

## How California's Green Chemistry Regulations Will Affect Your Business



### Cordon T. Baesel

Special Counsel - Luce Forward  
619.699.5459  
cbaesel@luce.com  
www.luce.com/cordonbaesel

*Cordon Baesel is Special Counsel at Luce Forward Hamilton & Scripps LLP and Co-Founder of its Action Sports Group, which is committed to providing comprehensive legal services to action sports businesses worldwide and includes multiple specialties such as business, securities, intellectual property, financing, tax and estate planning, labor and employment, product liability, environmental compliance, general litigation and real estate. For more information, please visit [www.luce.com/actionsports](http://www.luce.com/actionsports).*

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*Editors note: Lawyers following the California Green Chemistry statutes say that updates to the regulations are imminent, and manufacturers must adopt regulations that apply to "all consumer products made available for use in California." Depending on the chemical composition of your products, DTSC may require you to identify what specific chemicals are in your products and reduce or eliminate harmful chemicals that are present. So how can these seemingly daunting regulations be turned into a business advantage?*



### What Is Green Chemistry?

Green chemistry is the innovation, design and manufacture of chemical products and processes intended to reduce or eliminate the creation and use of materials hazardous to human health and the environment.

What is in your products? Do you know? For sure? Can you prove it?

Such questions are critical when bringing consumer products to market. Liability risks are higher than ever because of increased scrutiny of potential human exposures to harmful chemicals in consumer goods. Be it hardgood, softgood or something in between, "inquiring minds" (i.e. consumers, government agencies, and environmental groups) want to know.

Now, with California's new "Green Chemistry" regulations, knowing what is in your products is essential. It is not about a self-anointed, "green" sustainability hang-tag ranking; this green inquiry is qualitatively different. Your company is at risk if you don't know what's in your products, aren't prepared to address consumer health concerns, or can't meet regulatory requirements on product composition.

### What is this new layer of regulation?

California Green Chemistry regulations require you to understand chemical toxicity and consumer usage/exposure details to comply. Intended to better protect all California consumers (have you heard that before?), Green Chemistry will impact your business and your bottom line. This article provides basic background on California's Green Chemistry regulations, along with some ideas on how to comply. And one important note: Though proposed regulations are imminent (i.e., 2011), it is a transparent process, happening right now. You and your company can participate at <http://www.dtsc.ca.gov/PollutionPrevention/GreenChemistryInitiative/index.cfm>.

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### Green Chemistry Background

Under Green Chemistry statutes passed in 2008, Cal-EPA and its Department of Toxic Substances Control (DTSC) must adopt regulations that apply to "all consumer products made available for use in California." Depending on the chemical composition of your products, DTSC may require you to identify what specific chemicals are in your product. Your company will also be required to reduce or eliminate harmful chemicals that are present in its products.

The basic principle is to require manufacturers, importers and private labels to investigate the chemical composition of different products they offer for sale. Product composition information will be generally available to the public through DTSC's Web site so consumers can access the details. If products contain particularly toxic chemicals - so-called "Chemicals of Concern" - manufacturers will be required to perform an assessment of alternative chemicals for use in their products. If products are not re-formulated with safer alternatives, you may be prohibited from selling them in California. The regulations are not final yet, and they are subject to change. But the Green Chemistry incentive is for real: Ensuring products' chemical composition is absolutely safe so people are not unnecessarily or involuntarily exposed to potentially harmful chemicals.

### Green Chemistry and the Action Sports Industry

The action sports industry is in the same position as many other industries that sell consumer products in California. At times, however, the action sports industry is a little myopic: The healthy, outdoor lifestyle, premised on high-performance hard goods and stylish soft goods, can't possibly be an environmental liability—or can it? Of course it can. Just ask big brands about Proposition 65 compliance and private bounty-hunter lawsuits. The problem lies in product-sourcing and composition - the exact matters that Green Chemistry seeks to address. Despite our supposedly environmentally sound lifestyle, product-sourcing, especially from Asia, has proven to be a significant environmental challenge for most prominent action sports companies. Many soft goods manufactured overseas and imported by action sports companies have adhesives, coatings, colorings, fabric properties, and performance characteristics that are comprised of chemical materials that are unknown to the brands, distributors and retailers. And what about chemical mixtures utilized in hard goods?

Chemical composition and human exposure issues should already be a part of your environmental compliance and risk management strategy for consumer products. But with Green Chemistry, you may soon lose control of your own product inquiry. Given performance demands for action sports goods, potential liability risks are high in this industry. What you don't know about your product could end up hurting you, big time.

### Green Sky Falling?

While Green Chemistry regulations may seem potentially disastrous to action sports companies, the sky is not falling. As we have seen with numerous other products and consumer-buyer strategies, people are genuinely interested in what chemicals are present in products they use everyday. The potential health risk from an aerosol can of fragrance sprayed in the home is likely far greater than the potential chemical exposure associated with a simple screened t-shirt or a pair of shoes. But can you prove it? Negative sales impact to a brand from hypothetical (or real) health risks are surprisingly high in the apparel industry. Yet as the surf industry learned from the demise of Clark Foam, there are alternatives to the old manufacturing approaches that caused significant environmental harm throughout a product's life cycle.

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### What's Next: How Safe Is Safe?

How can manufacturers protect everyone (themselves and downstream distributors and retailers) from liability or shrinking profits based on the chemical composition of their products? We all want safe products. Determining "how safe is safe" in our changing regulatory environment requires strategic and sound input.

One: Know Thyself (i.e., Thy Products). Be able to prove your products and their sourcing comply with applicable laws and chemical exposure standards, including the currently evolving Green Chemistry requirements. While many companies have already implemented Restrictive Substances Lists and other product-sourcing chemical restrictions, Green Chemistry requires you to affirmatively determine chemical composition of products. Beware: Chemical composition inquiries can bite you. Collection of analytical data should focus on strategic objectives, necessity of data, defensible testing methods, human exposure analysis, foreseeable product use and confidentiality. Legal and technical input can help you identify testing that is appropriate, confidential and incorporated into the front-end of a product's life cycle.

Two: Know the Technical Standards and the Law. Keep ahead of the curve on new chemical standards, public and private enforcement trends and risk management strategies. Technical and legal input keeps your focus on bringing the best goods to market, while reducing back-end costs, risks and liabilities to everyone in the consumer good chain. That way, boards, clothes and shoes are moving off the shelves, and you are using Green Chemistry as a way to increase market share by really being more green - so you are in the black.