

## **PRODUCTS LIABILITY**

### *California's Green Chemistry Initiative*

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The California Department of Toxic Substance Control ("DTSC") recently submitted the Green Chemistry Proposed Regulation for Safer Consumer Products to the California Office of Administrative Law for review. While the proposed regulation may improve the safety of the products sold in California, it may also cost affected businesses more to comply with the regulation and reformulate their products to use safer alternatives.

#### **Green Chemistry**

Green chemistry is a new approach for protecting the environment and public health from hazardous chemicals. Historically, toxic chemicals have been managed through regulated storage or disposal at the end of the chemical's life cycle. However, the green chemistry approach involves managing toxic chemicals by reducing or eliminating their use at the beginning of their life cycle. Consumer product designers and manufacturers are encouraged to consider the public health and environmental impact of the products at the design phase.

#### **California's Green Chemistry Initiative**

California's Green Chemistry Initiative is a shared effort to identify toxic chemicals and reduce the impact of the toxic chemicals on public health and the environment. The goal of the California Green Chemistry Initiative is to develop regulatory options for implementing green chemistry policies.

Beginning in 2003, the Senate Environmental Quality Committee and the Assembly Committee on Environmental Safety and Toxic Materials commissioned a report from the University of California to investigate the deficiencies in California's chemical substances regulations and suggest options to address health concerns related to chemical toxicity. In 2006, the authors presented their report entitled *Green Chemistry in California: A Framework for Leadership in Chemicals Policy and Innovation*. As a result of the report, the California Environmental Protection Agency launched California's Green Chemistry Initiative within the DTSC. The DTSC released a report in December 2008 with six policy recommendations for implementing California's Green Chemistry Initiative.

Finally, in 2008, Governor Schwarzenegger signed Assembly Bill 1879 and Senate Bill 509 into law. These bills implemented two of the key recommendations made by the DTSC. The recommendations included an acceleration of the quest for safer products and the creation of an online toxics clearinghouse. Specifically, the 2008 legislation required the DTSC to adopt

regulations by January 2011 that establish procedures to identify chemicals of concern, evaluating these chemicals in consumer products and analyzing potential alternatives.

### **Summary of the Proposed Regulation & Compliance Burdens**

The proposed regulation applies to all consumer products placed into the stream of commerce in California and all chemicals reasonably expected to be in these consumer products that exhibit a hazardous trait, with the exception of those products specifically exempted by statute. It establishes a protocol to: (1) identify chemicals of concern; (2) evaluate their use in consumer products and identify safer alternatives; and (3) provide for specific regulatory responses that may be imposed on the responsible entity.

The proposed regulation involves a three-step process. The first step is identification and prioritization of chemicals and consumer products based on their risk of toxicity. The DTSC will develop a "Priority Chemicals" list which will include chemicals that exhibit a hazardous trait and a "Priority Products" list which will include consumer products that contain a Priority Chemical.

The second step is an assessment of alternatives. The purpose of the alternatives assessment is to identify and select a safer alternative which may or may not exist. The proposed regulation requires responsible entities to perform more rigorous assessments if their product is listed as a "Priority Product."

Finally, once the responsible entity has completed the assessment of alternatives, the DTSC will notify the responsible entity whether one or more of the regulatory responses detailed in the proposed regulation are triggered. Possible regulatory responses include, but are not limited to requiring the responsible entity to: take no action; provide product information to consumers; maintain and fund an end-of-life product stewardship program; or ensure the Priority Product is removed from the stream of commerce.

### **Status of Proposed Regulation**

On June 23, 2010, the DTSC released a draft of the proposed regulation. The June release was the result of an unofficial two-year process whereby stakeholders and the general public were involved in drafting the regulation. According to the DTSC website, the DTSC received 762 pages of comments from more than 90 stakeholders, legislators and the public after issuing the June draft regulation.

On September 14, 2010, the DTSC released the official proposed regulation entitled, *Green Chemistry Proposed Regulation for Safer Consumer Products*. The official proposed regulation includes changes to the June 23rd draft as a result of feedback from interested parties. The DTSC submitted the proposed regulation to the Office of Administrative Law ("OAL") for review. A formal 45-day public comment process will follow when the OAL posts public notice. A hearing is scheduled for November 1, 2010.

### **CONCLUSION**

The goal of the California Green Chemistry Initiative is to create safer products which limit human exposure to toxic chemicals and reduce adverse environmental impacts. While the proposed regulation may achieve this goal, it may also create a compliance burden for responsible entities

that directly or indirectly make a product containing a toxic chemical available in California's stream of commerce.