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ENVIRONMENTAL NOTES

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EPA ANNOUNCES NEW COMPLIANCE POLICY

BY: CHANNING J. MARTIN

EPA has announced a new compliance policy that some will view as providing welcome relief to industry and others may view as providing unwarranted concessions. The subject line of the EPA memo announcing the new policy is "Transition from National *Enforcement* Initiatives to National *Compliance* Initiatives" (emphasis added). That alone is an indication of how things have changed. EPA's National Enforcement Initiatives ("NEIs") have focused on various industry and agricultural sectors for the past two decades. NEIs result in targeted enforcement in each EPA region because of a perceived lack of compliance by some regulated parties in the sectors selected. NEIs have been selected every three years, and recent sectors have included oil and gas, chemical manufacturing, and animal feeding operations.

Going forward, EPA will use National Compliance Initiatives ("NCIs") instead of NEIs. Consistent with its focus on Cooperative Federalism – the concept of the federal government sharing power with states – EPA has announced that it will provide states with "additional opportunities for more meaningful engagement" in selecting NCIs and in EPA's compliance activities within the states. Specifically, EPA says it is making four important adjustments to its policy: (i) modifying the selection criteria for the FY 2020-23 NCI cycle to better align with EPA's Strategic Plan, (ii) engaging more fully with states and tribes in the selection and development of NCIs, (iii) enhancing use of a full range of compliance assurance tools in an NCI (with enforcement being only one of those tools), and (iv) extending the NCI selection cycle to four years (rather than the current three) to better align with EPA's National Program Guide cycle.

For FY 2019, EPA will modify its implementation of the existing NEIs to evolve them into NCIs. It anticipates selecting NCIs for FY 2020-2023 by April 2019. The upshot of this change in policy is probably less federal enforcement and, depending on the state, perhaps more state enforcement. Of course, this is the policy of the current Administration. If President Trump is not re-elected, it's a sure bet the policy will change.

Memo from Susan Bodine, Assistant Administrator, to Regional Administrators, "Transition from National Enforcement Initiatives to National Compliance Initiatives" (August 21, 2018).

FOURTH CIRCUIT DECISION CONVEYS NEW MEANING OF CLEAN WATER ACT "POINT SOURCE" FOR COAL ASH PONDS

BY: HENRY R. "SPEAKER" POLLARD, V

In the *evolving Sierra Club v. Virginia Electric & Power Company* case, the U.S. Circuit Court of Appeals for the Fourth Circuit has just reversed a Virginia-based federal district court on the key issue of whether a coal ash pond or landfill may serve as a point source of pollution to regulated waters. This case is yet another of several important recent federal court decisions addressing the scope of federal Clean Water Act ("CWA") jurisdiction. It further shapes in significant ways how discharge permitting and enforcement pursuant to the CWA's National Pollutant Discharge Elimination System ("NPDES") could be implemented in the Fourth Circuit's territory of Maryland, West Virginia, Virginia, North Carolina, and South Carolina.

As reported in the May 2018 edition of Environmental Notes, the *Sierra Club* case involves coal ash ponds and a coal ash landfill at a now-shuttered power plant in eastern Virginia. The Virginia Department of Environmental Quality ("DEQ") had issued a solid waste permit for the landfill and ponds that implemented coal ash management standards established pursuant to the federal Resource Conservation and Recovery Act ("RCRA"). DEQ had also issued the facility a Virginia Pollutant Discharge Elimination System ("VPDES") permit pursuant to Virginia's NPDES program approved by EPA. Monitoring required by the solid waste permit revealed arsenic leaching from the landfill and/or ponds into the groundwater. DEQ approved a corrective action plan and incorporated it into the solid waste permit.

Sierra Club nonetheless sued the power company pursuant to the CWA's citizen suit provisions claiming an unauthorized discharge of pollutants in violation of CWA § 1311(a). Due to observed exceedances of Virginia's groundwater quality standard for arsenic, Sierra Club also alleged violations of the VPDES permit's (i) Condition II.F prohibiting discharges of pollutants into state waters except as authorized by the VPDES permit, and (ii) Condition II.R prohibiting disposal of wastes and other pollutants in a manner that causes them to enter state waters. The district court agreed with Sierra Club's first count based on two key findings: (a) the landfill and ponds are "point sources" as defined in the CWA, and (b) a regulated discharge of a pollutant may occur even if the pollutants migrate through groundwater between the point source and the navigable waters where a direct hydrological connection exists between the groundwater and the navigable water. However, the district court denied the alleged VPDES permit condition violations, instead deferring to DEQ's

view that surface waters, not groundwater, are the types of "state waters" to be protected under these conditions. Each party appealed.

