

MFG Week Webinar Series Transcripts

Regulatory Crosscurrents

00:00:28:00 - 00:00:36:15

Speaker 1

All right. So I know it's noon, but we're going to just give everyone a minute or, everyone to get into the zoom room.

00:00:36:17 - 00:00:38:24

Speaker 2

To settle in, settle into the zoom room.

00:00:39:01 - 00:00:51:07

Speaker 1

Settle into the same room. Get comfortable.

00:00:51:09 - 00:01:18:09

Speaker 1

Okay. Well, welcome everyone to, meet manufacturing League. So this is our second annual Manufacturing Week webinar series. So today, Terry Montoya and I will be talking about, regulatory crosscurrents, Cephas Carbon, the future of environmental enforcement. I am a, my name is Chris Conn. I'm a partner in our Nati office, an environmental practice group.

00:01:18:11 - 00:01:42:14

Speaker 1

My partner, Terry Montoya, he'll introduce himself before his portion of the presentation, but, he is also a partner in the environmental practice group. Just a little bit of housekeeping at the top. So there, this is a webinar, set up as a webinar. So we actually can't the, anyone who has joined. But if you have any questions, please, input them into the question and answer box.

00:01:42:16 - 00:02:11:16

Speaker 1

We'll answer some questions along the way, but we will try at the end to, circle back and address any questions that are submitted. And then this session has

also been submitted for CLE approval. So additional information related to that will be provided in an email later today.

00:02:11:18 - 00:02:42:04

Speaker 1

So we're going to start with P5. And what are P5. So P5 is a class of thousands of related synthetic chemicals. So various sources estimate that there might be 8000 P5 or over 15,000 P5. NPA's Toxic Release inventory list currently includes 205 key phosphor reporting in 2025. The most prominent are PFOA and PFOA.

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Speaker 1

And you know, key for us is really the it's also the subject of a movie that was actually filmed in Cincinnati, Dark Waters. They're called Forever Chemicals. So they are used in many applications because of their ability to resist grease, oil, water, heat and stains. So they're very pervasive. And they also, degrade very, very slowly or don't really degrade.

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Speaker 1

They just kind of are in the environment forever. And so that is the reason why it has gotten so much attention. And it's used in a number of different things. So, it's very commonly found in apparel and other textile treatment. And, and firefighting foam. So a triple F, carpet and rugs. So, Scotchgard and those types of treatments that are often in carpets and chemicals, and carpets and textile treatment, it's also used in a number of industrial applications.

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Speaker 1

So things like wires and cable coatings, it's also used in a lot of processing. So like where materials are extruded. A lot of times it is being used because of its, ability to, kind of like manage heat and also in those type of application. So.

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Speaker 1

What I, what we're really here to talk about are, you know, updates and changes. And so sort of at the beginning of the year, there was a lot of speculation as far as, you know, what does the new administration mean for the future of PFAs regulation at the federal level? So,

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Speaker 1

So, you know, so from a macro overall level, the priorities are really sort of aligned, so that if you remember back to, President Trump's first administration and during that first administration was really what laid the groundwork for US regulation. So even, back in 2019, EPA identified actions that it was planning to implement, including developing analytical method as well as, you know, regulating PFOA and PFOs.

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Speaker 1

Establishing drinking water standards for PFOA and PFOA, you know, promulgating significant new use rules under Tosca, requiring notification, under Tosca, when, PFAs chemicals are used in new ways. So, so even though I think at the beginning of the year, there was sort of a question, as far as you know, does that do the overall deregulatory agenda, like how did that affect federal PFOA?

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Speaker 1

I, you know, especially because at the end of the Biden administration, you know, there were new federal regulations coming out basically every month with various regulations. For people. So, overall, like, that based on announcements by USDA, that the priority sort of still stay the same. EPA has announced that it, you know, that it intends to, you know, use, use current regulations to, enforce, forest cleanups, particularly against polluters.

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Speaker 1

To develop testing methods to, test and detect PFOA, and then and to also gather information related to people. I think when you get down to the specific rules, there are definitely changes. And different approaches that are being

taken under the current administration. So I think an important one that was recently announced was, the of final rule, which had been passed to designate PFOA and PFOs and PFOA.

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Speaker 1

So, there was some, rumors of whether under the current administration, if there was going to be a rethinking of that rule and a rollback of the Cercla hazard assessment designation for people and.

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Speaker 2

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Speaker 1

Us EPA in there, there's currently ongoing litigation related to that rule. And, and the US EPA announced also separately that they are going to, not roll that back, but they are planning to keep that regulation. There is no, current effort to there is no current plan to rescind that rule. But but that they are, you know, planning to work with Congress to come up with a legislative approach to address some of the concerns, challenges by passive receivers, including, pot use and sewer district, where there are some changes that, for the drinking water standards.

