

# THE NATIONAL LAW REVIEW

## Recent Federal Developments February 15, 2019 EPA /FDA / TSCA / FIFRA /TRI

Saturday, February 16, 2019

### TSCA/FIFRA/TRI

#### ***EPA Sued To Issue Pending Methylene Chloride***

**Prohibition Rule:** On January 14, 2019, in the U.S. District Court for the District of Vermont, the Vermont Public Interest Group; Safer Chemicals, Health Families; and two individuals (plaintiffs) followed up on their earlier notice of intent to sue and filed a complaint against Andrew Wheeler and EPA to compel EPA to perform its “mandatory duty” to “address the serious and imminent threat to human health presented by paint removal products containing methylene chloride.” Plaintiffs bring the action under TSCA Section 20(a), which states that “any person may commence a civil action ... against the Administrator to compel the Administrator to perform any act or duty under this Act which is not discretionary.” Plaintiffs allege that EPA has not performed its mandatory duty under TSCA Sections 6(a) and 7. TSCA Section 6(a) gives EPA the authority to regulate substances that present “an unreasonable risk of injury to health or the environment” and TSCA Section 7 gives EPA the authority to commence civil actions for seizure and/or relief of “imminent hazards.” Plaintiffs’ argument to direct EPA to ban methylene chloride is centered on the issue of risk to human health only, however, stating that it presents “an unreasonable risk to human health” as confirmed by EPA. Under TSCA Section 20(b) (2), plaintiffs are required to submit a notice of intent to sue 60 days prior to filing a complaint, which they did on October 31, 2018. On January 19, 2017, EPA issued a proposed rule under TSCA Section 6 to prohibit the manufacture (including import), processing, and distribution in commerce of

methylene chloride for consumer and most types of commercial paint and coating removal (82 Fed. Reg. 7464). EPA also proposed to prohibit the use of methylene chloride in these commercial uses; to require manufacturers (including importers), processors, and distributors, except for retailers, of methylene chloride for any use to provide downstream notification of these prohibitions throughout the supply chain; and to require recordkeeping. EPA relied on a risk assessment of methylene chloride published in 2014, the scope of which EPA stated included “consumer and commercial paint and coating removal.” The proposed rule stated that in the risk assessment, EPA identified risks from inhalation exposure, including “neurological effects such as cognitive impairment, sensory impairment, dizziness, incapacitation, and loss of consciousness (leading to risks of falls, concussion, and other injuries)” and, based on EPA’s analysis of worker and consumer populations’ exposures to methylene chloride in paint and coating removal, EPA proposed “a determination that methylene chloride and NMP in paint and coating removal present an unreasonable risk to human health.” The comment period on the proposed rule was extended several times, ending in May 2017, and in September 2017 EPA held a workshop to help inform EPA’s understanding of methylene chloride use in furniture refinishing. No further action was taken to issue the rule in final, however, until December 21, 2018, when [EPA sent the final rule to the Office of Management and Budget \(OMB\) for review](#). On the same day, EPA also sent another rule to OMB for review titled “Methylene Chloride; Commercial Paint and Coating Removal Training, Certification and Limited Access Program,” which has not previously been included in EPA’s Regulatory Agenda; very little is known about this rule. Plaintiffs do not refer



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to it in the complaint but there is speculation, based on its title, that this second rule may allow for some commercial uses of methylene chloride.

**EPA Denies Section 21 Petition To Increase Reporting Of Asbestos:** On February 12, 2019, EPA published its December 21, 2018, denial of a [petition](#) filed under TSCA Section 21 requesting that EPA initiate rulemaking to amend the TSCA Chemical Data Reporting (CDR) rule to increase reporting of asbestos. 84 Fed. Reg. 3396. EPA denied the September 27, 2018, petition on the grounds that the petitioners, the Asbestos Disease Awareness Organization, American Public Health Association, Center for Environmental Health, Environmental Working Group, Environmental Health Strategy Center, and Safer Chemicals Healthy Families, did not demonstrate that it is necessary to amend the CDR rule. Petitioners state that they support a “robust and comprehensive” risk evaluation of asbestos under TSCA Section 6(b), followed by rulemaking to ban asbestos under TSCA Section 6(a). Petitioners requested initiation of a rulemaking under TSCA Section 8(a) to amend the CDR rule. According to the petition, the requested CDR amendments would accomplish three purposes: remove the exemption for CDR reporting for naturally occurring asbestos, thereby requiring reporting on importation and use of asbestos and asbestos-containing products in the U.S.; lower the reporting threshold, eliminate exemptions for impurities and articles, and require reporting by processors to assure that EPA has the information on asbestos necessary to meet its TSCA responsibilities; and determine that reports submitted on asbestos are not subject to protection as confidential business information (CBI) because disclosure is necessary to protect against an unreasonable risk of injury to health under TSCA Section 14(d)(3). For more information, see our [memorandum](#).

**EPA Publishes Extension Of Review Periods For TSCA Section 5 PMNs, SNUNs, MCANs, And Exemption Notices:** On February 8, 2019, EPA published in the *Federal Register* its notice extending the review periods for all TSCA Section 5 Premanufacture Notices (PMN), Significant New Use Notices (SNUN), Microbial Commercial Activity Notices (MCAN), and exemption notices that were submitted to the Agency under TSCA Section 5 before December 29, 2018, and for which the review period had not expired as of December 29, 2018. 84 Fed. Reg. 2851. The notice states that EPA requires an extension of the review periods to complete its risk assessments, to examine its regulatory options, and to prepare the necessary documents associated with the relevant determination under TSCA Section 5(a)(3). The duration of the extension period is a total of **33 days**, but the notice states that because the extension is less than 90 days, EPA reserves the right under TSCA Section 5(c) to issue, for good cause, future additional extensions for individual cases up to a total of **90 days**. More information on why EPA has chosen to do this is in our blog item regarding the pre-publication version of this notice “[EPA Extends Review Periods for TSCA Section 5 PMNs, SNUNs, MCANs and Exemption Notices Due to Lack of Authorized Funding and Shutdown.](#)”

#### RCRA/CERCLA/CWA/CAA/SDWA/PHMSA

**EPA Releases Three Technical Superfund Site Characterization Guides:** EPA has [released](#) three technical guides under the Superfund program: “Smart Scoping for Environmental Investigations,” “Strategic Sampling Approaches Technical Guide,” and “Best Practices for Data Management.” EPA developed these documents to assist environmental professionals in scoping, data management, and strategic sampling activities at hazardous waste sites. EPA intends for the guides to strengthen Superfund site characterization activities to facilitate stronger site remedy decisions and improved remedy performance, among other objectives. In the past six years, EPA’s understanding of best management practices (BMP) for site characterization “has grown through implementation of [its] 2012 Superfund national optimization strategy, interaction with state and industry leaders, engagement in Lean processes and other relevant activities.” The guides highlight these BMPs to help focus and streamline the site characterization process by presenting more efficient scoping, investigation, and data management approaches, EPA states. The streamlining of these activities may reduce both time and costs during the remedial investigation/feasibility study (RI/FS) and throughout the Superfund process. The guides also address three of EPA’s [July 2017 Superfund Task Force Recommendations](#): *Recommendation 3*: Broaden the Use of Adaptive Management at Superfund Sites; *Recommendation 5*: Clarify Priorities for RI/FS Resources and Encourage Performing Interim/Early Actions During the RI/FS Process to Address Immediate Risks; and *Recommendation 8*: Reinforce Focused Scoping Which Closely Targets the Specific for Remediation and Identify and Use Best Management Practice in the RI/FS Stage. The documents are available online at:

- “Best Practices for Data Management Technical Guide” (<https://semsub.epa.gov/src/document/11/100001798>);
- “Smart Scoping for Environmental Investigations Technical Guide” (<https://semsub.epa.gov/src/document/11/100001799>); and
- “Strategic Sampling Approaches Technical Guide” (<https://semsub.epa.gov/src/document/11/100001800>).

