Message

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**Subject**: OPPT/OPP/OCSPP Clips, 4/12/2019

OPPT/OPP/OCSPP Clips
April 12, 2019

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**Asbestos**

**Insurance Journal**
**Part of Asbestos Cleanup Site in Montana Removed from Superfund List**
https://www.insurancejournal.com/news/west/2019/04/12/523587.htm
**Matt Volz**
**Friday, April 12, 2019**

U.S. officials have removed part of a Montana asbestos cleanup site from its Superfund list in the latest sign that the 17-year cleanup is ending, though the asbestos-related health problems for thousands of people remain.

The 45-acre area is five miles north of downtown Libby and is the first of eight units of the Libby Asbestos Superfund site to be taken off the National Priorities List of sites nationwide contaminated by hazardous waste.

Asbestos from a vermiculite mine owned by W.R. Grace polluted Libby and nearby Troy until it was shuttered in 1990. Health officials estimate at least 400 people have died and another 3,000 have been sickened from exposure, and people in the area are still being diagnosed with asbestos-related disease today.

The contaminated material can cause fatal lung diseases and other health issues.

The area has been a Superfund site since 2002. The cleanup had cost $596 million as of July 2017, the most recent figure available, U.S. Environmental Protection Agency spokeswoman Katherine Jenkins said.

Federal officials have been winding up the cleanup, and Wednesday's announcement was a significant step toward its end.

The area being removed from the list was contaminated by a processing plant used to screen mined vermiculite that contained asbestos. The EPA has determined that "no further remediation action is needed to protect human health and environment."

Jenkins said two other Libby Superfund site units also are in the process of being removed from the National Priorities List: the area surrounding another former processing plant and a 400-acre industrial park that used to house a lumber company.

The other units that will remain on the Superfund list include homes and businesses in Libby and Troy, rail and transportation corridors and the former W.R. Grace vermiculite mine itself.

The former mine and the surrounding parts of the Kootenai National Forest are not part of the cleanup, and there is no formal cleanup plan in place.

The cleanup of the residential and commercial properties was completed in October, but must still go through an assessment and comment period that could last a year or longer, Jenkins said.

Once the sites are taken off the Superfund list, state and local agencies will be responsible for handling new asbestos discoveries, from construction or excavation work, for example.

**Montana Standard**
**Guest view: Montana needs a complete asbestos ban**
https://mtstandard.com/opinion/columnists/guest-view-montana-needs-a-complete-asbestos-ban/article_023d55aa-b677-5e3e-ad5b-7bb625c40de7.html
**Linda Reinstein**
**Friday, April 12, 2019**

The deadly legacy of asbestos has cost Montanans dearly.

Montana's Senators, Jon Tester and Steve Daines, know all too well how the scourge of asbestos has savaged the beautiful town of Libby. More than 400 residents have died and thousands more have been diagnosed with asbestos-related diseases since W.R. Grace closed its vermiculite mine in 1990.

This is why an asbestos ban is especially crucial to Montanans, perhaps more than anyone else in the United States.

"My communities in Montana are eager for progress... we've known for a while the dangers of asbestos and we want to protect others from the tragedies we've seen in Montana," Daines said in a recent Senate hearing.

But then the senator announced something curious. He is working on legislation that would simply prohibit "new uses" of asbestos. That would fall tragically short of a ban that would protect Montanans and the nation from the deadly carcinogen which continues to be imported and used today.

A bill to halt "new uses" of asbestos is a false flag masquerading as a ban. This tactic, referred to as a SNUR or "Significant New Use Rule" by EPA regulators, is designed to give cover instead of take action. In fact, in 2018, when the EPA proposed a similar SNUR rule on asbestos, nearly 20,000 public comments were submitted in opposition.

The real issue is the risk posed by uses of asbestos that already exist, not the industry's smokescreen of possible new uses. According to the United States Geological Survey, the U.S. presently imports raw chrysotile asbestos (for use in chlor-alkali diaphragms), as well as a slew of asbestos-containing products, including brake linings, knitted fabrics, rubber sheets (i.e. sheet gaskets), and cement pipe. Independent testing by other organizations has confirmed that some makeup brands, baby powder, and crayons are contaminated with asbestos as well.

