Recent Federal Developments
February 15, 2015

TSCA/FIFRA/IRIS/NTP/TRI

EPA OEI Office Announces Transfer Of TRI Program To OPPT: On January 22, 2015, U.S. Environmental Protection Agency (EPA) Office of Environmental Information (OEI) announced that EPA has begun the process of transferring the Toxics Release Inventory (TRI) program to the Office of Pollution Prevention and Toxics (OPPT). EPA believes this move would leverage better scientific and technical expertise in both EPA program offices and make the TRI program a more integral and effective part of EPA's chemical management efforts. A large portion of the TRI program and the staff associated with the program will be transferred to OPPT. TRI systems work will, however, remain in OEI. While the transfer will require a formal "reorganization" process within EPA, EPA intends to implement the process and conduct the transfer in a timely way that minimizes disruption.

EPA Grants Petition For Reduced Reporting For Biodiesel: On January 27, 2015, EPA announced its decision to grant a petition submitted by the Biobased and Renewable Products Advocacy Group (BRAG®), an affiliate of Bergeson & Campbell, P.C. (B&C®), to add "biodiesel" as a chemical category for partial reporting exemption at 40 C.F.R. Section 711.6(b)(2)(iv) under the Chemical Data Reporting (CDR) rule. 80 Fed. Reg. 4486. EPA also issued a direct final rule implementing this decision. 80 Fed. Reg. 4482. Manufacturers and importers of the listed biodiesel chemicals will not be required to compile and report downstream industrial, consumer, or commercial processing and use information for the upcoming 2016 CDR reporting cycle, or future CDR reporting cycles. This represents a time savings of more than 80 hours per chemical, which can be crucial for smaller biobased companies. As with all the chemicals currently afforded partial exemption status, the biodiesel chemicals would no longer be eligible for the partial reporting exemption if they were to become the subject of a Section 4, 5(a)(2), 5(b)(4), or Section 6 rule (proposed or final), an enforceable consent agreement, a Section 5(e) order, or relief granted under a civil action under TSCA Sections 5 or 7. This direct final rule is effective **March 30, 2015,** without further notice, unless EPA receives adverse comment on or before **February 26, 2015**. If EPA receives written adverse comments, EPA will withdraw the applicable partial exemption in the direct final rule before its effective date. BRAG's press release is available at http://www.braginfo.org/news/epa-grants-brag-petition-requesting-partial-cdr-exemptions-for-biodiesel-pr.

EPA Releases Draft Guidelines For Endocrine Testing: On January 30, 2015, EPA released drafts of new guidelines for animal testing of the endocrine disrupting effects of pesticides and other chemicals. 80 Fed. Reg. 5107. The proposed guidelines outline how scientists can use Japanese quail, medaka fish, or amphibian larvae to conduct various endocrine tests. EPA reportedly also considered including mysid crustaceans on its list of non-mammals acceptable to use in endocrine testing, but did not because the data were not deemed "fully reliable" across all endpoints. Comments are due **March 31, 2015**.

EPA Proposes Significant New Use Rule On Perfluorinated Chemicals: On January 21, 2015, EPA issued a proposed amendment to a significant new use rule (SNUR) for long-chain perfluoroalkyl carboxylate (LCPFAC) chemicals. According to EPA's January 15, 2015, press release, EPA intends the proposed amendment "to ensure that perfluorinated chemicals that have been phased out do not re-enter the marketplace without review." The proposed amendment would require anyone who intends to import these perfluorinated chemicals, including in articles, or domestically produce or process these chemicals for any new use to submit a notification to EPA at least 90 days before beginning the activity. Comments on the proposed amendment are due **March 23, 2015**. More information is available at http://www.lawbc.com/regulatory-developments/entry/tsca-epa-proposes-a-significant-new-use-rule-that-would-close-a-chapter-on.

EPA Issues Direct Final SNUR For 27 Chemicals: On February 2, 2015, EPA issued direct final SNURs for 27 chemicals. 80 Fed. Reg. 5457. The SNURs set forth conditions for the 27 chemicals that would apply to other manufacturers that wish to produce the same substances. Any manufacture or use of a chemical that does not comply with the SNUR provisions would be considered a "new use" and require notification to EPA. Of the 27 chemicals, two are believed by EPA to pose an unreasonable risk. The two chemicals are: phosphoric acid, iron (2+) lithium salt (1:1:1), CAS No. 15365-14-7, which will be used to make electrode components (due to analogous respirable, poorly soluble particles) and a generically named compound, polymer of terephthalic acid and ethyl benzene with multi-walled carbon nanotube, PMN No. P-13-573 (due to toxicity data addressing analogous respirable, poorly soluble particulates). EPA issued Section 5(e) consent orders for both substances. The rule is effective on **April 3, 2015**, unless adverse comment is received by **March 4, 2015**. If adverse comment is received, EPA will withdraw the affected sections of the direct final rule before it is effective. EPA will then issue a proposed SNUR for the chemical substance(s) on which adverse or critical comments were received, providing a 30-day period for public comment.

EPA Submits ICR On Partial Update Of TSCA Section 8(b) Inventory Data Base: On January 29, 2015, EPA submitted an Information Collection Request (ICR), "Partial Update of the TSCA Sec. 8(b) Inventory Data Base, Production and Site Reports (Chemical Data Reporting)" to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. 80 Fed. Reg. 4915. Comments are due **March 2, 2015**.

