



Recent Federal Developments December 15, 2009

Bergeson & Campbell, P.C. extends its best wishes to our clients and many friends and we wish you and your family a happy, healthy, and peaceful New Year.

TSCA/FIFRA/NTP/EPCRA

EPA Issues Technical Amendment Of Cross-Media Electronic Reporting Rule -- On November 17, 2009, the U.S. Environmental Protection Agency (EPA) amended the Final Cross-Media Electronic Reporting Rule (CROMERR) to exclude from the regulation all documents and information submitted electronically to EPA by applicants for, and recipients of, grants, cooperative agreements, and other forms of financial assistance pursuant to EPA financial assistance regulations. 74 Fed. Reg. 59104. The final rule was immediately effective.

EPA OPP Launches Pilot Programs In Collaboration With DFE -- On December 9, 2009, EPA announced two pilot programs under the Design for the Environment Program (DFE). 74 Fed. Reg. 65119. The Factual Label Statement Pilot Program will permit the addition of the following factual statements to antimicrobial pesticide product labels when the terms are met by registrants:

- ***Dyes and/or fragrance free statements*** -- The Office of Pesticide Programs (OPP) will permit for the purposes and duration of the pilot program the following label statements to be placed on qualifying antimicrobial pesticide products: “Dye-free,” “Fragrance-free,” and “Dye and fragrance free.” Registrants applying for this pilot program must submit as part of their application the current Confidential Statement of Formula (CSF) and a draft label with the new statements. OPP will examine the CSF to verify the dye/fragrance free claim prior to granting use of the label. Upon initial pre-acceptance of the statement(s) by OPP, a final printed label must be submitted before the labeling is stamped acceptable.
- ***Corporate commitment statements*** -- OPP will permit for the purposes and duration of the pilot program the following label statement on qualifying antimicrobial pesticide products: “For technical assistance or information on [INSERT THE NAME OF THE COMPANY] environmental/sustainability initiatives, go to [INSERT COMPANY WEBSITE].” Registrants applying for this pilot program must submit as part of their application a link to their company’s website and their product’s draft label with the new statement. Upon initial pre-acceptance of the statement(s) by OPP, a final printed label must be submitted before the labeling is stamped acceptable.



In addition, the notice states that EPA has decided to allow the addition of information concerning product packaging of an antimicrobial pesticide product, such as the recycled content of the product's packaging, in lieu of a pilot. EPA examined OPP's existing Pesticide Registration (PR) Notice 98-10, "Notifications, Non-Notifications and Minor Formulation Amendments," available at http://www.epa.gov/PR_Notices/pr98-10.pdf. EPA concluded that the PR Notice sufficiently provided for label statements about product packaging, and therefore recycled content of product packaging additions may be made through the notification process at any time.

OPP will start accepting product label amendment applications for the Factual Label Statement Pilot Program on **January 25, 2010**. If OPP decides not to allow use of approved factual statements at the end of the pilot, then the last day that pesticide products participating in this pilot can be released for shipment is **May 3, 2013**. According to the notice, OPP is working with EPA's DfE program in the Office of Pollution Prevention and Toxics (OPPT) "to empower consumers to make informed choices when purchasing antimicrobial pesticide products, and encourage registrants to develop pesticide formulations that are at the lower end of the toxicity spectrum." The OPP-DfE Logo Pilot Program is targeted towards antimicrobial pesticide products that are either Acute Toxicity Categories 3 or 4. OPP states that antimicrobial pesticide products with the following characteristics would likely not qualify:

- Are classified as Acute Toxicity Category 1 or 2;
- Have known, likely, or suggestive carcinogens;
- Have known developmental, reproductive, mutagenic, or neurotoxicity issues;
- Have significant, outstanding data issues for the active ingredient and/or product; or
- The label requires use of personal protective equipment.

EPA states that additional criteria and details on the pilot are available at <http://www.epa.gov/pesticides>. The DfE program will start accepting applications for the OPP-DfE Logo Pilot on **December 9, 2009**. OPP will start accepting product amendment applications starting on **May 3, 2010**. This pilot ends on **May 3, 2013**, and the last day that pesticide products participating in this pilot can be released for shipment is **May 3, 2013**.

EPA Announces Listening Session Regarding TCE -- On December 11, 2009, EPA announced a listening session to be held on **January 12, 2010**, during the public comment period for the external review draft document entitled, "Toxicological Review of Trichloroethylene: In Support



of Summary Information on the Integrated Risk Information System (IRIS)” (EPA/635/R-09/011A). 74 Fed. Reg. 65775. The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA’s Office of Research and Development (ORD). EPA’s draft assessment and peer review charge are available via the Internet on the NCEA’s home page under the Recent Additions and Publications menus at <http://www.epa.gov/ncea>.

