

# TEXAS ENVIRONMENTAL UPDATE



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## TEXAS DEVELOPMENTS

### **Sunset Commission Issues Staff Report on TCEQ**

The Sunset Advisory Commission issued the Staff Report on its review of the Texas Commission on Environmental Quality ("TCEQ") on November 18, 2010. Regarding review of TCEQ, the report notes the following eight "issues" and associated "key recommendations":

#### **Issue 1: Texas Has a Continuing Need for the TCEQ.**

Key Recommendations:

- Continue the TCEQ for 12 years.
- Transfer the authority for making groundwater protection recommendations regarding oil and gas activities from TCEQ to the Railroad Commission.

#### **Issue 2: TCEQ's Public Assistance Efforts Lack Coordination and Focus.**

Key Recommendations:

- Charge the Executive Director with providing assistance and education to the public on environmental matters under the agency's jurisdiction.
- Focus the Office of the Public Interest Counsel's ("OPIC's") efforts on representing the public interest in matters before the Commission.
- Require the Commission to generally define, by rule, factors OPIC will consider in representing the public interest and establish OPIC's priorities in case involvement.

#### **Issue 3: TCEQ's Approach to Compliance History Fails to Accurately Measure Entities' Performance, Negating Its Use as an Effective Regulatory Tool.**

Key Recommendations:

- Remove the uniform standard from statute and require the Commission to develop a compliance history method to be applied consistently.
- Remove the requirement to assess the compliance history of entities for which TCEQ does not have adequate compliance information.
- Expand the statutory components to allow TCEQ to consider other factors in evaluating compliance history.

#### **Issue 4: TCEQ's Enforcement Process Lacks Public Visibility and Statutory Authority.**

Key Recommendations:

- Require the Commission to structure its general enforcement policy in rule and publicly adopt its resulting enforcement policies.
- Increase TCEQ's administrative penalty caps.
- Authorize TCEQ to assess administrative penalties for dam safety violations.

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- Authorize TCEQ to consider Supplemental Environmental Projects for local governments that would improve the environment.

**Issue 5: TCEQ Does Not Have the Tools Necessary to Effectively Protect Surface Water Availability During Drought or Emergency Conditions.**

Key Recommendations:

- Clarify the Executive Director's authority to curtail water use in water shortages and times of drought.
- Require water rights holders to maintain monthly water-use information and allow the Commission to access that information upon request.
- Authorize TCEQ to require implementation of drought contingency plans during times of a potential water shortage.
- Require TCEQ to evaluate the need for additional watermaster programs.

**Issue 6: Gaps in Petroleum Storage Tank ("PST") Regulation and Remediation Fee Expiration Threaten the State's Ability to Clean Up Contaminated Sites.**

Key Recommendations:

- Require previous tank owners or operators to share responsibility, as appropriate, for contamination from leaking PSTs.
- Prohibit delivery of certain petroleum products to uncertified tanks and provide for administrative penalties.
- Reauthorize the PST remediation fee, change the current fee levels to caps, and authorize the Commission to set fees in rule.
- Expand use of the remediation fee to allow TCEQ to remove non-compliant PSTs that pose a contamination risk.

**Issue 7: TCEQ Lacks Guidance on How to Fund the Texas Low-Level Radioactive Waste Disposal Compact Commission.**

Key Recommendation:

- Clarify the Compact Commission's funding mechanism.

**Issue 8: The Statutory Cap on Emissions Limits TCEQ's Ability to Adequately Fund the Title V Air Permit Program.**

Key Recommendation:

- Authorize TCEQ to administratively adjust the annual emissions tonnage cap for the Air Emissions Fee when necessary to adequately fund the Title V Operating Permit program.

The report also contains a section entitled "**Water and Wastewater Utility Regulation Transfer Supplement to the Sunset Staff Report on PUC**" which includes the Sunset Commission staff's determination that Texas could benefit from combining regulatory functions related to gas and water utilities in the Public Utility Commission ("PUC"). The key recommendations associated with that determination are:

- Transfer responsibility for regulating water and wastewater rates and services from TCEQ to PUC.
- Eliminate the existing water and wastewater utility application fees and adjust the Water Utility Regulatory Assessment Fee to pay for utility regulation at PUC.
- Require the Office of the Public Utility Counsel ("OPUC") to represent residential and small commercial interests relating to water and wastewater utilities, contingent on the transfer to PUC.