**Suit Alleges EPA Has Failed To Update SDWA Standards:** On January 30, 2019, several environmental groups filed suit against EPA, alleging that it has neglected its responsibilities under the Safe Drinking Water Act (SDWA). *Waterkeeper Alliance Inc. et al. v. U.S. Environmental Protection Agency et al.*, Case No. 1:19-cv-0089. The groups claim that EPA has failed to revise national primary drinking water standards for currently regulated contaminants and to promulgate new standards for emerging ones, as required by the SDWA. The suit states that EPA must review every national primary drinking water regulation every six years, but has not done so for all contaminants. The suit highlights EPA's failure to not revise the standards for tetrachloroethylene or trichloroethylene, "even though it determined more than eight years ago that existing standards for these chemicals needed to be more protective." The suit claims that EPA is statutorily required to set standards for chlorite, cryptosporidium, haloacetic acids, heterotrophic bacteria, giardia lamblia, legionella, total trihalomethanes, and viruses. Standards for chromium were also singled out by the environmental groups as warranting revision by EPA.

In a sharply worded decision, the U.S. District Court for the D.C. Circuit on February 4, 2019, allotted one year for the U.S. Chemical Safety and Hazard Investigation Board (CSB) to promulgate final regulations requiring facilities to report accidental releases of chemicals. The court took CSB to task for its inaction on a statutorily required, non-discretionary action. At issue is a requirement under the Clean Air Act (CAA) for CSB to issue a release reporting rule. Specifically, CAA Section 112(r)(6)(C)(iii) requires CSB to "establish by regulation requirements binding on persons for reporting accidental releases into the ambient air." CSB issued an advance notice of proposed rulemaking (ANPRM) on this requirement, but never promulgated a proposed or final rule. 74 Fed. Reg. 30259; June 25, 2009. In *Air Alliance Houston, et al., v. U.S. Chemical and Safety Hazard Board*, Case No. 17-cv-02608 (APM), the plaintiffs sued CSB over its "unreasonable delay" in promulgating the final accidental release reporting rule. The CSB "does not deny that its enabling statute [the CAA] requires [it] to act," the court found. CSB countered in two ways. First, it argued that the plaintiffs had no standing and second, it stated that its failure to issue the rule did not constitute an "unreasonable delay." The court ruled "neither argument has merit." With respect to the "unreasonable delay," the court stated that "30 years have passed since Congress enacted the CSB's enabling statute," and that it has been ten years since CSB issued the ANPRM. "CSB has not taken any action in the ensuing 10 years to promulgate reporting regulations," the court stated. (Emphasis in original.) "In this case, although the CSB's enabling act does not require the agency to establish reporting regulations by a date certain, there can be no doubt that the congressional directive to adopt such regulations is a discrete act that the CSB is required to take," the ruling stated. "In the past, the CSB readily conceded that 'a reporting regulation is clearly required by the statute,'" the court added. The court ruled in favor of the plaintiffs and gave CSB one year to promulgate the final rule. While it is difficult to anticipate what form the release reporting regulation will take, in the 2009 ANPRM, the CSB did identify four general approaches for implementing the statutory requirement:

- A broad approach requiring the reporting of information on all accidental releases subject to the CSB's investigatory jurisdiction;
- A narrower requirement to report basic information (e.g., location, date, and time of incident; chemical involved; number of injuries) for incidents that met significant consequence thresholds (incidents that result in death, serious injuries requiring in-patient hospitalization, large public evacuations, very substantial property damage, or acute environmental impact);
- Requiring owners or operators to report to the CSB more extensive information on chemical incidents in their workplace when notified by the CSB; and
- Basing the release reporting on the presence or release of specified chemicals and specified threshold amounts.

**EPA Issues Final Rule Adjusting Civil Penalty Amounts:** EPA on February 6, 2019, promulgated a final rule adjusting for inflation the civil monetary penalty amounts under the statutes EPA administers. 84 Fed. Reg. 2056. The new maximum and minimum penalty levels vary by statute. The new amounts will apply to all civil penalties assessed by EPA on or after February 6, 2019, for violations that occurred after November 2, 2015, which is the date of enactment of the Federal Civil Penalties Inflation Adjustment Act Improvements.

**Proposal To Revise "Necessary And Appropriate" Standard For MATS Rule Published In Federal Register:** On February 7, 2019, EPA published in the *Federal Register* a revision to its response to the U.S. Supreme Court's decision in *Michigan v. EPA*. 84 Fed. Reg. 2670. The *Michigan v. EPA* decision held that EPA erred by not considering cost in its determination that regulation under CAA Section 112 of hazardous air pollutant (HAP) emissions from coal- and oil-fired electric utility steam generating units (EGU) is appropriate and necessary. The rule, known as the Mercury and Air Toxics Standard (MATS), is too costly to justify, EPA states, and thus no longer is "appropriate and necessary." EPA stated it would count only the direct costs and benefits of

reducing mercury and other toxic air pollutants under the MATS. In so doing, it is abandoning the approach of considering the rule's "co-benefits," such as reductions in particulate matter that are also achieved when reducing mercury emissions. EPA claims the direct costs to control mercury emissions at power plants greatly outweighed the benefits associated with reducing those pollutants. Despite this finding, EPA is not proposing to revise or remove the MATS requirements. EPA's rationale for retaining the standards is that power plants have already spent money to put controls in place and are recovering those costs from their ratepayers. EPA is soliciting comment, however, on whether it has the authority or obligation to rescind the rule. The proposed rule also states that EPA has concluded its residual risk and technology review (RTR) of the MATS rule and found no new developments in HAP emission controls to achieve further cost-effective emissions reductions. Therefore, based on the results of these analyses and reviews, EPA states that no revisions to MATS are warranted. The comment period closes on **April 8, 2019**.

**EPA ICR Seeks Comment On Revising RCRA Hazardous Waste Manifest:** Information Collection Requests (ICR) issued by EPA are typically pro forma notices alerting the regulated community that EPA is submitting a federally-required form to the Government Printing Office (GPO) for renewal. On February 8, 2019, however, EPA issued an ICR that more resembles a proposed rule, as it would alter the information contained in the Resource Conservation and Recovery Act (RCRA) hazardous waste manifest. 84 Fed. Reg. 2854. EPA is soliciting comment on three changes to the manifest: (1) improving the precision of the waste quantities and units of measure reported on the manifest; (2) requiring additional information for international shipments; and (3) changing the manifest to make it easier to integrate data between the manifest and the biennial report required under RCRA. The comment period closes on **April 9, 2019**. The proposed changes are summarized below.

