Recent Federal Developments March 16, 2019 EPA / FDA / TSCA / FIFRA / TRI

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Sunday, March 17, 2019

Recent Federal Developments covering: TSCA, FIFRA, TRI, RCRA, CERCLA, CWA, CAA, PHMSA, FDA, nanotechnology, biobased and renewable products and miscellaneous legislative updates.

TSCA/FIFRA/TRI
**Ninth Circuit Grants Petition For En Banc Panel Rehearing In Chlorpyrifos Case:** On February 6, 2019, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) issued an order granting EPA and Acting EPA Administrator Andrew Wheeler’s (collectively EPA or Respondents) September 24, 2018, petition for an *en banc* rehearing concerning the Ninth Circuit’s August 9, 2018, decision that vacated an EPA order maintaining chlorpyrifos registrations and remanded the case to EPA with directions to revoke all tolerances and cancel all registrations for chlorpyrifos within 60 days. The Ninth Circuit’s order granting the Respondent’s petition that the case be reheard *en banc* does not provide an explanation for its decision. The Ninth Circuit evidently found the arguments offered by Respondents and other interested parties that filed *amicus curiae* briefs more persuasive than Petitioners’ brief (including the Pesticide Action Network North America (PANNA) and the Natural Resources Defense Council (NRDC), who argued against submission of certain *amicus curiae* briefs and also that, with limited exception, Respondent’s petition for rehearing lacked merit and should be denied. The *en banc* oral argument will be held **March 26, 2019, at 2:30 p.m. (PST).**

**EPA Releases Updated TSCA Inventory:** On February 19, 2019, the U.S. Environmental Protection Agency (EPA) released an update of the Toxic Substances Control Act (TSCA) Chemical Inventory (TSCA Inventory), which lists chemicals that are “active” versus “inactive” in commerce in the U.S. EPA’s [News Release](https://www.epa.gov/prop60/new-media-releases) states that a “key result of the update is that less than half of the total number of chemicals on the current TSCA Inventory (47 percent or 40,655 of the 86,228 chemicals) are currently in commerce.” According to EPA, more than 80 percent (32,898) of the chemicals in commerce have identities that are not Confidential Business Information (CBI), increasing public access to additional information about them. For the less than 20 percent of the chemicals in commerce that have confidential identities, EPA is developing a rule outlining how it will review and substantiate all CBI claims seeking to protect the specific chemical identities of substances on the confidential portion of the TSCA Inventory. More information is available in our [February 21, 2019, memorandum](https://www.epa.gov/).  

**GAO Reviews EPA’s IRIS Assessment Efforts And Implementation Of TSCA Reforms:** On March 4, 2019, the U.S. Government Accountability Office (GAO) published a report titled *[Chemical Assessments: Status of EPA’s Efforts to Produce Assessments and Implement the Toxic Substances Control Act](https://www.gao.gov/products/GAO-19-288)*. The report describes the extent to which EPA’s Integrated Risk Information System (IRIS) Program has addressed identified challenges and made progress toward producing chemical assessments; and assesses whether EPA has demonstrated progress implementing TSCA. GAO reviewed documents from the National Academy of Sciences (NAS) and EPA and interviewed EPA officials and representatives from two environmental and two industry stakeholder organizations. GAO found that while EPA made improvements in the IRIS Program, between June and December 2018, EPA leadership directed the Program to stop the assessment process during discussions about program priorities. GAO states that while EPA has responded to initial statutory deadlines in TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Lautenberg Act), challenges remain. More information is available in our [March 6, 2019, memorandum](https://www.epa.gov/).  

**EPA’s Process For Assessing And Controlling Toxic Chemicals Remains On**
**GAO’s High-Risk List:** GAO released on March 6, 2019, a report entitled *High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas.* GAO’s high-risk program identifies government operations with vulnerabilities to fraud, waste, abuse, and mismanagement, or in need of transformation to address economy, efficiency, or effectiveness challenges. GAO’s report describes the status of high-risk areas and outlines actions necessary to assure further progress. GAO states that in the two years since its last high-risk report, three areas, including “Transforming EPA’s Process for Assessing and Controlling Toxic Chemicals,” have regressed in their ratings against GAO’s criteria for removal from the High-Risk List. GAO notes that since adding this area to its High-Risk List in 2009, it has made 12 recommendations to EPA related to the IRIS Program and TSCA. According to GAO, while EPA has taken steps to manage chemicals that pose risks to human health and the environment, leadership and implementation challenges remain. More information is available in our March 8, 2019, memorandum.

**EPA Issues Final Rule Banning Consumer Use of Methylene Chloride, Issues ANPRM Soliciting Comments on Commercial Use of Methylene Chloride:** On March 15, 2019, EPA Administrator Wheeler signed a final rule prohibiting the manufacture (including import), processing, and distribution in commerce of methylene chloride for consumer paint and coating removal, including distribution to and by retailers; requiring manufacturers (including importers), processors, and distributors, except for retailers, of methylene chloride for any use to provide downstream notification of these prohibitions; and requiring recordkeeping. The rule states that EPA has determined that “the use of methylene chloride in consumer paint and coating removal presents an unreasonable risk of injury to health due to acute human lethality.” This final rule does not prohibit the use of methylene chloride in commercial paint and coating removal, however. EPA is instead soliciting comment, through an advance notice of proposed rulemaking (ANPRM) also signed by Administrator Wheeler on March 15, 2019, on questions related to a potential training, certification, and limited access program as an option for risk management for all of the commercial uses of methylene chloride in paint and coating removal.

**RCRA/CERCLA/CWA/CAA/PHMSA**


**CDC/ATSDR Announce Sites For PFAS Assessments:** On February 21, 2019, the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announced that they have identified communities to be a part of assessments to examine human exposure to per and polyfluoroalkyl substances (PFAS). The communities are near current or former military installations. CDC/ATSDR expect the assessments to begin in 2019 and continue through 2020. The assessments will lay the groundwork for CDC/ATSDR’s future multi-site health study that will look at the relationship between PFAS exposure and health outcomes. The locations are: Berkeley County, West Virginia,
near Shepherd Field Air National Guard Base; El Paso County, Colorado, near Peterson Air Force Base; Fairbanks North Star Borough, Alaska, near Eielson Air Force Base; Hampden County, Massachusetts, near Barnes Air National Guard Base; Lubbock County, Texas, near Reese Technology Center; Orange County, New York, near Stewart Air National Guard Base; New Castle County, Delaware, near New Castle Air National Guard Base; and Spokane County, Washington, near Fairchild Air Force Base. The primary goal of these exposure assessments is to provide information to communities about levels of PFAS in their bodies. The results of these assessments will help communities better understand the extent of their environmental exposures to PFAS. CDC/ATSDR will select people in each of these communities randomly to participate in these exposure assessments. Participants will have their PFAS levels checked via blood and urine samples. The exposure assessments are one part of CDC’s/ATSDR’s efforts to address PFAS exposure in communities. In the future, CDC/ATSDR will explore conducting exposure assessments in additional communities. For more information about the PFAS Exposure Assessment or PFAS, please visit ATSDR’s website.

