

Commentary

How 'Green' Is Your Chemistry: California's Green Chemistry Legislation And Its Impact

By
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Continuing its role as a world leader in shaping environmental policy and practice, California recently enacted its Green Chemistry Bills (AB 1879 and SB 509). The passage of these bills signals the growth of an important trend toward this type of legislation and sets forth a number of new concerns that both manufacturers and distributors must consider regarding the chemical composition and safe use of products along the supply chain.

AB 1879 sets forth a framework to regulate hazardous materials over their life cycle and to promote the use

of safer alternatives. The companion bill, SB 509, establishes a Toxics Information Clearinghouse for the collection of and public access to information regarding chemical hazards.

Specifically, AB 1879 requires the Department of Toxic Substances Control (DTSC) to establish a process by January 1, 2011, by which chemical substances in consumer products may be identified and prioritized for consideration as chemicals of concern. This process is to utilize to the extent possible already existing sources of information and to set the priority based upon volume, potential for exposure and the potential effects on sensitive subpopulations. The DTSC must also establish by the same deadline a process by which chemicals of concern in consumer products and their potential alternatives are evaluated. The process must also specify the potential regulatory responses that the DTSC may take after completing its evaluation. The regulatory responses identified as options include labeling mandates, use restrictions, bans, end-of-life requirements, and funding green chemistry challenge grants.

This legislation was developed in response to the perceived failures of the Toxic Substances Control Act (TSCA) to protect the public from dangerous chemicals. It was designed to avoid the delays and frustration that have accompanied recent attempts to ban specific chemicals on a chemical-by-chemical basis. It was further advanced by recent concerns over such substances as lead in children's toys and bisphenol A in baby bottles. The intent is to have potential hazards evaluated when a product is being developed rather than after the product is in use or ready for disposal.

However, some of the original proponents of this legislation fear that it does not go far enough. They point to the lack of an articulated human health standard and specific deadlines. They believe that the life cycle analysis mandated by the legislation is too cumbersome, will be too resource intensive and bureaucratic for a department that is already struggling, and will rely on assumptions since key data will be unavailable. They further fear that the human health risks will be overshadowed by the other mandated life cycle analysis considerations such as environmental considerations.

In enacting this legislation, California is at the start of a growing Green Chemistry trend. Canada enacted its new Chemicals Management Plan, referred to as "The Challenge" in December 2006. A primary aspect of The Challenge is to collect information on approximately 200 chemical substances deemed high priorities for action that Canada identified through its categorization process. These high priority substances have been divided up into several smaller groups and are being addressed sequentially. Canada intends to use this information to make decisions regarding the best approach to address the risks these substances might pose.

Similarly, the European Union's new chemical management directive concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) was enacted in December 2006. The stated purpose of REACH, which relies on the precautionary principle, is to protect human health and the environment from chemical substances while promoting the development and use of alternatives, especially in place of certain chemical substances that are deemed

to be substances of very high concern. REACH requires that essentially all chemical substances be registered for specific uses with the European Chemicals Agency. REACH also allows for certain substances to be deemed as "Substances of Very High Concern" and thus subjected to restrictions and even bans. Additionally, REACH requires information related to the safe use of chemical substances to be provided across the entire supply chain. Currently, businesses around the world are struggling to put into place the necessary systems to comply with REACH.

Other legislative bodies are still considering how to respond to concerns over the use of chemical substances. The United States Congress is expected to consider TSCA reform this spring. Similarly, the Massachusetts legislature has been considering a "Safer Alternatives" bill that focuses on many of the concerns addressed in the California legislation.

These legislative developments make certain things clear. First, it is no longer business as usual with respect to chemical substances in the United States. It is critical for manufacturers and distributors of products to begin to understand the chemical substances contained in their products even if those products are articles for which an MSDS has never been required. Manufacturers and distributors need to immediately begin to develop enhanced communication systems along their supply chains. Information regarding the chemical composition and safe use of products will need to be conveyed from suppliers and to customers. Finally, manufacturers should immediately begin to seek substitutes for those chemical substances deemed most dangerous. Clearly, the future of those substances is limited. ■