

Martha Marrapese Quoted in Coverage of States' Push for EPA to Broaden TSCA Risk Evaluations

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Martha E. Marrapese, a partner in Wiley Rein's Environment & Safety and Consumer Product Regulation practices, was quoted in an August 17 *Chemical Watch* article about a push by some states for the U.S. Environmental Protection Agency (EPA) to broaden the scope of risk evaluations under the Toxic Substances Controls Act (TSCA).

Such a move by EPA would also broaden federal preemptions on the actions states could take under the 2016 amendments to TSCA, according to the article. But states could take actions with respect to chemical uses that are not evaluated by the EPA.

Ms. Marrapese said the potential for states to act puts companies with an evaluated substance in an "interesting" position in relation to the uses the EPA includes in its evaluations. If the EPA evaluates a substance and makes an affirmative finding that it does not pose an unreasonable risk, then states will be preempted from acting, she explained.

However, for any use the EPA doesn't evaluate, "the states will still have the ability to regulate themselves, to the extent they're not preempted by other federal laws," Ms. Marrapese said.

A company could argue that their use of a substance is safe or results in negligible exposure, and therefore should be excluded from the assessment, she said. But "the downside to that is if it's not part of EPA's risk evaluation, those companies are still going to be fighting that battle on a state-by-state basis."

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"If you believe you have a safe use, it benefits you to have it be part of EPA's risk evaluation," because then states will be preempted from acting, Ms. Marrapese added.

The article can be found here (*subscription required*).