



Episode Title: EPA and PBTs: A New Normal? — A Conversation with Richard E. Engler, Ph.D.

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Lynn L. Bergeson (LLB): Hello and welcome to All Things Chemical, a podcast produced by Bergeson & Campbell (B&C[®]), a Washington, D.C., law firm focusing on chemical law, business, and litigation matters. I am Lynn Bergeson. This week, I sat down with Dr. Richard Engler, B&C's and The Acta Group's (Acta[®]), our consulting affiliate, Director of Chemistry, to discuss the U.S. Environmental Protection Agency's (EPA) continuing struggle to regulate certain persistent, bioaccumulative, and toxic (PBT) chemicals, especially those found in finished products, what EPA refers to as "articles." The Toxic Substances Control Act (TSCA) has always applied to the products or articles that contain substances of interest to EPA under TSCA. While EPA previously used that authority somewhat sparingly, the 2016 amendments to TSCA have jumpstarted a new wave of regulations that expressly apply to articles. EPA is required under TSCA to regulate certain PBTs, and EPA issued a final rule earlier this year that has inspired chaos in the business community, especially in the electronics sector and its very complicated supply chain. Rich and I discuss these PBT rules and help explain why it may well be the new normal with regard to the regulation of finished products under TSCA and what stakeholders can do to address the situation. Now, here is my conversation with Dr. Richard Engler.

Rich, it is always a pleasure to record a podcast with you; you're one of my very favorite podcast people.

Richard E. Engler (REE): It's a pleasure to be back, Lynn.

LLB: Why don't we take a step back and explain to our listeners why persistent, bioaccumulative, and toxic chemicals, so-called PBT chemical substances, were singled out by Congress in amending TSCA in 2016. What makes PBT so special?

REE: PBTs are special because of the way they behave in ecosystems when they're released. The P, for persistence, means that the substance doesn't degrade much in the environment; it doesn't biodegrade, it doesn't degrade from sunlight, so it can hang around in the environment for a long time. And then the bioaccumulation, the B, means the substance first may partition from the water into, say, fish or other aquatic life. It may also accumulate if

you have something that's not just being exposed in the water, but also eating something else. Its diet contains PBT, something else that's, for instance, already absorbed the PBT out of the water. And the higher you go in the food web generally, you get a phenomenon called biomagnification, where these PBTs build up at higher levels in the food web. They persist, and they build up in the food web. And then, even if they're not particularly toxic at low levels, they can build to toxic levels and may have unanticipated or unknown health outcomes.

LLB: All right. So they tend to be nasty and persistently so, which has really gotten both Congress's and EPA's concern over the many years EPA has been tackling PBTs, right?

REE: Generally for more than a decade now, EPA's approach to new chemicals that are PBT is to insist that none be released to the environment. EPA would approve new chemical PBTs, but none could be released because EPA did not want to be surprised by what happened with DDT [dichloro-diphenyl-trichloroethane], where there were these unanticipated effects very high in the food web that were really unknown when the substance was approved. They're just trying to avoid those sorts of situations by prohibiting any release.

LLB: Back in 2016, Congress directed EPA to propose a rule by 2019 that expedited the regulation of certain PBT chemicals listed in what we all understand and know well to be the 2014 update of the TSCA Work Plan for Chemical Assessments list. In my view, this is where the drama begins, as a little-known and apparently never before regulated chemical is on that 2014 list: phenol, isopropylated phosphate (3:1), so-called "PIP (3:1)." Tell us a little bit about PIP (3:1) and why it has, in the narrow circles in which we work, skyrocketed to international fame as of January 6, 2021, a day seared in our minds for at least a couple of reasons.

REE: PIP is both a plasticizer and a flame retardant, and it's used in a variety of plastics to soften the plastics and, especially in electronic articles or things that carry current, it also acts as a flame retardant so that your electronic things, if they overheat, they don't then burst into flame. It's been used for a while now. It's been used in place of some of the halogenated flame retardants that have been phased out. And then EPA, as you say, in that rule in January, proposed a complete -- well, there are a couple of exempted uses -- but largely a ban on the distribution and processing of PIP and PIP-containing products and PIP-containing articles.

