



## Recent Federal Developments October 15, 2006

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### TSCA/FIFRA/EPCRA/NTP

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***EPA Schedules Public Meeting On GHS*** -- On September 21, 2006, the U.S. Environmental Protection Agency (EPA) announced the scheduling of a public meeting on the scope and application of the Globally Harmonized System of Classification and Labeling of Chemicals (GHS) to pesticide labeling issues. 71 Fed. Reg. 55180. The meeting will be held on **October 18, 2006**. Please consult the *Federal Register* for details.

***EPA Schedules Public Comment On Carcinogenicity Evaluation Of Ethylene Oxide*** -- On September 22, 2006, EPA announced a 30-day public comment period on a draft document entitled *Evaluation of the Carcinogenicity of Ethylene Oxide*. 71 Fed. Reg. 55470. The document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development (ORD). The document was released solely for the purpose of seeking comment and for review by EPA's Science Advisory Board during a meeting to be held later this year. On October 12, 2006, EPA announced an extension of the comment period. 71 Fed. Reg. 60143. Comments are due **December 8, 2006**.

***EPA Withdraws Certain Chemical Substances From The Preliminary Assessment Information Reporting (PAIR) And Health Safety Data Reporting Rules*** -- On September 29, 2006, EPA withdrew certain chemical substances from the category of voluntary High Production Volume (HPV) Challenge Program orphan (unsponsored) chemical substances that would be subject to reporting requirements under Toxic Substances Control Act (TSCA) Sections 8(a) and 8(d). 71 Fed. Reg. 57439. EPA published two final rules, both effective September 15, 2006, with certain exceptions: the PAIR rule under TSCA Section 8(a), which requires manufacturers of chemical substances in the category of voluntary HPV Challenge Program orphan chemical substances on the Interagency Testing Committee's (ITC) TSCA Section 4(e) Priority Testing List to submit a one-time report on general production/importation volume, end-use, and exposure-related information to EPA, and a Health and Safety Data Reporting rule under TSCA Section 8(d), which requires manufacturers of chemical substances in the category of HPV Challenge Program orphan chemical substances to submit certain unpublished health and safety data to EPA. The chemical substances listed in the final rule are being withdrawn from 40 C.F.R. Parts 712 and 716 for "good cause," and these chemical substances will not be subject to the reporting requirements imposed by the TSCA Sections 8(a) and 8(d) rules that were published on August 16, 2006. Please consult the *Federal Register* for a complete list of substances. The final rule was immediately effective.

***EPA Issues Draft Guidance On Antimicrobial Products In Heating And Ventilation Systems*** -- On September 22, 2006, EPA announced the availability of and request for public comment on a draft Pesticide Registration (PR) Notice entitled *Use of Antimicrobial Pesticide Products in Heating, Ventilation, Air Conditioning and Refrigeration Systems*. 71 Fed. Reg. 55471. The PR Notice would, once issued in final, provide guidance to registrants concerning EPA-registered



sanitizer, disinfectant, and other antimicrobial products whose labels bear general directions for use on or incorporation within hard, non-porous or porous surfaces, but which are not specifically registered for treatment of Heating, Ventilation, Air Conditioning and Refrigeration Systems. Comments are due on or before **November 21, 2006**.

***EPA Announces Integrated Risk Information System (IRIS) Literature Screening Verification***

-- On September 28, 2006, EPA announced the addition of ten confirmations to the IRIS Summaries. EPA announced the annual IRIS agenda on February 9, 2004, stating that it would use findings from the recent IRIS literature screening level review project as the basis for a systematic update of the IRIS database. The purpose of EPA's screening level review was to reach a preliminary determination regarding the need for a full reassessment. That determination was needed based on an evaluation of new health effects literature that could potentially result in significant changes to existing toxicity values or cancer weight-of-evidence designations. The notice stated that EPA would begin performing more in-depth reviews of the extant health literature to confirm results from the literature screening. The IRIS Summaries have been updated to confirm that existing assessments are current for the chemicals that were found to be without significant new health effects information that could result in a change to the existing data in IRIS. The notice also requested submission of scientific information from the public to confirm the results of the literature screening review. Confirmatory statements were added on September 19, 2004, June 22, 2005, August 15, 2005, and July 5, 2006, to a total of 56 IRIS Summaries. Since then, another ten confirmations have been completed for 3,3'-dichlorobenzidine, p-bromodiphenyl ether, tribromochloromethane, benzotrithloride, brominated dibenzofurans, 4,4'-methylene bis(N,N'-dimethyl)aniline, bromate, quinoline, diethyl-p-nitrophenylphosphate, and 1,1,1,2-tetrachloroethane. These confirmations were added to the IRIS Summaries on September 28, 2006. The results of the screening project were added to the IRIS database beginning in 2003 and continue as an ongoing project.