**RCRA Pharmaceutical Rule Published In Federal Register:** On February 22, 2019, EPA issued the final Resource Conservation and Recovery Act (RCRA) rule streamlining standards for managing hazardous waste pharmaceuticals. 84 Fed. Reg. 5816. Certain pharmaceuticals are regulated as hazardous waste under RCRA when discarded. The final rule removes these pharmaceuticals from full RCRA regulation and creates a new Part 266 Subpart P for the management of hazardous waste pharmaceuticals by healthcare facilities and reverse distributors. Healthcare facilities (for both humans and animals) and reverse distributors will manage their hazardous waste pharmaceuticals under this new set of sector-specific standards in lieu of RCRA generator regulations in Part 262. The new rule also prohibits the disposal of hazardous waste pharmaceuticals down the drain (sewering) and eliminates the dual regulation of RCRA hazardous waste pharmaceuticals that are also Drug Enforcement Administration (DEA) controlled substances. The rule maintains the household hazardous waste exemption for pharmaceuticals collected during pharmaceutical take-back programs and events. The new Subpart codifies EPA’s prior policy on the regulatory status of nonprescription pharmaceuticals going through reverse logistics. Specifically, the rule reaffirms that non-prescription pharmaceuticals and other unsold retail items that have a reasonable expectation of being used/reused or legitimately reclaimed are not solid or hazardous waste. EPA also is amending the P075 acute hazardous waste listing of nicotine and salts to exclude certain U.S. Food and Drug Administration (FDA) approved over-the-counter (OTC) nicotine replacement therapies. The final rule also establishes a policy on the regulatory status of unsold retail items that are not pharmaceuticals and are managed via reverse logistics. The revisions promulgated by EPA will only be effective in those states that do not have final authorization of their base RCRA programs, i.e., Alaska and Iowa. EPA is, however, promulgating the prohibition of “sewering” hazardous waste pharmaceuticals under the authority of the Hazardous and Solid Waste Amendments in RCRA Section 3018. That prohibition thus will become effective in all states on August 21, 2019, the effective date of the rule. The revisions will become effective in those states with RCRA authorized programs only when the states adopt the revisions, although they are not required to do so.

**EPA Announces 2018 Annual Superfund Accomplishments:** On March 4, 2019,
EPA issued its annual report under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund). The report is available online. It covers EPA’s major accomplishments and environmental progress made during Fiscal Year (FY) 2018 under the program. EPA states that Superfund “is a top priority ... under President Trump, and the agency is making great strides in accelerating sites through remediation and back to productive use.” The report states that in FY 2018, EPA deleted all or part of 22 sites from the National Priorities List (NPL), the largest number of deletions in one year since 2005. Additional highlights from the report:

- Improving human health for people living near sites by controlling potential or actual human exposure risk at 32 NPL sites and controlling the migration of contaminated groundwater at 29 sites.

- Returning sites to communities for redevelopment by identifying 51 additional sites as having all long-term protections in place and meeting “sitewide ready for anticipated use” designation, the highest annual result since 2013.

- Completing or providing oversight of 242 removal actions at sites where contamination posed an imminent and substantial threat to human health and the environment.

- Responding to hurricanes, wildfires, and other natural disasters in California, North Carolina, Puerto Rico, and elsewhere.

- Moving sites closer to completion, including West Lake Landfill in Bridgeton, Missouri; USS Lead in East Chicago, Indiana; and San Jacinto Waste Pits in Channelview, Texas.

**EPA Releases Analysis Of 2017 TRI:** On March 5, 2019, EPA released its 2017 Toxics Release Inventory (TRI) National Analysis. According to EPA, the results show that since 2007, releases of TRI chemicals have declined while the economy has grown. From 2016 to 2017, there was a six percent decrease in the release of TRI chemicals, EPA stated. EPA noted that this reduction is the continuation of a longer-term trend where the releases of TRI chemicals have decreased by nearly 60 percent since 2007.” But the analysis also acknowledged an increase in total releases compared to 2016. From 2016 to 2017, “[t]otal releases to the environment increased by 13%, driven by the 21% increase (433 million pounds) in on-site land disposal.” The metal mining sector accounted for 50 percent of total 2017 releases. The chemical sector was the second highest sector for 2017, with 13 percent of total releases. EPA highlighted some positive data. Air releases of TRI chemicals, for example, declined by 11 million pounds in 2017. Since 2007, air releases of TRI-listed chemicals fell 57 percent at industrial facilities submitting data to the program. Electric utilities are responsible for the greatest decreases in air releases since 2007, but nearly all industrial sectors have reduced their air releases over that time, EPA stated. And 87 percent of the nearly 31 billion pounds of TRI chemical waste was prevented from being released into the environment due to practices such as recycling, energy recovery, and treatment, the analysis shows. Industrial facilities also reported implementing nearly 4,000 new source reduction activities.
that eliminated or reduced the creation of chemical waste. The 2017 national analysis is available online.

**PHMSA Issues IFR Revising HMRs For Lithium Batteries:** The U.S. Department of Transportation’s (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) on March 6, 2019, issued an interim final rule (IFR) revising the Hazardous Materials Regulations (HMR) for the transportation of lithium batteries by aircraft. 84 Fed. Reg. 8006. The IFR imposes three main requirements:

1. It prohibits the transport of lithium ion cells and batteries as cargo on passenger aircraft;
2. It requires that lithium ion cells and batteries be shipped at not more than a 30 percent state of charge aboard cargo-only aircraft when not packed with or contained in equipment; and
3. It limits the use of alternative provisions for small lithium cell or battery shipments to one package per consignment.

The IFR does not restrict passengers or crew members from bringing personal items or electronic devices containing lithium cells or batteries aboard aircraft, nor does it restrict cargo-only aircraft from transporting lithium ion cells or batteries at a state of charge exceeding 30 percent when packed with or contained in equipment or devices. PHMSA made the rule immediately effective.

**EPA Retains NAAQS For Sulfur Dioxide:** On March 18, 2019, EPA is scheduled to publish a final action announcing that it is retaining, without changes, the primary (health-based) National Ambient Air Quality Standards (NAAQS) for sulfur oxides \((\text{SO}_x)\), a group of closely related gaseous compounds that include sulfur dioxide \((\text{SO}_2)\). EPA stated that it made the decision “after carefully reviewing the most recent available scientific evidence and risk and exposure information and consulting with the agency’s independent science advisors.” The current primary standard is set at a level of 75 parts per billion (ppb), as the 99th percentile of daily maximum one-hour \(\text{SO}_2\) concentrations, averaged over three years. EPA is required to review NAAQS on a periodic basis. EPA completed its most recent review of the primary \(\text{SO}_2\) NAAQS in 2010. 75 Fed. Reg. 35520; June 22, 2010. In that review, EPA significantly strengthened the primary standard, establishing a one-hour standard and revoking the 24-hour and annual standards. The final rule will become effective 30 days after date of publication in the *Federal Register* (presumably on April 17, 2019).

