



Recent Federal Developments August 15, 2009

TSCA/FIFRA/NTP/EPCRA

EPA Moves TSCA Chemicals From CBI To Public Inventory -- On July 28, 2009, the U.S. Environmental Protection Agency (EPA) updated the Toxic Substances Control Act (TSCA) Chemical Substance Inventory (TSCA Inventory) Master File to list 530 chemical substances as non-confidential on the TSCA Inventory that were previously listed as confidential. 74 Fed. Reg. 37224. EPA stated the action was necessary because these chemical substances no longer qualify for listing as confidential business information (CBI) under TSCA. The complete list of these chemical substances is provided in Docket Number EPA-HQ-OPPT-2008-0848 at <http://www.regulations.gov>. The updated public version of the TSCA Inventory will be available on or after August 3, 2009. This update was effective on July 22, 2009.

EPA Clarifies Applicability Of Significant New Use Rules -- On June 24, 2009, EPA issued final Significant New Use Rules (SNUR) under TSCA for 23 new chemicals, including two carbon nanotubes (nanoscale materials). 74 Fed. Reg. 29982. The SNURs allow the commercialization of specific carbon nanotubes under limited conditions to protect against unreasonable risks to human health and the environment. The SNURs require companies to notify EPA at least 90 days before manufacture, import, or processing of the specific carbon nanotubes for any activity not meeting the conditions specified in the rules at 40 C.F.R. Section 721.10155 and 40 Section C.F.R. 721.10156. Stakeholders reportedly have asked EPA whether these SNURs apply to all variants of carbon nanotubes. EPA clarified that the SNURs only apply to the specific carbon nanotubes that were the subject of the premanufacture notices (PMN) submitted under TSCA Section 5, and not to any other carbon nanotubes. Other carbon nanotubes must be notified through EPA's New Chemicals Program. EPA used this occasion to encourage all manufacturers and importers of nanoscale materials that are intended for commercial use to consult with EPA in advance of production or importation.

Product Stewardship Program (PSP) For Six Siloxanes Conducted Under A Memorandum Of Understanding (MOU) Signed By EPA And The Dow Corning Corporation -- On July 30, 2009, EPA issued a notice announcing receipt and availability of data developed under a MOU signed on April 9, 1996, by EPA and the Dow Corning Corporation. 74 Red. Reg. 38013. The MOU covered six siloxanes deemed representative of a broad class of siloxanes that have widespread use in a variety of industrial and consumer applications. A Public Docket has been established and documents are publicly available under Docket Number EPA-HQ-OPPT-2009-0180 at <http://regulations.gov>.

Under the MOU, health effects and exposure data, as well as strategies for communicating with employees, customers, and the public, were developed for the following siloxanes:



Octamethylcyclotetrasiloxane	D4	556-67-2
Decamethylcyclopentasiloxane	D5	541-02-6
Dodecamethylcyclohexasiloxane	D6	540-97-6
Hexamethyldisiloxane	HMDS	107-46-0
Polydimethylsiloxane	PDMS 10cs	63148-62-9
Polydimethylsiloxane	PDMS 350cs	63148-62-9

The PSP MOU was based on the Responsible Care principles developed by the Chemical Manufacturers Association -- now the American Chemistry Council (ACC) -- including 15 product stewardship goals organized under A) Communication of Health and Safety Data; B) Toxicity and Exposure Data Development; C) Pollution Prevention Actions; and D) Environmental Responsibility.

ITC Issues Sixty-Fourth Report To The Administrator Of EPA -- On August 4, 2009, the TSCA Interagency Testing Committee (ITC) transmitted its 64th report to the Administrator of EPA on June 25, 2009. 74 Fed. Reg. 38878. In the 64th ITC Report, which is included with the notice, the ITC has no revisions to the TSCA Section 4(e) Priority Testing List at this time. Importantly, the ITC identified data needs for occupational exposure and toxicity data for listed nanoscale materials. Comments on the report and the nanoscale materials data needs must be received on or before **September 3, 2009**.

Justice Department And USDA To Hold Public Workshops To Explore Competition Issues In The Agriculture Industry -- On August 5, 2009, Attorney General Eric Holder and Agriculture Secretary Tom Vilsack announced that the Department of Justice and the U.S. Department of Agriculture (USDA) will hold joint public workshops to explore competition issues affecting the agriculture industry in the 21st century and the appropriate role for antitrust and regulatory enforcement in that industry. These are the first joint Department of Justice/USDA workshops ever to be held to discuss competition and regulatory issues in the agriculture industry.

The joint Department of Justice/USDA workshops will address the dynamics of competition in agriculture markets, including, among other issues, buyer power (also known as monopsony) and vertical integration. They will examine legal doctrines and jurisprudence and current economic learning, and will provide an opportunity for farmers, ranchers, consumer groups, processors, the agribusinesses, and other interested parties to provide examples of potentially anticompetitive conduct. The workshops will also provide an opportunity for discussion for any concerns about the application of the antitrust laws to the agricultural industry.