***OIG Releases Report On EPA's FIFRA Fund***

-- EPA's Office of the Inspector General (OIG) released an October 10, 2006, report entitled *Fiscal 2005 and 2004 Financial Statements for the Pesticides Reregistration and Expedited Processing Fund*. Under the Food Quality Protection Act (FQPA), OIG performs an annual audit of the Pesticides Reregistration and Expedited Processing Fund (known as FIFRA) financial statements. According to OIG's report, during fiscal year (FY) 2005, EPA's Washington Finance Center recorded adjusting and correcting entries for Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) collections in the Integrated Financial Management System (IFMS) without adequately documenting the errors, corrections, or modifications. OIG recommends that the Washington Finance Center "adequately document adjusting and correcting entries entered in IFMS in accordance with the EPA Comptroller Policy Announcement No. 93-02, *Policies for Documenting Agency Financial Transactions*." Washington Finance Center officials agreed with OIG's recommendation, and began corrective action to better document adjusting and correcting entries in IFMS. The report is available on the Internet at <http://www.epa.gov/oig/reports/2007/20061010-2007-1-00001.pdf>.



***EPA Announces Availability Of Schedule For Registration Review*** -- On October 11, 2006, EPA announced the availability of the schedule for the registration review of pesticides mandated under FIFRA Section 3(g). 71 Fed. Reg. 59786. Although there is not a comment period for the schedule, according to the notice, EPA “may consider issues raised by the public or the registrant when reviewing the posted schedule, to schedule a pesticide registration review, or to modify the schedule of a pesticide registration review as appropriate.” The schedule shows which registration review cases are expected to begin the review process during the first four years of the program, beginning in FY **2007**. The schedule took effect on October 10, 2006, the effective date of the registration review regulation. Background information on the program is available at [http://www.epa.gov/oppsrrd1/registration\\_review/](http://www.epa.gov/oppsrrd1/registration_review/), and the schedule is available at [http://www.epa.gov/oppsrrd1/registration\\_review/schedule.htm](http://www.epa.gov/oppsrrd1/registration_review/schedule.htm).

***NAC/AEGL Committee Announces Availability Of Proposed AEGLs For 46 Chemicals*** -- On October 12, 2006, the National Advisory Committee for Acute Exposure Guideline Levels (AEGLs) for Hazardous Substances (NAC/AEGL Committee) announced the availability of proposed AEGL values and technical support documents (TSD) for 46 chemicals. 71 Fed. Reg. 60141. The proposed values and TSDs are available in the docket at <http://www.regulations.gov>, docket number EPA-HQ-OPPT-2004-0128. EPA states that the NAC/AEGL Committee is developing AEGLs on an ongoing basis to provide federal, state, and local agencies with information on short-term exposures to hazardous chemicals. The 46 chemicals include:

Acetaldehyde (CAS No. 75-07-0)	Formaldehyde (CAS No. 50-00-0)
Acetonitrile (CAS No. 75-05-8)	Hexane (CAS No. 110-54-3)
Benzene (CAS No. 71-43-2)	Hydrogen bromide (CAS No. 10035-10-6)
Benzonitrile (CAS No. 100-47-0)	Hydrogen iodide (CAS No. 10034-85-2)
Bromine pentafluoride (CAS No. 7789-30-2)	Hydrogen selenide (CAS No. 7783-07-5)
Bromine trifluoride (CAS No. 7787-71-5)	Isobutyronitrile (CAS No. 78-82-0)
Butadiene (CAS No. 106-99-0)	Lewisite L-1 (CAS No. 541-25-3)
Butane (CAS No. 106-97-8)	Lewisite L-2 (CAS No. 40334-69-8)
Butyl acrylate (CAS No. 141-32-2)	Lewisite L-3 (CAS No. 40334-70-1)
Chlorine pentafluoride (CAS No. 13637-63-3)	Malononitrile (CAS No. 109-77-3)
Chloroacetaldehyde (CAS No. 107-20-0)	Methacrylic acid (CAS No. 79-41-4)
Chloroacetone (CAS No. 78-95-5)	Methacrylonitrile (CAS No. 126-98-7)
Chloroacetonitrile (CAS No. 107-14-2)	Methyl bromide (CAS No. 74-83-9)
Chloroacetyl chloride (CAS No. 79-04-9)	Methyl chloride (CAS No. 74-87-3)
Cumene (CAS No. 98-82-8)	Methyl methacrylate (CAS No. 80-62-6)
Dichloroacetyl chloride (CAS No. 79-36-7)	Methylene chloride (CAS No. 75-09-2)
Dimethyl sulfate (CAS No. 77-78-1)	Oleum (CAS No. 8014-95-7)
Disulfur dichloride (CAS No. 10025-67-9)	Piperidine (CAS No. 110-89-4)
Ethyl acrylate (CAS No. 140-88-5)	Propane (CAS No. 74-98-6)
Ethyl mercaptan (CAS No. 75-08-1)	Propionaldehyde (CAS No. 123-38-6)



Propionitrile (CAS No. 107-12-0)  
Styrene (CAS No. 110-42-5)  
Sulfur trioxide (CAS No. 7446-11-9)

Sulfuric acid (CAS No. 7664-93-9)  
Titanium tetrachloride (CAS No. 7550-45-0)  
Vinyl chloride (CAS No. 75-01-4)

Comments are due **November 13, 2006**.