OECD Publishes Online Tools To Promote Substitutes For Harmful Chemicals: On January 30, 2015, the Organization for Economic Cooperation and Development's (OECD) *Ad Hoc* Group on Substitution of Harmful Chemicals published an online platform to promote the replacement of hazardous substances with safer alternatives. The OECD Substitution and Alternatives Assessment Toolbox compiles information on available tools and guidance for the assessment of alternatives to hazardous substances. The platform also includes case studies and information on chemicals regulation in developed countries and in China. Founded in 2012, the OECD *Ad Hoc* Group on Substitution of Harmful Chemicals promotes the substitution of hazardous substances. The group is jointly chaired by EPA and the European Chemicals Agency

(ECHA). The OECD Substitution and Alternatives Assessment Toolbox is available at http://www.oecdsaatoolbox.org.

EPA Revises GMO Insect Resistance Plan: On January 28, 2015, EPA announced that it is updating a plan for preventing rootworms from developing an immunity to corn that has been genetically modified to be toxic to insects. 80 Fed. Reg. 4564. EPA stated in the notice that it has received reports of rootworms in Iowa and Illinois with the ability to survive after feeding on genetically modified organism (GMO) corn designed to kill them. To prolong the usefulness of these GMO crops, EPA has proposed changes to its current insect resistance management plan that include using several different pesticide tools as well as newer, more accurate methods of testing rootworms for resistance. Comments are due **March 16, 2015**.

FDA

FDA CFSAN Draft Environmental Impact Statement: On January 12, 2015, the U.S. Food and Drug Administration (FDA) Center for Food Safety and Applied Nutrition (CFSAN) released the draft Environmental Impact Statement (EIS) for the 2013 proposed rule entitled "Standards for Growing, Harvesting, Packing, and Holding of Produce for Human Consumption," which is part of the ongoing efforts by the FDA Food Safety Modernization Act (FSMA). 80 Fed. Reg. 1478. The draft EIS includes proposed changes to some key issues relating to agricultural run off. Comments are due to FDA within 60 days. For more details, *see* http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm396564.htm?source=govdelivery&utm_medium=email&utm_source=govdelivery.

FDA Announces New Draft Guidance To Industry: On January 20, 2015, FDA's Center for Devices and Radiological Health (CDRH) released a new guidance to industry entitled "Medical Device Accessories: Defining Accessories and Classification Pathway for New Accessory Types. 80 Fed. Reg. 2710. The draft guidance includes definitions and outlines how the "risk-based framework for the classification of devices applies to accessories." According to the notice, although comments on any guidance may be submitted at any time, FDA suggests submitting comments on this guidance by **April 20, 2015**, to ensure that they are considered before work on the final version of the guidance begins.

FDA Expanding Comment Period For Updates To The Redbook: On January 30, 2015, FDA announced an extension to the comment period for the updates to the Toxicological Principles for the Safety Assessment of Food Ingredients or the "Redbook." 80 Fed. Reg. 5559. The "Redbook" is a critical tool that provides guidance for recommended toxicity testing for additives in foods based on the estimated exposure potential. Comments are now due by **May 11, 2015**.

RCRA/CERCLA

Federal Court Ruling Expands RCRA Authority By Declaring Manure A RCRA Solid Waste: On January 14, 2015, the U.S. District Court for the Eastern District of Washington granted summary judgment in a case against a dairy farm and declared manure from the farm's livestock as a solid waste under the Resource Conservation and Recovery Act (RCRA). This first of its kind decision could have far-reaching consequences, as manure that is returned to the soil as a fertilizer is generally exempt from RCRA regulation as a solid waste. The case could have major implications for concentrated animal feeding operations (CAFO) as it could subject certain manure applications to regulation as solid waste. The court found that manure is a solid waste under RCRA when it is applied to crops without regard to the crops' nutritional needs, when the manure is stored in surface impoundments, or in other ways that result in releases of the manure to the environment. These releases, the court found, constitute an imminent and substantial endangerment under RCRA Section 7003. The case, *Community Association for Restoration of the Environment, Inc. and Center for Food Safety, Inc. v. Cow Palace, LLC*, concerns Cow Palace Dairy's manure management practices and their effect on human health and the environment. Plaintiffs argue that Cow Palace's manure management operations are thinly veiled disposal operations. The dairy manages its manure in a variety of ways, including transforming it into compost and selling it, temporarily storing it in several earthen impoundments, and applying it to agricultural fields as fertilizer. In February 2013, the plaintiffs sued Cow Palace, alleging that its manure management practices constitute open dumping of solid waste and cause an imminent and substantial danger to public health and the environment because when the manure is improperly managed and stored, as well as over-applied to agricultural fields, it is discarded and consequently contributes to high levels of nitrates in underground drinking water. The court's decision centers on three ways that Cow Palace manages the manure from its operations: use as a fertilizer, storage in impoundments, and composting. Regarding the use as a fertilizer, the court found that Cow Palace did not apply the manure consistent with agronomic nutrient uptake rates. The decision states that manure "could plausibly be considered 'solid waste' -- as a legal matter -- when it is over-applied to fields and managed and stored in ways that allow it to leak into the soil because at that point, the manure is no longer 'useful' or 'beneficial' as a fertilizer." The court determined that the issue of whether manure can be considered a solid waste hinges, factually, on whether the manure is handled and used in such a manner that its usefulness as a fertilizer is eliminated. With respect to composting of the manure, the court ruled that manure in Cow Palace's unlined composting area "is both knowingly abandoned and accumulating in dangerous quantities and thus a solid waste. As with the lagoons, this Court finds that leaching into the soil is a natural and intended consequence of preparing (on unlined soil) the manure for later use as compost, not while *actually using* it for its beneficial purpose as a fertilizer." The consequence of such unlined composting surfaces converts what would otherwise be a beneficial product (the composted manure) into a solid waste, the court stated. Given the resounding implications of this decision, it is almost a certainty that industry groups will appeal the decision and seek to have it reviewed by the U.S. Court of Appeals for the Ninth Circuit. If the Appeals Court upholds the ruling, it could force

CAFO operators that do not have Clean Water Act (CWA) permits to seek such permits or to ensure that their surface impoundments meet RCRA regulations.

