

MEDIA MENTION

Erik Baptist, Martha Marrapese Discuss Upcoming TSCA Lawsuits in 2020

Bloomberg Environment

January 10, 2020

Erik C. Baptist and Martha E. Marrapese, partners in Wiley Rein's Environment & Product Regulation Practice, provided insight to *Bloomberg Environment*, which appeared in a January 9 article on lawsuits related to the evaluation and regulation of commercial chemicals in 2020. *Bloomberg Environment* reported that the Environmental Protection Agency (EPA) will be issuing the first of many decisions in the coming months regarding the agency's implementation of the 2016 Toxic Substances Control Act (TSCA).

While the courts will not issue rulings on every lawsuit right away, these lawsuits will eventually shape judicial decisions and all parties' understanding of TSCA, according to Mr. Baptist, who commented on a variety of issues throughout the article.

Citing his former role as a senior leader in EPA's Office of Chemical Safety and Pollution Prevention, *Bloomberg Environment* presented Mr. Baptist's view that where EPA's evaluation finds both unreasonable risk and no unreasonable risk, the agency will likely argue that its risk evaluation could not be challenged immediately.

Mr. Baptist added that because the EPA evaluates so many chemical uses in its assessments, the agency would argue that a lawsuit over each chemical use would become an unnecessary burden on both the EPA and the courts.

In addition, *Bloomberg Environment* described EPA's plan to determine that 20 chemicals will be a low priority and set aside for further scrutiny, unless new science regarding their use emerges. Mr. Baptist said that the new law doesn't spell out what "sufficient

Related Professionals

Martha E. Marrapese
Partner
202.719.7156
mmarrapese@wiley.law

Practice Areas

Environment & Product Regulation

information” is required to make that determination.

Because the amended TSCA requires companies to justify their need for confidentiality if public information about their product would harm their business, Ms. Marrapese pointed out that companies that don’t sufficiently address this requirement may have to challenge the EPA’s intention to make information public. “You can bet the farm companies will seek to protect their intellectual property,” Ms. Marrapese told *Bloomberg Environment*.

Some stakeholder groups that desire faster regulation have explored rulemaking petitions, which are allowed under the new law, but the EPA has since denied those petitions, spurring litigation, according to *Bloomberg Environment*. What’s interesting, Mr. Baptist noted, is that the 2016 TSCA amendments changed the criteria by which courts would review such agency decisions.

The standard of review changed from the original law, *Bloomberg Environment* reported. Mr. Baptist pointed out that under the amended law the courts were directed to look at whether the chemical presented an unreasonable risk, when the previous standard had been looking at whether there was a reasonable basis in asking for a new rule.

To read the article, click here (*subscription required*).