Finally, the report also addresses the Sunset Commission staff's review of the **On-site Wastewater Treatment Research Council**. From this review the Staff Report notes one issue: that Texas does not need a separate, stand-alone council to fund on-site sewage research. Associated with this issue, the report provides the following key recommendation: that the On-site Wastewater Treatment Research Council be abolished and that authority to award grants for on-site sewage research be transferred to TCEQ.

The Staff Report contains detailed discussion of each of the above-listed issues along with additional information about the TCEQ. A copy of the Staff Report and information about the Sunset review process is available at <http://www.tceq.state.tx.us/agency/sunset/>.

### **EPA Issues Opinion Letter to TCEQ that Alterations Are Improper De-Flexing Mechanism**

In the latest missive in the ongoing Texas flexible air permitting program "de-flexing" controversy, on November 1, 2010, EPA Region VI sent TCEQ a letter denouncing the use of the Texas "permit alteration" procedure as a mechanism for converting flexible New Source review ("NSR") air permits into State Implementation Plan ("SIP")-approved NSR permits (available at [www.bdlaw.com/assets/attachments/ltr-to-mvickory-11-1-10.pdf](http://www.bdlaw.com/assets/attachments/ltr-to-mvickory-11-1-10.pdf)). EPA's primary objection is that there is no way to determine whether the conditions for using an alteration can be met (e.g., no change in method of emissions control, no change in the character of emissions and no increase in emissions rate) absent a look-back of permit operations under the flexible permit. EPA also objects that the mechanism fails to include public participation that EPA believes is required for de-flexing. TCEQ has not responded to the letter. Almost all flexible permit holders received offer to confer letters from EPA in September requesting that they meet with EPA to go over their plans for de-flexing.

### **Texas State Implementation Plan Developments**

November was another busy month for the Texas State Implementation Plan, with the following actions taken by TCEQ and EPA.

On November 18, 2010, the Texas Commission on Environmental Quality ("TCEQ") commissioners approved the TCEQ Executive Director's recommended designation recommendation for the 2010 primary one-hour nitrogen dioxide (NO<sub>2</sub>) national ambient air quality standard ("NAAQS"). The U.S. Environmental Protection Agency ("EPA") adopted a new one-hour NO<sub>2</sub> standard effective April 12, 2010. TCEQ's recommendation proposes an attainment designation for all areas in Texas currently monitoring the one-hour NO<sub>2</sub> standard in Texas, and an unclassifiable/attainment designation for all other areas. TCEQ will submit the its recommendation to Governor Rick Perry for approval. EPA requested that states submit designation recommendations for this standard by January 11, 2011. EPA will finalize initial designations for all states in January 2012.

During November EPA published a number of Texas state implementation plan ("SIP")-related actions.

- EPA published withdrawal of its proposed limited approval and limited disapproval of Texas SIP revisions relating to public participation for air permits for new and modified sources that EPA had issued on November 26, 2008 (75 Fed. Reg. 68291, November 5, 2010). EPA took this action because TCEQ subsequently adopted new public participation rules and submitted those regulations to EPA as proposed SIP revisions on July 2, 2010.
- EPA issued a final rule regarding its proposal to partial approve and partially disapprove a SIP revision TCEQ submitted on January 23, 2006 about its 30 TAC Chapter 101 scheduled maintenance, startup and shutdown activities rules (75 FR 68989, November 10, 2010). Specifically, EPA finalized its proposed disapproval of provisions that provide for an affirmative defense against civil penalties for excess emissions during planned maintenance, startup, or shutdown activities and related provisions that contain nonseverable cross-references to the affirmative defense provision.

