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EPA PROPOSES BAN OF OZONE-DEPLETING SUBSTANCE, CHLOROBROMOMETHANE

Introduction

The U.S. Environmental Protection Agency (“EPA”) yesterday proposed a rule to ban the production and importation of chlorobromomethane (“CBM”), an ozone-depleting substance. See 67 Fed. Reg. 65,916 (Oct. 29, 2002) (the “Proposal”). Among other things, CBM is used to manufacture pharmaceutical products, water treatment chemicals, and a biocide. Comments on the Proposal are due November 29, 2002.

Background

EPA published the Proposal pursuant to the Clean Air Act (“CAA” or “Act”) and the Montreal Protocol on Substances that Deplete the Ozone Layer (“Protocol”). To date, 183 countries have ratified the Protocol, including the United States. The Protocol aims to phase-out substances that impact the ozone layer, *i.e.*, “ozone-depleting substances.” The CAA requires EPA to implement the requirements of the Protocol in the United States.

The Proposal

In 1999, the Parties to the Protocol agreed to the so-called “Beijing Amendments,” including a ban on CBM. Consistent with these amendments, EPA is proposing to list CBM as an ODS under the Act. That listing triggers a ban on CBM’s production and importation in the United States, subject to certain exceptions. EPA proposes the ban to take effect thirty days after publication of the final rule. Notably, the ban would not affect a company’s ability to use existing stockpiles of CBM that were manufactured or imported before the ban’s effective date.

Potentially Broader Significance of the Proposal to the Regulated Community

The Proposal might be of interest to companies that manufacture, use, or import other ODSs. CBM was targeted for regulation to prevent the development of a “significant future market” in the substance. 67 Fed. Reg. at 65,920. Other ODSs could similarly be targeted if the Protocol Parties or EPA perceives that the market for the ODS could increase significantly.

The Proposal also might be of interest because of its discussion of the “process agent” exemption. Notwithstanding the production/importation ban, a company may continue to manufacture or import ODSs used as process agents, *i.e.*, chemicals that can facilitate an intended chemical reaction and/or inhibit an unintended chemical reaction. The Proposal

provides a helpful discussion of the Agency's views on the process agent exemption. *See* 67 Fed. Reg. at 65,919.

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