OIG Begins Investigation Of EPA TSDF Inspections: EPA's Office of Inspector General (OIG) has launched an investigation to determine whether EPA is inspecting hazardous waste treatment, storage, and disposal facilities (TSDF) in compliance with the law. According to a memorandum announcing the effort, OIG will specifically seek to determine whether EPA is inspecting TSDFs as frequently as required by the law. RCRA Section 3007(e) requires EPA to inspect commercial TSDFs at least every two years. TSDFs owned or operated by federal or state agencies are to be inspected at least annually, pursuant to RCRA Sections 3007(c) and (d), respectively. There can be little doubt that OIG launched the review in response to claims that EPA is not satisfying its inspection requirements. EPA is expected to respond, in part, to the OIG investigation by claiming its inspections include various manners of reviews (records reviews, financial assurance reviews, and others) and are not limited to the traditional, on-site review. OIG stated that it will complete the effort by the end of EPA's 2015 fiscal year (FY).

CAA/CWA/SDWA

EPA Considers Adding Manganese And Nonylphenol To CCL: On February 4, 2015, EPA requested public input on whether to include the chemicals manganese and nonylphenol on its draft fourth Contaminant Candidate List (CCL4), a list required by the Safe Drinking Water Act (SDWA) of contaminants that are not currently subject to drinking water standards but should be considered for further regulation. 80 Fed. Reg. 6076. EPA requests comment on the two contaminants and seeks "data and information on manganese and nonylphenol health effects and concentrations in finished or ambient water." The draft CCL4 includes 100 chemicals or chemical groups and 12 microbial contaminants. Comments are due by **April 6, 2015**.

EPA And Army Corps Withdraw CWA Interpretive Rule: In a succinct memorandum issued on January 29, 2015, EPA and the Army Corps of Engineers (Corps) formally withdrew the so-called CWA "Interpretive Rule," which was issued by EPA in April 2014. The rule sought to clarify those farming practices that are exempt from the requirement to obtain CWA permits. Lawmakers believed the rule created confusion, in that it identified 56 "normal" farming operations, implying that any farming operation not on that list was not "normal" and thus required a CWA permit. Consequently, Congress included language in the FY 2015 omnibus spending bill that prohibited EPA and the Corps from taking further action on the regulation. President Obama signed the Consolidated and Further Continuing Appropriations Act of 2015 (CFCAA) into law on December 16, 2014; Section 112 of the CFCAA states that EPA and the Corps must withdraw the interpretive rule. The January 29, 2015, memorandum, signed by EPA Deputy Assistant Administrator for Water Ken Kopocis and U.S. Department of the Army Assistant Secretary for Civil Works Jo-Ellen Darcy, states that the interpretive rule is withdrawn "[e]ffective immediately" in line with the FY15 law's mandate." A related memorandum of

understanding that the two agencies signed March 24 with the Department of Agriculture on how to implement the rule is also withdrawn, according to the memorandum.

NANOTECHNOLOGY

Switzerland Announces Continuation Of Action Plan For Synthetic Nanomaterials: The Federal Office of Public Health (FOPH) announced on December 17, 2014, that the Federal Council decided to continue the action plan for synthetic nanomaterials until **2019**. The objectives of the action plan include:

- Development of regulatory framework conditions for the responsible handling of synthetic nanomaterials;
- Creation of scientific and methodical conditions aimed at identifying and preventing potential harmful effects of synthetic nanomaterials on health and the environment;
- Promotion of the public dialogue about opportunities and risks of nanotechnology; and
- Better utilization of existing tools for the development and rollout of sustainable nanotechnology applications.

FOPH states that the creation of regulatory framework conditions is divided into two phases. Phase 1 (short- and medium-term) calls for strengthening corporate responsibility through different tools (precautionary matrix, guide to self-regulation, support of private-sector codes of conduct, guidelines for nano-specific Safety Data Sheets (SDS), improved consumer information, and disposal guide). Phase 2 (medium- and long-term) calls for the development of legal framework conditions for the safe handling of synthetic nanomaterials (review of measures exceeding existing provisions and coordination with developments abroad).

Canada's New Substances Program Publishes Risk Assessment Summary For Multi-Wall Carbon Nanotubes: Canada announced on January 9, 2015, that the New Substances Program has published six new risk assessment summaries for chemicals and polymers, including a summary for multi-wall carbon nanotubes. Environment Canada and Health Canada conduct risk assessments on new substances. These assessments include consideration of information on physical and chemical properties, hazards, uses, and exposure to determine whether a substance is or may become harmful to human health or environment as set out in Section 64 of the Canadian Environmental Protection Act, 1999 (CEPA), and, if harm is suspected, to introduce any appropriate or required control measures. The risk assessment conclusion for multi-wall carbon nanotubes states:

> When used as notified, the substance is not suspected to be harmful to human health or the environment according to the criteria under section 64 of CEPA 1999. However it is suspected that a significant new activity in relation to the substance may result in the substance meeting those criteria.
>
> Due to the potential risk to the environment (related to aquatic, soil, and sediment toxicity) and due to the potential risk to the general population (related to respiratory toxicity, immunotoxicity, cardiovascular toxicity and carcinogenicity following oral and inhalation exposure) if the substance is used in increased amounts or in consumer products, a SNAc notice was issued to obtain information to ensure that the substance, in relation to these potential activities, undergoes further assessment. SNAc notice No. 17192 was published in the *Canada Gazette* Part I, Vol. 147, No. 34 - August 24, 2013.
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> A conclusion under CEPA 1999, on this substance, is not relevant to, nor does it preclude, an assessment against the hazard criteria for WHMIS that are specified in the *Controlled Products Regulations* for products intended for workplace use.

