



Recent Federal Developments October 15, 2009

TSCA/FIFRA/NTP/EPCRA

Ecology Center Creates Consumer Product Website -- On September 16, 2009, the nonprofit environmental organization Ecology Center rolled out a new website designed to provide consumers with test data on common products. The new site, <http://www.HealthyStuff.org>, provides information on chemicals in common products. The site provides more than 15,000 test results on more than 5,000 common items, including pet products, women's handbags, back-to-school products, children's toys, and car seats. The group also advocated change in the Toxic Substances Control Act (TSCA).

Groups Sponsor Conference On The Future Of U.S. Chemicals Policy -- On October 6, 2009, environmental, consumer, and industry associations hosted a conference entitled "The Future of U.S. Chemicals Policy." Sponsors included the Environmental Working Group, Rachel's Network, The Pew Health Group, Community Against Pollution, The Louisiana Bucket Brigade, American Chemistry Council (ACC), Grocery Manufacturers Association (GMA), Turner Foundation, Soap and Detergent Association (SDA), and Consumer Specialty Products Association (CSPA). U.S. Environmental Protection Agency (EPA) Administrator Lisa Jackson spoke at the conference, and stated that, while EPA supports revisions to TSCA, until Congress enacts TSCA reform, EPA will pursue enhancements to its current chemicals management program. Jackson announced the enhancements on September 29, 2009, and more information is available on the Internet at <http://www.epa.gov/oppt/existingchemicals/pubs/enhanchems.html>. A webcast of the October 6, 2009, conference is available at <http://www.ustream.tv/recorded/2293176>. During the conference, CSPA, GMA, and SDA proposed eight "building blocks" intended to help guide Congress in developing TSCA reform legislation. The building blocks include:

- 1) Promote Innovation -- TSCA reform should boost confidence in government chemical management and promote even greater innovation by chemical manufacturers and users;
- 2) Review Priority Chemicals -- EPA should establish a system to identify and review quickly "priority" chemicals based upon both hazard characteristics and exposures, including exposures to children;



- 3) Provide Adequate Use, Exposure and Toxicity Information -- EPA should work with chemical manufacturers and users to ensure that EPA has timely and adequate information of chemical hazards, exposures, and uses, including uses in children's products;
- 4) Update the Safety Standard -- EPA should establish a risk-based methodology to determine whether a "priority" chemical is reasonably expected to be safe for its intended use. Safety determinations should consider the effects of exposure to children and other sensitive populations;
- 5) Clarify Risk Management Tools -- EPA should have clearer risk-based authorities to specify risk management measures that will ensure that chemicals of concern are reasonably expected to be safe for their intended uses;
- 6) Leverage and Integrate Chemical Reviews -- Policymakers should take steps to leverage the chemical management programs undertaken by other nations and to integrate the patchwork quilt of laws governing chemical management;
- 7) Meet Deadlines -- Policymakers should provide EPA with adequate resources and clear authorities to establish and meet deadlines to carry agency work under TSCA; and
- 8) Use the Best Available Science -- Policymakers should ensure that EPA relies upon the best available science regardless of its source.

Both non-governmental organization (NGO) groups and trade associations noted the "alignment" of the general principles suggested to underpin any TSCA amendments. At the same time, the speakers also noted that the details of any specific proposals will be central to any support they might give to specific legislation. Almost every speaker commented that not only was this initial convening of interested (and often disagreeing) groups helpful, but that continued dialogue was desirable to attempt to close, or at least move closer, to an affirmative consensus on some or all elements of an amendment package. The overall tone of the discussion throughout the day was that consensus was possible, and that further attempts to reach that consensus were desirable. No specific plans for further meetings or discussions were made at this time. Also, no speaker indicated any particular expectation for the arrival date of the next iteration of legislation to be offered by the Members of Congress most historically involved with the subject (Senators



Barbara Boxer (D-CA) and Frank R. Lautenberg (D-NJ), and Representative Henry Waxman (D-CA)), although the particulars of such legislation will likely dictate whether consensus between the two camps is likely to be achieved.

EPA Issues Direct Final SNURS For 12 Substances -- On September 18, 2009, EPA issued a *Federal Register* notice promulgating direct final significant new use rules (SNUR) for 12 chemical substances under TSCA Section 5(a)(2). 74 Fed. Reg. 47877. For two of the 12 substances, EPA issued final SNURs that set forth the same exposure controls that were negotiated with the initial premanufacture notice (PMN) submitter through "risk-based" TSCA Section 5(e) consent orders. For the other ten substances, EPA determined that, although the manufacturing, processing, and use of the substance as set forth in each respective PMN did not present unreasonable risks to health and/or the environment, there were other potential uses that may cause significant adverse health and/or environmental effects for which SNURs are required. The chemicals are:

