COMMITTEE ON
ENERGY & COMMERCE
CHAIRMAN FRANK PALLONE, JR.

MEMORANDUM

March 11, 2019

To: Subcommittee on Environment and Climate Change Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Hearing on "Mismanaging Chemical Risks: EPA's Failure to Protect Workers"

On **Wednesday, March 13, 2019, at 10:30 am in room 2322 of the Rayburn House Office Building**, the Subcommittee on Environment and Climate Change will hold a hearing entitled, "Mismanaging Chemical Risks: EPA's Failure to Protect Workers." The hearing will examine EPA's assessment and management of risks to workers from toxic chemicals under the Toxic Substances Control Act (TSCA) and other laws.

I. BACKGROUND

The U.S. Environmental Protection Agency (EPA) is charged with managing risks from toxic chemicals under an array of environmental statutes, including TSCA, the Clean Air Act (CAA), and the Food Quality Protection Act. EPA's process for assessing and managing toxic chemicals has been on the Government Accountability Office's (GAO) High Risk List since 2009.[1] GAO's 2019 High Risk Report found EPA retains significant challenges in meeting its mission to protect human health and the environment.[2]

II. EPA REGULATION OF CHEMICALS

A. TSCA

Congress enacted TSCA in 1976 and significantly revised the law in 2016 with the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Lautenberg Act).[3] The statute regulates chemical substances (excluding drugs, cosmetics, and pesticides) to ensure they do not present an unreasonable risk of harm.[4] EPA evaluates new chemicals under TSCA Section 5 and

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[1] Government Accountability Office, *High-Risk Series: An Update* (Jan. 2009) (GAO-09-271).

[2] Government Accountability Office, *High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas* (Mar. 2009) (GAO-19-157SP).

[3] Pub. L. No. 115-31 (2017).

[4] 15 U.S.C. § 53.

existing chemicals under Section 6. Both types of evaluations are governed by a set of rules known as the framework rules, the first three of which are currently subject to litigation:[5]

- The risk prioritization rule outlines the process for identifying high priority and low priority chemicals. Only high priority chemicals receive risk evaluations and possible risk management.[6] EPA stated in this rule that a substance could be found to be low priority by looking only at a subset of uses, allowing the Agency to exclude commercial uses and workplace exposures.[7]

- The risk evaluation rule sets the process for scoping and conducting risk evaluations to determine whether a chemical presents an unreasonable risk (therefore requiring risk management).[8] EPA stated it could exclude legacy uses and associated disposal, exposures to the chemical substance when present as an impurity, and other uses as the Administrator sees fit.[9] The rule explicitly left open the possibility of categorically excluding worker exposures.[10]

- The inventory notification rule requires manufacturers and processors to identify "active" chemical substances – those on the TSCA inventory manufactured, processed, or distributed in commerce in the last 10 years.[11]

- The fee rule sets user fees to fund risk evaluation activities under TSCA.[12]

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[5] *Safer Chemicals, Healthy Families v. U.S. Environmental Protection Agency*, 9th Cir. Aug. 10, 2017 (No. 17-72260). *Environmental Defense Fund v. U.S. Environmental Protection Agency*, D.C. Cir. Sept. 1, 2017 (No. 17-1201).

[6] Environmental Protection Agency, Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act (www.regulations.gov/document?D=EPA-HQ-OPPT-2016-0636-0074) (Jul. 20, 2017).

[7] 40 C.F.R. § 702.9(f).

[8] Environmental Protection Agency, Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act (www.regulations.gov/document?D=EPA-HQ-OPPT-2016-0654-0108) (Jul. 20, 2017).

[9] *Id.*

[10] Environmental Protection Agency, *Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act*, 82 Fed. Reg. 33730 (Jul. 20, 2017) (final rule).

[11] Environmental Protection Agency, Toxic Substances Control Act Notification (Active-Inactive) Requirements (www.regulations.gov/document?D=EPA-HQ-OPPT-2016-0426-0070) (Aug. 11, 2017).

[12] Environmental Protection Agency, Fees for Administration of Toxic Substances Control Act (www.regulations.gov/document?D=EPA-HQ-OPPT-2016-0401-0072) (Oct. 17, 2018).