NGOs Comment On EC's Working Conclusions Concerning Transparency Measures For Nanomaterials On The Market: The European Environmental Bureau (EEB) posted on January 13, 2015, a paper entitled "NGO comments on Transparency measures for nanomaterials on the market: Working conclusions." EEB, the Center for International Environmental Law (CIEL), Friends of the Earth (FOE) Australia, and Friends of the Earth Germany (BUND) state that they disagree with most of the European Commission's (EC) working conclusions regarding the transparency measures for nanomaterials on the market. The non-governmental organizations (NGO) claim that the EC's conclusions "are biased towards industry's economic interests whilst disregarding environmental health and safety concerns and the public right to know. We believe the working conclusions fail to provide the right balance between private and public interests." The NGOs state: "In light of the early warnings and key data gaps regarding the risks associated with nanomaterials compilation of necessary information and transparency measures should be driven by the precautionary principle. This is the only way to adequately manage the potential risks associated with nanomaterials."

Canada Begins Review Of SNAc Orders And Notices For Nanomaterials: On January 28, 2015, Environment Canada announced that, with Health Canada, it has initiated a review of significant new activity (SNAc) orders and notices currently in place under CEPA. According to Environment Canada, since publication of the first SNAc in 2001, policies and practices have evolved, particularly with respect to the nature and scope of SNAcs, as well as the wording used

to identify "significant new activities." The SNAc review is intended to ensure that SNAcs are in step with current information, policies, and approaches. The SNAc review groups include 33 SNAcs for nanomaterials, published between 2008 and 2013. The review timeline for the nanomaterials group is 2014-**2015**. Environment Canada states that, following the review process, there may be no changes needed for certain SNAcs or, for others, rescissions or amendments may be warranted. As the review will be implemented via a phased approach, Canada will publish information on the results of the review process on an ongoing basis as elements of the review are completed. Elements of the review may be subject to external consultation.

CPSC's FY 2016 Budget Request Would Create Center For Consumer Product Applications And Safety Implications Of Nanotechnology: The Consumer Product Safety Commission's (CPSC) FY 2016 budget request includes funding to establish a Center for Consumer Product Applications and Safety Implications of Nanotechnology (CPASION), which is intended "to develop robust methods in identifying and characterizing nanomaterials in consumer products; to understand their effects on human exposure; and to develop scientists to advance nanomaterials in consumer product safety research." CPSC recommends a $5 million increase in its existing nanotechnology budget, currently $2 million annually, to establish CPASION. The budget request states that CPASION "will be a consortium of scientists focused on supporting the CPSC's unique mission through research directed at developing robust methods to quantify and characterize the presence, release, and mechanisms of consumer exposure to nanomaterials from consumer products." CPASION will also be a resource for manufacturers and distributors of nano-enabled products, and will develop approaches to providing information on the safe use of nanotechnology in consumer products. According to the budget request, to establish CPASION, CPSC would enter into a five-year interagency agreement with the National Science Foundation (NSF), modeled on a similarly sized, existing NSF-EPA research center studying nanotechnology implications.

ACGIH® TLV®-CS Committee Studying Nanoscale Primary Particle Notation: On January 30, 2015, the American Conference of Governmental Industrial Hygienists (ACGIH®) announced the under study list for its Threshold Limit Values for Chemical Substances (TLV®-CS) Committee. The under study list includes, under other issues under study, "nanoscale primary particle notation." According to ACGIH®, the under study list serves as "notification and invitation to interested parties to submit substantive data and comments to assist the committees in their deliberations." The TLV®-CS Committee will consider only those comments and data that address issues of health and exposure, but not economic or technical feasibility. ACGIH® states that comments must be accompanied by copies of substantiating data, preferably in the form of peer-reviewed literature. By **July 31, 2015**, ACGIH® will update the TLV®-CS Committee's under study list into a two-tier list:

- Tier 1 consists of chemical substances and physical agents that may move forward as a notice of intent to change (NIC) or notice of intent to

establish (NIE) in **2016**, based on their status in the development process; and

- Tier 2 consists of chemical substances and physical agents that will not move forward, but will either remain on, or be removed from, the under study list in **2016**.

ACGIH® states that the best time to submit comments is in the early stages of the TLV® development process, preferably while the substance or agent is on the under study list.

BIOBASED/RENEWABLE PRODUCTS

BRAG Biobased Products News And Policy Report: B&C's consulting affiliate, B&C Consortia Management, L.L.C. (BCCM), manages BRAG. For access to a weekly summary of key legislative, regulatory, and business developments in biobased chemicals, biofuels, and industrial biotechnology, go to http://www.braginfo.org.

LEGISLATIVE DEVELOPMENTS

Congress Passes Keystone Approval Bill: After weeks of debate and filibuster, and in a signature effort announcing the arrival of the GOP control of Congress, the Senate on January 28, 2015, by a vote of 62-36 approved the Keystone XL Pipeline Act (S. 1). The House passed the bill on February 12, 2015, by a vote of 270-152; nine Democrats joined with Republicans in voting to approve the bill. The bill would approve the construction of the Keystone XL pipeline. The passage of the bill yields Republicans their first legislative victory of their new majority. Both votes fell short of the two-thirds majority that would be needed to override a promised veto from President Obama. Republican leaders will not send the bill to the President until after the week-long President's day Congressional break; Obama will then have ten days to sign the bill or veto it.

