

TRI – A Powerful Tool for TSCA Implementation

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Herb Estreicher

Herbert (Herb) Estreicher is a prominent environmental lawyer who is listed in Who's Who Legal: Environment and in Marquis Who's Who in America. Herb holds a PhD in Chemistry from Harvard University (1980) in addition to his U.S. law degree (1988). He is also listed as a foreign lawyer (B List) with the Brussels legal bar. Herb is recognized as a leading expert on the Toxic Substances Control Act (TSCA) and is frequently quoted in Inside EPA, Chemical Watch, and BNA Environmental Law Reporter. He is one of the few U.S.-based lawyers that is expert on the EU REACH regulation and has successfully argued a number of cases before the European Chemicals Agency (ECHA) Board of Appeal and has briefed cases before the EU General Court and the European Court of Justice.

Herb represents leading manufacturers of chemicals, pesticides, and consumer products. His broad practice in international environmental regulatory law allows him to take an interdisciplinary approach with his clients and their needs. His extensive background in organic chemistry, risk assessment, and bioengineering is valued highly by his clients in the chemical, nanotechnology, and biotechnology industries.

Herb provides advice on product liability risk control and assists his clients with crisis management for embattled products, including wood preservatives and persistent, bioaccumulative, and toxic (PBT) chemicals. He helps his clients secure and maintain chemical approvals and pesticide registrations in Canada and Europe, advises clients on matters involving the Canadian Environmental Protection Act and on European chemical directives such as the EU Registration, Evaluation and Authorization of Chemicals (REACH) regulation, the Classification, Labelling and Packaging (CLP) regulation, and the Biocidal Products Regulation. Herb also represents clients in matters involving the Stockholm Convention on persistent organic pollutants (POPs) and has participated in the Canadian Strategic Options Process (SOP). He counsels clients on matters concerning sustainability and the circular economy.



David B. Fischer

David Fischer advises clients on environmental, policy, and health and safety matters, with a concentration on the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). In addition, he has extensive experience with numerous other statutes including the Clean Air Act (CAA), Clean Water Act (CWA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Safe Drinking Water Act (SDWA), the Emergency Planning and Community Right-to-Know Act (EPCRA), and the Food Quality Protection Act (FQPA).

David's clients include domestic and international industrial and specialty chemical manufacturers, and the trade associations which represent them. Having held senior level positions with the U.S. Environmental Protection Agency (EPA) and the American Chemistry Council (ACC), clients look to David for his insight and perspective when navigating the myriad of complex environmental regulations.

Prior to joining Keller and Heckman, David was the Deputy Assistant Administrator (DAA) for the Office of Chemical Safety and Pollution Prevention (OCSPP). During his tenure as DAA, he was deeply involved in TSCA implementation, with a particular focus on risk evaluation and risk management of existing chemicals, and all aspects of FIFRA implementation.

During his tenure at the American Chemistry Council, David co-managed the Chemical Products and Technology Division (CPTD) where he led the implementation of the Lautenberg Chemical Safety Act.



Agenda



- ◆ Origins and Impact of the TRI
- ◆ Use for Priority Chemicals of Concern
- ◆ TRI as a tool in TSCA
- ◆ Future Plans

Origins of the TRI

- ◆ The Toxic Release Inventory Program (TRI) was created in response to the 1984 Bhopal, India tragedy
- ◆ A cloud of methyl isocyanate gas escaped from a Union Carbide Chemical facility; thousands of people died, thousands more died later, and thousands of survivors have permanent disabilities
- ◆ In 1986, Congress passed the Emergency Planning and Community Right-to-Know Act (EPCRA) that, in Section 313, established the TRI

TRI Around the World



- ◆ The U.S. TRI was the first system of its kind in the world
- ◆ Many countries, at least 50, have now established Pollutant Release and Transfer Registers (“PRTs”) to track releases of pollutants into the environment and transfers of pollutants off site for waste disposal or other management
- ◆ The primary purposes of these systems is to **improve transparency** regarding pollutant releases and transfers to better inform decision-making by the public, academics, policy makers, scientists, and representatives of industry