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Speaker 1

So under so the prior USDA administration had promulgated chemicals for PFOs, PFOA, PFOA, TFA, and mixtures with Holidia, which is Gen X. And so USP has announced that they plan to keep PFOA as a key apoa, and to do new rulemaking to respond to others. The task force reporting rules. So, this is a, rule that I think has been on the radar for a lot of manufacturers, especially because the breadth of the rule requiring reporting for, of people that have imported, which is manufactured, which also includes importing from 2011 to 2022, and also, the original rule did not include any exemptions for article that orders.

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Speaker 1

So, the task force reporting rule, there was recently a submittal to the OMB, indicating that EPA is looking at, making some modifications to that rule to, you know, which could include exemptions for which could include exemption, or modifications to the scope of the reporting rule. And so based on some prior announcements, including, the April 2025 EPA announcement from Administrator Belden, you know, there is some speculation that these modifications could include exemptions for small businesses and article importer.

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Speaker 1

That is something that EPA has, sort of announced that are things that they are considering. There's also some speculation that, you know, potentially the time period for the data collection could be narrow. That is a very common comment from industry is that, you know, for for a lot of companies, records for that long period of time just really aren't available.

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Speaker 1

U.S. EPA continues to add additional chemicals or PFAs chemicals for the toxic release inventory. So for reporting year 2025, there are now 10 or 5 PFAs chemicals that both of our reporting, and then also in NCDs permit applications, for monitoring, reporting continues. Continues to be added to to NCDs, permit.

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Speaker 1

So now while so I think the big picture message or this presentation is really that for us. Yes, there are some changes in the way that PFOA that the rulemaking proposes being implemented. And the way that they're being addressed. But I think place is still really here to stay. And it's really still an issue for, manufacturing facilities.

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Speaker 1

And I think in particular because of the challenges of the state regulations. So, you know, just even during, kind of like more active regulation on the federal level, some states have been really active in establishing regulations, for us in both environmental and various goods and product categories. So this has resulted in like really a lot of variation in the way that states are regulating PFOA.

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Speaker 1

So we have there state sort of like sort of like Maine and Minnesota and now New Mexico that have issued regulations that have very specific based prohibitions of various products. But also require very specific reporting for PFOA. So even if, the product is not prohibited in that state, there are very, detailed, reporting regulations that are being required by state.

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Speaker 1

So, this sort of adds to the challenge of having varying state requirement because now you not only have varying timelines when various state requirements are going to affect, the scope of, of what these regulations are. So like what it means to be a manufacturer or what it means, you know, for the sale and distribution of states, but means to have PFAs or intentionally added PFOA.

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Speaker 1

But you. But you also, have other.

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Speaker 1

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Speaker 1

Intentionally added people and then,

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Speaker 1

And then you also have, U.S., EPA or not USDA. You also have kind of at the federal level. The Department of Justice is also looking at not just us, but other state regulations that are sort of affecting interstate commerce. And so the Department of Justice recently issued a request for information requesting comments on state laws that significantly affect national economy or interstate commerce.

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Speaker 1

So the comments related to and response to RFI, you know, related to not just environmental regulations, but a number of them, a number of them, brought up the challenges that are being faced by, at the variety of state laws and regulations, particularly because, like manufacturing, the sale and distribution and manufacturing is so national. So, you know, by in order to comply with the requirements in certain states, it's the challenge is really to it becomes really challenging to have 50 different requirements in the different states.

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Speaker 1

And so, the so there is a lot of effort by industry to push for one reporting requirement. And also, to have there be some uniformity with these regulations. So state regulation of there is not only are there these bans on various products, you know, include consumer goods, drilling fluids, textiles and other other types of products, but there's also, different environmental regulations, those health based standards, cleanup standards, disposal restriction.

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Speaker 1

And then, not just for consumer goods, but there's other industries that are affected, like oil and gas operations. Certain states have banned people and fracking fluids. And then also, restrictions related to the use of air filters. So, you know, for prohibiting the use of a travel ban, you know, practice, in practice, firefighting and things like that, or, or limiting these to certain types of fires.

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Speaker 1

And then sort of the other area, where this is not going to go away, regardless of what, different what priorities are under different, different administrations. But, there are a growing number of federal and state enforcement and cleanup orders. So we are seeing more requests for information related to us, you know, both state and federal governments coming in and requiring testing where they think that there might have been a release related to both.