- **Improve Precision of Waste Quantities and Units of Measure:** EPA currently does not allow the use of decimals or fractions to denote the quantity of hazardous waste being shipped under a manifest. Instead, generators are required to round partial units to the nearest whole unit or select smaller units of measure (e.g., pounds instead of tons). EPA is proposing to allow those completing the manifest to list the quantities of wastes being shipped using decimals or fractions. EPA also is considering allowing the use of alternative units of measure -- such as ounces, grams, or milliliters -- that could more precisely report waste quantities. The current set of units of measure specified in the manifest instructions are limited to gallons, kilograms, liters, metric tons, cubic meters, pounds, tons, or cubic yards.
- **Additional Information for International Shipments:** EPA is soliciting comment on whether it should add a new field for consent numbers for import and export shipments. Current export regulations at 40 C.F.R. Section 262.83(c)(3) require exporters to record the consent numbers on the manifest for each waste stream listed in Item 9b of the manifest. Similarly, import-related regulations at 40 C.F.R. Section 264.71(a)(3)(i) require U.S. facilities receiving hazardous waste from a foreign entity to record the relevant waste stream consent number from consent documentation supplied by EPA to the facility for each waste listed on the manifest. Currently, EPA recommends listing the consent numbers in Item 14 "Special Handling Instructions and Additional Information" on the paper manifest form due to the lack of dedicated fields for listing such numbers. For electronic manifests, consent numbers are collected in e-Manifest for each waste stream as part of Item 9b, the U.S. Department of Transportation (DOT) shipping description. EPA believes the addition of a separate data field to the paper and electronic manifest for consent numbers would facilitate the electronic upload or manual data entry of data from paper export and import manifests as the manifest would more clearly list the consent number for each waste stream. EPA also is considering revising the manifest to capture exporter EPA Identification Numbers (ID Number). EPA is proposing to require that it be the responsibility of the primary exporter to enter its EPA ID number on the manifest. EPA also is considering changes on how to incorporate new fields in the manifest for international shipments and how to incorporate export and import data for the movement document on the manifest. (For hazardous waste shipments entering the U.S., the regulations require that both an import manifest and a movement document accompany the shipment. The movement document must accompany the shipment from the country of export to the delivery of the shipment to the receiving facility in the U.S.)
- **Integration with Electronic Manifest and Biennial Report:** To comply with requirements under the Electronic Manifest Establishment Act, EPA is proposing to revise the paper manifest and continuation sheet to include source and form codes and density information. The current manifest form already collects certain waste receipt data for biennial reporting, but it does not provide biennial report data that describe how the hazardous waste originated (source code). Nor does the paper manifest provide waste information about the physical form or chemical composition of the hazardous waste (form code). Under EPA's proposed changes, certain hazardous waste generators would be required to enter source and form codes and density information on the manifest for each RCRA waste listed on paper and electronic manifests.

**EPA Acting Administrator Announces First-Ever Comprehensive Nationwide PFAS Action Plan:** Calling it a "historic plan," EPA Acting Administrator Andrew Wheeler on February 14, 2019, announced EPA's Per- and

Polyfluoroalkyl Substances (PFAS) Action Plan. The PFAS Action Plan is intended to respond to extensive public interest and input EPA has received over the past year and represents the first time EPA has built a multi-media, multi-program, national communication and research plan to address an emerging environmental challenge like PFAS. EPA's Action Plan identifies short-term solutions for addressing these chemicals and long-term strategies that it believes will help provide the tools and technologies states, tribes, and local communities need to provide clean and safe drinking water to their residents and to address PFAS at the source. The actions called for in the plan are as follows:

- EPA is moving forward with the maximum contaminant level (MCL) process under the SDWA for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS). **By the end of this year**, EPA will propose a regulatory determination, which is the next step in the SDWA process for establishing an MCL.
- EPA has already begun the regulatory development process for listing PFOA and PFOS as hazardous substances and will issue interim groundwater cleanup recommendations for sites contaminated with PFOA and PFOS.
- EPA will use available enforcement tools to address PFAS exposure in the environment and assist states in enforcement activities.
- EPA will propose to include PFAS in nationwide drinking water monitoring under the next Unregulated Contaminant Monitoring Program. The Agency will also consider PFAS chemicals for listing in the Toxics Release Inventory (TRI).
- EPA will develop new analytical methods so that more PFAS chemicals can be detected in drinking water, soil, and groundwater.
- EPA will develop a PFAS risk communication toolbox that includes materials that states, tribes, and local partners can use to communicate effectively with the public.

**EPA And The Corps Publish Revised “Waters Of The U.S.” Definition:** On February 14, 2019, EPA and the U.S. Army Corps of Engineers (Corps) published in the *Federal Register* its highly anticipated proposed revised “Waters of the U.S.” (WOTUS) definition that defines the scope of waters and wetlands that fall under federal Clean Water Act (CWA) jurisdiction. 84 Fed. Reg. 4154. EPA/Corps previously released the text of the proposed rule in late December 2018 in pre-publication format on EPA’s website along with [several fact sheets](#) and other supporting materials. The proposed rule is now open for a 60-day comment period closing **April 15, 2019**.

The WOTUS definition has a several decade history of confounding both the regulated community and regulators tasked with implementing the rule nationwide. Over the years, a series of U.S. Supreme Court decisions and agency guidance interpreting those decisions have fallen short of providing clarity and regulatory certainty. The proposed rule, if issued in final, would supplant the 2015 WOTUS rule promulgated by the Obama Administration. The 2015 WOTUS rule is the subject of ongoing litigation, including three active challenges pending before U.S. federal district courts in North Dakota, Georgia, and Texas. In 2017, EPA and the Corps issued a proposed rescission of the 2015 WOTUS rule, which has not been issued in final and is expected to be met immediately with legal challenges.

With the 2018 WOTUS proposed rule, EPA and the Corps are aiming to correct purported legal deficiencies and ambiguities with the 2015 WOTUS definition and its predecessors. Some of the key elements of the 2018 proposal include, but are not limited to:

- Inclusion of perennial and intermittent tributaries to traditional navigable waters;
- Retention of prior exclusions for groundwater, prior converted cropland, stormwater control systems, groundwater recharge basins, waste treatment systems, and *some* wastewater recycling systems;
- Exclusion of ephemeral streams (*i.e.*, where water is present only in response to precipitation or snow melt) and related features;
- Creation of a separate category of certain ditches that are jurisdictional;
- Requires “adjacent wetlands” to abut directly or have direct hydrologic surface connection to other jurisdictional waters to fall within the scope of WOTUS; and
- Eliminates subjective, multi-factor analyses of individual waters for jurisdictional determinations.

Although changes to the WOTUS definition do not directly alter the CWA's various programs and permitting schemes, including the CWA Section 402 National Pollutant Discharge Elimination System (NPDES) permitting program and the CWA Section 404 wetlands dredge-and-fill permitting program, WOTUS defines the scope of the waters and wetlands where compliance with NPDES and 404 permits apply. For this reason, a broad cross-section of industries, from manufacturing, to mining, and agricultural, are expected to be carefully considering the 2018 WOTUS proposal and filing comments. Likewise, as in past WOTUS rulemakings, environmental groups have already mounted extensive grassroots campaigns, mostly critical of the 2018 proposal's scope as being too narrow and leaving waters unprotected. Earlier this week, EPA and the Corps leadership received letters from over 160 [House](#) Democrats and 36 [Senate](#) Democrats requesting an extension of the comment period on the 2018 proposal. Although, in recent history, EPA has denied comment period extension requests, the significance of the WOTUS definition may place added pressure on EPA and the Corps to provide additional time. The Senate letter requested a response from EPA/Corps by **February 25, 2019**.

B&C expects to share more analysis and commentary on the 2018 WOTUS proposal in the coming weeks and plans to schedule a webinar in **April 2019** to hear perspectives from industry and state regulatory experts on the proposal. Stay tuned!

