On May 3, 2023, the U.S. Environmental Protection Agency (EPA) announced its intent to extend the January 6, 2023, compliance date on the prohibition on the processing and distribution of decabromodiphenyl ether (decaBDE) for use in wire and cable insulation in nuclear power generation facilities, and decaBDE-containing wire and cable insulation. As reported in our December 23, 2020, memorandum, decaBDE is one of the persistent, bioaccumulative, and toxic (PBT) chemicals that are the subject of risk management rules under the Toxic Substances Control Act (TSCA) issued in 2021. EPA states that it “expects to propose this compliance date extension as part of a rulemaking on the chemical this fall.”

EPA also issued a related temporary “Enforcement Statement,” which indicates that it does not intend to pursue violations of this prohibition on processing and distribution of decaBDE-containing wire and cable insulation for use in nuclear power generation facilities, “as long as the entities involved are diligently working to qualify their alternative components in accordance with Nuclear Regulatory Commission regulations and guidance.” EPA also announced a settlement agreement with RSCC Wire & Cable, LLC (RSCC), “the only known supplier of qualified decaBDE-containing wire and cable, regarding TSCA violations.”

According to EPA, it only became aware in late 2022 that RSCC would not be able to meet the January 6, 2023, deadline due to its inability to transition fully to an alternative. EPA states that as a result, downstream customers such as nuclear power plants could face potential shutdowns due to being unable to source and obtain decaBDE-free qualified wires and cables that meet NRC regulations. EPA notes that “[t]his issue was exacerbated by a lack of effective communication by the nuclear power sector with EPA despite multiple opportunities to comment on EPA’s rulemaking decisions.”

EPA notes that the Enforcement Statement also covers related recordkeeping requirements and the use of decaBDE-containing wire and cable. EPA states that the Enforcement Statement does not cover the prohibition of all processing and distribution in commerce of decaBDE (i.e., raw or compounded) for use in wire and cable insulation in nuclear power generation facilities.
According to EPA, on May 1, 2023, EPA reached a settlement with RSCC, “which is the Agency’s first settlement under TSCA section 6 since TSCA was amended in 2016.” EPA states that “[s]pecifically, this settlement with RSCC resolves import violations of the manufacturing prohibition of decaBDE-containing products for nine imports that occurred between March 8, 2021 and January 6, 2023.” Under the 2021 TSCA rules for PBT chemicals, EPA set an extended compliance date for the processing and distribution of decaBDE-containing wire and cable of January 6, 2023. The compliance date for the import of decaBDE-containing wire and cable was March 8, 2021. Therefore, RSCC’s import of decaBDE-containing products after this date was a violation of TSCA. EPA notes that the settlement includes conditions to allow both the continued manufacturing, processing, and distribution of decaBDE-containing wire and cable insulation and the processing, and distribution of decaBDE (including raw and compounded) while the nuclear power generation industry undergoes transition to a decaBDE-free alternative.

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