COMMITTEE ON
ENERGY & COMMERCE
CHAIRMAN FRANK PALLONE, JR.

MEMORANDUM

October 25, 2021

To: Subcommittee on Environment and Climate Change Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Hearing on "TSCA and Public Health: Fulfilling the Promise of the Lautenberg Act."

On **Wednesday, October 27, 2021, at 10:30 am (EDT), in the John D. Dingell Room, 2123 of the Rayburn House Office Building, and via Cisco Webex online video conferencing**, the Subcommittee on Environment and Climate Change will hold a hearing entitled, "TSCA and Public Health: Fulfilling the Promise of the Lautenberg Act." The hearing will examine the Environmental Protection Agency's (EPA) assessment and management of chemical risks under the Toxic Substances Control Act (TSCA).

I. BACKGROUND

Congress enacted TSCA in 1976 to regulate the safety of chemical substances in commerce to ensure that they do not present an unreasonable risk of harm.[1] On June 22, 2016, President Obama signed the Frank R. Lautenberg Chemical Safety for the 21st Century Act (the Lautenberg Act) into law.[2] The Lautenberg Act comprehensively amended TSCA, including key reforms to increase EPA's authority to mandate testing, require EPA to make affirmative decisions about the safety of new chemicals, and require the evaluation, and where merited, the regulation of existing chemicals.

In order to implement the Lautenberg Act reforms, EPA promulgated a series of rules, referred to as the framework rules, governing prioritization, risk evaluation, disclosures, and fees. The fee rule has taken effect, but the other three framework rules are still subject to active court challenges. Much of the litigation has focused on the scope of uses and exposures included in EPA's assessments of chemical substances during prioritization, risk evaluation, and new chemical review.

[1] 15 U.S.C. § 53.

[2] Pub. L. No. 114-182 (2016).

II. SCIENTIFIC INTEGRITY

The Office of Chemical Safety and Pollution Prevention (OCSPP) has received whistleblower complaints[3] regarding irregularities of the new chemical review program. Chairs Pallone, DeGette and Tonko sent EPA a letter requesting additional information on the chemicals reviewed during this time, the whistleblower claims, and planned efforts to strengthen whistleblower protections at the agency.[4] In response to those claims, OCSPP announced it was establishing a science policy advisor to the Assistant Administrator and a new OCSPP Science Policy Council to advise the office on scientific integrity. In response to concerns about the new chemical reviews, OCSPP created the New Chemicals Advisory Committee, updated processes for reviewing and finalizing human health risk assessments, and required enhanced documentation of decisions made under the New Chemicals Division.[5]

III. RECENT ACTIONS ON SPECIFIC CHEMICALS OF CONCERN

A. Per- and Polyfluoroalkyl Substances (PFAS)

The PFAS Roadmap (Roadmap), released October 18, 2021, highlighted key actions OCSPP will be undertaking to address risks from PFAS chemicals.[6]

OCSPP will use TSCA section 4 authority to require PFAS manufacturers to conduct and fund studies to address PFAS data gaps, to be identified in a national PFAS testing strategy. The Roadmap states that EPA will publish the testing strategy and the first round of test orders before the end of 2021. The testing results will inform future regulatory actions by OCSPP and other EPA offices.

Under the Roadmap, OCSPP will also adopt new policies for the review of new PFAS under TSCA section 5. In April 2021, EPA announced that PFAS substances would no longer qualify for low volume exemptions to review under section 5, and this new policy builds on that decision. The Roadmap also includes a commitment to reexamine previous decisions to allow

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[3] *Whistleblowers Expose Corruption in EPA Chemical Safety Office,* The Intercept (July 2, 2021).

[4] Letter from Rep. Frank Pallone, Jr., Chairman, House Committee on Energy and Commerce, Rep. Diana DeGette, Chair, Subcommittee on Oversight and Investigations, and Rep. Paul Tonko, Chairman, Subcommittee on Environment and Climate Change, to the Honorable Michael S. Regan, Administrator, U.S. Environmental Protection Agency (Aug. 17, 2021).

[5] U.S. Environmental Protection Agency, *EPA Announces Next Steps to Enhance Scientific Integrity and Strengthen New Chemicals Safety Reviews* (Oct. 14, 2021) (press release).

