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Sent: 5/26/2017 8:54:23 PM
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Subject: Follow-up to Today's Meeting

Thanks for a constructive discussion today.

Because we were all uncertain about the exact wording of the relevant statutory provisions, I went back to check the law and thought it would be helpful to provide the actual language:

Section 6(b)(4)(A) states as follows:

(4) RISK EVALUATION PROCESS AND DEADLINES.— (A) IN GENERAL.—The Administrator shall conduct risk evaluations pursuant to this paragraph to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use.

As you can see, the Administrator has discretion to identify the “potentially exposed or susceptible subpopulations” considered in the risk evaluation, but there is no comparable provision allowing her to identify “the “conditions of use” to be considered. Thus, the determination of unreasonable risk must be under “the conditions of use” in their entirety, with no ability to pick specific uses for evaluation and exclude others.

More detail on the elements of risk evaluations is provided in subparagraph (4)(F)(i), which provides that risk evaluations must –

integrate and assess available information on hazards and exposures for the conditions of use of the chemical substance, including information that is relevant to specific risks of injury to health or the environment and information on potentially exposed or susceptible subpopulations identified as relevant by the Administrator;

Again, the provision recognizes the Administrator’s ability to identify vulnerable populations, but directs her to compile and assess information on hazards and exposure “for the conditions of use of the chemical substance.” There is no indication that the Administrator can decide to assess only a subset of the conditions of use.

The definition of “conditions of use” in section 3(4) states that –

(4) The term ‘conditions of use’ means the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.

This wording recognizes the role of the Administrator in “determining” which activities involving a chemical comprise “conditions of use” but there is no indication that, having identified “the conditions of use” of a chemical, the Administrator can then exclude some of these conditions from the scope of a risk evaluation under section 6(b)(4)(A). Moreover, in making determinations of a chemical’s conditions of use, the Administrator must select all use conditions

which she finds are “intended, known or reasonably foreseen” in the course of the chemical’s manufacture, processing, distribution in commerce, use or disposal. It is clear that uses that are not “intended” by the manufacturer but whose occurrence is “known” or “reasonably foreseen” fall within the definition.

Hope this helps and, again, thank you for meeting with us.

Best – BOB

Robert M. Sussman

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