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Speaker 1

And then also litigation brought by third parties. And so litigation was initially primarily filed against manufacturers of, so like the three, DuPont cameras. But the scope of the defendants in these cases have really expanded. So, you know, where, like for us litigation, I would say a couple years ago is really, you know, age litigation and against manufacturers of us, we're seeing more litigation now, again, now being brought by against companies that are, alleged to be discharging because they use force in their, in their process.

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Speaker 1

So, there's, the big piece of multidistrict litigation that's going on right now that's still kind of working its way through the court. And, you know, and then there's also numerous public interest in class actions brought against, various retailers and also consumer goods manufacturers, because for different claims related to, you know, like saying that you're good.

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Speaker 1

Like, goods are healthy or, you know, are nontoxic and, you know, with allegations that they might contain people either in the material or in the packaging. So, I think the takeaways are really, actually, we have one question.

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Speaker 1

Can you talk about what you know about the Cercla final rule in general, contractors and construction managers as passive receivers of construction site that contain PBR. So the Cercla final rule does not currently include any specific exemptions. Although EPA has said that they plan to, use their discretion and, bring enforcement against, passive receivers.

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Speaker 1

And so the passive receivers that are really sort of being talked about are more the pot use and governmental and municipal entities that receive us. And so, I think for general contractors and construction managers, I guess, you know, if the concern is liability due to, you know, potentially, affecting, I guess, like making keep us worse, if there is like a of contamination on the site, the Cercla final rule doesn't really speak to that.

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Speaker 1

Other than, you know, EPA sort of public, a, I guess, like, announcement or approach of their intention to, to, you know, make the polluter pay and to primarily be focused on that player. But there, there is not some sort of exemption for general contractors and construction managers, for both. So I think the key takeaways really are, you know, staying up to date on the federal and state legislative and regulatory development.

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Speaker 1

I think, you know, even as federal regulation and new regulation, thank you both continue to flow, or have flowed and state legislative and regulatory developments continue to, be passed, and then also, conduct diligence and gather information that is needed to comply with federal and state regulations. So because of the task of reporting requirement as well as the various state reporting requirements, the important the I guess like the thing that is, I guess, like most important on the near horizon is to conduct the adequate due diligence to have information to report.

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Speaker 1

And then in terms that the long term strategy, of managing potential risks due to foreign products is one, just like finding out if you have. So you might a lot of companies might not think that they have people in their product or in their process, or might not know because of the you know, the ongoing reporting requirements as well as, you know, the continued, there, like the monitoring and reporting requirements also and needs permit, even if you don't know if you have in your product or your process now, like there is a very high likelihood that you will know or you will learn a bit because of these other because of these

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Speaker 1

regulatory developments. And then the last thing is also making sure to the counsel, when you're responding to regulatory inquiries. So live wastewater treatment plants are, providing surveys to their discharge or their administrative information requesting information and also requests from a supplier or from from customers to their suppliers as far as what pay for their product, kind of filling up the, supply chain.

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Speaker 1

So now I'm going to turn it over to my colleague Teri Montoya.

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Speaker 2

Well, to those on the West Coast. Good morning. To everyone else, probably good afternoon at least, Teri Montoya for 37 years, I've enjoyed representing the regulated business community in, environmental actions in California. Air, soil and groundwater in California is unique. California has its own version of the Clean Air Act. The Clean Water Act and federal require hazardous waste, storage, usage and disposal, and states are allowed to do that.

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Speaker 2

We we have a federal republic type of of government. So California can, seek approval if it need to seek approval to have its own statutes that are at least as stringent as the federal statutes, but they can be more stringent in many

instances. California's statutes are more stringent. And here we're not, we're not talking this is the the Senate bills are, greenhouse gas related.

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Speaker 2

So they're not necessarily Clean Air Act gas related, but a state like California can decide since there is a regulatory vacuum here to institute its own greenhouse gas. Initiatives does not mean that it immune from litigation, which we'll talk about. So overview. Senate Bill 253 and 261 aimed to make climate disclosure as reliable as financial reporting.

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Speaker 2

They standardize emissions and climate risk data to support California's net zero pathway for 2045. Senate Bill 253 requires disclosures of scope one, two and three, with phase assurance rising to the level, to the audit level rather four scopes one and two. Senate Bill 261 requires disclosure of material climate related financial risk with board oversight and governance integration.

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Speaker 2

Carb is currently finalizing its rules for Senate Bill 253 and 261 at the August 21st workshop, the last workshop on rulemaking that they had, which I attended for our clients. The agency confirmed financial grade scrutiny as a reporting requirement, and we're going to talk about what that means. They also confirm coverage is going to follow the, quote, doing business in California, end of quote test under revenue and Taxation Code 23101.

