



## TSCA News Roundup, January 2017

### TSCA, PEOPLE IN THE NEWS, US EPA, CHEMICALS OF INTEREST

By LANA BECKETT, January 5, 2017

ACC Creates Hub to Help Companies Comply with New TSCA Rules The American Chemistry Council (ACC) announced the creation of the **Center for Chemical Safety Act Implementation**<sup>1)</sup>, a scientific, technical, and advocacy hub that they claim will assist companies with the implementation of the **Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA)**<sup>2)</sup>, legislation enacted to modernize the Toxic Substances Control Act (TSCA).

Under the new law, chemical manufacturers, processors, importers and downstream users of chemistry will have multiple opportunities to provide input to the Environmental Protection Agency (EPA) and may be subject to Agency requests for additional information on chemicals. In an effort to share costs and promote efficiency, this new Center will provide opportunities for companies to work together through consortia to develop comments or new data to submit to EPA. This new collective effort will also help inform EPA decisions on chemical prioritization, risk evaluations and risk management options.

"Because of our constructive role in the enactment of the LCSA, ACC is well versed in the new law, and we are already actively engaged with EPA on implementation," said **ACC President and CEO Cal Dooley**<sup>3)</sup>.

Critique of First 10 Substances to be Reviewed Under TSCA **Lawrence E. Culleen**<sup>4)</sup> and **Erika Norman**<sup>5)</sup>, attorneys with Arnold & Porter, recently **critiqued the first 10 high-priority substances**<sup>6)</sup> to be reviewed under TSCA [see **EPA Names First Ten Chemicals and Proposes First Chemical Ban Under New TSCA**<sup>7)</sup>, December 23, 2016].

Culleen and Norman pointed out that "Methylene Chloride and NMP, which have both low environmental persistence and potential for bioaccumulation, were less likely choices—especially considering that EPA recently submitted proposed regulations to OMB for review that will likely propose limits on certain uses of those two substances pursuant to Section 6(a) of TSCA. EPA choice of trichloroethylene (TCE) is similarly somewhat surprising, given that EPA has also undertaken a rulemaking with respect to TCE under TSCA Section 6(a) and the Notice of Proposed Rulemaking has been under review at OMB for some time and is projected to be published in the Federal Register in December. This strongly suggests there are uses for these three substances that remain of concern to EPA and that fall outside of the scope of the proposed rules EPA already has submitted to OMB for review. It also might be the case that Agency officials, in view of the impending change of Administrations, want to provide some "insurance" through these particular listings and provide the additional momentum that can be leveraged by NGOs who can point to the new statutory deadlines should the pending proposals get stalled (or derailed) along the way."

They wrote that "Carbon tetrachloride is a listing that is somewhat curious. Carbon tetrachloride has a hazard score of 3, is carcinogenic, was widely used in consumer products, has high reported releases to the environment, is highly persistent, and has been detected in drinking water supplies. Nevertheless, the major consumer uses in the US have largely ceased, maximum concentration limits have been established for drinking water, and there are workplace regulations governing its use and limiting worker exposures."

They also pointed out that one of the major NGOs, Safer Families, which worked on the reform legislation, had 5 of the chemicals they suggested to EPA show up on the list. At least 50 other groups endorsed their choices in a letter to the agency. The chemicals not listed were: Cadmium & Cadmium Compounds, Lead & Lead Compounds, Nonylphenol and Nonylphenol Ethoxylates (NP/NPEs), Octamethylcyclotetrasiloxane (D4), and Styrene.

Risk Limits Under TSCA Continue Past Practice **Bloomberg BNA**<sup>8)</sup> reporter Steven Gibb interviewed several past EPA officials and other experts in the field to find out their opinions on defining what "unreasonable risk" means for chemicals as it crafts a risk evaluation rule to be finalized in June 2017.

EPA told **Bloomberg BNA**<sup>9)</sup> , "'unreasonable risk' under the new law is now a purely risk-based standard that will be profoundly more protective of human health and the environment ... Further, in making an 'unreasonable risk' determination, EPA must now explicitly consider risks to vulnerable subpopulations who, due to either greater susceptibility or greater exposure, may be at greater risk from the chemicals."

Former EPA toxics chief Jim Aidala and former EPA risk assessor Oscar Hernandez, both based in Washington D.C. with Bergeson and Campbell PC, see no dramatic change. "I would not expect any dramatic changes at this point without the blessing of EPA science advisers or the National Academy of Sciences," said Hernandez.

When asked about the increases in costs on industry for chemical rules that employ stricter risk standards due to susceptible subpopulations, Tracey Woodruff with the University of California, San Francisco (and who also sits on Proposition 65's Developmental and Reproductive Toxicant Identification Committee panel) said "the costs of not regulating are borne by the public."

NRDC Says Cheaper, Safer Alternatives for TCE Available Jennifer Sass, Senior Scientist with NRDC, recently **wrote about US EPA's proposed ban of trichloroethylene (TCE)**<sup>10)</sup> .

She said that many companies have already replaced TCE with less toxic or non-toxic **alternatives**<sup>11)</sup> .

