



ENVIRONMENTAL UPDATE

The Environmental Practice of Sidley Austin LLP

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Center for Biological Diversity Petitions EPA to Develop Water Quality Criteria for Endocrine Disruptors

On January 11, 2010, the Center for Biological Diversity (“CBD”) petitioned EPA to publish water quality criteria for over 60 pharmaceuticals and personal care products (“PPCPs”), pesticides, plasticizers and other chemicals alleged to disrupt the endocrine system (a list of the chemicals included in the petition is listed at the end of this Update). Endocrine disrupting chemicals (“EDCs”) potentially interfere with hormones in humans and animals causing adverse developmental, reproductive, neurological or immunological effects. CBD’s petition claims that new scientific research shows that its long list of common chemicals are EDCs and “that infinitesimally small levels of exposure, in fact any level of exposure at all – may cause endocrine or reproductive abnormalities.”

Under section 303 of the Clean Water Act, States set water quality criteria. Section 401 of the Act requires that wastewater discharges not undermine state water quality standards. Although the Act leaves water quality standards to the states, CBD is urging EPA to use its general power to “prescribe such regulations as are necessary” to implement the Clean Water Act to set new standards for CBD’s list of chemicals based on the “latest scientific knowledge.”

If EPA grants the petition, it would commence one or more rulemakings that could result in new standards for previously unregulated or “under-regulated” chemicals. While the quality of the evidence that CBD presents is very uneven, it is focusing on an area that is already of serious concern to EPA. For instance, EPA is currently addressing EDCs through its Endocrine Disruptor Screening Program which will test a group of pesticide ingredients.

CBD is seeking regulation of a vast array of chemicals including 33 pharmaceutical and PPCPs. Many of the chemicals are quite common, such as caffeine, acetaminophen, oral contraceptives, veterinary drugs, antihistamines, statins and chemicals used in perfumes, cologne and antibacterial soap. These PPCPs are released into the environment from individual homes as well as manufacturing establishments. CBD also targeted flame retardants and plasticizers, such as Bisphenol A (“BPA”) and

polybrominated diphenyl ethers (“PBDEs”) commonly found in household items such as consumer electronics, plastic consumer goods and furniture.

Much of CBD’s petition focuses on pesticides and includes several references to what it cites as scientific studies supporting its claims. The petition goes on to characterize common PPCPs and other chemicals as being as damaging to human health and the environment as pesticides. Often the only evidence provided by the petition is claims that PPCPs and plasticizers are present at some unstated level in intersexed fish or are simply present at a detectable level in the environment generally. CBD’s petition also claims that EPA has a heightened duty to establish water quality criteria for EDCs because they harm endangered species of fish.

EPA could choose to deny the petition and continue addressing EDCs through the Endocrine Disruptor Screening Program, grant the petition and create a new series of rulemakings or take no action, in which case it is likely to face a lawsuit from CBD to rule on the petition.

Chemicals Listed in the Center for Biological Diversity's January 11, 2010 Petition

Pharmaceuticals and Personal Care

Products

- 1,7-dimethylxanthine
- 2,6-dimethyl-naphthalene
- 4-nonylphenol
- 4-tert-octylphenol
- 17 β -estradiol
- Acetaminophen
- Acetone and Acetophenone
- Atenolol
- Atorvastatin and cholesterol
- Benzophenone
- Beta sitosterol
- Caffeine
- Carbamazepine
- Cimetidine
- Clarithromycin
- Cotinine
- Dehydronifedipine
- Diazepam
- Diltiazem
- Diphenhydramine
- Erythromycin
- Ethinylestradiol
- Fluoxetine
- Gemfibrozil
- Indole
- Lindane
- Methyl Salicylate
- Octachlorostyrene
- Sulfamethoxazole and Trimethoprim
- Synthetic Musks
- Triclosan
- Tributyl Phosphate
- Tris(2-chloroethyl) Phosphate
- Tris (2-butoxyethyl) Phosphate

Pesticides

- 2,4-dichlorophenoxy
- Atrazine and Desethyl Atrazine
- Benfluralin
- Chlordane
- Chlorpyrifos
- Dacthal/DCPA
- DDT and breakdown products
- Diazinon
- Dieldrin
- Diuron
- Endosulfan (alpha- and beta-endosulfan, endosulfan sulfate)
- Endrin
- Hexachlorobenzene
- Metolachlor
- Phenanthrene
- Prometon
- Simazine
- Toxaphene
- Trifluralin

Flame retardants and plasticizer

- 5-methyl-1H-benzotriazole
- Bisphenol A
- Butylbenzyl Phthalate
- Diethylhexyl Phthalate
- Para-cresol
- Pentachloroanisole
- Perchlorate
- PBDEs
- Triphenol Phosphate

Others

- Isophorone (solvent in ink, paint, adhesives, pesticides, wood preservatives, floor sealants)
- Naphthalene (component in jet fuel, cigarette smoke, mothballs)
- PCBs (used in lubricants, paints, caulking, varnishes, inks and electrical equipment)
- Pyrene (used in dyes)
- Selenium (naturally occurring mineral, byproduct of sulfuric acid production)

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