

California Environmental Update For Plastic Manufacturers and Suppliers: Beware of More “Greenwashing” Lawsuits in 2013

California is taking serious and substantial steps to try to regulate the labeling of all plastic products.

Beginning on January 1, 2013, California law no longer allows *any* plastic product sold within the state to be labeled as “biodegradable,” “degradable,” or “decomposable,” or any form of those terms. Cal. Pub. R. Code §42357(b). Moreover, a label cannot “in any way imply that the plastic product will break down, fragment, biodegrade or decompose in a landfill or other environment.” *Id.*

In 2008, the California Legislature banned the use of the terms “biodegradable,” “degradable” or “decomposable” when labeling plastic bags, and plastic food and beverage containers. The new legislation (SB 567), signed into law by Governor Brown, expands the scope of the 2008 plastic end-of-life claim labeling requirements to include *all* plastic products. In doing so, the Legislature has expressly declared:

[T]he use of the terms “degradable,” “biodegradable,” “decomposable,” or other like terms on plastic products is inherently misleading . . . Given the complex nature of biodegradation and given the intrinsic constraints of marketing claims, including the space on the plastic product, there is no reasonable ability for plastic product manufacturers to provide an adequate disclaimer ... Given these and other constraints, and the significant environmental harm that is caused by plastic litter, the use of these terms must be prohibited unless, or until the time as there is established, an American Society for Testing and Materials (ASTM) standard specification for the term claimed that has been approved by the Legislature.

Cal. Pub. R. Code §42355(d)-(e).

As with the prior 2008 law, the new law allows the use of the terms “compostable” and “marine degradable” as long as the plastic product containing such labels meets the necessary American Society for Testing Materials (ASTM) standard(s) enumerated in the statute. See, e.g., Cal. Pub. R. Code §42357(a). Companies using or planning to use such terms should take heed of other cosmetic requirements on the packaging. See, e.g., Cal. Pub. R. Code §42357.5(b)(2)(A) (requiring the label to be at least one inch in height and of uniform color of green).

Additionally, as with the prior 2008 law, the new law allows any member of the public to send a request to a plastic manufacturer or supplier, asking for information confirming that the company has complied with the statute. A manufacturer or supplier must respond with information and documentation demonstrating compliance within 90 days of any such request. Cal. Pub. R. Code §42356.2(c).

There is a \$500 fine for the first violation, a \$1,000 fine for the second violation, and a \$2,000 fine for the third and any subsequent violation, collectible by the office of the City Attorney, City Prosecutor, District Attorney, or Attorney General, whichever office brings the action. Cal. Pub. R. Code §42358. Such civil penalties are assessed on a *per product basis* and can easily amount to hundreds of thousands of dollars, depending on the volume of circulation.

Attorney General Kamala D. Harris filed her first “greenwashing” lawsuit against three plastic distributors in October 2011 (under the 2008 law) in Orange County Superior Court, *California v. Enso Plastics, LLC et al.*, case no. 30-2011-00518091. We expect to see similar lawsuits against plastic manufacturers and suppliers with the enactment of SB 567.

We recommend taking this seriously. Please contact us for additional information regarding SB 567.

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