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A HISTORY TO LEVERAGE

Natural Resources & Environmental Update

EPA Training May 16 on Toxic Substances

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The U.S. Environmental Protection Agency (EPA) promulgated a rule in 1986 known as the Inventory Update Rule (IUR) providing for the partial updating of the chemical inventory database maintained under the Toxic Substances Control Act (TSCA). The IUR generally requires that manufacturers and importers of specified chemicals under TSCA report data on production volume, plant site and other information about the chemicals. Reporting under the IUR takes place every four years and started in 1986.

EPA recently amended the IUR to alter the reporting threshold from 10,000 pounds to 25,000 pounds, to alter the exemptions from reporting, and to modify the nature of the information submitted. Under the IUR amendments (IURA), manufacturers and importers will report new information based upon their level of production. For chemicals with annual volumes of 25,000 pounds or more per site, manufacturers and importers will report the following new information if and to the extent that it is known or reasonably ascertainable:

1. Number of workers reasonably likely to be exposed to the chemical substance at the site of manufacture or import.
2. Physical form(s) of the chemical substance as it leaves the submitter's possession, along with the associated percent production volume.
3. Maximum concentration of the chemical substance as it leaves the submitter's possession.

In addition, for chemicals with annual volumes of 300,000 pounds or more per site, manufacturers and importers will report the following new information to the extent that it is readily obtainable:

1. Type of industrial processing or operational use at downstream sites.
2. North American Industrial Classification System (NAICS) codes that best describe the industrial activities conducted by the sites that use or process the substance.
3. Industrial functions of the chemical substances.
4. Approximate number of processing and use sites.
5. Estimated number of workers reasonably likely to be exposed to each chemical substance at all sites at which the chemical is used or processed.
6. Commercial and consumer uses of reportable chemical substances, including an indication of whether the products are intended for use by children.
7. Maximum concentration of the reportable chemical substance in each commercial and consumer product category.
8. Estimated percentages of the submitter's production volume in each industrial function category and commercial and consumer product category.

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The first IUR reporting period governed by the IURA will occur in 2006, when companies will report data on chemicals manufactured and imported in 2005. EPA has announced plans for training on the IURA and its impact on industry in Phoenix, Arizona on May 16, 2005. For specific information about and to register for the EPA training session in Phoenix, please visit https://www2.ergweb.com/projects/Conferences/iur/iur-register05.asp.

If you have any questions about the potential applicability of the IURA to your company, please contact Robert Kramer at 602-916-5464 or John LeSueur at 602-916-55408.

Robert Kramer practices primarily in the areas of environmental and water law. He has worked extensively on legal issues relating to environmental due diligence and audits, hazardous waste regulation, materials recycling, underground storage tanks, pretreatment requirements, Superfund sites and remedial actions involving pesticides and other hazardous substances, and water issues. H earned his B.A. (1985) from the University of California and his J.D., magna cum laude, Order of the Coif (1988) from Arizona State University.

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Arizona Department of Environmental Quality Seeking Amended Soil Remediation Levels and New Vapor Intrusion Policy

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The Arizona Department of Environmental Quality (ADEQ) is considering changes to Arizona Administrative Code Chapter 7, Article 2 Soil Remediation Standards (SRLs) and development of a Vapor Intrusion Guidance document to supplement the SRLs. The Vapor Intrusion Guidance is designed to assist the regulated community with assessing the vapor intrusion risks on contaminated properties.

The agency will likely release drafts of the new soil standards and the Vapor Intrusion Guidance document in the next couple months for public review and comment. It has been working with various stakeholders in the preliminary drafting of the new standards.

The new SRLs would affect property owners or operators with known or suspected soil contamination, developers seeking to develop prior agricultural land for residential use and those managing cleanup programs on existing contaminated sites.

The new Vapor Intrusion Guidance would affect owners of property with contaminated soils and groundwater, current site managers and consultants working on contaminated sites and those seeking to clean up and develop property with known or suspected contamination.

The SRLs under consideration are more stringent for many chemicals, but in a handful of instances, standards are less stringent, most often for commercial property. Further, while ADEQ is considering

applicable timeframes, the current draft would apply the new standards to sites that are not closed within two years of the effective date of the new SRLs.

ADEQ draft anticipates that the Vapor Intrusion Guidance will develop concurrently with the SRLs and be available at the time the revised SRLs are issued in final rule. This guidance document will also provide a process for determining whether further site characterization is warranted for a vapor intrusion pathway.

ADEQ's Vapor Intrusion Guidance document resembles those developed in other states, such as California and New York. ADEQ is proposing a model, called the J/E Model, for this guidance with default values based upon EPA's vapor intrusion guidance. Concerns have been raised by some stakeholders that the default values may not be appropriate for Arizona soils. Further, the draft guidance presently prefers soil gas data as opposed to soil data, which may cast doubt on how sites that are being cleaned up, based upon soil data, will be affected by the new guidance document.

If you have any questions regarding the Proposed SRLs or Vapor Intrusion Guidance, please contact Lisa A. Brautigam at (602) 916-5428.

Lisa Brautigam's area of practice includes natural resource, endangered species, water, environmental and land use law. Ms. Brautigam counsels clients on natural resources, water and environmental law issues, including compliance with the Clean Air Act, Clean Water Act, CERCLA, the Endangered Species Act, underground storage tank regulations, and land use regulations. She received her B.S. (1993) from the Florida Institute of Technology, her J.D. (1997) from Florida State University College of Law and her LLM (2000) from the University of Washington School of Law.

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