It was that prohibition, without any *de minimis* -- there's no lower threshold limits, no PIP whatsoever -- that led to a number of article producers and importers to recognize that not only could they not have PIP, but they had to *know* that there was no PIP in their supply chains. That was the big issue because they only had 60 days to figure that out. As we've discussed before, I think a lot of article importers do not follow TSCA closely because there are generally few TSCA rules or actions that apply to articles. If they do, there's often an impurity exemption, which is not the case here. It led people to realize that the level of information that they needed about their supply chains, they just could not meet in 60 days.

LLB: This is probably a harsh characterization. PIP (3:1) apparently has been hiding in plain view for at least seven years, since 2014, when it was added to EPA's Work Plan chemical list. Ironically, Rich -- I'm sure you picked up on this, too -- and described by EPA then, seven years ago, as quote, unquote, "widely used as a flame retardant." This is where the wheels to my cart fall off. What happened? It is just kind of hard to hide from regulatory scrutiny, and yet PIP (3:1) appears to have been the best-kept secret in Washington up until January of this year, being on this much-celebrated list of chemical substances that we in our practice

emphasize over and over and over again, because it's the list of chemicals that EPA really really cares about, right?

REE: Yes, it is, but generally the audience for that list is *chemical* importers and *chemical* manufacturers. Again, the *chemical* manufacturers were aware even then of the scrutiny on PIP, but *article* manufacturers and importers were not aware of the *potential* regulation. EPA didn't just say, "Thou shalt no longer manufacture or import PIP." EPA said -- it worked -- "You can't manufacture or import an article containing PIP. You may not distribute."

LLB: That's the real kicker.

REE: Suddenly, you have Target being regulated by TSCA because Target is selling, or *may* be selling, products -- TVs, computers, even just USB cables -- that *may* contain PIP. According to the regulation, Target needs to keep a record that any product that it distributes is in compliance with the prohibitions, so Target needs to know that all those electronic, electric things -- the toasters, the vacuum cleaners, all those things -- do not contain PIP before Target can sell them. Target could not come into compliance in 60 days.

LLB: Given the brouhaha that ensued when the rule was issued on January 6, how did EPA come to grips with the tremendous commercial pushback? I understand that the No Action Assurance that you're about to talk about is a seldom-used remedy to address truly exigent circumstances.

A couple of questions there. What is a No Action Assurance? Why did EPA wait until the very day -- I think it was issued on March 8 -- to exercise that authority? Businesses like certainty. Nobody likes surprises. This caused tremendous upheaval in the commercial sector, particularly the electronics sector. What do you think was going on there?

REE: Well, the word got around, and it's still not clear to me how all the electric and electronic companies and trades sort of figured this out, what woke them up. It was clearly related, the timing, the people coming and knocking on our door. It was basically that first week in January when the rule went final, so something happened; people figured it out. When they realized what it meant and the amount of time that they had to come into compliance, that's what really kicked over the anthill. People were justifiably, I think, freaking out because the commercial disruption would have been extraordinary. When you think about all the retail establishments that would have to -- I mean, you'd close the Best Buy. What does Best Buy sell that doesn't have a wire in it? Especially at that point in the pandemic, the commercial disruption would have been devastating. Lots of lost sales. You wouldn't be able to even service air conditioners during the summer because the part that goes into the air conditioner would have to be *known* to not contain PIP (or be eligible for one of the phase-in exemptions). It really would have been quite devastating economically and socioeconomically, people not being able to communicate, not being able to cool their houses; it would have been very bad.

EPA recognized that, and EPA also recognized that it didn't have a lot of options in the rule. The rule stated that the compliance date was March 8, and EPA did not have time to change that. That led them to the No Action Assurance, which, as you state, is a seldom-used authority that EPA has. EPA basically said, "Okay. We recognize there's a huge problem with this rule. We don't have time to change the rule, so we are going to state publicly that we will not enforce the rule until this new date; September 4 is the extension for that compliance. And they did this very narrowly. They only extended the date for the

prohibition of processing and distribution of PIP and PIP-containing articles, and for the recordkeeping provision, so the record that you knew -- or have a basis to know -- that the article, the product that you're distributing, is compliant.

The rest of the rule went into effect. All the other PBTs and the other aspects of the PIP rule went into effect on March 8. They crafted the No Action Assurance as narrowly as they could, but they granted the No Action Assurance to allow -- and then they also opened up a rulemaking to solicit comments to basically fill in the data gaps that they missed the first time around, to allow the industry that did not comment on the 2019 proposed rule to now comment and provide the necessary detail.