- In two Federal Register publications EPA proposed to approve portions of revisions to the Texas SIP that create and amend the Emissions Banking and Trading of Allowances (“EBTA”) Program (75 Fed. Reg. 69884, November 16, 2010; and 75 Fed. Reg. 69909, November 16, 2010). The EBTA Program is a cap and trade program designed to reduce emissions of oxides of nitrogen (“NOx) and sulfur dioxide (SO<sub>2</sub>) from participating electric generating facilities. TCEQ submitted the subject SIP revisions to EPA on January 3, 2000, September 11, 2000, July 15, 2002 and October 24, 2006.
- EPA proposed to disapprove severable portions of two SIP revisions that Texas submitted on May 1, 2001 and August 16, 2007, that created and amended the System Cap Trading (“SCT”) Program in 30 TAC Chapter 101, Subchapter H, Division 5 (75 Fed. Reg. 70654). EPA has proposed disapproval of the SCT Program based upon its finding that the program lacks a number of necessary emissions trading program components as outlined in EPA’s Economic Incentive Program Guidance.

On November 16, 2010, EPA determined that a portion of Collin County is not meeting the 2008 lead NAAQS. In October 2008, the EPA lowered the standard tenfold from its 1978 level of 1.5 micrograms per cubic meter to 0.15 micrograms per cubic meter. The final rule is expected to be published in the Federal Register later this year, and is expected to be effective December 31, 2010. EPA is issuing this and other designations for those areas for which pre-2010 monitoring network data are available. EPA will issue a second round of lead designations by October 15, 2011 for areas with newly-deployed monitors. Texas’ lead attainment demonstration SIP will be due to the EPA on June 30, 2012.

On November 9, 2010, TCEQ announced that it has indefinitely extended the deadline to provide comment on potential ozone nonattainment boundaries relating to EPA’s yet-to-be-proposed 2010 ozone NAAQS. Earlier this month EPA indicated that it will need until December 31, 2010 to complete its ongoing rulemaking and sign a final rule. TCEQ expects that the deadline to submit comments on potential resulting nonattainment boundaries will be a date two to three weeks after the new standards are promulgated. Additional information about EPA’s evaluation of the ozone NAAQS is available at <http://www.tceq.state.tx.us/implementation/air/aqps/eighthour.html>.

Additional information about Texas SIP developments is available on TCEQ’s “SIP Hot Topics” webpage at <http://www.tceq.state.tx.us/implementation/air/sip/Hottop.html>

### **Texas Low-Level Radioactive Waste Disposal Compact Commission Proposes Rules**

The Texas Low-Level Radioactive Waste Disposal Compact Commission (the Commission) recently published proposed rules (available at [www.bdlaw.com/assets/attachments/TR\\_publication\\_Subchp\\_B\\_101126.pdf](http://www.bdlaw.com/assets/attachments/TR_publication_Subchp_B_101126.pdf)) for comment that set forth the procedures and criteria for which exports and imports of low-level radioactive waste may be issued as well as fees for import. Texas participates in a Compact with Maine and Vermont and Texas is the Host State. The rules have been met with controversy and did not receive unanimous approval by the Commission. Critics argue that the proposed rules allow low-level radioactive waste from 36 other non-Compact states to be imported into Texas for disposal at a site that has not yet been issued a license, although licensure is anticipated by the end of the year. Comments are due on December 26, 2010. For more information, please go to <http://www.tllrwdcc.org/>

### **TCEQ Approves Proposed Environmental Flows Rules for Publication & Comment**

On November 3, 2010, the TCEQ commissioners approved for publication proposed rules for environmental flow standards for the Sabine and Neches Rivers and Sabine Lake Bay, and the Trinity and San Jacinto Rivers and Galveston Bay. The proposed rules were published in the November 19, 2010 Texas Register (35 Tex. Reg. 10168). The agency is proposing the rules pursuant to Texas Water Code Section 11.1471, which requires that

TCEQ adopt appropriate environmental flow standards for each river basin and bay system in the state. TCEQ is proposing the creation of new 30 Texas Administrative Code Chapter 298, Environmental Flows, with Subchapter A relating to the Sabine and Neches Rivers and Sabine Lake Bay; and Subchapter B relating to the Trinity and San Jacinto Rivers and Galveston Bay.