The public and press are invited to attend the hearings. Additional information about the date, time, and location of the workshops will be provided at a later date. Interested parties should



submit written comments in both paper and electronic form to the Department of Justice no later than **December 31, 2009**. All comments received will be publicly posted.

EPA Letter Reminds Pesticide Companies Of Federal Pesticide Label Regulations And EPA's Position On Use Of Terms Like "Professional Strength" -- EPA has posted a recent letter regarding permissible product names and advertising for pesticide products. According to EPA, the goal of this letter is to remind pesticide producers and distributors of federal pesticide label regulations and EPA's process for addressing misbranded products, such as those with false and misleading statements. The letter includes examples of statements that are considered false or misleading according to federal regulations (40 C.F.R. Section 156.10(a)(5)). EPA further explains why it finds the use of the term "Professional" in product names, labeling, and marketing to be false or misleading under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and therefore unacceptable. Pesticides cannot be sold, distributed, and promoted with inappropriate words such as "Professional" and "Professional Grade" in product names and advertising. This applies to distributor products as well as the basic registered product. When distributor products contain claims that have not been accepted for the basic registration, the label is in violation of 40 C.F.R. Section 152.132(d). Both the distributor and the basic registrant are liable for violations pertaining to the distributor product. The letter is available on EPA's website at <http://www.epa.gov/pesticides/regulating/labels/product-labels.htm>. EPA's Office of Pesticide Programs (OPP) provides information on its website about the regulations that govern labels and advertising, along with tools for understanding how EPA reviews pesticide labels (http://www.epa.gov/pesticides/regulating/labels/label_review.htm).

CAA/CWA

EPA Sets Public Hearing Dates On Air Quality Standards For Nitrogen Dioxide -- EPA announced on July 15, 2009, that it would convene two public hearings on its proposal to revise nitrogen dioxide (NO₂) standards. 74 Fed. Reg. 34290. The proposed revisions would establish a one-hour NO₂ standard, at a level between 80 and 100 parts per billion (ppb) and would retain the current annual standard of 53 ppb. The hearings were held on August 3 in Arlington, Virginia, and August 6 in Los Angeles. Please consult the proposed rule for instructions on how to submit written comments. 74 Fed. Reg. 34404. More information on the proposed rule is available at <http://www.epa.gov/air/nitrogenoxides/actions.html>.

REACH

European Commission And European Chemicals Agency New Risk And Hazard Information On Chemical Substances Available -- On July 14, 2009, the European Chemicals Agency (ECHA) announced the publication of new information on the risks and hazards of 16 chemical substances. The 16 substances are:



Chemical Substance	CAS Number
2,2'6,6'-tetra-tert-butyl-4,4'-methylenediphenol	118-82-1
2-ethylhexyl 10-ethyl-4,4-dioctyl-7-oxo-8-oxa-3,5-dithia-4-stannatetradecanoate	15571-58-1
Dichlorodioctylstannane	3542-36-7
5-Nonylsalicylaldehyde oxime	50849-47-3
Benzoic acid, 2-hydroxy-, mono-C ₁₃ -alkyl derives., calcium salts (2:1)	83846-43-9
Di(tert-dodecyl) pentasulphide	31565-23-8
Magnesium, bis(2-hydroxylbenzoato-01,02)-, ar,ar'-di-C ₁₃ -alkyl derives.	84929-98-6
Octamethylcyclotetrasiloxane	556-67-2
Phenol, styrenated	61788-44-1
Terphenyl, hydrogenated	61788-32-7
Tetraoctyltin	3590-84-9
Tert-Dodecanethiol	25103-58-6
2-Ethylhexyl 10 ethyl-4-[[2-[(2-ethylhexyl)oxy]-2-oxoethyl]-thio]-4-octyl-7-oxo-8-oxa-3,5-dithia-4-stannatetradecanoate	27107-89-7
Tris(2,4-di-tert-butylphenyl)phosphite	31570-04-4
Decamethylcyclopentasiloxan	541-02-6
DIPN	38640-62-9

The 16 substances are “handovers” from the previous legislation (Regulation (EEC) No.793/93) and are prioritized due to being produced in large quantities or having possible persistent, bioaccumulative, and toxic (PBT) properties. In addition, the European Union (EU) Member State Competent Authorities responsible for evaluating new data expected from industry according to Regulation (EC) No 465/2008 are identified. The substance fact sheet produced by the responsible EU Member State Competent Authority will contain updated risk assessment and/or PBT data. This information will be useful for companies who are planning to register these substances. Additional details can be obtained from the ECHA website at http://echa.europa.eu/chem_data/transit_measures_en.asp.