LLB: The No Action Assurance lapsed at 11:59 on September 4, and on September 3, just before that Saturday, when the lapse was going to become effective, EPA issued a chemical update which it tried to share broadly through its posting on the EPA website. It sent out e-mails to those of us that are on the Office of Pollution Prevention and Toxics (OPPT) EPA ListServ. What did that update basically say? And in your view, Rich, was it a bit of a surprise to many of us in the regulated community, given what it offered and what it didn't?

REE: The comments received from industry were quite consistent, that a significant amount of time, typically years, would be needed to survey the entire supply chain, gather the information necessary. If PIP was found for a non-exempt use, then an alternative would have to be identified, qualified, and then put into service. That takes a while, especially if a product has to go through some sort of certification -- a safety certification or other performance certification -- that's going to take a fair amount of time. Commenters generally -- I think the range was somewhere between two and 15 years, depending on the complexity of the product that the company distributes.

LLB: And probably the utility of PIP, whether it could be substituted by some other chemical substance existent now, right?

REE: Well, that's one of the unknowns. If you find that this particular wire in this particular product has PIP in it, can we replace it? Why is PIP used there instead of something else? Until you know where the PIP is, which parts in your product -- your TV, which has, I don't know, 1500, a couple thousand parts. Until you know, check with every supplier of every part, is PIP in there? Yes, it's in there. Why is it in there? Is it a plasticizer? Is it a flame retardant? Is it both? Can it be replaced? How does it work? If it's replaced, how does that affect the performance of the whole thing? These are complex problems that it takes a while to answer. You can't even begin to answer the questions until you know PIP is present or not. So this is part of the problem.

One of the commenters was commenting on electron microscopes with 100,000 parts. Imagine trying to have to chase down all the suppliers of all those parts all around the world. It's an extraordinarily challenging task, and it's going to take a long time. Those were what the comments said, but when EPA put out the rule, they only gave a six-month extension, which was a bit of a surprise to me. But EPA did state that in EPA's view, they needed more detail on these products and the complexity and the necessity for additional time. EPA felt it didn't have enough facts to provide more relief than six months. So they provided a six-month additional relief and another opportunity will open to provide additional details to justify longer extensions or potentially exemptions.

LLB: The new compliance date as of this time, right now in September 2021, is March 8, 2022. I found reading the Agency's notice very interesting, and I also appreciate that EPA's a little

bit between a rock and a hard place. In your view, were the comments truly devoid of granular particularity for substantive support for more generous extensions? Let me read you just a little bit of that notice that EPA issued -- and this is a quote:

As part of the separate rulemaking on all five PBT chemicals planned for 2023, EPA intends to reevaluate the current rules for PIP (3:1) and the other PBTs, as well as provide a description of the specific kinds of information the Agency will require to support any additional extensions to the compliance dates. EPA will expect industry commenters to provide documentation of the specific uses of PIP (3:1) in articles throughout their supply chains, documentation of concrete steps taken to identify, test, and qualify substitutes for those uses, documentation of specific certifications that would require updating, and an estimate of the time that would be required.

And the most important statement, I think, in the notice is this: “Without this more specific information from suppliers, EPA will be unlikely to extend the compliance dates again,” close quote. That’s a scary message because some people might have thought they’ve already documented that information with regard to, as you correctly note, where it’s just identifying the presence of PIP in the supply chain and going back many layers, through a very complicated supply chain that involves people in the United States and in Asia, Europe, literally all over the planet. Providing this information to the degree that the Agency accepts as compelling to extend another compliance date is pretty daunting. What are your thoughts on what EPA can and should do to help this process along?

REE: Well, EPA has stated it’s going to provide guidance on what level of detail will be necessary. It’ll be very interesting to see what that says. I think that what will need to happen is commenters may need to -- because from my understanding, there are many commenters that are still trying to survey; all these many months later, they’re still trying to survey their supply chains. This has been going on since January, when people were beginning to frantically ask all their suppliers all the way up the supply chain all around the world, “Is PIP present? And if it’s not, swear -- give us some certification that it’s not there.” That is still going on.