## FDA

**FDA Announces Guidance For Industry On Labeling For Human Prescription Drug And Biological Products:** On February 4, 2019, the U.S. Food and Drug Administration (FDA) announced the availability of a final guidance for industry titled "[Labeling for Human Prescription Drug and Biological Products Approved Under the Accelerated Approval Regulatory Pathway](#)." 84 Fed. Reg. 1470. FDA states in the *Federal Register* notice that this guidance discusses: (1) FDA's recommendations for developing the indication and usage statements in the prescribing information for drugs approved under the accelerated approval regulatory pathway; and (2) labeling considerations for indications approved under accelerated approval when clinical benefit has been verified and FDA terminates the conditions of accelerated approval, or when FDA withdraws accelerated approval of an indication while other indications for the drug remain approved. This guidance is the final version of the draft guidance of the same name that was issued on March 25, 2014.

**FDA Announces Guidance For Industry On Public Warning And Notification Of Recalls:** On February 8, 2019, FDA announced the availability of a final guidance for industry and FDA staff titled "[Public Warning and Notification of Recalls Under 21 CFR Part 7, Subpart C](#)." 84 Fed. Reg. 2876. The *Federal Register* notice states that the guidance "establishes guidance for industry and FDA staff regarding the use, content, and circumstances for issuance of public warnings and public notification of recalls under federal regulations" and the intent of the guidance is to "increase and expedite the appropriate and accurate use of public warnings and public notification and to increase public health protection by better informing the public about violative products being recalled."

**FDA Collects Information On FCN Program:** On February 12, 2019, FDA announced that a proposed collection of information was submitted to the OMB for review and clearance related to the Food Contact Substance Notification (FCN) Program (21 C.F.R. Sections 170.101, 170.106, and 171.1). 84 Fed. Reg. 3468. The *Federal Register* notice states that this information collection "supports FDA regulations regarding [FCN], as well as associated guidance and accompanying forms." 21 C.F.R. Sections 170.101 and 170.106 require: (1) a FCN that includes Form FDA 3480; and (2) a notification for a food contact substance (FCS) formulation that includes Form FDA 3479. 21 C.F.R. Section 171.1 states that a petitioner must: (1) establish that the proposed use of an indirect food additive is safe; and (2) secure the publication of an indirect food additive regulation in 21 C.F.R. Parts 175 through 178. The included FDA guidance documents are: (1) "Preparation of Food Contact Notifications: Administrative"; (2) "Preparation of Food Contact Notifications and Food Additive Petitions for Food Contact Substances: Chemistry Recommendations"; and (3) "Preparation of Food Contact Notifications for Food Contact Substances: Toxicology Recommendations." EPA states that these guidance documents "provide assistance to industry regarding the preparation of an FCN and a petition for a [FCS]." Also included is a draft guidance titled "Preparation of Food Contact Notifications for Food Contact Substances in Contact with Infant Formula and/or Human Milk." Comments on the collection of information are due by **March 14, 2019**.

## NANOTECHNOLOGY

**ECHA Publishes Substance Evaluation Conclusion For Silver:** The European Chemicals Agency (ECHA) announced on December 19, 2018, that it published several new substance evaluation conclusion documents, including one for silver. According to the [substance evaluation conclusion and evaluation report](#), silver was originally selected for substance evaluation to clarify concerns about nanoparticles/ecotoxicity of different forms

of the substance; environmental fate; exposure/wide dispersive use; and aggregated tonnage. The scope of the substance evaluation was limited to the properties of and information on nanoforms of silver. The evaluation of the available information on silver led the Netherlands to the following conclusions:

Conclusions	Tick box
Need for follow-up regulatory action at the European Union (EU) level	X
Harmonized classification and labeling (CLH)	X
Identification as substance of very high concern (SVHC) (authorization)	
Restrictions	
Other EU-wide measures	
No need for regulatory follow-up action at EU level	

More information is available in our January 23, 2019, [blog item](#).

**EC Committee Includes Micro- And Nano-Plastic In The Environment And Nanoparticles Released From Building Materials And Construction Waste On List Of Emerging Issues:** The European Commission's (EC) Scientific Committee on Health, Environmental and Emerging Risks (SCHEER) published on January 14, 2019, a [statement](#) and a [position paper](#) on emerging health and environmental issues. SCHEER identified and prioritized 14 emerging issues to bring to the attention of the EC services, including:

- Micro- and nano-plastic in the environment (priority is uncertain); and
- Nanoparticles released from building materials and construction waste to the environment (priority is high).

The position paper on emerging issues and the role of SCHEER describes how SCHEER draws the attention of the EC services to emerging issues in the non-food area. More information is available in our January 16, 2019, [blog item](#).

**NIOSH Publishes Nanotechnology Research Plan For 2018-2025:** On January 24, 2019, the National Institute for Occupational Safety and Health (NIOSH) published a document entitled [Continuing to Protect the Nanotechnology Workforce: NIOSH Nanotechnology Research Plan for 2018-2025](#). NIOSH is using the Nanotechnology Research Plan for fiscal years (FY) 2018-**2025** as a roadmap to advance: (1) understanding of nanotechnology-related toxicology and workplace exposures; and (2) implementation of appropriate risk management practices during the discovery, development, and commercialization of engineered nanomaterials along their product lifecycle. NIOSH published a February 5, 2019, *Federal Register* notice announcing the availability of the Nanotechnology Research Plan. 84 Fed. Reg. 1735. More information is available in our January 25, 2019, [blog item](#).

**ECHA Proposes To Restrict Intentionally Added Microplastics:** ECHA [announced](#) on January 30, 2019, that it has submitted a restriction proposal for microplastic particles that are intentionally added to mixtures used by consumers or professionals. ECHA states: "Due to their small size, microplastics and nanoplastics -- even smaller particles that are created from the further degradation of microplastics -- may be readily ingested and thereby enter the food chain." ECHA's proposed restriction targets intentionally added microplastics in products from which they will inevitably be released to the environment. The proposed restriction would cover small, typically microscopic, synthetic polymer particles that resist (bio)degradation. The scope would cover a wide range of uses in consumer and professional products in multiple sectors, including cosmetic products, detergents and maintenance products, paints and coatings, construction materials, and medicinal products, as well as various products used in agriculture and horticulture and in the oil and gas sectors.

**ACGIH® TLV®-CS Committee Seeks Information On Carbon Nanotubes:** The American Conference of Governmental Industrial Hygienists (ACGIH®) Threshold Limit Values for Chemical Substances (TLV®-CS) Committee has included carbon nanotubes on its **2019** [list of chemical substances and other issues under study](#). ACGIH® will update the under study list into a two-tier list by **July 31, 2019**:

- Tier 1 entries indicate the chemical substances and physical agents that may move forward as a notice of intended change or notice of intent to establish in the upcoming year, based on their status in the development process; and

- Tier 2 consists of those chemical substances and physical agents that will not move forward, but will either remain on, or be removed from, the under study list for the next year.

**Stakeholders Have Opportunity To Provide Feedback On EUON:** The EU Observatory for Nanomaterials (EUON) provides information on nanomaterials to a wide audience on subjects including safety, innovation, and research. It also covers the existing EU legislation on nanomaterials and the presence and uses of specific substances on the EU market. EUON is currently [conducting a survey](#) to allow stakeholders to express their views on how EUON is performing and how it could be developed to meet their needs better.

**JRC Publishes Overview Of Concepts And Terms Used In The EC's Definition Of Nanomaterial:** The EC's Joint Research Center (JRC) published on February 13, 2019, a report entitled [An overview of concepts and terms used in the European Commission's definition of nanomaterial](#). The report supports the implementation of the EC's Recommendation on a definition of nanomaterial (2011/696/EU). It addresses the definition's key concepts and terms and discusses them in a regulatory context. Corresponding to the broad scope of the definition, the report states that its considerations can be applied across all relevant legislative areas; they are not specific to any particular piece of legislation. The report provides recommendations for a harmonized and coherent implementation of the nanomaterial definition in any specific regulatory context at the EU and national level.