There is overwhelming scientific consensus that asbestos is a carcinogen and there is no safe or controlled use, yet some companies continue to put profits over people's health. The chlor-alkali industry which produces industrial chlorine and caustic soda insists on using asbestos in its production process. Safer alternatives to asbestos are available and are used in other countries. Just last year, the chlor-alkali industry doubled its asbestos imports — sourced primarily from Brazilian and Russian mines — to a staggering 750 metric tons.. Despite the fact that nearly 40,000 Americans die every year from asbestos-linked disease, they brazenly claim that their "use [of the mineral] does not pose an unreasonable health risk to workers."

The public health disaster in Libby should be an important lesson for us. It's a lesson about greed, corruption, and the human cost of inaction. The cleanup of the Libby Superfund sites have cost taxpayers $596 million. In fact, it's taken 17 years to remove one of the eight Libby Superfund sites from the National Priorities List.

There is no price tag for the suffering and death. For the patients who have been silenced by asbestos and their families left behind — in Montana and throughout the nation — we owe them more than dollars.

What they deserve is a true asbestos ban — one without loopholes or exemptions, one that stops all imports of raw asbestos, asbestos-containing products and contaminated goods used by kids and families. The U.S. needs to ban asbestos once and for all.

During the past two years, the EPA has repeatedly undermined public health and the environment. Regulatory rollbacks and a complete failure to implement the Frank R. Lautenberg Chemical Safety for the 21st Century Act have demonstrated an overt negligence of the Agency's responsibility to manage, mitigate, or eliminate chemical exposures.

There is a bill in Congress that will solve that: the Alan Reinstein Ban Asbestos Now Act (ARBAN) of 2019. Sen. Tester is a co-sponsor of the legislation, which is endorsed by the AFL-CIO, American Public Health Associations, Montana Public Health Association, and other leading occupational safety and health organizations. If passed, it would ban the manufacturing, processing, use, and distribution of asbestos within a year of being signed. Vitally important, it will has

ban the Libby amphibole that has caused the pain and disease in Libby, bringing true protection to Montanans and all Americans.

It's time to embrace bipartisanship and take the legislative steps to ban all uses, old and new, without exemptions or loopholes. Together with Senators Tester and Daines, I have confidence that Montana will boldly lead the nation with legislation to finally ban asbestos once and for all.

**Chemicals**

**E&E News**
**Report: Harmful nitrogen drifting into Rocky Mountain park**
https://www.eenews.net/greenwire/stories/1060155667/search?keyword=epa
**Friday, April 12, 2019**

Harmful nitrogen pollution is drifting onto fragile, high-elevation ecosystems in Rocky Mountain National Park from Colorado highways, power plants and livestock operations, state and federal agencies said.

Nitrogen pollution was 38% higher than the 2017 target level, according to a draft report released Wednesday by the Colorado health department, EPA and the National Park Service.

But the report recommended against activating a contingency plan to reduce pollution, saying nitrogen levels did not increase much in the previous decade.

The report also said pollution will probably begin to decline because of tougher state and federal rules for vehicle emissions, planned retirements of coal-fired power plants and other steps.

Increased nitrogen reduces biodiversity, worsens the risk of insect and disease outbreaks, and makes it harder for ecosystems to respond to climate change, scientists say. The effects are magnified at high elevations because of shallow soil and harsh conditions.

Rocky Mountain National Park, about 60 miles northwest of downtown Denver, is renowned for its high-elevation alpine tundra, a land of cold temperatures, high winds and a short growing season. The park has 60 peaks at least 12,000 feet above sea level.

Researchers say wind, rain and snow carry nitrogen into the park, primarily from sources inside Colorado, including vehicles, power plants, livestock, agricultural fertilizers, and oil and gas operations. Changes in the park were first detected in the early 1980s.

The Colorado Department of Public Health and Environment and the two federal agencies began monitoring nitrogen in the park in 2005 under pressure from the Environmental Defense Fund and Colorado Trout Unlimited. Neither group had any immediate comment on the new report.

The agencies set a goal of limiting yearly nitrogen pollution to 1.5 kilograms per hectare, or 3.3 pounds per 2.5 acres, by 2032. They also set a series of interim goals, including 2.4 kilograms per hectare (5.3 pounds per 2.5 acres) in 2017.

The 2017 level was 3.3 kilograms (7.3 pounds).