- **Benzeneethanol,halo-,halocycloalkyl-,hydrazinealkyl-(generic):** PMN Number P-05-775 (CAS No. not available) (will be used as an intermediate used in a closed process). Effective date of TSCA Section 5(e) consent order: May 8, 2008. To be codified at 40 C.F.R. § 721.10157.
- **2-Pentanone, 3,5-dichloro-:** PMN Number P-06-16 (CAS No. 58371-98-5) (will be used as an intermediate used in a closed process). Effective date of TSCA Section 5(e) consent order: May 8, 2008. To be codified at 40 C.F.R. § 721.10158.
- **1-Docosanamine, N,N-dimethyl-:** PMN Number P-07-587 (CAS No. 21542-96-1) (will be used as a chemical intermediate). To be codified at 40 C.F.R. § 721.10159.
- **Poly(oxy-1,2-ethanediyl),.alpha.-[(13Z)-1-oxo-13-docosen-1-yl]-.omega.-[[[(13Z)-1-oxo-13-docosen-1-yl]oxy]-:** PMN Number P-07-629 (CAS No. 56565-72-1) (will be used as a polymer additive). To be codified at 40 C.F.R. § 721.10160.
- **Substituted silyl methacrylate (generic):** PMN Number P-08-3 (CAS No. not available) (will be used as an intermediate for a paint binder). To be codified at 40 C.F.R. § 721.10161.



- **1,3 Dioxolane-4-butanol, 2-ethenyl-:** PMN Number P-08-24 (CAS No. 2421-08-1) (will be used as a crosslinking agent to be ultimately used in the manufacture of automotive and aircraft coating materials). To be codified at 40 C.F.R. § 721.10162.
- **Chloro fluoro alkane (generic):** PMN Number P-08-33 (CAS No. not available) (will be used as a chemical intermediate). To be codified at 40 C.F.R. § 721.10163.
- **Benzenecarboximidamide, N-hydroxy-4-nitro-:** PMN Number P-08-36 (CAS No. 1613-86-1) (will be used as a chemical intermediate). To be codified at 40 C.F.R. § 721.10164.
- **Carbonotrithioic acid, bis(phenylmethyl) ester:** PMN Number P-08-138 (CAS No. 26504-29-0) (will be used as a chain transfer agent). To be codified at 40 C.F.R. § 721.10165.
- **1,3-Cyclohexanedione, 2-[2-chloro-4-(methylsulfonyl)-3-[(2,2,2-trifluoroethoxy)methyl]benzoyl]-, ion(1-), potassium salt (1:1):** PMN Number P-08-180 (CAS No. 1121649-70-4) (will be used as a precursor to another chemical substance). To be codified at 40 C.F.R. § 721.10166.
- **Tetrafluoro nitrotoluene (generic):** PMN Number P-08-212 (CAS No. not available) (will be used as a chemical intermediate). To be codified at 40 C.F.R. § 721.10167.
- **Cesium tungsten oxide:** PMN Number P-08-275 (CAS No. 52350-17-1) (will be used as a component of infrared absorption material). To be codified at 40 C.F.R. § 721.10168.

The final rule will be effective **November 17, 2009**, unless EPA receives adverse comments or notice of intent to submit adverse comments before **October 19, 2009**. In that instance, EPA will withdraw the SNUR for the substance(s) for which adverse comments or notice of intent to submit adverse comments are received and will instead issue a proposed SNUR and provide a 30-day public comment period.

EPA Launches Online Stakeholder Discussion On Metal Mining -- On October 5, 2009, EPA announced the launch of an online stakeholder discussion forum for metal mining issues. EPA is considering modifying Toxics Release Inventory (TRI) reporting requirements associated with metal mining operations, and the forum is intended to give stakeholders the opportunity to



discuss issues related to a future metal mining rulemaking. Over the next several months, EPA plans to begin its internal regulatory process and conduct a preliminary regulatory analysis. Comments received through the stakeholder forum will supplement these efforts and help inform the rulemaking process. EPA plans to make the discussion forum accessible until the end of October.

EPA Issues Draft IRIS Files On Three Chemicals -- On September 24, 2009, EPA's National Center for Environmental Assessment (NCEA) announced the availability of three draft Integrated Risk Information System (IRIS) toxicological reviews. 74 Fed. Reg. 48731, 48733, and 4735. The chemicals are: 1,1,2,2-tetrachloroethane (CAS No. 79-34-5), cis- and trans-1,2-dichloroethylene (CAS Nos. cis: 156-59-2, trans: 156-60-5, mixture: 540-59-0), and trichloroacetic acid (CAS No. 76-03-9). Comments are due by **November 23, 2009**. In a related notice issued on September 29, 2009, NCEA announced that it has released for public comment an external review draft IRIS review of chloroprene. 74 Fed. Reg. 49874. Comments are due by **November 30, 2009**.

EPA Announces Public Role In Pesticide Registration Process -- On October 1, 2009, EPA announced the establishment of "a new transparent process" intended to allow the public to review and comment on risk assessments and proposed registration decisions for pesticides. According to EPA, this expanded process will apply to all new pesticide active ingredients and first food uses, first outdoor uses, and first residential uses. Starting October 1, 2009, for certain registration actions, EPA will add its risk assessments and proposed decisions to the public docket and make them available for a 30-day public comment period. Following the comment period, EPA will publish its decision and a response-to-comment document. EPA states that, by focusing public access on new pesticide ingredients and first food, outdoor, and residential uses, the public will have the opportunity to comment on all major new exposure patterns for pesticide registration. More information is available at <http://www.epa.gov/pesticides/regulating/registration-public-involvement.html>.