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Speaker 2

We're going to talk about what that means in a minute. So today we're going to talk about coverage and Nexus. We're going to talk about parent subsidiary relationships scope definitions and the assurance timeline, governance, current litigation against these bills and near-term action to be audit ready. So if we could switch to the the coverage doing business in California slide.

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Speaker 2

There we go. Coverage is based on California Nexus, not headquarters entities organized or commercially domiciled in California fall within the scope of these statutes. For both statutes, Carb applies tax and revenue Code to three 101. So if you meet any one of the following definitions for the prior year, you fall within the rubric of triggering reporting compliance definition.

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Speaker 2

One company qualifies as a company. Sales exceed \$735,019. That's a 2024 inflation adjusted figure sales. Increase or greater than that. You fall within the rubric California real or tangible personal property exceeds \$73,502, or 25% of total property. You fall under that definition. Compensation paid in California exceeds \$73,502, or 25% of total compensation. You fall within the definition.

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Speaker 2

Thresholds are indexed annually. Total annual revenues under Tax and Revenue Code section is proposed as global gross receipts. Multinational or interstate companies with California sales or operations may need to comply, even if based elsewhere. Carb will also rely on California Secretary of State records to identify companies with agents for service, a process in California to identify whether you're domiciled or a registered entity.

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Speaker 2

And if so, they're going to they're going to advise you that they might need more information to see if you fall under two five 3 or 2 six one. A limited footprint can still establish Nexus registered agent distribution center or recurring in state sales, inventory registrations, revenue and in-state assets. Align entity records, align your tax positions and disclosure status so the compliant posture is consistent between your various entities.

00:26:04:08 - 00:26:12:03

Speaker 2

So now let's talk about that. Let's switch to slide three. Parent subsidiary reporting.

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Speaker 2

Carb indicated at its recent workshop that it may allow parent corporation to take on the reporting obligation for its subsidiaries so consolidation can reduce duplicate filings. But it raises the bar for data control. Centralize. If you're if you're, a business with a lot of entities, I have one client that has all types of entities handling all types of real estate, positions and ownerships.

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Speaker 2

The time is now, as I advise, to centralize how emissions are calculated and where boundaries are drawn between all of your California businesses, use the same emission factors across all of the entities, and assign clear owners for inventories, consolidation, and final signoff to get your accounting in order here, extend internal controls to subsidiary systems. By methodology changes, I mean any change in how emissions are calculated, switching emission factors using a new data source or revising the organizational boundary, you've got to track those changes.

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Speaker 2

You've got to prove those changes on a on a parent corporate level and keep them keep an auditing trail as to why you may have various emission data and emission factors that you're using. May may pan out, may not. Documents, estimate used in the numbers, the input, the assumptions and why they're reasonable and retain source records. So an independent reviewer can reproduce the calculations.

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Speaker 2

So we're going to talk about what that means and the assurance level. So carb is also stated that the greenhouse gas protocols established in the 1970s for determining greenhouse gas emissions, for identifying scope one, two and three are going to be able to be used and relied upon. One does not need to

create, new protocols when the greenhouse gas protocol already has those, that data in it.

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Speaker 2

To two weeks ago, I think two weeks ago. Law360. Published one of my articles where I analyzed the greenhouse gas methods and how you can meet compliance under two, five, three by relying on the greenhouse gas protocol. If you do not have access to, to that, article, you would like a copy of the article, shoot me an email and be happy to provide it.

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Speaker 2

All right. Slide four, if you will, Chris. Emission scopes, scope one. What is scope one? Direct emissions under your control. Boilers process lines on site combustion mobile equipment. Scope one refers to your facility. But remember, SB 253 requires a global outlook. So if you fall under the ambit, a revenue and tax code section and you have to report you're not going to report just your scope one, emissions based on your California footprint or footprints.

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Speaker 2

It has to be global as well. Scope two. Scope two, relates to the to the energy that you purchase to fuel your scope. Once purchased, energy, electricity, steam, heat or cooling assurance will require middle meter level evidence, documented conversions, and a stated location or market based approach. This makes for this makes greater sense. If you look at my article on the Greenhouse Gas protocol.

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Speaker 2

Scope three. Scope three is the upstream and downstream value chain emissions and I have I have clients that then that are global entities. And so, you know, they have mines in certain countries where they're where they're, digging out and processing the raw materials and shipping them by train, by ship, to a facility to be processed in another country.

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Speaker 2

Then it becomes, you know, a piece of steel, and that piece of steel is further refined somewhere else down the line. And it eventually makes it to California, where it is a piece of wire, a cable, or whatever. That entire process is what scope three calls for, and the greenhouse gas emissions and every stage. So upstream purchased goods and services, capital goods, transport, waste, downstream distribution use phase, use phase where material is used end of life.