ECHA Clarifies Its Position On Activities Of Providers For REACH-Related Services -- According to the European Commission (EC) and ECHA, during the current stage of Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) activities, Substance Information Exchange Forums (SIEF) are active in ensuring pre-registrants are advancing towards registration dates. During this pre-registration period, it has become apparent to ECHA that several entities have “identified and/or elected” themselves as SIEF Facilitator or



Lead Registrant while not representing a pre-registrant or being identified as an “Only Representative” or “Third Party Representative” within REACH-IT. As such, several of these entities have impeded the process and thus progress of SIEF-related activities. ECHA was requested to clarify whether certain advertising practices may possibly constitute a violation of the terms and conditions of REACH-IT or a breach of obligations imposed by the REACH regulation. ECHA confirmed that it is not its policy to contact companies to verify whether their business practices are in compliance with REACH. ECHA confirmed that Enforcement of REACH lies with the Member States, and that ECHA will only act in exceptional cases, such as incorrect and misleading statements concerning ECHA’s activities, breaches of the terms and conditions of REACH-IT, or infringements of ECHA’s intellectual property rights. ECHA also reported that it is investigating a claim that one of its staff contacted a service provider by phone to inquire about its business practices and will take internal measures as appropriate. The web page on ECHA’s guidelines and recommendations is available at http://echa.europa.eu/home_en.asp.

ECHA Requests Reproductive Toxicity Information -- In an August 10, 2009, press release, ECHA requested health effects information on the reproductive toxicity of a substance with the generic chemical name of “hydrogenated oligomerisation product including dimers and trimers, of tetradec-1-ene and alkene.” The registrant has proposed two tests involving vertebrate laboratory animals. Under the REACH program, new testing of a substance involving vertebrate animals is conducted only as a “last resort.” ECHA states that the purpose of the request is “to give anyone the opportunity to submit relevant data with a view to make sure that animal testing is only conducted as a last resort when the available information is not sufficient to assess the potentially harmful effects of this chemical on human health or the environment.” According to ECHA, organizations that may have information include academic institutions, individual companies, and non-governmental organizations (NGO). Information is due **September 24, 2009**. ECHA will evaluate the registrant’s testing proposal, as well as any information submitted. ECHA’s press release is available on the Internet at http://echa.europa.eu/doc/press/pr_09_10_animal_testing_proposal_20090810.pdf.

EC Issues List Of Chemicals -- On August 11, 2009, the EC published the final list of “notified” substances that are expected to be deemed registered under the REACH regulation. The European List of Notified Chemical Substances (ELINCS) consists of 5,287 new chemicals that were evaluated under the pre-REACH regulatory system in the EU (Directive 67/548/EEC, including Annexes VII and VIII, Directive 93/67/EEC), according to the Commission’s Joint Research Center. The final ELINCS list is available at http://ecb.jrc.ec.europa.eu/DOCUMENTS/New-Chemicals/ELINCS_PUBLICATION/ELINCS_2009.pdf.



NANOTECHNOLOGY

ETC Group Issues Report On Nanogeopolitics -- Earlier this month, in advance of the Organization for Economic Cooperation and Development's (OECD) July 15-17, 2009, Conference on Potential Environmental Benefits of Nanotechnology: Fostering Safe Innovation-Led Growth, the Action Group on Erosion, Technology, and Concentration (ETC Group) issued a draft report entitled *Nanogeopolitics 2009: The Second Survey*. The ETC Group recommends that policies concerning nanotechnologies be developed within the United Nations (UN) system, "where all nations can have a say about the technology and where the so-called nano-nations will come clean with everybody else about what they are doing to the economy and the environment." The report is a follow up to the ETC Group's 2005 survey of "the nanogeopolitical landscape." In the report, the ETC Group reviews: (1) the extent to which the "markets and players" have shifted position since 2005, especially in terms of research and funding; (2) the effectiveness of various governance and regulation; and (3) recommended action to regulate better and develop responsibly nanotechnology.

According to the ETC Group, estimates for the projected market value of nanotechnology in the next five years are over-hyped. The report cites the lack of transparency concerning the role of nanomaterials within products, and the varying role of nanotechnologies across the range of products as reasons for the disparity in values. The report cites the Project on Emerging Nanotechnologies' product inventory, and states that, of the 807 product lines on the market, "the U.S. market is responsible for more than just over half (428) of the nanoproducts, while Asia accounts for just under 30% (228) and Europe 13% (106 products)." Various governments have appropriated \$40 billion in nanotechnology funding over the last decade, and the ETC Group reports that almost \$10 billion more will be added this year. The report notes that, for 2009, the combined EU member states spent 27 percent of the global nanotechnology funding, Russia spent 23 percent, outspending the United States (19 percent) and Japan (12 percent). The ETC Group notes, however, that "Chinese research is about 1/20th the cost of European research," and China "could be out in front."