EPA Denies Objections And Requests For Hearing On Carbofuran -- On November 18, 2009, EPA denied objections to, and requests for hearing on, a final rule revoking all pesticide tolerances for carbofuran under Federal Food, Drug, and Cosmetic Act (FFDCA) Section 408(d). 74 Fed. Reg. 59608. The objections and hearing requests were filed on June 30, 2009, by the National Corn Growers Association, National Sunflower Association, National Potato Council, and FMC Corporation. According to EPA, “[a] principal flaw in the Petitioners’ objections is that they have objected to EPA’s determination in the final rule on the safety of carbofuran based on the FIFRA registration amendments that FMC filed with EPA 45 days after the safety determination was made. As such, the Petitioners’ objections are irrelevant, and thus immaterial, to the determination EPA made in the final rule.” Petitioners’ have challenged the determination in the federal U.S. Court of Appeals for the D.C. Circuit. *National Corn Growers Ass’n v. EPA*, No. 09-1284 (D.C. Cir. Nov. 18, 2009). The order was effective immediately.

EPA Schedules Regional Stakeholder Meetings On Pesticide Impact On Aquatic Life -- On November 25, 2009, EPA announced that it will conduct six public meetings to solicit input on methods being evaluated by OPP and the Office of Water (OW), with the support of ORD to characterize effects from pesticides on fish, other aquatic organisms, and aquatic plants in aquatic ecosystems. 74 Fed. Reg. 61679. The public meetings will be held in Chicago, IL (Region 5), Edison, NJ (Region 2), Kansas City, KS (Region 7), Atlanta, GA (Region 4), San Francisco, CA (Region 9), and Seattle, WA (Region 10), starting in **January 2010**. At the public meetings, EPA will provide presentations that detail its initial thinking on how to ensure that pesticide effects are characterized consistently by both OPP and OW. Please consult the *Federal Register* for details.

TRI Releases Decline In 2008 -- EPA reported on December 8, 2009, that environmental releases and disposal of toxic substances reported under the Emergency Planning and Community Right-to-Know (EPCRA) Toxics Release Inventory (TRI) declined 6 percent in 2008 to 3.9 billion pounds, compared with 4.1 billion pounds in 2007. Releases to air declined 14 percent. Surface water discharges rose by 8.1 million pounds, an increase of 3 percent. Land disposal increased by 2.2 million pounds, the report said. The 2008 TRI data indicated that on-site releases accounted for about 3.4 billion pounds of the total releases in 2008, including about 1.1 billion pounds of air emissions. About 1.8 billion pounds went to land disposal facilities such as surface impoundments and waste piles or was released in the form of spills and leaks, it said. The remaining 489 million pounds of the 2008 total were sent off-site for disposal or were



otherwise released off-site. The TRI Reporting Year 2008 National Analysis is available on the Internet at http://www.epa.gov/TRI/tridata/tri08/national_analysis/pdr/TRI_key_findings_2008.pdf.

EWG Releases Report On Cord Blood Contaminants -- On December 2, 2009, the Environmental Working Group (EWG) issued a new report, *Pollution in People: Cord Blood Contaminants in Minority Newborns*, describing 21 contaminants detected in umbilical cord blood. The 21 new chemicals are among a total of 232 contaminants detected by EWG in the two-year study. Five research laboratories in Canada, the Netherlands, and the United States found the chemicals in the umbilical cord blood from 10 American newborns representing African American, Asian, and Hispanic minorities. EWG said it chose to focus on minorities because it could find no studies that examined the chemical body burden in the womb of minority children. The labs detected 21 chemicals for the first time in U.S. newborns, including: bisphenol A (BPA), which is used to make plastic bottles and linings for cans; tetrabromobisphenol A, a fire retardant for circuit boards; galaxolide and tonalide, synthetic fragrances; perfluorobutanoic acid, part of the perfluorocarbon chemical family that makes products fire-, grease-, stain-, water-, and stick-resistant; and eight previously undetected polychlorinated biphenyls or PCBs, coolant and insulating chemicals that have been banned since the late 1970s but which persist in the environment. The report is available at <http://www.ewg.org/>.

EPA Announces Revised Risk Assessment Methods For Workers, Children Of Workers In Agricultural Fields, And Pesticides With No Food Uses -- On December 9, 2009, EPA, announced the availability of a policy paper entitled *Revised Risk Assessment Methods for Workers, Children of Workers in Agricultural Fields, and Pesticides with No Food Uses*, which describes how EPA plans to use revised methods in conducting risk assessments for pesticide uses and exposures not governed by the FFDC. 74 Fed. Reg. 65121. Under the policy, risk assessments for children, farm workers, and others would consider aggregate pesticide exposures from all sources, in addition to the cumulative effects from multiple pesticides that have similar toxicity. EPA also would apply an additional safety factor intended to protect infants and children from the risks of pesticides where the available data are incomplete. Comments are due by **February 8, 2010**. More information is available on the Internet at <http://www.epa.gov/pesticides/health/worker-rsk-assmnt.html>.