House Bill Would Block "Waters Of The U.S." Regulation: A bipartisan bill introduced in the House on January 28, 2015, would block EPA and the Corps from promulgating the final "Waters of the United States" rule under the CWA. The Waters of the United States Regulatory Overreach Protection Act of 2015 (H.R. 594) was introduced by Representative Paul Gosar (R-AZ) and quickly amassed 106 co-sponsors, including several Democrats. The bill would bar the Administration from issuing or implementing the proposed rule or an earlier contested EPA-Corps guidance on CWA jurisdiction. The legislation would also ban the use of the proposed rule or earlier guidance language in any future policy and instead would require EPA and the Corps to launch a formal consultation with state and local governments to develop a new proposed rule. The bill is largely moot, however, as EPA and the Corps recently withdrew the proposed Waters of the U.S. rule in accordance with the FY continuing appropriations bill.

House Passes Natural Gas Pipeline Permitting Reform Act In Face Of Veto Threat: On January 21, 2015, the House of Representatives passed the Natural Gas Pipeline Permitting Reform Act (H.R. 161) by a vote of 253-169. Introduced by Mike Pompeo (R-KS), the bill would amend the Natural Gas Act to direct the Federal Energy Regulatory Commission (FERC) to make final approval or denial decisions on natural gas pipeline projects within a year of when FERC receives a complete application for a project. If FERC fails to meet this deadline, the pipeline project would be automatically approved. In a Statement of Administration Policy released on January 20, 2015, the White House voiced its strong opposition to the bill, stating that it would cause "confusion and the risk of increased litigation" and that it could force federal agencies "to make decisions based on incomplete information." The White House vowed that President Obama would veto the bill if it reaches his desk.

Senate Environment And Public Works Committee Holds Hearing On EPA's Power Plant Rules: The Senate Environment and Public Works Committee on February 11, 2015, held a hearing entitled "Oversight Hearing: Examining EPA's Proposed Carbon Dioxide Emissions Rules from New, Modified, and Existing Power Plants." The stated purpose of the hearing was to examine EPA's proposed rules limiting emissions of carbon dioxide and other greenhouse gases (GHG) from power plants. Janet McCabe, EPA Assistant Administrator for Air and Radiation, was the sole witness. Her testimony and a webcast of the hearing are available online. During the hearing, Republicans took aim at EPA's authority to issue the rules and cited legal, scientific, and other flaws in EPA's approach. Many Republicans on the committee made plain their displeasure with the rules during the hearing, but gave little indication as to what legislative measures they will propose to amend or derail the regulations.

Bill Seeks To Replace Gas Tax, Ensure Solvency Of Highway Trust Fund, And Fight Climate Change: On January 13, 2015, Representative Jared Huffman (D-CA) introduced The Gas Tax Replacement Act (H.R. 309). The bill is intended to stabilize the Highway Trust Fund by replacing the federal gas tax with a life-cycle assessment-based carbon tax on gasoline and diesel fuels that Huffman states will accurately reflect the carbon emissions of gasoline. Excise taxes into the Highway Trust Fund come from an 18.4 cent-per-gallon tax on gasoline and a 24.4 cent-per-gallon tax on diesel fuels. The carbon tax in the legislation would replace the gas tax. It would be set at $50 per metric ton of carbon dioxide and would apply to surface transportation fuels, based on a life-cycle assessment of carbon emissions. EPA would develop the assessments for different sources of crude oil, biofuels, and other inputs into gas and diesel fuels for surface vehicle transportation. Given the GOP's control of the House, the bill is unlikely to advance.

Bill Would Prohibit U.S. Participation In UN Climate Change Efforts: Representative Blaine Luetkemeyer (R-MO) on January 14, 2015, introduced the No Tax Dollars for the United Nations Climate Change Agenda Act (H.R. 383). The bill would prohibit the use of taxpayer money to fund UN climate programs.

House Bill Seeks To Accelerate Environmental Review And Improvement Of Projects: Representative Tom Marino (R-PA) on January 14, 2015, reintroduced H.R. 348, the Responsibly and Professionally Invigorating Development Act (RAPID). The bill is intended to reform and expedite the approval and completion of energy and infrastructure projects. Marino's RAPID Act was featured as part of the *Pillars of a Renewed Majority* document that outlined a roadmap consisting of five pillars designed to grow the economy, create jobs, and increase opportunity for upcoming generations of Americans. One of the pillars calls for enactment of multiple regulatory reform bills, two of which Marino has sponsored or originally co-sponsored (RAPID and H.R. 185, the Regulatory Accountability Act). In the 113th Congress, the RAPID Act passed the House of Representatives with a bipartisan majority by a 229 to 179 margin.

Regulatory Responsibility For Our Economy Introduced In Senate: On January 14, 2015, Senator Dean Heller (R-NV) introduced the Regulatory Responsibility for Our Economy Act (S. 168). The bill would require federal agencies to review their economically significant rules and set timelines for repealing those deemed overly burdensome. The bill essentially codifies Executive Order 13563, issued by President Obama in 2011. The order requires agencies to conduct "look back" reviews of existing regulations to identify those that are duplicative, outdated, or no longer necessary. The bill defines "economically significant rules" as those that have an annual economic cost of the economy of $100 million or more.

Senate Votes That Climate Change Is Real: In a largely symbolic act and as part of the debate on the Keystone pipeline bill, the Senate on January 21, 2015, voted that "climate change is real and is not a hoax." The measure, introduced by Senator Sheldon Whitehouse (D-RI), passed by a vote of 98 to 1. Even noted climate change skeptic James Inhofe (R-OK) voted for the amendment, although he stated that he does not believe climate change is driven by human activity. Roger Wicker, GOP Senator from Mississippi, cast the lone no vote.