The Fourth Circuit's decision affirmed the district court regarding whether a regulated discharge from a point source must occur directly to surface waters rather than pass through groundwater first. The circuit court cited its own recent opinion in *Upstate Forever v. Kinder Morgan Energy Partners, L.P.*, 887 F.3d 637 (4th Cir. 2018), holding that a regulated discharge of pollutants may still occur where pollutants are discharged from a point source but pass through groundwater before entering regulated surface waters, so long as there is a "a direct hydrological connection" between the groundwater and the regulated surface waters. However, appeals from that decision and a similar decision from the Ninth Circuit Court of Appeals in *Hawai'i Wildlife Fund v. County of Maui* (see again the May 2018 edition of Environmental Notes) have now been filed with the U.S. Supreme Court.

Next, and most importantly, was the circuit court's review of the status of the landfill and settling ponds as "point sources." In short, the circuit court found they are not the sort of discrete conveyances contemplated by the CWA's definition of "point source," rejecting the district court's reasoning otherwise. The circuit court focused on the language of the definition of "point source" as a "discernable, confined, and discrete conveyance" including "but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft." Based on the dictionary meaning of "conveyance," the circuit court further determined that a point source must facilitate movement of pollutants in "a discrete, not generalized," manner. Accordingly, passive seepage of rainwater and groundwater through a "static accumulation of coal ash," resulting in a diffused "leaching [of] arsenic into groundwater and ultimately into navigable waters," is not enough to qualify as a point source. Sierra Club's argument that the landfill and ponds were containers within the meaning of "point source" was also found inadequate. The court concluded that "the landfill and ponds were not created to convey anything and did not function in this manner." Further, the court opined that the CWA effluent limitation-based regime indicates that there should be measurable levels of pollutants discharging from point sources, but no such levels had been attributed to the landfill and ponds. Finally, the circuit court found that the district court's approach would render the more specifically-crafted RCRA coal ash permit program redundant, a result to be avoided if possible.

The Fourth Circuit then affirmed and expounded upon the district court's rejection of Sierra Club's allegations of violations of VPDES permit conditions. Relying in part on VPDES regulatory language for context, the Fourth Circuit noted that Condition II.F's prohibition against any "discharge into state waters" means that a point source is effecting such a discharge. Because that court determined that the landfill and ponds were not actually point sources, it likewise found that there was no violation of Condition II.F. For Condition II.R, the distinction between the broadly defined "state waters" (including groundwater and surface waters) versus "navigable waters" could not overcome the circuit court's concerns related to the regulatory context requiring a point source, deference to long-standing DEQ interpretation that these Conditions pertain only to surface waters, and the fact that Sierra Club's interpretation of Condition II.R would render the rest of the VPDES permit's terms meaningless.

The *Sierra Club* case sets another marker for the reach of CWA jurisdiction and has implications for a variety of land-based waste units. This case, together with other recent cases, sets the stage for appeals to the U.S. Supreme Court on several CWA issues, which means these issues – and the regulatory uncertainty surrounding them – will remain active for some time.

Sierra Club v. Virginia Electric & Power Company, No. 17-1895 (4th Cir. September 12, 2018).

HAZARDOUS WASTE DETERMINATIONS: WHAT YOU NEED TO KNOW TO COMPLY

BY: BENJAMIN C. MOWCZAN

EPA issued its *Hazardous Waste Generator Improvements Rule* in November of 2016 to, among other things, add greater flexibility in how hazardous waste is managed. But the rule also tightened up certain requirements, most notably how hazardous waste determinations must be made and documented. The changes come on the heels of an estimated 20 to 30 percent non-compliance rate for this essential first step. Successfully navigating the waste management process hinges on accurately determining whether the waste is hazardous. This article reviews the requirements of the 2016 rule and how they apply to your business.

