



## Green Products Update

November 2011

### California Proposes New Green Chemistry Regulations

On October 31, 2011, California's Department of Toxic Substances Control (DTSC) released a new draft of proposed Green Chemistry Regulations. This proposal follows two prior proposals put forth by California regulators pursuant to California's 2008 Green Chemistry Initiative law, both of which met with heavy criticism by environmental and public health groups, scientists, and industry. The latest version of the regulations expands the scope of the program to include more Chemicals of Concern (COCs) and shortens the timeframes for identifying COCs and for building a list of Priority Products.

#### Background of the Regulations

In 2008, California's legislature passed legislation requiring DTSC to have its regulations in place by January 1, 2011. Previously, an increasing number of chemical-specific bills were introduced to ban particular chemicals or restrict their use in certain products. The Green Chemistry Initiative regulations are an attempt to create a systematic regulatory process that potentially addresses all chemicals. Under the law, the regulations must provide a science-based approach for building a list of chemicals that pose the greatest risks, for identifying products that contain the chemicals, and for analyzing safer alternatives.

#### Four-Step Process

The new draft regulations provide for a four-step continuous, science-based, iterative process to identify safer consumer product alternatives:

- 1) **Chemicals of Concern:** The regulations establish an immediate list of around 3,000 Chemicals of Concern, which "exhibit a hazard trait or an environmental or toxicological endpoint" or are identified by other authoritative organizations. The regulations also specify a process for DTSC to identify additional chemicals as COCs.
- 2) **Product Prioritization:** The regulations require DTSC to develop a list of Priority Products for which an Alternatives Assessment (AA) must be conducted. DTSC specifically noted that it "anticipates that the initial list of Priority Products will include 2 to 5 products." Products that are exempted by law, manufactured solely for out-of-state use, or subject to tighter state or federal regulations, would be exempted from COCs and Priority Product assessment. Products containing less than 0.01 percent of a hazardous chemical would be subject to a *de minimus* exception from reporting requirements.
- 3) **Responsibility for Compliance:** Importantly, the proposed regulations expand the primary responsibility for compliance beyond manufacturers to include product retailers and importers. Responsible entities must notify DTSC when their product is listed as a Priority Product, conduct an AA for any Priority Product(s), and submit both a Preliminary AA Report and a Final AA Report to DTSC.
- 4) **Regulatory Responses:** The regulations require DTSC to identify and impose regulatory responses to effectively limit potential adverse public health and/or environmental impacts, if any, posed by the Priority

Product/COC (if the manufacturer decides to retain the Priority Product) or the potential adverse impacts posed by the alternative chemical/product selected to replace the Priority Product. If an alternative product is identified, the responsible party must:

- a. Ensure that the Priority Product is no longer sold in California and that an inventory recall program for the Priority Product is implemented and completed within three years; or
- b. Submit to DTSC an AA Report that selects an alternative that does not contain a COC.

If DTSC determines that a responsible entity has not complied with the regulations' requirements, DTSC will issue a notice of non-compliance to the product's manufacturer and any importers and post a Failure to Comply list on its website. Under the regulations, DTSC is also authorized to conduct audits to determine compliance with the AA and regulatory response requirements.

### **"Informal" Draft Regulations**

After much controversy and criticism, DTSC has dubbed its newest proposed regulations "informal" and has provided time for additional comments by stakeholders and DTSC's Green Ribbon Science Panel. The current informal draft will be discussed by the Green Ribbon Science Panel at its November 14-15, 2011 meetings. DTSC will then hold a workshop on the informal draft regulation on December 5, 2011. Following the informal public comment period, which ends December 30, 2011, DTSC will release formal proposed regulations next year and solicit further comment before adopting the final regulations.

### **FOR MORE INFORMATION**

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