

TSCA REVISED RISK EVALUATION RULE LITIGATION

Internal deliberative pre-decisional - FOR USE BY 2024 PRESIDENT-ELECT TRANSITION TEAM MEMBERS ONLY

ISSUE SUMMARY:

In 2024, EPA promulgated a final rule titled, "Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act (TSCA)" (the "Revised Risk Evaluation Rule"). The Revised Risk Evaluation Rule replaced an earlier TSCA risk evaluation procedural rule that was promulgated in 2017.

The following challenges were filed concerning the Revised Risk Evaluation Rule, which have been consolidated in the D.C. Circuit:

Intl. Assoc. of Machinists & Aerospace Workers v. EPA, No. 24-1462 (originally filed in the 4th Cir.)

Texas Chemistry Council, et al. v. EPA, No. 24-1185 (originally filed in the 5th Cir.)

United Steel Workers, et al. v. EPA, No. 24-1151 (D.C. Cir.)

Worksafe, Inc. v. EPA, No. 24-3234 (originally filed in the 9th Cir.)

Industry Petitioners (TCC, ACC, API, AFPM) are challenging the following amendments to the final rule: (1) Inclusion of all COUs, (2) Single risk or "whole chemical" determination, (3) Requirement for EPA to not assume PPE use for workers. Labor Petitioners (United Steel, Worksafe, IAM) are challenging a narrow provision of the final rule that allows EPA to consider reasonably available information to determine scenarios when PPE use may be known or intended. The Sierra Club and Alaska Community Action on Toxics, represented by Earthjustice, have intervened in the litigation in support of EPA, while Olin Corp. has intervened in support of TCC.

KEY POINTS:

- Administrative Record Certified Index is due July 5, 2024
- Dispositive motions, if any, are due July 5, 2024
- Industry and Labor Petitioners' opening briefs were filed Oct. 10, 2024
- Petitioner-Intervenor's opening brief is due Oct. 17, 2024
- Respondents' brief is due Dec. 20, 2024
- Respondent-Intervenors' brief is due Jan. 17, 2025
- Industry and Labor Petitioners' and Petitioner-Intervenors' reply briefs are due Feb. 3, 2025
- Oral Argument date TBD

ONGOING/UPCOMING REVIEWS FOR FY2025:

KEY EXTERNAL STAKEHOLDERS:

- Congress Industry States Tribes Media Other Federal Agency
 NGO Local Governments Public

MOVING FORWARD:

- EPA OGC is coordinating with DOJ in defending the lawsuits.