

Sustainability and TSCA

September 14, 2022

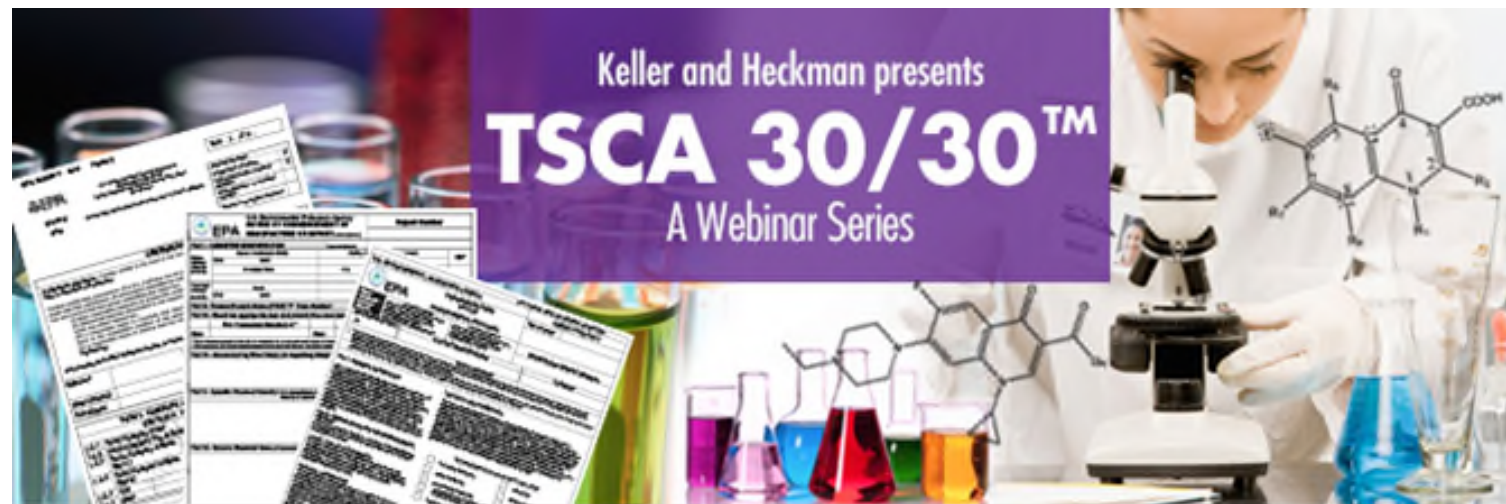
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Herb Estreicher

- ♦ 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 US 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 US-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 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.



What is Sustainability?

- ◆ Sustainability is the balance between the environment, equity, and economy
- ◆ Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs
- ◆ Sustainability presumes that resources are finite and should be used conservatively and wisely with a view to long-term priorities and consequences of the ways in which resources are used

What is the Generational Goal of Sustainability?

- ◆ The Generational Goal outlined at the 2002 World Summit on Sustainable Development states that:
 - ◇ Nations should commit to achieve that “chemicals are used and produced in ways that lead to the minimization of significant adverse effects on human health and the environment” and
 - ◇ “that threats posed by toxic chemicals should be eliminated within one generation.”

How Does Chemical Policy Support Sustainability?



- ◆ Chemical policy can help ensure protection of workers, communities, and consumer health while stimulating the development and use of non-hazardous and sustainable chemicals in production systems, materials, and products

What are the Key Indicia of Chemical Policies that Promote Sustainability (1)



- ◆ They offer a comprehensive and integrated approach to all chemicals
 - ◇ They go beyond "toxics policies" that focus on chemical-by-chemical or media-by-media restrictions
- ◆ They establish processes that allow rapid chemical assessment, prioritization, and decision-making based on inherent toxicity, uses, functions, and potential exposures through manufacturing, use, and disposal
- ◆ NGOs prefer approaches that are hazard rather than risk-based
 - ◇ Considerations of use and potential exposures are used to further prioritize chemicals and their uses for restriction and are useful in understanding potential concerns and trade-offs from one substance to another

What are the Key Indicia of Chemical Policies that Promote Sustainability (2)



- ◆ They ensure adequate data collection and dissemination providing open access to information
- ◆ They establish processes for transitioning chemical use from high hazard to low hazard substances
 - ◇ Alternative assessment or substitution planning processes are used to identify priority uses of substances of higher concern and opportunities for use of safer alternatives
- ◆ They promote research and innovation

Sustainability Explains Certain NGO and Biden EPA Initiatives

- ◆ NGOs are pushing for more and more transparency
 - ◇ Shines light on problem chemicals
- ◆ NGOs are pushing for more rigorous new chemicals review
 - ◇ Helps to avoid regrettable substitution
- ◆ Biden EPA focuses on Equity
 - ◇ Environmental inequity means that some people experience the effects of pollution and environmental degradation more than others because of their race, ethnicity, gender, and/or socioeconomic status