Senate Bills Seek To Limit EPA's CWA Authority: Senator David Vitter (R-LA) has introduced two bills seeking to limit EPA's authority to veto permits under the CWA. On January 22, 2015, Vitter and Joseph Manchin (D-WV) introduced the Regulatory Fairness Act of 2015 (S. 54). The bill would amend Section 404(c) of the CWA to dilute EPA's authority to reject so-called dredge-and-fill permits issued by the Corps for mining operations. The bill would specifically limit EPA's authority to reject permits when the Corps publishes a notice identifying a project for which a dredge-and-fill permit would be issued. S. 54 would authorize EPA to object to such a permit, after a notice-and-comment period, on grounds that "the discharge of dredged or fill material into such defined area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas." The bill would essentially prohibit EPA from retroactively denying permits issued by the Corps and is a direct reaction to EPA's denial of a dredge-and-fill permit issued to the Mingo Mine in West Virginia. In that case, the Corps issued a permit to the coal mine in 2007, but EPA subsequently vetoed the permit in 2011. Vitter also

introduced a bill (S. 234) on January 22, 2015, that would confirm the scope of EPA's authority to deny or restrict the use of defined areas as disposal sites.

Bipartisan Senate Bill Would Prevent EPA Regulation Of Sporting Goods: Legislation introduced on January 21, 2015, by Senators John Thune (R-SD) and Amy Klobuchar (D-MN) would prohibit EPA from regulating ammunition and fishing tackle under the Toxic Substances Control Act (TSCA). The bill (S. 225) specifically excludes ammunition and fishing tackle from regulation under TSCA and instead leaves it up to state fish and game agencies and the U.S. Fish and Wildlife Service to regulate ammunition and tackle. In 2014, Thune was able to introduce a measure into EPA's FY 2015 appropriations bill that would ban EPA from regulating lead in ammo and tackle for the remainder of FY 2015. S. 225 would make permanent the TSCA exemption.

House Agriculture Committee Revises Subcommittee Jurisdictions For Pesticide Issues: The House Agriculture Committee has reorganized the responsibilities of its Subcommittees with respect to pesticide issues. The Biotechnology, Horticulture and Research Subcommittee, chaired by Representative Rodney Davis (R-IL), now has jurisdiction over pesticide issues, taking over from the Department Operations, Oversight and Credit Subcommittee.

Super Pollutant Emissions Reduction Act Introduced In House: On January 22, 2015, Representative Scott Peters (D-CA) introduced the Super Pollutant Emissions Reduction Act (H.R. 508). The bill would establish an intergovernmental task force charged with coordinating the efforts of federal agencies to reduce emissions of short-lived but potent GHGs. The legislation targets pollutants such as methane, hydroflurocarbons, ozone precursors, carbon black, and others. The task force would have 18 months to report its findings to EPA and make recommendations on how to reduce emissions of these so-called "super pollutants."

Bill Would Create Standards For Electronic HazMat Shipping Papers: Legislation introduced on January 22, 2015, by Representative Daniel Lipinski (D-IL) would establish a Hazardous Materials Information Advisory Committee to develop standards for the use of electronic shipping papers for shipments of hazardous materials. The Developing Standards for Electronic Shipping Papers Act of 2015 (H.R. 505) would pave the way for the use of electronic hazardous materials shipping documents. The Committee would be created by the Department of Transportation. Its members would include state and federal agencies and other stakeholders engaged in hazardous materials transportation. The bill would give the Committee just 120 days to develop recommendations intended to accelerate the use of electronic shipping documents. The bill (H.R. 505) was referred to the House Transportation Committee.

House Passes Regulatory Reform Legislation Over Veto Threat: By a vote of 260-173, the House of Representatives on February 5, 2015, passed the Small Business Regulatory Flexibility Improvements Act (H.R. 527) by a vote of 19-8. Introduced by Representative Steve Chabot (R-OH), Chair of the House Small Business Committee, the bill would require federal agencies to

expand their consideration of the costs imposed by their regulations. The bill would specifically amend the Regulatory Flexibility Act to require agencies to consider indirect economic impacts of regulations and to consider reasonable regulatory alternatives that impose less economic burdens. On February 3, 2015, however, the White House issued a Statement of Administration Policy threatening to veto the legislation if it is presented to the President.

House Passes Legislation On Unfunded Mandates; White House Threatens Veto: The House on February 4, 2015, passed legislation that is intended to blunt the impact on industry of federal unfunded mandates. By a vote of 250-173, Representatives approved the Unfunded Mandates Information and Transparency Act of 2015 (H.R. 50), introduced by Representative Virginia Foxx (R-NC) and co-sponsored by Representative Loretta Sanchez (D-CA). The bill would require independent regulatory agencies for the first time to comply with the Unfunded Mandates Reform Act of 1995. It would codify Executive Order 12866, issued by President Clinton in 1993 and which required federal agencies to conduct cost-benefit analyses of their regulations. H.R. 50 would also require the Congressional Budget Office to determine the entire cost of a federal mandate imposed by legislation and require federal agencies to consult with potentially regulated companies before issuing major proposed rules. In addition, Committees in the House or Senate could request reviews of existing federal mandates. The White House opposes the bill and in a February 3, 2015, Statement of Administration Policy, White House officials stated that they would recommend President Obama veto the legislation if it reaches his desk. The White House believes that the bill would introduce needless uncertainty into agency decision making and undermine the ability of agencies to provide critical public health and safety policy. Further, the bill would create needless grounds for judicial review, unduly slowing and increasing the cost of the regulatory process, it stated.