TCEQ will hold a public hearing on the proposal on December 16, 2010. The deadline for submitting comments is December 20, 2010. Standards for the above-listed river and bay systems must be adopted by June 1, 2011. Additional information about the proposal, including a link to the proposal itself, is available at [http://www.tceq.state.tx.us/permitting/water\\_supply/water\\_rights/eflows/rulemaking](http://www.tceq.state.tx.us/permitting/water_supply/water_rights/eflows/rulemaking).

### TCEQ Issues Oil & Gas Emissions Calculation Tool

TCEQ has issued a proposed tool for calculating emissions from sites involved in the production of oil and gas. The tool will be used to determine compliance with applicable permit by rule or standard permit emissions limits. TCEQ intends that the tool will be used by facility owners/operators to determine emissions based upon data available at the site with minimal outsourced assistance. TCEQ has requested that comments on the tool's accuracy and ease of use be submitted to TCEQ by the extended deadline of December 10, 2010. Additional information regarding this tool is available at <http://www.tceq.state.tx.us/permitting/air/announcements/nsr-announce-10-29-10.html>.

### TCEQ Seeks Comments on Draft Air Pollutant Watch List Protocol

TCEQ's Office of the Chief Engineer is requesting comments on a draft Air Pollutant Watch List ("APWL") protocol. The APWL is a list of geographic areas in Texas for which TCEQ has determined that specific air pollutant levels have been measured at levels of concern. The APWL serves a number of purposes, including to heighten awareness of such areas for interested persons (including TCEQ personnel, industry representatives and private citizens), and to encourage efforts and focus resources to reduce emissions in these areas. The draft APWL protocol outlines the framework that TCEQ will follow for APWL issues, including the listing and delisting of APWL areas. TCEQ has requested that comments on the draft protocol be submitted by January 24, 2011. The draft protocol and information on how to submit comments is available on TCEQ's APWL webpage at [http://www.tceq.state.tx.us/implementation/tox/AirPollutantMain/APWL\\_index.html](http://www.tceq.state.tx.us/implementation/tox/AirPollutantMain/APWL_index.html).

### Upcoming TCEQ Meetings and Events

- TCEQ will host a **Chapter 115 Control Techniques Guidelines ("CTG") Stakeholder Group meeting** in Austin on December 1, 2010 to provide information about the agency's volatile organic compound ("VOC") Reasonably Available Control Technology rule revision project and to solicit input on related issues. Topics on the agenda include an overview of the project, the technological and economic feasibility of the CTG recommendations, stakeholder input on implementation issues, stakeholder suggested alternatives to the recommended emission controls, and potential revisions to 30 TAC Chapter 115, Subchapter E, Divisions 2 and 3 (Surface Coating Processes and Flexographic and Rotogravure Printing). A video teleconference of this meeting will be available at TCEQ's Dallas-Fort Worth and Houston regional offices. TCEQ has requested that informal written comments on the topics discussed at this meeting be submitted by January 5, 2011. Additional information about this meeting is available at <http://www.tceq.state.tx.us/implementation/air/sip/Hottop.html>.
- On December 10, 2010, TCEQ will conduct an **air emissions fee rule stakeholder meeting** in Austin to provide information about the pending rulemaking regarding the air emissions fee rule in 30 Texas Administrative Code Section 101.27. TCEQ is revising that rule to ensure that adequate funds are generated to support the Title V permitting program. Additional information about this meeting is available at <http://www.tceq.state.tx.us/implementation/air/sip/Hottop.html>.

## TCEQ Enforcement Orders

TCEQ announcements for enforcement orders adopted in November can be found on the TCEQ website at [http://www.tceq.state.tx.us/comm\\_exec/communication/media/111810CommissionAgenda](http://www.tceq.state.tx.us/comm_exec/communication/media/111810CommissionAgenda) and [http://www.tceq.state.tx.us/comm\\_exec/communication/media/110310commissionersagenda](http://www.tceq.state.tx.us/comm_exec/communication/media/110310commissionersagenda).

## Recent Texas Rules Updates

For information on recent TCEQ rule developments, please see the TCEQ website at <http://www.tceq.state.tx.us/rules/whatsnew.html>.

