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USA – California: Trends and Developments

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Trends and Developments

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Environmental General Counsel (EGC) is a boutique California environmental law firm with special expertise in consumer products compliance, extended producer responsibility (EPR) programmes, Proposition 65, truth-in-labelling, and remediation of contaminated sites. EGC supports clients based in California and around the world with a variety of matters, including global sustainability initiatives, emerging chemical regulation of consumer products, and product labelling requirements. EGC represents a diverse range of industries, including food and beverage, personal care and beauty products, agricultural, high tech, apparel, industrial manufacturing, transportation, real estate, and others. EGC's clients range from publicly traded companies to privately owned companies, small businesses, and public agencies. EGC attorneys are represented on the advisory boards of Proposition 65 Clearinghouse News and the executive committee of the Bar Association of San Francisco's environmental section, and on the board of directors of the Independent Beauty Association and its government affairs and public relations committee.

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As the fourth-largest economy in the world, California continues to assume a leadership role and shape the national trajectory in the environmental field, including chemical and consumer-product regulation, its extended producer responsibility (EPR) packaging programme, and landmark climate change initiatives, including disclosure requirements and stringent new restrictions on ozone-forming emissions. While California maintains its role as a national leader in environmental policy, actions by the Governor's office this year – one involving still-unfolding EPR regulations, and the second a veto on chemical restrictions – signal that there may also continue to be checks of some nature on programmes deemed too burdensome for business.

EPR Packaging Programme

The Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54), California's EPR programme for packaging and plastic food service ware, represents a conceptual shift in managing the entire lifecycle of these covered materials. Six other states have adopted similar EPR programmes, but California's programme is widely considered the most stringent and the broadest in scope.

SB 54 creates a powerful economic incentive for industry to redesign packaging and reduce the use of plastic food service ware. The California law mandates three core outcomes by 2032: (i) a 25% decrease in plastic packaging; (ii) all covered materials must be recyclable or compostable; and (iii) increased recycling rates for plastics. The penalty for failing to comply with these and other requirements is a ban on the producer's sale of covered material into the state. SB 54 allows for civil penalties of up to USD50,000 per day per violation against non-compliant entities.

"Producers" must join and fund a Producer Responsibility Organisation (PRO) and pay fees to the PRO based on the weight and type of covered materials that they use. Producers are usually the owner or manufacturer of the brand or licensee of the products associated with the packaging but in certain cases can be distributors or retailers. Only producers registered with the PRO may sell or distribute covered materials in California after 1 January 2027.

The PRO implements a system where fees are "eco-modulated" favouring, for example, easily recyclable materials and post-consumer recycled content (PCR) and disfavouring other covered materials, including those that contain certain chemicals.

Programme momentum initially faltered when Governor Newsom refused to sign the last rulemaking package, asserting the proposed regulations presented unacceptable burdens to business; however, a new rulemaking package is now poised for adoption in early 2026.

The new proposed rule provides significant concessions to industry, primarily through broader application of two exemptions: less stringent requirements for the refill and reuse exclusions and a broad exemption for certain packaging regulated for safety by federal agencies, which could conceivably include most food packaging. The later exemption is not self-executing but requires an application to the state regulatory agency, the California Department of Resources Recycling and Recovery (commonly known as "CalRecycle").

Even under the revised proposed regulations, California's programme is still much broader in scope than other state programmes, including, for example, more business-to-business packaging, a lower threshold for which small businesses are exempt from the programme, source reduction requirements, a functional ban on extended polystyrene food service ware, and its unique definitions of and requirements applicable to recyclability and/or compostability of covered materials by 2032.

To date, there has been no litigation challenging the California programme, although that may change after the final regulations are adopted. Oregon's EPR packaging programme faces a lawsuit from a trade association representing distributors, who are particularly hard hit by the EPR programmes, alleging various theories including breach of due process and equal protection claims involving interstate commerce.

The disposition of the Oregon lawsuit may impact other state EPR programmes – not necessarily by invalidating the programmes but potentially through

modifications that could satisfy the constitutional challenges or facilitate settlement of such claims. For example, adopting measures such as transparency in the PRO's calculation of fees, an opportunity for administrative or judicial review of fee assessments and/or other PRO decisions, and simplified bookkeeping to account for materials that are not easily traceable to a producer.

In addition, to avoid or optimise defences from equal protection and interstate commerce challenges, some states, including California, may consider stepping up enforcement to level the playing field. Enforcement could take place at the retail level because of the difficulties of enforcing against companies incorporated in countries outside the United States.

It remains to be seen exactly how the EPR programmes will unfold in California or the disposition of any litigation that may be filed in California (or in other states). Meanwhile, however, it is reasonable to expect that retailers will be demanding compliance and indemnity provisions from their suppliers – and that other potential producers will be seeking similar assurances across their own supply chain.

In conclusion, companies in California will need to take proactive steps to comply with SB 54 to avoid the sales restrictions on non-compliant producers that will take effect from 1 January 2027.

Climate Change Initiatives

California's climate change initiatives, particularly its stringent volatile organic compounds (VOC) restrictions and corporate disclosure requirements, are generally considered among the most ambitious and pioneering globally.

