

# Alerts & Publications

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## Latest Developments in Green Chemistry from California; EPA Urged to Provide Guidance on “Green” Products

November 14, 2012

The California Department of Toxic Substances Control (“DTSC”) has announced that it intends to amend the draft Safer Consumer Products Regulation, commonly known as the Green Chemistry Initiative, and seek additional public comments before finalizing the regulations early next year. [1]

During the comment period that concluded on October 11, 2012 the DTSC received several thousand comments from interested parties.[2] Many comments expressed support for Green Chemistry concepts generally, but took issue with elements of the draft regulations. Common themes among industry stakeholders included the high cost and complexity of the program and the potential for regulation of a large number of “chemicals of concern.” Commenters also questioned whether the DTSC failed to adhere to procedural requirements for consideration of the proposed regulations. Environmental groups, on the other hand, tended to support the proposed regulations, with many urging swift adoption. Local water and wastewater agencies requested that DTSC expand the program to add Clean Water Act Section 303(d) pollutants to the chemicals of concern list, citing difficulty of removing many of these chemicals from water supplies and from storm water runoff.

The DTSC has not provided details as to further amendment of the

regulations. However, it has indicated that it intends to respond with a new draft of the regulations within the next several weeks.

In October 2012, State Sen. Michael J. Rubio (D) and fifteen other California lawmakers sent a letter to the Governor asking that the State delay the proposed regulations until a report can be prepared on how much the regulations will cost businesses and consumers, and the number of firms and jobs that could be lost due to rules designed to implement the program. Another group of lawmakers, including the authors of the Green Chemistry statute, responded by urging the Governor to move forward with the regulations and ignore calls for delay. The Governor has yet to respond.

On the federal level, a stakeholder group is encouraging the U.S. Environmental Protection Agency to develop green chemistry guidance and to take other actions to advance product stewardship. A stakeholders forum, known as the Sustainable Materials Management Coalition (with the EPA and other governmental agencies participating as observers), recently published a report that calls on the EPA to sponsor a regular multi-stakeholder dialogue on sustainable materials management. These talks would emphasize near-term strategies for promoting more effective materials management, including more productive and sustainable use and reuse of resources throughout their life cycles and minimizing both the amount of materials involved and all the associated environmental impacts. [3] The topics include EPA guidance on collection and management of used electronics, improved solid waste characterization data, exploration of strategies to sustain municipal solid waste recycling programs, and pursuit of guidance for manufacturers on how to ensure that life-cycle analyses underlying “green” product claims are transparent.

The group further recommended that the EPA not prescribe specifically how green-product analyses should be conducted or set criteria that green products have to meet before a company makes a claim. Instead, it was suggested that the EPA provide guidance on how a company explains the basis of its “green” claim, including the boundaries and scope of its life-cycle based analysis, so that the public can understand the basis of the claim. In this connection EPA recently revised and republished its “Green Guide” statement of principles for sustainable product advertising.

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[1] See earlier Green Chemistry client alerts at <http://www.omm.com/california-department-of-toxic-substances-control-releases-consumer-product-safety-regulations-for-public-comment-11-07-2011/> and <http://www.omm.com/dtsc-releases-proposed-green-chemistry-regulations-08-13-2012/>.

[2] Comments are available at <http://www.dtsc.ca.gov/SCPRegulations.cfm>.

[3] The report, entitled "Sustainable Materials Management New Materials Hierarchy Solutions to Barriers and Recommendations for Path Forward," is available at [http://www.michaeldbaker.com/documents/smm\\_final\\_report.pdf](http://www.michaeldbaker.com/documents/smm_final_report.pdf).

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