



TSCA Update: EPA Creates New Restrictions

Today's Presenters



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Agenda

1. Intro to Assent Compliance
2. Five Commonly Used Substances In Scope of TSCA Section 6 Restrictions, Including PIP 3:1
3. Supply Chain Risks Posed by the New Rules
4. The EPA Update & New Timeline for Compliance
5. Questions & Answers

Introduction TO ASSENT

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Feature Presentation

TSCA Has Become “U.S. REACH”

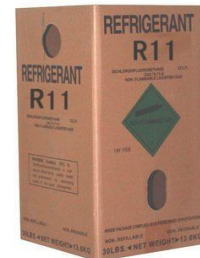
The U.S. Congress Recast TSCA in 2016

- The **Toxic Substances Control Act of 1976** (TSCA) allows the Environmental Protection Agency (EPA) to comprehensively manage chemicals in U.S. commerce.
 - The EPA uses Section 6 of TSCA to ban the use of existing substances.
- TSCA was recast by Congress as the “Lautenberg Chemical Safety Act” in 2016.
 - Mandated the evaluation of 84,000 existing chemicals.
 - Requires the development of risk-based chemical assessments.
 - Provided the EPA with additional funding for surveillance and enforcement.
- **The recent risk management rules for five persistent, bioaccumulative, and toxic (PBT) chemicals are the first of many under TSCA.**
 - The EPA’s five-year plan envisions eight new chemical restrictions per year.

What Substances Had EPA Restricted?

Between 1976–2020, the EPA Restricted Nine Substances or Substance Families Under TSCA

- Asbestos (mineral fibers)
- Lead (in paint)
- PCBs (polychlorinated biphenyls)
- Dioxins (e.g. Agent Orange)
- Chlorofluorocarbons (ozone-depleting substances)
- Elemental mercury (in consumer products)
- Formaldehyde (from composite wood)
- Nitrites (in cutting fluids)
- Hexavalent chromium compounds
(in water treatment)



EPA Published Five Final Rules on January 6, 2021

Rulings Impact Substances, Mixtures & Articles Containing These Restricted Substances

Could you have existing compliance data?

- [PIP 3:1](#) Phenol, isopropylated phosphate (3:1), CAS 68937-41-7
 - Flame retardant and plasticizer
- [DecaBDE](#) Decabromodiphenyl ether, CAS 1163-19-5
 - Flame retardant
- [2,4,6 TTBP](#) 2,4,6-tris(tert-butyl)phenol, CAS 732-26-3
 - Antioxidant, lubricant, and fuel additive
- [HCBd](#) Hexachlorobutadiene, CAS 87-68-3
 - Hydraulic, heat transfer, or transformer fluid
- [PCTP](#) Pentachlorothiophenol, CAS 133-49-3
 - Plasticizer

	EU REACH	RoHS	Proposition 65
PIP 3:1	✗	✗	✗
DecaBDE	✓	✓	✗
2,4,6 TTBP	✗	✗	✗
HCBd	✗	✗	✓
PCTP	✗	✗	✗

Supplier Risk Scoping for Five PBTs

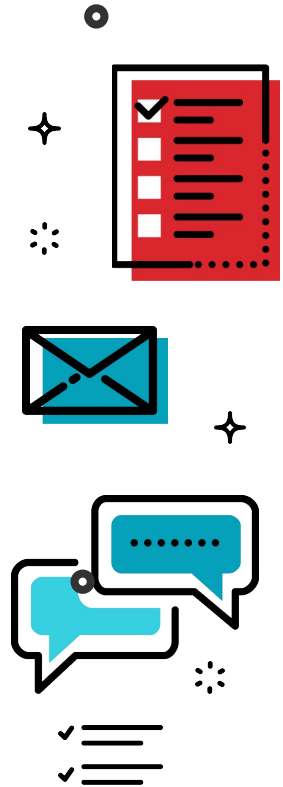
What Materials Are at Risk?

- Low risk:
 - Metals, alloys, surface treatments, platings
 - Paper, cardboard, corrugate
- High risk:
 - Electronic components, PCB boards
 - Electrical insulation, plastic enclosures
 - Power supplies, power cords, wiring harnesses
 - Vinyl cable jacketing and wire sheathing
 - Hydraulic fluids, cutting fluids, lubricants
 - Gaskets, seals, o-rings
 - Rubberized and plasticized components
 - Flame-retardant resins, thermoplastics



EPA Compliance Requirements

1. Companies must document the use of restricted substances in parts, materials, and products.
 - EPA requires three-year document retention.
2. Companies must proactively declare the presence of restricted substances to commercial customers.
3. Companies should evaluate supply chain risk for consumables and spare parts used for domestic operations that may contain these substances.
 - Example: Fork lifts (hydraulic fluid, gaskets, seals, etc.).