Disclosure requirements

The Climate Corporate Data Accountability Act (SB 253) requires companies with over USD1 billion in revenue to annually disclose all Scope 1, 2, and 3 greenhouse gas (GHG) emissions, with the first reports (for 2025 data) due in 2026. Separately, the Climate-Related Financial Risk Act (SB 261) requires companies with over USD500 million in revenue to publish biennial reports on the financial risks posed by climate change, with the first report due by 1 January 2026.

California's approach goes beyond the now-abandoned climate change disclosures proposed by the US Securities Exchange Commission (SEC) in at least two significant respects. First, by mandating the disclosure of Scope 3 (value chain) GHG emissions for companies with over USD1 billion in annual revenue, regardless of a financial materiality assessment. Second, both SB 253 and SB 261 apply to both public and private US companies that meet the relevant revenue thresholds and "do business" in California. Additionally, SB 253 requires mandatory third-party assurance for emissions data, starting with limited assurance for Scope 1 and 2 emissions in the first reporting cycle, with the requirement escalating over time.

The laws are currently in the crucial rulemaking phase led by the California Air Resources Board (CARB). CARB has pushed the initial proposed rulemaking of SB 253 to the first quarter of 2026 to integrate substantial stakeholder feedback. Despite the delay in final regulations, companies must prepare to report their 2025 financial year data starting in 2026. The statutory deadline for the first biennial report under SB 261 is 1 January 2026.

Both laws are also subject to ongoing litigation from business groups that are challenging their constitutionality and scope, arguing they violate commerce and free speech clauses. This litigation adds a layer of uncertainty, but companies are nevertheless moving forward with compliance efforts to meet the looming statutory deadlines.

Air quality and VOC regulation

CARB's Consumer Products Regulation remains central to California's strategy for reducing ozone-forming emissions from consumer and commercial products. The 2023 amendments represented the most comprehensive tightening of volatile organic compound (VOC) limits in more than a decade and are projected to deliver a total statewide reduction of approximately 9.8 tons per day (tpd) of VOC emissions once all phased limits – effective through 2031 – are fully implemented. Early reductions of about 3 tpd will occur in the near term, primarily from categories such as air fresheners, multipurpose cleaners, and personal-fragrance products, with additional reductions realised as later compliance dates take effect.

These reductions, while significant, represent only a portion of the commitments California must meet under its State Implementation Plan (SIP) for ozone attainment. Under the current SIP, CARB is obligated to secure approximately 20 tpd of additional VOC reductions statewide, including 8 tpd within the South Coast air basin, by 2037. To close this gap, CARB will need to identify further reductions in product categories that contribute disproportionately to emissions, either because of high VOC content or large sales volumes. This keeps sustained regulatory pressure on industries such as personal care, fragrance, hair care, and household cleaning, where aggregate VOC output remains substantial even after recent reforms.

To generate the data necessary for the next regulatory phase, CARB launched its 2023 Consumer and Commercial Products Survey, requiring manufacturers to submit detailed formulation and sales information across 37 product categories by April 2025. The survey results will inform the next rulemaking cycle, anticipated around 2031, which is expected to pursue the remaining VOC-reduction tonnage needed to meet SIP obligations.

During the 2023 rulemaking, CARB also deferred several of its more aggressive proposals, most notably a 50% VOC limit for personal fragrance products, to 2030. While this delay gives manufacturers time to develop low VOC formulations and alternative propellants, it underscores the agency's intent to reach deeper cuts as it works toward the 2037 targets.

For manufacturers and importers, the implications are twofold. Product development timelines must now account for both the phased implementation of the 2023 amendments and the likelihood of additional restrictions driven by the SIP reduction gap. Companies will need to evaluate formulation options well in advance of compliance deadlines and maintain VOC and chemical composition data capable of supporting regulatory reporting and future reformulation decisions.

Chemical and Consumer Product Regulation

In the chemical and consumer product arena, in recent years, the state has broadened its focus from traditional pollution control toward upstream product governance, regulating what ingredients may be used, how they are disclosed and how sustainability is substantiated. These initiatives parallel the European Union's Chemical Strategy for Sustainability (CSS) and position California as the US jurisdiction most closely aligned with the EU's hazard-based approach. Through concurrent initiatives led by the Department of Toxic Substances Control (DTSC), the California Air Resources Board (CARB) and the legislature, California is constructing a regulatory framework that connects chemical management, transparency and environmental-marketing oversight. Beauty, personal care, home fragrance and cleaning product companies sit squarely within this evolving framework.

PFAS and the expansion of chemical bans

California's targeted action on perfluoroalkyl and polyfluoroalkyl substances (PFAS) remains a cornerstone of its chemical-safety agenda. Assembly Bill 2771 bans intentionally added PFAS in cosmetics beginning in 2025, complementing AB 1817's restriction for textiles and AB 1200's prohibition for food packaging and cookware. In 2025, the legislature also advanced Senate Bill 682, which would have prohibited intentionally added PFAS in a broad range of additional consumer products, including cleaning products, dental floss, juvenile items, ski wax, and cookware, with phased implementation through 2030. Although the bill was vetoed by the Governor, its passage by both chambers underscores the state's continued legislative intent to expand PFAS restrictions across consumer-product categories.