NCEA Announces Comment On Nanoscale Titanium Dioxide In Water Treatment And Topical Sunscreen Case Studies -- On July 31, 2009, EPA announced a public comment period for the draft document titled, "Nanomaterial Case Studies: Nanoscale Titanium Dioxide in Water Treatment and Topical Sunscreen" (EPA/600/R-09/057). 74 Fed. Reg. 38188. The document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development. The case studies focus on two applications of nanoscale titanium dioxide, water treatment and topical sunscreen. The document is intended to serve as a foundation for creating a long-term research strategy to provide the information needed for comprehensive environmental assessments of selected nanomaterials. EPA released the draft document solely for the purpose of pre-dissemination peer review under applicable Information



Quality Guidelines (IQA). Technical comments should be in writing and must be received by **September 14, 2009**.

Study Reports The Effects From Exposure To Nanoscale Titanium Dioxide -- On July 29, 2009, *Particle and Fibre Toxicology* posted an article entitled “Maternal Exposure to Nanoparticulate Titanium Dioxide During the Prenatal Period Alters Gene Expression Related to Brain Development in the Mouse.” The purpose of the study was to investigate the effects of maternal exposure to nano-sized anatase titanium dioxide on gene expression in the brain during the developmental period. According to the authors, analysis of gene expression indicated that expression levels of genes associated with apoptosis were altered in the brain of newborn pups, and those associated with brain development were altered in early age. Genes associated with response to oxidative stress were changed in the brains of two- and three-week-old mice. The authors concluded that maternal exposure of mice to titanium dioxide nanoparticles “may affect the expression of genes related to the development and function of the central nervous system.” The article is available at <http://www.particleandfibretoxicology.com/content/6/1/20>. A July 17, 2009, *ACS Nano* article entitled “Cellular Toxicity of TiO₂-Based Nanofilaments” concludes that titanium dioxide-based nanofilaments “are cytotoxic and thus precautions should be taken during their manipulation.” The authors studied the cellular toxicity of titanium dioxide-based nanofilaments in relation to their morphology and surface chemistry. The article is available at <http://pubs.acs.org/doi/abs/10.1021/nn9002067>.

The Responsible Nano Forum Marks Anniversary Of Royal Society And Royal Academy Of Engineering Report -- The Royal Society and Royal Academy of Engineering released on July 29, 2004, their report entitled *Nanoscience and Nanotechnologies: Opportunities and Uncertainties*. To mark the five-year anniversary of the report, The Responsible Nano Forum invited representatives from science, risk, investment, NGOs, unions, business, and consumer groups to reflect on the legacy of the report and what still remains to be done. The report, *A Beacon or Just a Landmark? Reflections on the 2004 Royal Society/Royal Academy of Engineering Report*, includes contributions from a range of individuals and organizations in the United Kingdom and internationally. We are pleased to announce that Lynn L. Bergeson is a contributor. The report is available at <http://www.responsiblenanoforum.org/RNF5yearsReport.pdf>.

Separate Recommendations For TSCA Reform Released By ACC And Safer Chemicals, Healthy Families -- In anticipation of the introduction of the Kid Safe Chemical Act, which would amend TSCA, ACC released its “10 Principles for Modernizing TSCA.” Safer Chemicals, Healthy Families, a coalition of health and environmental organizations, also announced its own set of requirements for reforming TSCA. Safer Chemicals, Healthy Families includes state and national environmental groups, associations of health professionals, advocates for health-affected individuals, and environmental justice organizations. Senator Frank R. Lautenberg (D-NJ) has stated that he will soon introduce the Kid Safe Chemical Act.



ACC states that it supports modernizing TSCA, which is more than 30 years old, and that EPA must have the resources and authority to do its job effectively. According to ACC, while it has previously offered general concepts for a modern chemical management system, the 10 Principles expand upon those concepts and provide more detail. ACC intends to continue to refine the details of its principles for modernizing TSCA, and to work with all stakeholders to enact effective legislation. The 10 Principles are available on the Internet at <http://www.americanchemistry.com/TSCAPrinciples>. Below are the 10 Principles, and ACC provides specific details for each Principle:

1. Chemicals should be safe for their intended use;
2. EPA should systematically prioritize chemicals for purposes of safe use determinations;
3. EPA should act expeditiously and efficiently in making safe use determinations;
4. Companies that manufacture, import, process, distribute, or use chemicals should be required to provide EPA with relevant information to the extent necessary for EPA to make safe use determinations;
5. Potential risks faced by children should be an important factor in safe use determinations;
6. EPA should be empowered to impose a range of controls to ensure that chemicals are safe for their intended use;
7. Companies and EPA should work together to enhance public access to chemical health and safety information;
8. EPA should rely on scientifically valid data and information, regardless of its source, including data and information reflecting modern advances in science and technology;
9. EPA should have the staff, resources, and regulatory tools it needs to ensure the safety of chemicals; and
10. A modernized TSCA should encourage technological innovation and a globally competitive industry in the United States.



