

TOXIC SUBSTANCES REGULATION (TSCA)

OVERVIEW

BCLP recognizes that for many of our clients, particularly those in the chemical manufacturing industry, TSCA regulation of the client's business and its products not only can have a great impact on the client, but can also impact the client's customers. Our TSCA representation has run the gamut from enforcement defense to preparation of company compliance guidance to regulatory advocacy. We have advised clients on numerous TSCA issues such as Section 4 Test Rules, pre-manufacture notification (PMN) requirements and exemptions (research and development, food and drug, articles, polymers, non-isolated intermediates, etc.), import and export requirements, Significant New Use Rules (SNURs), inventory update reporting, substantial risk reporting under Section 8(e), CAIR reporting and PCB issues including remediation, reporting and obtaining regulatory exemptions for manufacturing of PCBs.

MEET THE TEAM



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RELATED PRACTICE AREAS

- Energy Transition

EXPERIENCE

- Leading a comprehensive TSCA audit of over fifty manufacturing facilities throughout the US. The audit identified numerous TSCA compliance issues and resulted in several submissions to EPA Headquarters under EPA's Audit Policy. No penalty was imposed as a result of the submissions.
- Negotiating settlements with EPA. For example, after purchasing the assets of a chemical adhesives manufacturing business, one of our client discovered that several of the substances manufactured in the production process were not listed on the TSCA Inventory, resulting in the shut down of the entire plant. We were able to negotiate a settlement with EPA, allowing our client to distribute back inventory to its customers, commence production and avoid losses of tens of thousands of dollars per day.
- Negotiating a Section 5(e) Consent Order with EPA to allow our client to import certain products with minimal restrictions.
- Advising clients on how to handle TSCA violations discovered during an internal audit. For example, during an internal audit, one of our clients discovered it had imported several

chemical substances over a two year period which were not on the TSCA Inventory. We advised the client and disclosed the violations to EPA with no resulting penalty.

- Defending a client against a TSCA Inventory Update enforcement action filed by EPA and were able to negotiate a reduction in the gravity-based penalties by over 80%.
- Preparing the legal guidelines for conducting the audit of information required by the TSCA 8(e) CAP for a major chemical manufacturer and provided all legal counsel in the conduct of the audit.
- Preparing procedures that streamlined a chemical company's TSCA 8(e) committee's processing of toxicological information and yet retained the liability protection afforded a TSCA 8(e) committee.
- Negotiating amendments to a Section 5(e) Order which the client has been operating under for a number of years. Under the new order, the client is able to eliminate expensive treatment and sampling requirements.
- Representing a major mining company in an internal corporate investigation under TSCA to determine whether employees had illegally buried PCB items at one of the company's mines. We structured and then conducted the investigation, which determined that the 15 present and former employees in four states had engaged in no wrongdoing.

RELATED INSIGHTS

Insights

Feb 20, 2020

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