
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: SB 502
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Urgency: No
Consultant: Rylie Ellison
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Fiscal: Yes

SUBJECT: Hazardous waste: green chemistry: consumer products

DIGEST: This bill proposes a number of updates to California’s Safer Consumer Products (green chemistry program), in line with perceived shortcomings from its first ten years with regards to the speed of the program to filling existing data gaps.

ANALYSIS:

Existing law:

- 1) Under AB 1879 (Feuer, Chapter 559, Statutes of 2008): (Health and Safety Code (HSC) §25252 et seq.)
 - a) Establishes the Safer Consumer Products (SCP) Program within the state Department of Toxic Substances Control (DTSC), whereby the department is required to adopt regulations to establish a process to identify and prioritize chemicals or chemical ingredients in products that may be considered a “chemical of concern,” in accordance with a review process.
 - b) Grants DTSC authority to establish and promulgate regulations which:
 - i) Include an interagency consultative process that includes public participation.
 - ii) Include a prioritization and identification process that includes a consideration of specified factors (e.g., chemical volume, exposure potential, potential effects on sensitive subpopulations).
 - iii) Develop criteria for evaluating chemicals and alternatives, as specified.
 - c) Appoints a Green Ribbon Science Panel (GRSP) of experts in several relevant disciplines to advise the department on “scientific and technical matters.”

- d) Directs DTSC to adopt regulations which reference and use, to the maximum extent feasible, available information from other nations, governments, and authoritative bodies, so as to minimize costs and maximize benefits for the state's economy.
 - e) Authorizes a person providing information pursuant to this article to identify a portion of the information submitted to DTSC as a trade secret, with procedures and details, as specified.
- 2) Under AB 289 (Chan, Chapter 699, Statutes of 2006): (HSC §57018 et seq.)
- a) Permits the California Environmental Protection Agency (CalEPA) to coordinate requests from the state Air Resources Board, DTSC, Integrated Waste Management Board (now the Department of Resources Recycling and Recovery or CalRecycle), the Office of Environmental Health Hazard Assessment, the State Water Resources Control Board, and the US EPA to chemical manufacturers.
 - b) Allows the above agencies to inquire from manufacturers regarding their chemicals':
 - i) Analytical test methods for detection;
 - ii) Concentration in humans as compared to concentration in the product, and their concentration in an alcohol and water mixture;
 - iii) Fate and transport in the environment.
 - c) Does not include enforcement provisions for the above requests.

This bill:

- 1) Updates definitions related to green chemistry.
- 2) States that it is the policy goal of the state to ensure the safety of consumer products sold in California through timely administrative and legislative action on consumer products and chemicals of concern in those products, particularly those products that may have disproportionate impacts on sensitive populations.
- 3) Permits DTSC to proceed directly to issuing a regulatory response based on existing alternatives analyses (AAs) published in a (1) scientifically peer reviewed report or other literature; (2) report of the United States National Academies; (3) report by an international, federal, state, or local agency that

implements laws governing chemicals; and/or (4) conducted, developed, submitted, prepared for, or reviewed and accepted by an international, federal, state, or local agency for compliance or other regulatory purposes.

- 4) DTSC shall provide a public comment period on the proposal to rely on the studies or evaluations, which may be combined with the proposal to list a chemical-product combination as a priority product.
- 5) DTSC may augment the study or evaluation with additional information as part of the proposal if it does not address one or more of the following factors:
 - a) Public health and environmental protection (i.e. the speed with which the regulation will address adverse impacts, chemicals of concern in replacements, end-users ability to act upon the response, and ecological impacts on sensitive resources or populations);
 - b) Private economic interests of responsible entities (i.e. existing federal or California regulatory requirements, costs to responsible entities as compared to other responses, and practicality of compliance to regulation);
 - c) Government interest in efficiency and cost containment (i.e. the management and clean-up costs by the product's continued sale, DTSC's administrative burden in regulating, and the ease of enforcement).
- 6) Following the public comment period, DTSC shall publish a summary of its determination, including whether the department plans to proceed to regulatory responses. If regulatory responses are planned, the summary shall not be judicially reviewable until regulatory responses are finalized.
- 7) DTSC shall amend the California Code of Regulations to allow a person to petition the department for a regulatory response pursuant with these changes.
- 8) Removes informal dispute resolution and subsequent administrative appeal procedures as long as DTSC provides public notice of the proposed regulation and opportunity for public comment prior to adoption.
- 9) Clarifies and strengthens enforcement of DTSC's ability to request data on a priority product:
 - a) From product manufacturers, as it pertains to: (1) ingredient, concentration, and functional use; (2) use of the product by sensitive populations; and (3) sales of the product;