***EPA Extends Comment Period On Draft Toxicological Review Of Dichlorobenzenes And Reschedules External Peer Review Panel Meeting*** -- EPA announced on October 12, 2006, that it was extending the public comment period and rescheduling an external peer review panel meeting to review selected sections of the EPA National Center for Environmental Assessment (NCEA) final draft document entitled *Toxicological Review of Dichlorobenzenes: In Support of Summary Information on the Integrated Risk Information System (IRIS)* (EPA/635/R-03/015), regarding the inhalation reference concentration (RfC) and inhalation cancer assessment for 1,4-dichlorobenzene. 71 Fed. Reg. 60139. EPA is also changing the format of the external peer review meeting to include both a teleconference and an in-person panel meeting. Comments are due **October 17, 2006**. The external peer review meeting is scheduled for **November 3, 2006**.

***SFIREG Working Committee Will Meet November 6-7, 2006*** -- EPA announced on October 13, 2006, that the Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Water Quality and Pesticide Disposal (WQ/PD) will hold a two-day meeting on **November 6-7, 2006**. 71 Fed. Reg. 60509. The meeting is open to the public. According to the *Federal Register* notice announcing the meeting, the tentative agenda includes the following topics:

1. Office of Pesticide Programs (OPP)-Office of Water partnerships in Pesticide Water Quality Programs;
2. Disposal of pesticide-treated seed;
3. Prioritizing ambient water criteria for pesticides;
4. Endangered species and pesticide water quality issues;
5. Atrazine special review progress;
6. Pesticide degradates;
7. EPA water quality performance measures/state end-of-year reporting;
8. Committee Workgroups issues papers, updates, surveys;



9. FIFRA/Clean Water Act (CWA): Court cases, EPA proposed rules;
10. Water Quality Pesticide Regulatory Education Program course review;
11. Container/containment rule implementation; container recycling: state information gathering;
12. Toxicity and fate data retrieval protocol for states;
13. Pyrethroid registration evaluation and lab analytical issues;
14. Water quality benchmarks for screening-level assessments;
15. EPA update/briefing:
  - a. OPP update; and
  - b. Office of Enforcement Compliance Assurance (OECA) update.

***PPDC PRIA Workgroup Will Meet November 2, 2006*** -- On October 13, 2006, EPA announced that the Pesticide Program Dialogue Committee (PPDC), Pesticide Registration Improvement Act (PRIA) Process Improvement Workgroup will hold a public meeting on November 2, 2006. 71 Fed. Reg. 60510. According to EPA, an agenda for this meeting is being developed and will be posted on EPA's website. The Workgroup is developing advice and recommendations on topics related to EPA's registration process. The meeting is open to the public.

***EPA Publishes Framework For Assessing Health Risks Of Environmental Exposures To Children*** -- On October 13, 2006, EPA announced the availability of a final report entitled *A Framework for Assessing Health Risks of Environmental Exposures to Children* (EPA/600/R-05/093F), which was prepared by NCEA within EPA's ORD. According to EPA, the purpose of this report is to provide an overarching framework for a complete and transparent assessment of exposure of environmental agents to children and resulting potential health risks within the U.S. The framework lays out a life stage-specific risk assessment process, points to existing published sources for more detailed information on life stage-specific considerations, and includes web links to specific online publications and relevant EPA science policy papers, guidelines, and guidance. The framework emphasizes the need for risk assessments to take into account potential exposures to environmental agents during preconception and all stages of development. EPA states that the framework is not intended to present an EPA guideline, but rather describes the overall structure of and the components considered important for children's health risk assessment. The report describes an approach that includes problem formulation, analysis, and



risk characterization steps, and also builds on EPA experience assessing risk to susceptible populations.

- Problem Formulation -- Focuses on the life stage-specific nature of the analysis to include scoping and screening level questions for hazard characterization, dose response, and exposure assessment.
- Analysis -- Focuses on a life stage approach to evaluating hazard, dose-response, and exposure that is relevant to the scope of the problem identified in problem formulation.
- Risk Characterization -- Recognizes the need to consider life stage-specific risks and explicitly describes the uncertainties and variability in the database.

EPA notes that within this framework, life stage-specific data gaps are not meant to convey an obligatory change in how uncertainty factor(s) associated with EPA's health risk assessment methods should be judged in a given risk assessment, but rather to consider how life stage-specific data can better characterize the risk to susceptible groups within the population. The framework, which EPA intends to post online on October 13, 2006, will be available on the Internet at <http://cfpub.epa.gov/ncea/>.