## NATIONAL DEVELOPMENTS

### Senate TSCA Hearing Closes Out 111th Congress' Focus on TSCA

On October 26, 2010, Senator Lautenberg (D-NJ), Chairman of the Senate Environment and Public Works Committee's Subcommittee on Superfund, Toxics, and Environmental Health, led a field hearing at the University of Medicine and Dentistry of New Jersey in Newark entitled "Toxic Chemicals and Children's Environmental Health."<sup>1</sup> This hearing likely was the final step in what has been a two-year focus of both the House and Senate on overhaul of the Toxic Substances Control Act (TSCA). The prospects for TSCA legislation in the upcoming 112th Congress are uncertain in light of the November mid-term election results.

#### Earlier Developments

The 111th Congress began its consideration of TSCA early with a hearing on February 26, 2009 held by the House Energy and Commerce Committee's Subcommittee on Commerce, Trade, and Consumer Protection, chaired by Representative Bobby Rush (D-IL).<sup>2</sup> Additional hearings by that Subcommittee followed on November 17, 2009,<sup>3</sup> and March 4, 2010.<sup>4</sup> In the Senate, the Environment and Public Works Committee and Senator Lautenberg's Subcommittee on Superfund, Toxics and Environmental Health held a hearing on December 2, 2009,<sup>5</sup> with the Subcommittee holding additional hearings on February 4, 2010,<sup>6</sup> and on March 9, 2010.<sup>7</sup>

On April 15, 2010, Senator Lautenberg introduced TSCA legislation, the "Safe Chemicals Act of 2010," S. 3209, that would fundamentally overhaul TSCA.<sup>8</sup> His Subcommittee held no hearings on the bill, however, until the field hearing on October 26, six months later.

Meanwhile, a discussion draft of the House counterpart to Senator Lautenberg's bill, the Toxic Chemicals Safety Act of 2010, was released the same day as his bill, on April 15, 2010. Representative Rush then held a series of stakeholder sessions before introducing the bill, H.R. 5820, on July 22, 2010. A hearing followed on July 29, 2010, at which industry representatives expressed concern about the bill.<sup>9</sup> No further hearings were held.

#### Senate TSCA Hearing

The October 26, 2010 field hearing reiterated prior arguments for TSCA reform. Its timing late in the legislative year suggests an effort to position the topic for the next Congress.

Senator Lautenberg's introductory statement recited a now-familiar litany of flaws in the current TSCA law, relating to EPA's difficulties in obtaining information and imposing restrictions on chemicals.<sup>10</sup> Senator Lautenberg also stated that substantial fractions of childhood cancers, neurological disorders, and asthma are associated with hazardous chemicals, and cited an earlier Senate hearing on a Centers for Disease Control and Prevention report on biomonitoring.<sup>11</sup> While acknowledging that industry groups have not endorsed the Safe Chemicals Act, he characterized them as having agreed that TSCA reform legislation is "a worthwhile venture" and as "not as hostile" to the idea of TSCA reform as in the past. TSCA reform, he argued, would benefit rather than harm the economy and

the important chemicals sector by, among other things, restoring public trust in the industry.

Senator Inhofe (R-OK), the ranking member on the Subcommittee, was not present at the hearing. He submitted a written statement that could be construed as generally supportive of TSCA reform, saying “assessing the environmental impact on children deserves additional, specialized interest.” He expressed a commitment “to develop legislative solutions to the extent they are needed and according to what the best available science is telling us.”

The field hearing’s first panel consisted of EPA Administrator Lisa Jackson, who has made chemicals management a top priority for her agency. Administrator Jackson’s testimony reiterated previous statements about limitations of TSCA and about special risks faced by children exposed to chemicals. A large part of the testimony summarized EPA’s “Essential Principles for Reform of Chemicals Management Legislation,” released in fall 2009.<sup>12</sup> She also highlighted suspected ties between toxic chemicals in the environment and breast cancer.