[6] U.S. Environmental Protection Agency, *PFAS Strategic Roadmap: EPA's Commitments to Action 2021-2024* (Oct. 18, 2021) (www.epa.gov/pfas/pfas-strategic-roadmap-epas-commitments-action-2021-2024).

new PFAS into commerce in order to identify additional conditions that might be needed to protect human health and the environment.

Further, OCSPP will use authorities under TSCA section 8 to require additional PFAS reporting. The Roadmap calls for rulemakings to classify PFAS as "Chemicals of Special Concern," to add more PFAS to the Toxic Reporting Inventory by spring of 2022, and to require reporting of PFAS sources and quantities by winter of 2022.

B. Persistent, Bioaccumulative, and Toxic Chemicals

When Congress enacted the Lautenberg Act, it created a direct path to risk management regulation for a small subset of chemical substances. This subset is comprised of those chemical substances, other than heavy metals, that had been identified as persistent, bioaccumulative, and toxic (PBT) on the agency's 2014 TSCA Workplan.[7]

The Trump Administration issued final risk management rules restricting the use of five PBT chemicals in January 2021; these went into effect in February 2021. In a March 8, 2021 notice, EPA announced it was reviewing those rules, and opened a public comment period to collect additional comments or information relevant to compliance dates and any aspect of the final PBT rules.[8] After further review, EPA is now considering revising all five of the final rules to further reduce exposures, promote environmental justice, and better protect human health and the environment.

On September 3, 2021, EPA announced its intent to initiate a new rulemaking and anticipates proposing new rules for five PBT chemicals that are the subject of final risk management rules under TSCA.[9] Additionally, EPA is taking action to extend the compliance dates for the prohibitions on processing and distribution and the associated recordkeeping requirements for one of these PBT chemicals, phenol, isopropylated phosphate (3:1) (PIP (3:1)). Initially, EPA provided a short-term extension until March 8, 2022, due to supply chain and downstream producer concerns. EPA subsequently further extended the compliance date to October 31, 2024, allowing more time to review and address supply chain issues. This final rule became effective upon publication. EPA will also be issuing a notice of proposed rulemaking (NPRM) seeking comment on a further extension of the PIP (3:1) compliance deadlines and describing specific information that the agency would need to justify any further compliance deadline extensions.

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[7] U.S. Environmental Protection Agency, *TSCA Work Plan for Chemical Assessments: 2014 Update* (Oct. 2014).

[8] U.S. Environmental Protection Agency, *EPA Seeks Public Comment on Protecting Human Health and the Environmental from PBT Chemicals* (Mar. 8, 2021) (press release).

[9] U.S. Environmental Protection Agency, *EPA Announces Plan for New Rulemaking on PBT Chemicals, Extends Existing Compliance Date to Protect Supply Chains* (Sept. 3, 2021) (www.epa.gov/chemicals-under-tsca/epa-announces-plan-new-rulemaking-pbt-chemicals-extends-existing-compliance).

C. Asbestos

Asbestos-related diseases kill up to 15,000 Americans per year.[10] In July 1989, EPA issued a final rule banning most asbestos-containing products under TSCA. In 1991, the Fifth Circuit Court of Appeals overturned that regulation. Congress's enactment of the Lautenberg Act allowed EPA's asbestos work to resume in 2016. The risk evaluation for asbestos, published in December 2020, focused exclusively on ongoing commercial use of asbestos, with no evaluation of the risk from ongoing exposure to other sources of asbestos. Following a court decision finding that that risk exclusion rendered the risk evaluation deficient,[11] EPA initiated a supplemental risk evaluation examining other exposure sources. In a pair of recent settlement agreements, EPA committed to completing the final rule within 18 months of the court settlement and expanding the supplemental risk evaluation to include more forms of asbestos, exposure pathways, and health endpoints.[12]

D. Methylene Chloride

Methylene chloride is a solvent used in commercial and consumer applications, such as paint stripping surface refinishing.[13] From 2000-2011, 13 Americans died from acute exposure to methylene chloride while refinishing bathtubs.[14] In January 2017, EPA proposed banning its commercial and consumer use as a paint stripper.[15] However, in March 2019, EPA issued a final rule finalizing the ban only for consumer uses, leaving workers exposed.[16]

Four days before President Biden's inauguration, EPA formally withdrew the pending methylene chloride ban proposal on the grounds that it is more efficient to take risk management action on multiple conditions of use at once. Nevertheless, EPA has discretion to accelerate risk management action for conditions of use that present high risks. TSCA section 6(c)(1) requires

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[10] Asbestos Nation, *Asbestos kills 12,000-15,000 people per year in the U.S.* (www.asbestosnation.org/facts/asbestos-kills-12000-15000-people-per-year-in-the-u-s/).