**FDA**

**FDA Proposed Rule For OTC Sunscreen Drug Products Addresses Combination Sunscreen-Insect Repellent Products:** On February 26, 2019, FDA issued a proposed rule that would put into effect a final monograph for nonprescription, OTC sunscreen drug products. 84 Fed. Reg. 6204. The proposed rule describes the conditions under which FDA proposes that OTC sunscreen monograph products are generally recognized as safe and effective (GRASE) and not misbranded. Under the
proposed rule, products that combine sunscreens with insect repellents would not be
GRASE. Sunscreen-insect repellent products are jointly regulated by FDA as
sunscreen drugs and by EPA as pesticides under the Federal Insecticide, Fungicide,
and Rodenticide Act (FIFRA). On February 22, 2007, FDA and EPA both issued
advance notices of proposed rulemaking (ANPR) requesting comment on the
appropriate regulatory status of these products. **FDA published a notice** seeking
information to formulate a regulatory position on insect repellent products that
contain OTC sunscreen ingredients. 72 Fed. Reg. 7941. **EPA published a similar
notice** announcing that it was also seeking information to determine how insect
repellent-sunscreen combination products should be regulated to complete the
reregistration review described in the Reregistration Eligibility Decision document
More information is available on our [Pesticide Law and Policy Blog®](#).

**FDA Issues Statement On Asbestos Contamination In Cosmetic Products:** On
March 5, 2019, FDA Commissioner Scott Gottlieb, M.D., and Susan Mayne, Ph.D.,
director of the Center for Food Safety and Applied Nutrition (CFSAN) **issued a
statement** on testing done by third-party laboratories that confirmed a 2017 finding
of asbestos contamination in certain cosmetic products and new steps that FDA is
pursuing to improve cosmetics safety. The results from those tests confirmed the
presence of asbestos in three of the product samples collected from Claire’s and one
of the product samples collected from Justice. All suspect Justice products, including
the one that tested positive for asbestos, were previously recalled from the market
in 2017. Claire’s refused to comply with FDA’s request. FDA stated it does not have
the authority to mandate a recall, therefore, it is warning consumers not to use
these products and will continue to communicate its safety concerns about them.
FDA’s **Safety Alert** warned consumers to not use three of Claire’s products: Claire’s
Eye Shadows -- Batch No/Lot No: 08/17; Claire’s Compact Powder -- Batch No/Lot No:
07/15; and, Claire’s Contour Palette -- Batch No/Lot No: 04/17, because they tested
positive for asbestos. FDA encourages consumers and health care providers to
report cosmetic-related adverse reactions to its [MedWatch reporting system](#)
or a **consumer complaint coordinator**. FDA requests cosmetic firms to take responsible
steps to voluntarily register their products and list ingredients, including talc, used
in their products via their [Voluntary Cosmetic Registration Program (VCRP)](#) which
provides a mechanism for cosmetic manufacturers, distributors, and packers to
voluntarily file information on their products that are currently being marketed to
U.S. consumers and to register their manufacturing and/or packaging facility
locations. FDA also requests manufacturers to proactively report adverse events
involving cosmetic products to [CFSAN’s Adverse Event Reporting System](#).

**FDA Announces Availability Of Revised Draft Guidance For Industry On
Mitigation Strategies To Protect Food Against Intentional Adulteration:** On
March 6, 2019, FDA **announced** the availability of a revised draft guidance for
industry “**Mitigation Strategies to Protect Food Against Intentional Adulteration:
Guidance for Industry.**” 84 Fed. Reg. 8103. FDA states that the revised draft
guidance supersedes the version of the intentional adulteration draft guidance
released on June 20, 2018, and that when prepared in final, it will help food
facilities that manufacture, process, pack, or hold food, and that are required to
register under the Federal Food, Drug, and Cosmetic Act (FFDCA), comply with the
requirements of FDA’s regulation on Mitigation Strategies to Protect Food Against
Intentional Adulteration. FDA is requesting comments to be submitted by July 5, 2019.

**FDA Commissioner Releases Statement On Biotechnology Innovations:** On March 8, 2019, FDA Commissioner Scott Gottlieb, M.D., released a statement on the continued efforts to advance safe biotechnology innovations, and the deactivation of an import alert on genetically engineered (GE) salmon. In his statement, Dr. Gottlieb emphasized FDA’s mission to evaluate the safety of intentional genomic alterations (IGA) in animals that will ultimately be sold for consumption in the U.S. According to FDA’s recent framework for the efficient development of safe biotechnology products, *Plant and Animal Biotechnology Innovation Action Plan*, Dr. Gottlieb stated that FDA has taken important steps to help advance new products. More information is available on our BRAG™ Biobased Products Blog.

**HHS Secretary Announces Norman Sharpless, M.D., As FDA Acting Commissioner:** On March 12, 2019, Alex M. Azar III, Secretary of the U.S. Department of Health and Human Services (HHS), announced that Norman E. (Ned) Sharpless, M.D., current director of the National Cancer Institute, will serve as acting commissioner of FDA beginning in early April. The current FDA Commissioner, Dr. Gottlieb, resigned on March 5, 2019, for personal reasons. Dr. Sharpless has been the director of the National Cancer Institute (NCI) since October 17, 2017. Prior NCI, Dr. Sharpless served as the director of the University of North Carolina (UNC) Lineberger Comprehensive Cancer Center, a position he held since January 2014. Dr. Sharpless was a Morehead Scholar at UNC-Chapel Hill and received his undergraduate degree in mathematics. He went on to pursue his medical degree from the UNC School of Medicine, graduating with honors and distinction in 1993. He then completed his internal medicine residency at the Massachusetts General Hospital and a hematology/oncology fellowship at Dana-Farber/Partners Cancer Care, both of Harvard Medical School in Boston.

**NANOTECHNOLOGY**

**ECHA Interview Focuses On Research On Safety Of Nanomaterials:** The February 2019 issue of the European Chemicals Agency’s (ECHA) Newsletter includes an interview with Eva Valsami-Jones, Professor of Environmental Nanoscience at the University of Birmingham and leader of the European Union (EU) NanoSafety Cluster Coordination Team, on research on the safety of nanomaterials. The NanoSafety Cluster coordinates the funding of research projects at the European level that address the safety aspects of nanomaterials and related technologies, such as toxicity, exposure, and standardization.

**EU NanoSafety Cluster Announces Its Support Of The Malta Initiative:** On February 18, 2019, the EU NanoSafety Cluster announced that it is supporting the Malta Initiative by linking various projects with activities developed within the Malta Initiative. In line with existing Organization for Economic Cooperation and Development (OECD) procedures, any country or organization with expertise interested in working on adapting existing OECD Test Guidelines or developing new OECD Test Guidelines and/or Guidance Documents is welcome to become an active contributor. The Malta Initiative Board was formed to facilitate and steer the activities of the Malta Initiative. More information is available in our February 19.
White House OSTP’s Science And Technology Highlights Include Advances In Nanotechnology: On February 21, 2019, the White House Office of Science and Technology Policy (OSTP) posted a report entitled Science & Technology Highlights in the Second Year of the Trump Administration. The report highlights science and technology achievements, including supporting and celebrating key advances in nanotechnology.

JRC Opens Calls For The Nanobiotechnology Laboratory: The European Commission’s (EC) Joint Research Center (JRC) opened its scientific laboratories and facilities, including its Nanobiotechnology Laboratory, to people working in academia and research organizations, industry, and small and medium-sized enterprises (SME). JRC opened a call on February 1, 2019, for the Nanobiotechnology Laboratory for several priority topics. The call ends on May 3, 2019. JRC opened a call on March 4, 2019, for certain training and capacity building topics for the Nanobiotechnology Laboratory. Applications are due June 3, 2019. For each call, JRC requires that the lead user institution and user institutions be from a country associated to the EU Research Program Horizon 2020. The lead user institution must be from a university, research or public institution, or from an SME. More information is available in our March 8, 2019, blog item.