"Trends indicate that nitrogen deposition has not been reversed but remains stable, and has not increased or decreased in recent years," the report said.

The agencies are taking public comment on the report until May 10, and the final version is expected in June or July.

**Koco News 5 ABC**

**Decades later, environmentalists still battling contamination at former industrial sites**
https://www.koco.com/article/decades-later-environmentalists-still-battling-contamination-at-former-industrial-sites/27118339
**Evan Onstot**
**Thursday, April 11, 2019**

It led to a multibillion dollar settlement and the Oscar-nominated movie "Silkwood," but dangerous contamination at two Oklahoma industrial sites remains decades later, with a new round of cleanup just getting started.

"The real health risk would be if someone came in and built something here and then were exposed to this material," Amy Brittain from the Department of Environmental Quality said. "There are cancer risks with some of these chemicals."

Nearly 25 years after energy company Kerr-McGee stopped filling acid sludge pits just south of Cushing. KOCO 5 was given what was called a windshield tour of the facility.

"There are cancer risks with some of these chemicals," Brittain told KOCO 5 on the site.

In most areas, the tour guides from the Department of Environmental Quality and the Multistate Environmental Response Trust will not even get out of the car. The KOCO 5 crew was even asked to sign a waiver because of the dangers.

"Back then they didn't understand what we understand today about how to properly handle chemicals and waste materials. Most environmental laws didn't exist yet," Brittain said.

Kerr-McGee no longer exists but what is left behind are toxic waste, bad soil and poisonous ground water. A tedious, expensive cleanup is working, although at a snail's pace.

"Environmental cleanup is complicated, it's expensive," Brittain said. "What's left to be done is hopefully in 2019 we plan on starting the final soil and waste material cleanup."

The sludge pits in Cushing are gone and the radiological cleanup was finished 14 years ago.

"In 2019 we plan on starting the final soil and waste material cleanup," Brittain said.

There is also more cleanup to be done in Crescent, where Kerr-McGee manufactured and stored nuclear fuel in '60s and '70s.

Tom Stewart now owns the old facility made famous in the 1983 movie "Silkwood." Meryl Streep played Karen Silkwood, an employee who was contaminated and her sudden death still has people talking.

Parts of the Crescent site are licensed to the nuclear regulatory commission because the groundwater is still contaminated with uranium. But other parts are still clean.

Stewart operates a business out of the old plutonium storage facility. He says he is not worried.

"I mean this thing has been vetted by the EPA, the justice department, DEQ, DOT, I mean everybody has had their fingers in this thing," Stewart said.

A clean bill of health is not just good for the environment, it is also potentially good for the economy with businesses, and jobs moving onto grounds that have long been off-limits.

But while a final cleanup could happen this year in Cushing, regulators are still looking at a plan to remove the uranium from the water on that property in Crescent.

"We are reviewing proposals for the final groundwater cleanup for the site. So that's the one piece that's still under license under the NRC," Stewart said.

You might call them two of Oklahoma's dirtiest secrets. Decades after they were contaminated, we may eventually get to call them two of the state's best comebacks.

**Union of Concerned Scientists**
**Prodded by Coal Industry, the EPA Decides Mercury Is Fine, Just Fine. Remind Them: It's Not.**
https://blog.ucsusa.org/julie-mcnamara/epas-brazen-mercury-rule-proposal
**Julie McNamara**
**Friday, April 12, 2019**

From the gaping maw of coal baron greed slithers another brazen ploy.

This time: guiding our nation's Environmental Protection Agency (EPA) to arrive at the stunning discovery that mercury spewed from coal plants is actually A-Okay.

That's right. Under the direction of (former Murray Energy coal lobbyist) Administrator Andrew Wheeler, the EPA is now proposing to find that mercury, a potent neurotoxin that can ruin a person's fair shake at life before they're ever born, is neither appropriate nor necessary to regulate from coal plants—by far mercury pollution's largest source.

Which is awfully convenient news for the desperate heads of coal mining corporations that are existentially dependent on power plants consuming more coal. For them, this regulatory turn would usher in a new refrain: puff away, coal plants, puff away! And with it, too, the devastating confirmation that today's EPA is officially Not Okay.

This brash attack on the health and welfare of untold millions in favor of the fortunes of a coal-laden few is underpinned by an analytical sleight of hand buried deep in the regulatory fine print. It's obscure, it's dull—and it's incredibly effective. The pernicious combination has polluters hoping to slip a game-changing precedent through without garnering the level of attention warranted by the staggering ramifications therein.