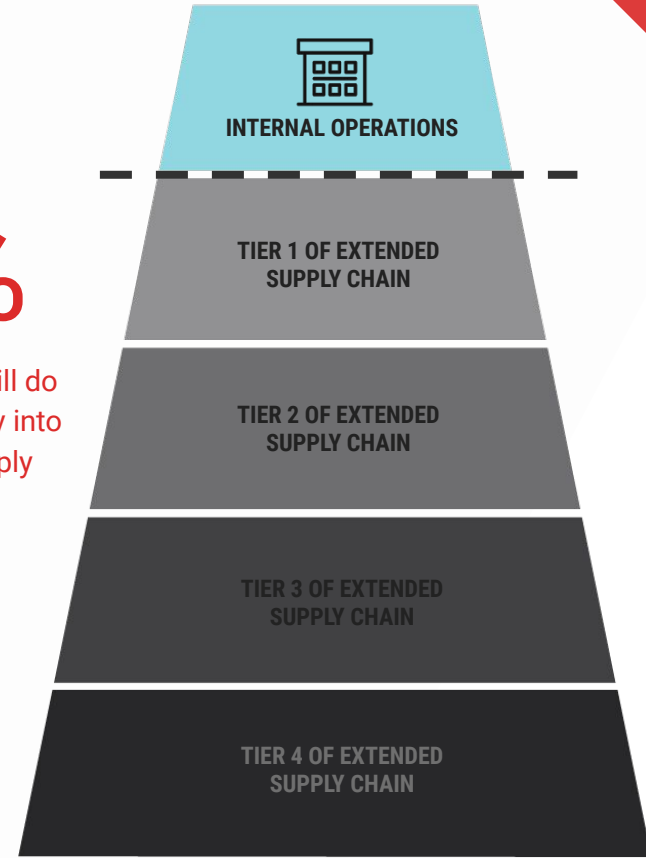
Supply Chain Is the #1 Business Risk

TSCA Impacts Each Layer of the Supply Chain

- Chemicals required for processes will be banned from the market.
- Parts containing chemicals or reliant on processing chemicals will no longer be sellable.
- Products containing restricted chemicals will no longer be sellable.
- Spare parts and existing machines that require servicing will have to be sunset or retrofitted to compliant parts/materials.

84%

of businesses still do not have visibility into risks in their supply chains while outsourcing the majority of their production.^{1,2}



¹ Bové, A. & Swartz, S. (2016, November 11). Starting at the source: Sustainability in supply chains. McKinsey & Company. <https://www.mckinsey.com/business-functions/sustainability/our-insights/starting-at-the-source-sustainability-in-supply-chains>

² E2open. (n.d.). Outsourcing Manufacturing: A 20/20 view. https://www.scmr.com/wp_content/e2open_wp_outsourcing_mfg_011316.pdf

Enforcement Timeline



Penalties & Market Loss

What Happens If I Ignore This?

EPA Imposes Largest Ever TSCA Penalty for Violation of Lead Paint Regulations



December 21, 2020

On December 17, 2020, the U.S. Environmental Protection Agency (EPA) announced that it had entered into a Consent Decree with Home Depot U.S.A., Inc., to resolve alleged violations of the EPA's Lead Renovation, Repair and Painting (RRP) Rule, 40 C.F.R. Part 745, at home renovation projects that Home Depot's installation contractors performed across the country. Under the Consent Decree, which was lodged with the U.S. District Court for the Northern District of Georgia, Home Depot will pay a **\$20.75 million penalty**, the largest civil penalty ever assessed for a settlement under the Toxic Substances Control Act; \$750,000 of the penalty will be paid to Utah, \$732,000 to Massachusetts, and \$50,000 to Rhode Island.

TSCA Violations

Another large penalty—over \$544,000—must be paid by a northern New Jersey business that specializes in the procurement of construction products from global supply chain networks. In April, the company submitted a voluntary disclosure through EPA's Central Data Exchange (CDX) system, which revealed it was not in compliance with the Toxic Substances Control Act (TSCA) Formaldehyde Standards for Composite Wood. While the violations were self-reported, the EPA determined that the company did not meet the conditions of the audit policy, and therefore the violations did not qualify for a penalty reduction.