- b) On the identity and contact information of the chemical manufacturer, should the product manufacturer be unable to provide such data;
 - i) DTSC may issue an independent information request to a supplier or chemical manufacturer for information the product manufacturer certifies it does not have access to, as well as for the identity and contact information of other suppliers or chemical manufacturers, as necessary.
 - c) For any product category or subcategory in a previous or upcoming Priority Product Work Plan;
 - d) With the authority to collect fines up to \$50,000 per day from noncompliant entities;
 - i) After a 30 day response period, or, if the department determines that a longer time is needed, no longer than 120 days. If the entity is in communication with the department and is working in good faith to fulfill the department's request, up to an additional 60 days may be granted beyond the 120 days.
 - ii) A product manufacturer, chemical manufacturer, or supplier may raise trade secret claims in accordance with procedures and details, as specified.
- 10) Requires DTSC to, in their three-year Priority Product Work Plan development:
- a) Include information DTSC currently has regarding their chemicals of concern;
 - b) Identify additional information DTSC must acquire through internal testing or data call-in;
 - c) Plan for how they will collect the above data in a timely manner;
 - d) Provide timelines for, with at least 5 product (sub-) categories, collecting all necessary data and proceeding through all stages of the Safer Consumer Product (SCP) program framework;
 - e) Will be held to a seven-year timeline for the above;

- f) Must, in determining what additional data is needed, consider the likely substitutions that could serve the same function in the product as the to-be-regulated chemical.

Background

- 1) *Principles of green chemistry.* Green chemistry is the design of chemical products and processes that reduce or eliminate the generation of hazardous substances. It is protective of consumers' health and the environment, and creates new business opportunities for the development and use of products that perform vital functions without undue health impacts.
- 2) *Public Health Institute Report.* In October of 2018, the Public Health Institute released a report, *California's Green Chemistry Initiative at Age 10: An Evaluation of its Progress and Promise*, evaluating the Green Chemistry program in California. The report noted that while the Green Chemistry program is an innovative program with the potential to drive the market for safer chemicals and products, and has many of the attributes of a successful chemicals policy, it has failed to achieve its full potential in several ways. According to the report, the pace of implementation of the SCP program has been slow and DTSC has unclear authority to collect necessary information on chemicals in products. California's overall efforts and investment have not been sufficient to foster robust research and development of safer product chemistry. The SCP's Candidate Chemical List needs to be updated over time to capture chemicals with Hazard Traits consistent with breast cancer-causing chemicals and other potential health threats.
- 3) *Establishing the initial regulations was deliberative.* When California's Green Chemistry program was enacted, no other state had a comparable comprehensive chemicals policy in place. By setting the precedent, California was tasked with creating a new program based on rigorous science to evaluate tens of thousands of chemicals in tens of thousands of consumer product applications – all from scratch. DTSC had to develop ideas, collect reliable information, and implement new approaches, all without a dedicated funding source to support the program, and within existing resources.

The regulations establishing the SCP program were made operative on October 1, 2013. In the time between the passing of AB 1879 and SB 509 in 2008 and that date, DTSC worked to develop those regulations, and has only since then been able to execute the SCP framework as it applies to chemicals of concern. Since the regulations went into effect, some of the SCP progress DTSC has accomplished includes issuing 2 priority product work plans as well as 1 draft,

adopting 3 priority product-chemical combinations, proposing 8 more, and releasing an alternatives analysis guideline.

Comments

- 1) *Purpose of Bill.* According to the author, “SB 502 updates California’s Green Chemistry program in order to protect consumers from toxic chemicals in their daily lives. In 2008, the California established the Green Chemistry Initiative (GCI) to identify toxic chemicals in household products and compel manufacturers to switch to alternatives when necessary. The GCI was intended to be an expedient, science-based framework for assessing a chemical’s threat to humans and regulating its producers. The GCI created the Safer Consumer Products (SCP) program, a four-step process run by the Department of Toxic Substances Control (DTSC), which seeks to identify products that may contain specific hazardous chemicals, calls upon manufacturers to find alternatives, and grants DTSC the ability to regulate the dangerous products. Unfortunately, after twelve years, not a single chemical has made it through the third stage of the SCP framework. The SCP program has been slow and data gaps hinder informed decision-making.