NNCO Celebrates NNI’s 15th Anniversary: The National Nanotechnology Coordination Office (NNCO) announced on February 28, 2019, that it is planning a number of activities to celebrate the 15-year anniversary of the National Nanotechnology Initiative (NNI). Upcoming events will include:

- Special anniversary episodes of “Stories from the NNI” podcast series;
- Plenary keynote panel at Nanotech 2019, part of TechConnect World Innovation Conference & Expo, June 17-19, 2019, in Boston, Massachusetts; and
- The NNI at 15: A Stakeholder Workshop on the Past, Present, and Future of the NNI, August 1-2, 2019, in Washington, D.C.

ISO Publishes Standard On Considerations For The Measurement Of Nano-Objects And Their Aggregates And Agglomerates In Environmental Matrices: The International Organization for Standardization (ISO) has published standard ISO/TR 21386, “Nanotechnologies -- Considerations for the measurement of nano-objects and their aggregates and agglomerates (NOAA) in environmental matrices.” The standard provides some considerations for the collection of environmental samples to be analyzed for manufactured NOAA, considerations to distinguish manufactured NOAA from background levels of naturally occurring nanoscale particles of the same composition, and preparation procedures to aid in the quantification of manufactured nanomaterials in environmental matrices.

The ISO standard builds on the work of the Industry Consortium for Environmental Measurement of Nanomaterials (ICEMN), a consortium of stakeholders involved with the production, assessment, and use of nanomaterials working collectively and cooperatively to provide information that would address environmental measurement.
of nanoscale materials and to enhance the state of the science in this regard. The Consortium included representatives from industry, academia, and government groups, and was managed by B&C® Consortia Management, L.L.C. (BCCM).

**2019 NanoEHS CORs Workshop Will Be Held In October:** The 2019 U.S.-EU NanoEHS Communities of Research (COR) Workshop will take place October 15-16, 2019, at the Europole de l’Arbois in Aix en Provence, France. The workshop is organized by NNI and the EC. The agenda for the October 2018 Bridging NanoEHS Research Efforts Joint Workshop and a number of presentations are available online. More information is available in our March 13, 2019, blog item.

**LEGISLATIVE**

**House Subcommittee Holds Hearing On “Dismal” EPA Enforcement Numbers:** On February 26, 2019, the House Energy and Commerce Subcommittee on Oversight and Investigations held a hearing on slumping EPA enforcement numbers. In a video announcing the hearing, Committee Chairman Frank Pallone, Jr. (D-NJ) said EPA’s data indicate “a dismal enforcement record.” The video is available online. The hearing was titled “EPA's Enforcement Program: Taking the Environmental Cop Off the Beat.” The hearing was sparked by EPA’s 2018 enforcement numbers, which indicate a significant slowing of enforcement actions. Adding to the Committee’s concern is an analysis released by former Office of Enforcement and Compliance Assurance (OECA) Assistant Administrator Cynthia Giles. Her analysis indicates that EPA’s combined civil and administrative penalties were the lowest since 1994. Ms. Giles’ analysis is available online (subscription required). Testifying before the committee were:

- Susan Bodine, Assistant Administrator, OECA, EPA;
- Bruce Buckheit, JD, MS Analyst and Consultant, Former Director, Air Enforcement Division, OECA, EPA;
- Bakeyah Nelson, Ph.D., Executive Director, Air Alliance Houston;
- Eric Schaeffer, JD, Executive Director, Environmental Integrity Project;
- Chris Sellers, Ph.D., M.D., Professor of History Director, Center for the Study of Inequality and Social Justice, Stony Brook University;
- Jay Shimshak, Ph.D., Associate Professor of Public Policy and Economics, Frank Batten School of Leadership and Public Policy, University of Virginia; and
- Ronald J. Tenpas, J.D., Partner, Vinson & Elkins LLP, Former Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice (DOJ).

Witness testimony, member statements and an archive of the webcast are available online.
House Appropriations Subcommittee Holds Hearing On EPA Spending: On February 26, 2019, the House Appropriations Subcommittee on Interior, Environment, and Related Agencies held a hearing on spending issues under the panel’s jurisdiction. Over the course of morning and afternoon sessions, the panel heard testimony from a host of individuals and from dozens of organizations including the American Lung Association, the National Association of Clean Air Agencies, the American Battlefield Trust, the Nature Conservancy, and the American Society of Civil Engineers. An archived webcast of the hearing and witness testimony are available online.

House Appropriations Subcommittee Holds Hearing On Climate Change Research: On February 26, 2019, the House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies held a hearing on climate change research. The title of the hearing was “Understanding the Changing Climate System and the Role of Climate Research.” Testifying during the hearing were Michael Freilich, Ph.D., Director of the National Aeronautics and Space Administration’s (NASA) Earth Science Division and Neil Jacobs, Ph.D., Assistant Secretary of Commerce for Environmental Observation and Prediction. An archived webcast of the hearing and witness testimony are available online.

House Committee Holds Hearing On Federal Infrastructure Policy And Climate Change: On February 26, 2019, the House Transportation and Infrastructure Committee held a hearing titled “Examining How Federal Infrastructure Policy Could Help Mitigate and Adapt to Climate Change.” The hearing examined how federal infrastructure policy could help with climate change mitigation and adaptation. Testifying at the hearing were:

- Dr. Daniel Sperling, Board Member, California Air Resources Board (CARB);
- Vicki Arroyo, Executive Director, Georgetown Climate Center;
- Professor Thomas P. Lyon, Stephen M. Ross School of Business, University of Michigan;
- Ben Prochazka, Vice President, Electrification Coalition;
- Nancy Young, Vice President, Environmental Affairs, Airlines for America;
- Kevin DeGood, Director, Infrastructure Policy, Center for American Progress;
- James M. Proctor II, Senior Vice President & General Counsel, McWane Inc.;
- Dr. Whitley Saumweber, Director, Stephenson Ocean Security Project, Center for Strategic & International Studies; and

An archived webcast of the hearing and witness testimony are available online.
Local Water Protection Act Introduced In House: On February 26, 2019, Representative Angie Craig (D-MN) introduced a bill intended to reduce harmful pollution in sources of water caused by the runoff of snowmelt and rainfall. The Local Water Protection Act (H.R. 1331) increases a grant fund intended to give local and state governments the flexibility to make conservation improvements aimed at decreasing water pollutants through partnerships within their communities. The bill specifically would reauthorize EPA’s CWA Section 319 grant program. The bill would increase the grant funding level to $200 million per FY, made available to state and local governments for technical assistance, financial assistance, education, training, technology transfer, demonstration projects, and monitoring the success of specific nonpoint source implementation projects.

Long-Term Extension To CFATS Program Subject of House Committee Hearing: On February 27, 2019, the House Homeland Security Committee held a hearing examining a long-term extension or reauthorization of the Chemical Facility Anti-Terrorism Standards (CFATS). Lawmakers earlier this year passed legislation extending the program for 15 months; it was set to expire on January 18, 2019. Testifying before the panel was David Wulf, Director, Infrastructure Security Compliance Division, Cybersecurity, and Infrastructure Security Agency, Department of Homeland Security; and Nathan Anderson, Acting Director, Homeland Security and Justice, GAO. An archived webcast of the hearing and witness testimony are available online.