"Although there is big money to be made in the safer replacement products, nonetheless the TCE manufacturers continue a **decades-long battle (pdf)**<sup>12)</sup> to defeat any restrictions on TCE. The Halogenated Solvents Industry Alliance, Inc. (HSIA)—a trade group representing manufacturers of solvents, including TCE, continues to **defend TCE**<sup>13)</sup> against regulatory actions" she wrote. "And, TCE has friends in Congress as well. Soon-to-be former Senator David Vitter (R-La.), along with Senators Mike Crapo (R-Idaho) and James Inhofe (R-Okla.) are all on record challenging EPA's TCE assessment (for example, see **Chemical Watch**<sup>14)</sup> , July 2014 and **Senator's letter**<sup>15)</sup> , June 2014)."

ACC Takes EPA to Task on Slow Pace of Implementation Under TSCA Section 5 EPA's section 5 implementation effort is a marked contrast to progress in other areas that EPA has made in implementing TSCA, wrote **Karyn Schmidt**<sup>16)</sup> in her American Chemistry Council **blog**<sup>17)</sup> .

She said "Some 350 pre-manufacturing notices (PMNs), the mechanism by which EPA reviews new chemicals, were pending as of the date the amendments were enacted. Since that time, some 200 new PMNs have been filed with the Agency. In a program that has regularly reviewed about 1,000 PMNs a year, EPA's pace of review has dropped off dramatically. Since the date of enactment, only 27 PMNs (each finding that a substance is 'not likely to pose an unreasonable risk') have been posted. Interim recommendations for 172 others are posted on EPA's website, but progress toward a final decision has been extremely slow."

"A substantial part of the delay is attributable to EPA's interpretation of the section 5 changes, an interpretation that is having measurable impacts on innovation," she wrote. "EPA has expanded its review of new chemicals well beyond the uses designated by the PMN submitter, and in some cases has focused on uses (and in some cases manufacturing processes) that are remote or speculative, well beyond those reasonably anticipated from the conditions of use described in the PMN."

"Delay is also caused by EPA's refusal to apply its so-called 'non-section 5(e) significant new use rule (SNUR)' authority — authority that was not changed by Congress" she claims. "Non-section 5(e) SNURs can be issued more quickly than 5(e) orders, and they're effective — they address new uses outside the PMN by requiring advance notice to the Agency through a Significant New Use Notification. Now, however, EPA seems poised to issue section 5(e) consent orders in the vast majority of PMN cases. The refusal to issue non-5(e) SNURs and instead issue orders means the Agency is opting to return to the status quo before 1995..."

"Because chemicals are building blocks for everything else, delays bringing new chemistries to market work just like construction delays — the lag time to get approval affects everything down the value chain. A delay doesn't just hurt the PMN submitting company; it hurts all the companies in the supply chain — and the consumer."

## **Resources for this article**

### **1. Center for Chemical Safety Act Implementation**

<https://www.americanchemistry.com/Center-for-Chemical-Safety-Act-Implementation.html>

### **2. Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA)**

<https://www.americanchemistry.com/Policy/Chemical-Management/LCSA.html>

### **3. ACC President and CEO Cal Dooley**

<https://www.americanchemistry.com/Dooley/>

### **4. Lawrence E. Culleen**

<http://www.apks.com/en/people/c/culleen-lawrence-e>

### **5. Erika Norman**

<http://www.apks.com/en/people/n/norman-erika>

### **6. critiqued the first 10 high-priority substances**

<http://www.apks.com/en/perspectives/publications/2016/12/epa-publishes-a-tsca-top-10>

### **7. EPA Names First Ten Chemicals and Proposes First Chemical Ban Under New TSCA**

<https://prop65clearinghouse.com/articles/3200>

### **8. Bloomberg BNA**

<https://www.bna.com/risk-limits-new-n73014448246/>

**9. wrote about US EPA's proposed ban of trichloroethylene (TCE)**

<https://www.nrdc.org/experts/jennifer-sass/epa-proposes-restrictions-tce-toxic-solvent-under-tsca>

**10. alternatives**

[http://www.turi.org/TURI\\_Publications/TURI\\_Chemical\\_Fact\\_Sheets/Trichloroethylene\\_TCE\\_Fact\\_Sheet/TCE\\_Facts/Alternatives](http://www.turi.org/TURI_Publications/TURI_Chemical_Fact_Sheets/Trichloroethylene_TCE_Fact_Sheet/TCE_Facts/Alternatives)

**11. decades-long battle (pdf)**

<https://www.nrdc.org/sites/default/files/IrisDelayReport.pdf>

**12. defend TCE**

<http://www.hsia.org/news.asp>

**13. Chemical Watch**

<https://chemicalwatch.com/register?o=20368&productID=1&layout=main>

**14. Senator's letter**

<http://www.epw.senate.gov/public/index.cfm/press-releases-republican?ID=4CFA4C64-BC90-A04B-9AC0-ECBC4DAF4027>

**15. Karyn Schmidt**

[https://blog.americanchemistry.com/author/karyn\\_schmidt/](https://blog.americanchemistry.com/author/karyn_schmidt/)

**16. blog**

<https://blog.americanchemistry.com/2016/12/growing-pains-in-implementing-the-new-tsca-section-5-and-its-critical-role-in-innovation/>