**Case Study Demonstrates Successful Application Of ECHA's Read-Across Guidance To Multi-Walled Carbon Nanotubes:** The February 2019 issue of *Computational Toxicology* includes an article entitled "[Grouping of multi-walled carbon nanotubes to read-across genotoxicity: A case study to evaluate the applicability of regulatory guidance](#)." According to the abstract, the study shows the practical application of the ECHA framework for grouping of nanomaterials, as well as use of the ECHA Read-Across Assessment Framework for nanomaterials, and how this can be supported by chemoinformatics techniques. EUON issued a February 15, 2019, [press release](#), stating that the study "successfully demonstrates the applicability of this guidance to such materials."

**EFSA Will Hold Stakeholder Workshop On Nanoscience And Nanotechnology:** The European Food Safety Authority (EFSA) will hold a [stakeholder workshop on nanoscience and nanotechnology](#) on **April 1-2, 2019**, in Parma, Italy. As reported in our July 5, 2018, blog item, "[EFSA Publishes New Guidance on Nanotechnologies in Food and Feed](#)," in July 2018, EFSA published new guidance on how to assess the safety of nanoscience and nanotechnology applications. During the **April 1-2, 2019**, workshop, applicants can raise specific issues, give and follow presentations, and discuss with EFSA scientists their experiences in implementing the guidance. [Registration](#) will close on **February 28, 2019**. After closure of registration, EFSA will inform potential participants whether they have been selected for participation.

## BIODEBASED/RENEWABLE PRODUCTS

**BRAG Biobased Products News And Policy Report:** B&C consulting affiliate, B&C<sup>®</sup> Consortia Management, L.L.C. (BCCM), manages the Biobased and Renewable Products Advocacy Group (BRAG<sup>®</sup>). For access to a weekly summary of key legislative, regulatory, and business developments in biobased chemicals, biofuels, and industrial biotechnology, go to <http://www.braginfo.org>.

## LEGISLATIVE

**Trump Signs Bill Codifying Integrated Plans For Water Upgrades:** On January 14, 2019, President Donald Trump signed into law legislation that codifies a 2012 EPA framework for integrated water planning. The Water Infrastructure Improvement Act (H.R. 7279) authorizes localities to tailor their plans for complying with wastewater and sewer overflow permits under the CWA. The integrated plans can include water reclamation, recycling, or reuse. The law also requires EPA to promote the use of green infrastructure in various EPA activities.

**House Energy And Commerce Committee Announces Democratic Rosters:** On January 15, 2019, House Energy and Commerce Committee Chair Frank Pallone, Jr. (D-NJ) announced the full Democratic rosters for the six Subcommittees in the 116th Congress, including the six Subcommittee Chairs and the full Committee Vice Chair, who were elected by the Democrats on the Committee. The six Subcommittees and their Chairs are:

- Subcommittee on Communications and Technology -- Mike Doyle (PA);
- Subcommittee on Consumer Protection and Commerce -- Jan Schakowsky (IL);
- Subcommittee on Energy -- Bobby Rush (IL);

- Subcommittee on Environment and Climate Change -- Paul Tonko (NY);
- Subcommittee on Health -- Anna Eshoo (CA); and
- Subcommittee on Oversight and Investigations -- Diana DeGette (CO).

The appointments will now need to be approved by the Democratic Steering and Policy Committee and the Democratic Caucus. Committee Democrats also elected Representative Yvette Clarke (NY) as Vice Chair of the full Committee.

## **SUBCOMMITTEE ROSTERS**

### **Subcommittee on Communications and Technology**

- Mike Doyle (PA) -- Chair
- Jerry McNerney (CA)
- Yvette Clarke (NY)
- David Loebsack (IA)
- Marc Veasey (TX)
- Donald McEachin (VA)
- Darren Soto (FL)
- Tom O'Halleran (AZ)
- Anna Eshoo (CA)
- Diana DeGette (CO)
- G.K. Butterfield (NC)
- Doris Matsui (CA)
- Peter Welch (VT)
- Ben Ray Luján (NM)
- Kurt Schrader (OR)
- Tony Cárdenas (CA)
- Debbie Dingell (MI)
- Frank Pallone, Jr. (NJ) -- Ex Officio

### **Subcommittee on Consumer Protection and Commerce**

- Jan Schakowsky (IL) -- Chair
- Kathy Castor (FL)
- Marc Veasey (TX)
- Robin Kelly (IL)

- Tom O'Halleran (AZ)
- Ben Ray Luján (NM)
- Tony Cárdenas (CA)
- Lisa Blunt Rochester (DE)
- Darren Soto (FL)
- Bobby Rush (IL)
- Doris Matsui (CA)
- Jerry McNerney (CA)
- Debbie Dingell (MI)

- **Frank Pallone, Jr. (NJ) -- Ex Officio**

### **Subcommittee on Energy**

- Bobby Rush (IL) -- Chair
- Scott Peters (CA)
- Mike Doyle (PA)
- John Sarbanes (MD)
- Jerry McNerney (CA)
- Paul Tonko (NY)
- David Loebsack (IA)
- G.K. Butterfield (NC)
- Peter Welch (VT)
- Kurt Schrader (OR)
- Joseph P. Kennedy III (MA)
- Marc Veasey (TX)
- Ann Kuster (NH)
- Robin Kelly (IL)
- Nanette Barragán (CA)
- Donald McEachin (VA)
- Tom O'Halleran (AZ)
- Lisa Blunt Rochester (DE)
- Frank Pallone, Jr. (NJ) -- Ex Officio

### **Subcommittee on Environment and Climate Change**

- Paul Tonko (NY) -- Chair
- Yvette Clarke (NY)
- Scott Peters (CA)
- Nanette Barragán (CA)
- Donald McEachin (VA)
- Lisa Blunt Rochester (DE)
- Darren Soto (FL)
- Diana DeGette (CO)
- Jan Schakowsky (IL)
- Doris Matsui (CA)
- Jerry McNerney (CA)
- Raul Ruiz (CA)
- Debbie Dingell (MI)
- Frank Pallone, Jr. (NJ) -- Ex Officio

### **Subcommittee on Health**

- Anna Eshoo (CA) -- Chair
- Eliot Engel (NY)
- G.K. Butterfield (NC)
- Doris Matsui (CA)
- Kathy Castor (FL)
- John Sarbanes (MD)
- Ben Ray Luján (NM)
- Kurt Schrader (OR)
- Joseph P. Kennedy III (MA)
- Tony Cárdenas (CA)
- Peter Welch (VT)
- Raul Ruiz (CA)
- Debbie Dingell (MI)
- Ann Kuster (NH)
- Robin Kelly (IL)
- Nanette Barragán (CA)

- Lisa Blunt Rochester (DE)
- Bobby Rush (IL)
- Frank Pallone, Jr. (NJ) -- Ex Officio

## **Subcommittee on Oversight and Investigations**

- Diana DeGette (CO) -- Chair
- Jan Schakowsky (IL)
- Joseph P. Kennedy III (MA)
- Raul Ruiz (CA)
- Ann Kuster (NH)
- Kathy Castor (FL)
- John Sarbanes (MD)
- Paul Tonko (NY)
- Yvette Clarke (NY)
- Scott Peters (CA)
- Frank Pallone, Jr. (NJ) -- Ex Officio

**House Bill Would Require Offsets For Regulatory Burdens:** On January 15, 2019, Representative Mark Meadows (R-NC) introduced legislation that would seek to blunt the economic costs of federal regulations. The bill (H.R. 575) would require offsetting of costs of “significant” rulemakings through the repeal of other regulatory actions. Entitled Lessening Regulatory Costs and Establishing a Federal Regulatory Budget Act, the legislation would essentially codify President Trump’s Executive Order (EO) 13771. That EO called for federal agencies to offset the costs of each significant new rulemaking by repealing two rules.

