



Industry on the Counter-Attack

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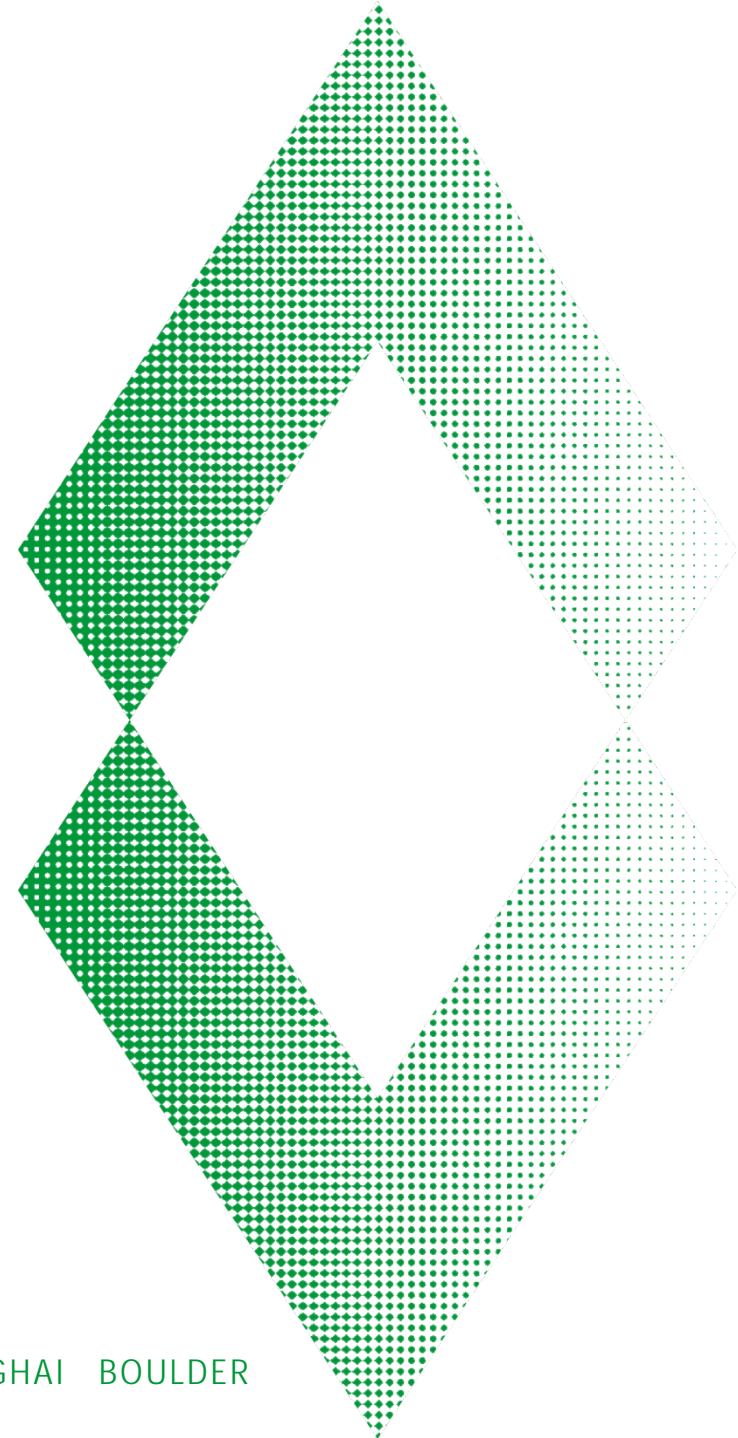
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Herb Estreicher

- ◆ 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 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 counsels 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). Having served as the Deputy Assistant Administrator for EPA's Office of Chemical Safety and Pollution Prevention as well as having held senior level positions at the American Chemistry Council, David advocates for clients before the U.S. EPA and provides strategic advice to them regarding issues before Congress.
- ◆ In addition to TSCA and FIFRA, he has 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), 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. Clients seek his assistance on new chemical approvals, and chemical and pesticide risk evaluations and risk management rulemakings because of his deep understanding of EPA, its internal science policy apparatus, and its many organizational pieces that collectively are responsible for all aspects of TSCA and FIFRA.



Back in Time to the Trump Administration

- ◆ NGOs brought many lawsuits trying to roll back the Administration's initiatives.
- ◆ Attorneys general from Blue states filed lawsuits.
- ◆ At NGOs urging Hill Democrats wrote letters complaining about EPA's approach towards TSCA implementation.
- ◆ At John Wheeler's Confirmation Hearing in August 2018, Senator Tom Carper (D-Delaware) remarked "there's probably no aspect of EPA's implementation of [TSCA] that will not be litigated."

