

CALIFORNIA GREEN CHEMISTRY INITIATIVE UPDATE



Gregory Brandt is the Chair of Wendel, Rosen, Black & Dean LLP's Environmental Practice Group and has more than 20 years of experience handling hazardous materials and regulatory compliance matters. The practice group was recently named one of the top 10 environmental practice groups in the San Francisco Bay Area by *The Recorder*.

Email: gbrandt@wendel.com

Phone: 510.834.6600

© 2012 Wendel, Rosen, Black & Dean LLP

On July 27, 2012, the California Department of Toxic Substances Control (DTSC) issued the latest draft of its proposed Safer Consumer Products Regulations. The regulations set forth the DTSC's plan for finding safe substitutes for hazardous chemicals found in consumer products. Stakeholders now have 45 days to comment on the proposed regulations.

Background on the Green Chemistry Initiative

In 2008, California passed what is known as the Green Chemistry Initiative. The Green Chemistry Initiative seeks to replace chemicals used in consumer products with less hazardous substitutes and to make related information more readily available to the public. The Safer Consumer Products Regulations are the first step in the implementation of the initiative.

Who is Impacted by the Regulations?

The manufacturer of a product that is covered by the Safer Consumer Products Regulations is responsible for satisfying the regulatory requirements; however, if the manufacturer fails to comply, the importer (if any) must meet the requirements. And, if the manufacturer and importer both fail to comply, the California retailer is required to take the necessary steps to meet the regulatory obligations. As a result, almost every company in the supply chain could be impacted by these requirements. Compliance with the regulations may require reformulating certain products, finding an alternative, or discontinuing the sale of the identified product.

Step-by-Step Summary of the Proposed Regulations

The regulations would first require DTSC to develop a list of "Chemicals of Concern" or COCs. The list of COCs will be developed by combining similar lists already developed by other states and countries. The DTSC anticipates that the initial list of COCs will include approximately 1200 chemicals, but more may be added in the future.

Once the list of COCs is established, the DTSC will identify not more than five "Priority Products" that contain COCs. The initial list of Priority Products would be issued for review and comment within 6 months of the effective date of the regulations. The products on the list will be reviewed by the DTSC and, if necessary, revised at least every three years.

After Priority Products are identified, an entity will have 60 days to notify the DTSC that it manufactures, imports or sells a listed product. DTSC will post this information on its website. Unless an exemption applies or the entity agrees to stop selling the product in the state, the entity will have to determine whether it can reduce, replace or eliminate the COCs in the product and/or reduce or restrict the potential for exposure to the COCs in the product. The evaluation is known as an Alternatives Analysis ("AA"). In general, a preliminary AA must be submitted within 180 days of the

product being listed as a Priority Product. A final AA report must be submitted within 12 months after the DTSC issues a notice of compliance for the preliminary AA report, but that time period may be extended if, for example, additional testing of alternative formulations is required.

Then, based on the AA, the DTSC will require implementation of specific actions designed to protect public health and the environment and maximize the use of alternatives of least concern, where such alternatives are technically and economically feasible.

Implementation Time Line

There is a public hearing scheduled for September 10 and stakeholders have until September 11, 2012 to provide written comments on the current draft regulations. The DTSC plans to finalize the regulations by the end of this year.

Not later than January 1, 2014, the DTSC will publish a plan for evaluating possible Priority Products; the first list of Priority Products would then be issued on or before January 1, 2016.