Chemical as a Whole Approach and Sustainability

- ◆ Industry has argued that EPA's whole chemical impedes sustainability because it creates uncertainty about whether uses of evaluated chemicals that may be safe will be regulated in any event
- ◆ Industry preferred the Trump-era approach of designating certain uses as not presenting an unreasonable risk
- ◆ Such uses would be considered sustainable and efforts to find alternatives would be focused on those uses found to present an unreasonable risk
- ◆ There is another way of looking at this
 - ◆ TSCA is risk-based but the Chemical as a Whole Approach gets one step closer to a hazard-based system preferred by NGOs

EPA Urged to Strengthen Chemical Controls



- ◆ By BlueGreen Alliance, Earthjustice, and others
- ◆ Main messages:
 - ◇ Voluntary agreements to stop using problem chemicals have not succeeded
 - ◇ Regulation is Key to Advancing Sustainable Chemistry
 - ◇ TSCA allows EPA to ban chemicals and to open opportunities for safer substitutes
 - ◇ EPA must take full advantage of this opportunity by systematically gathering information about safer substitutes for all chemicals it will soon have to regulate under TSCA

New Focus on Articles

- ◆ Michal Freedhoff announced last September that EPA planned to “generally” regulate articles under TSCA
- ◆ So far, the TSCA office has not outlined any overarching approach to articles; rather, it has only addressed the subject through individual rulemakings
- ◆ Specifically, proposed reporting rules for PFAS would cover articles that include the chemicals, and EPA is also implementing Trump-era rules restricting five “persistent, bioaccumulative and toxic” substances that also apply to finished products
- ◆ Eliminating toxics in articles is important to a circular economy

Plastic Waste Reduction Strategy



- ◆ Save Our Seas (SOS) 2.0 Act calls for EPA’s plastic waste reduction strategy to “improve post-consumer materials management and infrastructure for the purpose of reducing plastic waste and other post-consumer materials in waterways and oceans.”
- ◆ What role does TSCA play in plastic waste reduction?
 - ◇ Recycling of plastic waste
 - ◇ Domestic plastic waste
- ◆ TSCA §2614. Prohibited acts: It shall be unlawful for any person to—
 - ◇ “(2) use for commercial purposes a chemical substance or mixture which such person **knew or had reason to know** was manufactured, processed, or distributed in commerce in violation of section” 5 or 6 of TSCA
 - Imported plastic waste
 - Situation is less clear

Safer Choice Reactivation



- ◆ EPA's elevation of the voluntary Safer Choice program to a separate division within the Office of Chemical Safety and Pollution Prevention
- ◆ In theory the Safer Choice program could play an important role in helping to achieve sustainability goals
- ◆ Scope should be broadened beyond household cleaning products
- ◆ Calls to integrate the Safer Choice program with TSCA regulation

EPA's Sustainable Futures Program



- ◆ The Sustainable Futures program provides the public with educational training workshops on chemical screening approaches and the use of EPA's computerized models and tools developed under TSCA
- ◆ The program also encourages chemical developers to use EPA's models and methods to screen new chemicals for potential risks early in the development process
- ◆ The goal is to produce safer chemicals more reliably and more quickly and provide alternatives to more risky chemicals
- ◆ [Predictive Models and Tools for Assessing Chemicals under the Toxic Substances Control Act \(TSCA\) | US EPA](#)

Low Priority for Risk-Evaluation Substances



- ◆ Congress established a mechanism for designating substances that are considered a low priority for risk-evaluation
- ◆ The Trump-era EPA designated 20 such low priority substances
- ◆ But why stop there?
 - ◇ Problem with limited EPA resources
- ◆ But now that the Whole Chemical Approach effectively kills Manufacturer Requested Risk Evals, the question is:
 - ◇ Would Industry be willing to pay for EPA to review chemicals as a candidate for low priority for risk evaluation?

Partial Exemption from CDR Reporting



- ◆ Under the Chemical Data Reporting (CDR) rule, manufacturers of chemicals listed in Table 2 at 40 CFR 711.6 are exempt from reporting the processing and use information
- ◆ Chemical substances are included on this list only if EPA has determined that there is low current interest in the processing and use information for that substance
- ◆ This list should be expanded and can serve as a resource for safer alternatives

FINAL THOUGHTS



Please join us at 1:00 PM Eastern U.S.
Wednesday, September 21, 2022
www.khlaw.com/OSHA3030



Please join us at 1:00 PM Eastern U.S.
Wednesday, October 12, 2022
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Please join us at 1:35 PM Eastern U.S.
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Thank You

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