Fuel Choice And Deregulation Act Introduced In Senate: On February 27, 2019, Senators Rand Paul (R-KY) and Chuck Grassley (R-IA) introduced the Fuel Choice and Deregulation Act of 2019 (S. 581). The legislation would remove “burdensome” regulations on domestic energy production. The bill “provides new economic opportunity for Kentucky farmers by allowing fuel producers and automobile manufacturers to innovate and bring new products to market that will lower costs for consumers, increase domestic energy production, and protect the environment,” said Senator Paul. The Fuel Choice and Deregulation Act would remove regulations blocking higher ethanol blends, such as E15, from entering the marketplace. It also removes the requirement for EPA certifications on aftermarket vehicle conversions. The bill specifically would reform Reid Vapor Pressure (RVP) requirements by allowing higher blend levels of ethanol to exceed the current 9.0 pounds per square inch (psi) standard, and it prevents EPA from regulating biomass fuel. RVP is a measure of how quickly fuel evaporates into the atmosphere. EPA regulates RVP in conjunction with ozone emissions in the summer months. Congress previously directed EPA to issue a “one pound waiver” for ethanol blends of ten percent, allowing E10 to be sold at 10.0 psi. Last year President Trump signed an executive order directing EPA to look into the possibility of allowing year-round sales of E15. This bill extends the Congressional waiver to higher blends of ethanol, including E15.

House Subcommittee Holds Hearing On Paris Accord: On February 28, 2019, the House Energy and Commerce Subcommittee on Environment and Climate Change held a hearing on the Paris Climate Agreement. Cleverly titled “We’ll Always Have Paris: Filling the Leadership Void Caused by Federal Inaction on Climate Change,” the hearing examined the importance of the United States’ continued commitment to the Paris Agreement and how cities, states, and businesses across the country are
stepping up to say, “I’m still in.” An archived webcast of the hearing and witness testimony are available online.

**Senate Confirms Andrew Wheeler:** On February 28, 2019, the Senate confirmed Andrew Wheeler to serve as Administrator of EPA. The vote was 52-47, mainly along party lines. Every Democrat voted against Wheeler. Senator Susan Collins of Maine was the sole Republican who voted against him.

**House Republican Leadership Names Members Of Climate Change Committee:** On February 28, 2019, House Majority Leader Kevin McCarthy (R-CA) named six Republicans to sit on the Select Committee on Climate Change. They are Garret Graves (LA), Morgan Griffith (VA), Buddy Carter (GA), Gary Palmer (AL), Carol Miller (WV), and Kelly Armstrong (ND).

**Senate Democrats Introduce Resolution On Global Warming:** On February 28, 2019, Senator Tom Carper (D-DE), ranking member on the Senate Environment and Public Works (EPW) Committee, and Minority Leader Chuck Schumer (D-NY), introduced a resolution (S.J. Res. 9) on climate change. All 47 members of the Democratic Caucus co-sponsored the resolution. The resolution states: “climate change is real; human activity during the last century is the dominant cause of the climate crisis, and the United States and Congress should take immediate action to address the challenge of climate change.” Senators Carper and Schumer also sent a “Dear Colleague” letter to all Republican Senators inviting them to join Democrats in supporting the resolution. The resolution is one of many steps Democrats are taking to go on the offensive on climate change. Companion legislation was introduced in the House by Representative Debbie Dingell (D-MI) (H.R. 535).

**Senate Bill Would Require EPA To List PFAS As CERCLA Hazardous Substances:** On March 1, 2019, Senator Carper introduced legislation that would require EPA to list all PFAS substances as hazardous substances under Section 102(a) of CERCLA. The bill would give EPA one year to promulgate the listing. Designating a hazardous substance by legislation is an unusual move. Also, such a designation would have significant ramifications for sites with PFAS contamination and would hold liable those potentially responsible for the contamination for remediation costs.

**Senate Subcommittee Holds Hearing On States’ Role In Protecting Air Quality:** On March 5, 2019, the Senate EPW Subcommittee on Clean Air and Nuclear Safety held a hearing on the role of states in protecting air quality. The focus of the hearing was a discussion of cooperative federalism and the proper balance between federal and state regulation of air quality. Testifying at the hearing were three state regulators: Dave Glatt, Chief of the Environmental Health Section for the North Dakota Department of Health; Becky Keogh, Director of the Arkansas Department of Environmental Quality; and Craig Segall, Assistant Chief Counsel for CARB. An archive of the web broadcast and the witness testimonies are available online.

**House Subcommittee Holds Hearing On PFAS:** On March 6, 2019, the House Oversight and Reform Subcommittee on Environment held a hearing examining PFAS chemicals and their risks. The first witness at the hearing was Congressman Brian Fitzpatrick (R-PA), who co-chairs the Congressional PFAS Task Force. In 2017, he introduced legislation that was enacted that requires the Department of Defense
Bipartisan Senate And House Bills Would Reauthorize Chesapeake Bay Program: On March 7, 2019, Senators Ben Cardin (D-MD) and Shelley Moore Capito (R-WV) introduced bipartisan legislation to reauthorize the Chesapeake Bay Program. The Chesapeake Bay Program Reauthorization Act (S. 701) would provide $90 million in FY 2020, with a $500,000 increase each year for the five years authorized. The vast majority of funding for the program would go directly toward states within the Chesapeake Bay Watershed -- Virginia, Maryland, Delaware, West Virginia, Pennsylvania, and New York, plus the District of Columbia -- to help control pollution and manage runoff into the tributaries that feed into the Bay. Companion legislation was introduced in the House by Representatives Elaine Luria (D-VA), John Sarbanes (D-MD), Bobby Scott (D-VA), and Rob Wittman (R-VA) (H.R. 1620). Created by President Reagan and ratified by Congress in 1987, authorization for the Chesapeake Bay Program expired in FY 2005, although Congress has appropriated funds each year for it. In June 2014, a new voluntary Chesapeake Bay Watershed Agreement was signed by the governors of the six states in the watershed and the federal government. The agreement has ten goals to improve water quality in local rivers and streams and the Chesapeake Bay by 2025. Under the program, federal funds are used to coordinate the science, research, modeling, monitoring, data collection, and other activities essential to the Bay Agreement. Over 60 percent of funds go to states, primarily through grants programs that leverage private investment for restoration activities. Each Bay Program partner uses its own resources to implement Bay restoration and protection activities. To protect the quality of the Chesapeake Bay, the program results in appropriate discharge permit limits imposed upon facilities that discharge waters to the Chesapeake Bay watershed.