Eliminating any lingering doubts, the rule clarifies existing requirements by stating that a generator's waste determination must be accurate. It is not enough to simply make a determination and proceed down the waste management path -- accuracy is essential. To aid generators in making an accurate determination, the rule mandates that the waste determination be made at the point of generation, before any dilution, mixing, or alteration occurs. But the duty to make an accurate determination does not end there; the rule also requires a new waste determination during management of the waste if there is reason to believe the properties of the waste may have changed. Thus, it is critical for generators to understand the chemical properties of their wastes and how they might change through exposure to the environment or other factors. If non-hazardous waste has the ability to become hazardous waste under certain circumstances, generators must make a determination again if those circumstances occur.

The rule retains the ability of the generator to use "knowledge of the waste" to determine whether a solid waste meets one of the descriptions of listed hazardous waste or exhibits a characteristic of hazardous waste, i.e., ignitability, corrosivity, reactivity, or toxicity. As guidance, the rule provides examples of acceptable knowledge for making these determinations, including knowledge of waste origin, composition, the process producing the waste, feedstock, and other reliable and relevant information. The examples listed are merely illustrative and are not exhaustive. If available knowledge yields inconclusive or inadequate results, the generator is then required to test the waste for hazardous characteristics.

"Acceptable knowledge" is a flexible concept that affords generators considerable latitude, but it is not without limits. Needless to say, EPA does not view guessing as an acceptable practice. Generators must base their determination on relevant and reliable information and be able to present that information in a logical, organized way. Although generators have expressed concern that regulators will view knowledge-based determinations to be less accurate than testing, EPA has indicated that it expects most hazardous characteristic determinations will be made using generator

knowledge. EPA says it expects testing to be limited to circumstances where it is necessary to resolve any uncertainty.

Critical to the hazardous waste determination process are the recordkeeping requirements. While recordkeeping itself is not a new obligation, the rule expands upon what types of information generators must maintain to document their hazardous waste determinations. Documents to be retained include, but are not limited to, the results of any tests, sampling, waste analyses, or other determinations; records documenting the tests, sampling, and analytical methods to demonstrate their reliability; records consulted to determine the process generating the waste, the composition of the waste, and the properties of the waste; and records explaining the knowledge basis for the generator's determination. This last requirement is key. If a generator makes a determination without conducting a test, it must still document and keep records of the basis for its knowledge-based determination. These records must be maintained for three years from the date the waste was sent to on-site or off-site storage, treatment, or disposal facilities. The rule does not require generators to keep records of non-hazardous waste determinations. However, some state programs impose more stringent standards requiring records of both hazardous and non-hazardous determinations, and EPA suggests maintaining records of non-hazardous determinations as a best management practice.

Lastly, if waste is determined to be hazardous, generators must identify all applicable EPA hazardous waste codes and mark all containers with the applicable codes before shipping the waste off-site.

While the rule became effective on May 30, 2017 in states without an EPA-authorized hazardous waste management program, most states are authorized by EPA to run their own hazardous waste management program. In those states, the rule was required to be adopted into the state program by July 1, 2018 or July 1, 2019, depending on the state's regulatory process. You should consult your state's program to determine whether these requirements now apply to you. Regardless, implementing these procedures now can help ensure your compliance and save you from making a big mistake.

40 C.F.R. § 262.11; *Hazardous Waste Generator Improvements Rule*, 81 Fed. Reg. 85748-85755 (Nov. 18, 2016).

DECONSTRUCTING CLEAN AIR ACT STATIONARY SOURCE AGGREGATION: EPA ISSUES NEW INTERPRETATION OF "ADJACENCY"

BY: LIZ WILLIAMSON

When EPA or a state environmental agency determines that two or more facilities should be considered as one source of air pollution for purposes of Clean Air Act permitting, that action is called source aggregation. The factors to be considered in that determination and how it is made has been the source of controversy for years. For example, for a facility to be "adjacent," does it have to share a common property boundary or can it be nearby? EPA recently released for public comment a draft guidance memo addressing when multiple stationary sources are sufficiently "adjacent" to be deemed part of the same stationary source (the "Draft Guidance").

EPA employs a three-factor test to determine if two for more facilities should be aggregated. The three factors are whether the facilities: (1) have the same industrial grouping; (2) are located on one or contiguous or adjacent properties; and (3) are under common control of the same person(s). In our May issue, we summarized EPA's efforts to re-interpret the "common control" third factor in the context of the Meadowbrook Energy LLC's biogas processing facility in Pennsylvania. For all facilities except those in the oil and gas exploration sector, the Draft Guidance interprets the second factor: Whether sources are "adjacent" to one another.

