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August 23, 2011

Dr. Alex Stone
Safer Chemical Alternative Chemist
Washington Department of Ecology
P.O. Box 47600
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Subject: Alternative Assessment Guidance Document

Dear Dr. Stone:

A number of Weyerhaeuser managers have received your August 10 notice inviting participation in a stakeholder process. Insufficient information was presented to allow a judgment on the importance of the eventual Alternative Assessment Guidance Document (hereafter "the Guidance") to Weyerhaeuser interests in Washington state. Your answers to the following questions would aid our understanding.

1. What is the intended objective for the Guidance? Who is the target audience?
2. EPA funding was presumably in response to a WDOE grant application. Could you provide a reference to the funding request?
3. Does Ecology intend the Guidance be referenced for use in implementing WAC 173-307 *Pollution Prevention Plans*, WAC 173-333 *Persistent, Bioaccumulative Toxins*, or other Ecology-administered regulation?
4. Will the Guidance impart any regulatory requirements?
5. The August 22, 2011 *InsideEPA* news service reports that EPA is embarking on an effort to prioritize chemicals for assessment and possible regulatory action under the Toxic Substances Control Act (article enclosed). Further, in this reported \$16 million effort for fiscal 2012, EPA will consider several factors for prioritization including

"Chemicals identified as potentially of concern for children's health (e.g., chemicals with reproductive or developmental effects). Chemicals identified as persistent, bioaccumulative, and toxic. Chemicals identified as probable or known carcinogens. Chemicals used in children's products. Chemicals used in consumer products. Chemicals detected in biomonitoring programs."

Will the Guidance be duplicative of EPA's effort?

Thank you in advance for your response to these questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Johnson", written in a cursive style.

Ken Johnson
Corporate Environmental Manager



Daily News

EPA Details New Risk Prioritization Effort To Replace Chemical 'Action' Plans

Posted: August 22, 2011

EPA is outlining how it intends to prioritize chemicals for assessment and possible regulatory action under the Toxic Substances Control Act (TSCA) as part of a broad new risk review program to replace its chemical "action" plan process that agency sources say gave EPA insufficient data to support new TSCA rules addressing substances' risks.

The effort by EPA's Office of Pollution Prevention & Toxics (OPPT) is part of a "comprehensive approach to enhance the agency's current chemicals management program," according to EPA's website. The agency will use a two-step process to identify priority chemicals for review and assessment under TSCA. One EPA source says that the process could provide EPA with better data to determine whether to issue new rules for chemicals.

That could help address long-running concerns from the Government Accountability Office (GAO), which in February reiterated its belief that EPA's risk assessment and chemical management programs remain a "high-risk" area in need of reform. While GAO noted in its report, "High Risk Series: An Update," that EPA is taking steps to collect data and regulate substances under TSCA, "most such actions are in the early stages of development."

EPA's proposed fiscal year 2012 budget includes \$16 million to "make long-overdue progress in ensuring the safety of existing chemicals" by conducting "detailed chemical risk assessments on priority chemicals," including \$4.9 million for ten such risk studies to be completed during FY12. EPA's FY12 budget bill is pending in Congress.

The new proposal that OPPT is floating could help address the GAO concerns and meet the FY12 budget's plan for assessing chemicals. "EPA's goal is to identify priority chemicals for near-term evaluation, not to screen and prioritize the entire TSCA Inventory of approximately 84,000 chemicals," the agency says. As part of the effort EPA released a discussion guide outlining its planned two-step process, and will host a Sept. 7 webinar to discuss it.

The first step will be identifying an initial group of priority chemicals for review "by using a specific set of data sources to identify chemicals that meet one or more" of the priority factors in EPA's chemical action plan program. In selecting chemicals for action plans EPA weighed factors including whether the substances are persistent, bio-accumulative and toxic, high production, of concern for children's health and other issues.

EPA will consider several factors for prioritization including, "Chemicals identified as potentially of concern for children's health (e.g., chemicals with reproductive or developmental effects). Chemicals identified as persistent, bioaccumulative, and toxic. Chemicals identified as probable or known carcinogens. Chemicals used in children's products. Chemicals used in consumer products. Chemicals detected in biomonitoring programs."

The second step of the new approach will be to "refine" the list of priority chemicals "by using a broader range of data sources to further analyze and select specific chemicals from the initial group for further assessment," according to the guide.

"Identification of a chemical as a priority chemical for review would not itself constitute a finding by the Agency that the chemical presents a risk to human health or the environment. Rather, identification of a chemical as a priority chemical would indicate only that the agency intends to review it on a priority basis," according to the discussion guide.

Providing More Data

An agency source says the new process should provide more data than the action plans. "The chemical action plans were serving [our purposes] but we decided more up front [information] is needed" to justify new rules on chemicals, the source says. "For rules, a fairly rigorous economic analysis is needed. We would like a better sense before we start a rule analysis of the risks in play. The chemical action plans weren't providing enough information."

The source also says that EPA appears to have released its last action plan in the past spring. The guide also described the action plans in the past tense, as having been prepared "from December 2009 through April 2011."

But EPA's website indicates that an action plan for the chemical siloxanes remains underway. A second EPA source indicates the action plan for that substance is "a mess right now, behind schedule and confusion reigns."

EPA pursued action plans to identify chemicals that pose a concern to the public, and use that information to determine potential regulations to limit those risks. EPA has said that its action plans could have led to new regulatory actions under TSCA including labeling, restricting or banning chemicals.

The agency in March indicated that the plans were being "re-thought" and were likely to be replaced because they were not providing toxics office decision-makers with the necessary information for regulatory action. One source indicated that there was particular concern that the action plans did not provide the data needed to support a rule to ban or restrict the chemical, something the new plan might address.

The first EPA source says that the action plans provided agency rule makers "screening-level" information, while the new prioritization decisions under the plan are intended to be a fuller risk assessment. These assessments will be "reasonably detailed but not as detailed as" the research office's Integrated Risk Information System assessments, which generally take years to complete. "We think we can do [the prioritization assessments] in about one year's time with information that gives us the confidence to put the agency's regulatory [actions] in motion."

OPPT intends to hold its public webinar next month to discuss its plans and receive feedback, and has opened an online discussion form through Sept. 14. Throughout the guide, EPA raises questions about its intended methods, such as which factors should receive greater weight in EPA's analyses, should there be changes to the list of factors, and also requests comments on the data lists EPA intends to use to provide information about these factors.

Chemical Action Plans

EPA's action plans were often unpopular with industry, and several business associations -- many of them often representing chemicals subject to action plan -- argued that the documents stigmatized their products.

Several of these groups discussed these concerns with the White House Office of Management & Budget, which reviewed the action plans before EPA could implement them. The agency published some 10 action plans, including those for chemicals such as Bisphenol-A, phthalates and perfluorinated chemicals.

The action plans address chemicals that existed before TSCA took effect in 1976. Each plan outlines the agency's proposed approach for regulating the chemical, such as through review to determine safer alternatives or through TSCA Section 6 bans. Under TSCA, EPA generally has less authority to require industry to provide data on the chemicals that were in existence when TSCA was passed than on new chemicals formulated since then.

Moreover, agency officials have been reluctant to regulate substances under section 6 since a 1995 appellate court ruling blocking EPA's regulation of asbestos set a high bar for future efforts. Section 6, which EPA has not used since its loss in the asbestos case, gives the agency the authority to protect against "unreasonable risk" of injury to health or the environment from chemical substance -- but requires that the agency to justify that the product it is proposing to ban meets that standard, and that no lesser regulation is sufficient to reduce the risk. -- *Maria Hegstad* (mhegstad@iwpnews.com)

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