EPA Announces Availability Of Pesticide Registration Notice Announcing Establishment Of Antimicrobial Exposure Assessment Task Force II -- On October 14, 2009, EPA announced the availability of a Pesticide Registration (PR) Notice regarding the formation of the Antimicrobial Exposure Assessment Task Force II (AEATF II). 74 Fed Reg. 52804. The PR Notice provides information concerning the formation of an industry-wide task force to jointly develop mixer, loader, applicator, and post-application exposure data for antimicrobial pesticides used in commercial, institutional, occupational, and consumer settings.

EPA Announces Interim Policy On Pesticide Containers -- On October 9, 2009, EPA released its Pesticide Container Repair Interim Policy. Under it, retailers of pesticide products are



allowed to repair minor damage to pesticide containers. The policy is intended to ensure that the repairs are consistent with federal requirements for pesticide registration, production, and labeling. Retailers and producers must apply for the program, and approval will be made on a case-by-case basis. Previously, EPA had no policy on such repairs. More information on the interim policy is available at <http://www.epa.gov/pesticides/regulating/containers.htm#container>.

ACS Holds Briefing On TSCA Reform -- On September 29, 2009, the American Chemical Society (ACS) held a briefing intended to provide a forum to explore the perspectives, roles, and activities of various stakeholders regarding reform of TSCA. E. Donald Elliott, Willkie Farr & Gallagher LLP, moderated the panel, which included Andy Ingrejas, Safer Chemicals, Healthy Families; Sarah Brozena, ACC; Roger McFadden, Staples; Kenneth Zarker, Washington State Department of Ecology; and James Gulliford, former Assistant Administrator for the EPA Office of Prevention, Pesticides, and Toxic Substances. According to information provided at the briefing, Senator Frank R. Lautenberg (D-NJ) intends to introduce in the next few weeks TSCA reform legislation, and to hold hearings after that.

In August 2009, Safer Chemicals, Healthy Families, a coalition of health and environmental organizations, announced its requirements for reforming TSCA. At the same time, ACC released "10 Principles for Modernizing TSCA." The Safer Chemicals, Healthy Families platform is available at <http://www.edf.org/pressrelease.cfm?contentID=10289>, and ACC's 10 Principles are available at <http://www.americanchemistry.com/TSCAPrinciples>. Ingrejas and Brozena summarized these recommendations during their presentations. McFadden provided examples of questions that retail and business supply chain consumers are beginning to ask retailers and product providers, including: what chemicals of concern are in the products that you offer?; have you eliminated the worst chemicals and replaced them with safer alternatives while committing to continuous improvement on the others?; do you fully disclose chemicals and/or ingredients in your product?; how can we recognize a product made from safer and/or greener alternatives?; and who is accountable for the quality, accuracy and comprehensiveness of the chemical information being provided for your product?

Gulliford recommended actions that EPA could undertake now, without waiting for Congress to pass legislation reforming TSCA, including: reset TSCA Chemical Inventory; Inventory Update Reporting Rule; continued work on priority chemicals: Chemical Assessment and Management Program (ChAMP) screening tool; Nanotechnology: Nanoscale Materials Stewardship Program Organization for Economic Cooperation and Development data sets; Funding; and Green Chemistry/Pollution Prevention.

EPA Issues Final IRIS On 2-Hexanone -- On September 25, 2009, EPA issued a final IRIS assessment of 2-hexanone (CAS No. 591-78-6), a chemical found in waste and at Superfund sites. The final assessment of the chemical sets a reference dose (RfD) of 0.005 milligram per



kilogram per day and a reference concentration (RfC) of 0.03 milligram per cubic meter air, values that are somewhat lower than EPA proposed in 2008. RfDs and RfCs are used by risk assessors as they evaluate the health risk posed by specific situations. The IRIS assessment is available at <http://www.epa.gov/iris/subst/1019.htm>.

EPA Releases 2008 TRI Data -- On September 28, 2009, the TRI Program announced the third and final update of the 2008 TRI dataset. These final files will be used to construct the 2008 TRI National Analysis, planned for December. On August 18, EPA began providing the preliminary 2008 TRI data, the earliest data release in the program's history. The downloadable data files and facility locator tool were then updated on August 31. The 2008 data can be accessed at <http://www.epa.gov/tri>, and the Early Data Sharing can be accessed at http://www.epa.gov/tri/tridata/tri08/early_data/indexearlyhome.html. To comment on the 2008 Early Data Release, please visit <http://yosemite.epa.gov/ceis/early.nsf/comment?openform>.

EPA Reviews Registrations Of Five Pesticides -- On September 30, 2009, EPA opened registration review dockets for a set of biopesticides as part of a program aimed at ensuring such substances meet current scientific and safety standards. 74 Fed. Reg. 50203. The pesticides are verbenone and 4-allyl anisole, wood oils and gums (cedarwood oil), metarhizium anisopliae, and streptomyces griseoviridis. Comments on the registration review of the five biopesticides must be submitted by **November 30, 2009**.