When asked how long a TSCA reform law might take to implement and to impact environmental health endpoints, Administrator Jackson acknowledged that it would take “a while” to actually review all chemicals in commerce. She added that impacts on chemical safety would be felt more quickly. Administrator Jackson also acknowledged that many of the concerns driving mistrust of chemicals, such as the presence of chemicals such as bisphenol A in food-contact materials, are outside EPA’s jurisdiction. (She did not expand on the relevance of these jurisdictional issues to the introduced legislation.) In response to a question from Senator Lautenberg regarding the balance between public disclosure of information and protection of manufacturers’ intellectual property interests and competitiveness, Administrator Jackson acknowledged the industry concern but generally supported greater disclosure requirements.

The second panel featured four speakers, all also supportive of TSCA reform. The first was CNN medical correspondent Dr. Sanjay Gupta, who spearheaded an extensive investigative report on “Toxic America” earlier this year.<sup>13</sup> Dr. Gupta used the examples of DDT and lead to illustrate the importance of knowing about the health effects of chemicals. He criticized what he called the “innocent until proven guilty” approach to chemicals management under current law, comparing it unfavorably to the Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) in the European Union. Dr. Gupta also stated that, according to his investigation, a precautionary principle would promote rather than stifle innovation.

Dr. Lisa Huguenin, an environmental scientist and mother of child with autism and an immune system disorder, offered emotional testimony about her worries about exposure to chemicals.

Dr. Steven Marcus, MD, a professor at the New Jersey Medical School, discussed his experiences with treating lead poisoning and with broader medical toxicology. He argued that we live in “a soup of environmental chemicals” whose cumulative effects should be determined, and urged additional support for pediatric toxicology and Poison Control Centers.

Finally, Dr. Frederica Perera, Director of the Columbia University Center for Children’s Environmental Health, reported on studies on developmental effects from children’s prenatal exposures to phthalates, BPA, and polybrominated diphenyl ethers.

### **What Next?**

As a result of the November 2 mid-term election, in the 112th Congress Republicans will have control of the House of Representatives, by a margin of approximately 242 to 193, and will have increased strength in the Senate, where there will be some 51 Democrats, 2 independents who caucus with them, and 47 Republicans. Chairmanship of the House Energy and Commerce Committee will pass from Representative Henry Waxman (D-CA), a strong supporter of TSCA reform, to a Republican to be selected in the coming days.

TSCA reform will not be among the House Republicans’ initial priorities. House Republicans

are likely to focus on health care, appropriations, and oversight, rather than enactment of major environmental legislation. The lead environmental issue will once again be climate change, with TSCA waiting its turn.

Still, TSCA reform legislation does have some chance of enactment in the 112th Congress. Republicans may need to point to accomplishments on environmental issues beyond limitations on EPA's greenhouse gas rulemaking activity. The key question is whether industry stakeholders, who advocated for TSCA legislation in 2009, will maintain that position in a very different Congress. Those who felt that the 2010 legislation went too far may push for a more moderate compromise that still results in significant changes to TSCA.

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<sup>1</sup> U.S. Senate Committee on Environment and Public Works, Subcommittee on Superfund, Toxics, and Environmental Health, Field Hearing: "Toxic Chemicals and Children's Environmental Health" (Oct. 26, 2010), available at [http://www.epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing\\_ID=c9fbef98-ee5d-2a2d-65cd-21bcd5313f8f](http://www.epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=c9fbef98-ee5d-2a2d-65cd-21bcd5313f8f) (including witness testimony and archived webcast).

<sup>2</sup> See Beveridge & Diamond, P.C., First TSCA Reform Congressional Hearing of 2009 Held February 26, Mar. 3, 2009, available at <http://www.bdlaw.com/news-506.html>.

<sup>3</sup> See Beveridge & Diamond, P.C., Congressional Hearing Builds Momentum for TSCA Amendments, Nov. 20, 2009, available at <http://www.bdlaw.com/news-730.html>.