## **RCRA/CERCLA**

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***EPA Issues Final Rule On Administrative Reporting Exemptions For Certain Air Releases Of NOx*** -- On October 4, 2006, EPA issued a final rule that it believes would reduce reporting burdens under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended in the Emergency Planning and Community Right-to-Know Act (EPCRA). 71 Fed. Reg. 58525. Under the rule, EPA broadens the existing reporting exemptions for releases that are the result of combustion of less than 1,000 pounds of nitrogen oxide (NOx) and less than 1,000 pounds of nitrogen dioxide in the air in 24 hours. These may also include emissions from detonation or processes that include both combustion and non-combustion operations, such as nitric acid production. The administrative reporting exemption, according to EPA, is protective of human health and the environment and consistent with EPA's goal to reduce unnecessary reports given that the levels for which the Clean Air Act (CAA) regulates NOx are considerably higher than 10 pounds. The rule is effective on **November 3, 2006**.



## NANOTECHNOLOGY

*House Committee Holds Hearing On Nanotechnology And Federal Activities* -- On September 21, 2006, the House Committee on Science held a hearing entitled “Research on Environmental and Safety Impacts of Nanotechnology: What are the Federal Agencies Doing?,” which examined whether the federal government is adequately funding, prioritizing, and coordinating research on the environmental and safety implications of nanotechnology. Representative Sherwood Boehlert (R-NY), Chair of the Committee, stressed the need for a prioritized research agenda and additional funding for environmental research on nanotechnology. Ranking Member Bart Gordon (D-TN) agreed with Boehlert’s comments, and criticized the National Science and Technology Council’s (NSTC) report entitled *Environmental Health and Safety Research Needs for Engineered Nanoscale Materials*, which was intended to identify environmental, health, and safety (EHS) research and information needs related to understanding and management of potential risks of engineered nanoscale materials. The report, an archived webcast of the hearing, and the witness statements are available at <http://www.house.gov/science/hearings/full06/Sept%2021/index.htm>.

During the hearing, the Committee heard testimony from the following witnesses: Norris E. Alderson, Ph.D., Chair of the interagency Nanotechnology Environmental and Health Implications (NEHI) Working Group and Associate Commissioner for Science, Food and Drug Administration (FDA); Arden L. Bement, Jr., Ph.D., Director, National Science Foundation; William Farland, Ph.D., Deputy Assistant Administrator for Science, ORD, EPA; Altaf H. (Tof) Carim, Ph.D., Program Manager, Nanoscale Science and Electron Scattering Center, Office of Basic Energy Sciences, Department of Energy; Andrew Maynard, Ph.D., Chief Science Advisor, Project on Emerging Nanotechnologies at the Woodrow Wilson International Center for Scholars; and Matthew M. Nordan, President and Director of Research at Lux Research Inc.

Gordon and Maynard, in particular, criticized the NSTC’s report. Gordon stated that the report fails to provide a prioritized research plan and lacks a sense of urgency. Gordon also noted that agencies are now late in the budget planning process for FY 2008, but that there is nothing available in the report to help agencies prioritize their research needs. Maynard testified that “the federal government needs a master plan for identifying and reducing potential risks,” and that the plan “should include a top-down risk research strategy, sufficient funding to do the job, and the mechanisms to ensure that resources are used effectively.” According to Nordan, identification of priority areas is not the “roadblock to progress.” Instead, he said that two things are missing -- a specific game plan for accomplishing research, and adequate funding.

*OECD Nanomaterials Group To Meet* -- The first meeting of the Working Party on Manufactured Nanomaterials, established by the Organization for Economic Cooperation and Development (OECD), has been scheduled for **October 26-27, 2006**, in London. The meeting is intended to obtain consensus on a draft work program the panel would propose to pursue



beginning this year and through **2008**. The draft program would have to be approved by OECD's Chemical Committee.

***DEFRA Announces Voluntary Reporting Scheme For Nanoscale Materials*** -- On September 22, 2006, the U.K.'s Department for Environment, Food, and Rural Affairs (DEFRA) announced its Voluntary Reporting Scheme, which it describes as an "initiative to work towards addressing any potential risks posed by the products of nanotechnologies." Under the scheme, industry, research organizations, and others may provide DEFRA with information on the engineered nanoscale materials with which they are working. DEFRA intends the Voluntary Reporting Scheme to provide information on the potential risks that these materials may pose to the environment and human health. The Scheme is voluntary and will run for two years, ending in **September 2008**. More information is available on the Internet at <http://www.defra.gov.uk/environment/nanotech/policy/index.htm#voluntary>.

DEFRA states that it would like to receive data from any company or organization "involved in manufacturing, using, importing, researching, or managing wastes consisting of engineered nanoscale materials." The focus of the Voluntary Reporting Scheme is materials that: are deliberately engineered (*i.e.*, not natural or unintentional by-products of other processes); have two or more dimensions broadly in the nanoscale; and are "free" within any environmental media at any stage in a product's life-cycle.