CDC Releases Fourth National Report On Human Exposure To Environmental Chemicals -- On December 10, 2009, the Centers for Disease Control and Prevention (CDC) released the *Fourth National Report on Human Exposure to Environmental Chemicals* (Fourth Report), which provides an ongoing assessment of the exposure of the U.S. population to environmental chemicals using biomonitoring. The Fourth Report presents data for the U.S. population for 212 environmental chemicals over the period 2003-2004, updating CDC's 2005 *Third National Report on Human Exposure to Environmental Chemicals*, which presented biomonitoring exposure data for 148 environmental chemicals over the period 2001-2002. New chemicals



included in the Fourth Report include acrylamide and glycidamide adducts; arsenic species and metabolites; environmental phenols, including BPA and triclosan; perchlorate; perfluorinated chemicals; polybrominated diphenyl ethers; volatile organic compounds; and some additions to chemical groups previously measured. The Fourth Report is available at <http://www.cdc.gov/exposurereport/>. According to CDC, the Fourth Report “provides unique exposure information to scientists, physicians, and health officials to help prevent effects that may result from exposure to environmental chemicals.”

The Fourth Report states that findings indicate “widespread exposure” to the following “commonly used industrial chemicals”:

- Polybrominated diphenyl ethers are fire retardants used in certain manufactured products. These accumulate in the environment and in human fat tissue. One type of polybrominated diphenyl ether, BDE-47, was found in the serum of nearly all of the National Health and Nutrition Examination Survey (NHANES) participants.
- BPA, a component of epoxy resins and polycarbonates, may have potential reproductive toxicity. General population exposure to BPA may occur through ingestion of foods in contact with BPA-containing materials. CDC scientists found BPA in more than 90 percent of the urine samples representative of the U.S. population.

Another example of widespread human exposure included several of the perfluorinated chemicals. One of these chemicals, perfluorooctanoic acid (PFOA), was a byproduct of the synthesis of other perfluorinated chemicals and was a synthesis aid in the manufacture of a commonly used polymer, polytetrafluoroethylene, which is used to create heat-resistant non-stick coatings in cookware. Most participants had measurable levels of this environmental contaminant.

CAA/CWA

EPA Issues Effluent Limitations Guidelines And Standards For Construction And Development Point Source Category -- On December 1, 2009, EPA issued final regulations establishing Clean Water Act (CWA) technology-based Effluent Limitations Guidelines and New Source Performance Standards for the Construction and Development (C&D) point source category. 74 Fed. Reg. 62996. EPA issued a series of non-numeric effluent limitations, and a numeric effluent limitation for the pollutant turbidity. All construction sites will be required to meet the series of non-numeric effluent limitations. Construction sites that disturb ten or more acres of land at one time will be required to monitor discharges from the site and comply with the numeric effluent limitation. EPA is phasing in the numeric effluent limitation over four years



to allow permitting authorities adequate time to develop monitoring requirements and to allow the regulated community time to prepare for compliance with the numeric effluent limitation. Construction sites that disturb 20 or more acres at one time will be required to conduct monitoring of discharges from the site and comply with the numeric effluent limitation beginning 18 months after the effective date of the final rule. Construction sites that disturb ten or more acres at one time will be required to conduct monitoring of discharges from the site and comply with the numeric effluent limitation beginning four years after the effective date of the final rule. The rule is effective on **February 1, 2010**.

EPA Announces Availability Of Integrated Science Assessment For Particulate Matter -- On December 15, 2009, EPA announced the availability of a final document titled, "Integrated Science Assessment for Particulate Matter" (EPA/600/R-08/139F) and the supplementary annexes (EPA/600/R-08/139FA). 74 Fed Reg. 66353. The document was prepared by NCEA within EPA's ORD as part of the review of the national ambient air quality standards (NAAQS) for particulate matter. The document is available at NCEA's home page under the Recent Additions and Publications menus at <http://www.epa.gov/ncea>.

EPA Issues National Emission Standards For Hazardous Air Pollutants For Asphalt Processing And Asphalt Roofing Manufacturing -- On December 2, 2009, EPA issued national emissions standards for hazardous air pollutants (NESHAP) for the control of emissions of hazardous air pollutants (HAP) from the asphalt processing and asphalt roofing manufacturing area source category. 72 Fed. Reg. 63236. The final emissions standards for new and existing sources are based upon EPA's final determination as to what constitutes the generally available control technology or management practices (GACT) for the source category. The final rule was immediately effective.

EPA Issues NESHAP For Paints And Allied Products Manufacturing -- On December 3, 2009, EPA issued NESHAP to control HAPs for the paints and allied products manufacturing area source category. 74 Fed. Reg. 63504. The final rule establishes emission standards in the form of management practices for volatile HAP, and emission standards in the form of equipment standards for particulate HAP. The emissions standards for new and existing sources are based on EPA's determination as to what constitutes the GACT for the area source category. The rule was immediately effective.