The Safer Chemicals, Healthy Families platform, which is available at <http://www.edf.org/pressrelease.cfm?contentID=10289>, includes the following requirements for effective TSCA reform:

- Immediately Initiate Action on the Worst Chemicals;
- Require Basic Information for All Chemicals;
- Protect the Most Vulnerable;
- Use the Best Science and Methods;
- Hold Industry Responsible for Demonstrating Chemical Safety;
- Ensure Environmental Justice;
- Enhance Government Coordination;
- Promote Safer Alternatives; and
- Ensure the Right to Know.

Environmental Defense Fund (EDF), which is a member of the Safer Chemicals, Healthy Families coalition, has posted a blog item regarding differences between ACC's 10 Principles and the Safer Chemicals, Healthy Families platform. EDF describes the following three differences: (1) focus on the most significant uses and exposures of priority chemicals versus requiring robust data on all chemicals; (2) testing or monitoring requirements determined on a case-by-case basis versus requiring a minimum data set for all chemicals; and (3) maintaining multi-agency regulation versus charging EPA with conducting a "holistic assessment." The blog item is available on the Internet at <http://blogs.edf.org/nanotechnology/2009/08/04/let-the-games-begin-dueling-tsca-reform-manifestos/#more-86>.

LEGISLATIVE DEVELOPMENTS

New Bill Would Require Product Ingredient Labeling -- On June 25, 2009, Representative Steve Israel (D-NY) introduced the Household Product Labeling Act of 2009 (H.R. 3057). The bill would require any household cleaning product or similar product to bear a label containing a "complete and accurate" list of all the product's ingredients. One year after enactment, any household cleaning product or similar product that is manufactured for sale, offered for sale, distributed in commerce, or imported to the U.S. without such a label would be treated as a



misbranded hazardous substance within the meaning of Section 2(p) of the Federal Hazardous Substances Act. The bill defines “household cleaning product or similar product” as “any substance which is customarily produced and distributed for use in or about a household as a cleaning agent, pesticide, epoxy, paint or stain, or similar substance.” The bill provides the Consumer Product Safety Commission (CPSC) the authority to promulgate regulations to enforce the Act, “including regulations which expand on or exempt from the definition . . . any product or product category.” The bill has been referred to the House Energy and Commerce Committee. The Consumer Specialty Products Association (CSPA), in its response to the legislation, stated that CSPA, the Canadian Consumer Specialty Products Association (CCSPA), and the Soap and Detergent Association (SDA) have launched a voluntary Consumer Product Ingredient Communication Initiative, which is intended to provide consumers with information about product ingredients. The Initiative uses a variety of methods to inform consumers about the ingredients in products: the product label; the manufacturers’, distributors’, or importers’ website; through a toll-free telephone number; or through some other non-electronic means. More information on the Initiative is available at <http://www.cspa.org/public/media/info/cpici.html>.

New NNI Reauthorization Bill Introduced In Senate -- On July 21, 2009, Senator John Kerry (D-MA) introduced legislation (S. 1482) in the Senate that would reauthorize and amend the 21st Century Nanotechnology Research and Development Act. The House bill (H.R. 554) was passed in the House and referred to the Senate Committee on Commerce, Science, and Transportation in February 2009. While each bill is entitled “National Nanotechnology Initiative Amendments Act of 2009” and has similar provisions, some differences exist. The following is a summary of their differences. When discussing matters to be evaluated during an external triennial review, S. 1482 includes three matters not specified in H.R. 554. The matters added are: “The adequacy and effectiveness of the Program’s public education and outreach efforts; [t]he worldwide investment in and activities related to nanotechnology and an analysis of the relative position of the United States compared to other countries with respect to nanotechnology research and development; [and] [t]he adequacy of the Program in incorporating the results of deliberative public input into the decisionmaking process.”

Both bills make amendments for a research plan on the “Societal Dimensions of Nanotechnology.” Under the “Development of Standards” heading, S. 1482 requires a description within the research plan to develop “[i]nstruments required to fill major gaps in metrology capabilities.” S. 1482 also requires that the Coordinator for Societal Dimensions of Nanotechnology include any recommendations from the National Nanotechnology Advisory Panel in these planning activities, a step in the research planning process H.R. 554 does not explicitly require. Each bill contains provisions for the modification of the National Nanotechnology Advisory Panel and its different review responsibilities. Yet S. 1482 establishes an Advisory Panel Review of “Environmental Health and Safety Program Component Area,” which H.R. 554 does not specify. This review is to be focused on funding for environmental health and safety or any “successor program component area.”