Senate And House Bills Would Amend TSCA To Ban Asbestos: On March 7, 2019, Senator Jeff Merkley (D-OR) introduced the Alan Reinstein Ban Asbestos Now Act of 2019 (S. 717). The bill would ban the mining, importation, use, and distribution in commerce of asbestos and any asbestos-containing mixtures in the U.S. Companion legislation (H.R. 1603) was introduced in the House by Suzanne Bonamici (D-OR). The bill is named after Alan Reinstein, who passed away in 2006 at the age of 66 from mesothelioma, a disease caused by exposure to asbestos. Mr. Reinstein’s wife, Linda, co-founded the Asbestos Disease Awareness Organization (ADAO) in 2004. Asbestos is still legal in the U.S., even though more than 60 other countries have banned it. Asbestos is one of ten chemicals selected for risk reviews under the 2016 revised TSCA. Lawmakers note that “EPA’s safety assessment must be completed before EPA can consider any controls on asbestos, and the EPA is not required to ban it.” They added that “President Trump and his handpicked leadership
at the EPA have made clear that they will not prioritize taking dangerous chemicals off of the market.” Specifically, the bill would amend TSCA to direct EPA, within one year after the date of enactment of the bill, to ban the manufacturing, processing, use, and distribution in commerce of asbestos and any mixture or article containing asbestos. There is an exemption for national security purposes, but only for a three-year period with one three-year extension allowed. The bill also would require within 120 days of enactment any person or entity that has manufactured, processed, or distributed in commerce asbestos or any mixture containing asbestos in the last three years to submit to EPA a detailed report regarding the description of the activity; the quantity, quality, and concentration of asbestos; and reasonable estimates of the number of individuals that have been or will be exposed to asbestos due to the activity. Under the legislation, EPA would be required to consult with HHS and the Department of Labor (DOL) to submit to Congress within 18 months a report assessing the legacy presence of asbestos in residential, commercial, industrial, public, and school buildings and the extent of exposure and risk to human health associated with the asbestos present in those buildings.

President Trump Signs PRIA 4 Reauthorization Bill: On March 8, 2019, President Trump signed S. 483, the “Pesticide Registration Improvement Extension Act of 2018,” which reauthorizes the Pesticide Registration Improvement Extension Act (PRIA 4) through FY 2023, updates the fee collection provisions and authorities available under FIFRA, and addresses worker protection matters. The text is available at Congress.gov. On February 14, 2019, the Senate approved S. 483 and the House of Representatives approved it on February 25, 2019. Further amendments were made and the Senate approved the amended text on February 28, 2019. More information on the PRIA 4 legislation is available on our blog under key word PRIA.

Trump Budget Request Would Cut EPA’s Funding By 31 Percent: On March 11, 2019, the Trump Administration released its FY 2020 proposed budget request. Titled “A Budget for a Better America,” the recommendation would scythe EPA’s funding by approximately 31 percent and cap staff at 12,414 full-time employees (FTE), a level not seen since President Reagan’s tenure in the White House. The recommended budget is in line with the President’s requests for the previous two FYs. Lawmakers rejected those requests and funded EPA far above the levels sought by the White House. The FY 2019 continuing resolution passed by Congress funded EPA at $8.8 billion; President Trump’s recommended funding level for EPA is $6.1 billion. Lawmakers are certain to ignore the request and fund EPA at levels they deem appropriate. Nonetheless, the request does provide insight into the Administration’s priorities. The budget request indicates three strategic goals to guide EPA’s approach to protecting human health and the environment:

- **Goal 1 -- Core Mission**: Deliver real results to provide Americans with clean air, land, and water, and ensure chemical safety.

- **Goal 2 -- Cooperative Federalism**: Rebalance the power between Washington and the states to create tangible environmental results for the American people.

- **Goal 3 -- Rule of Law and Process**: Administer the law, as Congress
intended, to refocus EPA on its statutory obligations under the law.

The budget request also highlights EPA’s six “Agency Priority Goals” and sets deadlines to meet these goals. These are:

- **Improve air quality by implementing pollution control measures to reduce the number of non-attainment areas.** By September 30, 2019, EPA will reduce the number of nonattainment areas to 138 from a baseline of 166.

- **Empower communities to leverage EPA water infrastructure investments.** By September 30, 2019, EPA will increase by $16 billion the non-federal dollars leveraged by EPA water infrastructure finance programs (Clean Water and Drinking Water State Revolving Funds and the Water Infrastructure Finance and Innovation Act program).

- **Accelerate the pace of cleanups and return sites to beneficial use in their communities.** By September 30, 2019, EPA will make an additional 102 Superfund sites and 1,368 Brownfields sites ready for anticipated use.

- **Meet new statutory requirements to improve the safety of chemicals in commerce.** By September 30, 2019, EPA will complete in accordance with statutory timelines: 100 percent of required TSCA risk evaluations for existing chemicals; 100 percent of required TSCA risk management actions for existing chemicals; and 80 percent of TSCA pre-manufacture notice final determinations.

- **Increase environmental law compliance rate.** Through September 30, 2019, EPA will increase compliance by reducing the percentage of CWA National Pollutant Discharge Elimination System (NPDES) permittees in significant noncompliance with their permit limits to 21 percent from a baseline of 24 percent.

- **Accelerate permitting-related decisions.** By September 30, 2019, EPA will reduce by 50 percent the number of permitting-related decisions that exceed six months.

The funding priorities laid out in the budget request are:

- Infrastructure;
- Improving air quality;
- Clean and safe water;
- Revitalizing land;
- Ensuring the safety of chemicals;
Protecting children;

Regulatory and permitting priorities; and

Establishing new fees.

The budget request would also eliminate scores of EPA programs, many of them popular with lawmakers and states. The budget request notes that the programs earmarked to be culled totaled over $650 million and that the Administration “is committed to creating a leaner, more accountable, less intrusive, and more effective Government.” The programs that the White House seeks to kill include:

- Alternative Dispute Resolution;
- Categorical Grants for: Beach Protection; Reducing Lead Exposure; Reducing Nonpoint Source Pollution; Pollution Prevention; and Reducing Radon Exposure; and the Underground Storage Tank Program;
- Endocrine Disruptors Program;
- Geographic Programs for the Gulf of Mexico, Lake Champlain, Long Island Sound, Puget Sound, San Francisco Bay, and South Florida;
- Monitoring for the Gold King Mine site;
- Infrastructure Assistance for the Mexico Border;
- The National Estuary Program;
- The Pollution Prevention Program;
- The RCRA Waste Minimization and Recycling Program;
- The Reducing Lead in Drinking Water Program;
- Regional Science and Technology Programs;
- The Scientific Policy and Biotechnology Program;
- The Small Minority Business Assistance Program;
- The Stratospheric Ozone Multilateral Fund; and
- The TSCA Lead Risk Reduction Program.

House Subcommittee Holds Hearing On Risks Of Carcinogens In Consumer Products: On March 12, 2019, the House Oversight and Government Reform Subcommittee on Economic and Consumer Policy held a hearing to examine the
public health risks of carcinogens in consumer products. The hearing examined the scientific evidence of health risks from long-term use of consumer products containing talc. Sparking the hearing was a February 21, 2019, action by DOJ and the Securities and Exchange Commission (SEC) issuing subpoenas in an investigation of asbestos in Johnson & Johnson’s baby powder. Also, on March 5, 2019, FDA confirmed that it detected asbestos in product samples collected from Claire’s and Justice retailers marketed to children. In the wake of these findings, FDA issued a statement urging cosmetic firms to “take responsible steps to voluntarily register their products and list ingredients, including talc, used in their products via the FDA’s Voluntary Cosmetic Registration Program.” Testifying before the subcommittee were Anne McTiernan, M.D., Ph.D., Member, Fred Hutchinson Cancer Research Center; Scott Faber, Vice President of Government Affairs, Environmental Working Group; and Marvin Salter, the son of a deceased ovarian cancer patient. A webcast of the hearing and witness testimonies are available online.