I suppose that the commenters that are in that situation can put together that narrative like, “We asked our tier one suppliers -- we have a hundred tier one suppliers -- and we’ve asked them. Our tier one suppliers have asked their --” They each have ten tier two suppliers. Now that’s a thousand companies that are scrambling to figure this out. And tier three and tier four. Some of these products have many levels of suppliers, as you go back all the way to really the resin formulator, whatever that formulator is that’s putting together the plastic, that where they’re adding PIP, right? You have to dive through that whole many layers of the supply chain and describe how challenging that is. “Hey, EPA, we’ve been at this for nine months now, and we’re 50 percent done. We’re still going to need another nine months to complete the survey.” And then we start the research and development (R&D) to replace PIP.

You cannot identify the alternatives until you know where it is. So I think, from the comments that I’ve read, the comments were very general in this place saying, “We’re going to have to survey our supply chain, identify alternatives, qualify them, et cetera.” EPA wants more specific details on those steps. So I think unless you already know, “We already found PIP. It’s going to take us a year to identify a replacement and a year to test it, and then a

year to distribute it.” If you have those facts, then you can provide those in a comment. But I suspect more people will be in the “We’re still figuring it out” phase. They’re just going to have to provide lots of e-mails. “These are who we’ve asked. This is what they’ve told us. This is what they’ve told us about how long it’s going to take them to figure out from their supplier.” You are going to have to assemble this whole entire package of communication from the entire supply chain.

A lot of that’s going to be confidential business information because it’s a supplier-customer relationship. Put that package together and send it to EPA and say, “We’re hard at this, but it’s going to take a while.” And it’s also challenging. We’ve spoken to at least one company where they can’t get a U.S. distributor of parts to even recognize that they’re subject to this rule. But they’re asking their supplier, “We need to know if PIP is in there.” And their supplier says, “I don’t know, and I don’t care.” So I can’t tell you that it is or isn’t. And the customer says, “We need to know because the rule says we need to know.” And the supplier says, “We don’t think we’re subject to TSCA.” Now you can’t use that supplier, so you have to identify an entire new supplier for that part, a supplier that is aware and is compliant with the rules. So these are supply chain challenges that are difficult to identify and to quantify how long it’s going to take to come into compliance. That’s the story that these comments are going to have to tell, it’s “These are the facts that explain why it’s going to take two, five, 10, 15 years to understand all of this and to get these replacements in place.”

LLB: Yes, and you wonder if there are other considerations going on because March 8, 2022, is not that far off. We’re still living through a pandemic. Companies are still struggling at a variety of levels because of that. Supply chain challenges have been exacerbated by the pandemic. You’re dealing with a little-recognized chemical substance that in many instances is not produced here in the United States and is found elsewhere. There are many degrees of separation between U.S. entities that are distributing products that may contain PIP. Now they have a need to know if they do, in what capacity, and are there substitutes, and will Underwriters Laboratories (UL) certification -- or some other certification -- be necessary?

Here we are in September 2021, and the expectation that this will be as clear as EPA seems to suggest that it wants it to be by March still strikes me as very daunting. I get why EPA probably did what it did. You and I have speculated that the administrative process with regard to the PIP (3:1) rule has been unusual, right? Maybe this two-step process is intended to address some procedural improprieties or anomalies, but it’s also causing extraordinary anxiety in the commercial sector. One of my questions to you, Rich, is, is part of this all a great big push to get people to drop anything having to do with PIP, period? Instead of trying to recertify, or determine if additional exemptions from the PIP rule are necessary, which EPA’s apparently prepared to consider in any new PBT rule that it might be issuing in 2023. Maybe this is just an effort to separate from PIP entirely, regardless of whether alternatives can be found or not. What are your thoughts?

REE: I think the rule in general is designed to minimize the continued use of PIP to the extent practicable, which is what’s required. I think that is already the goal. I don’t think the goal here is to somehow put more pressure on PIP. I think EPA simply felt that it did not have the facts to support a longer extension of that deadline.

LLB: But if the period of time within which an entity has to document to a greater degree of precision is as abbreviated as it is, and then when EPA says it is unlikely to extend the compliance dates, again, I’m just questioning how legitimate that timeframe is, given everything that we’ve talked about.

