

# Client Alert

Environmental, Health & Safety Practice Group

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## EPA Selects First 10 Chemicals for TSCA Risk Evaluations

### *A Set of "Blueprints" for Future Reviews?*

In satisfaction of a mid-December deadline under the Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act, EPA has issued the required initial list of ten "high priority" substances it will review under the new Toxic Substances Control Act (TSCA) existing chemical risk evaluation program:<sup>1</sup>

1,4-Dioxane	Methylene Chloride (MC)
1-Bromopropane (1-BP)	N-Methylpyrrolidone (NMP)
Asbestos	Pigment Violet 29
Carbon Tetrachloride	Trichloroethylene (TCE)
Cyclic Aliphatic Bromide Cluster (HBCD+)	Tetrachloroethylene (PCE)

As required under the amended TSCA, EPA selected these chemicals from its TSCA Work Plan,<sup>2</sup> in which EPA had already identified several dozen substances of concern.<sup>3</sup> EPA must now commence the process of determining whether these substances "present an unreasonable risk of injury."<sup>4</sup> Within the next six months, EPA must issue scoping documents for each risk evaluation, and then complete the evaluations within three years. If the Agency concludes that an "unreasonable risk of injury" is present, regulation to impose risk management measures must follow within two years.

For companies that manufacture, import, or process these initial chemicals, or have them in their supply chain, the November 29 announcement is sufficient to prompt their keen attention to and participation in the risk evaluations that are now required. For other companies, the more important function of these initial evaluations is any precedent EPA may achieve for other chemicals that share the same aspects as one or more of the first set.

Certain issues will be common to all risk evaluations. First, the amended statute links the "unreasonable risk" determination to the "conditions of use," which are those "circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of."<sup>5</sup> Even if EPA provides additional guidance in its forthcoming process rules on how it interprets intent and reasonable foreseeability,<sup>6</sup> the initial set of risk evaluations will provide the first concrete applications. Second, EPA must

For more information, contact:

**Cynthia A.M. Stroman**

+1 202 626 2381

+1 713 276 7364

cstroman@kslaw.com

**King & Spalding  
Washington, D.C.**

1700 Pennsylvania Avenue, NW  
Washington, D.C. 20006-4707

Tel: +1 202 737 0500

Fax: +1 202 626 3737

**Houston**

1100 Louisiana Street  
Suite 4000

Houston, Texas 77002-5213

Tel: +1 713 751 3200

Fax: +1 713 751 3290

[www.kslaw.com](http://www.kslaw.com)

under the new law take into consideration “potentially exposed or susceptible subpopulations.”<sup>7</sup> Like conditions of use, these initial evaluations will demonstrate how the Agency will undertake its determination and consideration of such subpopulations.

Other aspects of EPA’s risk evaluations will be chemical-specific, and EPA appears to have selected an initial set that will require it to address a range of these issues. Thus, companies will likely find interest in particular elements of specific reviews:

If your company:	Consider reviews of:
Makes or uses consumer products	1,4-Dioxane, 1-BP, MC, NMP, Pigment Violet 29, TCE, PCE
Owns property connected with groundwater contamination	1,4-Dioxane, 1-BP, Carbon Tetrachloride, MC, NMP, TCE, PCE
Is involved in product liability or environmental litigation involving releases or exposure to chemicals	1,4-Dioxane, 1-BP, Carbon Tetrachloride, MC, NMP, TCE, PCE
Makes or uses a chemical with a potentially “safer” alternative	1-BP, PCE, 1,4-Dioxane
Makes or uses a one of a “family” of chemicals	HBCD+
Makes or uses pigments, dyes, or additives	Pigment Violet 29
Makes or uses products with target substance as an impurity	1,4-Dioxane
Makes or uses products with target substance as an intermediate	NMP
Makes or uses high volume chemicals	MC, TCE, PCE, NMP
Makes or uses a possible or known human carcinogen	1,4-Dioxane, 1-BP, Asbestos, Carbon Tetrachloride, MC, TCE, PCE
Makes or uses a substance with aquatic toxicity concerns	HBCD+, Pigment Violet 29
Makes or uses a substance with reproductive toxicity concerns	NMP

As EPA works its way through these initial evaluations, companies who manufacture, import, process or use chemicals will undoubtedly find particular points to their liking or displeasure. The latter will certainly provide leverage to argue for similar treatment when a company’s own chemicals undergo review. However, the former may need earlier attention to avoid or limit their precedential value in future evaluations. Companies may want to consider commenting on specific facts or circumstances that limit conclusions only to the chemical under review, or, conversely, that a chemical under review shares certain characteristics with other chemicals. Regardless, prudent companies will keep an eye on EPA’s risk evaluations as they unfold.

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*This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising."*

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<sup>1</sup> EPA posted its announcement on its website. <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/evaluating-risk-existing-chemicals-under-tsca>. Publication in the *Federal Register* is expected soon.

<sup>2</sup> 15 U.S.C. § 2605(b)(2)(A).

<sup>3</sup> Characteristics used by EPA to select chemicals for the Work Plan list included carcinogenicity; presence in drinking water or biomonitoring; persistence, bioaccumulation, and toxicity (PBT); potential exposures for children; and similar considerations.

<sup>4</sup> 15 U.S.C. § 2605(b)(4)(A).

<sup>5</sup> 15 U.S.C. § 2602(4).

<sup>6</sup> Draft proposed rules for identifying "high priority" chemicals and the process for conducting risk evaluations are under review by the Office of Management and Budget.

<sup>7</sup> 15 U.S.C. § 2602(12); *id.* § 2605(b)(1)(A).