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Speaker 2

So scope three carbon mindsets. It's challenging to define scope three. So they're working on that in their rules. But you're going to have to we know in Europe greenhouse gas reporting has been going on for for decades under the greenhouse gas protocol. So, working with my clients, I tell them we've got to start with a defensible screening.

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Speaker 2

We've got to identify material categories. We have to prioritize high impact suppliers. We have to use primary data where feasible and use high quality secondary data where necessary. And we have to record choices that we make, rationales that we make, and limitations that we place on, on the data so that it meets the assurance level. Let's talk about assurance.

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Speaker 2

Slide five, if you would, Chris.

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Speaker 2

Assurance is phased. So in 2026 there's going to be limited assurance for scope one and scope two reporting. And it's data. Limited assurance as a matter of law means a good faith attempt. 2027 is when, scope three disclosure begins. A limited assurance at that point, Carb is not ready to to put

at this point to commit to, a reasonable assurance level for scope three, but it suggests probably by 2030 it may but a reasonable assurance for scope one and scope two.

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Speaker 2

And by reasonable assurance that is an accountable, reviewed audit level stamp of approval on your data. So some key timelines. First compliance deadline. It was g carb had proposed January 1st, 2026 for scope one and scope two reporting. And it's last workshop. It relaxed the deadline to June 30th, 2026 for fiscal year 2025. Scope one and scope two disclosures.

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Speaker 2

Is the pressure off? People know the pressure is not off. We're going to be talking about how you still have to have, good faith assurance by a third party can have in in-house assurance of your scope one and scope two reports, data, assumptions and finding. So you have to assemble all the scope one and scope two data.

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Speaker 2

You have to commit to a methodology. You have to put the methodology in place. You've got to get that information from your subcontractors and suppliers, and you've got to secure an auditor. And the auditors under s force, SB 253 and 261, work are very busy and they've got clients that have already booked them. So you can't wait till the last minute.

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Speaker 2

I'm I totally agree. One of my recommendations to Carb on behalf of clients is January 1st, 2026 is too aggressive for scope one and scope three, but there's a lot to be done before June 30th, 2026, so the pressure is not entirely off. It's on carb on August 21st and it's, workshop card carb. Still committed to October 14th, 2025 as the date by which they were going to propose their draft rules for Senate Bill 253261 on October 14th.

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Speaker 2

However, they do not produce the rules, but they produce. Notice that the rules will be forthcoming sometime in the first quarter of 2026, due to the volume of public comments. So we're still waiting for the draft rules.

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Speaker 2

Limited assurance is review level. Reasonable assurance is audit level positive confirmation tested controls robust evidence on your methodology, your findings, your data is what your subcontractors and your suppliers are reporting to you and and what level of data scrutiny that you're using. So got to start working on that. Slide six. If you would. Thank you Chris. Audit ready means compliant means complete.

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Speaker 2

It means compliance ultimately but complete accurate reproducible version control methods, standardized work papers, segregation of duties, issue tracking for errors and late data. So for scope one, scope two tie outs to meters, invoices to support your your data and fuel logs. For scope three, it simply establish supplier engagement protocols and contract terms with your suppliers and subcontractors.

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Speaker 2

Now in your supplier and subcontractor agreements. Time to time to modify them require timely based on your reporting obligations. Require timely, structured production of scope three data and supporting documentation in the format you prescribe. Definitions, units, deadlines, evidence, standards, and audit rights so that you're telling your suppliers, I have to report into, SB 253. So we're going to revise our contract here so that you get me the data that I need.

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Speaker 2

And let me give you descriptions of what I need from you. You give me the support you allow me to. You get it to me in time so I can meet my reporting deadlines, obviously. But you're going to back away. You're going to further back that into your accounting process, but you're also going to want audit rights of the data because you're ultimately responsible.

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Speaker 2

So if your suppliers, subcontractors give you data and you say, this isn't right, this isn't that, there's more to it than that, then you want time to audit those documents, get back to them and under your contract, right. Say you need to provide me this and you omit it to do so, set data quality expectations in procurement, calculations, methods retention and run reasonable checks on outlier data.

00:39:05:03 - 00:39:17:17

Speaker 2

Give yourself the time to do that because we are talking about a third. You've got to turn everything over to a third party auditor. And the auditor then has to scrutinize it.

