

CLIENT ALERT

Triclosan and Increased Scrutiny of Chemicals

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On April 8, Representative Edward Markey (D-Mass.), chairman of the House Energy and Commerce Subcommittee on Energy and Environment, called for a ban on many applications of the antimicrobial chemical triclosan, which has widespread use in such diverse products as liquid soap, hand sanitizer, cosmetics, socks, workout clothes, and toys. He simultaneously announced plans to introduce legislation that would accelerate the evaluation and regulation of substances such as triclosan that may harm the human endocrine system.

Pressured by a steady stream of press reports and new "studies" flagged by environmental interest groups, triclosan is only the latest of what is fast becoming a "hit list" of chemical targets. Chairman Markey's call for a ban of triclosan occurred in conjunction with the release of correspondence from the Environmental Protection Agency (EPA) and Food and Drug Administration (FDA) that revealed concerns about the possible health effects of the substance. In particular, the FDA correspondence stated that recent research raised concerns about the effect of triclosan on the body's endocrine system and whether its use promotes the creation of bacteria that are resistant to antibiotics. FDA did concede, however, that there is insufficient safety evidence to recommend limiting consumer use of products containing triclosan at this time. Regardless, this conclusion will not stop the increased focus on triclosan.

Chairman Markey's action comes less than two weeks after EPA released the latest "Chemical Action Plan" on Bisphenol A (BPA). EPA is developing these plans as a means for evaluating "chemicals of concern." Although not "final" Agency action, the plans are intended to outline the risks that each chemical present and what specific steps the EPA will take to address those concerns. For example, EPA's action plan for BPA states that despite no finding of concern with respect to BPA's impact to human health, the Agency intends to initiate rulemaking on the substance by the fall of 2010 because of potential concerns on BPA's impact to the environment. EPA previously issued chemical action plans for phthalates, perfluorinated chemicals (PFCs), polybrominated diphenyl ethers (PBDEs) in products, and short-chain chlorinated paraffins, and has plans to issue at least five more such plans. Chemicals currently in the action plan development process include: benzidine dyes; diisocyanates; hexabromocyclododecane (HBCD); nonylphenol and nonylphenol ethoxylates (NP/NPE); and siloxanes. EPA is also developing a list of "chemicals of concern" under the Agency's TSCA 5(b)(4) authority. The effect of these non-binding actions is to raise questions about the safety of targeted chemicals.

Manufacturers and users of chemical products can expect the challenges to the safety of chemical use to persist on a chemical by chemical basis until comprehensive reform of TSCA is achieved. Monitoring upcoming governmental actions and restrictions will be important to the continued operation of companies producing or using these chemicals. Chemical manufacturers and their customers would be well advised to monitor proposed legislative and regulatory actions, as well as press reports in order to respond to threats accordingly, especially threats to chemicals with a proven history of safe use. Apparently, as demonstrated by triclosan and BPA, reports by federal agencies of lack of sufficient evidence of any harm is not stopping efforts to severely restrict or even ban these substances. Whether this is just an effort to be responsive to safety claims by NGOs or signals a more formal shift towards the "precautionary principle" in health and environmental regulation remains to be seen.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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