S. 1482 establishes two areas of research for nano-manufacturing that H.R. 554 does not. These areas are: “Improvements in atomically precise measurement, monitoring, manipulating, and manufacturing”; and “[d]evelopment of nanotechnology production methods and tools for aerospace information and intelligence applications.” Also, when discussing the transfer of research results to industry, S. 1482 specifies that “priority consideration [will be] given to proposals that provide non-Federal funds in an amount not less than 25 percent of the total amount of any funding to be awarded under the Program.” S. 1482 adds two new sections to the bill. The first covers the research areas as well as environmental health and safety characteristics of “nanoscale characterization and metrology.” The second details how public input will be involved in the decision-making process. The plan calls for not only a solicitation, but an incorporation of a diverse set of stakeholder views into the initiative.

The full text of H.R. 554 is available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h554rfs.txt.pdf. The full text of S. 1482 is available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s1482is.txt.pdf.

House Climate Control Legislation Is Affordable -- The U. S. Department of Energy submitted a report to Congressman Henry Waxman (D-CA) demonstrating that the household energy cost of the climate control legislation to the average American household would increase by \$114 in 2020 and \$288 in 2030. Mr. Waxman stated that the report showed that the legislation was affordable, and that the conclusions of the report were consistent with findings by EPA and the Congressional Budget Office.

Senate Passes Bill With Monies For Agriculture, The Food And Drug Administration And Rural Development -- On August 4, 2009, by an 80-17 margin, the Senate passed an appropriations bill containing \$23.7 billion for water, waste, and energy projects. The next step in the process is a Conference Committee to resolve differences in funding levels with a House bill already passed. In most cases, the amounts allotted for various programs are comparable, although at least one Senate program is not mentioned in the House bill. In earlier action, on July 29, the Senate passed a \$34.3 billion fiscal 2010 spending bill for energy and water programs. The Conference Committee will have to resolve differences in the amounts allocated by the House for several of the projects.

House Moves To Protect Coastal Waters -- On July 29, 2009, the House re-authorized funding to support state programs to improve the quality of beach water and increase pathogen testing. The funding was increased from \$30 million to \$40 million, and provisions provide for EPA to review state compliance with the monitoring and test requirements of the Beaches, Environmental Assessment and Coastal Health Act (BEACH). Sponsors of the legislation said that it was necessary in order to insure that the public was protected from potentially harmful pollutants and contaminants.



Senate Moves To Reauthorize Nanotechnology Initiative -- Senator John Kerry (D-MA) introduced a bill on July 21 to reauthorize the Nanotechnology Initiative. The House approved a similar measure by voice vote this past February.

Household Product Labels To List Ingredients -- Representative Steve Isreal (D-NY) has introduced legislation to require a “complete and accurate list” of all product ingredients on household products such as cleaners, pesticides, epoxies, paints, and stains within one year of passage. The only product group presently required to carry labeling is pesticides, and there only the listing of active ingredients is required. At least one trade group, the CSPA, is concerned because the bill purports to give jurisdiction to the CPSC to issue regulations and enforce the law. EPA has jurisdiction over pesticides and antimicrobials, however, and the CSPA is concerned about uncertainty over jurisdiction. According to reports, another concern the CSPA has is the effect of legislation on its Voluntary Consumer Ingredient Communication Initiative, a major outreach program designed to provide consumers with product information in several ways. In addition to possible labeling, the means discussed are company websites and toll free numbers.

Bill To Phaseout Use Of Mercury At Chlor-Alkali Facilities -- Senator Sheldon Whitehouse (D-RI) is sponsoring a measure to require the four plants in the United States that still use mercury in the process of making chlor-alkali to stop that use within the next two years. The sponsor and several of his colleagues referred to the fact that there is cleaner technology available and that the switch should be made since mercury contamination is a serious public health hazard. A similar measure is working its way through the House Committees with jurisdiction.

House Of Representatives Passes Far Reaching Food Safety Measure -- By a vote of 281 to 143, the House on July 30 passed and sent to the Senate the Food Safety Enhancement Act. The Food Safety Enhancement Act establishes procedures and practices heretofore missing, with the intent of reducing foodborne illness and death. All facilities that manufacture, process, label, and distribute food would have to register with the Food and Drug Administration (FDA), and that would establish the inventory of facilities for FDA to inspect. The fees for inspections, initially \$500, would be used to fund the cost of food safety activities, including the cost of the FDA inspectors and the laboratory facilities used to examine food during inspections. Inspections would be split into three categories. Category 1 facilities where food is processed or manufactured would be inspected every 6-12 months. Facilities that label or pack food (category 2) would be inspected every 18-36 months, and category 3 facilities that hold food would be inspected every 3-5 years. FDA could suspend any facility that creates a violation that could result in death or serious adverse health consequence.

