



ACC Asks DTSC to Take A Second Look at Decision to Identify SPF Systems as Priority Product

SAFER CONSUMER PRODUCTS, PRODUCT STEWARDSHIP, DTSC

By ROGER PEARSON, August 20, 2018

On July 1, 2018, the Department of Toxic Substances Control formally identified Spray Polyurethane Foam Systems (SPF Systems) with Unreacted Methylene Diphenyl Diisocyanates (MDI) as a Priority Product under the Department's Safer Consumer Products program (SCP) [see **DTSC Lists SPF Systems as Second Priority Product under Its SCP Program**¹], May 14, 2018]. The American Chemistry Council (ACC) has now requested that the Department initiate an "informal dispute resolution" with ACC to review objections that the organization continues to have with the process used to formalize the identification.

SPF systems are the second chemical-product combination identified as a Priority Product under the SCP. The first Priority Product, children's foam-padded sleeping products containing the fire retardants TDCP or TCEP, was listed last year with so far, no major objections.

Article 7 of the SCP regulations² establishes a dispute resolution process by which parties objecting to a decision by the Department may seek further review of that decision by Department personnel. The regulations provide for an "informal dispute resolution process" that can be demanded by an interested party within 30 days of the decision. The Department announced that it would go ahead with the SPF Systems identification in a May 1 email. ACC filed its informal dispute resolution request on May 30.

The **ACC letter makes several claims**³ about the inadequacy of the DTSC rulemaking process:

- The Department failed to show an adequate "Potential for Public and/or Aquatic, Avian, or Terrestrial Animal or Plant Organism Exposure to the Candidate Chemicals" in SPF Systems; as required by the SCP regulations.
- The Department has not shown an adequate "Potential for Widespread or Significant Adverse Impacts" for exposure to SPF Systems.
- "MDI Exposure" (i.e. exposure to the candidate chemical) in SPF Systems is already adequately regulated by other regulatory regimes.
- Listing SPF Systems as a Priority Product will not meaningfully enhance public health.
- DSTC's economic analysis of the effects of the listing does not comply with applicable law.

- There are no feasible alternatives to the use of unreacted MDI in SPF systems and consequently DTSC improperly rejected a proposal by ACC to institute a multi-year California-focused product stewardship and safety campaign to limit exposure to SPF Systems.
- Listing SPF as a Priority Product is not authorized under—and conflicts with—Federal and California law.

Each of these issues was raised by ACC during the comment period on DTSC's formal Priority Product identification proposal. Each of the comments were addressed by DTSC in the **agency's "response to comments" in its Final Statement of Reasons⁴⁾** (FSOR) supporting the identification.

The Department has 30 days to institute the informal dispute process. If ACC doesn't like the result of the process, the organization can then appeal to the DTSC Director. If that doesn't resolve ACC's concerns it can then, presumably, go to court.

Resources for this article

1. DTSC Lists SPF Systems as Second Priority Product under Its SCP Program

<https://prop65clearinghouse.com/articles/13446>

2. Article 7 of the SCP regulations

<https://prop65clearinghouse.com/documents/28334>

3. ACC letter makes several claims

<https://prop65clearinghouse.com/documents/28335>

4. agency's "response to comments" in its Final Statement of Reasons

<https://prop65clearinghouse.com/documents/28336>