This is the first in a series of postings about Assembly Bill 1879 (AB1879), California's "Green Chemistry" program. This summer California Department of Toxic Substances Control (DTSC) issued draft regulations, the comment period for which is currently open.

Let's start with the mega-view of the nascent program. In the organic statute, AB1879, DTSC was charged with developing a regulatory program for identifying, prioritizing, evaluating and ultimately regulating (as appropriate) chemicals of concern in consumer products. The statute is long on big concept but short on details, leaving it to DTSC to engineer both the framework and the substantive standards for this program. A potentially overwhelming challenge was made more problematic by the legislature's failure to provide any stable funding source for the innovative, ambitious undertaking.

Perhaps the most innovative aspect of the statute is the central role given to alternatives assessment. As a threshold matter, DTSC must establish a process for identifying and prioritizing chemicals of concern in consumer products. That is no small thing, but neither is it revolutionary by now. For those prioritized uses, however, the statute requires that an alternatives assessment be performed—essentially a comparative evaluation of the regulated chemical use and its alternatives taking into account their health, environmental, economic, and resource impacts. Now that *is* news, and will require development of rigorous, valid methodologies and practices. But even that is not the most innovative and challenging aspect of this program.

The most interesting aspect of this program is that it attempts to integrate alternatives assessment as part of a mainstream regulatory program. In other words, it was not meant to be simply a facility planning statute; it has teeth—the outcome of the alternatives assessment is linked with some regulatory response. The bad news is that the statute does not provide much guidance on how that should work—it fails to identify by whom, how or for what specific purpose the alternatives assessment should be performed. It provides no mechanism or standards for linking the outcome of the alternatives assessment with any particular type of regulatory response. The only substantive direction given by the statute is that the alternatives assessment process is to "determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern."

That left DTSC with an enormous task. To its credit, the agency has devoted substantial time, effort and resources to working through the morass of technical, policy and legal issues created by the statute. I'll discuss some of the specific outcomes reflected in the draft regulations in future postings, but for now will focus on the structural choice the agency made. When you back away from the details, you see that DTSC essentially adopted a permitting model, which given their institutional focus on hazardous waste programs, is

not all that surprising. Akin to the Resource Conservation and Recovery Act (RCRA) hazardous waste program, DTSC will establish categories of regulated "priority products." Individual companies manufacturing such products must submit an alternatives assessment work plan (consistent with yet to be developed guidance), implement the work plan, and propose regulatory responses. The regulations establish a set of default regulatory responses, some of which track what we are used to in the hazardous waste program—labeling/information disclosure (think hazardous waste labeling and manifests on steroids), limited end of life management requirements (including financial assurance), and—in *very* limited circumstances—product bans. DTSC also retains a sort of omnibus authority to impose additional "engineered safety measures," use restrictions and other responses. The regulatory response is determined by DTSC and set forth in a "final regulatory response determination notice."

Leaving aside substantive evaluation of these provisions for now, the adoption of this permitting model is a reasonable approach to an otherwise intractable challenge. The program has the makings of a much-needed paradigm shift. The success and pace of that shift, however, is dependent on the specific regulations DTSC chooses to adopt and the amount of resources available for implementation. And there is reason to worry, as experience with permitting under RCRA demonstrates. While the RCRA permitting program was flush with similar procedures, default management standards, and omnibus authorities as a backstop, it languished for years, the victim of inadequate funding, seemingly unending administrative delays, submissions and resubmissions, and uncertain guidance. To avoid a similar fate, DTSC and its partner agencies must be provided with the funding and resources, expertise, enforcement support, and political capital necessary to actually implement such a program.