Other features of the bill include the requirement to conduct hazard analysis and establish risk-based procedures to prevent or reduce hazards to an acceptable level. Those measures become



part of a food safety plan that has to be in effect before any product is distributed. There is a new panoply of enforcement-related measures, including recalls, cease distribution order notifications, and civil and criminal penalties. There are also requirements for FDA to study the effect of various issues dealing with food, such as the use of Bisphenol A (BPA) in food and beverage containers. The Senate will take up the bill in the fall.

MISCELLANEOUS

DARTIC Recommends Against Adding BPA To Proposition 65 -- The California Office of Environmental Health Hazard Assessment's (OEHHA) Developmental and Reproductive Toxicant Identification Committee (DARTIC) met on July 15, 2009, and considered the addition of BPA to Proposition 65 as a developmental or reproductive toxicant. The DARTIC voted against adding BPA to Proposition 65, concluding that the science failed to show BPA causes developmental or male or female reproductive harm. The meeting presentations and index of comments submitted to OEHHA are available at http://www.oehha.org/prop65/public_meetings/dart071509ag.html.

Guzy Confirmed As Deputy Director Of CEQ Office Of Environmental Quality -- On July 17, 2009, President Obama nominated Gary S. Guzy for Deputy Director of the Office of Environmental Quality, Council on Environmental Quality (CEQ). Guzy was subsequently confirmed in August by the Senate. During the Clinton Administration, Guzy served as EPA General Counsel and Counselor to the EPA Administrator, as well as a Senior Attorney in the Environment Division of the Justice Department. Guzy is currently the General Counsel of APX Inc. and an Adjunct Professor of Environmental Law at the Georgetown University Law Center. Guzy is a graduate of Cornell University and Cornell Law School. More information is available on the Internet at http://www.whitehouse.gov/the_press_office/President-Obama-Announces-More-Key-Administration-Posts-7-17-09/.

Walmart Introduces Sustainable Product Index -- Walmart announced on July 16, 2009, at a Sustainability Milestone Meeting, that it intends to develop a sustainable product index, which would provide a single source of information to evaluate the sustainability of products. In the first phase of the initiative, Walmart will ask its suppliers to complete a 15-question survey. Walmart will ask its top tier U.S. suppliers to complete the survey by October 1, 2009. For suppliers outside the U.S., Walmart will develop deadlines on a country-by-country basis. In the second phase, Walmart will help create a consortium of universities to collaborate with suppliers, retailers, NGOs, and government to develop a global database of information on the lifecycle of products. Walmart states that it has provided the initial funding for the Sustainability Index Consortium, and invited all retailers and suppliers to contribute. The final step, according to Walmart, is to translate the product information into a simple rating about the sustainability of products. More information is available on the Internet at <http://walmartstores.com/Sustainability/9264.aspx?p=9191&sourceid=milestone&ref=>.



ATSDR Announces Availability Of Draft Profile And Set 23 Toxicological Profiles -- On July 23, 2009, the Agency for Toxic Substances and Disease Registry (ATSDR) announced the availability of the draft toxicological profile for perfluoroalkyls, prepared by ATSDR, for review and comment. 74 Fed. Reg. 36492. The comments on this draft toxicological profile must be received on or before **October 30, 2009**. In addition, ATSDR announced the development of Set 23 Toxicological Profiles. 74 Fed. Reg. 36493. The following toxicological profiles are now being developed:

Toxicological Profile	CAS No.
Acrylamide	79-06-1
Carbon Monoxide	630-08-0
1,3-Butadiene	106-99-0
Phosphate Ester Flame Retardants	126-73-8, 126-71-6, 78-51-3, 115-86-6, 13674-84-5, 13674-87-8, 115-96-8
Vanadium	7440-62-2

UK Government Proposes Controls On Two Industrial Chemicals -- The United Kingdom (UK) proposed controls on two important industrial chemicals -- 1,4-Butanediol (CAS Number 110-63-4) and Gamma-butyrolactone (CAS Number 96-48-0) in July. The regulation is proposed pursuant to the Misuse of Drugs Act 1971 due to the misuse of these substances as the result of the similarity of their effects, when ingested, to gamma-hydroxybutyrate (GHB), commonly known as the “date-rape” drug. Gamma-butyrolactone and 1,4-Butanediol are, according to the UK, pro-drugs of GHB, meaning that when either substance is ingested, it is rapidly converted to GHB. The UK states its “concern” that users of GHB are switching to Gamma-butyrolactone and 1,4-Butanediol use as a consequence of GHB control under the 1971 Act, but acknowledges that the evidence is limited. The UK government is proposing that the two chemicals be considered as Class C substances under the Misuse of Drugs Act 1971, and that they be placed in Schedule 1 under the Misuse of Drugs Regulations 2001. The UK notes that 1,4-Butanediol and Gamma-butyrolactone “have a wide variety of legitimate uses, which have a reputation for being safe and environmentally friendly.” The controls proposed by the UK authorities vary and range from a complete ban on industrial uses, which the authorities acknowledge “would have the highest impact on industry, where it would necessitate finding alternative chemicals and removing otherwise legitimate products from the shop shelves,” to placing controls on supply for human consumption. The UK government accepted comments on the proposal until August 13, 2009. The UK government proposal is available on the Internet at <http://www.homeoffice.gov.uk/documents/cons-2009-gbl/>.