And so we go, once more unto the breach.

Public comments on this proposed rule are incredibly important, to officially record objections to an outright decimation of the value of public health in favor of polluter preference.

The Union of Concerned Scientists has made it easy for you to submit your own comments. For all the details and background, we also wrote a technical guide to help inform discussion, introduced by my colleague Rachel here; below, I'll offer context, and highlight four key points. The deadline for public comments is April 17.

Mercury protections, and mercury attacks
At immediate issue is the "appropriate and necessary" finding underpinning the 2012 Mercury and Air Toxics Standards (MATS) for coal- and oil-fired power plants.

In the 1990 Clean Air Act Amendments, Congress directed the EPA to regulate hazardous air pollutants—including mercury, as well as things like nickel, arsenic, and chromium—from coal-fired power plants, provided the agency first found such regulations to be "appropriate and necessary."

Which the agency did. Repeatedly. And unsurprisingly, given the devastating health effects of mercury, the dominating contribution of coal plants to mercury pollution, and the fact that effective controls readily existed and were already installed on approximately 60 percent of the existing coal fleet when MATS was released.

And by 2016, in line with deadlines, virtually all covered coal plants were in compliance. Far under expected cost, with no negative effects on grid reliability, and achieving a 96 percent reduction in annual emissions of hazardous air pollutants—including an 86 percent, or 25-ton, drop in mercury—by 2017. Which means that a lot less mercury is now in the air, settling on the ground, entering the food chain, and accumulating in our bodies, not to mention the bodies of all those still to come.

So why, why, why this new proposed reversal by Wheeler's EPA?

Because coal consumption has taken a hit, and Robert Murray—fervent supporter of President Trump and Founder, Chairman, President, and CEO of Murray Energy, a coal mining empire wholly dependent on domestic consumption of coal— is hitting back, leading the coal industry charge in an attempt to tear down every hurdle in sight.

And because some polluters have long complained about the costs of pollution standards (compared to previously polluting for free), and this rule provides a chance to permanently change the math.

Which brings us to this action, and a spectacular kowtowing to both: a bold hand-out to Robert Murray and his coal company cohorts, coupled with the establishment of precedent to permanently tip the regulatory scales in favor of polluter profits over public health.

How to make a good rule look bad
So how does Administrator Wheeler pull it off?

By assuming a dark and dismal view, where human health matters not and polluter preference matters lots. Here, the agency's four-step approach to making all the compelling reasons for regulation go away:

First, refuse to consider co-benefits. Co-benefits are benefits that occur because of a rule but were not the principal target of the rule. Like when power plants burn coal, lots of pollutants are released, so attempts to limit any one pollutant often means a lot of other pollutants are reduced, too. This is a good thing! It means efficiency, and cost-effective health improvements. Long-standing regulatory guidance has been to ensure that these co-benefits count. But not according to the EPA's refreshed perspective, which wipes these co-benefits right off the map, excluding an estimated annual reduction of 11,000 premature deaths, 130,000 asthma attacks, and 4,700 heart attacks, valued on the order of $37 billion to $90 billion each year.

Second, ignore benefits which are known to occur but can't be easily monetized. Although mercury and hazardous air pollutants have been recorded as causing or contributing to a range of severe negative effects, including neurological damage in developing brains, chronic respiratory diseases, and various cancers, at the time of the EPA's 2011 evaluation, the agency was only able to fully quantify a single effect, for a single exposure pathway, for a single pollutant. In the past, the EPA acknowledged this significant omission, but because these unquantifiable benefits further supported the agency's conclusions that regulation was appropriate, the lack of quantification was not a problem. Now, because they're counter to its tack, the EPA "acknowledges the importance of these benefits," then dismissively waves them away.

Third, disregard new information. The EPA last performed a quantitative analysis in 2011. Lots of new research has been performed since that time, including to help quantify previously unquantifiable benefits, as well as to identify new benefits that were not previously known. What's more, because MATS already went into effect, the actual—as opposed to industry-projected—costs of compliance are now known. And they are much, much lower than previously guessed. Which all suggests a major shift to the ledger: benefits orders of magnitude higher, costs orders of magnitude lower. Or at least, it should suggest. But the EPA? It now insists that the agency should only consider what it knew back in 2011, however wrong or incomplete that knowledge may well be.

