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AS EPA SCALES BACK DIOXIN RISKS, INDUSTRY EYES LIMITING CLEANUP LEVELS

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As EPA prepares to downgrade the risks of dioxin, industry and other critics are arguing the agency should accept weaker Superfund cleanups and regulatory requirements than industry would have sought before the National Academy of Sciences (NAS) recommended last year that the agency scale back the risks posed by the chemical.

Critics are also vowing increased public scrutiny of EPA's revised risk assessment, including suggesting that EPA subject the revised risk assessment to a novel notice-and-comment rulemaking. One environmentalist says the critics' call suggests continuing efforts to challenge the agency's new dioxin assessment.

EPA recently announced that it expects to revise its interim risk assessment of dioxin by July 13, according to information available through its Integrated Risk Information System (IRIS). EPA is revising the interim assessment in response to NAS' landmark 2006 study recommending that the agency downgrade cancer risks from a substance that is "carcinogenic to humans" to one that is "likely to be carcinogenic to humans."

Among other things, NAS recommended that EPA use both a conservative linear risk model and a non-linear model, when estimating risks at levels of exposure below which exposure may not cause an "observable effect." NAS also recommended that EPA develop a first-time non-cancer risk value.

The agency's revisions to its interim risk assessment are significant because it would help the agency finalize the risk level, cleanup targets and other environmental standards that have had interim status for over 15 years pending final approval of the agency's risk assessment.

However, industry is ramping up its efforts to argue that EPA should consider scaled-back risk estimates in cleanup and other regulatory decisions.

The American Chemistry Council (ACC) and other agency critics recently failed to convince the Supreme Court to review a case over the Vertac Superfund site, a dioxin-contaminated site in Arkansas, which they say could have set a precedent for whether cleanup agreements can be changed after EPA revises a risk assessment.

The high court announced April 23 that it would not review the case, *Hercules, Inc. v. United States*, which included the question of whether EPA's use of its dioxin risk assessment to set cleanup levels was unlawful because the agency failed to subject the risk assessment to notice-and-comment rulemaking.

Industry officials were interested "far more in the [potential] precedential value" of the court reviewing EPA's dioxin risk assessment and determining whether revised risk assessments can be applied retroactively than what the ruling may mean for the liable parties' cleanup costs, one industry source says. The source says industry sought to have the court hear the case as a way to raise public awareness over dioxin. We want to "demystify dioxin," the source says.

While industry did not succeed in winning the precedent it sought in this case, industry's effort to scale back cleanup levels could have broad significance because the Vertac site is one of 233 dioxin-contaminated sites on the Superfund National Priorities List, according to EPA data.

For example, Dow Chemical Corp. and EPA Region V are sparring over cleanup levels at the company's Michigan headquarters, which is contaminated with dioxin.

Industry efforts to scale back regulatory requirements also extend beyond waste cleanups. ACC is urging the Bush administration to adopt a voluntary wastewater discharge program for dioxin releases that relies on the scaled-back risk assessment, rather than proceeding with strict, technology-based standards.

In its recent *amicus* brief to the high court, ACC argued that EPA's use of its prior risk assessment to set cleanup levels at the site was unlawful because the risk assessment had never been subjected to notice-and-comment rulemaking.

ACC argues the potency factor, which is developed after tests conducted on rats in high doses, has never been subjected to notice-and-comment rulemaking and thus its legitimacy is questionable. "The EPA has thus never had to consider the full range of scientific evidence that bears on the dioxin potency standard; nor has it ever had to satisfy any level of independent judicial review in holding that factor," ACC says in its brief. *Relevant documents are available on InsideEPA.com.*

In the brief, ACC says that if EPA were to adopt the NAS recommendations, it would result in a risk factor and cleanup level even weaker than the level proposed by the liable parties at the site. And, the group says, if EPA were to adopt other NAS recommendations, it would "leave open the ever-increasingly likely possibility that dioxin does not cause human cancer even at the highest levels of exposure." -- *Colin Finan*

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