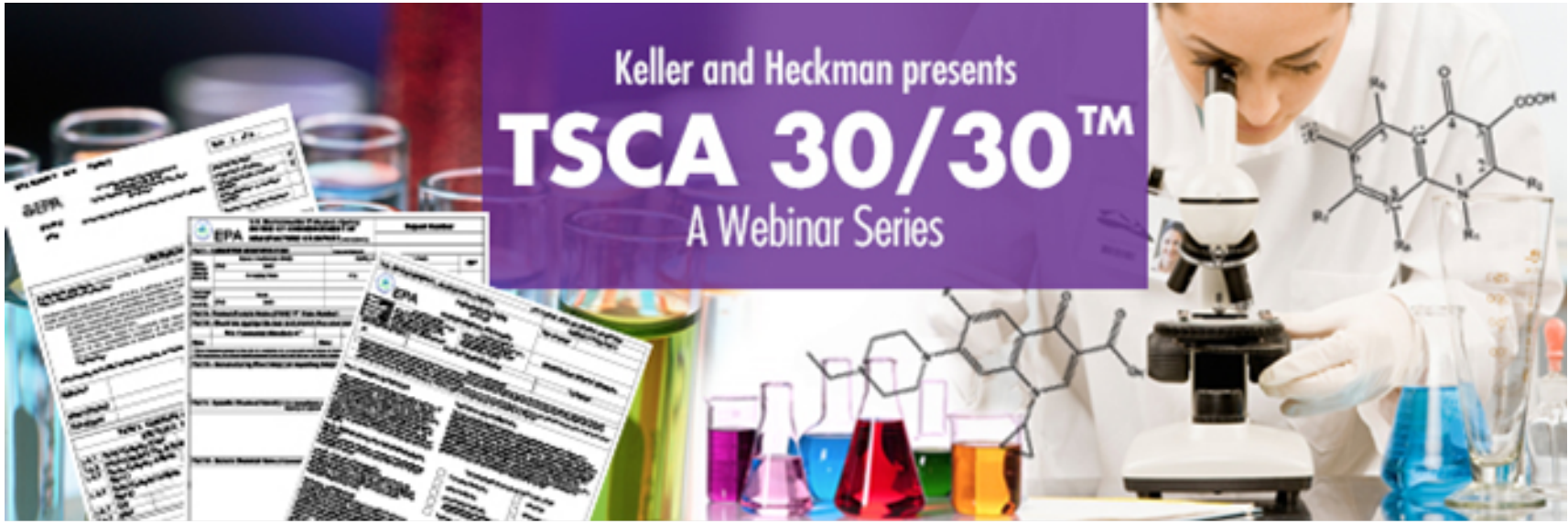
More on Forever Chemicals



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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 Ph.D. 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 an 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 maintains 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

EPA'S PFAS Roadmap

- The risks posed by PFAS demand that the Agency attack the problem on multiple fronts at the same time
- EPA must leverage the full range of statutory authorities to confront the human health and ecological risks of PFAS
- Objectives: Research; Restrict; Remediate

Objectives Relevant to TSCA's Mission (1)

- **RESEARCH**
  - Build the evidence base on individual PFAS and define categories of PFAS to establish toxicity values and methods
  - Increase scientific understanding on the universe of PFAS, sources of environmental contamination, exposure pathways, and human health and ecological effects
  - Expand research on current and emerging PFAS treatment, remediation, destruction, disposal, and control technologies
  - Conduct research to understand how PFAS contribute to the cumulative burden of pollution in communities with environmental justice concerns

Objectives Relevant to TSCA's Mission (2)

- **RESTRICT**
  - Use and harmonize actions under all available statutory authorities to control and prevent PFAS contamination and minimize exposure to PFAS during consumer and industrial uses
  - Place responsibility for limiting exposures and addressing hazards of PFAS on manufacturers, processors, distributors, importers, industrial and other significant users, dischargers, and treatment and disposal facilities
  - Establish voluntary programs to reduce PFAS use and release
  - Prevent or minimize PFAS discharges and emissions in all communities, regardless of income, race, or language barriers

National PFAS Testing Strategy (Published in October 2021)

Candidate PFAS Name
2:1 Fluorotelomer alcohol
Perfluonafene
Octafluorocyclobutane
Perfluorohexane
2H-Perfluoro-5-methyl-3,6-dioxanonane
Perfluoro(2-methyl-3-oxa hexanoyl) fluoride
1H,1H,5H-Perfluoropentanol
3,3,4,4,5,5,6,6,6-Nonafluorohexane-1-sulphonyl chloride
Hexafluoroamylene glycol
2,3,3,3-Tetrafluoro-2-(perfluoroethoxy)propanoyl fluoride
Perfluoropropyl trifluorovinyl ether
2,3,3,3-Tetrafluoro-2-(trifluoromethyl)propanenitrile
3-Methyl-3-[[(3,3,4,4,5,5,6,6,6-nonafluorohexyl)oxy]methyl]-oxeta ne
3-(Perfluorohexyl)-1,2-epoxypropane
Perfluoro(N-methylmorpholine)
Trifluoro(trifluoromethyl)oxirane
1H, 1H,2H-Perfluorocyclopentane
Perfluorooctanesulfonyl fluoride
Methyl perfluoro-3-[(perfluoro-3-oxopropan-2-yl)oxy]propanoate
Perfluoro(4-methyl-3,6-dioxaoct-7-ene)sulfonyl fluoride
Nonafluoro-1-iodobutane
Perfluorobutanesulfonyl fluoride
1, 1,2-Trich loro-1,2,2-trifluoroethane
6:2 Fluorotelomer sulfonamide betaine

Defining PFAS (1)

- OPPT's working definition is "any chemical substance or mixture that structurally contains the unit R-(CF2)-C(F)(R')R."
- This definition appears on EPA's website, in the TSCA PFAS testing strategy, in the proposed TSCA Section 8(a) rule as well as on the pesticide office's website page on PFAS in pesticide packaging.
- NGOs seek a broader definition
- Amendment attached to the House version of the 2022 Defense Authorization bill would have defined PFAS as "any chemical "that contains at least one fully fluorinated methyl or methylene carbon atom." The measure was not adopted by the Senate.

