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Two Steps Forward, One Step Back — California's DTSC to Revisit Proposed Changes to Green Chemistry Regulations

California's Green Chemistry Initiative ("GCI") will force companies doing business in California to evaluate and, possibly, rethink their manufacturing processes. The GCI attempts to drive companies away from the common linear production model (one that begins with raw materials and ends with wastes) to a circular model that focuses on waste prevention and product stewardship (i.e., from a "cradle-to-grave" to a "cradle-to-cradle" approach). Once implemented, California's GCI may serve as a national model for chemical policy reform. However, even if the GCI does not spark national reform, all companies selling or manufacturing products in the California marketplace potentially will be impacted by the GCI's reach. (For Hunton & Williams' October client alert describing the GCI and its potential impact, click [here](#).)

California [Assembly Bill 1879](#) (2008) mandated that the California Department of Toxic Substances Control ("DTSC") adopt GCI regulations ("Proposed Regulations") by January 1, 2011. However, the most recent version of the Proposed Regulations, issued on November 16, 2010, has been beset by criticism and as of today's date the Proposed Regulations have not been

adopted. In the November 16 revisions, DTSC attempted to address significant issues raised by commenters, such as the scope of the definition of "consumer products," third-party verification, the virtual abrogation of long-held standards relating to trade secret information, and the identification and prioritization of chemicals of concern, among other issues. Perhaps most significantly, the November 16 revisions temporarily limited the application of the GCI to three categories (children's products, personal care products, and household cleaning products) through the end of 2015, expanding thereafter to all consumer products. The November 16 revisions also would have required the state to demonstrate that a chemical was harmful before subjecting it to regulation under the GCI. (For a December 2, 2010, Los Angeles *Daily Journal* article about the November 16 version of the Proposed Regulations, click [here](#).)

The proposed requirements have prompted concerns about the inadequacy of foundational assessments supporting the GCI program. Among these concerns were questions regarding the adequacy of documentation about the number and extent of products and/or companies to be affected by the

GCI, the costs on such companies, whether and how the proposed regulations will work in practice, and the apparent lack of any quantitative assessment of the expected benefits.

Others charged that DTSC gutted its initially Proposed Regulations in a manner contrary to the intent and requirements of AB 1879. Indeed, the November 16 revisions prompted a withdrawal of support by numerous GCI proponents, including the author of AB 1879, Assemblymember Mike Feuer (D-L.A.), as well as several members of the [Green Ribbon Science Panel](#) (the "Panel") created by AB 1879 to ensure that the GCI's implementation is based on a strong scientific foundation. (For a complete listing of the comments received in response to the November 16 revisions, click [here](#).)

In response, Linda Adams, Secretary for the California Environmental Protection Agency, requested that

DTSC reconsider the Proposed Regulations. In an [open letter to Assemblymember Feuer](#), Secretary Adams announced "[a]t my request, DTSC has agreed to take additional time to be responsive to the concerns raised and revisit the proposed regulations. I believe this extra time will allow us to create a workable program and address critical policy issues, such as third-party verification and prioritization." Secretary Adams also asked DTSC to reconvene the Panel to further vet a variety of issues.

The Panel is set to reconvene on February 3–4, 2011. The public will have an opportunity to address the Panel and that each Panel-member is expected to weigh-in on the three highest priority issues with the Proposed Regulations. (For information regarding the broadcast of the Panel's hearing, click [here](#).)

All signs indicate that more changes to the Proposed Regulations are coming.

For further information, please contact us directly

[Hunton & Williams'](#) dedicated team of professionals is prepared to help you navigate the complexities of the GCI's requirements, as well as other laws impacting the sale of products in California such as "Proposition 65." We stand ready to assist you to monitor and help influence the development of the lists and in the continuing process and how it will impact your business, including by participating in the public comment process and/or coordinating public testimony. Our California environmental attorneys have considerable experience counseling manufacturers and other industrial clients on regulatory matters, as well as responding to notices of violation, pursuing environmental litigation and negotiating settlements of regulatory infractions.

Contacts

[Chris M. Amantea](#)
(213) 532-2102
camantea@hunton.com

[Belynda Reck](#)
(213) 532-2129
breck@hunton.com

[Lucas Bergkamp](#) (REACH)
+32 2 643 58 15
lbergkamp@hunton.com

[Ian M. Forrest](#)
(213) 532-2139
iforrest@hunton.com

[Malcolm C. Weiss](#)
(213) 532-2130
mweiss@hunton.com

[P. Scott Burton](#)
(213) 532-2108
sburton@hunton.com

[Ann Marie Mortimer](#)
(213) 532-2103
amortimer@hunton.com

[Michael S. Balster](#)
(213) 532-2120
mbalster@hunton.com

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