REE: I was surprised at how short the six-month extension was. EPA is trying to thread a needle. They needed to extend the deadline -- that, or they would have to extend the No Action Assurance. But as we've discussed earlier, EPA is loath to use No Action Assurance, except in the most extreme circumstances. Here they had an opportunity to, by rule, extend the date. How long would they extend the date? Would they extend it for six months? Would they extend it for a year? Would they extend it for longer because of the comment that most people needed longer? I think, based on the statements made by EPA, EPA felt like they needed to extend to avoid the same disruption that would have occurred in March, but that EPA did not have sufficient facts to give a longer specific phase-in period, the way that EPA did with adhesives and photographic printing articles, or some of the other exclusions, like the automotive parts exclusion or the lubricant exclusion. EPA simply felt it did not have sufficient detail because the commenters did not have that detail in May.

LLB: And may not have it in March, is my point.

REE: And they may not have it again. I think that's the problem, but what I hear EPA saying -- and I hope EPA's guidance will lay this out is -- if you are still figuring this out, you need to provide evidence of how hard you are working to figure out what's in your supply chain. I would certainly hope that EPA will be amenable to considering that, because that is the truth. A lot of these companies are struggling mightily to document that these -- you have to know before you distribute -- you have to have a basis to know -- that PIP is not in the product that you're distributing. If it's got a wire, and it's got a wire coating, and that wire coating may have a plasticizer, may have a flame retardant, how do you know that's not in there?

Your supplier has to tell you, or you have to test every part. You have to bust open a TV and run an X-ray fluorescence (XRF) over every part in that TV to see if PIP is in there. That's a burden that's not feasible. That's not practicable for every different product that you might import. It's an extraordinary burden. The way this is going to be handled is through supply chain representation: suppliers saying, "PIP is or is not there." And again, it can't be there as an impurity either; there's no *de minimis*. You have to be able to represent that PIP is not present at all in any of these parts. That is a challenge.

LLB: This is so frustrating. EPA is going to be issuing guidance -- and I don't know when it intends to do that -- on how best to document to EPA's satisfaction that additional time is necessary. That's what we've been talking about. When EPA issues this, I'm guessing it's going to be more quantitative, not qualitative. There's been a lot of qualitative comments submitted already to say, wait a minute. A lot of people in the articles community, a lot of entities that contribute elements or components to finished products do not believe that they are part of the TSCA stakeholder community. For the past 45 years, that has by and large been the perception, as you began your comments, Rich. Chemical manufacturers and chemical importers have a deep and abiding understanding of TSCA, but everybody else outside of the product sector really has thought TSCA doesn't apply to them. So if EPA is going to be issuing guidance on what it needs quantitatively -- and that's not going to be subject to comment; that's just going to define the elements of what EPA will regard as sufficient for purposes of an additional compliance extension -- that in and of itself may or may not fairly reflect the realities of the commercial world. I'm not being critical of EPA. EPA is a science-based agency. It is not known for its intimate understanding of the commercial intricacies of doing business in a global economy, right?

REE: Especially in the article space.

LLB: Well, especially in the space of what gives us -- what gives you comfort, Rich -- that what will be coming out will fairly approximate what is doable between now and March 2022?

REE: I am hopeful. I also think that EPA's guidance, it's going to state whatever it's going to state. And if commenters say, "In the six months that we are provided, there is no way for us to meet that threshold, and here is the documentation of that fact," then EPA -- I think this comment period is going to have to be very fact-specific, with a lot of documentation, to convince EPA that the situation is as complicated and as dire as commenters represented in the May comment period. I think EPA was semi-convinced that it's true, but they want to see more documentation.

There were comments about the need to recertify. How many labs are available for the recertification? Well, there are two labs, or whatever it is. There are two labs, six labs, whatever the number is that are available, and they have to recertify 8,000 different products in that timeframe. Recertification requires, on average, nine months, 12 months, whatever it is. Do the math on how many products, how many labs, and how long it takes. That will help determine the number. But it's not like these labs magically appear when EPA issues a rule. If the demand goes up, the labs have to expand. They have to hire people; they have to train people. That takes a while.

We saw this with the testing for the European Union's (EU) Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) registration deadline a few years back, where there was a tremendous demand for lab space, and a number of registrations had to request extensions because they simply could not get the testing done. And I know a couple of the comments in May said, "Okay, EPA, if you're going to put a deadline on, we need a petition process to be able to say we need more time, either because we couldn't survey the supply chain deep enough, or we couldn't identify an alternative in time, or we couldn't certify the alternative in time. Or did the idea that there's a deadline, but a particular importer may not be able to meet that deadline for some reason -- the commenters requested that EPA set up a process that they could ask for those extensions, that some regular method that they could say, "Oh, we need more time, and here's why. Here are the facts," so that the EPA could either grant or deny that extension.