DEFRA will review regularly data obtained from the Scheme and will revise the Scheme as necessary, based on DEFRA's "understanding of both how it is working and the data that [are] of most value."

***Risk Management Practices For Nanoscale Materials*** -- On October 4, 2006, EPA announced a public meeting on **October 19-20, 2006**, regarding risk management practices under a possible stewardship program for nanoscale materials under TSCA. 71 Fed. Reg. 58601. According to the notice, EPA is considering development of a stewardship program "to encourage responsible commercial development of nanoscale materials." EPA states that the stewardship program will also enable EPA, affected industry, and other stakeholders to build the capacity to assess potential risks to human health and the environment from nanoscale materials and to identify risk management practices available to reduce such potential risks. EPA is requesting comments at the public meeting on: risk management practices currently used or potentially available for use for nanoscale materials, the rationale for the use of these practices and the effectiveness or efficiency of these practices, and issues to consider for including risk management practices for nanoscale materials in the stewardship program. Comments must be received on or before **8 a.m., October 19, 2006**. Requests to present oral comments must be submitted before **October 16, 2006**. Requests to attend the meeting may be submitted electronically through the Eastern Research Group (ERG) registration website at <https://www2.ergweb.com/projects/conferences/nano> by **October 16, 2006**. Advance requests are not required, however. The ERG



registration website also includes a draft discussion paper and a list of peer panelists for the meeting.

***Nanotechnology And The Food And Drug Administration*** -- On October 5, 2006, Michael R. Taylor, former Deputy Commissioner for Policy at FDA and current Professor at the University of Maryland School of Medicine, presented the findings of his report, "Regulating the Products of Nanotechnology: Does FDA Have the Tools It Needs?," at a meeting convened by the Woodrow Wilson International Center's Project on Emerging Nanotechnologies (PEN), on whose behalf the report was published. Taylor's report is available at <http://www.nanotechproject.org/82/10506-regulating-the-products-of-nanotechnology>.

David Rejeski, PEN Director, provided opening remarks in which he highlighted those FDA nanotechnology areas growing fastest. These include cosmetics, food-contact materials, drugs, and medical devices. Rejeski remarked that the Project has available an inventory of consumer products containing nanomaterials (available at <http://www.nanotechproject.org/index.php?id=44>), and noted that a similar inventory of nanomaterial products is being created in Japan.

Taylor began his presentation by advising that there is no basis to conclude that there are dangerous nanotechnology products currently being marketed. Taylor remarked, however, that the FDA lacks the tools to do the job the public expects of it, namely protecting and promoting public health, and promoting public confidence in FDA-regulated products. He emphasized that while small size does not necessarily mean dangerous, safety cannot always be assumed given the small size of nanoscale materials used in products regulated by the FDA. He cautioned against generalizations about safety in either direction (always safe, or always not safe). He articulated a similar caution regarding the risk arising from regulating nanotechnology, namely that too much regulation may stifle promising innovations.

Taylor noted that while FDA is nearly set to achieve pre- and post-market goals of regulatory oversight of nanomaterial products for food, substances that are generally recognized as safe (GRAS), food packaging, medical devices, and over-the-counter and new drugs, FDA does not have in place the same oversight capacity with respect to cosmetic ingredients, whole foods, or dietary supplements. Taylor emphasized that there is no need to treat nanotechnology as being beyond the scope of FDA's traditional regulatory framework. Taylor quickly added, however, that there is (and has been) scant framework historically in place regarding pre- and post-market oversight of cosmetics or dietary supplements.

Taylor also noted that there are gaps in FDA's "legal tool kit" and in financial resources available to FDA and emphasized that the greatest challenges FDA faces are budgetary constraints. He noted that FDA is faced with increasing demands ranging from bird flu to bioterrorism concerns, but that FDA's budget and employees have been cut and continue to



decline. To assess the use of nanoscale materials properly in consumer products, Taylor suggested that FDA:

- Build its knowledge base;
- Expand in-house expertise;
- Develop scientific and regulatory guidance;
- Develop safety evaluation tools;
- Expand post-market oversight;
- Develop criteria for determining when nanotech materials are “new”;
- Determine how to let GRAS, food additive, food packaging, and cosmetic manufacturers know if nanoscale versions of cleared materials raise new safety considerations;
- Develop guidance on “adequate” substantiation of safety of nanoscale cosmetic ingredients; and
- Develop guidance on when claims resulting from the use of nanomaterials in cosmetics converts the “cosmetic” into a “drug.”

Additionally, Taylor noted the need for FDA to obtain discretionary pre-market notification authority, records access, post-market monitoring authority, and adverse event reporting authority.

A question was raised concerning how we can discern the very few nanomaterials that may have emergent properties that may or may not have safety issues, from those nanomaterials that do not. That was the million dollar question. Nobody had an answer.