Defining PFAS (2)

- The definition determines the scope
- Study by university researchers applied nine different PFAS definitions to 360 organofluorine drugs to draw conclusions on how broadly they would apply to chemicals of concern. The study concludes that the OPPT definition would leave out a wide range of fluorinated pharmaceuticals.
- NGO Public Employees for Environmental Responsibility (PEER) is suing EPA under the Freedom of Information Act (FOIA) alleging the agency unlawfully withheld internal documents on how the TSCA program developed its narrow definition of PFAS.

Compliance Notification Letter on PFAS in High-Density Polyethylene (HDPE) Containers

- On March 16, 2022, EPA sent a letter stating that the presence of PFAS formed as a byproduct in HDPE containers may be a violation of TSCA.
- This is what EPA said:
  - EPA considers the manufacturing of certain PFAS from the fluorination of polyolefins to be a significant new use under EPA's 2020 long-chain perfluoroalkyl carboxylate (LCPFAC) Significant New Use Rule.
  - LCPFAC chemical substances present in polyolefins due to the fluorination process would be considered byproducts of the manufacturing process and not exempt from the SNUR under 40 CFR § 721.45(e)5.

State Activity

- Maine has enacted LD 2019 which will prohibit the distribution and use of pesticides contaminated with PFAS, as part of a broader bill mandating a shift away from pesticides intentionally containing PFAS.

Removing PFAS from the Safer Chemical Ingredients List

- On March 16, 2022, EPA announced it intends to remove PFAS from the Safer Choice Ingredient List (SCIL). EPA initially listed these PFASs on the SCIL in 2012, based on the data available and the state of knowledge at the time.
- EPA's process for removing a chemical from the SCIL is to first mark the chemical with a grey square on the SCIL webpage to provide notice to chemical and product manufacturers.
- A grey square notation on the SCIL means that the chemical may not be allowed for use in products that are candidates for the Safer Choice label, and any current Safer Choice-certified products that contain this chemical must be reformulated unless relevant health and safety data is provided to justify continuing to list this chemical on the SCIL.
- Unless information provided to EPA adequately justifies continued listing, these chemicals would then be removed from the SCIL 12 months after the grey square designation.

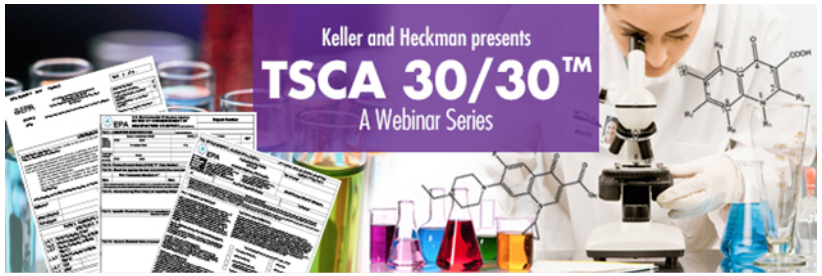
Fluoropolymers

- Some fluoropolymers still qualify under the TSCA Polymer Exemption
- Ineligible fluoropolymers are ones that contain any one or more of the following: Perfluoroalkyl sulfonates, perfluoroalkyl carboxylates, fluorotelomers, or perfluoroalkyl moieties that are covalently bound to either a carbon or sulfur atom where the carbon or sulfur atom is an integral part of the polymer molecule.
- Non-TSCA exempt fluoropolymers are increasingly subject to Section 5(e) Consent Orders and SNURs requiring:
- Respirators and other PPE; testing triggers; disposal only by incineration; no release to water.

Moves to eliminate the de miminis exemption for TRI reporting of PFAS

- NGOs sued EPA over its TRI reporting requirements for PFAS seeking to force EPA to remove exemptions.
- According to the NGOs, only 39 entities reported producing or using TRI-listed PFASs in 2020 – for just 43 compounds – and only 20 disclosed releases, at small volumes. They claim numerous manufacturers and processors failed to report.
- The EPA has commented on the "seemingly limited scope of PFAS reporting" and stated that it has "used existing data to generate lists of potential producers and recipients of PFAS waste, and has contacted facilities with potential reporting errors, as well as those that were expected to report but did not."
- EPA has announced that it plans a proposed rulemaking by this summer that would, among other things, remove the eligibility of the de minimis exemption for PFAS (0.1% for perfluorooctanoic acid (PFOA) and 1% for all other PFAS).

FINAL THOUGHT



Please join us at 1:00 PM Eastern U.S.
Wednesday, June 8, 2022
www.khlaw.com/TSCA-3030

Please join us at 1:35 PM Eastern U.S.
Wednesday, June 8, 2022
www.khlaw.com/REACH-3030

Please join us at 1:00 PM Eastern U.S.
Wednesday, May 25, 2022
www.khlaw.com/OSHA3030

Thank You

NEXT TSCA 30/30 and REACH 30/30

June 8, 2022

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