

## CLIMATE CHANGE & SUSTAINABILITY ALERT



Shook, Hardy & Bacon applies a unique multidisciplinary approach to the business challenges, risks and opportunities arising from today's international focus on climate change and sustainability.

*For more information about SHB's Climate Change and Sustainability Practice, please contact:*

**Keith Casto**

*Partner*

SHB San Francisco  
333 Bush St., Suite 600  
San Francisco, CA 94104  
Direct (415) 544-1980  
Cell (408) 221-1304  
[kcasto@shb.com](mailto:kcasto@shb.com)



**Kevin Haroff**

*Partner*

SHB San Francisco  
333 Bush St., Suite 600  
San Francisco, CA 94104  
Direct (415) 544-1961  
[kharoff@shb.com](mailto:kharoff@shb.com)



### CALIFORNIA'S GREEN CHEMISTRY INITIATIVE: NEW APPROACH TO REGULATING CHEMICALS IN CONSUMER PRODUCTS

In a first-of-its-kind regulation in the United States, California's Department of Toxic Substances Control (DTSC) is currently seeking public comment on its Green Chemistry Proposed Regulation for Safer Consumer Products. DTSC is required to adopt final regulations by January 1, 2011, to reduce or remove potentially toxic chemicals from a wide variety of consumer products.

The new regulation would apply to all consumer products in the stream of commerce in California and all chemicals with hazard traits that are expected to be in consumer products, with a few exemptions for some medical and dental devices and products that are produced but not sold in California. The proposed regulation is taking a new approach to identifying and prioritizing chemicals that exist in current and future consumer products.

DTSC will first identify and prioritize all available chemicals and consumer products based on their risk or toxicity levels by June 1, 2012, and a further reduced list by July 1, 2012. After DTSC has prioritized the chemicals, it will list certain potentially harmful chemicals as under consideration or as a priority chemical. Then manufacturers must submit alternative assessment notifications showing that they have reformulated the chemical, removed the chemical from the consumer product or reduced its concentration within the product.

If the chemical is under consideration, then the manufacturer is required to submit a Tier I alternative assessment that explains the rationale for the change and what reductions to any adverse health or environmental affects have been achieved by this change, among other requirements.

For a priority listed chemical, a manufacturer must complete a more extensive Tier II alternative assessment that would also include verification by a third-party assessor or manufacturer. Once DTSC notifies a manufacturer that a regulatory response

**CLIMATE CHANGE  
& SUSTAINABILITY  
ALERT**

SEPTEMBER 30, 2010

would be required for a product, the manufacturer must then issue notification to its California retailers of the applicability of the response to the product.

DTSC will publicly post information on its Website when non-compliance with its new regulations is not remedied; enforcement actions, such as fines and penalties, would also be available. In more extreme failure-to-comply situations, the regulations would allow the agency to ban a product for sale in California.

Two major concerns raised by the proposed regulations are the potential for release of trade secrets and the lack of a petition process to have products or chemicals removed from the priority lists. Thus, manufacturers will be forced to continually monitor the proposed lists and participate in the comment period before the list becomes final. There is, however, a petition process for public or government entities to add chemicals or products to the list.

DTSC believes this Green Chemistry Initiative will lead to safer consumer products, fewer exposures to dangerous chemicals and an overall healthier environment. Public comment closes November 1, 2010.

DTSC's Proposed Regulation can be found at:

<http://www.dtsc.ca.gov/PollutionPrevention/GreenChemistryInitiative/Proposed-Regulation.cfm>

For more information, please contact Keith Casto ([kcasto@shb.com](mailto:kcasto@shb.com)) or Kevin Haroff ([kharoff@shb.com](mailto:kharoff@shb.com)) in our San Francisco office; (415) 544-1900. ■