The problem is there are still a lot of unknowns, so yes, EPA, you want more detail? I don't know when a lot of the importers are going to be able to have the detail to provide, and six months strikes me as not long enough. I think what the comments will have to say is, "In the next six months, we'll continue to survey, and maybe we'll identify some and then start to work on alternatives. But we won't know for sure for all 100,000 parts in our doodad, that there's no PIP. Or the PIP that's present is eligible for one of the phase-ins," or whatever the facts are. I don't think that's going to happen in time. I think we're going to be in the same situation where people are freaking out days before the deadline, just as they were ten days ago. And by the way, EPA issued the pre-pub for that rule; that rule's not been published yet.

LLB: Now, as of this morning, that is still not in the *Federal Register*, let alone the guidance on how to explain to EPA that time beyond March 2022 is not only necessary; it's essential. This is a very -- I think -- one of its kind, intriguing, perplexing situation that involves all the elements of a great movie: commercial uncertainty, anxiety. Who the hell heard of PIP (3:1) before January of this year, even though it's been on a list, a very special list of chemical substances for seven years? It really is very unusual. I understand intellectually why EPA is doing this bite-size, incremental, "Okay, we did the No Action Assurance, and now we're providing another limited extension, but tethering it with a requirement that it

meets certain elements to justify further time strikes me as being a little arbitrary and hopelessly unrealistic, given the complexity of the supply chain specific to this industry sector of electronics. But that's just me.

REE: Yes, I know. I think it is going to be a tremendous challenge. I hope that importers and commenters have all of these e-mails back and forth with all the suppliers, some record of what they've been doing. I think that's what's going to be necessary to convince EPA that people are hard at this, but it's going to take a long time to get this done. And we talk about, oh, people were surprised. Well, right. You're importing a product. There's no requirement to know if that substance is in your product, so why would you pay attention? Because it's on the 2014 Work Plan chemical list. But there's been no indication, even in 2016 when Section 6(a) was enacted, that it's going to apply to the content of imported articles.

I think it's a little misleading to say, "Oh, well in 2014, people should have said, 'Oh, we've got to figure out that this is not'" -- I think in the U.S., companies were like well, "2014 Work Plan list. It's coming, so we're going to get out of this business." And my understanding is there's not a lot of PIP business in the United States. But why would an article manufacturer suddenly think, "Oh, just because something's on the 2014 Work Plan list, I'm going to have to stop, make sure it's not in my articles"? That's not the case for methylene chloride, which is the first Work Plan chemical that EPA took action on. There's no prohibition on content in articles of methylene chloride. Yes, it's not necessarily an extrapolation, I think, that people leapt to.

LLB: That's a really good point, Rich. It's one thing to be listed on a list, and it's another thing, as you suggest, to be put on some sort of effective notice that, gee, maybe EPA will not provide any exemption for this chemical substance. We're looking at a full stop, no distribution as of a date certain, because had people been thinking that in 2014, we would have been better prepared for the rule that came out in January 2021. That expectation -- or even absence of imagination with regard to that as even a conceptual possibility, let alone a probability -- we would be having a very different conversation right now.

REE: Yes, the retailers, through the Retail Industry Leadership Association, commented in 2019, stating that they needed time to figure out what was inside that TV box. What they get is a box with a TV in it, and that they needed a significant amount of time because they didn't know, and they'd have to survey the supply chain. And they knew their suppliers would have to survey their supply chain. They made that comment at 2019, and EPA waved their hands over it and said, "No, you have 60 days; you'll be able to figure it out." It's not like EPA didn't know that it was a problem. I don't think EPA quite recognized how widespread a problem it would be. There was some recognition that articles were going to be an issue. A lot of the article importers were not aware. That's definitely, I hope -- part of the lesson for article importers is they need to pay a lot more attention to TSCA.

LLB: Well, you have a wonderful segue opportunity for my next question, which is: what are the lessons learned here? There are some really big generic lessons regarding just monitoring TSCA initiatives and not being caught unaware, as many entities were. And in that regard, our TSCAblog[®] comes to mind. We report on this stuff relentlessly, daily, when anything comes up. But do you think this is the new normal for EPA, as TSCA continues to expand its application to even greater and more diverse industry communities in the supply chain? What are the lessons here?