Public Awareness



- ◆ Mapping tools from more than one online resource make TRI data available to the public
- ◆ EPA tools – TRI Search; TRI Explorer; Envirofacts
- ◆ TOXMAP, which is a geographic information system (GIS) from the S. National Library of Medicine; it incorporates maps of the United States to let users visually extrapolate chemical and environmental health information from TRI data
- ◆ The Commission for Environmental Cooperation, which has created a downloadable file for Google Earth that shows all the most recent reports to the TRI database

Shining Light on Company Activities



- ◆ TRI creates a strong incentive for companies to reduce pollution and be good neighbors in their communities
- ◆ Under the Pollution Prevention Act of 1990 (PPA), TRI collects information to track industry progress in reducing waste generation and moving towards safer waste management alternatives
- ◆ From 1991 to 2016, more than 22,000 industrial facilities reported implementing 450,000 unique source reduction activities; during this time period, TRI chemical releases declined steadily

The TRI is Not a Reflection of Risk



- ◆ The TRI reports do not necessarily mean that the public is being exposed to toxic chemicals or is at risk from every release, as almost all of the releases are regulated under permit conditions designed to limit human and environmental exposure
- ◆ For example, due to extensive mining activity, Alaska had the highest reported TRI volumes in the nation
- ◆ The vast majority of Alaska's reported releases — more than 99.9 percent — consist of naturally occurring trace minerals in overburden, spent rock, and tailings excavated from mines, which are disposed of in state-permitted, engineered, and monitored disposal sites

Use of TRI for Priority Chemicals of Concern



- ◆ The current TRI toxic chemical list contains 767 individually listed chemicals and 33 chemical categories
- ◆ The list has grown over the years in response to emerging information needs
- ◆ CERCLA and RCRA listed chemicals and Section 112r air pollutants have been added over the years as well as chemicals designated by NTP or OSHA as carcinogens
- ◆ In 1999 EPA designated 18 chemicals already on the TRI chemical list as PBTs and established lower reporting thresholds for these chemicals; and added a category of dioxin and dioxin-like compounds to the TRI chemical list and established a 0.1 gram reporting threshold for the category
- ◆ In 2018 EPA added a nonylphenol ethoxylates (NPEs) category to the list

TRI Reporting for PFAS Substances



- ◆ In 2020 Section 7321 of the National Defense Authorization Act for Fiscal Year 2020 (NDAA) immediately added 172 per- and polyfluoroalkyl substances (PFAS) to the TRI list
- ◆ **Thresholds** – The NDAA established TRI manufacturing, processing, and otherwise use reporting thresholds of 100 pounds for each of the listed PFAS
- ◆ **Exemptions** – Existing TRI reporting exemptions are applicable for these chemicals
- ◆ The **de minimis concentration level** for perfluorooctanoic acid (PFOA) (CASRN: 335-67-1) is 0.1%. At the present time, all the other TRI-listed PFAS have a de minimis level of 1%.

PFAS

- ◆ **Supplier Notification** – Certain facilities manufacturing PFAS or incorporating PFAS into commercial products are required to provide notification to their customers indicating that the listed PFAS are subject to TRI reporting requirements and including the name, CAS number, and percent by weight of each TRI chemical in the product
- ◆ Supplier notification may be provided on a Safety Data Sheet (SDS) or may take other forms such as a letter, product labeling, or product literature
- ◆ Use of a fire suppression system for system testing, training, or to suppress a fire as part of an emergency response would constitute **otherwise use** of the PFAS-listed chemicals in the firefighting foam

TRI as a Tool in TSCA (1)

- ◆ EPA uses TRI data to prioritize chemicals and to evaluate their risks
 - ◆ TRI data are collected annually and include the location of facilities and the quantities of TRI chemicals they released to air, water and land, and transferred to off-site locations
 - ◆ Trend analyses of TRI data can help identify changes over time
 - ◆ Releases to the environment from facilities are a component of potential exposure

TRI as a Tool in TSCA (2)

- ◆ TRI in Prioritization
 - ◇ In a January 26, 2021 letter to the Acting EPA Administrator, the Children’s Health Protection Advisory Committee (CHPAC) promoted using TRI data in conjunction with other databases to prioritize chemicals for risk evaluation
“[W]e recommend beginning with chemicals with consumer product use that also affect people in communities most burdened by both environmental health hazards and non-chemical stressors that contribute to social vulnerability.”
- ◆ EPA expected to respond to the CHPAC letter

