

TSCA RISK MANAGEMENT LITIGATION

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

ISSUE SUMMARY:

In 2024, EPA promulgated two different risk management rules under section 6 of the Toxic Substances Control Act for two different chemicals, one for chrysotile asbestos (the “Asbestos Part I Rule”) and the other for methylene chloride (the “Methylene Chloride Rule”). In each case, EPA will be responding to both industry petitioners and environmental group petitioners (collectively, the “eNGOs”); in the Asbestos Part I Rule litigation, EPA will also be responding to a labor union petitioner. Between the two lawsuits, industry petitioners have raised several arguments, including that: (1) EPA’s TSCA risk evaluations are not based on substantial evidence but, instead, rely on worst-case assumptions that overestimate risk; (2) Congress intended TSCA to be a “gap-filling” statute, and that EPA has erred by not using its authority under TSCA section 9 to refer the regulation of the chemicals to other EPA programs or other federal agencies, like OSHA; and (3) the statute’s “to the extent necessary” language effectively creates a ceiling on the extent that EPA can exercise authority to manage unreasonable risks posed by chemicals. Meanwhile, the eNGO and labor petitioners have, among other things, argued that: (1) EPA has not done enough to evaluate and mitigate unreasonable risks the chemicals pose for fence-line communities; (2) EPA’s risk management timelines are too delayed and EPA has therefore failed to meet the statutory requirement of mitigating unreasonable risk “as soon as practicable”; and (3) EPA failed to evaluate and regulate all sources of exposure to the chemicals. EPA also has four other section 6 rules for different chemicals that may be issued before the transition of administrations and, once issued, those rules may also be the subject of litigation.

The following challenges were filed concerning the Asbestos Part I Rule, which have been consolidated in the Fifth Circuit:

American Chemistry Council, et al. v. EPA, No. 24-11206 (originally filed in 11th Cir.)

American Public Health Association, et al. v. EPA, No. 24-60281 (5th Cir.)

Asbestos Disease Awareness Organization v. EPA, No. 24-1090 (originally filed in D.C. Cir.)

Ohio Chemistry Tech. Council v. EPA, No. 24-3325 (originally filed in 6th Cir.)

Olin Corporation v. EPA, No. 24-2467 (originally filed in 8th Cir.)

Texas Chemistry Council v. EPA, No. 24-60193 (5th Cir.)

United Steel Workers, et al. v. EPA, No. 24-1089 (originally filed in D.C. Cir.)

The following challenges were filed concerning the Methylene Chloride Rule, which have been consolidated in the Fifth Circuit:

East Fork Enterprises, Inc. v. EPA, No. 24-60256 (5th Cir.)

Sierra Club v. EPA, No. 24-3350 (originally filed in 9th Cir.)

KEY POINTS:

For Asbestos Part I Rule Litigation:

- Administrative Record Certified Index was submitted in July 2024
- EPA merits brief due January 17, 2024

For Methylene Chloride Rule Litigation:

- Administrative Record Certified Index was submitted in July 2024
- EPA merits brief due December 13, 2024

ONGOING/UPCOMING REVIEWS FOR FY2025:

Depending on briefing schedules set by the Fifth Circuit in each case, there may be a need for approval of merits briefs during FY 2025.

KEY EXTERNAL STAKEHOLDERS:

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| <input type="checkbox"/> Congress | <input checked="" type="checkbox"/> Industry | <input type="checkbox"/> States | <input type="checkbox"/> Tribes | <input type="checkbox"/> Media | <input checked="" type="checkbox"/> Other Federal Agency |
| <input checked="" type="checkbox"/> NGO | <input type="checkbox"/> Local Governments | <input type="checkbox"/> Public | | | |

MOVING FORWARD:

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