Fourth, pretend it's all a lark. Throughout the proposed rule, EPA insists that it does not intend to rescind MATS itself, just the entire regulatory framework upon which it stands. This, of course, is patently absurd. The EPA can't have it both

ways, and it knows it: by employing such an approach, the agency is positioning challengers to be able to knock the whole thing down, while attempting to avoid the firefight of undoing MATS outright.

And quod erat demonstrandum: the previously inconceivable. Where once, twice, three times the EPA found that the towering benefits of limiting toxic pollution from coal plants were well worth the costs, now, in the alpenglow of the deregulatory agenda, it appears that mercury pollution is fine, just fine.

Fight back!
Mercury is bad. Really bad. For human health, and for the environment.

Or at least it was, until this proposed rule "discovered" otherwise.

Don't stand for it! Speak up, speak out, and make the many count more than the favored few—for this vital public health protection, and all the health protections still to come.

**Pesticide**

**DTN**
**States Fight Back on Dicamba**
https://www.dtnpf.com/agriculture/web/ag/crops/article/2019/04/12/state-regulators-ask-epa-allow-state
**Emily Unglesbee**
**Friday, April 12, 2019**

ROCKVILLE, Md. (DTN) -- The nation's state pesticide regulators are fighting back after EPA's recent announcement that it is considering limiting states' ability to place additional restrictions on federal pesticides.

Rose Kachadoorian, president of the Association of American Pesticide Control Officials (AAPCO) and an Oregon pesticide regulator, and Leo Reed, an Indiana pesticide regulator, penned a letter urging EPA to leave this state right untouched. Barbara Glenn, CEO of the National Association of State Departments of Agriculture (NASDA), also sent a letter to EPA, asking the agency to consult with state regulators before making any decision.

"AAPCO takes this issue very seriously, and strongly supports a state's right to grant a Section 24(c) pesticide registration to reduce risk," Kachadoorian and Reed wrote.

At issue is an announcement made by EPA in late March that the agency is "reevaluating" how it handles additional restrictions placed on federal pesticides via a section of pesticide law known as 24(c). This section of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) was crafted to allow states to expand or supplement the use of a federally labeled pesticide according to individual state needs. However, states have occasionally used it to restrict a pesticide's use instead. Most recently, a number of states have used 24(c) labels to add restrictions to the new dicamba formulations XtendiMax, Engenia and FeXapan, out of concern over widespread off-target dicamba movement and injury over the past two years.

For example, after fielding a combined 576 complaints about dicamba injury in 2017 and 2018, Illinois regulators opted to grant a 24(c) label for the three dicamba herbicides in 2019, which mandates a cutoff date of June 30, among other restrictions.

"We now have two years of data showing how dicamba has the potential to drift off target," John Sullivan, director of the Illinois Department of Agriculture, said in an announcement of Illinois's new 24(c) label. "It's obvious measures need to be put in place so farmers can continue to effectively use these products, while also protecting surrounding property and crops."

EPA appears to disagree, stating that: "Due to the fact that section 24(a) allows states to regulate the use of any federally registered pesticide, and the fact that some states have instead used 24(c) to implement cutoff dates (and/or

impose other restrictions), EPA is now re-evaluating its approach to reviewing 24(c) requests and the circumstances under which it will exercise its authority to disapprove those requests." See the DTN story on EPA's announcement here: https://www.dtnpf.com/...

Without this use of 24(c), states will be unable to move quickly to limit pesticide use to protect workers or their environment, Kachadoorian and Reed warned EPA in the AAPCO letter. Enacting state laws regarding an individual pesticide can take years, during which damage from a pesticide could continue unabated, she noted. In particular, the frequent revision of the new dicamba herbicide labels have made it hard for states to make permanent changes to their use.

"With [dicamba] labels changing annually and a short two-year registration period of the dicamba containing products, SLAs [state lead agencies] have not been able to consistently identify the mitigation measures needed beyond the [federal] label," the state regulators wrote. "Utilizing the Sec. 24(c) process allows SLAs to be nimble, timely, practical and appropriately responsive."