In December 2016, EPA named the first 10 chemicals to receive risk evaluations under the reformed TSCA.[13] To date, EPA has released one Draft Risk Evaluation to the public for comment, Pigment Violet 29 (PV29).

B. Integrated Risk Information System (IRIS)

EPA created the IRIS Program in 1985 to provide an internal database of human health assessments for chemicals found in the environment.[14] IRIS assessments inform EPA program offices implementing chemical regulatory statutes.[15] In 2009, GAO's High Risk Report made nine recommendations to EPA related to the IRIS program. As of February, six remain open.[16]

C. Risk Management Planning

The Risk Management Plan (RMP) Rule implements Section 112(r) of the Clean Air Act Amendments of 1990. RMP requires facilities using covered hazardous substances to develop a risk management plan detailing the potential effects of an accidental release and identifying response plans.[17] The program facilitates coordination between local emergency responders, chemical facilities, and communities.[18]

In January 2017, the Obama Administration finalized amendments to the RMP program.[19] The Trump Administration attempted to stay the program's effective date, but the D.C. Circuit rejected that effort in August 2018.[20] EPA is currently moving forward with a new proposal to undo many of the Obama Administration's changes.[21]

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[13] *See* note 5.

[14] Environmental Protection Agency, Integrated Risk Information System (www.epa.gov/iris) (accessed Mar. 6, 2019).

[15] American Bar Association, An Introduction to EPA's Integrated Risk Information System and Risk Assessments (www.americanbar.org/groups/young_lawyers/publications/the_101_201_practice_series/introduction_epa_integrated_risk_information_system_and_risk_assessments/) (Jul. 26, 2012).

[16] Government Accountability Office, *High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas* (Mar. 2009) (GAO-19-157SP).

[17] Environmental Protection Agency, *Clean Air Act Section 112(r): Accidental Release Prevention/Risk Management Plan Rule* (Mar. 2009) (www.epa.gov/sites/production/files/2013-10/documents/caa112_rmp_factsheet.pdf).

[18] *Id*.

[19] Environmental Protection Agency, *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*, 82 Fed. Reg. 4594 (Jan. 13, 2017) (final rule).

[20] Environmental Protection Agency, Risk Management Plan (RMP) Delay Rule Vacatur (www.epa.gov/rmp/risk-management-plan-rmp-delay-rule-vacatur) (accessed Mar. 6, 2019).

[21] *Id*.

III. EPA'S ACTIONS ON PARTICULAR CHEMICALS OF CONCERN

A. Asbestos

Asbestos-related diseases kill up to 15,000 Americans per year.[22] 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.[23] Since passage of the Lautenberg Act, EPA's work on asbestos has begun again. However, the asbestos risk evaluation scoping document, released in June 2017, excludes exposure from legacy asbestos and associated disposal, which is a major risk driver.[24]

B. Methylene Chloride

Methylene chloride is a solvent used in commercial and consumer applications, such as paint stripping surface refinishing.[25] From 2000-2011, 13 Americans died from acute exposure to methylene chloride while refinishing bathtubs.[26] In January 2017, EPA proposed banning its commercial and consumer use as a paint stripper.[27] In December 2018, EPA transmitted to the Office of Management and Budget documents finalizing the ban, but the titles make clear that only consumer uses will be banned, leaving workers exposed.[28]

C. PV29

PV29 is used as a colorant and in the production of other pigments (e.g. automotive paint and fiber dye) and by the solar industry in solar cells.[29] In 2012, EPA added PV29 to its chemical work plan because of high exposure potential, high toxicity to aquatic organisms, and

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[22] Asbestos Nation, Mapping the Deadly Toll of Asbestos – State by State, County by County (www.asbestosnation.org/facts/asbestos-deaths/) (accessed Mar. 6, 2019).

[23] *Corrosion Proof Fittings, et. al., v. the Environmental Protection Agency and William K. Reilly, Administrator*, 947 F.2d 1201 (5th Cir. 1991).

[24] Environmental Protection Agency, *Scope of the Risk Evaluation for Asbestos* (Jun. 2017) (EPA-740-R1-7008).

[25] Environmental Protection Agency, Fact Sheet: Methylene Chloride or Dichloromethane (DCM) (www.epa.gov/assessing-and-managing-chemicals-under-tsca/fact-sheet-methylene-chloride-or-dichloromethane-dcm-0) (Mar. 2015).

