

# Client Alert

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## California's Green Chemistry Agency Issues New Guidance to Identify Future Consumer Products for Regulation

By Peter Hsiao, William F. Tarantino, and Lois Miyashiro

California's Green Chemistry Initiative continues to build momentum. On April 16, 2015, the California Department of Toxic Substances Control (DTSC) released its final April 2015 Priority Product Work Plan for 2015–2017 ("Work Plan"). The Work Plan is the first step in identifying the next set of Priority Products for regulation under California's Safer Consumer Products Act. It sets forth seven new product categories, examples, and potential candidate chemicals regarding the types of products that may be evaluated over the next three years. The product categories, examples, and potential candidate chemicals are:

- **Beauty/Personal Care/Hygiene:** Skin Products, Personal Hygiene Products, Hair Products, and Cosmetics and Fragrances (Aldehydes, Formaldehyde; Alkylphenol Ethoxylates (APEs); Azo Dyes, Coal Tars, Lead, and Lead Acetate; Phthalates; Triclosan; and Toluene);
- **Building Products (Painting Products, Adhesives, Sealants, and Flooring):** Adhesives and Glues, Carpeting and Carpet Padding, Engineered Wood and Laminate Flooring, Paints and Primers, Paint and Graffiti Removers, Roof Coatings, Sealants, and Vinyl Flooring (Brominated or Chlorinated Organic Compounds, Organophosphates; Isocyanates; Metals, such as Chromium VI; Perfluorochemicals; Phthalates; and Volatile Organic Compounds (VOCs), such as Formaldehyde, n-hexane, n-methylpyrrolidone, Toluene);
- **Household/Office Furniture/Furnishings with PFCs, FRs:** Bedding, Curtains, Fabric and Textile Furnishings, and Household and Office Seating (Chlorinated and Brominated Organic compounds, Organophosphates; and Perfluorochemicals);
- **Cleaning Products:** Fresheners and Deodorizers, Cleaners, Laundry, and Surface Care (APEs; Hydrogen Fluoride; Phthalates; and Triclosan);
- **Clothing:** Full Body Wear, Lower Body Wear and Bottoms, Sleepwear, Sportswear, Underwear, and Upper Body Wear and Tops (APEs; Aromatic Amines and Azo Dyes; Perfluorochemicals, Formaldehyde; Phthalates; and Triclosan);
- **Fishing and Angling Equipment:** Fishing Weights (Metals); and
- **Office Machinery (Consumable Products):** Inks and Toners, and Thermal Paper (Azo Dyes; Bisphenols; Phthalates; and VOCs such as Hexane, Toluene and Xylene).

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Prior to the release of the final Work Plan, DTSC received comments on its draft September 14, 2014 Priority Product Work Plan (“draft Work Plan”). (See prior [MoFo client alert](#)). Substantive comments requested:

- Adding product categories (notably, food packaging and automotive products) or refining or dropping existing ones, specifically building products and fishing and angling equipment;
- Adding chemicals to the Candidate Chemicals List (e.g., chlorinated and organophosphate flame retardants) or narrowing the scope of chemicals under considerations; and
- Prioritization of specific products during the Work Plan cycle.

Some of the changes made to the final Work Plan from the draft Work Plan include:

- Addition of carpet padding and insulation, as well as wall coverings with flame retardants, as examples in the “Building Products” category narrative;
- Addition of wall coverings with flame retardants as an example in the “Household/Office Furniture and Furnishings” category narrative;
- Revision of the “Clothing” product category narrative, clarifying that the category does not include protective wear for occupational safety purposes.

DTSC did not add any new chemicals to the Candidate Chemicals List, nor did it add any new product categories to, or remove any categories from, the final Work Plan. In 2017, DTSC plans to issue its next Priority Product Work Plan covering the time period 2018 – 2020. The Work Plan and additional useful guides can be found at the Green Chemistry portal web page at <http://www.mofo.com/green-chemistry>.

DTSC continues to be behind schedule in moving forward with its plans to regulate its first set of Priority Products. The final Work Plan shows, however, that the agency has not backed away from its plans to press forward with the Green Chemistry Initiative and to continue to broaden its reach to other consumer products.

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Morrison & Foerster has one of the largest Cleantech groups in the nation. We represent retailers, consumer product manufacturers, chemical companies, and some of the leading biochemistry research and development companies. We are closely watching and participating in the development of green chemistry regulations, and can provide additional information about this important topic upon request.

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