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COMMENTARY

Recent REACH Developments

Regulation 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ("REACH") applies to every manufacturer or importer into the European Union ("EU") of chemical substances on their own or in a mixture. REACH also applies, to a limited extent, to finished articles involving the release of chemicals or containing certain chemicals of concern.

The purpose of this *Commentary* is to briefly introduce the main recent developments on REACH that are relevant for the petrochemical industry.

2018: Registration for Chemicals Between 1-100 Tons

May 31, 2018 is the last REACH registration deadline that is applicable to existing low-tonnage substances (on their own or in a mixture). This deadline applies to pre-registered substances manufactured/imported into the EU in quantities of 1-100 tons per calendar year per manufacturer/importer that do not have carcinogenic, mutagenic or reprotox properties. If the relevant substance is not registered by its specific manufacturer/importer by that date, it will no longer be placed on the market in the EU.

If a substance has not been pre-registered, it has to be registered immediately. Late pre-registration may still be an option until 31 May 2017, however. More information about REACH registration is available here.

Continuing Identification of Substances as SVHC and REACH Authorization Process

EU authorities are continuously identifying additional chemical substances as Substances of Very High Concern ("SVHC"), which are then listed on the Candidate List held by the European Chemical Agency ("ECHA"). Substances on the Candidate List might be subject to inclusion into Annex XIV REACH ("Authorization List"), which lists the substances that are subject to the REACH authorization requirement. Such substances cannot be used in the EU after a specified date, unless a company (or an actor upstream) has received an authorization for the specific use from the European Commission. More information about the REACH authorization process and applications for authorizations are available here.

The Authorization List currently includes, among others, four phthalates (DEHP, BBP, DBP and DIBP), brominated flame retardants and several chromates. Substances that are on the Candidate List include coal tars, anthracene oil and other PAHs, and several

aromatic hydrocarbons such as phenolphthalein. Substances for which the procedure for the identification as an SVHC is pending include several phthalates for their endocrine disruptive properties and also bisphenol A ("BPA").

The ECHA document "SVHC RoadMap to 2020 implementation" sets out as a priority further identification of SVHCs, and also an intention "to develop an approach to assess the petroleum streams".

Continuing Identification of Substances Subject to REACH Restriction

Substances that are listed in Annex XVII REACH are subject to a restriction that is specified therein. For example, currently the restrictions apply to the phthalates DEHP, BBP, DBP and DIBP for indoor uses and uses with exposure; 2-naphthylamine and its salts; coal tars; anthracene oil; naphthalene oils and creosote oil. One of the pending proposed restrictions includes BPA in thermal paper. There is a planned restriction for BPA in food contact materials.

Continuing Substance and Dossier Evaluation

The EU Member States are continuously identifying substances that should be subject to further evaluation, with a view to assess whether their risk is sufficiently controlled or whether there should be a proposal of EU-wide risk management measures such as restrictions, identification as SVHC, harmonised classification or other actions outside the scope of REACH. The substances that are to be evaluated over a period of three years are listed in the Community Rolling Action Plan. The Public Activities Coordination Tool, or PACT, list is an additional list of substances that are subject to an informal risk management option analysis carried out by volunteer Member States, which are also intended to identify the most appropriate instrument to address a concern.

In parallel, ECHA is evaluating the REACH registration dossiers submitted by the registrants in order to identify any potential data gaps. ECHA might request the registrants to submit additional data, including animal studies.

Definition of "Endocrine Disruptors"

The European Commission has recently published its long-awaited scientific criteria to identify endocrine-disrupting chemicals. The criteria are in the form of regulations amending Regulation 1107/2009 on plant protection products and Regulation 528/2012 on biocidal products. The criteria are relevant for the potential identification as endocrine disruptors of several chemicals, such as phthalates or BPA. The European Commission shied away from establishing a safe threshold for endocrine disruptors. According to the European Commission, it is not necessary to include considerations of how "potent" an endocrine disruptor is. Potency is a question to be asked only once it has been established that a substance is an endocrine disruptor at all.

Lawyer Contacts

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com/contactus/.

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