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

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

[28] *Id.*

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

potential for persistence and bioaccumulation.[30] In November 2018, EPA released a Draft Risk Evaluation finding no unreasonable risk. EPA excluded consideration of worker exposures from that risk evaluation.[31]

D. Ethylene Oxide

Ethylene oxide is a flammable, colorless gas used as a sterilizing agent and to produce other chemicals.[32] It is also a carcinogen regulated as a hazardous air pollutant under the CAA.[33] A 2016 review found ethylene oxide cancer risks about 30 times greater than previously estimated.[34] In August 2018, EPA announced additional steps to address emissions of ethylene oxide from some types of industrial facilities under the CAA.[35]

E. Chlorpyrifos

Chlorpyrifos is a pesticide that poses serious risks to human health, including nervous system damage.[36] In 2015, in response to a petition, EPA proposed banning chlorpyrifos, finding the extensive body of peer-reviewed science correlated chlorpyrifos exposure with brain damage to children.[37] The Trump Administration subsequently declined the petition to ban chlorpyrifos. That reversal has been challenged and rejected by the 9th Circuit. Appeals are ongoing.[38]

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

[31] *See* note 29.

[32] Environmental Protection Agency, *Ethylene Oxide* (Sept. 2016) (www.epa.gov/sites/production/files/2016-09/documents/ethylene-oxide.pdf).

[33] *Id.*

[34] Environmental Protection Agency, *Evaluation of Inhalation Carcinogenicity of Ethylene Oxide* (Dec. 2016) (EPA/635/R-16/350Fa).

[35] Environmental Protection Agency, *Fact Sheet: EPA Taking Steps to Address Emissions of Ethylene Oxide* (Aug. 2018) (www.epa.gov/sites/production/files/2018-08/documents/ethylene-oxide-fact-sheet.pdf).

[36] Environmental Protection Agency, Chlorpyrifos (www.epa.gov/ingredients-used-pesticide-products/chlorpyrifos) (accessed Mar. 6, 2019). Agency for Toxic Substances and Disease Registry, *Chlorpyrifos* (Sept. 1997) (www.atsdr.cdc.gov/toxfaqs/tfacts84.pdf).

[37] Environmental Protection Agency, Registration Review of Chlorpyrifos (www.regulations.gov/docket?D=EPA-HQ-OPP-2008-085) (accessed Mar. 8, 2019).

[38] *League of United Latin American Citizens, et. al., v. the Environmental Protection Agency and Andrew Wheeler, Acting Administrator, en banc* (9th Cir. 2018).

F. Glyphosate

Glyphosate is one of the most widely used herbicides, known commercially as Roundup®.[39] In 2015, the World Health Organization classified glyphosate as "probably carcinogenic to humans."[40] In December 2017, EPA published a draft risk assessment that found no carcinogenic potential.[41]

IV. WITNESSES

The following witnesses have been invited to testify:

Adam M. Finkel, Sc.D., CIH
Clinical Professor of Environmental Health Sciences
University of Michigan School of Public Health

Wendy Hutchinson
On behalf of the Baltimore Teachers Union and American Federation of Teachers

Giev Kashkooli
Vice President
United Farm Workers

Patrick Morrison
Assistant to the General President for Health, Safety, and Medicine
International Association of Firefighters

Jeaneen McGinnis
Benefit Representative
FCA-UAW

Tom Grumbles, CIH, FAIHA
Past President, American Industrial Hygiene Association (AIHA) and the Product Stewardship Society

Mark Duvall
Principal
Beveridge & Diamond PC

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[39] Environmental Protection Agency, Glyphosate (www.epa.gov/ingredients-used-pesticide-products/glyphosate) (accessed Mar. 6, 2019).

[40] International Agency for Research on Cancer, *IARC Monographs Volume 112: evaluation of five organophosphate insecticides and herbicides* (Mar. 20, 2015) (www.iarc.fr/wp-content/uploads/2018/07/MonographVolume112-1.pdf).

[41] Environmental Protection Agency, Glyphosate Registration Review (www.regulations.gov/docket?D=EPA-HQ-OPP-2009-0361) (accessed Mar. 7, 2019).