DTSC's Safer Consumer Products (SCP) programme continues to expand, but remains selective in scope compared with major EU chemical-safety frameworks. Since the programme's launch in 2013, DTSC has designated only a small number of Priority Products, including nail products containing toluene, spray foams with diisocyanates, and carpets or textile treatments containing PFAS. Each listing requires manufacturers to undertake an alternatives analysis or reformulate, which can be significant for the affected sector but limited in broader market reach. In contrast to EU programmes such as ECHA's REACH restriction processes or the Scientific Committee on Consumer Safety (SCCS) evaluations, California's SCP programme has generated relatively few final regula-

tory outcomes to date, reflecting both the depth of its analytical process and the resource constraints of a state-level agency. SB 502, enacted in 2022, is intended to streamline the petition process and allow more rapid regulatory response, but it remains to be seen whether these procedural changes will materially increase throughput or policy impact. California has also broadened its list of banned cosmetic ingredients. Assembly Bill 496 (2023) expands California's Toxic-Free Cosmetics Act to prohibit a substantially larger group of ingredients, including additional phthalates, formaldehyde-releasing preservatives, several PFAS compounds, boron-based substances, and certain colourants, effective 1 January 2025.Together, AB 2771, AB 496 and SB 682 demonstrate how California's legislature is attempting to codify EU-style ingredient restrictions and advancing a precautionary, class-based approach to chemical regulation.

Transparency and ingredient disclosure

California has made transparency a unifying principle across its consumer product laws. Legislation such as the Cosmetic Fragrance and Flavor Ingredient Right to Know Act (2020) and the Cleaning Product Right to Know Act (2017) apply the same disclosure logic to different categories – requiring public reporting of intentionally added ingredients and specified allergens or hazardous substances, often using criteria drawn from EU and IFRA frameworks.

Together, these laws have normalised ingredient visibility as a baseline expectation for consumers and created a single compliance culture that spans cosmetics, home fragrance and household cleaning products. For manufacturers, the practical outcome is the same: comprehensive ingredient databases, harmonised labelling systems, and public-facing transparency portals designed to meet the most stringent disclosure obligations.

At the federal level, the Modernization of Cosmetics Regulation Act (MoCRA) establishes a national baseline for cosmetic safety and registration. Yet California's broader transparency and ingredient-restriction laws continue to set the higher operational standard, prompting companies to treat California compliance as the governing framework for product information management and supplier documentation across all US markets.

Litigation and Enforcement Trends

These developments reflect a shift from reactive regulation toward continuous chemical governance, as manufacturers face increasingly demanding obligations to maintain auditable inventories, anticipate new PFAS and VOC restrictions, and align supply-chain documentation with DTSC and CARB oversight.

While plaintiffs continue to rely on long-standing statutes, such as Proposition ("Prop") 65 and the False Advertising Law (Business and Professions Code § 17500), their strategy is evolving. Rather than focusing primarily on alleging undisclosed chemical hazards, recent cases challenge marketing language that overstates product safety or environmental performance, such as "non-toxic", "clean", or "environmentally safe", where trace levels of restricted substances or incomplete ingredient disclosures remain. This evolution effectively extends traditional chemical-exposure law into the broader realm of sustainability and brand representation.

By the same token, in 2025, the United States Eastern District of California issued its third injunction on the basis of a First Amendment challenge to a Prop 65 claim where the science underpinning the warning requirement for specific Prop 65 chemicals is disputed. The Ninth Circuit has affirmed two of the earlier injunctions issued by the Eastern District. These defences are fact-specific rather than necessarily precedential for cases involving other chemicals but these cases could signal a possible change to the Prop 65 paradigm, which for decades favoured the plaintiff's bar – a pivot foreshadowed by the *EHA v Sream* case, handled by Environmental General Counsel, affirming that only direct exposures were covered by Prop 65 (*EHA v Sream, Inc*., 83 Cal. App. 5th 721 (2022)).

Outlook

California's consumer product and chemical management framework will remain the most comprehensive in the United States and a model for global convergence. The combination of legislative bans (AB 2771, AB 496, SB 682), regulatory authority expansion under

SB 502, and CARB's phased VOC limits ensures continued momentum toward hazard elimination and full-spectrum disclosure.

For companies operating across US and European markets, aligning California and EU compliance strategies offers both efficiency and risk mitigation. The underlying regulatory philosophy – ie, prevention, transparency and circularity, is now shared across both systems. California's trajectory toward 2030 and beyond confirms that product-level sustainability is no longer aspirational policy but an enforceable legal standard, firmly establishing California as the bridge between US and EU chemical-safety regimes.

California's EPR packaging programme will likely become the most comprehensive and largest EPR packaging programme in the United States, promoting a shift to recyclable packaging and reduction of plastic packaging, albeit possibly with some significant adjustments to the programme over time.

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