

EPA ANNOUNCES 10 CHEMICALS TO BE EVALUATED FOR RISKS TO HUMAN HEALTH AND THE ENVIRONMENT

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Toxic Tort/Environmental, Land and Natural Resources Alert

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This client alert is the fifth in a series that discusses the significant changes instituted by the passage of a new federal Toxic Substances Control Act. The first alert addressed broadly the law's myriad of changes and the second alert discussed the significant changes instituted by its passage. The third alert addressed how TSCA, as amended, preempts state regulation of chemicals and preserves certain state laws and regulatory authority. The fourth alert discussed changes to confidential business information disclosure requirements. A future alert will cover international impacts of the amendments.

On November 29, 2016, the Environmental Protection Agency ("EPA") announced 10 chemicals that it will evaluate for potential risks to human health and the environment pursuant to its new authority under the recently enacted Frank R. Lautenberg Chemical Safety for the 21st Century Act (the "Act"), which revised, updated, and replaced the 1976 federal toxic substances statute, known as the Toxic Substances Control Act ("TSCA"). Many of the 10 targeted chemicals are incorporated into a wide variety of consumer end products, such as appliances, personal care products, and textiles. The results of these evaluations, therefore, could significantly impact a broad spectrum of manufacturers.

Over the years, TSCA has been subject to criticism in large part due to the requirement that EPA choose the "least burdensome" way of addressing the risks posed by any given chemical. The Act significantly expands EPA's authority under TSCA by removing the "least burdensome" standard and eliminating the requirement that EPA undertake formal rulemaking before requiring companies to test chemical substances. Under the new law, EPA can require toxicity testing through an administrative order, which requires considerably less administration and time. The Act further modified TSCA such that EPA is now required to evaluate existing chemicals under a new, risk-based safety standard pursuant to clearly defined and enforceable deadline.

Pursuant to those new requirements and deadlines, EPA has announced that it will evaluate the following 10 chemicals:

- 1,4-Dioxane
- 1-Bromopropane
- Asbestos
- Carbon Tetrachloride
- Cyclic Aliphatic Bromide Cluster

- Methylene Chloride
- N-methylpyrrolidone
- Pigment Violet 29
- Trichloroethylene
- Tetrachloroethylene

EPA previously conducted risk assessments for three of these chemicals (Trichloroethylene, N-methylpyrrolidone, and methylene chloride) under the old TSCA and is currently drafting proposed rules for them that it plans to publish in December 2016. Those rules, however, cover certain specified uses of the chemicals only, and the new evaluations may result in additional or more comprehensive restrictions.

EPA must complete the 10 risk evaluations within three years to determine whether the chemicals present an unreasonable risk to human health or the environment and must mitigate any such risk within two years. Given the prevalent use of many of these chemicals, the results of these evaluations could significantly impact several industries, including the pharmaceutical, agrochemical, cosmetics, and adhesives industries, both in terms of manufacturing and finished products. While the actual extent of that impact is uncertain, companies who manufacture these 10 chemicals or incorporate them into end products should be cognizant that EPA may severely restrict, limit, or modify their use in the foreseeable future. We will continue to monitor the developments in this area and can provide guidance to companies regarding compliance once those rules are issued.

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