The EPA itself has benefited from states' use of 24(c) to limit dicamba use, the state regulators noted. In 2017 and 2018, several states issued specific restrictions on dicamba that have since been adopted by the EPA and added to the federal dicamba labels released in November 2018. For example, some states banned dicamba applications when winds surpassed 10 mph -- a restriction now codified on the federal dicamba labels.

The AAPCO letter also noted that ending state 24(c) label restrictions could actually threaten the availability of dicamba herbicides for farmers. "In order to maintain the technology to control herbicide resistant weeds, it has been necessary for states with unique or special local conditions to have the option to grant Sec. 24(c) registrations," the state regulators wrote. "These registrations allow for adequate weed control to occur, but also mitigate potential risks."

A change to state use of 24(c) would affect all pesticides -- not just dicamba, Kachadoorian and Reed added. "The EPA policy of not disapproving more restrictive Sec. 24(c) registrations has been in place for nearly 30 years," they pointed out. "The current process has allowed SLAs to continue the use of various pesticides, within their individual jurisdictions, with additional safeguards."

So far, EPA has not opened up a Federal Register docket on its pending 24(c) decision and invited public comment, as normally occurs with regulatory policy changes. States are free to enforce their 2019 24(c) labels on dicamba and other pesticides -- for now.

Glenn ended her letter from NASDA to EPA with a warning: "We hope EPA recognizes that states are not stakeholders but co-regulatory partners under FIFRA and, therefore, must be consulted on any FIFRA regulatory or policy initiative."

**The Scientist**
**Pesticide Marketed as Safe for Bees Harms Them in Study**
https://www.the-scientist.com/news-opinion/pesticide-marketed-as-safe-for-bees-harms-them-in-study-65734
**Chia-Yi Hou**
**Friday, April 12, 2019**

A pesticide used to control aphids and whiteflies called flupyradifurone, sold commercially as Sivanto, harms or even kills honey bees (Apis mellifera) when exposed to low doses in combination with a fungicide, according to the results of laboratory experiments published on April 10 in the Proceedings of the Royal Society B. The researchers find that when honey bees encounter both FPF and a commonly used fungicide, propiconazole (PRO), the effects are worse than FPF alone.

“We demonstrate for the first time that the combination of two chemicals can cause synergistic effects on behavior of pollinators,” says coauthor Simone Tosi of the French Agency for Food, Environmental and Occupational Health and Safety.

Bayer, the producer of FPF, says that the compound is safe for bees. Its website states that FPF "targets key damaging pests while helping safeguard beneficial insects." While that may be the case with FPF alone and at labeled doses, the team's experiments show that FPF and PRO together increase mortality of both bees residing in the hive and foragers. They also report that the two chemicals together boost the frequency of bees showing abnormal behaviors, such as hyperactivity and a lack of motor coordination.

See "Herbicide May Harm Microbiome of Bees"

Scientists are concerned about the safety of FPF because, although it falls under a different classification of pesticide, it is similar to neonicotinoids, a class of compounds that affect the central nervous system of insects. "So it's not being called a neonicotinoid, although the chemistry and the fact that it's systemic, that it can get into pollen and nectar, that it's highly water soluble, is very similar to the neonicotinoids," says Vera Krischik, who studies bumble beesat the University of Minnesota and was not involved in the study.

There has been growing evidence . . . that fungicides may actually be having a much more pronounced effect than we first thought

—Dennis vanEngelsdorp, University of Maryland

For this latest work, the team put bees in cages and exposed them to six dosage levels of FPF ranging from 375 to 12,000 ng per bee. In the trials of both FPF and PRO, they exposed bees to a single 7,000-ng dose of PRO. The researchers measured survival after up to 48 hours and observed the bees' behavior for up to four hours. Bees exposed to FPF alone could tolerate higher doses before half of them died than when bees experienced both FPF and PRO together. For instance, forager bees could endure up to 1,869 ng of FPF until they reached the 50 percent mortality point, whereas that level dropped to 353 ng when combined with PRO.

In the real world, bees near treated crops typically encounter levels of FPF around 750 ng on the high end and varying levels of PRO, which on its own does not affect bee survival.

While FPF is approved in the European Union and in the US, neonicotinoids were banned in the EU in 2018. Although President Donald Trump's administration eased restrictions on neonicotinoids' use last year, pesticide makers have agreed to discontinue them in a voluntary ban and the Environmental Protection Agency will release official reviews for several chemicals this year.