[11] *Court orders EPA to step up asbestos data collection*, The Hill (Dec. 23, 2020).

[12] Asbestos Disease Awareness Organization, *2021 ADAO v. EPA Settlement FAQs* (www.asbestosdiseaseawareness.org/wp-content/uploads/2021/10/2021-ADAO-v.-EPA-Settlement-FAQs.pdf).

[13] U.S. Environmental Protection Agency, *Fact Sheet: Methylene Chloride or Dichloromethane (DCM)* (Mar. 2015) (19january2017snapshot.epa.gov/sites/production/files/2015-09/documents/dcmfaq.pdf).

[14] Centers for Disease Control, *Fatal Exposure to Methylene Chloride Among Bathtub Refinishers* (Feb. 2012) (www.cdc.gov/mmwr/pdf/wk/mm6107.pdf).

[15] Safer Chemicals, Healthy Families, Methylene Chloride (www.saferchemicals.org/get-the-facts/chemicals-of-concern/methylene-chloride/) (accessed Mar. 7, 2019).

[16] U.S. Environmental Protection Agency, *Risk Management for Methylene Chloride* (updated Oct. 14, 2021) (www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-methylene-chloride#consumerban).

promulgation of risk management rules within two years of completion of a risk evaluation. In the June 2020 final risk evaluation, EPA reviewed the exposures and hazards of methylene chloride uses and found 47 of the 53 uses to carry unreasonable risk on this chemical, including for workers and occupational non-users in the vicinity of use. EPA is now developing ways to address the unreasonable risks identified in its updated final risk evaluation.

E. Pigment Violet 29

Pigment Violet 29 (PV29) is used as a colorant and in the production of other pigments (e.g. automotive paint and fiber dye) and in solar cell production.[17] In 2012, EPA added PV29 to its chemical work plan because of high exposure potential, high toxicity to aquatic organisms, and potential for persistence and bioaccumulation.[18] In November 2018, EPA released a draft risk evaluation finding no unreasonable risk, but excluded consideration of worker exposures from that evaluation.[19]

In the January 2021 final risk evaluation, EPA reversed course by including worker exposures in its evaluation. In the October 30, 2021 Federal Register, EPA published a revision stating that several occupational use scenarios present unreasonable risk, including:

- domestic manufacture and import;
- paint and coating processing;
- plastic and rubber product processing;
- recycling; and
- industrial and commercial use of plastic and rubber products in automobile plastics.

The Science Advisory Committee on Chemicals (SACC) raised concerns over "large data gaps that preclude coming to confident conclusions regarding certain subpopulations."[20] SACC further concluded that "the greatest exposures to PV29 will likely occur in manufacturing and occupational workers via inhalation and dermal exposures."[21] This analysis led to the reversal of the original risk evaluation oversights.

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[17] U.S. Environmental Protection Agency, *Draft Risk Evaluation for C.I. Pigment Violet 29* (Nov. 2018) (740R18015).

[18] U.S. Environmental Protection Agency, *TSCA Work Plan Chemicals* (June 2012) (www.epa.gov/sites/production/files/2014-02/documents/work_plan_chemicals_web_final.pdf).

[19] *See* note 17.

[20] U.S. Environmental Protection Agency, *EPA Scientific Advisory Committee on Chemicals (SACC) Open Meeting: Toxic Substances Control Act (TSCA)* (June 18-21, 2019) (EPA-HQ-OPPT-2018-0604-0089).

[21] *Id.*

IV. WITNESS

The following witness has been invited to testify:

The Honorable Michal Ilana Freedhoff, Ph.D.
Assistant Administrator
Office of Chemical Safety and Pollution Prevention (OCSPP)
U.S. Environmental Protection Agency