



**Stringent Environmental Standards
Applied to Consumer Products:**

**How California's New "Green Chemistry"
Program Will Affect Your Business**

What is Green Chemistry?

“Green Chemistry” is California’s innovative approach to exporting its environmental standards to the worldwide manufacturing industry.

By focusing on consumer products sold into California, and regulating the design of those products and the processes by which they are manufactured, California aims to reduce overall use of what the state perceives as potentially hazardous and toxic substances.

The legislation that governs California’s Green Chemistry movement is comprised of California’s Assembly Bill 1879 (AB 1879) and Senate Bill 509 (SB 509).

AB 1879 directs that California’s Department of Toxic Substances Control (DTSC) create a systematic, science-based process to evaluate chemicals of concern in products and stimulate innovation in California’s product development sector. SB 509 requires the state to develop an online toxics data clearinghouse and regulations to establish the requirements for data and test methods.



What does this mean?

Combined, the statutes require DTSC to establish the following regulations by January 1, 2011. The regulations have not met that deadline and expectations are for them to be established no earlier than late 2011.

- Identify and create a list of chemicals that are toxic and can harm people or the environment;
- Prioritize products containing those chemicals, based upon such factors as the volume in commerce, the extent of public exposure and how the product is eventually disposed;
- Require manufacturers of those products to perform a detailed “alternatives assessment” to determine if a viable, safer alternative to the chemical exists; and
- Establish various regulatory response actions to address any remaining concerns raised by the alternatives selected by manufacturers for implementation, and to move manufacturers toward designing safer products. Potential actions include requiring labeling, requiring end-of-life management and restricting usage.

DTSC has missed the January 1, 2011, deadline but is expected to have the draft regulations out for review in late 2011 and effective in early 2012.

“Safer Consumer Product Alternatives”

In the fall of 2010, DTSC released its proposed “Safer Consumer Product Alternatives” regulations. There are a number of concerns with DTSC’s regulatory approach—everything from open-ended data requirements to a lack of clarity regarding supply chain liability. Alston & Bird attorneys stand ready to help you navigate this maze.



Who is Affected by California DTSC's Proposed Green Chemistry Regulations?

California's Green Chemistry program has implications for all companies that produce consumer products sold in California, regardless of where a company is located. The phrase "consumer products" is broadly defined by both AB 1879 and the proposed regulations to include a product or part of a product that is "used, bought, or leased for use by a person." The DTSC views that any producer, private label manufacturer and importer, into California, of a consumer product has a duty to comply with the requirements of California's Green Chemistry program, regardless of where that company does business.

As illustrated by the broad language of AB 1879 and the regulations recently proposed by the DTSC, significant change is inevitable and will have a considerable impact on companies doing business in California. Specifically, the **California Green Chemistry laws authorize the broadest array of regulatory responses and enforcement options of any law governing chemicals and consumer products in the world.** DTSC views its authority as including the power to:

- Seek the imposition of fines of up to \$25,000 per day per violation for failures to comply with the regulations (Cal. Health and Safety Code Sections 25188, 25189) and criminal misdemeanor violations for false statements in data and documents (Cal. Health and Safety Code Sections 25190, 25191);
- Impose bans on the sale of products;
- Require the use of specific safer substitute ingredients in products;
- Require the funding of research and development of safer substitutes where a product contains an ingredient with toxic attributes for which the alternatives analysis has concluded that no safer substitute exists;
- Require extended producer responsibility or take-back requirements on the product manufacturer at the end of the product's useful life to the consumer; or
- Impose "any other outcome the department determines accomplishes the requirements of this article."

Alston & Bird's Services

Alston & Bird LLP has a dedicated, cross-disciplinary Green Chemistry Team that helps national and international companies understand this new legislation and its impact upon their business. Our Green Chemistry Team is led by partner Maureen Gorsen, the former head of California's DTSC.

Ms. Gorsen was intricately involved with development of the legislation establishing the Green Chemistry program. Her expertise and experience is complemented by our Environmental & Land Development, Products Liability, Tax and Intellectual Property practices. Alston & Bird is ready and able to address client needs relating to the complex issues that will arise once California's Green Chemistry legislation is enacted.



What can we do for you?



Whether it is representing clients in regulatory and legislative proceedings governing the limitation or ban on chemicals they produce, or assisting product manufacturers in the myriad of new legal pressures on their global supply chain, Alston & Bird is helping clients capitalize on opportunities presented. We provide strategic counsel on domestic and international environmental issues affecting the design, use, marketing and manufacturing of clients' products to avoid expensive recalls, bans, penalties or product defect litigation. We currently:

- Represent consumer product manufacturers, retailers and chemical manufacturers seeking significant changes or clarifications to the DTSC's proposed Green Chemistry regulations.
- Advise forward-thinking clients regarding the evaluation, development and implementation of strategies and policies to comply with California's legislation (beginning in early 2011), thus minimizing and eliminating any interruption in business.
- Monitor the development of the DTSC's Green Chemistry regulations on behalf of product and chemical manufacturing clients to determine applicability of the proposed regulations to their products, and develop a compliance strategy.
- Monitor developments in other states and countries considering enactment of similar legislation, as well as U.S. federal efforts to seek amendments to the Toxic Substances Control Act (TSCA).

Green Chemistry: Wave of the Future?



In key markets around the United States and the globe, at the national and subnational level, governments are adopting regulatory frameworks to manage the risks that chemicals in products may pose. Governments are increasingly enacting measures to regulate product design, ban or restrict the use of certain chemicals, expand environmental labeling and certification programs, and manage end-of-life consumer and commercial products. **To the extent that other states and countries follow California's model, the concerns raised by the DTSC's proposed regulations will continue to increase in prominence nationally and internationally.**

As proposed, California's program is much more extensive than the European Union's existing REACH (Registration, Evaluation, Authorization, and Restriction of Chemical substances) program. Adopted in 2007, REACH changed the nature of chemical regulation by asking industry to demonstrate the safety of chemical manufacturing and use. REACH and its legal imitators in Canada, Japan and elsewhere shift the burden, and impose massive registration and data submission requirements on chemical manufacturers, instead of on regulatory agencies.

In contrast, California's Green Chemistry laws focus more on products and product manufacturers, and on the compelled redesign of products to include "safer" ingredient choices, rather than purely the generation of toxicity data on chemical ingredients.

California's Green Chemistry regulations, as proposed, are even more stringent than the currently proposed amendment to the United States' federal Toxic Substances Control Act (TSCA). Assuming California's program is successful, companies can reasonably expect federal and international programs to follow suit.

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