Federal Permitting Improvement Act Introduced In Senate: Senators Rob Portman (R-OH) and Clair McCaskill (D-MO) on January 28, 2015, co-sponsored legislation in the Senate intended to streamline the bureaucratic red tape associated with approving large infrastructure projects. The Federal Permitting Improvement Act (S. 280) would create a single federal agency that would have primary responsibility for coordinating the review of projects. The legislation is intended to streamline and improve the federal permitting process. Portman and McCaskill stated that the bill is modeled on the "commonsense, bipartisan permit-streamlining reforms of the 2006 and 2012 transportation bills and recommendations from the President's Jobs Council, as well as other studies." Businesses seeking to undertake major capital projects often must run the gauntlet of a dozen separate agency approvals and reviews, the Senators stated in a press conference announcing the bill's introduction. That process is often criticized for being plagued by a lack of coordination, few deadlines, insufficient transparency, and litigation exposure, they stated. The resulting uncertainty surrounding major capital projects makes new construction and investments less attractive and hinders job creation, stated Portman. The Senators pointed to several recent reports that they claim highlight the need for modernization of the permitting process, including the 2011 Year-End Report of the President's Jobs Council, the Business Roundtable's Permitting Jobs and Business Investment, and the Chamber of Commerce's

Project/No Project report. Portman and McCaskill claim that the Federal Permitting Improvement Act would improve the permitting process for major capital projects in three ways: better coordination and deadline-setting for permitting decisions; enhanced transparency; and reduced litigation delays. The bill is limited to economically significant capital projects, defined as more than $25 million, based on the size of the initial investment. The bill covers major capital projects across all sectors, including renewable or conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, and manufacturing. The bill also builds on and makes permanent the new permit streamlining project launched by the Obama Administration in 2012 under Executive Order 13604. The bill would establish an interagency council, led by the White House OMB, to identify best practices and deadlines for required reviews and approvals of various types of infrastructure projects. It would also define a formal role for a single "lead agency" to set a permitting timetable for each major capital project, in consultation with participating agencies and based on OMB guidance. The bill further seeks to foster greater cooperation with state and local permitting authorities and encourages agencies to conduct environmental reviews by the most efficient process available. To ensure greater transparency and early public participation, the legislation would create a public, on-line "dashboard" to track agency progress on required approvals and reviews of major capital projects and to provide access to relevant documents. It would also require agencies to reach out to accept comments from stakeholders early in the approval and review process, with the aim of identifying and addressing important public concerns early. In an effort to reform litigation, the bill reduces the current (default) statute of limitations on National Environmental Protection Act (NEPA) suits from six years to 150 days. It also would permit courts to consider potential job loss in weighing equitable considerations for injunctive relief.

House Bill Would Require Federal Agencies To Release Scientific Studies: Representative Larry Buchson (R-IN) on January 21, 2015, introduced a bill that he states will compel EPA and other federal agencies to release publicly scientific studies used in the rulemaking process. The *Transparency in Rule Making When Using Scientific Testing Act of 2015* (H.R. 445) would amend the Administrative Procedures Act to require federal agencies to publish "any scientific research of which the agency is aware and which is relevant to the rule making" as part of the regulatory process. The bill defines "scientific study" broadly to include a study that "applies rigorous, systematic, and objective methodology to obtain reliable and valid knowledge relevant to the subject matter involved; presents findings and makes claims that are appropriate to, and supported by, the methods that have been employed; and includes, appropriate to the research being conducted," use of data analyses, systematic or empirical study methods, and other tools.

House Committee Approves Bill On Cyanotoxin Risks In Drinking Water: The House Energy and Commerce Committee on February 12, 2015, approved a bill that would require EPA to manage the risks of cyanotoxins in drinking water. The Drinking Water Protection Act (H.R. 212) specifically would require EPA to develop and submit to Congress within 90 days a strategy for "assessing and managing the risk associated with cyanotoxins in drinking water," to

establish a list of those cyanotoxins deemed harmful to human health when present in drinking water and to develop health advisories for those on the list as well as technical guidance and assistance for states in monitoring the cyanotoxins. The bill also would require EPA to enter into cooperative agreements with states and provide technical assistance to them and public water systems to manage risks posed by algal toxins.

House Bill Would End "Sue-And-Settle" Regulation By Litigation: Legislation introduced on February 5, 2015, by Representative Doug Collins (R-GA) seeks to end the practice of enacting federal regulations through "sue-and-settle" litigation. In introducing his bill, Collins stated that "this tactic, used by federal agencies and like-minded special interest groups, circumvents the normal rulemaking process to impose new, burdensome regulations on businesses and communities." The Sunshine for Regulatory Decrees and Settlements Act of 2015 (H.R. 712) provides for greater transparency by requiring agencies to post publicly and report to Congress information on sue-and-settle complaints, consent decrees, and settlement agreements. It also prohibits the same-day filing of complaints and pre-negotiated consent decrees and settlement agreements in cases seeking to compel agency action. Under the bill, consent decrees and settlement agreements can be filed only after interested parties have had the opportunity to intervene in the litigation and join settlement negotiations, and only after any proposed consent decree or settlement has been published for at least 60 days to provide for notice and comment. The legislation also would require courts considering approval of consent decrees and settlement agreements to account for public comments and compliance with regulatory process statutes and executive orders. The Attorney General or, where appropriate, the defendant agency's head, would also have to certify to the court that he has approved any proposed consent decree that includes terms that: convert into a duty an otherwise discretionary authority of an agency to take regulatory action; commit an agency to expend funds that have not been appropriated and budgeted for the action in question; commit an agency to seek a particular appropriation or budget authorization; divest an agency of discretion committed to the agency by statute or the Constitution; or otherwise afford relief that the court could not enter under its own authority.