The Draft Guidance focuses exclusively on the physical proximity of facilities. EPA departed from its prior approach that focused on functional interrelatedness of the operations. EPA explains that physical proximity includes properties that are touching as well as those that are otherwise in "reasonable proximity to one another," such as those separated by a right of way. *Id.* at 7. EPA does not specify a particular distance when defining properties in reasonable proximity to one another. Rather, EPA leaves it to the permitting authorities to make this factual determination.

EPA defends its new approach as consistent with the 1980 New Source Review Rule Preamble. EPA also suggests that its previous approach based on functional interrelatedness has resulted in "burdensome, fine-grained analyses." *Id.* at 7. EPA concludes that focusing only on physical proximity will foster administrative simplicity. EPA's draft is labeled for public review and comment, although EPA notes that its revised interpretation is not subject to notice and comment rulemaking requirements.

The practical impacts of this change in interpretation are in the hands of state permitting authorities. Although EPA has urged uniformity, ultimately the permitting authority will make the

factual decisions on source aggregation. A source should ascertain the position of its permitting authority on this Guidance. If the source wishes to make an argument that it is should not be aggregated with another facility nearby, it continues to be prudent to gather as much information as possible to support that position. Finally, sources that are already aggregated are dissuaded by EPA in the Draft Guidance to seek a "redo" if the other two factors (common control and industrial grouping) continue to be met. However, new facilities seeking to be permitted should find it easier to apply the bright line physical proximity test, something that is likely to result in fewer source aggregations.

Draft Memorandum from William L. Wehrum, Assistant Administrator, to EPA Regional Air Division Directors (Sept. 4, 2018).

EPA ISSUES TSCA PMN GUIDANCE: POINTERS FOR SUBMITTERS

BY: RYAN W. TRAIL

EPA recently published guidance for companies preparing to submit new chemical notifications pursuant to the Toxic Substance Control Act (TSCA). The guidance, entitled *Points to Consider When Preparing TSCA New Chemical Notifications* (the "Guidance"), is intended to assist submitters in preparing a Premanufacture Notice ("PMN") under TSCA Section 5. EPA states that it issued the Guidance to promote "early engagement and communication" and enhance industry's overall understanding of the TSCA submittal process.

TSCA requires companies planning to manufacture or import a chemical substance not listed on the TSCA Inventory to prepare and submit a PMN at least ninety (90) days prior to manufacture of the

substance. The Guidance provides submitters an overview of what EPA considers "best practices" for submitting a proper PMN, including specific information regarding the chemical identity and physical-chemical properties of the substance, information regarding estimated production and use volumes, and proper submittal of health data.

Upon receipt of a completed PMN, EPA must evaluate whether the proposed chemical substance presents an unreasonable risk of injury to human health or the environment. EPA will make one of the following determinations: (1) the substance presents an unreasonable risk; (2) there is insufficient information to make a reasoned evaluation of the effects of the substance; or (3) the substance is not likely to present an unreasonable risk of injury to human health or the environment. The Guidance sets forth the review process that EPA uses to make this determination and provides additional information to submitters, which EPA claims may expedite the process.

In its announcement of the Guidance, EPA also encouraged "companies to contact EPA's new chemicals program to set up a pre-submission (or 'pre-notice') meeting before submitting their PMN."

According to EPA, a pre-submission meeting offers an "an opportunity to discuss the planned new chemical submission and to understand the Agency's approach to reviewing new chemicals for potential risks early in the process."

While the Guidance may seem helpful to companies manufacturing or importing chemicals, it is important to note one significant subject the Guidance fails to mention: exemptions to PMN requirements. TSCA provides several exemptions from some or all requirements for PMN submittals. Chemical substances manufactured for research and development purposes, polymers, byproducts, and articles are automatically exempt from PMN requirements if they meet regulatory requirements. Chemical substances manufactured in low volumes or for test marketing purposes, or those with low environmental releases and human exposures, may be exempted upon EPA approval. A thorough evaluation of whether a chemical substance may be eligible for an exemption from PMN requirements should be a company's primary consideration.

Points to Consider When Preparing TSCA New Chemical Notifications, EPA Office of Pollution Prevention and Toxics (June 2018).