<sup>4</sup> U.S. House Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection, Hearing: TSCA and Persistent, Bioaccumulative, and Toxic Chemicals: Examining Domestic and International Actions" (Mar. 2, 2010), available at [http://energycommerce.house.gov/index.php?option=com\\_content&view=article&id=1915:tsc-and-persistent-bioaccumulative-and-toxic-chemicals-examining-domestic-and-international-actions&catid=129:subcommittee-on-commerce-trade-and-consumer-protection&Itemid=70](http://energycommerce.house.gov/index.php?option=com_content&view=article&id=1915:tsc-and-persistent-bioaccumulative-and-toxic-chemicals-examining-domestic-and-international-actions&catid=129:subcommittee-on-commerce-trade-and-consumer-protection&Itemid=70).

<sup>5</sup> See Beveridge & Diamond, P.C., Senate Oversight Hearing on TSCA Highlights Familiar Concerns, New Science, Dec. 4, 2009, available at <http://www.bdlaw.com/news-747.html>.

<sup>6</sup> U.S. Senate Committee on Environment and Public Works, Subcommittee on Superfund, Toxics, and Environmental Health, Hearing: "Current Science on Public Exposures to Toxic Chemicals" (Mar. 4, 2010), available at [http://epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing\\_ID=8a722315-802a-23ad-4e9a-b8477139e63f](http://epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=8a722315-802a-23ad-4e9a-b8477139e63f).

<sup>7</sup> U.S. Senate Committee on Environment and Public Works, Subcommittee on Superfund, Toxics, and Environmental Health, Hearing: "Business Perspectives on Reforming U.S. Chemical Safety Laws" (Mar. 4, 2010), available at [http://epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing\\_ID=29c259ec-802a-23ad-4b7b-6087cdaf2ceb](http://epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=29c259ec-802a-23ad-4b7b-6087cdaf2ceb).

<sup>8</sup> See Beveridge & Diamond, P.C., "Proposed Legislation Would Overhaul TSCA" (Apr. 23, 2010), available at <http://www.bdlaw.com/news-852.html>.

<sup>9</sup> See Beveridge & Diamond, P.C., "House Discusses Potential Dramatic Changes to U.S. Chemicals Law" (Aug. 5, 2010), available at <http://www.bdlaw.com/news-938.html>.

<sup>10</sup> See, e.g., Beveridge & Diamond, P.C., "Senate Oversight Hearing on TSCA Highlights Familiar Concerns, New Science: (Dec. 4, 2009), available at <http://www.bdlaw.com/news-747.html>.

<sup>11</sup> See Beveridge & Diamond, P.C., "TSCA Reform Efforts Turn to Biomonitoring Studies for Support" (Feb. 12, 2010), available at <http://www.bdlaw.com/news-809.html>.

<sup>12</sup> EPA, "Essential Principles for Reform of Chemicals Management Legislation" (Sep. 29, 2009), available at <http://www.epa.gov/oppt/existingchemicals/pubs/principles.html>.

<sup>13</sup> CNN, Specials: Toxic America, available at <http://www.cnn.com/SPECIALS/2010/toxic.america/>. The special report first aired over two nights: "Toxic Towns" on June 2, 2010, and "Toxic Childhood" on June 3, 2010.

### **D.C. Circuit Rejects Pesticide Registration Challenge as Untimely**

In a unanimous published panel decision, the U.S. Court of Appeals for the District of Columbia Circuit has ruled that a challenge to a pesticide registration was untimely when filed more than six years after the Plaintiffs were aware that the pesticide was registered





by the USEPA. Litigators from Beveridge & Diamond's Washington office represented an intervenor in the case on the side of USEPA and successfully argued with the U.S. Department of Justice that the lawsuit was untimely and that the District Court's order of dismissal should be affirmed. The Court's slip opinion in *Hardin v. Jackson* can be accessed at <http://www.bdlaw.com/assets/attachments/2010-10-29%20Judge%20Henderson%20Opinion%20Affirming%20DDC%20Decision%20Case%20No%2009-5365.PDF> and is reported at \_\_\_\_ F.3d. \_\_\_\_, 2010 U.S. App. LEXIS 22452 (D.C. Circuit October 29, 2010). A BNA article on the oral argument in the case can be accessed at <http://www.bdlaw.com/assets/attachments/268.pdf>.

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