



MEMORANDUM

Via E-Mail

DATE: September 30, 2009

TO: Clients and Friends

FROM: The Acta Group, L.L.C.

RE: EPA Announces Principles for TSCA Reform

Last night, in a speech at the Commonwealth Club in San Francisco, U.S. Environmental Protection Agency (EPA) Administrator Lisa Jackson announced the Obama Administration's core principles for legislative reform of the Toxic Substances Control Act (TSCA). In parallel with the legislative initiative, Jackson also announced EPA's plans to strengthen its current chemical management program and increase the pace of its efforts to address chemicals that pose a risk to the public. Jackson stated that, with the leadership of Senators Barbara Boxer (D-CA) and Frank Lautenberg (D-NJ) and Representatives Henry Waxman (D-CA) and Bobby Rush (D-IL), TSCA legislation is expected to be introduced shortly. The Obama Administration intends its "Essential Principles for Reform of Chemicals Management Legislation" to aid Congress during the legislative process. Lautenberg confirmed that he "will introduce legislation soon to turn these new principles into law." More information is available at <http://www.epa.gov/oppt/existingchemicals/index.html>.

Essential Principles for Reform of Chemicals Management Legislation

The principles listed below are intended to provide EPA with "the mechanisms and authorities to expeditiously target chemicals of concern and promptly assess and regulate new and existing chemicals in commerce":

- Chemicals should be reviewed against safety standards that are based on sound science and reflect risk-based criteria protective of human health and the environment;



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- Manufacturers should provide EPA with the necessary information to conclude that new and existing chemicals are safe and do not endanger public health or the environment;
- Risk management decisions should take into account sensitive subpopulations, cost, availability of substitutes, and other relevant considerations;
- Manufacturers and EPA should assess and act on priority chemicals, both existing and new, in a timely manner;
- Green chemistry should be encouraged and provisions assuring transparency and public access to information should be strengthened; and
- EPA should be given a sustained source of funding for implementation.

Yesterday, Richard Denison, Ph.D., Environmental Defense Fund (EDF), posted a blog item entitled “Straight from the Horse’s Mouth: EPA Antes Up on TSCA Reform.” According to Dennison, the Obama Administration’s Principles “encompass most of the elements EDF and others have for years been arguing are essential to TSCA reform.” The blog item is available at <http://blogs.edf.org/nanotechnology/2009/09/29/straight-from-the-horses-mouth-epa-antes-up-on-tsca-reform/>.

Enhancements to EPA’s Chemical Management Program

While the Obama Administration believes that legislative reform is necessary for an effective chemicals management program, Jackson stated that EPA is committed to strengthening the performance of the current program in the meantime. EPA’s web page entitled “Enhancing EPA’s Chemical Management Program,” available at <http://www.epa.gov/oppt/existingchemicals/pubs/enhanchems.html>, includes the following information:



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New Regulatory Risk Management Actions

EPA is taking risk management actions on a number of chemicals, including lead, mercury, formaldehyde, polychlorinated biphenyls (PCBs), glymes, and certain carbon nanotubes. These actions include:

- Lead:
 - Strengthening the lead paint work practice standards for renovation and remodeling, issued in 2008, to:
 - ◆ Expand coverage and eliminate the “opt out” provisions;
 - ◆ Require clearance testing after renovation; and
 - ◆ Address lead-safe work practices for public and commercial buildings.
 - Initiating rulemaking under TSCA Section 6 to ban the use of lead weights in tires.
- Mercury:
 - Initiating rulemaking under TSCA Section 6 to phase out or ban the use of mercury in a range of switches, relays, measuring devices, and other products.
- Formaldehyde:
 - Initiating rulemaking governing formaldehyde emissions from pressed wood products.
- PCBs:



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- Initiating rulemaking under TSCA Section 6 to re-evaluate the TSCA PCB use and distribution in commerce regulations.
- Glymes:
 - Initiating rulemaking under TSCA Section 5(a)(2) to require prior notification of any new consumer use of monoglyme (CASRN 110-71-4), diglyme (CASRN 111-96-6), and ethylglyme (CASRN 629-14-1).
- Nanomaterials -- Carbon Nanotubes:
 - Initiating rulemaking under TSCA Section 5(a)(2) to require protective measures to limit exposure or otherwise mitigate the potential unreasonable risk presented by two carbon nanotube chemical structures (P-08-177 and P-08-328).