**Senate Committee Holds Hearing On Nomination Of Andrew Wheeler As EPA Administrator:** On January 16, 2019, the Senate Environment and Public Works (EPW) Committee held a hearing on the nomination of Andrew Wheeler to serve as EPA’s Administrator. Mr. Wheeler currently serves as the Acting Administrator, having taken the reins of EPA after former Administrator Scott Pruitt resigned in July 2018. An archived webcast of the hearing is available [online](#). In introducing Mr. Wheeler, Senator John Barrasso (R-WY), Chair of the EPW Committee, stated: “Under Acting Administrator Wheeler’s leadership, the agency has taken a number of significant actions to protect our nation’s environment, while also supporting economic growth. Acting Administrator Wheeler has led efforts to: issue common-sense regulatory proposals, like the Affordable Clean Energy Rule, and the revised definition of ‘Waters of the United State’; implement this committee’s 2016 bipartisan reform of the Toxic Substances Control Act in an effective and efficient manner; reduce lead exposure, including through the Federal Lead Action Plan; provide greater regulatory certainty to states, to Tribes, localities, and to the regulated community; and improve enforcement and compliance assistance. Acting Administrator Wheeler is very well qualified to run the Environmental Protection Agency.” Republicans on the Committee were supportive of his nomination and actions while serving as the EPA Acting Administrator. They noted with praise his deregulatory efforts, the repeal and replacement of the Obama-era Clean Power Plan, the proposed replacement of the WOTUS rule, and the proposed repeal of the Corporate Average Fuel Economy (CAFE) standards. Democrats on the Committee, however, expressed their disapproval of Mr. Wheeler, as he faced sharp questions from them. EPW Ranking Member Tom Carper (D-DE) expressed his concern that Mr. Wheeler failed “to moderate some of Scott Pruitt’s most environmentally destructive policies,” adding that “upon examination, Mr. Wheeler’s environmental policies appear to be almost as extreme as his predecessor’s.” When questioned on his views on climate change by Senator Bernie Sanders (I-VT), Mr. Wheeler admitted that he believed it was a “huge issue” that should be addressed internationally, but he stopped short of agreeing with it is “one of the greatest crises facing our planet.” Despite seeming Democratic opposition to his nomination, the EPW voted to approve Mr. Wheeler’s confirmation on February 5, 2019, and a Senate vote to confirm Mr. Wheeler is expected to take place later in **February**. See [Senate EPW Committee Approves Nominations Of Andrew Wheeler As EPA](#)

[Administrator And Peter Wright As OLEM Assistant Administrator](#) below for more information on Mr. Wheeler's confirmation.

**Senate Passes CFATS Extension:** On January 16, 2019, the Senate passed legislation that would extend the Department of Homeland Security's (DHS) Chemical Facilities Anti-Terrorism Standards (CFATS) program for 15 months. The bill (H.R. 251) was approved by unanimous consent. The House passed its version of the bill by a vote of 414-3 on January 8, 2019. Its bill, however, would extend the life of CFATS for two years. Senate and House negotiators now must resolve the competing bills before advancing the legislation to the President. The CFATS program was set to expire at the end of January. CFATS is the U.S.' first regulatory program focused on security at high-risk chemical facilities. DHS administers the CFATS program by working with facilities to ensure they have security measures in place to reduce the risks associated with certain hazardous chemicals, and prevent them from being exploited in a terrorist attack. Under CFATS, a facility that possesses any of 300 chemicals of interest (COI) at or above specified quantities must report the chemicals to DHS, which uses the information to determine if the facility is considered high-risk and must develop a security plan.

**Senators Collins, Carper Reintroduce Bipartisan Legislation To Track Mercury Pollution:** On January 17, 2019, Senators Susan Collins (R-ME) and Tom Carper (D-DE) reintroduced the Comprehensive National Mercury Monitoring Act (S. 181). The bill would direct EPA, in conjunction with the Fish and Wildlife Service, the U.S. Geological Survey, the National Park Service, the National Oceanic and Atmospheric Association, and other appropriate federal agencies, to establish a national mercury monitoring program to measure and monitor mercury levels in the air and watersheds; water and soil chemistry; and marine, freshwater, and terrestrial organisms across the nation. It also would establish a scientific advisory committee to advise on the establishment, site selection, measurement, recording protocols, and operations of the monitoring program. The legislation would require the creation of a centralized database for existing and newly collected environmental mercury data that can be freely accessed on the Internet and is comprised of data that are compatible with similar international efforts. Also, the federal agencies tasked with creating the monitoring network would be required to report to Congress periodically to report on the monitoring program's results.

**Reintroduced Bill Would Repeal WOTUS Rule:** On January 17, 2019, Representative Jaime Herrera Beutler (R-WA) introduced a bill to repeal the controversial WOTUS rule and clarify that the CWA remains in effect as it has been interpreted for more than four decades. Representative Herrera Beutler introduced similar legislation in the 115th Congress. The bill (H.R. 667) would clarify that "navigable waters" includes territorial seas, interstate waters that are navigable-in-fact, tributaries to the interstate, navigable-in-fact waters, and wetlands that have a continuous surface water connection to interstate, navigable-in-fact waters, or their tributaries. The legislation also blocks the federal government's ability to grant itself the authority to regulate seasonal wet areas, ponds, puddles, and ditches as "navigable waters," whether on public or private property. The bill, titled Regulatory Certainty for Navigable Waters Act, would also require the Corps to act upon request within 60 days to determine whether water on a private property is a covered wetland under the CWA.

**House Bipartisan PFAS Task Force Formed:** On January 23, 2019, Representatives Dan Kildee (D-MI) and Brian Fitzpatrick (R-PA) announced the formation of the Congressional PFAS Task Force. Currently comprised of 13 Democrats and seven Republicans, the PFAS Task Force will work to address more urgently the public health threat of PFAS, Mr. Kildee stated. The Task Force will work to:

- Educate Members of Congress and their staff to increase awareness about PFAS chemicals;
- Craft legislation to address PFAS contamination;
- Meet with Congressional leadership, Committee Chairs, and Ranking Members to ensure PFAS is adequately and more urgently addressed; and
- Seek more robust funding through federal appropriations to clean up PFAS contamination.

Mr. Kildee has been on the vanguard of legislative efforts on PFAS. He previously introduced legislation to ensure that veterans and their families exposed to PFAS chemicals at military installations get necessary health care services and benefits. He also introduced legislation intended to accelerate PFAS remediation and detect PFAS contamination at sites. Also, he worked to include language authorizing a health study on PFAS exposure in the 2017 National Defense Authorization Act.

**Carbon Pricing Bill Introduced In House:** On January 24, 2019, Representative Ted Deutch (D-FL) introduced legislation to price carbon and return 100 percent of the net revenue as a rebate to American families. The bill is co-sponsored by members from both sides of the aisle. The purposes of the Energy Innovation and Carbon Dividend Act (EICDA) (H.R. 763) are to encourage market-driven innovation in clean energy technologies; create efficient markets, encourage competition, and promote our national interests; and create a healthier, more

stable, prosperous nation for future generations. The bill would establish a carbon fee, a gradually rising upstream fee on the carbon content of fuels. Assessed once, upstream, the fee would start at \$15 per metric ton of carbon dioxide emitted and increase \$10 each year. The bill would exempt agricultural fuels and non-emissive uses. For hydrofluorocarbons, the bill would also impose a fee assessed at 10 percent of the global warming potential (GWP) of fluorinated gases. The revenue collected would be rebated to the American people. The bill also contains a carbon equalization tariff on imported goods.

