

## California Postpones Adoption of Proposed Green Chemistry Regulations

California has postponed the final adoption of its proposed Green Chemistry Regulations based on concerns raised by a wide range of stakeholders, including those from industry and environmental groups as well as scientists and legislative leaders. On November 16, 2010, the California Department of Toxic Substances Control (DTSC) issued a significantly revised draft of its groundbreaking Green Chemistry Regulations. The public comment period concluded on December 3, 2010. Although the underlying regulation (A.B. 1879) required the adoption of the Green Chemistry Regulations by January 1, 2011, opponents of the proposed legislation have argued that missing the deadline was preferable to adopting regulations that fall short of the goals envisioned under A.B. 1879. DTSC's newest draft narrows the scope of the regulations by excluding nanomaterials from explicit coverage. It also redefines "Responsible Entities" covered by the regulations.

For more information on the original draft regulations, go to [www.ThompsonHine.com/publications/publication2174.html](http://www.ThompsonHine.com/publications/publication2174.html).

### NANOMATERIALS

DTSC has removed all references to nanotechnology from the latest draft of its proposed regulations. Initially, it had proposed the regulation of nanomaterials by including them in the definition of "chemical" and defined "nanoscale" materials to include materials with dimensions of 1,000 nanometers or smaller.

Upon review and in response to earlier public comments, however, DTSC decided that explicit references to "nanomaterials" in the current version of the regulations were unnecessary. The move to delete specific nanomaterial provisions is notable because previous drafts of California's Green Chemistry Initiative Regulations were considered by many to be among the most significant attempts by regulators to regulate nanomaterials based principally on nanoscale qualities or environmental or health impacts.

### "RESPONSIBLE ENTITIES"

While the prior draft regulations' definition of "Responsible Entities" embraced almost all businesses in the chain of consumer product distribution, including manufacturers, brand name owners, importers, distributors, and retailers, the new proposed regulations limit the definition of Responsible Entities to either manufacturers or retailers of a consumer product. Responsible Entities will still be required to provide certain information to consumers, conduct performance evaluations of alternatives to such chemicals, and institute a take-back program under which the



consumer can return the used product to the Responsible Entity for proper disposal or implement safety measures, if the product contains a “Chemical of Concern.”

Additionally, under the previous draft, the regulations would have applied to all consumer products immediately and without regard to the products’ potential hazards. Under the new draft, while the regulations will eventually govern a broad array of consumer products, DTSC will prioritize children’s products, personal care products, and household cleaning products until January 1, 2016. After that date, DTSC will begin assessing all other consumer products and will update the Chemicals of Concern list and Priority Product list “as needed.” A product manufacturer will be required to provide a Chemical Removal Notice to DTSC within 180 days after the Priority Product listing in order to avoid having to submit an Alternative Assessment.

#### **CHEMICALS OF CONCERN AND PRODUCTS OF CONCERN**

The new proposed regulations eliminate the requirement that DTSC develop lists of Chemicals under Consideration and Products under Consideration. This revision constitutes a major step back from the prior draft regulations, which would have required DTSC to assess all chemicals identified as priority toxic pollutants by California or the U.S. Environmental Protection Agency. The new proposed regulations, however, propose that DTSC will compile a list of Chemicals of Concern, comprised only of those that exhibit a hazard trait and are *reasonably expected* to be contained in products placed into the stream of commerce in California. Chemicals of Concern will be prioritized based on the relative degree of threat posed by each chemical to the public health or the environment. DTSC will then prepare a list of Priority Products that contain a Chemical of Concern, which, after public comment, will be published in the California Regulatory Notice Register and publicized on the DTSC website.

The prior draft regulations allowed exceptions to these listing requirements for products or chemicals regulated by California or federal regulatory programs that addressed the same public health and environmental threats, and for products for which there was no exposure pathway by which the chemical contained in the product might pose a threat to public health or the environment in California during the useful life or the end-of-life management of the product. In the current draft of the regulations, however, DTSC has removed these regulatory exceptions to its consideration of Chemicals and Products of Concern.

#### **NEW TIMELINE FOR IMPLEMENTATION OF REGULATIONS**

Under the new proposed regulations, in light of the elimination of lists of Chemicals under Consideration and Products under Consideration, the timeframe for implementation is compressed; DTSC’s initial Chemicals of Concern list must now be finalized by December 31, 2011, and a list of Priority Products containing Chemicals of Concern must be finalized by December 31, 2012, rather than September 1, 2013. Considering the postponed adoption of the final Green Chemistry Regulations, however, this timeline remains uncertain.



## **OPPOSITION TO THE NEW PROPOSED REGULATIONS**

The revised Green Chemistry Initiative Regulations drew strong criticism from environmental and public health groups, scientists, and industry. In early December, the Green Chemistry Alliance, an industry group, asked that the implementation of the regulations be delayed to address its concerns regarding how the state will protect confidential business information and the process for identifying and prioritizing Chemicals of Concern and Priority Products. In addition, the Environmental Working Group and 32 other organizations urged California Governor Schwarzenegger to stop the implementation of the regulations, calling the 15-day comment period inadequate and criticizing the more limited scope of the new proposed regulations as ineffective. Further, the sponsor of the underlying legislation, California Assemblyman Mike Feuer (D), also expressed concerns that the proposed regulations failed to address the flaws of the earlier proposed regulations, and instead diverged from the approach called for in the initial legislation.

On December 23, California Environmental Protection Agency Secretary Linda Adams asked the DTSC to take additional time in early 2011 to reconvene the Green Ribbon Science Panel, a panel established by the underlying Green Chemistry legislation to provide advice on scientific matters, chemical policy recommendations, and implementation strategies, to review the proposed regulations in light of the substantive concerns raised by the proposed Green Chemistry Regulations.

## **FOR MORE INFORMATION**

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