Development of Chemical Action Plans

EPA is developing chemical action plans that will target its risk management efforts on chemicals of concern. These action plans will be based on EPA's review of available hazard, exposure, and use information, and will outline the risks that each chemical may present and what specific steps EPA will take to address those concerns.

EPA intends to utilize the full array of regulatory tools under TSCA to address risks, including authority to label, restrict, or ban chemicals under TSCA Section 6.

The initial list of chemicals EPA is considering for action plan development includes:

- Benzidine dyes and pigments;
- Bisphenol A (BPA);
- Penta, octa, and decabromodiphenyl ethers (PBDEs) in products;



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- Perfluorinated chemicals;
- Phthalates; and
- Short-chain chlorinated paraffins

EPA anticipates completing and posting an initial set of four action plans in **December 2009** and will complete and post additional chemical action plans at four-month intervals. EPA will initiate a stakeholder dialogue to address the prioritization of chemicals for future risk management action.

Requiring Information Needed to Understand Chemical Risks

EPA will move quickly to ensure that it has the hazard, use, and exposure data critical to prioritizing chemicals for review and making risk management decisions. As part of this effort, EPA intends to:

- Require that companies submit information to fill the remaining gaps in basic health and safety data on high production volume (HPV) chemicals;
- Make the reporting of chemical use information more transparent, more current, more useful, and more useable by the public; and
- Require additional reporting on nanoscale chemical substances, and consider how to address new and existing nanoscale substances under TSCA.

These activities will include a number of new actions under TSCA Sections 4, 5, and 8:

- **High Production Volume (HPV) Chemicals:** The HPV Challenge Program challenged companies to submit basic screening level hazard data on HPV chemicals. Some HPV chemicals did not have sponsors for submitting health and safety data under the HPV Challenge Program, and some of the sponsoring companies failed to submit all the data they had committed to provide on their chemicals. EPA plans to fill the current gaps in health and safety data on HPV chemicals by:



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- Publishing test rules under TSCA Section 4 on unsponsored chemicals and to fill current gaps in data on sponsored but unfulfilled chemicals;
 - Continuing to develop and post hazard characterizations. EPA posted new hazard characterizations on 100 HPV chemicals in September 2009; and
 - Initiating action to require notification and possible follow-up testing that would be triggered under significant new use rules under TSCA Section 5(a)(2) on additional HPV chemicals.
- Inventory Update Reporting (IUR): The IUR requires companies to report production volume, processing, and use information on chemicals.
- In **early 2010**, EPA will propose modifications to the IUR rule under TSCA Section 8. EPA plans to propose a range of options for public comment to make the reporting of chemical use information more transparent, more current, more useful, and more useable by the public.
- Nanoscale Chemical Substances: Many nanomaterials are regarded as “chemical substances” under TSCA.
- In January 2009, EPA released an interim report on the Nanoscale Materials Stewardship Program (NMSP), noting that a number of the environmental health and safety data gaps EPA hoped to fill through the NMSP still exist. To address those gaps, EPA is developing:
 - ◆ A proposed rule under TSCA Section 8(a) to require companies to report data on existing uses, production volumes, specific physical properties, chemical and structural characteristics, methods of manufacture and processing, exposure and release



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information, and available health and safety data on nanoscale materials.

- ◆ A proposed rule under TSCA Section 4 to require companies to test several manufactured nanomaterials for health and environmental effects.
- EPA is also reviewing how to address nanoscale chemical materials under TSCA.

Increasing Public Access to Information about Chemicals

EPA intends to increase transparency and the public's access to information about chemicals. EPA is currently reviewing ways to make more information about chemicals more easily available to the public.

Engaging Stakeholders in Prioritizing Chemicals for Future Risk Management Action

Prioritizing chemicals for future risk management action is the final component of this effort. EPA intends to engage formally stakeholders and the public in this discussion in the coming months through public notices and public meetings.

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We hope this information is helpful. As always, please call if you have any questions.