Maine Releases List Of “Chemicals Of High Concern” -- Maine’s Department of Environmental Protection (MDEP), working with the Maine Center for Disease Control and Prevention



(MCDC), recently published a list of “Chemicals of High Concern,” which includes approximately 1,700 chemical entries. Maine’s law on Toxic Chemicals in Children’s Products mandated creation of the list. According to the MDEP website, a chemical is included on the list only if it is identified “by an authoritative governmental entity on the basis of credible scientific evidence as being known as”: (a) a carcinogen, a reproductive or developmental toxicant, or an endocrine disruptor; (b) persistent, bioaccumulative, and toxic; or (c) very persistent and very bioaccumulative. More information is available at <http://www.maine.gov/dep/oc/safechem/highconcern/index.htm>.

Under the statute, MDEP is required to review the list at least every three years. MDEP may also further periodically review and revise the list. According to MDEP, it intends to review the list annually and update it as appropriate in consultation with the MCDC. The definition of “Chemicals of High Concern” does not consider whether a chemical is in a children’s product or exempted under other sections of the statute. MDEP notes that chemicals may be listed that cannot be considered for subsequent action, “such as priority chemical disclosure or a sales prohibition.” Some of the exemptions that apply to other parts of the statute, but not to the definition of Chemicals of High Concern, include:

- A food or beverage, or an additive to a food or beverage;
- A container or packaging for a food or beverage, unless that product is intentionally marketed or intended for the use of children under three years of age;
- A tobacco product;
- A paper or forest product;
- A pesticide regulated by EPA; and
- A drug or biologic regulated by FDA.

Inclusion on the list does not restrict use of the chemical in commerce in Maine. According to MDEP, the list “identifies chemicals that [MDEP] and [MCDC] will look at to further determine at least two priority chemicals by” **January 1, 2011**. MDEP states that it has the authority to remove a chemical from the list, “if it finds that the chemical is not used in a children’s product, and therefore is not subject to regulation under Toxic Chemicals in Children’s Products. This is an optional authority that the department is not choosing to exercise at this time.”



Obama Nominates OSHA Assistant Secretary -- President Barack Obama announced on July 28, 2009, his nomination of David Michaels, Ph.D., M.P.H., as Assistant Secretary for the Occupational Safety and Health Administration (OSHA). Dr. Michaels is currently a Research Professor at the Department of Environmental and Occupational Health at the George Washington University School of Public Health and Health Services. From 1998 to 2001, he served in the Clinton Administration as Assistant Secretary of Energy for Environment, Safety and Health, responsible for protecting the health and safety of workers, neighboring communities, and the environment surrounding the nation's nuclear weapons facilities.

Canada Proposes Three Chemical Substances For Toxic Designation -- On August 1, 2009, the Canadian government recommended that benzenamine, dimethyl sulfate, and diethyl sulfate be designated as "toxic" under the Canadian Environmental Protection Act (CEPA). Final screening assessments of the 18 substances in Batch 4 of the Challenge to Industry, part of the Chemicals Management Plan, found that benzenamine should be targeted for virtual elimination due to the threat it poses to the environment, and that dimethyl sulfate and diethyl sulfate require controls due to the threat they pose to human health, Environment Canada and Health Canada said in a background document on the notices published in the August 1, 2009, issue of the *Canada Gazette*, Part 1. Benzenamine (BNST) is used as an antioxidant in automotive oils and commercial and industrial lubricants. Amounts of BNST can enter sewer systems via dispersed leaks of engine oil to roadways and from improper disposal of waste lubricating oils. Canada proposes to list dimethyl sulfate and diethyl sulfate because they are suspected carcinogens. Dimethyl sulfate is used to manufacture substances that are used in pharmaceutical products. Diethyl sulfate is primarily used by the tissue paper industry as a softener. Comments on the final screening assessments for the Batch 4 substances are due **September 30, 2009**. The *Final Decision on the Screening Assessment of Substances-Batch 4* is available at <http://www.gazette.gc.ca/rp-pr/p1/2009/2009-08-01/html/sup1-eng.html>.

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