Council On Environmental Quality Proposes New Guidelines For Water Project Studies -- On December 3, 2009, the White House Council on Environmental Quality (CEQ) released principles and standards for all federal agencies to follow in studies for water resource projects. The CEQ's proposed principles were outlined in the *Proposed National Objectives, Principles and Standards for Water and Related Resources Implementation Studies*, which was made available for public comment and was sent to the National Academy of Sciences for review. The principles would affect the work of the U.S. Army Corps of Engineers, the Bureau of



Reclamation, the Tennessee Valley Authority, and the National Resources Conservation Service. They also would cover other agencies to the extent that they engage in site-specific implementation studies for projects and project modifications. The principles would apply to implementation studies for site-specific projects and project modifications. Some key elements of the proposal include requirements to take into account non-monetary as well as monetary costs and benefits, to minimize floodplain development, and to account for “ecosystem services,” climate change, future development, and “environmental justice” for low-income and minority communities. The CEQ announcement on its Proposed National Objectives, Principles and Standards for Water and Related Resources Implementation Studies, with links to the proposal and to a comment submission form, is available at <http://www.whitehouse.gov/administration/eop/ceq/initiatives/PandG>. Comments are due **March 5, 2010**.

EPA Signs Off On Endangerment And Cause Or Contribute Findings For Greenhouse Gases Under The Clean Air Act -- On December 7, 2009, EPA Administrator Jackson signed two findings regarding greenhouse gases (GHG) under Clean Air Act (CAA) Section 202(a). The notice was published on December 15, 2009. 74 Fed. Reg. 66496. The first endangerment finding is that the current and projected concentrations of the six key well-mixed GHGs -- carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and sulfur hexafluoride (SF₆) -- in the atmosphere threaten the public health and welfare of current and future generations. Second, the Administrator finds that the combined emissions of these well-mixed GHGs from new motor vehicles and new motor vehicle engines contribute to the GHG pollution which threatens public health and welfare. These findings do not themselves impose any requirements on industry or other entities. The action is a prerequisite to issuing in final the EPA’s proposed GHG emission standards for light-duty vehicles, which were jointly proposed by EPA and the Department of Transportation’s (DOT) National Highway Safety Administration (NHTSA) on September 15, 2009. The findings are effective on **January 14, 2010**.

EPA Seeks Comment On A Framework For Categorizing The Relative Vulnerability Of Threatened And Endangered Species In Climate Change -- On November 25, 2009, EPA released and requested comment on a draft document titled, “A Framework for Categorizing the Relative Vulnerability of Threatened and Endangered Species to Climate Change” (EPA/600/R-09/011). 74 Fed. Reg. 61671. The document was prepared by NCEA within EPA’s ORD. The draft document describes an evaluative framework to categorize the relative vulnerability of species to climate change. An external peer review of this report has been completed. The public comment period and the external peer review are separate processes. According to EPA, the public comment period provides an opportunity for all interested parties to comment on the document. The draft is available primarily via the Internet on NCEA’s home page under the Recent Additions and the Data and Publications menus at www.epa.gov/ncea. Comments are due **December 28, 2009**.



EPA Issues Final Rule Regarding PSD And NSR For Fugitive Emissions -- On December 9, 2009, EPA announced its interim final determination to provide an additional stay of the regulations concerning the inclusion of fugitive emissions under Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR). 74 Fed. Reg. 65692. EPA made an interim final determination to provide an additional stay for three months. The three-month stay that began on September 30, 2009, expires on December 30, 2009. At that time, facilities will be required to comply with the final rule as published unless an additional stay is set in place. EPA intends to publish a notice in the future that will propose an additional stay of the Fugitive Emissions during the time period while EPA reconsiders the rule. Since that proposed rule has not yet been published, any resulting final action that EPA takes will likely occur after December 30, 2009.

RCRA/CERCLA

EPA Proposes To Withdraw Emission-Comparable Fuel Exclusion Under RCRA -- On December 8, 2009, EPA proposed to withdraw the conditional exclusion from regulations promulgated on December 19, 2008, under subtitle C of the Resource Conservation and Recovery Act (RCRA) for so-called Emission Comparable Fuel (ECF). 74 Fed. Reg. 64643. These fuels are produced from hazardous secondary materials which, when burned in industrial boilers under specified conditions, generate emissions that are comparable to emissions from burning fuel oil in those boilers. EPA is proposing to withdraw this conditional exclusion because ECF appears to be better regarded as being a discarded material and regulated as a hazardous waste. The exclusions for comparable fuel and synthesis gas fuel are not addressed or otherwise affected by this proposed rule. Comments must be received on or before **January 22, 2010**.