"With neonicotinoids being the old class of pesticides on their way out, there has been this kind of onslaught of new chemicals that are supposed to be safe replacements for neonicotinoids," says Amro Zayed of York University who was not involved with the study. His team's work published in Science in 2017 found similar synergistic effects of neonicotinoids and fungicides on honey bees as this latest study on FPF has found.

In a statement sent to The Scientist, Bayer says that the findings observed in this study are "well known to us." The company states that the "sublethal effects observed in individual bees do not necessarily cause adverse effects to honeybee colonies under realistic conditions." The statement also points out that Bayer makes its safety studies openly available. The company experiments found the lethal dose threshold for 50 percent of exposed bees to be 1,300 ng after 24 hours and 1,200 ng after 48 hours.

But standard protocols for risk assessment of pesticides expose bees to one stressor at a time, sources tell The Scientist. "You could have a good idea of the effect of a pesticide," says Tosi, "but miss all the field-relevant interactions because bees in the environment are not exposed to one single pesticide at a single time."

See "Widespread Declines in UK's Pollinators: Study"

Because honey bees are social, hives contain thousands of individuals. Although lethal effects could kill individual bees, sublethal effects may affect the colony on the whole. "And sometimes pesticides could not outright kill bees, but modify their behavior that makes the colony weaker," says Zayed. The worker bees have many different roles such as feeding larvae, tending to the queen, and foraging for food, and a change in behavior could affect normal functioning of the colony.

The authors of the study and sources who spoke to The Scientiststress that it's the synergistic effect with the fungicide that is important for bee health. "There has been growing evidence . . . that fungicides may actually be having a much more pronounced effect than we first thought," says Dennis vanEngelsdorp of the University of Maryland who was not involved with the study but has collaborated with Tosi on other projects. "We're seeing that it's the presence of fungicides . . . that may cause some of these long-term sublethal effects."

**PFAS**

**New Hampshire Public Radio**
**Activists Petition State For Stricter PFAS Chemical Limits As Public Comment Close**
https://www.nhpr.org/post/activists-petition-state-stricter-pfas-chemical-limits-public-comment-closes#stream/0
**Annie Ropeik**
**Friday, April 12, 2019**

Public comment closes today on New Hampshire's proposed limits for four types of toxic PFAS chemicals in drinking water.

The Department of Environmental Services has suggested recent science from Minnesota could lead to stricter standards for testing and treatment of PFAS at public water systems.

Some federal research suggests the state's proposed standards for PFAS – a large class of industrial chemicals once used in products like Teflon – could still cause human health risks. And drinking water advocates, including former state Rep. Mindi Messmer, want officials to heed that science and tighten the proposals before they're finalized this summer.

The current proposals are: 70 parts per trillion for PFOS, or for PFOA and PFOS combined; 38 ppt for PFOS alone; 85 ppt for PFHxS; and 23 ppt for PFNA.

Based on the new research from Minnesota, which the state says it's also reviewing, Messmer says the standards should instead be no higher than: 3 ppt for PFOA; 13 ppt for PFOS; 30 ppt for PFHxS; and 1 ppt for PFNA.

Messmer led a group of environmental activists to deliver a petition with more than a thousand signatures at the DES offices in Portsmouth Friday.

"Now it's time for our state to stop protecting the financial interests of polluters and start protecting us from the chemicals in the water," Messmer said. "We have paid our price."

She was joined by residents from towns like Merrimack, where drinking water wells were contaminated with PFAS from a local factory.

McKenzie Murphy, daughter of first-term state Rep. Nancy Murphy, says since then, her family has experienced health problems that some studies have linked to PFAS.

"Though this is not proof of harm, it is certainly concerning," Murphy said. "At the age of just 21 years old, I shouldn't need to grow up and be concerned about what toxins are in my environment."

Some business and municipal advocates have cautioned against more conservative PFAS standards, saying they'll cost too much for industrial water users and public water systems.

The state has estimated it would cost between $2.2 million and $8 million up front for public water systems to comply with the current proposals. New Hampshire hopes to finalize its rules this summer. Once it does so, it will be one of only a handful of states with their own drinking water rules for PFAS.

The EPA is working on its own standards and other PFAS-related reforms due out in the coming years.

Activists and some public health officials have argued that ultimately, state and federal governments should regulate all PFAS chemicals together, as a class.

