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Predictions and Outlook for EPA's Office of Chemical Safety and Pollution Prevention (OCSP) 2017

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2016 was full of surprises, two of which will drive much of the agenda for **EPA's Office of Chemical Safety and Pollution Prevention (OCSP)** during 2017. First, **Congress** significantly amended the **Toxic Substances Control Act (TSCA)**. The changes are intended to reform the program to address the widely recognized deficiencies in the law, especially regarding existing chemicals, chemical testing, Confidential Business Information (CBI) claims, and preemption of state actions. Although many thought the chances of successful TSCA legislation were slim, the second surprise event was even more unexpected -- the election of Donald Trump as President.

What the implementation of new TSCA will look like, along with the general environmental program and emphasis of the new Trump Administration, is very unclear this early in the New Year (the new President will not arrive until January 20). What is more predictable is that the operating environment of OCSP will change significantly, with uncertain impacts on both the U.S. Environmental Protection Agency's (EPA) pesticide and toxic chemical regulatory programs. EPA institutionally may never be the same, and while much of the political debate is likely to concern the climate change issue, all EPA programs will likely see new or different emphasis on how, when, or why to impose any appropriate regulatory controls.

Along with a new Republican President, both the House and Senate remained with Republican majorities. EPA will now be under great pressure to align with the party platform and long-standing calls from Congressional critics to be more flexible and business-oriented in implementing its programs. Current and past policies and interpretations will be under intense scrutiny and likely to change, while Democrats in Congress and environmental advocates who supported Obama Administration policies will resist significant changes. Specific predictions about policies and decisions are purely speculative at this point, but it likely means EPA will be operating in a volatile and often hostile environment (induced by both friends and foes alike).

What is also more predictable is that Non-government Organization (NGO) environmental advocates will need to change their approach in attempting to move their agenda and policy goals away from a now unfriendly Administration. What has happened in the past during a change in Administration like this is that there is a renewed emphasis on litigation and petition challenges to avoid the executive and legislative branches. Advocacy through the judicial branch of government may be slow and uneven, but it will be seen as more likely to be a successful forum.

Operating Environment

Few things can get the attention of federal civil servants more than a promise to eliminate their Agency by the



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President-elect. Mr. Trump at various times promised to eliminate EPA and change the fundamental direction of the Agency on climate change and, generally, to reduce the regulatory burdens of environmental regulations on businesses. While a new President is unlikely to eliminate EPA, simply stating threats of personnel cuts, a reduced budget, workforce “reform” of changed work conditions or retirement benefits -- initiatives which are also part of the Trump platform -- will have an immediate impact on the EPA operating environment. If budget and personnel cuts are proposed, there will not only be an immediate effect on EPA morale but more specifically could lead to a large increase of staff retirements to avoid proposed changes or even simply to not want to work under the direction of the new leadership.

New Leadership

Mr. Trump has nominated E. Scott Pruitt to be EPA’s next Administrator, who is currently the Attorney General of Oklahoma. Pruitt is on record as opposing the Obama Administration initiatives on climate change and water pollution. For OCSPP, it is not clear what direction any general “stop EPA” rhetoric might mean for the regulation of pesticides and chemicals. Regulated industries will continue to need a credible and competent EPA staff to review and approve applications for both pesticides and new chemicals. The surprise election of Mr. Trump also makes unclear what type of background the new Administration will seek in a new OCSPP Assistant Administrator. Even with an emphasis on being more business friendly, programs will still have to process applications and complete risk assessments.

The regulated community is reported to be informing the incoming leadership on the need for a functional, effective program. Administration-wide initiatives, however, might swamp any pleas for an exception to government-wide budget cuts, personnel policies such as a hiring freeze, or changes to pay or retirement policies. This could be especially impactful on the toxics program, since with the new TSCA amendments there are many new rules and related initiatives that are due to be completed in 2017 and beyond, and the program is to “ramp up” its hiring and contracting budgets to help implement the new law.

Congressional Relations

Similarly, a new Republican President will complement the Republican Congress, a Congress that has been hostile to many EPA initiatives developed under the Obama Administration. This will be more evident in the pesticide program, especially where the pesticide industry has objected to policies regarding changes to the 10x safety factor and the use of epidemiological data in risk assessments, certain changes to the Worker Protection Standard (WPS), and policies to protect pollinators. In recent years, the registrant community has raised concerns about the “science integrity” of EPA decisions, and has lodged complaints about policies that industry believes have been issued or developed without sufficient transparency or requisite notice and comment rulemaking authority. These subjects generally are certain to be the focus of Congressional oversight and policy lobbying of any new EPA leadership team.

Some of these issues will be discussed in more detail below. Taken together, EPA may face a more engaged and involved Congress since the Committee leadership of the authorizing and Congressional Oversight Committees will now assume they will get more deference to their initiatives. For the toxics program, implementation of new TSCA will be the top priority of both Congress and any constituencies.

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