TSCA TREATMENT OF BYPRODUCTS SENT FOR RECYCLING

Printed circuit board manufacturers have long been committed to sound environmental practices, including the recycling of byproducts to reduce waste and recover valuable metals. Current EPA reporting requirements related to TSCA, however, are forcing some printed circuit board manufacturers to reconsider whether recycling is too burdensome and, more importantly, too risky.

Existing TSCA regulations contain specific exemptions for byproducts, but the EPA's narrow interpretation and guidance over the past thirteen years has effectively eliminated any meaningful distinction between new chemical (products) and byproducts. EPA has interpreted TSCA's exemption of byproducts to apply only if the "chemical component" in the byproduct is removed through a process not involving a chemical reaction. In effect, this interpretation excludes the recycling of metals from the exemption, and instead treats metal-containing byproducts sent for recycling as new chemicals subject to the full regimen of TSCA regulation. Most significantly, this includes a Pre-Manufacture Notice (PMN), registration, and other requirements under Sections 5 and 6, as well as reporting and monitoring under Sections 8 and 12 and associated penalties or enforcement provisions.

The regulatory burden imposed by EPA's treatment of byproducts and sent for recycling and the regulatory risk that results discourages recycling without providing any additional protection of public health and the environment.

EPA has not demonstrated that TSCA registration and reporting of byproducts sent for recycling is needed to protect public health and the environment. For nearly thirty years of TSCA prior to 2003, EPA did not require reporting on inorganics because they were considered low risk. Based on industry questions about the utility of reporting inorganic byproducts sent for recycling, the 2011 final *CDR Rule* stated an intention to reexamine reporting requirements based on the data received during the 2012 reporting cycle, to identify whether some reporting could be eased or eliminated. IPC—through in-person meetings, letters and congressional testimony—has urged EPA to complete this analysis, but IPC has yet to see any such analysis demonstrating that collection of the data is needed.

TSCA reporting imposes a burden on manufacturers. In addition to reporting of byproducts required under RCRA and EPCRA, TSCA imposes an additional, cumbersome layer of reporting for manufacturers. Most printed circuit board manufacturers send byproducts for recycling *despite* the cost and *despite* the risk of regulatory fines for TSCA non-compliance. A typical printed circuit board factory has a database of well over 300 chemicals entries. Reporting under Section 8 requires generating very detailed information on chemical compounds or substances sent for recycling and how they may be processed by the recycler. One printed circuit board

manufacturer has determined that each TSCA report requires approximately 840 hours with an average of 64 hours per facility. The reporting also serves as a distraction from other important environmental and safety responsibilities.

The guesswork required to report byproducts sent for recycling under TSCA exposes manufacturers to considerable regulatory risk. TSCA reporting requires manufacturers to provide information best reported by recyclers. EPA's narrow interpretation bases the applicability of notification and reporting requirements on the recycler's actions, yet requires the byproduct generator to make this determination. When the generator sends the byproduct for recycling, the generator does not have the information needed to determine regulatory applicability, since they are simply sending the byproduct for recycling. Only the recycler knows for certain what chemical reactions (often safeguarded as a trade secret) will take place during the recycling process and how the resulting chemicals will be used in commercial and consumer markets.

Yet, a byproduct generator is required to report on this information and can be fined $37,500 per day for each chemical it fails to report fully and accurately. The average penalty in the past few years appears to be over $1M per company. This regulatory risk is the single biggest factor now forcing companies to reconsider their decision to recycle. Although the program office has suggested that a "best guess" is adequate, the risk of enforcement action forces companies to undergo far more burdensome and detailed data gathering and analysis.

TSCA reporting of byproducts sent for recycling is largely duplicative of reporting required from the recycler and by other environmental laws and OSHA statutes. TSCA reporting requires byproduct generators to provide information that serves the same purpose as reporting by recyclers. Much of the information about byproduct chemicals sent for recycling concerns similar chemical compounds to those reported by the recycler who uses the byproduct to manufacture a new product that is sold into the marketplace. IPC understands EPA's position that the form and content of the reporting are different under other reporting regimes (e.g. RCRA and EPCRA) and that these other reporting regimes require non-chemical manufacturers to submit data to different offices within EPA. We agree that there are differences in what, when and how the data is reported – that is why it is burdensome to submit what we refer to as a duplicative report. However, the essential information about what chemicals are present is the same as is the goal under these other statutes to protect public health and the environment.

Congress itself has required EPA to reduce the reporting burden on byproducts sent for recycling. In 2016, as part of the Frank R. Lautenberg Chemical Safety Act, IPC persuaded Congress to amend Section 8(a) of TSCA to add a new paragraph (6), which requires the EPA Administrator to finalize within three and a half years a negotiated rulemaking "limiting the reporting requirements, under this subsection, for manufacturers of any inorganic byproducts, when such

byproducts, whether by the product manufacturer or by any other person, are subsequently recycled, reused, or reprocessed." Beginning in late 2016, EPA organized a negotiated rulemaking committee, but that committee dissolved in 2017 without consensus and without progress in reaching the mandate set out by Congress.

SUMMARY CONCLUSION

TSCA treatment of byproducts recycling is a direct deterrent to efforts to promote recycling. Requiring PMNs for inorganic substances in byproducts that were exempt for nearly 30 years creates a significant risk of non-compliance for many byproduct generators that choose to send their byproducts for recycling. The TSCA inventory lists several entities for the same chemical substance due to inconsistencies in naming nomenclature. The potential liability imposed by any failure to properly comply with the oftentimes complex and confusing TSCA requirements forces companies to continually evaluate whether they should continue to recycle.

IPC would like to work with EPA to address these concerns as we have sought to do for more than 15 years. In the past, IPC has proposed three potential solutions:

1. Eliminate reporting for inorganic byproducts sent for recycling;
2. One-time reporting for inorganic byproducts sent for recycling (as opposed to every four years); and
3. Eliminate reporting for inorganic byproducts sent for recycling already reported under TRI and RCRA.

We appreciate that other options exist and we would like to find the right solution as EPA seeks to minimize reporting burdens across all EPA offices.

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