

US EPA Announces \$1.4 Million Civil Penalty Against Chemical Company for TSCA Violations

In an action that will likely be a wake-up call to chemical manufacturers and importers, the US Environmental Protection Agency (EPA) announced on February 7 that Dover Chemical Corporation has agreed to pay a \$1.4 million civil penalty for violations of the Toxic Substances Control Act (TSCA). The agreement is embodied in a consent decree lodged with the United States District Court for the Northern District of Ohio and is subject to a 30-day comment period and approval by the federal court. The agreement settles claims by US EPA that the company failed to file premanufacture notices (PMNs) required under TSCA for chlorinated paraffins it was manufacturing at its Dover, Ohio and Hammond, Indiana facilities. The \$1.4 million penalty underscores US EPA's announced intent to use its existing TSCA authorities more aggressively and bring financially significant enforcement actions for violations of the statute.

In addition to the \$1.4 million penalty, Dover has agreed to (i) cease manufacturing short-chained chlorinated paraffins (SCCPs); and (ii) submit PMNs for any medium-chained or long-chained chlorinated paraffins (MCCPs or LCCPs) it intends to manufacture within 30 days of the effective date of the consent decree.

Action Items

US EPA's action against Dover illustrates the need for chemical manufacturers and importers to ensure that the information they have provided to US EPA about the chemicals they manufacture or import is complete and up to date. Companies should particularly examine US EPA's TSCA Inventory and ensure that it accurately reflects the chemicals they are manufacturing or importing, especially if those chemicals have been listed on the TSCA Inventory for a long time. As the Dover case shows, the description of a chemical substance on the TSCA Inventory can be critical.

Any chemical not listed on the TSCA Inventory is considered a "new chemical substance" under TSCA for which a PMN must be filed with US EPA at least 90 days before a company begins producing it. Although chlorinated paraffins have been manufactured for decades and were "grandfathered" onto the TSCA Inventory when it was established in 1978, US EPA claimed that the specific chlorinated paraffins manufactured by Dover were different from those listed on the TSCA Inventory. In its statement about the penalty, Dover explained that the "original substance descriptions . . . were often not well-defined and this problem apparently created confusion regarding the appropriate CAS number/substance descriptions to use in reporting CP manufacture."

The Dover case also shows that chemical manufacturers and importers need to ensure that the data they submit to US EPA under other environmental statutes is consistent with the data they submit under TSCA. US EPA is increasingly reviewing and comparing these data sets for consistency. As the consent decree points out, US EPA issued a notice of violation to Dover on December 15, 2009. In the process of preparing its action plan on chlorinated paraffins, which was issued on December 30, 2009, US EPA staff concluded that there were discrepancies between the data on chlorinated paraffins submitted to the agency under other statutes and the information contained on the TSCA Inventory.

Conclusion

US EPA has been signaling its focus on increased TSCA implementation and enforcement for some time. US EPA Administrator Lisa Jackson has made “assuring the safety of chemicals” a top priority. In addition to preparing chemical action plans and pursuing new rulemakings, the agency is stepping up its TSCA enforcement activity, including devoting more resources to TSCA enforcement, inspecting more facilities, and seeking and reviewing more data on chemicals.

For additional information or assistance regarding the TSCA Inventory and TSCA’s PMN and other requirements, please contact one of the Squire Sanders lawyers listed below or one of the Squire Sanders lawyers with whom you routinely work.

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