TRI as a Tool in TSCA (3)

◆ TRI in Risk Evaluations

- ◆ In the TCE risk evaluation, for example, EPA developed a national mass balance to evaluate how much of the volume of TCE can be accounted for from cradle-to-grave; the inputs into the mass balance included data from TRI
- ◆ EPA also uses TRI data to evaluate environmental impacts from exposure to aquatic species via contaminated surface water, and exposure to sediment-dwelling species via sediment
- ◆ TRI introduces uncertainties in modeled concentrations because not all emitters are subject to TRI reporting

TRI as a Tool in TSCA (4)



- ◆ But you can't use TRI data unless the chemical you want to prioritize or evaluate is reported to the TRI
- ◆ Six of the twenty High Priority chemicals undergoing risk evaluation are **not** on the TRI
- ◆ And about one-third of the remaining work plan chemicals are **not** on the TRI

Future Plans for TRI (1)

- ◆ EPA recently announced that it plans to propose adding work plan chemicals and high priority chemicals to the TRI
 - ◇ It is unclear, however, when that will happen, and when data from TRI reporting would be available for either prioritization or risk evaluations
 - ◇ Also, the TRI data used in the initial 10 risk evaluations is already several years old
 - You may wish to provide EPA with more current TRI data if your chemical is prioritized for risk evaluation

Future Plans for TRI (2)



- ◆ EPA also announced that it plans to:
 - ◆ Expand TRI reporting on ethylene oxide to include certain contract sterilization facilities
 - ◆ Add natural gas processing facilities to the TRI list of industry sectors required to report



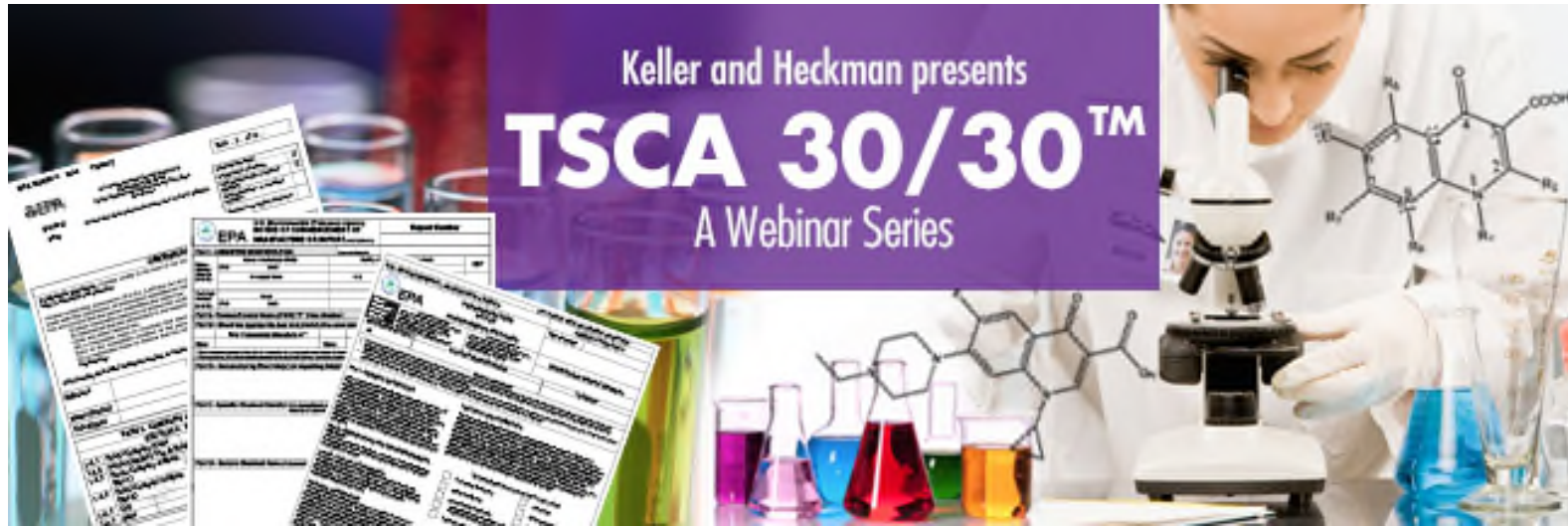
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