

Is Your Product Green Enough? California Department of Toxic Substances Control Issues Draft of Green Chemistry Regulations

September 23, 2010 by Oliver Theard

The Department of Toxic Substances Control (DTSC) recently released its proposed regulations to require safer consumer products under California's precedential "green chemistry" law. The green chemistry law, originally passed in 2008, is an industry and environmental game-changer because its stated purpose is to reduce adverse impacts to health and the environment by requiring manufacturers to use the safest available chemical components in their products. DTSC's regulations are aimed at fulfilling this mandate by prioritizing particular harmful chemicals and encouraging redesign of products containing those chemicals. The law and regulations represent a paradigm shift whereby the old model - essentially a "wait and see" approach in which chemical health risks were analyzed after someone complained about an injury allegedly caused by that chemical - is giving way to a new model whereby chemical risks are analyzed in advance of exposure in an effort to minimize future harm.

DTSC's proposed regulations are available for public comment on the [DTSC website](#) until November 1, 2010, whereupon the DTSC will hold a public hearing on the regulations. Also available on the website is DTSC's Initial Statement of Decision explaining the regulations, as well as useful fact sheets and flowcharts. The regulations may be modified again after November 1, but any final regulation will take effect on January 1, 2011.

Summary of Regulations

The regulations are lengthy, but the primary provisions are the following:

- Identify Priority Chemicals: DTSC will issue a list of Priority Chemicals, which are chemicals deemed to pose the greatest degree of threat to health or the environment. The final list of Priority Chemicals will be completed by 2013. Any chemical that "exhibits a hazard trait" and is reasonably expected to be placed into commerce in California can be considered for prioritization, unless the chemical qualifies for an exemption (exemptions are narrowly defined). Virtually any property of the chemical can be considered during the prioritization process, from carcinogenicity to flammability to impact on ecosystems.
- Identify Products Containing Priority Chemicals: From the list of Priority Chemicals, the DTSC will create a list of consumer products that contain that chemical, called Priority Products. Within 60 days of a product being listed as a Priority Product, entities that make such a product must provide information about that product to DTSC and perform an analysis of that product (its use, lifecycle costs and impacts, end of use disposal, etc.). The entity must also analyze whether safer alternatives exist that are functionally equivalent and technologically and economically feasible. The DTSC then has a range of options available to it, including requiring additional information or analysis from the responsible entity, placing restrictions on the products' use, or "any other regulatory response that the Department deems is necessary to limit exposure to or otherwise reduce the level of public health or environmental hazards posed by the product."
- Other Provisions: The regulations also have a plethora of other provisions, including requiring certification of companies performing product analysis, providing for petitions for DTSC review, and various other technical requirements.

Conclusion

Overall, the regulations introduce sweeping changes to the manner in which consumer products are managed and regulated in California and will create a brand new sub-specialty in the field of environmental law

and environmental consulting. Though applicable only to California, this law is sure to cause ripples throughout the nation because any chemicals and products introduced into California commerce are affected. This blog will provide periodic updates on the new regulations.