

CHEMICAL REGULATION & MANAGEMENT

Politicians, environmental regulators and plaintiffs lawyers are driving a green revolution in the manner in which chemical products are manufactured, distributed and used. These trends are particularly apparent for pesticides, green chemistry and nanotechnology.

Pesticides

KMCL has expertise in the U.S. Environmental Protection Agency's regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA requires pesticides to be registered, unless one or more exemptions apply. FIFRA also regulates the claims which appear on a pesticide's label and associated marketing materials. KMCL is adept at guiding clients through FIFRA regulatory issues and thereafter defending the subsequent use of pesticide products in the environment.

Green Chemistry

The Toxic Substances Control Act regulates the introduction into commerce of new chemical substances. In the face of criticism that regulators lack sufficient information about chemicals in commerce, federal and state regulators are taking steps to impose more stringent environmental requirements on chemicals and related substances.

Some of these new trends include so-called green chemistry requirements and mandates on the use of inherently safer technology (IST). Rooted in notions of homeland security as much as chemical safety, IST refers to government mandates that companies use processing procedures and equipment to enhance protections for humans and the environment. IST may, but does not necessarily, require the use of so-called safer substances in the manufacturing process.

Green chemistry refers to government mandates which require products to be designed to reduce or eliminate the use or generation of hazardous substances. A good example is California's Green Chemistry Initiative. Related examples include the European Union's directives on: (1) the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment and (2) Waste Electrical and Electronic Equipment.

KMCL advises clients on how green chemistry, IST and comparable requirements impact their business.

Nanotechnology

Nanotechnology, as its name suggests, is technology that makes use of nano-scale materials. Nano-scale materials are small – very small, in fact. They are used in a variety of applications, from pesticides to pharmaceutical products to paint coatings, all of which may result in human exposures and environmental discharges.

The small structure of nano-scale materials has attracted regulators' attention, some of whom argue that nanotechnology is not adequately regulated by current law in part because nanotechnology has the potential to create novel risks to human health and the environment. For example, it is alleged that non-pharmaceutical nano-scale materials, given their tiny size, may more readily enter the human blood stream through occupational or consumer-use exposures.

Our lawyers advise companies on the evolving landscape of nanotechnology regulation.

Representative Matters:

- Ongoing regulatory counseling of Fortune 500 manufacturer of consumer and commercial products on FIFRA compliance, including FIFRA's requirements applicable to "devices" and the self-disclosure to EPA of potential FIFRA violations related to a product line.
- Advised international mineral mining and processing company on FIFRA compliance, particularly the applicability of FIFRA's treated articles exemption, for an antimicrobial filler product to be sold into the decorative coatings market.
- Represented international mineral mining and processing company in connection with confidential regulatory and enforcement issues arising under FIFRA. The counterparties included EPA and a Fortune 100 global chemical manufacturer. In connection with this matter, we obtained regulatory approval from the EPA that allowed our client to avoid several hundreds of thousands of dollars in costs.
- Represent a national bird seed manufacturer on enforcement actions by both U.S. EPA and the state of California under the FIFRA. The agencies have alleged that certain of the company's products constitute unregistered pesticides under federal and state law.
- Counseled discount product manufacturer and wholesaler through FIFRA enforcement actions involving multiple states, product lines, and allegations of failure to register pesticides and mislabeling. In the most significant enforcement action, negotiated a resolution with EPA that allowed our client to continue marketing the product at issue as "minimal risk" and included a penalty approximately 60 percent below EPA's proposal.
- Sought "me-too" FIFRA end-use registration for a wood preservative.
- Initiated a section 3 FIFRA registration for an agricultural pesticide.
- Advised fabric manufacturers on acceptable antimicrobial claims.
- Represent a coalition of wood treaters and pesticide manufacturers before U.S. EPA and the U.S. Occupational Safety & Health Administration on issues related to worker exposure to hexavalent chromium.
- Provided high-level regulatory and policy assistance to the manufacturer of one of the most widely used herbicides in the United States.
- Prepared TSCA premanufacture notices for a German company.
- Advised firms on possible new nanotechnology requirements.
- Assessed whether certain imported clays are subject to TSCA requirements.