“The Public Health Institute issued a report outlining strategies to improve the program. Based on that report, SB 502 improves accountability and transparency, creates streamlining processes, and gives DTSC authority to collect product ingredient data. Specifically, SB 502 grants DTSC clear authority, backed by the ability to issue fines, to obtain product ingredient data from manufacturers and, if needed, their chemical suppliers; requires DTSC to adopt a seven-year timeline to identify and assess five priority products (or product categories); and streamlines the informal resolution and appeals processes and creates a fast-track for when existing high-quality studies overwhelmingly support DTSC moving quickly to a regulatory response to protect public health.

“Without changes to improve implementation, the consumer health benefits of the Safer Consumer Products program will not be realized. The adjustments made by SB 502 will ensure DTSC has the tools they need to efficiently identify and address unsafe chemical ingredients in everyday products.”

- 2) *Expanding data call-in authority.* The data call-in authority granted by AB 289 predated the SCP program, and lacks enforcement mechanisms. The current authorities DTSC has are not able to provide the extent of information or level of transparency needed to accomplish the SCP program goals. There have been reports that DTSC tests products in-house to determine their compositions. If

manufacturers share their ingredient lists with DTSC upon request, the department would not have to use state resources to determine what chemicals the product contains. In order to accomplish the SCP goals of protecting sensitive populations, requiring any existing data on use by sensitive populations and sales is a reasonable request.

- 3) *Using existing alternatives analyses.* SB 502 permits DTSC to use alternatives analyses (AAs) from other sources which is in line with AB 1879, which states, “In adopting regulations pursuant to this section, the department shall reference and use, to the maximum extent feasible, available information from other nations, governments, and authoritative bodies that have undertaken similar chemical prioritization processes, so as to leverage the work and costs already incurred by those entities and to minimize costs and maximize benefits for the state’s economy.” While using existing AAs can save resources, it is essential to ensure the reports are of sufficiently high quality.

The types of sources SB 502 permits using as existing AAs must meet the definition of “reliable information” according to the California Code of Regulations §69501.1. This includes a scientific study or scientific information published in a (1) scientifically peer-reviewed report or journal; (2) report of the United States National Academies; (3) government agency report or that was conducted, developed, submitted, prepared for, or reviewed by a government agency.

The Organization for Economic Cooperation and Development published *Current Landscape of Alternatives Assessment Practice: A Meta-Review* in 2013. This document covers 24 different advisories performing AAs under different regulatory frameworks, and is a useful resource to consider what existing governmental, academic, and industry standards would result in suitable AAs to be considered under SB 502.

The provision allowing existing AAs to be used in SB 502 states that, regardless of source, any proposal of using an existing AA must still address any relevant factors listed in the California Code of Regulations §69506. These factors include topics like the speed at which the response can address adverse effects, existing federal and/or California regulations, practical capacity of responsible entities to comply with the regulation, and the cost to the responsible entity of the proposed regulatory response relative to the cost of other possible responses. The proposal may be amended for any factors the AAs do not address and also shall be given adequate time for public comment. Given that these factors and more must be addressed, there appears to be a sufficiently high standard of quality for any existing AA used by DTSC to

proceed immediately to regulatory response.

- 4) *Accelerating regulatory action.* SB 502 makes attempts, based on the Public Health Institute's recent Green Chemistry Initiative report, to decrease the time from listing of a priority product to an eventual regulatory response. The bill accomplishes this by removing the informal dispute resolution and administrative appeal processes regarding product listing decisions, and through imposing 7-year work plan timelines on DTSC. While public comment periods will still exist for each regulatory decision, these windows will become more essential for stakeholders to have their voices heard.

Taken as a whole, SB 502 applies many of the recommendations from the recent report on the progress of the Green Chemistry Initiative to increase the speed of and fill data gaps in the program. Given the need to protect California's consumers from unnecessary hazardous chemicals, the committee may wish to consider supporting this measure.

Related/Prior Legislation

SB 392 (Allen, 2019), which was nearly identical to this bill, died in the Assembly inactive file.

SOURCE: Author

SUPPORT:

Breast Cancer Prevention Partners
Clean Water Action
Environmental Working Group
Natural Resources Defense Council

OPPOSITION:

None received

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