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California Revises Proposed Green Chemistry Regulation in Response to Comments

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On November 16, 2010, the California Department of Toxic Substances Control ("DTSC") issued revisions to its proposed Safer Consumer Product Alternatives regulations. In response to comments, DTSC made a number of significant changes to its draft Green Chemistry regulations and has solicited additional public comment until December 3, 2010.

As reported in our earlier Newsletter, on September 14, 2010, DTSC proposed regulations to establish a comprehensive new system for requiring safer alternatives to consumer products and chemicals as prioritized by DTSC based upon the relative degree of threat posed to public health and the environment, availability of reliable information to substantiate the threat, and DTSC resources.

Despite two years of stakeholder feedback prior to proposing its regulations, in response to comments, DTSC not only substantially rearranged certain sections of the regulations, but also revised its draft regulation by:

- Limiting the universe of priority products for the first five years, until January 1, 2016, to children's products, personal care products, and household cleaning products.
- Modifying the information required to be submitted to DTSC for its information-gathering process for the identification and prioritization of chemicals and products, including an attempt to reduce the scope and use of trade secret information.
- Clarifying the sequential order of the decision-making factors for prioritization of chemicals and products.
- Eliminating the development of lists for Chemicals under Consideration and Products under Consideration.
- Streamlining the Alternative Assessment provisions, including the elimination of Tier I AA Notifications, thereby limiting Alternative Assessments to Priority Products, and

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consolidating the two types of Alternative Assessment Reports into a single report.

- Modifying confidentiality provisions.
- Eliminating the burden of proof placed upon the manufacturer to establish that a product is manufactured, stored in, or transported through California solely for use outside of the state.
- Revising the scope of the regulations regarding unintentionally added chemicals or chemical ingredients.
- Modifying the regulation's exclusion where other specified regulatory programs already regulate the chemical of concern or priority product to avoid duplication.
- Changing the definitions of important terms, including "De Minimis Level," "hazard trait," and "place into the stream of commerce."

Despite these changes, it is unlikely that these revisions will satisfy and alleviate the concerns of many stakeholders. Still yet, since the regulation was initially proposed, a significant shift has occurred with regard to funding of California environmental programs. In light of the passage of Proposition 26 this month, DTSC's Green Chemistry program, which is essentially not funded, could be in jeopardy should it need to look to the Legislature to establish a feebased program as it would likely require passage by two-thirds vote.

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