's consideration. For ease of reference, we follow the organization of the draft proposal.

I. Product and Ingredient Identification

DEC must provide a definition of the term "product." The definition must ensure that each product has a unique name, preferably including the brand of the item, which will enable the public to compare competing products. To allow comparisons across products, the user also needs to know the form of each product (liquid, powder, foam, aerosol, etc.) for which ingredients are reported.

We commend DEC for requiring that manufacturers provide, for each ingredient, when available, the CAS number and all other applicable chemical names. It is absolutely essential that CAS numbers be provided whenever they are available.

II. Intentionally Added Ingredients

Disclosure should not be limited exclusively to "intentionally added ingredients." DEC's regulations specifically contemplate disclosure of trace quantities of any ingredient that is "not part of the household cleansing product formulation [and] is present only as an unintentional consequence of manufacturing." 6 N.Y.C.R.R. § 659.1(b)(1)(i) (defining "trace quantity"); *see id.* § 659.6(a)(3) (authorizing the Commissioner to require disclosure of trace quantities of ingredients). Ingredients that are not added intentionally can present serious health hazards.

For example, 1,4 dioxane and formaldehyde are unintended contaminants or residuals that can be found in cleaning products. They are both associated with cancer as well as acute conditions like dermatitis. See Campaign for Safe Cosmetics, *No More Toxic Tub*, at http://www.safecosmetics.org/downloads/NoMoreToxicTub_Mar09Report.pdf (focusing on the same problem in children's personal care products).

We understand that the identity of ingredients not intentionally added to products may not be known to some smaller manufacturing companies, but when a manufacturer does know or reasonably should know of impurities, contaminants, or ingredient residuals of concern, those chemicals should be disclosed. In fact, most manufacturers do know about those chemicals, because the companies have purity specifications for purposes of quality control. Moreover, trace chemical analysis is not a difficult procedure, so disclosure should include such chemicals, whether they are the product of interactions among ingredients intentionally added to the product, interactions with the product packaging, or other unintended but known processes.

In addition, the proposed ranges for reporting of estimated content by ingredient weight should be more finely grained. The Department's regulations expressly authorize the Commissioner to require disclosure of ingredients that constitute less than five percent of the product by weight, including ingredients appearing only in trace quantities. See 6 N.Y.C.R.R. § 659.6(a) (expressly providing that the information that the Commissioner may demand "shall not be limited to" the items separately listed in subsections (1)-(3) of section 659.6(a)). The following ranges should be added: 1-5%, 0.5-1%, 0.1-0.5%, below 0.1%. See *id.* § 659.1(b)(ii) (defining a trace quantity as "an incidental amount which is part of the household cleansing product formulation, and does not exceed one tenth of one percent (0.1%) of the contents of the product by weight). The report also should indicate whether an ingredient is used on the nano-scale.

Consumers might find it easier to understand comparisons among products with small quantities of particular chemicals if the quantities were measured in parts per million, as is done in Washington State. That alternative also is acceptable to us. What would be unacceptable is a mere listing of each product's chemicals in order of weight, volume, or other quantity, which would not provide enough information about the absolute amounts of specific ingredients to allow for comparisons across products.

III. Potential Health and Environmental Hazards

We note that DEC has created two lists of reportable health and environmental hazards. The initial list of seven categories (asthmagens, carcinogens, etc.), which applies to individual ingredients, and the second list of two categories (corrosive to skin or potentially causing serious eye damage, skin sensitizers), which applies to entire products, appear to identify long-term (chronic exposure?) and short-term (acute exposure?) effects, respectively. It would be useful to understand DEC's intent in creating these two lists. We strongly support disclosure of all the potential health and environmental hazards identified by DEC in both lists.

With respect to the first list, DEC should add reporting requirements for neurotoxins and endocrine disruptors. For endocrine disruptors, DEC could require reporting whether an ingredient is a Category 1 chemical in the priority list of chemicals developed within the EU-Strategy for Endocrine Disrupters,

http://ec.europa.eu/environment/endocrine/strategy/substances_en.htm#priority_list.

In addition, DEC should clarify that each trace ingredient must be listed individually with its associated health and environmental hazards. As the proposal is currently worded, it appears as if a manufacturer could provide a list of all trace ingredients with a list aggregating all of their hazards, without correlating the two. Because some chemicals can be hazardous in very small amounts, especially to persons with allergies or sensitivities, it is important to have each trace ingredient listed separately with its associated hazards.

With respect to the second list (of acute effects), we would recommend that DEC add reporting requirements when a product could cause respiratory or gastrointestinal irritation. Both the Consumer Product Safety Commission and EPA have chemical hazard classifications that could be reference points, and where there are inconsistencies between them, we would recommend using the more stringent applicable standard.

With respect to both lists, DEC should acknowledge expressly that the list of chemicals in all categories will evolve over time as we learn more about the hazards they present. Lists of additional hazards (*e.g.*, immunotoxins) also may develop as research progresses. When DEC addresses the mechanisms of disclosure, it should provide means for promptly updating product and ingredient information when a list changes or new lists develop. DEC or an appropriate designee should review the health and environmental hazard lists on an annual basis to ensure that the information provided to the public is up-to-date.

Finally, there is no reliable toxicity testing of the majority of ingredients in cleaning products, including evaluations for cancer and other chronic effects, such as asthma and allergies. Consumers need to be told clearly when inadequate studies or data are available, so that they do not assume that a chemical is safe just because it does not yet appear on any recognized health hazard list. To avoid ambiguity, DEC should adopt an approach similar to that used in the Globally Harmonized System of Classification and Labeling of Chemicals and require that the specific phrase "no data available--safety unknown" be used in reports to indicate the absence of necessary scientific research about a cleaning product ingredient.