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Speaker 2

Slide seven, if you would, Chris. Thank you so there's also, rigid protocol rules for, Senate Bill 261 board and executive oversight is mandatory. Carb is insistent that you sustainability teams cannot alone comply with Senate Bill 261. They want documentation to show that the board is committed to reducing, climate financial risk. There is at least a board member that's assigned the, SB 261 oversight and compliance obligation, and that they update committee charters to assign oversight, that they define reporting cadence and management rules that the board, the company everyone buys into it, that they integrate climate risk into enterprise risk management, transition risk, regulatory exposure, supply chain disruption, physical hazards and assessed

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Speaker 2

alongside with financial risk.

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Speaker 2

6261 compliance means that the board itself, the company itself, the heart of of of the company has to ensure direct reporting lines to leadership, maintain minutes, risk registers and management certifications to evidence. Active oversight on this issue. Slide eight, if you would, Chris. So our, our system of government is is a federal republic. So, you know, we know that under the current administration, the EPA itself, may have positions on, on on what they seek to enforce if they seek to, to be ardent in enforcement or at all.

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Speaker 2

And all of those operate at a federal level. But states can say that's all well and good, but we want to implement our own laws. And that's the that's the message of government, that Governor Newsom made clear when he signed SB 253 into six one is that if you're a business and you have a footprint in California, you're domiciled in California because you enjoy, you know, but enjoy the profits from the fourth largest economy in the world and the climate and all of that.

00:42:14:00 - 00:43:02:24

Speaker 2

And your employees like living here. Then you're going to buy into our 2045 net zero goals. So that doesn't mean that there aren't legal challenges. So there are current legal challenge to SB 253 and 261 on, federal level. The lead theory is compelled speech under the First Amendment. The earlier claims of Commerce Clause, the dormant Commerce Clause, which means, Senate Bill 253261 interrupts the flow of interstate business flow, business into California and out of California.

00:43:03:01 - 00:43:41:20

Speaker 2

I'm going to give you my thoughts on that. The the other component is that extraterritorial California's SB 253261 is not limited to the boundaries of the of the state. Its effect is extraterritorial due process. Those claims have, have

been narrowed. They haven't fared, too well in in the case so far. A preliminary injunction to stop halt SB 253 and 261 was denied by by the court.

00:43:41:22 - 00:44:30:12

Speaker 2

That's been taken up on appeal. So we will see what happens on appeal. But, the court the court has is under considering the issue of the First Amendment argument of commercial speech. And by commercial speech, I mean, it's been defined in that case as if you are a business, that has to comply with SB 253 and you're calling up your support, your subcontractors and your suppliers, and you say, I'm sorry, the cost of doing business with us now is now that you have to give us all of your greenhouse gas, data that you have been generated so that we can roll that into our report because we do business with you

00:44:30:12 - 00:44:42:19

Speaker 2

and the we're the ones in after report. And by the way, I'm going to have to tell you that I need this, that and the other. And the argument has been made that that is uncomfortable speech.

00:44:42:21 - 00:45:19:15

Speaker 2

It's an interesting argument, and it's been tried before in other types of cases. But on a federal level, there's a, there's a line of cases that say, you know, commercial speech is receives less protection than core political speech or core private speech where you're, you know, you're you're protesting something and you have the right to protest and, speech or actions that would violate one's, one's privacy and autonomy.

00:45:19:17 - 00:46:14:14

Speaker 2

There's less of a privacy concern from a long lineage of cases. Talking about commercial, free speech, there's less privacy concerns there. And the state's interest. Those courts talk about less privacy and the state's interest in accurate market information is is strong. So under this framework and under this line of cases, factual, uncontroversial disclosures about, hey, how much

energy does your does your subcontractor facility generate in order to give me the parts that I need, those, can be deemed to be reasonably related to legitimate state interest, such as investor information, climate risk management.

00:46:14:16 - 00:47:11:01

Speaker 2

And they're generally permissible as long as they're not unduly burdensome. So it's it's an argument that, is a challenge to make, but it's up on appeal. So we have to wait and see how that happens. The, the dormant commerce Clause that, in my opinion, is, the weakest of the of the arguments because we are not talking about a rule that, for instance, California instituted and then they backed away from and that is they had a rule that 20 years from now, the only dredge kind of trucks, the heavy trucks that go from the port to, across states to deliver goods would have to be EV electronic vehicles by, you know,

00:47:11:01 - 00:47:44:04

Speaker 2

the date 20 years from now, that meant a wave of dormant commerce clause, challenges because, once again, a diesel truck gets to the California border. If they're not electric powered, then they can't come in. That is that is an extraterritorial. That's a strong argument for extraterritorial violation of Commerce Clause. But unlike that example, SB 253 and 261 do not necessarily restrict the flow of goods.

