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Daily News

Environmentalists, Water Utilities Seek Changes In TSCA Framework Rules

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Environmental groups and water utility officials are looking for changes in the framework rules due for finalization June 22 that will implement the reforms to the Toxic Substances Control Act (TSCA) as signed into law last summer, with environmentalists fearing industry influence and utilities looking for EPA to describe an approach to prioritization.

While the law requires EPA to consider proximity to drinking water sources when prioritizing chemicals for risk evaluation, the draft version of the prioritization rule released in January for public comment did not include implementation language. Such a provision in the final rule would be novel, an industry source tells *Inside EPA*.

"It's part of prioritization [in the TSCA reform law] but EPA never said how they'd do it," the source says. How to implement the concept is more challenging than it may appear, the source adds. "From a surface water perspective, you can do the geographic proximity . . . but how do you deal with aquifers? It becomes very complicated."

EPA staff have been working to meet a series of deadlines laid out in the TSCA reform act, which requires the agency to establish a process for and begin assessing existing chemicals, those that were on the market when the original TSCA was enacted in 1976. The three framework rules establishing how EPA will update the TSCA inventory of existing chemicals, prioritize those chemicals for assessment and evaluate them are statutorily required to be finalized by the reform law's first anniversary -- June 22.

The reform law's passage regarding prioritization, TSCA section 6(b)1(A), states that EPA must formulate by rule "a risk-based screening process, including criteria for designating chemical substances as high-priority substances for risk evaluations or low-priority substances for which risk evaluations are not warranted at the time."

The statute then lays out a series of conditions EPA must consider in the screening process, including "consideration of the hazard and exposure potential of a chemical substance or a category of chemical substances (including consideration of persistence and bioaccumulation, potentially exposed or susceptible subpopulations and storage near significant sources of drinking water), the conditions of use or significant changes in the conditions of use of the chemical substance, and the volume or significant changes in the volume of the chemical substance manufactured or processed."

The prioritization and evaluation rules are undergoing White House Office of Management and Budget (OMB) review before their final release. The third rule, the inventory update

rule, has been exempted from this review because it was deemed not significant. EPA officials say they are confident the rules will be finalized by June 22.

Source Water Protection

In comments on the draft prioritization and evaluation rules, the American Water Works Association (AWWA), which represents drinking water utilities, explains in March 13 comments the importance of protecting drinking water sources and suggests approaches EPA could take to address the proximity requirement.

“Accidental spills and releases into surface and groundwater sources are a continuing hazard for water systems. Even when water systems have access to high quality sources, chemical contamination through spill events and incremental contributions through chemical use and/or disposal place the public’s health at risk,” AWWA says. “To date, the burdens of removing harmful chemicals from drinking water rests on water utilities. Pollution prevention is a more sustainable long-term solution with a lower cost as compared to the high cost of treatment or contaminant removal.”

The group recommends that EPA use the opportunity provided by TSCA reform to “support source water protection to safeguard America’s drinking water supply.” The group urges the agency to consider defining the concept in the statute broadly, by, for example, including consideration of both groundwater and surface water sources and “the volumes of chemicals that are in transport via rail, barge and pipeline.”

AWWA also asks EPA to “consider” aquifers and water bodies that may in the future be drinking water sources, noting that “[f]resh water is an increasingly scarce resource.” The TSCA program should weigh the concerns managed through the Safe Drinking Water Act (SDWA) Underground Injection Control Program in both the prioritization and risk evaluation processes, AWWA says.

The group reminds EPA it will need to craft a way to collect information regarding chemical storage within source protection areas “to support chemical prioritization and subsequent chemical evaluation” but warns that collecting this data may be challenging. “At present consistent data is only available for petroleum products subject to risk management controls under the Clean Water Act section 311 Spill Prevention, Control, and Countermeasure (SPCC) requirements,” AWWA says.

Tier 2 reports required by the Emergency Planning and Community Right-to-Know Act (EPCRA) “may be the best available data for chemical prioritization,” the group adds. But because this data is held by states and is submitted to the state in multiple formats, aggregate analysis even at the local/regional level to support source water protection planning efforts is challenging, AWWA says.

Water Treatment

AWWA continues by recommending that EPA consider “source water protection criterion . . . throughout the risk evaluation process put forth in the proposed rule.” The group calls on EPA, among other things, to “remove chemicals in common water treatment processes from evaluation” because SDWA requirements already “assure that drinking water treatment safeguards the public from toxics.”

The group also asks that EPA “determine if there are any sampling methods available for the chemical in a water matrix. This would also include methods for remediation that could

be implemented to mitigate exposure during a potential response action. The absence of such information and methods was a significant limiting factor that impeded the timeliness of response to the Freedom Industries spill in Charleston, West Virginia [in 2014] that impacted the water supply of 300,000 residents. The risk evaluation process should take this into account when weighing the need to promulgate a risk management measure.” The National Association of Clean Water Agencies (NACWA), which represents wastewater utilities, raises similar concerns in its [March 20 comments](#) to EPA on the prioritization rule. The group suggests that EPA add to the final rule language “to address chemical risks that concern wastewater utilities. This language could be modeled on California’s Safer Consumer Product Regulations, which allows prioritization based on a chemical’s adverse effects on a utility’s effluent quality, wastewater treatment processes, and ability to reuse or recycle materials resulting from wastewater treatment, such as recycled water and biosolids. These factors could also be specifically addressed in the screening review process described in Section 702.7(c).”

NACWA also encourages EPA’s toxics office to develop a process for collaborating with the agency’s water office when prioritizing chemicals.

OMB Meetings

Several stakeholders have already met with OMB staff to lay out their cases for the changes they would like to see to the rules under review, which involves interagency review as well.

Representatives of the Environmental Working Group (EWG) met with OMB staff June 7, largely to discuss points made in the group’s written comments, an EWG source says. “We’re all going to be watching very closely. We and the rest of the [non-governmental organization (NGO)] community are fairly happy with the rules as proposed. One thing we did say is that we’ll be looking closely at any changes, to see if any are significant [enough] to request re-proposal,” the source says.

The source adds that EWG is concerned specifically about changes regarding how chemicals’ conditions of use are evaluated, because of industry comments.

EWG and other NGOs consider it important that EPA consider all conditions of use in prioritization and evaluation, but many industry representatives have argued that such an all-encompassing approach is impractical and cannot be conducted in a reasonable amount of time.

Similarly, the American Chemistry Council (ACC) met with OMB June 6. “We met with OMB to reiterate points from the comments we submitted to EPA regarding its proposed rules for prioritization and risk evaluation processes under the [2016] amendments to TSCA,” an ACC spokesman says.

And the Environmental Defense Fund (EDF) met with OMB regarding the framework rules June 12. An EDF official declined to comment on the meeting. -- *Maria Hegstad* (mhegstad@iwppnews.com)

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