**Senate Bill Seeks To “Thwart Trump Administration Efforts to Twist Climate Change Science”:** On March 12, 2019, Senator Robert Menendez (D-NJ) introduced legislation that he states responds “to President Donald Trump’s recent efforts to undermine the prudent use of climate change data and forecasting in national security planning and analysis.” Co-sponsors of the legislation include all Democrats on the Senate Foreign Relations Committee Members. The Climate Security Act of 2019 (S. 745) is intended to ensure that that “misguided political ideology on climate change” does not compromise the quality of U.S. intelligence and national security strategies. The bill would establish a “Climate Security Envoy” within the State Department responsible for developing strategies for improving the integration of climate change science, data, and forecasting in national security operations as well as facilitating interagency collaboration between the federal government’s science and security agencies. It also outlines policies for how climate change data and forecasting should inform national security planning and analysis while calling for periodic global assessments on the risks climate change poses to national and global security. The legislation also formally reestablishes the Special Envoy for the Arctic. President Trump dismantled the Special Envoy to the Arctic’s office in 2017.

**Bipartisan Senate Bill Would Reauthorize the Diesel Emissions Reduction Program:** On March 12, 2019, calling it one of the “one of the most cost-effective federal clean air programs,” Senator Carper introduced legislation (S. 747) to reauthorize the diesel emissions reduction program. Senator Carper is the Ranking Member on the Senate EPW Committee. The bill is co-sponsored by Senators Capito, Jim Inhofe (R-OK), John Barrasso (R-WY), Sheldon Whitehouse (D-RI), Dan Sullivan (R-AK), Cory Booker (D-NJ), Kirsten Gillibrand (D-NY), Kevin Cramer (R-ND), and Chris Van Hollen (D-MD). The bill would reauthorize the program through FY 2024 at its current funding levels. The program was first established in the Energy Policy Act of 2005. It is administered by EPA and uses federal funding -- distributed through grants and rebates -- to leverage state and other non-federal funding to finance the voluntary replacement or installation of retrofits on existing heavy-duty diesel vehicles and engines.

**Senate Bill Would Establish Climate Change Advisory Commission:** On March
12, 2019, Senator Dick Durbin (D-IL) introduced legislation (S. 763) on climate change. Specifically, the bill would establish the Climate Change Advisory Commission to develop recommendations, frameworks, and guidelines for projects to respond to the impacts of climate change. It also would fund projects that aid in adaptation to climate change. Companion legislation (H.R. 1689) was introduced in the House by Representative Ted Deutch (D-FL).

**Senators Peters, Durbin, Duckworth Introduce Bill To Study Effects Of Petroleum Coke:** On March 12, 2019, Senators Gary Peters (D-MI), Dick Durbin (D-IL), and Tammy Duckworth (D-IL) introduced legislation that would address the concerns of petroleum coke. The legislation (S. 757) is intended to pave the way for federal environmental safety regulations on the fuel. The Petroleum Coke Transparency and Public Health Act of 2019 would require the federal government to study the potential health risks posed by petroleum coke exposure, as well as the environmental impacts. Based on the results of the study, the bill would mandate the implementation of federal safety standards for the storage and transportation of petroleum coke. Senators Durbin and Peters previously introduced this legislation in 2015. According to Senator Durbin, there has been a limited review of petroleum coke’s potential health and environmental effects, and each state has different regulations for its storage and transportation. The bill seeks to fill in those gaps by requiring HHS to conduct a comprehensive assessment of the public health and environmental impacts of petroleum coke production and use; an assessment of best practices for storing, transporting, and managing the material; and an analysis of current and projected domestic production and use. Companion legislation was introduced in the House by Representative Rashida Tlaib (D-MI) (H.R. 1675).

**House Homeland Security Subcommittee Holds Hearing On Improving CFATS Program:** On March 12, 2019, the House Homeland Security Subcommittee on Cybersecurity, Infrastructure Protection, and Innovation held a hearing on the CFATS program. Entitled “Securing Our Nation’s Chemical Facilities,” the hearing sought input and perspectives from stakeholders on improving the CFATS program. Witnesses testifying before the hearing were John S. Morawetz, International Chemical Workers Union Council (ICWUC) of the United Food and Commercial Workers International Union (UFCW); Dr. Mike Wilson, National Director, Occupational and Environmental Health Program, BlueGreen Alliance; Pamela Nixon, President, People Concerned About Chemical Safety; and Kirsten Meskill, Director, Corporate Security, BASF. An archived webcast of the hearing, testimony, and opening statements by subcommittee members are available online.

**House Subcommittee Holds Hearing On EPA’s Failure To Protect Workers From Chemical Risks:** On March 13, 2019, the House Energy and Commerce Subcommittee on Environment and Climate Change held a hearing on “Mismanaging Chemical Risks: EPA’s Failure to Protect Workers.” The Subcommittee addressed how EPA “is systemically ignoring worker risks in its implementation of the [Lautenberg Act] and other worker protections.” Energy and Commerce Chairman Pallone and Environment and Climate Change Subcommittee Chairman Paul Tonko (D-NY) stated that protecting vulnerable populations is an essential part of EPA’s mission, but under the Trump Administration, EPA “has systematically undervalued or completely overlooked the risks workers face from exposure to chemicals on the job. Workers should not have to choose between their health and their jobs.”
Information for the hearing, including the Majority Memorandum, witness list and testimony, and a live webcast, are available on the hearing web page.

**Scientific Integrity Act Introduced In House, Senate:** On March 13, 2019, Representative Tonko and Senator Brian Schatz (D-HI) introduced the Scientific Integrity Act (H.R. 1709; S. 775). The bill would shield public scientific research and reports from the influence of political and special interests. Representative Tonko in a statement said “President Trump’s ... assault on environmental standards has hinged on efforts to distort, bury and even rewrite credible public scientific findings, including his absurd denial of the growing climate crisis and efforts to cover up evidence that the American people are being exposed to dangerous toxins. Protecting the integrity of that science is one of the most important ways we can hold this President and his Administration accountable. Distorting or suppressing public science undermines our ability to protect the health and safety of the American people.” The statement also cited as the need for the legislation President Trump’s “track record of distorting or suppressing science.” He stated that in its first two years, the Trump Administration has buried reports on public health risks from PFAS substances, falsified scientific claims to justify restrictions on birth control access, prohibited CDC staff from using the phrases “evidence-based” and “science-based,” and banned federal scientists from speaking about climate change. The bill would seek to prevent undue influence over federal science by establishing uniform standards at U.S. agencies to adopt or strengthen existing scientific integrity policies. The legislation would formalize and reinforce policies that require federal agencies that conduct or fund scientific research to maintain clear scientific integrity principles. It also would affirm that science dictates policy, and that scientific research should be free from the pressure of politics, ideology, or financial influence; and it would hold public scientists to high standards and guarantee their rights and protections under the law.