00:47:44:06 - 00:48:09:16

Speaker 2

They just require companies doing business in California to assess and disclose greenhouse gas information about their operations. So we're keeping an eye on those cases. But SB 253 and 261 are still on the books and they're still enforceable. So you have to get ready for them and you have to start doing work now. Slide nine, if you would, Chris, thank you Bruce.

00:48:09:16 - 00:48:52:00

Speaker 2

Connection risks are regulatory litigation and reputational. Regulatory Carb is one of the three Cal EPA entities. And I deal with all three. And I can tell you 37

years Carb is the most ardent in, seeking and enforcing penalties. So there are significant penalties for SB 253 violations, up to half \$1 million. Litigation. We've talked about that reputational, that was one of the, attributes that, Senator Warner, when he got the bill, when drafted the bill and passed the bill.

00:48:52:00 - 00:49:19:17

Speaker 2

And Governor Newsom emphasized and that is, look, if you're doing business in California and you don't care, however, you define that about greenhouse gases, you know, we want you to, to report under 261 and 253. And if you're taking it lackadaisical, then we want your shareholders to say, you know what? We don't like that. You know, we want your customers to say we don't like that.

00:49:19:17 - 00:49:53:14

Speaker 2

So there's a reputational tarnish potentially inconsistent or incomplete disclosures, invite enforcement and investor scrutiny, material risk misrepresentation, misrepresentations. Let's slow down can create security law exposure actions to reduce risk, confirm coverage and nexus. Figure out if you fall under the rubric of the Revenue and Taxation Code. And I help clients do that because some of their corporate structure is very convoluted.

00:49:53:16 - 00:50:21:13

Speaker 2

Decide on parent level consolidation. I have two clients where I'm telling them, you know what you may want to, as the parent corporation, identified the parent corporation and have one entity reporting for everybody instead of 18, which which raises its own problems, run a gap analysis to limited assurance standards. Engage an insurance provider early. I can't stress that enough people they're very busy.

00:50:21:13 - 00:50:32:23

Speaker 2

Already trained teams on rules. Sign off and record keeping. Slide ten, if you would. Chris, you're doing a fantastic job.

00:50:33:00 - 00:50:33:14

Speaker 1

Thanks, Kerry.

00:50:33:18 - 00:50:59:24

Speaker 2

And to emphasize Chris's point, she made a very good point. And it's true in California, P force is not going away. California is in is working on all of its own independent p force regulations. Senate Bill 253 and 261 have not gone away yet. And I don't think they're going to go away entirely. So we need to we need to worry about the immediate next steps in the next 90 days.

00:51:00:01 - 00:51:40:16

Speaker 2

Set the organizational boundary, approve scope one and scope two. Methodology. Approve a scope three screening plan, build a control matrix mapping evidence and owners pilot supplier data collection in priority categories. Schedule a pre assurance review for scope one and scope two. Update board and committee charters. Establish recurring management reports and make oversight active, not nominal. And I go back to to to my point look at your supplier agreements.

00:51:40:18 - 00:51:59:13

Speaker 2

You maybe you need to start putting in, revising those with you know, when we ask you, you need to provide us with scope one and scope two data, or the failure to adhere to that protocol could be an independent basis for breach of contract.

00:51:59:15 - 00:52:05:19

Speaker 2

In closing, Chris, if you would.

00:52:05:21 - 00:52:30:21

Speaker 2

California now treats climate disclosure on financial reporting terms. Manufacturers that build assurance grade systems formalize governance and coordinate corporate family reporting will control cost and reduce risk.

00:52:30:23 - 00:52:57:20

Speaker 2

I'm trying to see if there's any other deadlines I wanted to provide you. Oh. And also, I think it was three weeks ago or three and a half weeks ago. I've been writing a lot of articles on on these issues because something new keeps happening. The reporting template is out. So I have an independent Law360, article that explains how to work through the reporting template.

00:52:57:22 - 00:53:37:01

Speaker 2

If anyone is interested in that, please, shoot me an email or give me a call. My practice covers state and federal soil and groundwater cleanup actions. My practice, covers, ground water rights. I also represent a ground, water basin. So I handle water rights of agricultural entities, to tribe, to Indian tribes, five cities.

00:53:37:03 - 00:54:06:00

Speaker 2

I do, land use and easement claims. And now I also handle coverage, consolidation, scope, design and insurance readiness. For your businesses, SB 253 and 261, are you subject to them? The implementation compliance roadmap and your governance and reporting timelines. And, I thank you very much for.

00:54:06:03 - 00:54:06:17

Speaker 1

00:54:06:19 - 00:54:10:00

Speaker 2

For having me here. I wonder if there's a question here.

