EPA'S DRAFT PLASTICS STRATEGY: A ROAD MAP OF WHAT COMES NEXT

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US Policy and Regulatory Alert

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The US Environmental Protection Agency (EPA or the Agency) recently released a “Draft National Strategy to Prevent Plastic Pollution.”[1] Depending on its ultimate composition, the final strategy could materially affect the regulated community, especially those manufacturing plastics, regularly using plastics, and handling waste plastics. Accordingly, such businesses would be wise to examine how the draft strategy might impact their operations and consider providing feedback by the 16 June 2023 public comment deadline.

Tied to the Biden administration's efforts to establish a circular economy, the draft strategy lays out three objectives aimed at eliminating the release of plastic waste from land-based sources into the environment by 2040.[2] They are: (1) reducing plastics pollution during plastic production, (2) improving post-use materials management, and (3) preventing trash and microplastics from entering waterways and removing escaped trash from the environment.

Focused on upstream actions, the first objective looks to reduce pollution throughout the life cycle of plastic products. Potential actions identified by EPA include reducing the production of single-use, unrecyclable, and frequently littered plastic products, as well as increasing the use of sustainability standards, ecolabels, certifications, and design guidelines. On the regulatory front, the draft strategy proposes reviewing and updating regulations relating to air emissions and water discharges of pollutants or waste disposal from plastic production and recycling facilities. It also proposes exploring other potential health and safety measures, such as regulating the production and transport of plastic pellets.

The second objective—improving post-use materials management—centers on EPA's belief that the United States should employ more circular approaches to reduce the life cycle environmental impacts of plastic products. Here, the Agency's suggested actions include increasing circularity by developing plastic reuse systems and composting systems, as well as improving public outreach on proper materials management. On this front, the draft strategy interestingly extends beyond EPA's jurisdiction and supports efforts to increase awareness of the Federal Trade Commission's Guides for the Use of Environmental Marketing Claims (Green Guides) and the consequences of deceptive environmental claims.[3]

EPA's third objective recognizes that interventions are necessary to ensure that plastic waste and micro/nanoplastics do not enter waterways and that an improved understanding of the sources, pathways, and sinks of trash is needed to develop effective solutions for removing escaped trash from the environment. According to EPA, possible interventions could include implementing new programs aimed at reducing littering, increasing street sweeping, and installing trash-capture technologies designed to filter waters. With respect to the regulatory actions under consideration, the draft strategy provides that EPA should assess how to “more expansively and effectively” utilize existing Clean Water Act programs to address trash loadings into waterways.

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In particular, the draft strategy calls for an analysis of how effective National Pollutant Discharge Elimination System permits, total maximum daily load development, water quality standards, impaired waterbody listings, nonpoint source management plans, effluent limitation guidelines, and pretreatment standards are in addressing trash.

In addition to establishing its strategic objectives, EPA confirmed that activities that convert nonhazardous solid waste to fuels or fuel substitutes (referred to as “plastics-to-fuel”) or for energy production are not considered to be “recycling” activities. Companies submitting new pyrolysis oil chemicals for review under the Toxic Substances Control Act will be required to conduct testing for impurities that could be present in the new chemical substance prior to approval and ongoing testing to ensure there is no variability in the plastic waste stream that is used to generate the pyrolysis oil.

While it is unclear if and when EPA will move forward on any of the proposed activities, given that the Biden administration released the draft strategy as an environmental justice initiative, it is likely that EPA will remain focused on addressing disparate impacts on communities affected by plastic. Under the draft strategy, such activities might include mapping plastic production facilities, performing an environmental justice assessment for nonhazardous solid waste management facilities, and providing funding to impacted communities for various initiatives, such as making recycling and collection program improvements.

LOOKING AHEAD

Those interested in evaluating how the draft strategy might impact specific ongoing or planned operations, as well as in preparing public comments for submission to EPA, are encouraged to contact the authors or another member of K&L Gates' Environment, Land, and Natural Resources practice group.

Stay tuned for forthcoming alerts examining recent litigation targeting microplastics and potential avenues for future microplastics regulation.

FOOTNOTES

[1] *See* 88 Fed. Reg. 27,502 (May 2, 2023). In connection with the draft strategy, the Biden administration formed a White House Interagency Policy Committee on Plastic Pollution and Circular Economy, which is tasked with coordinating federal efforts on plastic pollution in an environmentally just manner.

[2] The draft strategy is aligned with other national initiatives, such as EPA's goal to increase the US recycling rate to 50% by 2030 and the country's submission to the United Nations Environment Programme's Intergovernmental Negotiating Committee on plastic pollution. According to EPA, the draft strategy together with the administration's National Recycling Strategy satisfy the Agency's obligation under the Save Our Seas 2.0 Act to develop a strategy to improve post-consumer materials management and infrastructure to reduce plastic waste and other post-consumer materials in waterways and oceans. Published in November 2021, the National Recycling Strategy primarily focuses on advancing municipal solid waste recycling systems, including plastic products in municipal solid waste.

[3] *See* 77 Fed. Reg. 62,122 (Oct. 11, 2012). The Green Guides state marketers should not claim their products are “recyclable” unless recycling facilities for those products are available to a substantial majority of consumers or

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communities where the item is sold.

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