**MISCELLANEOUS**

**PHMSA Study Will Assess Aligning U.S. And International Regulations For Aerosol Containers:** DOT’s PHMSA routinely reviews and amends the HMRs to harmonize them with international regulations and standards. In February 2019, PHMSA’s Office of Hazardous Materials Safety contracted with the Cambridge Systematics Team to conduct a risk assessment for the transportation of aerosol containers to align U.S. and international regulations. The study is intended to determine whether the United Nations (UN) Recommendations on the Transport of Dangerous Goods -- Model Regulations (Model Regulations) definition of aerosols maintains an equivalent level of safety to the definition in the HMRs and to assess the risk associated with aligning the definitions. The study is expected to be completed in February 2020, and any rulemaking to align the definition of aerosol containers would be issued after that. More information is available in our March 5, 2019 memorandum.

**USTR Delays Raising China Tariffs:** On March 5, 2019, the United States Trade Representative (USTR) announced that it has decided to delay raising tariffs on some $200 billion of goods imported into the U.S. from China. 84 Fed. Reg. 7966. On September 21, 2018, USTR announced that the Trump Administration was imposing tariffs of ten percent on some $200 billion of goods imported from China. 83 Fed.
Reg. 47974. That list included hundreds of items and goods and Harmonized Tariff Schedule (HTS) codes, including numerous chemical goods. USTR was set to increase these tariffs to 25 percent on March 2, 2019, unless progress was being made in trade negotiations between the U.S. and China. The U.S. is engaging with China with the goal of obtaining the elimination of the acts, policies, and practices that triggered the imposition of tariffs. The leaders of the United States and China met on December 1, 2018, and agreed to negotiate on a range of issues. Since the December 1 meeting, the United States and China have engaged in additional rounds of negotiation on these issues. In light of progress in discussions with China, on February 24, 2019, the President directed USTR to postpone the increase in tariffs scheduled for March 2, 2019. USTR stated that “in light of progress of the additional rounds of negotiations since December 2018, and at the direction of the President, the Trade Representative has determined that it no longer is appropriate for the rate of duty under the September 2018 action to increase to 25 percent on March 2, 2019, and that the rate of duty under the September 2018 action will remain at 10 percent until further notice.”

USTR Releases 2019 Trade Policy Agenda and 2018 Annual Report: On March 1, 2019, the USTR released its 2019 Trade Policy Agenda and 2018 Annual Report. The report is available online. Successfully navigating trade issues with China and Congressional approval of the U.S.-Mexico-Canada (USMCA) Free Trade Agreement dominate USTR’s agenda and occupy its top priorities. USTR’s report portrays the U.S. as the victim of an increasingly unfair international trading system. USTR acknowledges that the U.S. had benefited for decades but complains that by the time President Trump took office, “significant flaws in that system were hurting American workers and businesses.” The report underscores three main points:

1. Inheriting a Deeply Flawed Global Trading System -- The report states that President Trump inherited a deeply flawed global trading system that put U.S. companies and workers at an unfair disadvantage and discouraged true market competition. The U.S. has been poorly served by outdated and imbalanced trade agreements such as the North American Free Trade Agreement (NAFTA) and the U.S.-Korea Free Trade Agreement (KORUS) that reduced economic opportunities for many Americans, the report claims. It offers the following as evidence of the “failing multilateral trade system”:

   - No new significant multilateral market access agreements have been made at the World Trade Organization (WTO) since it was formed in 1994.
   - The harmful judicial activism of the WTO’s Appellate Body.
   - Unfair trade has harmed U.S. workers and businesses, including through non-market policies causing overcapacity, China’s attacks on U.S. innovation and intellectual property, and U.S. trade partners disregarding labor and environmental obligations and science-based standards.

2. Making U.S. Trade Policy Work Better for American Workers -- The report states that President Trump delivered on his promises to withdraw from the Trans-Pacific Partnership (TPP) and negotiate better trade deals. It adds that KORUS
was revised in a matter of months and achieved significant outcomes for U.S. workers and businesses, including expanding U.S. access to Korea’s market and addressing long-standing concerns with onerous and costly procedures. NAFTA was renegotiated with “unprecedented speed into the [USMCA] to rebalance America’s trade relationships and better serve the interests of American workers, farmers, ranchers, and businesses.” As a new paradigm for future trade agreements, the USMCA “is the most advanced trade agreement ever negotiated by the United States on key issues like labor, environmental protection, currency manipulation, intellectual property, and digital trade,” USTR claims. The Administration is dedicated to enforcing aggressively U.S. trade laws using all available tools to prevent other countries from unfairly attacking our market and to create a fairer and stronger economy for American workers. The Administration launched the investigation into China’s treatment of U.S. intellectual property under Section 301 of the Trade Act of 1974, resulting in findings that warranted the imposition of tariffs to obtain the elimination of China’s unfair trade acts, policies, and practices. The U.S. has worked closely with leaders from the EU and Japan, who share many of the concerns expressed by the United States regarding China’s actions. The U.S. has engaged in negotiations with China on structural changes with respect to forced technology transfer, intellectual property protection, non-tariff barriers, cyber intrusions and cyber theft, services, and agriculture.

3. Pursuing New Trade Deals and Stronger Enforcement to Continue Rebalancing America’s Trade Relationships -- The report states that in 2019, the Trump Administration will continue working to rebalance U.S. trade relationships for the benefit of American workers and businesses. The Administration’s trade agenda will continue to focus on efforts to strengthen the U.S. economy and thereby help to generate the resources necessary to preserve national security. This includes efforts to preserve the innovation and technology that remain vital not only to the economy and national defense. The Administration will continue pursuing new trade deals with strategic partners, including the launch of new trade negotiations with Japan, the EU, and the United Kingdom (UK), and to deepen trade with Kenya through a trade and investment working group. The Administration will continue to enforce U.S. laws and trading rights through the monitoring of trade agreements, engagement in formal challenges at the WTO, and action under U.S. trade laws. The Administration will continue to work to rebalance the global economy, leading to more sustainable economic growth in the U.S.

**European Court Annuls Prior Judgments to Protect Testing Information Related to Glyphosate Authorization:** On March 7, 2019, in the Court of Justice of the European Union (EU), the Eighth Chamber of the General Court issued two judgments in cases regarding access of confidential information related to glyphosate. One of these decisions (**Tweedale v. EFSA, Case T-716/14**) related to a 2014 request for two toxicity studies that were “key studies” in the determination of glyphosate’s acceptable daily intake (ADI). The second decision (**Hautala v. EFSA, Case T-329/17**) related to a request from Members of the European Parliament for access to parts (**i.e., “material, experimental conditions and methods”** and “results and discussions”) of 12 unpublished carcinogenicity studies, described as the “‘most crucial’ studies for the peer review and [EFSA’s] conclusion that
glyphosate is unlikely to pose carcinogenic hazard to humans.” Partial access to those studies (i.e., raw data and findings aggregated in tables and figures) had been granted in an earlier 2016 decision.

A prior November 21, 2018, case related to glyphosate (Stichting Greenpeace Nederland and Pesticide Action Network Europe v. European Commission, Case T-545/11 RENV) and the General Court/Fourth Chamber’s judgment to prevent applicants from receiving access to information on the degree of purity of the active substance glyphosate, as well as the identity and quantities of impurities is discussed here. In contrast to the Stichting decision, where access was denied, the court in March 7, 2019, decisions annulled prior decisions dated October 16, 2017 and March 14, 2017, that refused access to the requested information. More information is available on our Pesticide Law and Policy Blog®.

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