EPA Seeks To Disclose Hazardous Pesticide Inert Ingredients -- On September 30, 2009, EPA announced it is moving forward "with a plan to disclose the identities of all inert ingredients in pesticides." This increased transparency will reportedly, according to EPA, assist consumers and users of pesticides in making informed decisions and will better protect public health and the environment. Pesticide manufacturers typically disclose their inert ingredients only to EPA. Currently, EPA evaluates the safety of all active and inert ingredients in a product's formulation when determining whether the pesticide should be registered. EPA anticipates publishing its proposed rulemaking in the *Federal Register* within the next few months. EPA reportedly will discuss ideas for greater disclosure of inert ingredient identities, including inerts associated with various hazards, as well as inerts in general. EPA believes one way of discouraging the use of the more hazardous inert ingredients in pesticide formulations is by making their identities public. In addition to pursuing regulatory action for inert disclosure, EPA is considering encouraging voluntary initiatives to achieve this broader disclosure. On September 30, 2009, EPA also responded to two petitions (one by Northwest Coalition for Alternatives to Pesticides (NCAP), and a second by certain State Attorneys General), that identified over 350 inert pesticide ingredients as hazardous. The petitioners asked EPA to require these inert ingredients be identified on the labels of products that include them in their formulations. The NCAP petition is available at http://www.epa.gov/opprd001/inerts/petition_ncap.pdf and the State



Attorneys General petition is available at http://www.epa.gov/opprd001/inerts/petition_states.pdf. EPA's response to the petitions is available at <http://www.epa.gov/opprd001/inerts/petitionresponse.pdf>.

CAA/CWA

EPA Announces It Will Reconsider National Smog Standards -- On September 16, 2009, EPA announced it will reconsider the 2008 national smog standards to ensure they are scientifically sound and protective of human health. Smog, also known as ground level ozone, has been linked to asthma and other respiratory illnesses. The reconsideration announced covers both the primary and secondary ozone standards. EPA sets primary air quality standards to protect public health, including the health of sensitive groups, such as children and people with asthma. The secondary standard is set to protect public welfare and the environment, including protection against visibility impairment, damage to animals, crops, vegetation, and buildings. EPA will propose any revisions to the ozone standards by **December 2009** and will issue a final decision by **August 2010**.

EPA Signs Final Rule Requiring Greenhouse Gas Emissions Reporting -- On September 22, 2009, Administrator Lisa Jackson signed a final rule that would require reporting of greenhouse gas (GHG) emissions from all sectors of the economy. The prepublication version of the final rule states that it applies to fossil fuel suppliers and industrial gas suppliers, direct GHG emitters, and manufacturers of heavy-duty and off-road vehicles and engines. The rule does not require control of GHG, "rather it requires only that sources above certain threshold levels monitor and report emissions." The final rule will be effective 60 days after publication in the *Federal Register*. The first annual reports for the largest emitting facilities, covering calendar year 2010, will be due to EPA **March 31, 2011**. According to EPA's fact sheet, in general, the threshold for reporting is 25,000 metric tons or more of carbon dioxide (CO₂) equivalent per year. The fact sheet is available on the Internet at <http://www.epa.gov/climatechange/emissions/downloads09/FactSheet.pdf>. Reporting will be required at the facility level, except that certain suppliers of fossil fuels and industrial GHGs, as well as vehicle and engine manufacturers, will report at the corporate level. Under the final rule, facilities and suppliers will begin collecting data on **January 1, 2010**, and the first emissions report is due on **March 31, 2011**. EPA estimates that 85 percent of the total U.S. GHG emissions, from approximately 10,000 facilities, are covered by the final rule. According to EPA, most small businesses would fall below the 25,000 metric ton threshold and are not required to report GHG emissions to EPA. The only emission source in the agriculture sector covered by the rule is manure management systems at livestock operations with GHG emissions that meet or exceed the threshold of 25,000 metric tons. EPA states that its modeling estimates



that just over 100 manure management systems at large livestock operations meet this threshold. The final rule includes a table of examples of affected entities by category.

EPA Releases List Of Priority Drinking Water Contaminants For Regulatory Consideration --

On October 8, 2009, EPA released its third list of drinking water contaminants that are known or anticipated to occur in public water systems and may require regulation. 74 Fed. Reg. 51850. EPA will continue to evaluate and collect data on the contaminants, and determine by 2013 for some of them whether or not to propose drinking water regulations. The contaminant candidate list (CCL 3) includes 104 chemical contaminants or groups and 12 microbes. Among them are contaminants, pesticides, disinfection byproducts, pharmaceuticals, chemicals used in commerce, waterborne pathogens, and algal toxins. EPA's selection of the contaminants builds upon evaluations used for previous lists and is based on substantial expert input and recommendations from different groups, including stakeholders, the National Research Council, and the National Drinking Water Advisory Council. EPA will make regulatory determinations for at least five contaminants in accordance with the Safe Drinking Water Act. For those CCL 3 contaminants that lack sufficient information for a regulatory determination by 2013, EPA will encourage research to provide the information needed. EPA evaluated approximately 7,500 chemicals and microbes and selected 116 candidates for the final list based on their potential to pose health risks through drinking water exposure. EPA considered the best available health effects and occurrence data and information to evaluate unregulated contaminants. A draft CCL 3 was published for review and comment on February 21, 2008. EPA reviewed and analyzed the information provided in the comments in developing the final CCL 3. More information on the contaminant candidate list is available at <http://www.epa.gov/safewater/ccl>.