## **AIR/WATER**

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***EPA Issues Final Rule For Miscellaneous Coating Manufacturing*** -- On October 4, 2006, EPA issued a final rule promulgating amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for miscellaneous coating manufacturing. 71 Fed. Reg. 58499. The amendments clarify that coating manufacturing means the production of coatings using operations such as mixing and blending, not reaction or separation processes used in chemical manufacturing. The amendments also extend the compliance date for certain coating



manufacturing equipment that is also part of a chemical manufacturing process unit. Finally, the amendments clarify that operations by end users that modify a purchased coating prior to application at the purchasing facility are exempt from the rule. The rule was immediately effective.

***EPA Issues Five CTGs*** -- On October 5, 2006, EPA issued five controlled technique guideline (CTG) documents that EPA hopefully will use to reduce emissions of volatile organic compounds (VOCs). 71 Fed. Reg. 58745. The CTGs are intended to reduce VOCs from the following Group II Product Categories: lithographic printing materials, letterpress printing materials, flexible packaging printing materials, flat wood paneling coatings, and industrial cleaning solvents. EPA issued the CTGs pursuant to CAA Section 183(e). The CTGs provide guidance to states concerning EPA's recommendations for reasonably available control technology (RACT). The CTGs are guidance only and are not enforceable as law.

## **LEGISLATIVE DEVELOPMENTS**

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***Chemical Plant Security Bill Becomes Law*** -- On October 4, 2006, President Bush signed an FY 2007 appropriations bill for the Department of Homeland Security (DHS) that includes provisions on chemical security. The measure (H.R. 5441) provides \$34.8 billion for DHS in FY 2007, an increase of \$2.3 billion above FY 2006 and \$2.7 billion above the President's request. The bill, which the House and Senate approved on September 29, 2006, before adjourning to campaign for the midterm elections, also gives DHS authority to establish chemical security standards.

Under the appropriations bill, DHS is granted authority to require "high risk" chemical plants to implement security measures. DHS is authorized to require compliance with its security requirements, including the authority to audit and inspect facilities, and to shut down a facility if it is not complying. The bill directs the Department to establish risk-based and performance-based standards for chemical facilities to help protect against terrorist attacks. Chemical plants are required to conduct vulnerability assessments and create and implement site security plans based on their specific vulnerabilities, subject to DHS approval. The appropriations bill is silent on the issues of state preemption and the use of inherently safer technology.

***Energy Legislation Approved*** -- The House of Representatives approved legislation (H.R. 6203) on September 29, 2006, calling for the further development of new energy technologies that sponsors say will reduce dependence on foreign oil and will ensure a cleaner environment for future generations. The "Alternative Energy Research and Development Act," which the House Science Committee developed, passed the House by voice vote in the final hours of the session. The bill would authorize spending approximately \$402 million over five years for energy research, development, demonstration, and commercial application. The bill covers a wide range of energy technologies, including batteries, biofuels, hydrogen, solar, wind, and plug-in hybrid



electric vehicles, as well as energy programs such as green buildings and green energy education. H.R. 6203 would authorize President Bush's Advanced Energy Initiative, which includes funding for solar, wind, and hydrogen research and development. The bill also creates programs at the Department of Energy to demonstrate plug-in hybrid vehicles and solar power technologies, to encourage the design of green buildings, and to offer energy extension services. An earlier version of the bill (H.R. 5656) passed the Science Committee in June 2006. It was revised in the final days of the session to exclude two provisions dealing with the FutureGen clean-coal project and the President's Global Nuclear Energy Partnership initiative to promote nuclear energy, which were considered too controversial. The rest of the bill was reintroduced as H.R. 6203. There is currently no Senate companion bill.

***Green Chemistry Bill Approved In House*** -- The House approved legislation on September 26, 2006, that would promote the use of "green chemistry," an engineering process designed to reduce or eliminate the use or production of hazardous substances through changes in manufacturing methods. The Green Chemistry Research and Development Act of 2005 (H.R. 1215), which Representative Phil Gingrey (R-GA) introduced, would set up a research and development program, authorize grants, and support green chemistry research at federal laboratories. The legislation, approved on a voice vote, would authorize funding over the next three years; a total of \$33 million in fiscal 2007, \$35.5 million in 2008, and \$38 million in 2009. The bill defines green chemistry as "chemistry and chemical engineering to design products and processes that reduce or eliminate the use or generation of hazardous substances while producing high quality products through safe and efficient manufacturing processes." Among other things, the legislation is designed to expand education and training for students, chemists, and chemical engineers in green chemistry science and engineering and to identify barriers to the commercialization of green chemistry. It would require the President to establish an interagency working group to oversee the green chemistry program and directs the National Science Foundation to award grants to colleges and universities to support the schools' efforts at revising curriculums to incorporate green chemistry concepts, according to an analysis by the Congressional Research Service.