**Two CWA Bills Introduced:** On January 29, 2019, Representative Bob Gibbs (R-FL) introduced two bills that would amend the CWA. The first, H.R. 843, would amend the law to clarify and limit when EPA has the authority to prohibit the specification of a defined area, or deny or restrict the use of a defined area for specification, for disposal sites under Section 404 of the law. The second bill, H.R. 844, would amend the CWA to allow for modified permits for industrial minerals remining operations.

**Pallone Announces Energy and Commerce Subcommittee Vice Chairs:** On January 30, 2019, House Energy and Commerce Chair Frank Pallone, Jr. (D-NJ) announced the Vice Chairs for the Committee's six Subcommittees in the 116th Congress. The Vice Chairs (all Democrats) are:

- Subcommittee on Communications and Technology -- Doris Matsui (CA);
- Subcommittee on Consumer Protection and Commerce -- Tony Cárdenas (CA);
- Subcommittee on Energy -- Jerry McNerney (CA);
- Subcommittee on Environment and Climate Change-- Raul Ruiz (CA);
- Subcommittee on Health -- G. K. Butterfield (NC); and
- Subcommittee on Oversight and Investigations -- Joseph Kennedy, III (MA).

**FIFRA Bill Introduced In House:** On January 30, 2019, Representative Bob Gibbs (R-FL) introduced a bill that would amend the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the CWA regarding pesticide usage. The bill (H.R. 890) would clarify Congressional intent regarding the regulation of the use of pesticides in or near navigable waters. Specifically, it would eliminate the requirement to obtain a CWA permit requirement for spraying FIFRA registered pesticides near federally regulated waters. Mr. Gibbs stated that requiring a CWA permit to spray pesticides near waterways is "duplicative and unnecessary," adding that "[t]his is a commonsense measure that provides peace of mind to those living in communities prone to mosquitos by eliminating the need for a redundant permit that diverts resources from the mission of protecting public health."

**Senate EPW Committee Approves Nominations Of Andrew Wheeler As EPA Administrator And Peter Wright As OLEM Assistant Administrator:** On February 5, 2019, the EPW Committee approved the nomination of Andrew Wheeler to serve as EPA Administrator. Mr. Wheeler was approved by a roll call vote of 11 to 10. Following through on a commitment he made in November 2018, President Trump on January 9, 2019, nominated Mr. Wheeler. Mr. Wheeler has served as EPA's Acting Administrator since the resignation of Scott Pruitt in July 2018. Mr. Wheeler previously worked in the law firm of Faegre Baker Daniels and was chief counsel to the EPW Committee. The Committee also approved by 11 to 10 voice vote the nomination of Peter Wright, formerly of Dow Chemical, to serve as the Assistant Administrator for EPA's Office of Land and Environmental Management (OLEM). Mr. Wright was nominated and approved by the Committee in 2018, but the full Senate failed to act on his nomination before the adjournment of the 115th Congress. Both nominees now move to the full Senate for consideration.

**Environment And Climate Change Subcommittee Holds First Committee Hearing On Climate Change In Six Years:** On February 6, 2019, the House Energy and Commerce Subcommittee on Environmental and Climate Change held a hearing on climate change. The hearing, entitled "Time for Action: Addressing the Environmental and Economic of Climate Change," was the first Energy and Commerce Committee hearing on climate change since 2013, when Republicans held a hearing critical of the Climate Action Plan. In announcing the hearing, Energy and Commerce Chair Frank Pallone (D-NJ) and Environment and Climate Change Subcommittee Chair Paul Tonko (D-NY) stated: "It is long past time for this Committee to begin seriously examining how climate change is affecting our communities, environment and economy, and take action to reduce its harmful effects. . . . The science has been indisputably clear for years now -- climate change is real and caused by human activity including burning fossil fuels. We are committed to combating climate change and standing up for those left to suffer in its wake. This will be the first of many hearings on this growing global crisis." Testifying at the hearing were Dr. Brenda Ekwurzel, Director of Climate Science, Union of Concerned Scientists; Rev. Leo Woodberry, Justice First Tour, Kingdom Living Temple Church; Michael Williams, Deputy Director, BlueGreen Alliance; Rick Duke,

Principal, Gigaton Strategies; Barry K. Worthington, Executive Director, U.S. Energy Association; and Rich Powell, Executive Director, ClearPath. An archived webcast of the hearing, Committee members', and witness testimonies are available [online](#).

**Senate Bill Introduced On Carbon Capture:** Senator John Barrasso (R-WY), Chair of the Senate EPW Committee, on February 7, 2019, introduced legislation on carbon capture. The bill (S. 383) supports carbon dioxide utilization and direct air capture research. It is intended to facilitate the permitting and development of carbon capture, utilization, and sequestration projects and carbon dioxide pipelines.

**Protecting America's Workers Act Would Amend OSHA:** On February 7, 2019, Representative Joe Courtney (D-CT), a member of the House Education and Labor Committee, reintroduced the Protecting America's Workers Act (H.R. 1074). The legislation is intended to strengthen and modernize the Occupational Safety and Health Act (OSH Act) by giving the Occupational Safety and Health Administration (OSHA) tools to ensure that employers promptly correct hazardous working conditions, protect whistleblowers from retaliation, and hold employers accountable for violations that cause illness, death, or serious injury to workers. Congress has not meaningfully revised the OSH Act since lawmakers passed it in 1970. The bill would expand OSHA coverage to state and local government employees in 25 states. It also would ensure that worker safety is protected in a timely manner by mandating that employers correct hazardous conditions while a citation for a serious, willful, or repeat violation is being contested. Currently, the requirement to abate violations is stayed while a violation is litigated, leaving workers in harm's way. Mr. Courtney's bill would reinstate an employer's ongoing obligation to maintain accurate records of work-related illness and injuries, and reverses a Congressional Review Act resolution on that regulatory requirement. The bill would improve whistleblower protections, update obsolete consensus standards, and increase civil monetary penalties for willful and serious violations that cause death or serious bodily injury. Employers also would be required to provide OSHA with injury and illness records. The legislation authorizes felony penalties against employers who knowingly commit OSHA violations that result in death or serious bodily injury and extend such penalties to corporate officers and directors. Criminal penalties are misdemeanors under the current law. OSHA would be required to investigate all cases of death and serious injuries that occur within a place of employment.