There were also enforcement actions taken against 19 other companies for violations of TSCA, with penalties ranging from \$400 to \$25,000. Notably, 14 of these enforcement actions were issued for violations of TSCA Section 402(c) Lead Exposure Reduction Proposed Renovation and Remodeling Rule. With the *Federal Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts* published in December, it looks like there's a focus on lead paint-related violations by renovation companies.

- A person
 - Knowingly or willfully
 - Fails or refuses to comply with a regulation order, or inspection under 15 U.S.C. 2603-2606, 2610 (Control of Toxic Substances); 15 U.S.C. 2681-2689 (Lead Exposure Reduction) regarding a substance regulated under TSCA or AHERA.

Statute: 15 U.S.C. 2615(b)

Penalty:

- 1 year and/or up to \$50,000 per day violation

8-Figure Fine for CAA Violations

In September, the EPA announced that it reached a settlement with a major heavy equipment manufacturer for violating Title II (Emissions Standards for Moving Sources) of the Clean Air Act (CAA). From 2012 to 2015, the company stockpiled engines that met outdated emissions standards, which were installed in heavy construction equipment that it imported, marketed, and sold. During this period, the company allegedly introduced at least 2,269 illegal diesel nonroad vehicles into the U.S. market.

While a \$1.95 million criminal fine has already been imposed by the justice department, look for this \$47 million civil penalty to be finalized in the coming months.

ENFORCEMENT AND INSPECTION

EPA Deals Out Big Fines in Q3

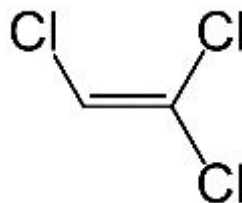
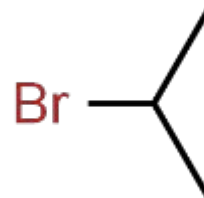
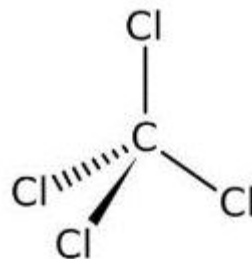
By EHS Daily Advisor Staff | Oct 10, 2019 | Enforcement and Inspection

In Q3, the U.S. Environmental Protection Agency (EPA) finalized 158 settlement agreements with companies small and large across the United States. There was a definitive increase in enforcement actions, with only 106 penalties issued in the previous quarter. Here we highlight some of the biggest fines.

Draft Risk Management: First 10 Chemicals

Draft risk management rules expected 12 months after the issuance of the final risk evaluation — that means by the end of 2021 or early 2022.

- 1,4-Dioxane
- 1-Bromopropane (1-BP)**
- Asbestos, chrysotile
- Carbon Tetrachloride**
- Cyclic Aliphatic Bromide Cluster (HBCLD)** — **4Q2021?**
- Methylene Chloride (MeCl)**
- N-Methylpyrrolidone (NMP)** — **1Q2022?**
- Pigment Violet 29 (PV29) — **4Q2021?**
- Trichloroethylene (TCE)
- Tetrachloroethylene (Perc)



**Final risk evaluation includes electronics-related conditions of use.

<https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-existing-chemicals-under-tsca>

References

[EPA Restriction of PBT chemicals under TSCA Section 6\(h\)](#) — January 6, 2021

- ▶ [PIP 3:1](#)
- ▶ [DecaBDE](#)
- ▶ [2,4,6 TTBP](#)
- ▶ [HCBD](#)
- ▶ [PCTP](#)

[EPA No-Action Assurance regarding PIP 3:1](#) — March 8, 2021

[EPA Announces Plan for New Rulemaking on PBT Chemicals, Extends Existing Compliance Date to Protect Supply Chains](#) — September 3, 2021

[EPA Proposes to Extend the Compliance Date for PIP \(3:1\) in Articles until October 31, 2024](#) — October 28, 2021

Budget for Compliance

Budgeting for compliance is a complicated task, and the sooner you begin, the more likely you are to get executive buy-in.

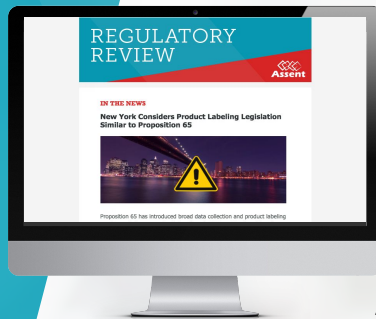
It takes most teams up to six months to figure out their budget and submit it for approval. Assent will help you understand what you should be budgeting for ahead of time — and how much we can help you save.

Book your demo now:
assentcompliance.com/demo



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Questions?