IV. Confidential Business Information

We have a few brief comments and questions on the proposal for disclosure when ingredients are claimed to be confidential business information ("CBI"). As a preliminary matter, we encourage DEC to examine the CBI policies of all cleaning product manufacturers that

voluntarily disclose product ingredients on their websites and to adopt as a baseline the policy that affords the most public disclosure. We see no reason why the most transparent corporate policy should not operate as the floor for all manufacturers. If one company can disclose all dyes and preservatives, for example, as Reckitt Benckiser already claims to do, *see* Reckitt Benckiser Product Information Site, <http://www.rbnainfo.com/productpro/whats-whys-hows.jsp#coming-soon>, it is hard to see why other companies could not do so as well. At the very least, no company should be permitted to disclose less to DEC than it already discloses on its own website.

We are unable to understand what a “chemical-descriptive” name is and urge DEC to provide a clear definition.

We do not understand how the disclosure of scent ingredients is intended to operate. What do we learn from the fact that an undisclosed ingredient is on the International Fragrance Association list? Will each scent ingredient be listed separately as “fragrance”, or will all scent ingredients in a product be listed collectively as “fragrance”? In either case, we need a system that identifies all of the reportable health and environmental hazards associated with the scent ingredients.

Finally, we need a system that identifies all of the reportable health and environmental hazards associated with any ingredients claimed to be CBI, regardless of whether they are in estimated amounts or trace quantities. Our concern about the percentage ranges of product content by weight, described above, applies equally to ingredients claimed to be CBI as it does to ingredients that are disclosed.

V. Web-Based Ingredient Disclosure Lists

In addition to soliciting our comments on your draft proposal for household cleaning product disclosure, you asked us to review the ingredient disclosure lists contained on the websites of the four companies represented at the October 6, 2010, meeting—The Procter & Gamble Company; Church & Dwight Co., Inc.; Reckitt Benckiser, Inc., and Colgate-Palmolive Company—and to provide you with feedback on the information provided. Our response to your request is set forth below.

None of the companies disclosed CAS numbers on their product ingredient information pages. In some cases, the companies use general names for ingredients, with which several CAS numbers could be associated. For example, Procter & Gamble used the term “Protease,” which is a non-specific descriptor for a biological enzyme; “dimethicone,” which is a process aid; and “SD alcohol”—none of which has a unique CAS number. Church & Dwight’s ingredient list for Orange Glo 4 in 1 Hardwood Clean and Shine included a number of “wax emulsion” ingredients with associated trade acronyms, but no specific ingredient information. Reckitt Benckiser and Colgate-Palmolive tended to provide more specific chemical names in product

ingredient lists, but CAS numbers were not included for any of them. Without CAS numbers, the consumer cannot be sure which chemical has been included in a product.

All four companies tended to provide only the functional descriptor “fragrance” on ingredient lists, with little additional information.

Some companies provide trade names or even specific colors on some ingredient lists, while some colorant information is completely absent. For example, Procter & Gamble provides trade names for colors in some cases and FD&C color information in others, but that information is missing completely from Church & Dwight’s Orange Glo 4 in 1 Hardwood Clean and Shine and its Arm and Hammer liquid laundry concentrates. Reckitt Benckiser provides more specific color information, and it claims to disclose all dyes. For the consumer who misses the general disclosure claim (which appears on a different page than product ingredients), it can be difficult to tell whether products without listed dyes (*e.g.* Cling Free, Lysol foaming disinfectant cleaner) simply do not list the colorants or, instead, are colorant-free. Colgate-Palmolive provides the most general information, listing only “dye” in the ingredients of its Fabuloso cleaners and Palmolive dishwashing detergent.

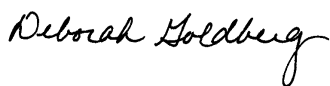
There also is variability among the companies in the specificity of their disclosure of preservative ingredients. Procter & Gamble provides some specific information on preservatives for some products (*e.g.*, methylisothiazolinone in Dawn Plus Odor Eraser) but has no listing for preservatives in a number of products (*e.g.*, ERA, Cascade Complete Powder). Church & Dwight did not always list preservatives (*e.g.*, Arm and Hammer laundry detergents) but does list a trade name for a preservative in its Orange Glo 4 in 1 Hardwood Clean and Shine. Reckitt Benckiser does not identify any preservative for a number of products (*e.g.*, Lysol All Purpose Orange Cleaner, Cling Free), and, without seeing a separate webpage, it is not clear whether they do not contain a preservative, or the preservative is not specifically listed as such. Colgate-Palmolive has only general listings of “preservative.”

Although the companies provide access to separate Material Safety Data Sheets (“MSDSs”), which contain some additional information for these products, the MSDSs generally do not list all of the product’s ingredients. Nor do the MSDSs or product information pages disclose the full range of health and environmental hazards that should be reported. Even if they did, we believe that consumers should not have to piece together ingredient and hazard information from separate webpages and MSDSs, but rather should have all of the available information easily accessible in a user-friendly, searchable database that facilitates comparisons among cleaning products.

Conclusion

Thank you again for your efforts to protect the public from the dangers of toxic cleaning products. If you have any questions or concerns about our comments or our feedback on the manufacturers' websites, please do not hesitate to contact me: 212-791-1881 x227.

Sincerely yours,



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