FATE OF "WATERS OF THE UNITED STATES" RULEMAKING NOW EVEN MURKIER

BY: HENRY R. "SPEAKER" POLLARD, V

The saga of the federal Clean Water Act's definition of "waters of the United States" ("WOTUS") has taken more turns recently, including a significant setback for the Trump Administration's efforts to transition away from the definition contained in the 2015 Clean Water Rule ("CWR") promulgated under the Obama Administration. As we have reported on several occasions, court decisions and agency actions over time have reshaped the meaning of WOTUS, but the spate of activity in the past year or so has made it difficult even to know which WOTUS definition is in effect in which state. The latest twists come in an EPA and U.S. Army Corps of Engineers ("Corps") supplemental rulemaking notice and in two different federal district court decisions.

First, the agencies are still proceeding with their CWR repeal-and-replace rulemaking effort. To recap this effort for perspective, President Trump's Executive Order 13778, signed in February 2017,

directs EPA and the Corps to review the CWR "for consistency with . . . [Trump Administration] policy . . . and publish for notice and comment a proposed rule rescinding or revising the [CWR], as appropriate and consistent with law." In July 2017, EPA and the Corps published notice of their proposed repeal of the CWR as part of a two-step process to repeal and replace the CWR with a new regulatory definition of WOTUS. In November 2017, EPA and the Corps proposed and then issued in February 2018 a final rule suspending the effective date of the CWR until[?] February 2020 (the "Suspension Rule"). The Suspension Rule reinstated the 1980's era definition of WOTUS. More recently, based on comments received from stakeholders in 2017, case developments, and issuance of the Suspension Rule, the agencies issued on July 12, 2018 a supplemental notice of proposed rulemaking, buttressing their original repeal-and-replace rulemaking notice with more detailed analysis and reasoning and inviting further comment.

However, in an August 16 decision and order in *South Carolina Coastal Conservation League v. Pruitt ("SCCCL")*, a federal district court in South Carolina vacated the Suspension Rule, tripping up the agencies in their attempted fast dash away from the CWR. The court did not rule on the merits of the CWR. Instead, the court found that the agencies neglected to comply with the federal Administrative Procedure Act when promulgating the Suspension Rule by not allowing for sufficient public comment. In particular, the court concluded that the notice of the Suspension Rule did not adequately explain the effects of replacement of the CWR with the pre-CWR regulatory definition of WOTUS, foreclosed comments on other aspects, and did not provide adequate time for stakeholders to file comments given the complex implications of the agencies' actions. The decision's net effect is that the CWR is restored in 26 states (including Virginia) and the District of Columbia. (Federal district courts in North Dakota and Georgia have already stayed the CWR in the other 24 states, including North Carolina and South Carolina.) An appeal of the *SCCCL* decision is expected.

Finally, seeking to counter the effects of the *SCCCL* decision, three states have sought relief in a pending challenge to the CWR in *State of Texas v. U.S. Environmental Protection Agency*. In that case, the states are asking a federal district court in Texas to stay implementation of the CWR nationwide. EPA and the Corps had previously intervened in that case. However, at that time, they argued against a nationwide stay based in part on the recent issuance of the Suspension Rule and pending repeal-and-replace rulemaking. However, with the Suspension Rule having been invalidated (subject to appeal), the agencies may yet change their tune. If the relief sought by the states is granted, it could mesh with the North Dakota and Georgia federal district court decisions, resulting in the CWR being stayed in all 50 states.

Assuming the *SCCCL* decision invalidating the Suspension Rule remains in effect, and unless the court in the *State of Texas* case grants a nationwide stay of the CWR, there remains a patchwork of CWR applicability across the country. This makes uniform federal Clean Water Act administration essentially impossible. With challenges of any final rule by EPA and the Corps to repeal and replace the CWR a near certainty, the current mish-mash of two different WOTUS definitions in effect across the country could continue for quite some time. Even if all states eventually are covered by a stay of the CWR, the pre-CWR definition would presumably apply nation-wide, again indefinitely. That result, however, resurrects the earlier struggles to apply through guidance documents

the Supreme Court decision in *U.S. v. Rapanos* and its progeny interpreting WOTUS under the pre-CWR definition, at least until a new final rule is issued and survives the inevitable ensuing litigation. All of this underscores a key part of the Trump Administration's justification for the Suspension Rule: the need for improved regulatory certainty, albeit under the old WOTUS definition, while the courts wrangle with the CWR challenges, and EPA and the Corps work to redefine WOTUS by a new rulemaking.

