

CLIENT ALERT

New Year Will Ring in California "Green Chemistry" Regulations

October 27, 2010

Starting January 1, 2011, how companies design and manufacture products sold, offered for sale, manufactured, imported, marketed or distributed in California will change dramatically. That is when new regulations prompted by California's Green Chemistry Initiative, an outgrowth of two bills approved in 2008, take effect. Specifically, Assembly Bill 1879 mandates a process to identify and prioritize chemicals of concern in products, followed by a procedure in which those chemicals and their potential alternatives "are evaluated to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern." Senate Bill 509 further mandates an online database to disseminate information about specific chemical hazards.

The regulations drafted by the Department of Toxic Substances Control ("DTSC") currently establish a four-step process to achieve California's Green Chemistry Initiative:

Step 1: DTSC will first prepare a list of Chemicals under Consideration based on traits associated with human health hazards, environmental hazards, exposure potential hazards and physical hazards. From that list, DTSC will prioritize a smaller list of Chemicals of Concern ("COC"). Any person may petition DTSC to evaluate a chemical or a product that is, or that contains, a chemical (see Step 2) for inclusion in this prioritization process.

Step 2: All products that are, or that contain, COCs will be placed on a list of "Products under Consideration." From that list, DTSC will prepare a list of "Priority Products" considered of the highest priority based on the relative degree of threat posed to public health or the environment because of the COC contained in the product, or simply based on the availability of DTSC's resources.

Step 3: Within 30 days after the designation of a Priority Product, any manufacturer of that product must notify retailers who sell the Priority Product in California and DTSC that their product is on this list. The manufacturer must then prepare an "Alternative Assessment Work Plan" that considers, among other objectives, different means to reduce the concentration of, or eliminate, the COC found in the Priority Product. Once DTSC accepts the AA Work Plan, the manufacturer must complete an "Alternative Assessment Report" that details, among other items, an assessment of each alternative to the COC, the rationale for selecting a specific alternative (or not), and "[a] detailed plan, including key milestones and dates, for implementing the selected alternative, if applicable."

Step 4: Following its review of the AA Report, DTSC will notify the manufacturer of its regulatory response, which may include no response, labeling, "end-of-life" management, restrictive usage, or restrictive exposure. DTSC also has the authority to prohibit sales of the product in California, and require that the manufacturer implement a recall program within two years. A manufacturer of a Priority Product that fails to comply with these regulations will be required to recall its product within 60 or 120 days, depending on the reason for its failure to comply, and notify retailers that the product cannot be sold in California.

November 1, 2010, is the deadline for public comments on the proposed regulations.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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