

Erik Baptist Comments on Lawsuit Challenging EPA's First Chemical Risk Evaluation

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Erik C. Baptist, partner in Wiley's Environment & Product Regulation Practice, was quoted by *Bloomberg Law* in a July 17 article about a lawsuit challenging the U.S. Environmental Protection Agency's (EPA) final risk evaluation of methylene chloride. As noted in the article, this is the first such evaluation the EPA has issued since the 2016 amendments to the Toxic Substances Control Act (TSCA) required the agency to decide whether certain chemicals pose unreasonable health or environmental risks.

In a July 16 petition, a group of advocacy organizations asked the U.S. Court of Appeals for the Ninth Circuit to review the EPA's conclusion that certain uses of methylene chloride did not present unreasonable risks, as well as its decision to not examine certain ways the chemical is used, *Bloomberg Law* reported.

As noted in the article, the EPA determined that 47 of the 53 uses of methylene chloride are too risky, while six of those uses were found to not pose unreasonable risks. This type of "bifurcated analysis" of a single chemical is not mentioned in the TSCA amendments.

"If the Ninth Circuit agrees that EPA can bifurcate its reviews," then both issues raised in the petition are ripe for court review, Mr. Baptist said. But another potential outcome, he said, would be for the court to decide it can't hear a case challenging a risk evaluation that will require the agency to develop regulations. In that scenario, the court would remand the risk evaluation back to the EPA for proceedings to regulate methylene chloride, Mr. Baptist told *Bloomberg Law*.

Related Professionals

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Practice Areas

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