Moving Forward to the Present

- ◆ Industry filing suits challenging EPA rules and orders.
- ◆ Industry asking Red state Congressional members to put EPA to the task.
- ◆ EPA subjected to hard questioning at Congressional hearings.

Jan 24, 2024 Senate Environment and Public Works Committee TSCA oversight hearing

- ◆ Trade Press Headline “Freedhoff Vows TSCA Policy ‘Shifts’ Under Pressure From GOP Senators”
- ◆ Sen. John Boozman (R-AR) questioned Freedhoff on whether EPA would set an existing chemical exposure limit (ECEL) in its pending TSCA risk evaluation of formaldehyde “that is lower than the amount of formaldehyde humans exhale.”
- ◆ Freedhoff response: “We’re not going to propose something that can’t be met, if that’s the way it turns out in our risk evaluation.”
- ◆ But that is precisely what EPA has done with its proposed trichloroethylene ECEL.

New Chemicals Concerns

- ◆ Sen Capito (R-VW) said she and other senators met with Freedhoff to discuss a list of possible policy changes they believe would improve the new chemicals review process.
- ◆ The ideas on Capito's list appear to overlap with a 2022 industry APA petition that sought broad changes to the review process for new chemicals.
- Would require EPA to respond formally to a PMN submitter's request for a meeting with assessors after hazards are identified and prior to going to engineering. A member of the engineering team must be present for the meeting.
- If models are used in place of industry-provided data – the EPA is required to provide timely justification on why it isn't using best available science.
- Would create an administrative petition process that will allow a submitter to petition for a de novo review by a panel of EPA senior scientists.

Congressional Bills Being Floated

Sound Science for Farmers Act, S.3719

- ◆ S.3719, introduced by Sen T. Budd [R-NC] would require draft or final TSCA Risk Evals implicating the Agricultural sector:
 - Be provided at least 90 days in advance to the USDA, FDA, and SBA.
 - The Risk Evals must be reviewed, “including for scientific quality, transparency, reproducibility of key results, consistency with real world exposure scenarios, and potential effects on the agricultural sector” by an “EPA Agricultural Science Committee.”

What is the Goal of All of this Pressure?

- ◆ EPA has not yet finalized any of the proposed risk management rules.
- ◆ Industry has made a strong legal case that bans are not lawful where EPA can set an ECEL that would eliminate unreasonable risk.
- ◆ Congressional pressure will likely cause EPA to rethink its approach when it finalizes the risk management rules.

None of this means the NGOs are asleep.

- ◆ NGOs are pushing EPA to ban vinyl chloride under TSCA Section 6 pointing to the East Palestine, OH derailment.
- ◆ But during the Jan. 24 Senate EPW oversight hearing, Sen. Mullin (R-OK) argued that EPA is tying itself too closely to the NGO groups.
- ◆ “When you go on a victory lap with activists and include their quote in your press release, how does . . . industry have any confidence this is not just . . . prejudged before it even comes out?”
- ◆ “I want to be very careful as we’re moving forward that the EPA is actually working with industry, not just working with activists, and knowing where we’re headed,” he said.

TSCA Improvement Coalition



- ◆ In December 2023, we convened an initial discussion of stakeholders on improving TSCA implementation
 - ◆ The meeting was well attended and underscored the need for TSCA reform
- ◆ Based on growing interest in addressing the growing frustrations with TSCA, we are creating a TSCA Improvement Coalition

TSCA Improvement Coalition



- ◆ An initial meeting of the Coalition will be held on Wednesday, February 21, at 3:30pm EST, at Keller and Heckman
 - ◆ Both in-person and virtual participation
- ◆ Invitations to a number of companies were emailed last week
- ◆ Contact KH if you would like to participate in the Coalition
 - ◆ fischer@khlaw.com

TSCA Improvement Coalition



- ◆ Our goal is broad-based participation spanning the chemical supply chain, from manufacturers to users
 - ◇ There is a membership fee for companies to participate
- ◆ We also anticipate participation of federal agencies and Hill staff
- ◆ The Coalition will meet regularly to develop options for TSCA improvement, including regulatory and legislative proposals
- ◆ Legislative changes are likely inevitable given the vast differences in how TSCA is interpreted by the current and previous administrations



DISCUSSION





Please join us at 10:00 AM Eastern U.S.
Wednesday, April 10, 2024
www.khlaw.com/REACH-3030



Please join us at 1:00 PM Eastern U.S.
Wednesday, February 28, 2024
www.khlaw.com/OSHA3030



Please join us at 1:00 PM Eastern U.S.
Wednesday, March 13, 2024
www.khlaw.com/TSCA-3030



Thank You

Any questions?



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