REACH

ChemSec Updates SIN List -- In October 2009, the International Chemical Secretariat (ChemSec) announced the addition of 89 new substances to the Substitute It Now (SIN) List, which consists of chemicals that nongovernmental organizations (NGO) have identified as substances of very high concern (SVHC) based on the criteria established by the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) program. According to ChemSec, the updated SIN List is due to an extension of the list of substances classified within the European Union (EU) as carcinogenic, mutagenic, and toxic to reproduction (CMR). The SIN List now includes 356 substances. More information is available at <http://www.chemsec.org/news/395-the-sin-list-updated-with-substances-newly-classified-within-the-eu-now-contains-356-substances>.

ECHA Announces New Version Of IUCLID 5, IUCLID 5.2 To Be Released In Early 2010 -- The European Chemicals Agency (ECHA) announced in late November that a new version of



IUCLID 5.2 will be released in early 2010. IUCLID 5 was published officially in June 2007. The main modifications, corrections, and enhancements that will be available in IUCLID 5.2 are:

- Correction and enhancement of Organization for Economic Cooperation and Development (OECD) Harmonised Templates: More than one hundred changes have been approved and will be made in IUCLID 5.2.
- Section 2.1 will also be updated in order to take into account the latest revisions of the Globally Harmonised System of Classification and Labelling of Chemicals and to incorporate some specifics of the new European CLP Regulation.
- Section 3.2 will be modified to give the user the possibility to provide more detailed information on tonnages.
- Sections 3.5 and 3.6 for the reporting of uses will be overhauled (Cf. news alert published on the IUCLID website in July 2008).
- The endpoint study summaries will be revised to allow the storage of parameters chosen by experts to be used to perform chemical assessments.
- Specific enhancement linked to the EU REACH Regulation (*e.g.*, creation of inquiry dossiers, modification of REACH related dossier templates).
- Several improvements of the user interface, such as the possibility to open multi-line text fields for editing and to retrieve documents by creation and modification dates, etc.

ECHA Calls For Information To Avoid Unnecessary Animal Testing -- On November 19, 2009, ECHA called for information on the health effects of a specific chemical substance. This is a public consultation under REACH for testing proposals involving animals. The objection of the request is to give anyone the opportunity to submit relevant data with a view to ensure 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. The chemical is “Polysulfo {5-hydroxy-1-naphthalen-2-yl-[4-[4-(2-sulfatoethyl-sulfonyl)-phenyl]diazanyl]-1H-pyrazole-3-carboxylic acid}, alkali metal salt.” The registrant has, as permitted by the legislation, claimed certain details of the chemical confidential and so they cannot be made public. Based on the available data, the registrant has classified the substance as an irritant and skin sensitizer. The testing proposal from the registrant concerns information on genetic toxicity *in vivo*, *i.e.*, an experimental test involving vertebrate laboratory animals. The testing proposal will be evaluated by ECHA in the coming months, together with any



information resulting from this call. On the basis of the evaluation, ECHA will propose a decision to accept, amend, or reject the testing proposal. The information is due by **December 24, 2009**.

ECHA Calls Again For Information To Avoid Animal Tests -- On December 2, 2009, ECHA called again for information on the long-term health effects of “4-((Triethoxysilyl)methyl)morpholine.” This is a public consultation foreseen by the REACH Regulation for testing proposals involving animals. The aim of the call 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. Information is due **January 11, 2010**.

ECHA Member State Committee Agrees On New SVHCs To Be Added To The Candidate List -- During the ECHA Member State Committee’s December 2-4, 2009, meeting, the Committee unanimously agreed that 15 new SVHCs would be added to the Candidate List. The Committee also unanimously agreed on a testing proposal from ECHA that was submitted under the REACH regulation. ECHA will include the 15 SVHCs on the Candidate List in **January 2010**. Candidate List substances may eventually be included on the list of substances subject to authorization under REACH regulation. In this case, after a transition period, they can only be used if a specific authorization is granted. Information requirements for suppliers of substances, preparations, and articles containing these substances will also follow from the inclusion of the substances on the Candidate List. More information is available at http://echa.europa.eu/doc/press/pr_09_15_msc_svhc_20091207.pdf.

The new substances are listed below.

SUBSTANCE NAME	EC NUMBER	CAS NUMBER	REASON FOR PROPOSAL
Anthracene oil	292-602-7	90640-80-5	PBT; vPvB; Carcinogen, category 2 ¹
Anthracene oil, anthracene paste, distn. lights	295-278-5	91995-17-4	PBT; vPvB; Carcinogen, category 2 ² ; Mutagen, category 2 ³



SUBSTANCE NAME	EC NUMBER	CAS NUMBER	REASON FOR PROPOSAL
Anthracene oil, anthracene paste, anthracene fraction	295-275-9	91995-15-2	PBT; vPvB; Carcinogen, category 2 ² ; Mutagen, category 2 ³
Anthracene oil, anthracene-low	292-604-8	90640-82-7	PBT; vPvB; Carcinogen, category 2 ² ; Mutagen, category 2 ³
Anthracene oil, anthracene paste	292-603-2	90640-81-6	PBT; vPvB; Carcinogen, category 2 ² ; Mutagen, category 2 ³
Pitch, coal tar, high temp.	266-028-2	65996-93-2	PBT; vPvB; Carcinogen, category 2
Acrylamide	201-173-7	79-06-1	Carcinogen, category 2; Mutagen, category 2



