

Responding to DTSC's Data Call-In for Carbon Nanotubes –

One Perspective

Presented by:

Ann Grimaldi, Esq.

McKenna Long & Aldridge LLP
December 3, 2009
San Francisco, California

Introduction

- Recent California laws
 - AB 484 (requires disclosure of carcinogens and reproductive toxins in cosmetics)
 - AB 1108 (bans certain phthalates in certain children's products)
 - SB 1713 (would have banned BPA in certain products above 0.1 ppb)
 - Green Chemistry Initiative – AB 1879 and SB 509
 - AB 289 (data call-in law)
- What does all this mean?

What Do The People Want?

- Information
 - Make informed choices
 - Use leverage to effect market change
 - Use voting power to effect legislative/regulatory change

What Does Government Want?

- Information
 - Promote a well-informed public
 - Understand appropriate regulatory targets
 - Craft balanced regulatory policy
 - Refine use of limited resources (public using market leverage)

What Does Industry Want?

- Information
 - Promote a well-informed public
 - Promote a well-informed government
- Push for innovation and competitiveness in the marketplace
- Protect investment-backed interests

Trends

- Collaborative efforts
- Transparency
- Balance

- All driven by information flow

AB 289

- Requires chemical manufacturers to provide answers to specific questions about chemicals they make or import into California – identify information and information gaps
- Requires the agency first to publicly “express interest” in obtaining information about specified chemicals – an invitation to a dialogue
- Requires the manufacturer to collaborate and cooperate to the extent practicable
- Questions focused on analytical test methods, fate and transport, but covers “other relevant information” related to fate and transport

AB 289

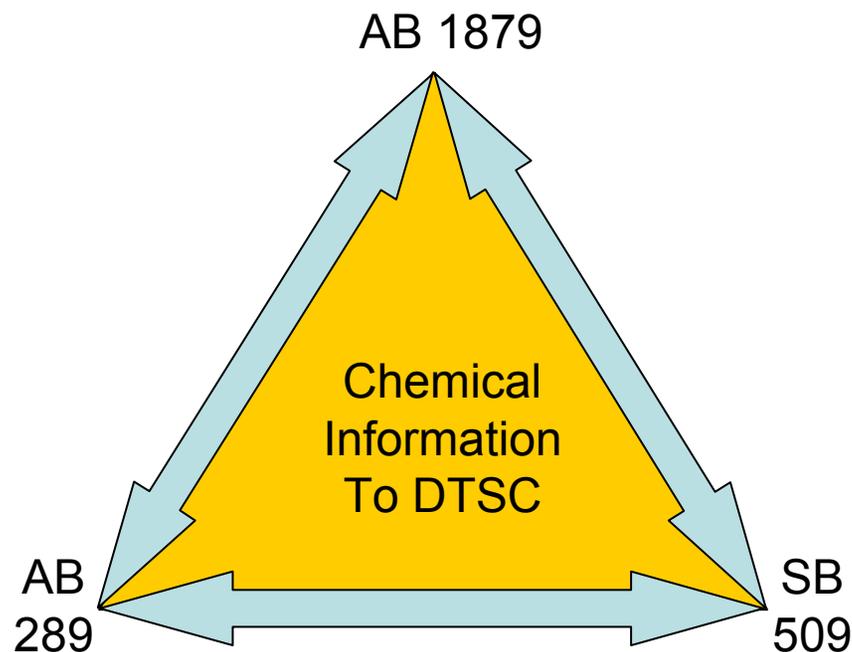
- DTSC issued the first DCI, targeting 26 entities that manufacture CNTs
- Responses due January 2010

AB 289

- Responses will be posted publicly
 - Fact that submitter has designated information as trade secret will be posted publicly, although trade secret information itself will not (subject to procedures for the protection of trade secrets)

AB 1879, SB 509 and AB 289

- Responses will be used to implement new Green Chemistry Initiative laws
 - AB 1879 (Safer Alternative Regulation)
 - SB 509 (Toxic Information Clearinghouse)



Let's Not Kid Ourselves

- AB 289 responses will not exist in a vacuum
- Information will establish foundation for regulatory policy in California, nationally and internationally
 - Supply chain concerns
- Industry will be getting pressure from regulators and the public to be forthcoming