

environmental lawflash

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Is EPA Setting Its Sights on Hydraulic Fracturing Compounds?

Agency implements rule requiring companies to disclose information regarding the use of certain industrial chemical substances commonly used in natural gas and oil well drilling.

On May 9, the U.S. Environmental Protection Agency (EPA) issued a Direct Final Rule¹ identifying 15 chemical substances² that will require notice prior to manufacturing, importing, or processing for an activity designated as a significant new use. These chemicals were flagged pursuant to the Toxic Substances Control Act (TSCA) significant new use rules (SNURs). The notices, referred to as Significant New Use Notices (SNUNs), must be submitted to EPA 90 days before a listed chemical is manufactured, imported, or processed for an activity designated as a significant new use. EPA states that this will provide the agency with an opportunity to evaluate the intended use and determine whether it is necessary under TSCA to prohibit or limit the activity before it occurs.

While chemicals in the rule include those that can be employed in a broad range of uses, of particular interest is the listing of one compound³ used in natural gas and oil well drilling and hydraulic fracturing to eliminate bacteria in the water that produce corrosive by-products. EPA included this compound due to its potential toxicity to aquatic life at concentrations above 11 parts per billion (ppb). Pursuant to the Direct Final Rule, 40 C.F.R. Part 721, Subpart E [Significant New Uses for Specific Chemical Substances] is expected to be amended to include section 721.10666, which would require reporting and associated recordkeeping obligations for the following significant new uses of this compound:

- Industrial, commercial, and consumer activities other than as described in the original premanufacture notice (PMN) for this substance (PMN P-12-437)
- Release to water resulting in surface water concentrations exceeding 11 ppb

EPA also recommended additional testing to help characterize the fate and environmental effects of the substance.

1. View the Direct Final Rule at <https://www.federalregister.gov/articles/2013/05/09/2013-11061/significant-new-use-rules-on-certain-chemical-substances>.

2. The chemical substances and associated PMNs subject to this Direct Final Rule are as follows:

- Methylenebis[isocyanatobenzene], polymer with alkanedioic acid, alkylene glycols, alkoxyated alkanepolyol, and substituted trialkoxysilane (generic). PMN No. P-11-60.
- Acetaldehyde, substituted-, reaction products with 2- butyne-1, 4-diol (generic). PMN No. P-11-204.
- Functionalized multi-walled carbon nanotubes (generic). PMN No. P-12-44.
- Alkenedioic acid dialkyl ester, reaction products with alkenoic acid alkyl esters and diamine (generic). PMN Nos. P-12-408, P-12-409, P-12-410, P-12-411, P-12-412, and P-12-413.
- 2-Propenoic acid, (2- ethyl-2-methyl-1,3-dioxolan-4-yl)methyl ester. PMN No. P-12-414.
- Quaternary ammonium compounds, bis(fattyalkyl) dimethyl, salts with tannins (generic). PMN No. P-12-437.
- Slimes and sludges, aluminum and iron casting, wastewater treatment, and solid waste. PMN No. P-12-560.
- Trisodium diethylene triaminepolycarboxylate (generic). PMN No. P-13-18
- Tertiary amine alkyl ether (generic). PMN No. P-13-78.
- Bromine, manufacture of, by-products from, distillation residues. PMN No. P-13-108.

A generic name was provided if the specific chemical substance named was claimed as confidential business information.

3. The "quaternary ammonium compounds, bis(fattyalkyl)dimethyl, salts with tannins (generic)."

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This is in line with EPA's declared intent to use TSCA to require companies to disclose information regarding chemical substances and mixtures used in hydraulic fracturing. However, it has been nearly two years since the agency, partly in response to a petition filed by Earthjustice, stated that it would propose rules to require certain reporting requirements for chemicals used in hydraulic fracturing.

Under TSCA, SNUNs must contain the following:

- Common or trade name of the chemical substance
- The chemical identity and molecular structure of the chemical substance
- The categories or proposed categories of use
- The total amount of each chemical substance manufactured or processed per category or use
- A description of by-products resulting from the manufacture, processing, use, or disposal of each such chemical substance or mixture
- All existing data concerning the environmental and health effects of the substance
- Estimates of the number of people exposed in their places of employment and the duration of such exposure
- Changes in disposal methods
- Any test data in the possession or control of the person giving the notice that is prescribed by EPA

Accordingly, while this rule does not implement a broad reporting requirement for hydraulic fracturing chemicals, it points to the likelihood of increased reporting for these substances. What is unclear, for the moment, is whether this new rule is a stopgap measure or a preview to a comprehensive proposal for TSCA reporting requirements for hydraulic fracturing chemicals.

The rule is effective on July 8, 2013, unless written "adverse or critical" comments on any of the SNURs, including potential alternatives and likely financial burdens, are received on or before June 10, 2013. Those chemical substance(s) and new use that receive comments or notice of intent to comment will be withdrawn before the effective date and a proposed SNUR for the specific chemical substance will be issued with a 30-day comment period. For purposes of judicial review, the rule is promulgated on May 23, 2013.

The rule highlights the need for firms using TSCA-listed chemicals for new and innovative technologies to bear in mind the PMN and SNUR implications for their applications. Additionally, the hydraulic fracturing industry should carefully watch for potential regulation of additional substances used in fracturing fluids.

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