REE: Yes, I think as other PBTs are discovered -- so the PBTs on the Work Plan list were the ones that ended up being in [Section] 6(h) in this action. We may see some expansion of the

prohibition on PFAS content. There's the long-chain perfluoroalkyl carboxylate (LCPFAC) rule and the PFAS rule that limits some PFAS content in some articles. We've already got the formaldehyde rule, which limits formaldehyde and manufactured wood products. I think there will continue to be some cases where EPA will identify content in articles as contributing to risk.

The 6(h) substances are different because there was no risk evaluation, so as EPA goes forward with their Section 6 actions, they will consider content in articles. If content in articles is contributing to the unreasonable risk, then I expect to see some limitations in content and articles. That will come out more slowly, substance by substance, but I fully expect that there will be some. And when they come up, nobody knows. But article importers, article manufacturers will need to be paying attention. When EPA nominates something for prioritization and suggests that articles or use in articles is going to be within scope, then those article importers need to be working, at that point diligently, to figure out if that substance is in their articles. And they're going to have to go through the whole exercise again and start surveying their supply chains.

I think this really cries for a global part database, where part manufacturers can go in and say -- they can keep their composition confidential, but they can certify that, you say, "I need a part that's PIP-free," or "I need a part that's whatever-free." And they can say, "Oh, yes, my part is PIP-free. I'm good. You can buy from me," or "My part is whatever-comes-next-free." When that gets put on the list, the data is already in there, and customers can reliably go in and purchase and have that basically precertification where you know that it's coming from someone who's representing their product is free of whatever that thing is.

LLB: That's an interesting concept. I wanted to talk a little bit about, and will ask you to do so, Rich, as the world is becoming much more familiar with TSCA because of its application to finished products, otherwise known as articles, I think in our legal practice and consulting practice, we have found that there are a lot of entities out there that simply are unfamiliar with the Toxic Substances Control Act and equally unfamiliar and unaware that it applies to them. So we developed very recently a TSCA Starter Kit™. Do you want to talk about what that is, Rich?

REE: Yes, it's a starter kit. It's a very basic introduction to TSCA. It includes some direct consultation with the firm, either with Acta or B&C, plus some basic information. It is an entree to help an article importer or manufacturer understand how TSCA applies, what they can do to comply, and if they need more assistance, what that effort might look like. We also have TSCA Tutor®, which is on demand and online, where people can get training. Simply go to TSCATutor.com and browse, and learn about what TSCA is and what the various provisions are, and how they might apply. We're reaching out to more people, trying to help people learn about what their obligations are, how they can satisfy them, and really demystify. I think the primary thing is demystifying TSCA, having all these new TSCA stakeholders, where people who don't realize they're TSCA stakeholders can be able to come to understand, and be more aware, and be more involved.

LLB: It's the perfect word, Rich. I was actually thinking that just as you articulated "demystify," because to many people, TSCA is a hugely unintelligible force of nature that they have consistently and successfully avoided understanding from a commercial perspective for 45 years. Now, not so much. We have a lot of information on our website. The TSCA Starter Kit is available, to learn more about it. And as Rich indicated, TSCA Tutor is online, on demand. I think there are lots of different modules, so you don't have to learn everything you need to know about TSCA. You just need to know what portions of the law apply to

you as a member of the business community. We try very hard to provide that information and urge you to take a look at our website, www.lawbc.com, and look at TSCA, and there's lots and lots there.

I think, Rich, the next thing to look for is the notice in the *Federal Register* regarding the announcement that came out on September 3, and then the guidance that EPA promised to provide that will dictate the level of granularity and sufficiency of technical comment to warrant additional compliance extensions beyond March 2022, correct?

REE: Yep. That's the next step, and I'm sure we'll be writing about it.

LLB: That's exactly right. Rich, I want to thank you for a riveting conversation on a topic that has caused no small amount of controversy and conversation as we struggle with coming to grips with a new normal when it comes to TSCA and its application to finished products. Thank you so much for being here.

REE: Always a pleasure, Lynn. Thank you.

LLB: My thanks again to Rich Engler for speaking with me today about PBTs, articles, and why stakeholders really need to hunker down and explain to EPA why the elimination of certain PBT chemical substances in finished goods may be easier said than done.

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