Stakeholders can be expected to continue to debate and litigate the substantive merits of the CWR, the pre-CWR definition of WOTUS, and any alternatives offered by the Trump Administration, but the regulated community and landowners with wetlands still face uncertainty as to whether their projects impact regulated WOTUS and what the value of these projects and properties may be. Perhaps in this case the devil you know is better than the devil you don't, but either way stakeholders remain in regulatory and economic purgatory.

"Definition of 'Waters of the United States' – Recodification of Preexisting Rule, 83 Fed. Reg. 32227 (July 12, 2018).

South Carolina Coastal Conservation League v. Pruitt, No. 2-18-cv-330-DCN (D.S.C. August 16, 2018).

State of Texas v. U.S. Environmental Protection Agency, Civil Action No. 3:15-cv-162, Federal Defendants' Opposition to Plaintiffs' Motions for a Nationwide Preliminary Injunction, 2 (S.D. Tx. February 14, 2018).

FREQUENT TSCA QUESTIONS CHEMICAL PROCESSOR REPORTING

BY: ETHAN R. WARE

The 2016 amendments to the Toxic Substances Control Act (TSCA) required EPA to designate chemical substances on the TSCA Chemical Substance Inventory as either "active" or "inactive" in U.S. commerce. To accomplish that, EPA established a retrospective electronic notification of chemical substances on the TSCA Inventory that were manufactured (including imported) for nonexempt commercial purposes during the 10-year period ending on June 21, 2016, with provision to also allow notification by processors. EPA will use these notifications to distinguish active substances from inactive substances. Notifications by manufacturers using a Notification of Activity Form A were due on February 7, 2018. Notifications by processors of chemicals for which a manufacturer did not file a Form A are due by October 5, 2018. If no one files a Form A for a particular chemical substance during the notification periods, that substance will be designated as "inactive" when EPA publishes its updated TSCA Inventory near the end of this year. Substances not on EPA's Active Chemical List (ACL) by February, 2019 may not be distributed in commerce in the United States without a pre-filing notice to EPA moving the substance to the ACL.

These requirements have raised a number of questions in the regulated community. A few of these questions are addressed below.

QUESTION: What chemical substances require designation on the ACL or by default will fall into inactive status?

ANSWER: "Chemical substances subject to commercial activity designation" (Designated Chemicals) must be on the ACL or moved to the ACL by October 5, 2018. This includes all chemical substances currently in the TSCA Inventory, which (1) are not considered an "interim active chemical substance" because no person included the chemical on a chemical data report (CDR) filed with EPA prior to 2017; (2) were not added to the TSCA Inventory before June 21, 2016; (3) are not "naturally occurring"; and (4) are not currently on the ACL.

QUESTION: Are chemicals designated confidential or otherwise not listed on a safety data sheet (SDS) excluded from the ACL requirements?

ANSWER: Yes and No. While a processor need not submit a Form A for chemical substances on the ACL where the person has evidence in the form of a Central Data Exchange (CDX) receipt documenting that another entity submitted the Form A for that substance, EPA guidance states that the processor "bears the risk of failing to report if [the processor] rel[ies] on the CDX receipt exemption and the Form A notice (for which they have a CDX receipt) is later withdrawn, leaving the substance being designated as inactive."

QUESTION: What are pre-conditions for exempting the processor from filing a Form A for byproducts generated during a manufacturing process?

ANSWER: A processor need not file for inclusion on ACL those chemical substances qualifying as "byproducts," if the byproduct's only commercial purpose is to be (1) burned as a fuel, (2) disposed as a waste; or (3) further processed to extract component chemical substances for use in commercial purposes. This exclusion, of course, applies only to the byproduct, not to any substance extracted from the byproduct.

QUESTION: How does EPA define "processing" for purposes of the October 5, 2018 reporting deadline?

ANSWER: EPA clarifies the scope of the term "processors" by referring the regulated community to the word "process." For purposes of the new reporting rule, process means "preparation of a chemical substance or mixture, after its manufacture [or import], for distribution in commerce." This may involve keeping the chemical substance in its "same form or physical state as, or in a different form or physical state from, that in which it was received," including processing "for use as an intermediate" in a final product.

QUESTION: What does EPA plan to do with chemical information received as part of the ACL filing?

ANSWER: According to the new amendments to TSCA, EPA must establish a system to review all ACL chemicals for risks to human health or the environment. Reviews of chemicals currently known to present risks – such as mercury and trichloroethylene (TCE) – are already underway.

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