SUBSTANCE NAME	EC NUMBER	CAS NUMBER	REASON FOR PROPOSAL
<p>Aluminosilicate Refractory Ceramic Fibres</p> <p>Aluminosilicate Refractory Ceramic Fibres are fibres covered by index number 650-017-00-8 in Annex VI, part 3, table 3.2 of Regulation (EC) No 1272/2008, and fulfil the two following conditions:</p> <p>a) Al₂O₃ and SiO₂ are present within the following concentration ranges:</p> <ul style="list-style-type: none">• Al₂O₃: 43.5-47 % w/w, and SiO₂: 49.5-53.5 % w/w, or• Al₂O₃: 45.5-50.5 % w/w, and SiO₂: 48.5-54 % w/w, <p>b) fibres have a length weighted geometric mean diameter less two standard geometric errors of six or less micrometers (µm)</p>	-	-	Carcinogen, category 2



SUBSTANCE NAME	EC NUMBER	CAS NUMBER	REASON FOR PROPOSAL
<p>Zirconia Aluminosilicate, Refractory Ceramic Fibres</p> <p>Zirconia Aluminosilicate Refractory Ceramic Fibres are fibres covered by index number 650-017-00-8 in Annex VI, part 3, table 3.2 of Regulation (EC) No 1272/2008, and fulfil the two following conditions:</p> <p>a) Al₂O₃, SiO₂, and ZrO₂ are present within the following concentration ranges:</p> <ul style="list-style-type: none"> • Al₂O₃: 35-36 % w/w, and • SiO₂: 47.5–50 % w/w, and • ZrO₂: 15-17 % w/w, <p>b) fibres have a length weighted geometric mean diameter less two standard geometric errors of six or less µm</p>	-	-	Carcinogen, category 2
2,4-Dinitrotoluene	204-450-0	121-14-2	Carcinogen, category 2
Diisobutyl phthalate	201-553-2	84-69-5	Toxic for reproduction, category 2
Lead chromate	231-846-0	7758-97-6	Carcinogen, category 2; Toxic for reproduction, category 1
Lead chromate molybdate sulphate red (C.I. Pigment Red 104)	235-759-9	12656-85-8	Carcinogen, category 2; Toxic for reproduction, category 1



SUBSTANCE NAME	EC NUMBER	CAS NUMBER	REASON FOR PROPOSAL
Lead sulfochromate yellow (C.I. Pigment Yellow 34)	215-693-7	1344-37-2	Carcinogen, category 2; Toxic for reproduction, category 1
tris(2-chloroethyl) phosphate	204-118-5	115-96-8	Toxic for reproduction, category 2

PBT -- Persistent, bioaccumulative, and toxic

vPvB -- Very persistent and very bioaccumulative

¹ -- The substance does not meet the criteria for identification as a carcinogen in situations where it contains less than 0.005% (w/w) benzo[a]pyrene (EINECS No 200-028-5).

² -- The substance does not meet the criteria for identification as a carcinogen in situations where it contains less than 0.005% (w/w) benzo[a]pyrene (EINECS No 200-028-5) and less than 0.1% w/w benzene (EINECS No 200-753-7).

³ -- The substance does not meet the criteria for identification as a mutagen in situations where it contains less than 0.1% w/w benzene (EINECS No 200-753-7).

Member State Committee Agrees On First Reach Testing Decision -- On December 3, 2009, the ECHA Member State Committee unanimously agreed on a testing proposal from ECHA which was submitted under the REACH. The Committee agreed that the registrant should have to carry out tests for viscosity, aquatic toxicity (*Daphnia magna* long term toxicity), repeated dose toxicity, and reproductive toxicity. The Committee discussed the registrant's proposal to use read-across from another substance, instead of testing the repeated dose toxicity and reproductive toxicity. ECHA will make the final decision in accordance with the Committee's unanimous agreement and the decision will be addressed to the registrant. For more information please consult http://echa.europa.eu/consultations/test_proposals_en.asp.

CEFIC Issues Monomers And Polymers Hazard Communication Under REACH -- On December 3, 2009, the European Chemical Industry Council (CEFIC) issued guidance regarding its interpretation of issues pertinent to the Hazard Communication of Monomers and Polymers under REACH legislation, which is based upon the Judgment of the United Kingdom Court (Grand Chamber). The guidance is available at <http://www.cefic.org/Files/Publications/REACH-and-Monomers-final.pdf>.