Duo Of House Bills Seeks To Reform Renewable Fuel Standard: Representative Bob Goodlatte (R-VA) on February 4, 2015, introduced a pair of bills intended to alter the Renewable Fuel Standard (RFS): the RFS Elimination Act (H.R. 703) and the RFS Reform Act (H.R. 704). The RFS Elimination Act eliminates the RFS and makes ethanol compete in the free market. The bipartisan RFS Reform Act, which eliminates corn-based ethanol requirements, caps the amount of ethanol that can be blended into conventional gasoline at 10 percent, and requires EPA to set cellulosic biofuels levels at production levels. The RFS mandates that 36 billion gallons of renewable fuels be part of the nation's fuel supply by 2022. Almost all of this is currently being fulfilled by corn ethanol. Both the RFS Elimination Act and the RFS Reform Act will be referred to the House Energy and Commerce Committee.

Senate Bills Seek To Protect Drinking Water From Microcystin Contamination And Algal Blooms: Following the water crisis that disrupted the water supply of approximately 500,000

people in Northwest Ohio in early August 2014, on February 11, 2015, Senators Sherrod Brown (D-OH) and Rob Portman (R-OH) renewed their efforts to protect the safety of drinking water in Ohio. The Safe and Secure Drinking Water Act (S. 462) -- developed in response to the high microcystin levels in the Western Lake Erie basin -- will direct EPA to publish a health advisory and submit reports on what level of microcystin in drinking water is expected to be safe for human consumption. The Senate unanimously passed this same bill in December 2014, but the House failed to pass it before the end of the 113th Congress. Microcystin is a byproduct of blooming algae in freshwater bodies. There is no federal limit on the level of microsystin in drinking water, so cities and water plant operators currently rely on the World Health Organization's suggestion of one part per billion or less. The legislation would require EPA to act on interim measure, an advisory that would help inform and educate local and state officials, as it continues to work on a federal mandate. Representative Marcy Kaptur has introduced companion legislation in the House (H.R.243). Portman and Brown also on February 11, 2015, introduced the Drinking Water Protection Act (S. 460), which would require EPA to develop and report to Congress a strategic Algal Toxin Risk Assessment and Management Plan within 90 days. The Plan will evaluate the risk to human health from drinking water provided by public water systems contaminated with algal toxins and recommend feasible treatment options, including procedures and source water protection practices, to mitigate any adverse public health effects of algal toxins. Representative Bob Latta (R-OH) introduced a similar version in the House.

House Bill Would Ban EPA From Issuing CWA Permits For Pesticide Applications: Representative Bob Gibbs (R-OH) on February 12, 2015, introduced legislation that would ban EPA from requiring CWA permits for the spraying of pesticides at or near bodies of water. The Reducing Regulatory Burdens Act of 2015 (H.R. 897) specifically prohibits EPA from issuing National Pollutant Discharge Elimination System (NPDES) permits for any pesticides that already are authorized for sale, distribution, or use under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The bill would amend both the CWA and FIFRA. Gibbs chairs the House Infrastructure Subcommittee on Water Resources and Environment and helped to ensure passage of an identical version of the legislation in the House in July 2014. Given the Republican majority in the House, the bill's passage by that body seems likely.

MISCELLANEOUS

EPA Seeks Comment On E-Enterprise For The Environment Portal: On January 26, 2015, EPA Office of the Chief Financial Officer requested comment on the development of an E-Enterprise for the Environment portal and announced three public meetings in the form of Internet webinars. 80 Fed. Reg. 3962. E-Enterprise is, according to EPA, a transformative 21st-century strategy for rethinking how government agencies deliver environmental protection in the United States. The portal, a website that functions as a point of access to information and tools, provides consolidated entry points for businesses and citizens to efficiently locate, obtain access to, and interact with relevant EPA, state, and tribal environmental programs and resources. The

goal is to reduce regulatory burden and optimize information technology resources across government entities. More information is available at www2.epa.gov/e-enterprise/e-enterprise-portal. EPA seeks comment on the value of establishing a portal and the functions that it should provide. EPA will host a series of webinars for the public to learn about the portal, ask questions, and learn how to provide comments. While open to any participants, the first webinar on **February 19, 2015**, will be oriented towards states and other co-regulators; the second webinar on **February 23, 2015**, will be for the regulated community; and the third on **March 5, 2015**, will be aimed at the general public. Webinars will be held on **February 19, 2015**, **February 23, 2015**, and **March 5, 2015** from 1 p.m. to approximately 3 p.m. Eastern Time. Comments are due by **April 26, 2015** (90 days after publication in the *Federal Register*).

ATSDR Makes Available Final Toxicological Profiles: On February 9, 2015, the Agency for Toxic Substances and Disease Registry (ATDSR) made available final Toxicological Profiles Toxaphene and Trichlorobenzene. 80 Fed. Reg. 6971.

ATDSR Announces Development Of Toxicological Profiles: On February 12, 2015, ATDSR announced the development of Set 28 Toxicological Profiles. 80 Fed. Reg. 7870. Set 28 Toxicological Profiles consists of one updated profile and three new profiles. These profiles will be available to the public on or about **October 17, 2015**.

Name	CAS
Antimony (UPDATE)	7440-36-0
Glyphosate	1071-83-6
2-4, Dichlorophenoxyacetic acid	94-75-7
Silica	7631-86-9