California Perchlorate BMPs Apply to Consumer Products

Perchlorate is a naturally occurring and man-made ionic salt primarily used as the main ingredient in solid rocket propellant and as a combustion-enhancer for pyrotechnic devices and explosives. Certain commonplace and less lethal products may also contain perchlorate, such as lithium-ion and other batteries, air bag initiators, bleach, and fertilizer. In response to perchlorate contamination found in over 40 public drinking water systems statewide, the California legislature in 2003 directed the Department of Toxic Substances Control (DTSC) to promulgate perchlorate best management practices (BMPs) setting out the proper management and handling of “perchlorate materials.”1 The California legislature intended the perchlorate BMPs to apply broadly, and so defined “perchlorate materials” as “perchlorate and all perchlorate-containing substances, including, but not limited to, waste perchlorate and perchlorate-containing waste.”

The Perchlorate BMPs were finalized in December 2005,2 and while providing some flexibility, are intended to protect against perchlorate contamination at every step in a product’s distribution stream. All persons “managing perchlorate materials” must ensure that products containing perchlorate or perchlorate compounds are labeled, packaged, and stored in accordance with the BMPs. The term “management” under these regulations, is defined to cover a broad array of activities where contact with perchlorate materials seems likely, including storage, transportation, manufacturing, processing, fabrication, packaging, use, treatment, and transfer. The pool of potentially affected product could be quite broad as the regulation defines “perchlorate materials” to include “all forms of matter, goods, and products.”3

Although the BMPs went into effect on July 1, 2006, they provide a phase-in period by exempting products manufactured before December 31, 2006. Products containing perchlorate in concentrations less than six parts per billion (ppb) also are exempt.

Labeling Best Management Practice

Generally, businesses that manufacture, repackage, distribute (for sale), or receive (for resale) perchlorate materials, or generate waste containing perchlorate materials containing perchlorate concentrations in excess of six ppb must conspicuously label the outer shipping container and exterior of the consumer package with the following warning:

Perchlorate Material – special handling may apply.

The DTSC did not define what constitutes conspicuous labeling. Indeed, the Department considered and specifically rejected more detailed requirements on appropriate font sizes and label placement in order to provide businesses with maximum labeling flexibility. In the absence of contrary guidance, we recommend businesses ensure perchlorate labels are clearly marked and visible by placing the perchlorate warning on a contrasting background and using a type size, font and style that will not be obscured by surrounding text or graphics.

We expect, however, that most businesses will avail themselves of the labeling exemption available under Section 67384.4(b)(4) of the BMPs. Really more of a labeling alternative than an exemption, a perchlorate warning is not required on the exterior package of a product if the warning is given on a Material Safety Data Sheet (MSDS), shipping document, or product insert. Companies may opt for this approach without obtaining DTSC approval.

Packaging and Containment Requirements

Reflecting California’s concerns about further perchlorate contamination of drinking water supplies, perchlorate wastes or products containing perchlorate are to be sold or distributed in water-resistant packaging that is designed and filled “so that under conditions normally incident to handling, there will be no identifiable release of perchlorate materials to the environment.”4 A “water-resistant package” is defined as “a package that when closed, under conditions incidental to handling, is substantially impervious to
rain, spray, or run on.” For now this appears to be a common sense requirement with which certain products may already comply. For instance, state regulators indicated recently that the outer casing of most consumer batteries likely already complied with the BMP’s packaging requirement.

Perchlorate materials and products not package in accordance with the BMPs may nevertheless be distributed or sold if they are stored in water-resistant structures with floors that prevent seepage. The floors cannot have drains that release into the environment, and must be strong enough to support the load. The containment requirements do not apply to consumer commodities used or stored in a home.

One-Time Notification
On or before September 1, 2007, businesses that manage more than 500 pounds of solids or 55 gallons of liquids containing perchlorate at any one time must submit a one-time written notification to the state. For products which meet the definition of a perchlorate material solely because they contain one or more perchlorate-containing devices, only the weight of the perchlorate-containing device will be counted toward the weight threshold. The notification, which can be submitted electronically, should list the perchlorate materials handled by the business between July 1, 2006 and June 30, 2007, and indicate how the material was managed (e.g., whether the material is manufactured, combusted, or sold).

Final Thoughts
The purpose of the BMPs is to inform all “managers” (i.e., all actors in the distribution stream) that a product contains perchlorate. Solutions that better inform downstream managers should be favored over those that do not. For example, manufacturers sending a perchlorate-containing product to a repackager would not generally use package inserts to warn the repackager, but rather would include a label on the MSDS or shipping document. Conversely, the repackager who prepares the same product for consumer sales should either label the package exterior or use a product insert.

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2 2006 CAL. REGULATORY NOTICE REG. No. 2-Z, p.38 (codified at CAL. CODE REGS. tit. 22, § 67384, et. seq.).
3 CAL. CODE REGS. tit. 22, § 67384.3.
4 CAL. CODE REGS. tit. 22, § 67384.5(a)(1).
5 CAL. CODE REGS. tit. 22, § 67384.3.
6 CAL. CODE REGS. tit. 22, § 67384.6(b)(4).