Second Joint REACH Enforcement Project Will Focus On How Formulators Comply With REACH -- On December 14, 2009, ECHA announced that the Forum for Exchange of Information on Enforcement will focus its next joint REACH enforcement project on formulators of mixtures who are the first level of Downstream Users in the supply chain. According to ECHA, most mixtures are sold to article producers, but a large number, such as detergents, paints, and personal care products, are sold directly to consumers. The preparations of the



project will start early **2010** and the on-site inspections are scheduled for **2011**, after the first registration deadline. More information is available at http://echa.europa.eu/doc/press/na_09_34_forum_20091214.pdf.

NANOTECHNOLOGY

EU Council Adopts Updated Cosmetics Regulation Requiring Labeling Of Nanoscale Ingredients -- On November 20, 2009, the EU Council approved an updated cosmetics regulation that would require cosmetic products that contain nanoscale ingredients to be labeled as such. The regulation would also require the manufacturers of new cosmetic products containing nanomaterials to notify the European Commission (EC) and provide certain information six months before the product is placed on the European market. If the EC has concerns regarding the safety of the nanomaterial, it would ask the Scientific Committee for Consumer Safety (SCCS) to give its opinion. Manufacturers of products containing nanoscale ingredients already being sold in the EU also would have to notify the EC and submit safety data. The regulation is expected to be published soon in the *Official Journal of the European Union*, and is available at <http://register.consilium.europa.eu/pdf/en/09/st03/st03623.en09.pdf>.

The regulation defines nanomaterial as “an insoluble or biopersistent and intentionally manufactured material with one or more external dimensions, or an internal structure, on the scale from 1 to 100 nm.” The regulation requires that all nanomaterial ingredients “be clearly indicated in the list of ingredients,” and the names of such ingredients shall be followed by the word “nano” in brackets. The regulation directs the EC to “make available a catalogue of all nanomaterials used in cosmetic products placed on the market, including those used as colorants, UV-filters and preservatives in a separate section, indicating the categories of cosmetic products and the reasonably foreseeable exposure conditions. This catalogue shall be regularly updated thereafter and be made publicly available.” The EC will also prepare an annual state report for the European Parliament and EU Council on developments in the use of nanomaterials in cosmetic products. The regulation will replace the current EU Cosmetics Directive 76/768/EEC. Within the EU, regulations automatically apply to all 27 member states, unlike directives, which must be implemented through legislation within each member state.

LEGISLATIVE DEVELOPMENTS

Senators Look To Achieve Bipartisan Support For Climate Change -- Senators Joseph Lieberman (Ind.-D-CT), Lindsey Graham (R-SC), and John Kerry (D-MA) have announced plans to introduce climate change legislation that might garner bipartisan support, compared to a measure already passed by the Senate Environment and Public Works Committee that was not supported by any Republicans. Such a bill would likely be introduced after the conclusion of the health care debate presently underway. In the interim, some form of outline of the key provisions of the proposal might be released. To receive broad support, the Senators have



indicated that the desire of business to use the measure to create new jobs must be addressed, through expansion of nuclear energy, off-shore drilling, and realistic, supportable emissions standards.

Kerry Addresses Effects Of Climate Change -- Senator John Kerry (D-MA), Chair of the Senate Foreign Relations Committee, has introduced legislation to assist in reducing GHG emissions worldwide and address a myriad of issues that may affect developing countries as climate change becomes more of a reality. The International Climate Change Investment Act would provide funds to help deter deforestation, develop so-called low carbon pathways, and implement GHG emission mitigation policies that are in keeping with the countries involved. U.S. investments in such overseas projects would be overseen by a board made up of the Secretary of State and various agency heads.

Wind Energy To Receive A Boost -- Entities creating renewable electricity from wind would receive additional depreciation allowances and tax credits pursuant to legislation introduced by Senator Charles Grassley (R-IA). The legislation is also expected to be a vehicle for the support of the creation of “green jobs” through the investment in projects that push energy independence and a clean environment.

Radioactive Waste Import Could Be Banned -- Acting after a company sought approval to import some 20,000 tons of radioactive waste, the House of Representatives passed a measure to prohibit the import of low-level radioactive waste into this country by a vote of 309-112. A similar measure has been introduced in the Senate and referred to Committee.

Gas Turbine Efficiency And Water Technologies Get Support -- The House of Representatives has passed by voice vote two measures intended to support research programs regarding water and energy, as well as gas turbine efficiency. Under one bill, a council would be established, made up of representatives of the Department of Energy and other federal agencies. The council would collect data and report activities to improve innovation. A total of \$5 million annually would fund the project until 2016. One key requirement is that the Energy Department gauge the effects of climate change on water quality and supplies. A second bill that passed is aimed at improving the efficiency of gas turbines used in cycle power generation systems. According to the sponsor of the bill, Representative Paul Tonko (D-NY), if the efficiency of the systems can be improved by 5%, it can possibly reduce carbon dioxide emissions by over 20 million tons a year.

