

## Environmental Law

### California Proposes (Again) Safer Consumer Product Regulations

Jul 30, 2012 | Author: Peter Duchesneau

On July 27, 2012, the California Department of Toxic Substances Control (DTSC) formally repropoed its Safer Consumer Products regulations, aka the "Green Chemistry" regulations. A public hearing will be held on September 10, 2012, and written comments must be submitted by September 11, 2012, on the 78-page proposed regulation.

As DTSC explains, the rule making is a preemptive strategy that reduces the use of toxic substances in the design of products and industrial processes, with the aim of creating safer and sustainable products that do not threaten human health or persist in the environment. The regulation provides for a four-step process for the identification of safer consumer product alternatives:

1. *Identification of Chemicals of Concern (COCs)* — An immediate list of COCs (~1,200) is established by the regulation based on certain existing authoritative lists. A process is specified for DTSC to identify additional chemicals as COCs.
2. *Prioritization of Product/COC Combinations* — DTSC will evaluate and prioritize product/COC combinations to develop a list of "Priority Products" for which an alternatives analysis must be conducted. The regulations specify that the first list of Priority Products will contain no more than five product-chemical combinations and is to be issued within 180 days after the regulations become effective.
3. *Alternatives Analysis (AA)* — Responsible entities (manufacturers, importers and retailers) are required to notify DTSC when their product is listed as a Priority Product and to perform AAs for the Priority Product and COCs in the product to determine how best to limit exposure to, or the level of adverse public health and environmental impacts posed by, the COCs in the product.
4. *Regulatory Response* — If the manufacturer decides to retain the Priority Product, DTSC will identify and impose regulatory responses to prevent or limit adverse public health and/or environmental impacts, if any, posed by the Priority Product/COCs or the adverse impacts posed by the alternative chemical/product selected to replace the Priority Product. Regulatory responses include the provision of product information to consumers; establishment, maintenance and funding of an end-of-life product stewardship program; restrictions on the use of COCs in a product or on the product itself; and the prohibition of product sales in California.

The proposed regulation marks yet another round of revisions by DTSC since it first proposed Safer Consumer Product regulations in September 2010. Significant changes since the October 2011 informal draft have been made, including the following:

- ▶ A reduction in the initial COCs, from more than 4,000 to approximately 1,200. However, the regulations provide a process for petitioning DTSC to add/remove a chemical to/from the COC list or a product-chemical combination to/from the Priority Product list, including requesting that an entire existing list of chemicals be added.
- ▶ The concentration-based trigger that determines whether a manufacturer can qualify for an exemption from the AA requirement has been renamed "alternative analysis threshold" from "de minimis level." The regulations no longer specify a default AA threshold. DTSC will specify the AA threshold for each COC in a Priority Product as part of the Priority Product listing process.
- ▶ The regulations no longer make a distinction between "assembled" and "formulated" products. When a product-chemical is added to the Priority Product list, DTSC will specify the component(s) and/or homogeneous material(s) within one or more components. The exclusion for "bulk chemicals" has been eliminated.

- ▶ Once a product is listed as a Priority Product, the manufacturer will be able to submit a Chemical of Concern Removal Notification (in lieu of an AA) if the only change to the product is the removal of the COC.
- ▶ DTSC will have the option to allow a manufacturer up to three years to complete an AA (instead of one year plus a one-year extension) if the manufacturer demonstrates that an extended amount of time is needed to comply with regulatory safety and/or performance testing requirements for multiple alternatives prior to choosing which alternative to pursue.
- ▶ Several important definitions have been revised, including "technically and economically feasible alternative," "functionally acceptable," "adverse public health impacts" and "sensitive subpopulations."

As DTSC touts, the Safer Consumer Product regulations are among the first comprehensive, state-level efforts to require safer alternatives to hazardous chemicals and are viewed as a potential national model for chemical policy reform. Should these green chemistry regulations be adopted, it will mark a significant milestone in the regulation of chemicals and products that will have lasting impacts beyond the state of California.

To view the proposed regulations [click here](#).

The professionals at Manatt are fully engaged in this issue and those issues surrounding California's efforts to regulate green chemistry. For additional information, contact Pete Duchesneau at 310-312-4209, partner with the Energy, Environment & Natural Resources practice group at Manatt, Phelps & Phillips, LLP, or Jon Costantino at 916-552-2365, Senior Advisor for Climate Change, Environmental and Clean Energy Policy at Manatt, Phelps & Phillips, LLP.