EPA Issues Stay On Grandfathering Provision For PM_{2.5} -- On September 22, 2009, EPA issued a stay, for nine months, on the "grandfathering" provision for particulate matter less than 2.5 micrometers (PM_{2.5}) requirements in the federal Prevention of Significant Deterioration (PSD) program. 74 Fed. Reg. 48153. The grandfathering provision was added to the federal PSD regulations on May 16, 2008, as part of the final rule titled, "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})." The stay follows an administrative stay, which was in effect from June 1, 2009, until September 1, 2009, on the same provision. EPA believes the additional stay will provide sufficient time for EPA to propose, take public comment on, and issue a final action concerning the repeal of the grandfathering provision for PM_{2.5} in the federal PSD program. The stay is in effect until **June 22, 2010**.

EPA Issues Flexible Air Permitting Rule -- On October 6, 2009, EPA issued final revisions to the regulations governing state and federal operating permit programs required by Title V of the Clean Air Act (CAA) to promote flexible air permitting (FAP) approaches that are believed to



provide greater operational flexibility. 74 Fed. Reg. 51418. The revisions to the Title V regulations consist of adding definitions for alternative operating scenario (AOS) and approved replicable methodology (ARM) and codifying some clarifications to existing provisions. These revisions are intended to clarify and reaffirm opportunities for accessing operational flexibility under existing regulations. EPA did not issue in final any revisions to existing minor or major New Source Review (NSR) regulations. EPA withdrew that portion of the proposal which relates to Green Groups and their potential inclusion in NSR programs required by Parts C and D of CAA Title I. EPA encourages states and sources to investigate in more depth the flexibilities currently available under the major NSR regulations. The final rule is effective on **November 5, 2009**.

EPA Issues Proposed Rule Reconsidering PSD Regulations -- On October 7, 2009, EPA issued a proposed rule on the interpretation in a December 18, 2008, memorandum on the regulatory phrase “subject to regulation” that is applied to determine the pollutants subject to the federal PSD program under the CAA. 74 Fed. Reg. 51535. The proposed rule implements the grant of reconsideration by discussing and requesting public comment on various interpretations of the regulatory phrase “subject to regulation.” The interpretations discussed in the document include EPA’s current and preferred interpretation, which would make PSD applicable to a pollutant on the basis of an EPA regulation requiring actual control of emissions of a pollutant, as well as interpretations that would make PSD applicable to a pollutant on the basis of an EPA regulation requiring monitoring or reporting of emissions of a pollutant, the inclusion of regulatory requirements for specific pollutants in an EPA-approved state implementation plan (SIP), an EPA finding of endangerment, and the grant of a Section 209 waiver. EPA is also taking comments on related issues and other interpretations that could influence this reconsideration. Comments must be received on or before **December 7, 2009**.

EPA Issues ANPR On Emissions Factors -- On October 14, 2009, EPA issued an Advanced Notice of Proposed Rulemaking (ANPR) to “convey issues raised by stakeholders about EPA’s emissions factors program, inform the public of our initial ideas on how to address these issues, and solicit comment on our current thinking to resolve these issues.” 74 Fed. Reg. 52723. EPA’s stated goal is to develop a self-sustaining emissions factors program that produces high quality, timely emissions factors, better indicates the precision and accuracy of emissions factors, encourages the appropriate use of emissions factors, and ultimately improves emissions quantification. Comments must be received on or before **November 13, 2009**.

RCRA/CERCLA

EPA Releases Updated Risk Analysis For Solvent-Contaminated Industrial Wipes -- On October 15, 2009, EPA announced that it is seeking public comment on a revised risk analysis



developed for the 2003 proposed Solvent-Contaminated Industrial Wipes Rule. EPA has revised the risk analysis in response to comments received when the rule was proposed. The rule is meant to improve the clarity and consistency of the regulations for wipes and reduce the cost of regulatory compliance, while maintaining the same level of protection for the environment.

The revised risk analysis, which was peer reviewed, includes updated data and information, including the use of a newly developed landfill model. The revised risk analysis shows that eight of the 20 solvents evaluated could pose a potential health risk if disposed of in an unlined municipal solid waste landfill. The revised risk analysis also shows one (tetrachloroethylene) of the 20 solvents evaluated has a potential health risk if the wipes or laundry sludge are disposed in a composite lined landfill.

In 2003, EPA proposed to exclude conditionally from the definition of hazardous waste disposable industrial wipes that are contaminated with hazardous solvents and are going to disposal. EPA also proposed to conditionally exclude from the definition of solid waste reusable industrial shop towels and rags that are contaminated with hazardous solvents and are sent for cleaning.

The public comment period will be open for 60 days after the notice is published in the *Federal Register*. More information on commenting on the risk analysis is available at <http://www.epa.gov/epawaste/hazard/wastetypes/wasteid/solvents/wipes.htm>.

EPA Plans To Develop Interim Preliminary Remediation Goals For Dioxin In Soil -- On October 15, 2009, EPA announced that it is seeking public comment on a plan to develop interim preliminary remediation goals (PRG) for dioxin in soil at contaminated sites. The plan includes a review of current dioxin cleanup guidance that has been established by EPA, states, and other countries, including the latest fully peer-reviewed dioxin toxicity assessments. EPA will release the draft interim PRGs for public comment in December 2009, and anticipates issuing the final interim PRGs in June 2010. EPA is currently undertaking a reassessment of dioxin, the results of which are expected to be released by the end of 2010.