***Bill Seeks To Prevent Changes To TRI*** -- Representatives Frank Pallone (D-NJ) and Hilda Solis (D-CA) introduced legislation introduced in the House of Representatives on September 27, 2006, that would prevent EPA from ever implementing its proposed changes to the Toxics Release Inventory (TRI) program. H.R. 6219, the Toxic Right-to-Know Protection Act, would amend EPCRA to prohibit the adoption of EPA's proposed revisions to TRI requirements.

EPA last year proposed to modify the TRI by raising chemical release thresholds. If adopted, EPA's proposal would allow companies releasing up to 5,000 pounds of nonpersistent bioaccumulative toxins to use Form A, as well as permit chemicals facilities that release less than 500 pounds of persistent bioaccumulative toxins to use the shorter reporting form. EPA has also notified Congress that it is considering reducing reporting frequency requirements from annual to



biennial, but has yet to propose a rule to carry this out. If adopted, the Toxic Right-to-Know Protection Act would prevent EPA from making the proposed changes.

***E-Manifest Bill Introduced*** -- EPA would be authorized to have a computer vendor pay the up-front costs of developing an electronic system to track hazardous waste shipments under a bill Senator John Thune (R-SD) introduced on September 7, 2006. The Hazardous Waste Electronic Manifest Establishment Act, S. 3871, would create a revolving fund at the Treasury Department to be used “to pay costs incurred in developing, operating, maintaining, and upgrading the system.” Waste handlers choosing to use the computerized system rather than paper forms would pay user fees that would reimburse the vendor, as well as pay EPA’s overhead costs. As of September 5, 2006, hazardous waste generators and haulers were required to begin using EPA’s standardized manifest form to keep track of shipments, which is a necessary step in converting the paper system to an electronic one. The bill, which amends the Solid Waste Disposal Act, requires the electronic system to be in operation three years after the bill is enacted. Senators James Inhofe (R-OK) and James Jeffords (I-VT) are co-sponsoring the legislation.

***House Approves Bill Limiting Imports Of Foreign Waste*** -- The House of Representatives approved a bill on September 6, 2006, that would allow states to limit the amount of international waste they accept. Representative Paul Gillmor (R-OH) sponsored the International Solid Waste Importation and Management Act (H.R. 4291). According to Gillmor, Canada ships nearly four million tons of trash into the United States each year, mostly into Michigan. Other states such as New York and Washington also receive some international waste. A companion bill, S. 1198, is pending in the Senate. The last action on the Senate bill was in June 2005 when it was referred to the Senate Committee on Environment and Public Works.

H.R. 2491 directs EPA to publish within 24 months regulations implementing the Agreement Between the Government of Canada and the Government of the United States of America Concerning the Transboundary Movement of Hazardous Waste. The agreement requires those who intend to export waste to provide specific information, including the types and quantities of waste, where the waste will cross the border, and the name of the facility to receive the waste. Under the bill, states could limit the receipt and disposal of foreign municipal solid waste until federal regulations are issued to implement the U.S.-Canadian agreement.

***Senate Bill Would Reauthorize Great Lakes Fish Restoration Program*** -- The Senate approved legislation on September 30, 2006, reauthorizing a program to restore fish and wildlife in the Great Lakes. Senators Mike DeWine (R-OH) and Carl Levin (D-MI) sponsored the Great Lakes Fish and Wildlife Restoration Act of 2006 (S. 2430), which authorizes \$12 million for the U.S. Fish and Wildlife Service (FWS) to award grants, based on the recommendations of the Great Lakes states and tribes, and authorizes \$4 million for the FWS to conduct regional fish and



wildlife projects. Senate passage of S. 2430 followed the House of Representatives' approval of similar provisions in a measure on September 27, 2006.

***Pipeline Safety Legislation*** -- The House Energy and Commerce Committee on September 27, 2006, passed by unanimous voice vote a measure to reauthorize federal pipeline safety programs. The Pipeline Safety Improvement Act of 2006 (H.R. 5782) includes various provisions on damage prevention, including prohibitions on construction without ensuring the location of underground facilities. The bill would increase federal authority to enforce damage prevention rules, encourage states to adopt effective damage prevention programs, and establish a grant to promote 811, the national excavation damage protection phone number.

Also on September 27, 2006, Senate Commerce, Science, and Transportation Committee Chair Ted Stevens (R-AK) and ranking member Daniel Inouye (D-HI) introduced legislation (S. 3961) to reauthorize federal pipeline safety programs for four years beginning in 2007. A summary of the Senate bill indicates that the Department of Transportation would be required to oversee all low-stress pipelines. The bill also would increase by 50 percent the number of federal pipeline safety inspectors, strengthen damage prevention programs, and require senior officials to certify that information being provided to regulators is accurate, among other provisions.

