

Client Alerts

September 2013

Going Green: California Adopts Groundbreaking Safer Consumer Products Regulations

On August 28, 2013, California's Office of Administrative Law approved the Department of Toxic Substances Control's (DTSC's) landmark **Safer Consumer Products Regulations**. These bold regulations are an integral part of the state's Green Chemistry Initiative to accelerate the use of safer products through a science-based process that evaluates chemicals of concern and identifies safer alternatives. The four primary steps in this process include the following:

- Establishment of a Candidate Chemicals list, which will initially include approximately 230 chemicals based on the work of global authoritative organizations. These include carcinogens, reproductive toxins, mutagenic toxins, neurotoxins, endocrine disruptors, toxic air contaminants, and water pollutants. This list is expected to grow to 1,200 chemicals.
- Designation of Priority Product/Candidate Chemicals combinations (**Priority Products**) by DTSC that will require the assessment of safer alternatives. Examples of such possible priority products that have been discussed are formaldehyde-based hair straighteners, nail polish, carpet adhesive, and furniture seating foam.
- Performance of Alternatives Assessments for Priority Products by manufacturers or other responsible entities, including importers, assemblers, and retailers.
- Identification and implementation of "Regulatory Responses" by DTSC designed to protect public health and the environment. Examples include requiring notice to consumers, establishing end-of-life product stewardship programs, restricting the use of chemicals in a product or the use of a product, or banning sales of a product in California.

California's Green Chemistry Initiative regulations apply to many consumer products, including cosmetics and over-the-counter drugs, that are sold, offered for sale, distributed, supplied, or manufactured in California. Exempt products include those manufactured or stored in, or transported through, California solely for use outside of the State, as well as the following: dangerous prescription drugs and devices; dental restorative materials; medical devices, packaging associated with dangerous prescription drugs and devices, dental restorative materials, and medical devices food; and pesticides.

These regulations will take effect **October 1, 2013**, signaling the end of a regulatory process that began in 2008 and the beginning of the sweeping law's implementation. Pursuant to the regulations, the DTSC's forthcoming actions include (1) publishing an informational list of Candidate Chemicals on its website by **November 1, 2013**; (2) proposing an initial list of up to five Priority Products for public comment by **April 1, 2014**; and (3) drafting guidance for performing Alternative Assessments.

Is your company prepared?

We expect that these new regulations will particularly affect the cosmetic industry and noncompliance could have profound consequences. In fact, the provisions provide for criminal and civil penalties of up to \$25,000 per violation. If your product(s) fall under this large umbrella, it is important to familiarize yourself with the chemicals posted on the Candidate Chemicals list in the upcoming months.

Your first priority should be determining whether your product(s) sold in California contain one of these Candidate Chemicals. To keep your product off the inaugural Priority Products list set for publication this spring, you should next compile evidence to persuade DTSC otherwise. We recommend that you also proactively identify who in your supply chain (e.g., manufacturer, importer, assembler, or retailer) will be responsible, if necessary, for responding to DTSC's requests and filing required notices regarding the chemical's presence.

For more information on how to prepare your company for the imminent execution of California's Green Chemistry Initiative, please contact any of the attorneys in our **Dietary Supplements, Cosmetics and**

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