

MASS & TOXIC TORT UPDATE**EPA Announces New Chemical Action Plans**

On December 30, 2009, the U.S. Environmental Protection Agency (EPA), in an exercise of its authority under the Toxic Substances Control Act (TSCA) announced the establishment of a “chemicals of concern” list and action plans that might prompt restrictions on four types of synthetic chemicals. The chemicals, which are widely used in manufacturing and consumer products, include phthalates, which are used to make flexible plastics that are often used for toys, household products and medical equipment and which have received much coverage in the media recently. The announcement is an unusual exercise of the EPA’s authority, as it is the first time since the TSCA was passed in 1976 that the agency has taken such action. To date, the EPA has only successfully used the TSCA to restrict or ban five of the 80,000-plus chemicals on its inventory of those used or produced in the United States.

Of the compounds covered in the action plans—phthalates, polybrominated diphenyl ethers (PBDEs), long-chain perfluorinated chemicals (PFCs) and short-chain chlorinated paraffins (SCCPs)—phthalates and PBDEs will be listed as “chemicals of concern.” The PFCs and SCCPs will be addressed under other TSCA provisions that might also result in restrictions. The EPA declared that these four types of chemicals raise serious environmental or health concerns, and in some cases, may present an unreasonable risk of injury to health and the environment. Although this action will not immediately change the chemical landscape for consumers and manufacturers, the “chemicals of concern” listings indicate that the EPA feels these chemicals are potentially dangerous and that further regulatory action is warranted. Listing also triggers export and production notifications under TSCA, requirements that may deter some users.

The action plans, which vary by chemical, include placing these compounds on the Toxics Release Inventory that requires reporting of environmental releases, along with developing safe alternatives through the EPA’s Design for the Environment program and green chemistry initiative. Among the chemicals included in the actions plans, PBDEs and long-chain PFCs already are subject to voluntary phase-outs that are being developed in cooperation between industry and the EPA. The new EPA action, however, could lead to formal regulation. In light of the focus on these chemicals in local, state and national legislation, these actions might be seen as the logical next step in efforts to ban the substances.

The action plans involve rulemaking that will begin later this year, including public comment and stakeholder input, on timelines that could extend beyond 2012. Additional action plans are slated for this spring for another high-profile substance, bisphenol A (BPA), the chemical building block of polycarbonate plastics that is used in countless consumer products and to make many resins that line food and beverage cans.



FOR MORE INFORMATION

If you have questions or would like more information on this topic, please contact:

Timothy J. Coughlin	216.566.5523	Timothy.Coughlin@ThompsonHine.com
Elizabeth B. Wright	216.566.5716	Elizabeth.Wright@ThompsonHine.com
Andrea B. Daloia	216.566.5818	Andrea.Daloia@ThompsonHine.com

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