00:54:10:02 - 00:54:27:02

Speaker 1

I don't see any questions, but I just wanted to kind of circle back Terry a little bit because I think, you know, when we put this presentation together, we just wanted to do some update on a timely topic, but I think keep us both people off and that, Kabul, like, they have a lot of things in common.

00:54:27:02 - 00:54:55:17

Speaker 1

So these are areas where there is really much more, you know, where the regulatory activity is being driven by that state. But the impact is beyond facility, beyond manufacturers that are operating in those states. Right? So for us, it applies to manufacturers that distribute or sell into those state, like. So a lot of that products regulation kind of a tariff that doing business in California is defined very broadly.

00:54:55:19 - 00:54:57:19

Speaker 1

So, you know, I think for.

00:54:57:19 - 00:54:59:13

Speaker 2

Larry as this caller is their.

00:54:59:15 - 00:55:33:10

Speaker 1

Heat, right. And so like, I think it's really important for manufacturers, even if you don't have a physical footprint and in the applicable CSA in California for Carb or, or in like, you know, the state that we're, they're regulating force to determine like is that affecting, you know, is that affecting your business. And then the other thing too is like under us, you know, under task, you know, Maine, Minnesota, New Mexico, under the state, many state of cat Canada to, one of the key regulatory requirements is really the reporting obligation.

00:55:33:10 - 00:56:11:19

Speaker 1

And so the that that Terry kind of went through in the recommendation with respect to, how do you document, the information that is being reported, how

do you gather that, you know, obtaining, changing supplier contracts to also require that they provide you with key information? Those are, you know, very similar, recommendations that we have on the far side, too, because a lot of this information is dependent on information, a lot of the information that you are having to report it, the information that you need to get from a supplier, and then also making sure that you meet the due diligence standard.

00:56:11:19 - 00:56:37:16

Speaker 1

So, you know, like and so there are, there is a certain level of inquiry that needs to be done in order to demonstrate that you've met your regulatory obligation in order to report. And so, you know, one of the key issues is going to be, how do you demonstrate that you conducted enough diligence to be reporting and like, and then and also what does that documentation really look like?

00:56:37:18 - 00:57:01:21

Speaker 1

And that's an area that, you know, the piece of fiber we've been helping clients and as Terry said, that is a key area for clients to demonstrate compliance with Carb. And yeah. And so I think that there are a lot of similarities, you know, even in these seemingly state specific requirements, that they really have broad application.

00:57:01:23 - 00:57:05:13

Speaker 1

For, you know, almost any manufacturing client.

00:57:05:15 - 00:57:58:08

Speaker 2

I think that's that's why they put us together. And, you know, to go back on, points that that we have said you have to it isn't, in the fast, and fast realm and under, the climate disclosure statutes, as a business, you have to make sure that, you have the right of recourse against your suppliers, because, you know, if if they've been if you are, complying with the greenhouse gas reporting or you have the data and the testing, and you're following the protocol to ensure

that you're not violating a fast rule, but you're supplier has is the one that's got you, in trouble and facing an enforcement

00:57:58:08 - 00:58:27:20

Speaker 2

action or you're in litigation because of the product. Correct. You you have to make sure that that you have beefed up your contracts, modified your contract so you have that right of indemnity against, against your supplier. And that is no, I now face this claim, this threat, this lawsuit, this demand, this penalty because of of what you did, you put me in that position.

00:58:27:20 - 00:58:53:04

Speaker 2

So it's really important to manage your own business. It's really but it's also important to, to now figure out all the connective chains that you have and say, okay, not only do I have to tell you what kind of information and what you're going to give me and what you're no longer going to give me, but I need to make sure that there's a legal hammer there to enforce it.

00:58:53:06 - 00:59:25:09

Speaker 1

Right. Well, I don't Molly, I don't think I see any additional questions on the question box, but, please feel free to reach out to me or Teri if you have any additional questions. You know, obviously, these are kind of both evolving our regulatory areas and so, and I know Teri and I both, you know, provide client updates to our various, you know, our various contact list.

00:59:25:09 - 00:59:50:10

Speaker 1

So, if those are of any interest, please, reach out if you would like to be added to any of those list. The next presentation that will be coming up tomorrow as part of STF Manufacturing Week is, future proofing production facilities, how to prepare for and manage crisis scenarios. And so that will be presented by our colleagues Steve Crawford and Kyle Johnson.

00:59:50:10 - 00:59:58:12

Speaker 1

So, if you are interested in that, please register and attend to any kind of word.

00:59:58:14 - 01:00:00:04

Speaker 2

Thank you for your time, I guess.

01:00:00:06 - 01:00:01:05

Speaker 1

All right. Okay. Thank you.