More information on the plan and how to comment is available at <http://www.epa.gov/superfund/policy/remedy/sfremedy/remedies/dioxininterimplan.html>.

REACH

ECHA Issues Guidance On REACH In 22 Languages -- On September 24, 2009, the European Chemicals Agency (ECHA) announced that it has published guidance on information requirements, chemical safety assessment, substances in articles, registration, and downstream



user obligations in a further 21 European Union (EU) languages. These documents are intended to provide information to manufacturers and importers of chemicals as well as users of chemicals and producers of articles (end-user goods) on how to comply with the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) legislation. The English language versions of the six documents were published earlier. The guidance documents are now available in the following 22 languages: Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovakian, Slovenian, Spanish, and Swedish. These translations will be validated by the Competent Authorities of the Member States using these languages. Whenever such validation is received from a Member State, the corresponding translation will be revised to reflect this validation. The following translated documents are available from the relevant language version of the guidance section of the ECHA website.

Information Requirements and Chemical Safety Assessment:

- **Part A: Introduction to the Guidance Document** -- Provides an introduction to the guidance for conducting the chemical safety assessment and preparing the chemical safety report for substances manufactured or imported in a quantity of 10 tonnes or more per year.
- **Part D: Exposure Scenario Building** -- Details how to develop exposure scenarios and related exposure estimation.
- **Chapter R12: Use Descriptor System** -- Gives a brief general description of identified uses and how to give exposure scenarios a short title.

Guidance on Requirements for Substances in Articles -- This document assists producers and importers of articles in identifying whether they have obligations under REACH.

Guidance on Registration -- This document describes when and how to register a substance under REACH. It consists of two parts: one on Registration tasks and obligations and the other on the preparation of the Registration Dossier.

Guidance for Downstream Users - Linguistic Update Published in the Internet -- This document describes the roles and obligations of downstream users, and advises them on how to prepare for the implementation of REACH.



The translations of the six documents can be found in the guidance section of the ECHA website at http://guidance.echa.europa.eu/guidance_en.htm.

NANOTECHNOLOGY

EPA Announces SAP Meeting Concerning Nanosilver -- On September 16, 2009, EPA announced that its Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) will meet **November 3-6, 2009**, “to consider and review a set of scientific issues related to the assessment of hazard and exposure associated with nanosilver and other nanometal pesticide products.” 74 Fed. Reg. 47575. Nominations of candidates to serve as *ad hoc* SAP members for this meeting are due **September 30, 2009**. The meeting will be open to the public. EPA asks that written comments be submitted by **October 20, 2009**, to allow for distribution to the SAP, and that requests for oral comments be made by **October 27, 2009**. EPA also states that written comments and requests to make oral comments may be submitted until the date of the meeting, however.

The notice states that companies with an interest in marketing products that contain nanosilver and/or other nanometals or nanometal oxides as pesticides regulated under FIFRA have approached the Office of Pesticide Programs (OPP) seeking product registration. According to the notice, OPP believes, based on its understanding of the scientific literature, that pesticides containing nanoscale materials may pose different risks to humans and the environment than those of pesticides that do not contain nanomaterials. EPA is seeking advice and recommendations on the following issues:

1. Scientific evidence that nanosilver and other nanometals/nanometal oxides with dimensions in the range of 1 - ~100 nm have unique behavior under conditions relevant to human and environmental risk assessment and other properties (in addition to size) that may influence this behavior;
2. Recommendations regarding the types of data that OPP should require to evaluate the risks to humans and the environment for products containing free nanosilver and/or nanometals or nanometal oxides and products with incorporated nanosilver and/or nanometals or nanometal oxides with variable potential to leach and the relative priorities for obtaining recommended types of data; and
3. Recommendations regarding how OPP should conduct risk assessments of pesticide products containing nanosilver and/or nanometals or nanometal oxides.



EPA is seeking nominations of qualified individuals to be considered as prospective SAP candidates. According to the notice, individuals nominated should have expertise in one or more of the following areas: nanosilver and other nanometals; ecotoxicology and environmental fate of nanoparticles; characterization of nanoparticles; nanoparticle toxicology (inhalation and dermal absorption); nanoparticle toxicology in general; and nanoparticle occupational exposure. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominations should identify the nominee by name, occupation, position, address, and telephone number. EPA states that it “will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of *ad hoc* members for this meeting is a discretionary function of the Agency.”

PEN Holds Meeting On Transatlantic Regulatory Cooperation -- On September 23, 2009, the Woodrow Wilson International Center for Scholars Project on Emerging Technologies (PEN) hosted a meeting on “Transatlantic Regulatory Cooperation: Securing the Promise of Nanotechnologies.” The program is part of a collaborative research project involving experts from the London School of Economics (LSE), Chatham House, the Environmental Law Institute (ELI), and PEN. The project is funded by a grant from the European Commission to support pilot projects on “Transatlantic methods for handling global challenges.” The purpose of the meeting was to discuss recommendations from the research effort that are part of a report released on September 10, 2009. The meeting was also intended to generate and examine new ideas to enable greater transatlantic convergence on nanotechnology oversight today and in the future. The slides and webcast from the meeting, as well as the report and briefing paper, are available on the Internet at <http://www.nanotechproject.org/events/archive/ec/>.