Action On Chemical Facility And Water Treatment Plant Security Begins In Senate -- An aide to Senator Frank Lautenberg (D-NJ) told the press that the Senator intends to introduce a measure to address chemical plant security and water and wastewater treatment plant coverage. While no details have been provided regarding the contents of the proposal, there is speculation



that the Senate bill will seek to avoid some of the compromise provisions contained in a chemical security bill passed by the House of Representatives earlier this year.

Technology To Stem Effects Of Stormwater Runoff Supported -- The Green Infrastructures for Clean Water Act has been introduced in the House of Representatives by Representative Donna Edwards (D-MD) and co-sponsors. The measure provides funds to develop stormwater management techniques that reduce the effect of runoff from hard surfaces in developed urban areas by using soil and plant life to absorb that runoff. The mechanism for supporting the further development of the technology would be issuance of grants to establish regional centers to support the technology using the resources of the particular area involved. The centers would provide manuals and come up with best management practices that might be employed by states and others in teaching. Funding would be in the amount of \$24 million per year for 2011 through 2014.

House And Senate Agree On EPA Appropriation -- On December 13, 2009, the Senate agreed by a vote of 57-35 to a Conference Report posted by the House of Representatives Rules Committee that detailed the agreement of the two bodies regarding appropriations for various government agencies and departments, including EPA. According to the Senate description of the report, the agreement includes, among other amounts, \$846,049,000 allocated for science and technology programs, plus \$26,834,000 transferred from Superfund monies. Under state and tribal grants, \$4,970,223,000 is appropriated for environmental programs and infrastructure assistance, with \$2,100,000,000 of that amount for making capitalization grants for the Clean Water State Revolving Funds and \$1,387,000,000 for capitalization grants for the Drinking Water State Revolving Funds. Portions of those monies in 2010 are directed to be used for green infrastructure projects. The conference agreement further provides \$2,993,779,000 for Environmental Programs and Management activities, including the Smart Growth Program, compliance assistance and incentives, and projects such as those outlined for the Chesapeake Bay and Puget Sound. For operations and administration, \$501,895,000 has been agreed to, and \$44,791,000 for the Office of the Inspector General. Monies for buildings and facilities totaling \$37,001,000 are also specified in the Conference Report. Earlier information describing the contents of the Report outlined significant sums for the Great Lakes Restoration Initiative, Superfund activities, inspection and clean up of toxic spills from underground storage tanks, and evaluation and cleanup of Brownfields and Climate Change Programs.

MISCELLANEOUS

Administrator Jackson Signs Two MOUs To Broaden The Conversation On Environmentalism -- EPA Administrator Jackson signed on November 24, 2009, two Memoranda of Understanding (MOU) designed to increase EPA's outreach to minority and underserved communities. The two MOUs signed by the Administrator, one with the Hispanic Association of Colleges and Universities (HACU) and the other with the Vermont Law School,



are expected to facilitate the flow of information between EPA and minority communities and further the teaching of environmental issues at colleges that serve minority students. As part of the MOU signed with the Vermont Law School, the university has agreed to employ distance learning technology to give a wider range of students from Minority Academic Institutions access to its environmental law program. The Administrator also signed an MOU with HACU that builds on EPA's relationship with HACU to enhance partnerships with Hispanic Serving Institutions.

EU Issues Directive On Pesticides -- On November 24, 2009, the EU issued Regulation 1107/2009 and Directive that bans aerial spraying of pesticides, tightens pesticide authorization rules, and expands eco-design rules to cover additional products. The Regulation on the Placing of Plant Protection Products on the Market will enter into force on the 20th day after publication in the journal. The Directive on the Sustainable Use of Pesticides entered into force November 25, 2009, but member states have until December 14, 2011, to bring into force the laws, regulations, and administrative procedures needed to comply with the Directive. The new Regulation also contains new provisions on data sharing to avoid the duplication of testing of plant protection products on vertebrate animals. In short, owners and prospective applicants must take all reasonable steps in order to avoid the repetition of tests. This obligation applies to both vertebrate and non-vertebrate animal tests. In the case of vertebrate studies, however, should the parties fail to reach an agreement, the Member State authorities are entitled to rely on the studies of the data owner for the benefit of the prospective applicant, and the data owner has a claim before a national arbitration panel or Court for a "fair share" of the costs. The new Regulation does not define in detail the procedure, timing, or criteria, much less the costs, for data sharing, and in turn, these may have to be further clarified either by the legislature or by Court decisions. The Regulation is effective on **December 14, 2009**.

EPA Issues Semi-Annual Report -- On December 7, 2009, EPA issued its Fall 2009 Regulatory Agenda. 74 Fed. Reg. 64496. The regulatory agenda publishes information on regulatory and major policies currently under development, reviews of existing regulations and major policies, and rules and major policymakings completed or canceled since the last agenda.

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