**Democrats Launch Green New Deal:** On February 7, 2019, Representative Alexandria Ocasio-Cortez (D-NY) and Senator Ed Markey (D-MA) laid out the goals for their "Green New Deal" to achieve net-zero greenhouse gas emissions in ten years. The Green New Deal is a ten-year plan to create a greenhouse gas neutral society "that creates unprecedented levels of prosperity and wealth for all while ensuring economic and environmental justice and security," according to a summary of the initiative. The measure will take the form of a non-binding resolution (H. Res. 109) that will call on lawmakers to support several goals for the U.S. to meet in the next decade. These goals include meeting 100 percent of power demand from zero-emissions energy sources. It also calls for new projects to modernize U.S. transportation infrastructure, de-carbonize the manufacturing and agricultural sectors, make buildings and homes more energy efficient, and increase land preservation. The Green New Deal also aims to create an economic safety net for "frontline" communities that will be affected by a shift away from fossil fuel use. The resolution sets out a list of several major projects that need to be completed "fast." These projects include upgrading virtually every home and building for energy efficiency, building 100 percent greenhouse gas neutral power generation systems, removing greenhouse gases from industry and agriculture, and more. Representative Ocasio-Cortez stated that she is planning to begin work immediately on Green New Deal legislation to flesh out the projects involved in the Green New Deal. The approach does not appear to include a carbon tax or cap and trade. In a summary of the resolution, lawmakers state that "[w]e cannot simply tax gas and expect workers to figure out another way to get to work unless we've first created a better, more affordable option. Similarly, cap and trade programs assume that existing or new markets can solve this problem for us on their own, and that's simply not true." The summary states that "[t]he door is not closed for market-based incentives or a diverse array of policy levers to play a role in the Green New Deal, but it would be a small role."

**Speaker Pelosi Names Democratic Members To House Climate Committee:** House Speaker Nancy Pelosi (D-CA) on February 7, 2019, named eight Democrats to the new Select Committee on Climate Change. The Democratic members are:

- Ben Ray Lujan (NM);
- Suzanne Bonamici (OR);
- Julia Brownley (CA);
- Sean Casten (IL);
- Jared Huffman (CA);

- Mike Levin (CA);
- Donald McEachin (VA); and
- Joseph Neguse (CO).

“This new Select Committee will spearhead Democrats’ work to develop innovative, effective solutions to prevent and reverse the climate crisis,” Speaker Pelosi stated in a statement. “It will generate the energy and action required to permanently reduce pollution so that we can honor our responsibility to be good stewards of the planet for future generations.” House Minority Leader Kevin McCarthy (R-CA) has yet to name the five Republicans who will serve on the panel. The Select Committee has no authority to advance legislation or issue subpoenas; it can only make recommendations to other Committees.

**Senator Paul Reintroduces Bill To Limit Scope Of CWA:** On February 7, 2019, Senator Rand Paul (R-KY) reintroduced his Defense of Environment and Property Act (S. 376). The bill would redefine “navigable waters” under the CWA to exclude ephemeral or intermittent streams. The bill also states that groundwater is not subject to federal jurisdiction and prohibits the use of a “significant nexus test.”

**Concurrent Resolution Reaffirms Congress’s Commitment To Paris Accord:** On February 8, 2019, Representative Jared Huffman (D-CA) introduced a Concurrent Resolution in the House that reaffirms the commitment of Congress to honoring the Paris Agreement on Climate Change. Mr. Huffman introduced the resolution (H. Con. Res. 15) along with over 50 fellow Democrats in a rebuke to President Trump’s decision to pull the U.S from the accord. Mr. Huffman serves on the newly reconstituted House Select Committee on Climate Change. Representative Brian Fitzpatrick of Pennsylvania was the sole Republican joining ranks with the more than 50 House Democrats co-sponsoring the resolution. Mr. Fitzpatrick is a leader of the bipartisan Climate Solutions Caucus. Mr. Fitzpatrick is also the co-sponsor of a carbon tax bill. All countries of the world except the U.S. under the Trump Administration have committed to the Paris Agreement, under which nations set their own nonbinding targets for reducing carbon emissions. Trump argued the U.S. committed too much compared with other countries, and withdrew. The U.S. plan, which the Obama Administration submitted in 2015, set the goal of reducing greenhouse gas emissions by 26 percent to 28 percent by **2025**.

**House Resolution Would Vacate OSHA Recordkeeping Rule:** Representative Andy Levin (D-MI) on February 8, 2019, introduced a resolution to vacate a recent OSHA final rule easing recordkeeping requirements for certain employers. The resolution, H. Res. 14, would null and void a January 29, 2019, final rule issued by OSHA. Detail on the rule is below in the Miscellaneous Section.

**Illinois Lawmakers Introduce Ethylene Oxide Bills:** On February 12, 2019, Senators Dick Durbin (D-IL) and Tammy Duckworth (D-IL), along with Representatives Brad Schneider (D-IL), Bill Foster (D-IL), Dan Lipinski (D-IL), and Sean Casten (D-IL), introduced a pair of bicameral bills that “would hold the U.S. Environmental Protection Agency (EPA) accountable for its poor oversight of ethylene oxide . . . [EO] emissions, which have been the source of harmful emissions in Illinois,” according to a statement from Durbin. The bills would require EPA to revise EO emissions standards for medical sterilization and chemical facilities and require EPA to notify the public no more than 30 days after it learns that the new standards have been violated. The Expanding Transparency of Information and Safeguarding Toxics (EtO is Toxic) Act of 2019 (S. 458, H.R. 1152) “would close existing loopholes that both benefit the chemical industry and allow the EPA to do nothing if a risk assessment they conduct finds that a chemical is more harmful than previously thought. In addition, the bill increases transparency, data, and public health requirements for chemicals that may present a public health risk.”

**The Durbin-Schneider bill would require EPA to:**

- Revise its CAA EO emissions standards for commercial sterilization and miscellaneous organic manufacturing no more than 180 days after enactment;
- Base this revision off of the best available science, including EPA’s most recent Integrated Risk Information System (IRIS) assessment;
- Notify the public of a violation involving EO no later than 30 days after the Administrator learns of a violation of the new revised standards; and
- Require an investigation by the EPA Inspector General if the Administrator fails to notify the public of a violation within 30 days;

**The EtO Is Toxic Act would require EPA to:**

- Notify Congress, state and local public health departments, and local communities when public health risks are uncovered;
- Publish a list of sites that require additional review when an exposure risk is determined; and
- Bring direction and intention to the chemical review process between EPA and the Agency for Toxic Substances Disease Registry (ATSDR).

In addition, the bill would improve the IRIS review of chemicals, and ensure IRIS reviews and National Air Toxic Assessments (NATA) are expeditiously published and made accessible to state and local health agencies, other federal agencies, and international health organizations. It will also increase funding for these programs. The bill would also require EPA to consider its own IRIS assessments when conducting a rulemaking and expedite the process of utilizing technology to mitigate the impacts of toxic chemicals.

**Lawmakers Pass EPA Appropriations Bill:** Senate and House lawmakers on February 14, 2019, passed an appropriations bill that fills EPA's coffers for FY 2019. The highlights of the bill are as follows:

- The bill provides over \$8 billion for EPA, a modest increase over last FY's appropriations.
- Lawmakers did not kill any of the programs that the White House targeted for elimination in its budget request. Programs like EnergySTAR, the Chesapeake Bay initiative, and others survived appropriators' axe.
- With respect to TSCA, the bill includes language that the conferees state will enable EPA to collect and spend new fees to conduct additional chemical reviews. Those fees are expected to be \$27,000,000 per year once the program is fully implemented. The Congressional Budget Office estimates that in FY 2019, fee collections will begin several months after the beginning of the FY and will total \$5,000,000. The bill does not support reductions proposed in the budget request with respect to TSCA.
- Science and technology research is funded at over \$717 million.
- Regarding the Pesticide Registration Improvement Act (PRIA), the conferees stated that they have recommended sufficient funding for compliance with PRIA. They direct EPA to continue compliance with FY 2017 quarterly reporting requirements related to previously collected maintenance fees that are currently unavailable for obligation. EPA also is directed to provide a briefing to the Appropriations Committees within 30 days of enactment of the legislation. More information on these topics is available in our blog items "[Federal Budget Deal Negotiations Fail to Advance PRIA Reauthorization](#)" and "

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