The PEN meeting included two panels. The first consisted of David Rejeski, Director, PEN; Leslie Carothers, President, ELI; Linda Breggin, Senior Attorney, ELI; Robert Falkner, Senior Lecturer in International Relations, LSE; and John Pendergrass, Senior Attorney, ELI. The second panel included Andrew Maynard, Chief Science Advisor, PEN; Mitchell Cheeseman, Acting Director, Office of Food Additive Safety, Food and Drug Administration; J. Clarence Davies, Senior Advisor, PEN; Richard A. Denison, Senior Scientist, Environmental Defense Fund; Astrid Koch, Science and Technology Section, European Commission; and William Gullledge, ACC.

EPA Announces Research Strategy To Study Nanomaterials -- On September 30, 2009, EPA announced the availability of the *Nanomaterial Research Strategy* (Strategy), which EPA describes as its new research strategy to understand better how manufactured nanomaterials may harm human health and the environment. The Strategy outlines what research EPA intends to support over the next several years to generate information about the safe use of nanotechnology



and products that contain nanoscale materials. The Strategy also includes research into ways nanotechnology can be used to clean up toxic chemicals in the environment. In its announcement, EPA states that its role among federal agencies “is to determine the potential hazards of nanotechnology and develop approaches to reduce or minimize any risks identified. As part of the strategy, researchers are investigating widely used nanomaterials, such as carbon nanotubes, which are used in vehicles, sports equipment and electronics; and titanium dioxide, which is used in paints, cosmetics and sunscreens.” The Strategy is available on the Internet at http://www.epa.gov/nanoscience/files/nanotech_research_strategy_final.pdf.

Obama Issues Executive Order Focused On Federal Leadership In Environmental, Energy, And Economic Performance -- President Obama signed an Executive Order that sets sustainability goals for federal agencies and focuses on making improvements in their environmental, energy, and economic performance. The Executive Order requires federal agencies to set a 2020 GHG emissions reduction target within 90 days; increase energy efficiency; reduce fleet petroleum consumption; conserve water; reduce waste; support sustainable communities; and leverage federal purchasing power to promote environmentally-responsible products and technologies. The federal government occupies nearly 500,000 buildings, operates more than 600,000 vehicles, employs more than 1.8 million civilians, and purchases more than \$500 billion per year in goods and services. The Executive Order builds on and expands the energy reduction and environmental requirements of Executive Order 13423 by making reductions of GHG emissions a priority of the federal government, and by requiring agencies to develop sustainability plans focused on cost-effective projects and programs. Projected benefits to the taxpayer include substantial energy savings and avoided costs from improved efficiency. The Executive Order was developed by the Council on Environmental Quality (CEQ), the Office of Management and Budget (OMB), and the Office of the Federal Environmental Executive (OFEE), with input from the federal agencies that are represented on the Steering Committee established by Executive Order 13423. The new Executive Order requires agencies to measure, manage, and reduce GHG emissions toward agency-defined targets. It describes a process by which agency goals will be set and reported to the President by the Chair of CEQ. The Executive Order also requires agencies to meet specified energy, water, and waste reduction targets. Implementation of the Executive Order will focus on integrating achievement of sustainability goals with agency mission and strategic planning to optimize performance and minimize implementation costs. Each agency will develop and carry out an integrated Strategic Sustainability Performance Plan that prioritizes the agency’s actions toward the goals of the Executive Order based on lifecycle return on investments. Implementation will be managed through the previously-established OFEE, working in close partnership with OMB, CEQ, and the agencies.



LEGISLATIVE DEVELOPMENTS

House Committee Addresses Algal Bloom Dead Zones -- The House Science and Technology Subcommittee on Energy and the Environment passed by voice vote legislation to establish programs to reduce harmful algal blooms and “dead zones,” areas characterized by low levels of oxygen. The Subcommittee measure if passed by the full House would authorize \$35 million per year from 2010 through 2014, to be administered through the National Oceanic and Atmospheric Administration (NOAA). The legislation would require that plans be developed via a task force within two years of enactment.

House And Senate Conference Agrees To Budget For Energy And Water Programs -- On September 30, 2009, Conferees for the two Houses agreed to fund energy and water projects in the amount of \$33.5 billion for fiscal 2010. That amount is a modest increase from the prior year’s funding, but nearly \$1 billion below what the Administration had sought. The programs that saw a material increase in funding were projects dealing with energy efficiency and renewable energy, smart grid transmission research, and research dealing with energy storage and cybersecurity. The full House has approved the conference report by a vote of 308-114. Senate action was expected early in October, but has been delayed due to a hold placed on the conference report by Tom Coburn (R-OK). Senator Coburn is objecting to a provision in the measure that restricts dissemination of various agency reports to members of the appropriations committees, instead of making them available to all members of Congress. A meeting will be held at an early date to attempt to resolve the hold issue.