***Bill Would Impose Penalties On Sources In Areas With Serious Air Quality Problems*** -- Senator James Inhofe (R-OK) introduced legislation on September 7, 2006, that would impose monetary penalties on major stationary sources in areas that are in serious nonattainment of the federal air quality standard for ozone and fine particles. As drafted, S. 3868 would affect only areas in California, because other states do not have serious ozone nonattainment areas. On September 11, 2006, however, Inhofe announced that he was pulling the legislation from the agenda for a Committee markup set for September 13, 2006. There is speculation that Senator Inhofe's introduction of the bill was an attempt to retaliate against California for controlling greenhouse gases, an effort Inhofe opposes.

***House Approves Legislation Addressing LUST Trust Fund*** -- The House of Representatives approved by voice vote on September 26, 2006, legislation (H.R. 6131) to permit certain expenditures from the Leaking Underground Storage Tank (LUST) Trust Fund. The updates reflect enactment of the Energy Policy Act of 2005, which broadened the use of the trust fund. According to a House Ways and Means Committee statement, the bill would codify an updated list of permitted expenditures from the LUST Trust Fund that would allow EPA to spend funds appropriated from the Trust Fund to carry out corrective actions for the release of methyl tertiary butyl ether, provide additional measures to protect groundwater, and for other purposes.

***Senate Bill Would Expand Ethanol Credit*** -- Senate Finance Committee member Charles Schumer (D-NY) introduced legislation (S. 3840) on September 5, 2006, that would provide a tax incentive to produce ethanol in high-consumption, low-production states. The Ethanol



Stimulus Act of 2006 would expand the small ethanol producer tax credit to spur ethanol production in states that consume more than two percent of U.S. gasoline, but produce less than two percent of U.S. ethanol. New production facilities would be given a tax credit of 20 cents per gallon on the first 50 million gallons produced in a year if the plant's total annual ethanol production does not exceed 150 million gallons.

***Ship Emissions Addressed In House Measure*** -- The House of Representatives passed a measure on September 28, 2006, that would require the Coast Guard and EPA to set limits on sulfur oxide and NOx emissions from ship exhausts and prohibit deliberate emissions of ozone-depleting substances used on vessels. The Coast Guard Authorization Act of 2006 (H.R. 5681), approved by a voice vote, includes a provision that implements standards the United States agreed to under Annex VI to the 1973 International Convention for the Prevention of Pollution from Ships, known as the MARPOL Convention. Among other things, Annex VI regulates sulfur oxide and NOx emissions from large diesel vessels operating off the territorial waters (up to 12 miles) of member nations. It also requires port and terminal facilities in those member nations to provide receptacles for the disposal of ozone-depleting substances from ships.

#### **MISCELLANEOUS**

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***Schwarzenegger Signs Biomonitoring Legislation*** -- On September 29, 2006, California Governor Arnold Schwarzenegger (R) signed legislation (S.B. 1379) that would create a state biomonitoring program. The bill defines designated chemicals as "those chemicals that are known to, or strongly suspected of, adversely impacting human health or development, based upon scientific, peer-reviewed animal, human, or *in vitro* studies, and consist of only those substances including chemical families or metabolites that are included in the federal Centers for Disease Control and Prevention studies that are known collectively as the National Reports on Human Exposure to Environmental Chemicals program and any substances as specified." Under the bill, a nine-member scientific guidance panel would be formed by **September 1, 2007**, to guide development and implementation of the program. The first statewide biomonitoring assessment would be due by **January 1, 2010**. Schwarzenegger stated: "There are literally thousands of chemicals being used in our everyday products in the United States in cleaning supplies, pesticides, cosmetics, and more. It's important to know more about how those chemicals are building up in our bodies or how they may be affecting our health."

Under the bill, the Department of Health Services, working with the California Environmental Protection Agency, will create a statewide report on environmental chemical exposure. In future years, smaller localized community-based studies will be conducted. Schwarzenegger vetoed similar legislation last year. His staff was involved in the drafting of S.B. 1379, however.



The Centers for Disease Control and Prevention (CDC) released its third *National Report on Human Exposure to Environmental Chemicals* (National Report) in July 2005. It includes 148 environmental chemicals in the following categories: metals; tobacco smoke; phytoestrogens; polycyclic aromatic hydrocarbons; phthalates; organochlorine pesticides; organophosphate insecticides; herbicides; pyrethroid pesticides; other pesticides; carbamate pesticides; polychlorinated dibenzo-p-dioxins, dibenzofurans, and coplanar and mono-ortho-substituted biphenyls; and non-dioxin-like polychlorinated biphenyls. The fourth National Report is scheduled to be released in **2007**, and it will include information on the 148 chemicals included in the third National Report, as well as information on chemicals included in the National Report for the first time. No information is publicly available regarding a complete list of new chemicals that will be included in the fourth National Report, however, CDC spokespersons have identified polybrominated diphenyl ethers and perfluorinated chemicals as chemicals that will be included. More information on the National Report is available on the Internet at <http://www.cdc.gov/exposurereport/>.

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