

SUSTAINABLE TECH

Companies Need to Know What's in Their Products

Manufacturers must develop robust chemical management systems which can rapidly respond to an evolving regulatory landscape.

The beginning of 2021 was a whirlwind for many reasons. But in the chemical management world, industry was unexpectedly caught up in the Environmental Protection Agency's (EPA) Final Rules on five persistent, bioaccumulative and toxic chemicals pursuant to the Toxic Substances Control Act (TSCA). After publication of the Final Rules, one of those five chemicals — phenol, isopropylated phosphate (3:1) (PIP (3:1)) — was found to play a critical role in internal and external cables, insulation covers and other components in many consumer technology products. PIP (3:1) is a halogen-free flame retardant that operates at a high level of efficiency while also exhibiting plasticizer qualities. It provides fire safety protection for some components and accessories of consumer technology products.

Many of CTA's members have robust chemical management programs, but a multitude of factors led to industry being caught up by EPA's new regulations. First, PIP (3:1) is not regulated in any jurisdiction around the world. Second, it doesn't appear on industry-wide declarable substances lists. As a result, many manufacturers' chemical management tracking systems failed to flag this chemical.

The limited industry engagement with EPA in the development of the Final Rule resulted in an EPA assuming that PIP (3:1) was not widely used in commerce and thus established a 60-day compliance timeframe to phase it out of commerce. This placed both product manufacturers and retailers in an untenable position. Companies and retailers were faced with the real possibility of having to pull products from shelves at a significant financial loss.

In collaboration with several other industry trade associations, CTA petitioned EPA to revisit the Final Rule for PIP (3:1) and, in March 2021, EPA issued a 180 day No Action Assurance indicating the agency would exercise "enforcement discretion" with companies. CTA recently submitted comments to the Final Rule requesting a compliance timeframe extension.

Lessons Learned

There are several lessons to be learned from our experience with PIP (3:1). First is a policy lesson. Although EPA has regulated chemicals under TSCA since the 1970s, a 2016 bipartisan effort updated TSCA through the Frank R. Lautenberg Chemical Safety for the 21st Century Act. With the updated law now being implemented, TSCA no longer primarily impacts chemical manufacturers. Brand

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owners and retailers are now on notice that the use of chemicals in articles, a term that encompasses parts, components and finished goods, may be regulated.

Second is a process lesson. The experience with PIP (3:1) has been a stark and painful reminder that EPA may establish rules that are untenable for industry unless we proactively engage. Without such engagement, the risk of unreasonable compliance timeframes or bans of a needed chemical for which no alternatives exist is now very high.

EPA's PIP (3:1) regulation is likely to be the first of many in the coming years at the federal and state level that impacts chemicals used in consumer technology products. This demonstrates the urgent need for manufacturers to develop robust chemical management systems which can rapidly respond to an evolving regulatory landscape. Investing in transparent supply chains can stave off challenging situations like this one and ensure that the industry is positioned to advocate for the establishment of reasonable rules under which industry can continue to innovate. ■