Appropriations For EPA Lead To Negotiations -- The House and Senate will go to conference to resolve differences in the amounts appropriated for EPA for fiscal 2010. The House passed a continuing resolution on September 25, 2009, to keep the government running into the new fiscal year, until November 1. The major issues between the two houses that need to be resolved involve state and tribal funding programs and EPA research and development, and environmental programs and management. The last category involves the costs of keeping EPA running, namely salaries, administrative costs, maintenance, and operations. The Appropriations measure has become the vehicle for voicing displeasure with various programs, and attempts to defeat the measure if those programs are not dropped. Some examples are an amendment in the Senate by James DeMint (R-SC) to bar implementation of Interior biological opinions relating to endangered fish species and avoid the shutting off of water to farmers. Another controversial amendment to be introduced by David Vitter (R-LA) would bar the use of federal funds to regulate carbon dioxide emissions until foreign powers China and India entered into agreements to make similar reductions. Senator Vitter has already filed amendments, the gist of which are to prohibit EPA from implementing endangerment findings for GHG emissions until such time as EPA conducts evaluation of the effect on jobs that may result if the rule is finalized. In a similar



vein, Senator Kit Bond (R-MO) is going to introduce amendments to protect farmers and workers from what he referred to as “backdoor” attempts to impose carbon dioxide regulations.

Vehicle Research Funds Increased -- The House of Representatives passed a measure on September 16 that would provide \$2.85 billion funding for federal research on hybrid, electronic, and other like vehicles in the period from 2010 through 2014. A major objective of the program is to reduce or eliminate altogether the use of gas and diesel in various classes of vehicles.

OSHA

OSHA Issues Proposed Rule To Align Hazard Communication Standard With United Nations Globally Harmonized System Of Classification And Labelling of Chemicals -- On September 30, 2009, the Occupational Safety and Health Administration (OSHA) proposed a rule that would align the Hazard Communication Standard (HCS) with provisions of the United Nations Globally Harmonized System of Classification and Labelling of Chemicals (GHS). 74 Fed. Reg. 50280. The HCS requires chemical manufacturers and importers to evaluate chemical hazards and provide information to subsequent users. According to OSHA, it made a preliminary determination that the proposed HCS modifications “will improve the quality and consistency of information provided to employers and employees regarding chemical hazards and associated protective measures.” The proposed modifications include revised criteria for classification of chemical hazards; revised labeling provisions that include requirements for use of standardized signal words, pictograms, hazard statements, and precautionary statements; a specified format for safety data sheets (SDS); and related revisions to definitions of terms used in the standard, requirements for employee training on labels and SDSs. OSHA is also proposing to modify provisions of a number of other standards, including standards for flammable and combustible liquids, process safety management, and most substance-specific health standards, to ensure consistency with the modified HCS requirements. OSHA intends to schedule an “informal” public hearing on the proposed rule, and it will announce the location and date of the hearing in a future *Federal Register* notice. Comments on the proposed rule are due **December 29, 2009**.

MISCELLANEOUS

White House Report Proposes Strategy For Ocean Management -- On September 7, 2009, the White House CEQ released a report outlining a proposed strategy to better protect, restore, and manage ocean waters, coastlines, and the Great Lakes. President Obama created the Interagency Ocean Policy Task Force in a June 12 memorandum, and the report is a product of that group. The 38-page document calls for a new national ocean policy and an interagency National Ocean Council to coordinate ocean-related issues across all federal agencies and implement the new policy. The report also identifies nine priority objectives, such as ecosystem-based management,



to tackle the most pressing challenges while a new national policy is being developed, White House CEQ Chair Nancy Sutley said during a telephone news conference. The nine priority objectives for implementing a new national policy are: adopt ecosystem-based management practices; implement comprehensive, integrated ecosystem-based coastal and marine spatial planning; make informed decisions and improve understanding of the issues; better coordinate and support federal, state, tribal, local, and regional ocean management and policy decisions; strengthen resiliency of coastal communities and marine and Great Lakes environments and their abilities to adapt to climate change and other impacts; establish and implement an integrated ecosystem protection and restoration strategy; enhance water quality in the ocean and in the Great Lakes; address environmental stewardship needs in the Arctic Ocean and adjacent coastal areas in the face of climate-induced and other environmental changes; and strengthen and integrate federal and non-federal ocean observing systems, sensors, and data collection platforms into a national system and integrate that system into international observation efforts. The Interim Report of the Interagency Ocean Policy Task Force is available at <http://www.Whitehouse.gov/oceans>. Comments are due by **October 17, 2009**.

Canada Issues Draft Orders To Designate Substances As Toxics -- On October 3, 2009, Environment Canada and Health Canada published three draft orders that would declare seven chemicals toxic under the Canadian Environmental Protection Act (CEPA) and would give the government more regulatory authority to control the substances. One draft order would list as toxic diethyl sulfate and dimethyl sulfate as well as the antioxidant benzenamine, also known as BNST. The second draft order would list the organotin compounds tributyltins and tetrabutyltins as toxic. The tin compounds have a variety of uses, from catalysts to industrial biocides to wood preservatives. The departments proposed the two organotins for virtual elimination. The third draft order addresses acrylamide and a form of ethanol known as TCEP. Full text of the Environment Canada and Health Canada order to list tributyltins and tetrabutyltins as toxic is available at <http://www.gazette.gc.ca/rp-pr/p1/2009/2009-10-03/html/reg4-eng.html>. The order on diethyl sulfate, dimethyl sulfate, and BNST is available at <http://www.gazette.gc.ca/rp-pr/p1/2009/2009-10-03/html/reg2-eng.html>. The order on acrylamide and TCEP is available at <http://www.gazette.gc.ca/rp-pr/p1/2009/2009-10-03/html/reg3-eng.html>.

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