If that happens, New Hampshire water advocates say the drinking water limit on all PFAS should be just 1 part per trillion – roughly equal to a single drop of water in 20 Olympic-sized swimming pools.

**OutThere Colorado**
**Bill banning firefighting foam advances in Legislature**
https://www.outtherecolorado.com/bill-banning-firefighting-foam-advances-in-legislature/
**Marianna Goodland**
**Friday, April 12, 2019**

A bill banning the use of a firefighting foam linked to drinking water contamination in southern El Paso County passed its first committee test on Thursday.

House Bill 1279 — sponsored in the House by Democratic Rep. Tony Exum and Republican Rep. Lois Landgraf, both of Colorado Springs — passed the House Energy and Environment Committee on an 8-2 vote. It now moves to the House Appropriations Committee.

The bill would ban Class B firefighting foams that contain "intentionally added" per- and polyfluoroalkyl substances, also known as PFAS. Such chemicals were used for decades at Peterson Air Force Base and have been found in the contaminated Widefield aquifer, drinking water for Security, Widefield and Fountain.

The foam was sprayed on the ground and used for years in a firefighting training area that was flushed into Colorado Springs Utilities' treatment system, which was ill-equipped to remove the chemicals. The effluent ended up in Fountain Creek, which feeds the Widefield aquifer.

The Air Force has since replaced that foam with a new version that the military says is less toxic and more environmentally friendly, though it still contains perfluorinated chemicals.

The full extent of contamination in Colorado is unknown, the bill says, though it notes that such chemicals also have been an issue in Boulder County's Sugarloaf area.

Under the bill, fire departments would be banned from using such foam for training exercises beginning Aug. 2. A first offense would result in a $5,000 fine, with the fine rising to $10,000 for subsequent offenses. Firefighters' protective gear would be barred from containing the chemicals.

Fines would go into a fund established in 2014 that helps pay for firefighters' health needs.

Under the bill's "Firefighting Foams and Personal Protective Equipment Act," which would start in August 2021, manufacturers no longer could sell fluorine-based foam in Colorado, except where allowed by federal law. Exum said Thursday those who sell firefighting foam would be required to certify whether that foam is fluorine free.

The chemicals have been linked to a host of health ailments, including kidney cancer, thyroid problems and low infant birth weight.

The bill does provide exemptions for use of the fluorine-based foams at chemical plants, where otherwise provided for by federal law and at fuel storage facilities. Landgraf said another exemption may be on the way, allowing the use of fluorine-based foams to end catastrophic fires at refineries, oil tankers loaded onto trains and tank farms.

At this time of year in the legislative session, however, bills that carry a cost may have a harder time getting past the appropriations committees.

House Bill 1279 carries a cost of $47,000, all for a survey to be conducted by the Colorado Department of Public Health and Environment, which every three years would look at the amount of PFAS foam held, used, and disposed of by fire departments for the preceding five years.

Exum said that the survey could be put off a year if the money isn't there, and that would eliminate costs tied to the bill.

While the Air Force's new foam still contains a different type of PFAS, Peterson Air Force Base has agreed to only use it in life-saving responses.

It also will only use water during training exercises, said Stephen Brady, a Peterson spokesman.

Renee Lani of the American Chemical Society's Fluoro Council described the benefits of fluorine-based foams, while saying the industry supports legislation that limits its use to emergencies.

Fluorine-free foams can be an alternative for spills or smaller tank fires, Lani said, but "they are not currently able to provide the same level of fire suppression, capability, flexibility and scope of usage."

She acknowledged the concerns that some fluorine-based foams have contaminated the environment.

Liz Rosenbaum, who lives in the Fountain area, pointed out that blood tests have shown that many residents' bloodstreams are saturated with the toxic chemicals.

"We are the most contaminated community in the United States and have been contaminated since the 1970s," Rosenbaum said.

Steve Clapp of the Colorado Professional Firefighters Association also testified in favor of House Bill 1279. There are no safe levels of these chemicals in the body, Clapp told the committee.

"They are referred to as forever chemicals" because of how long-lasting they they are in soil and groundwater, he said. "We support the complete eradication of these dangerous chemicals."

Republican Rep. Larry Liston of Colorado Springs voted against the bill, although he said he might support it once it gets to the floor. He said he supports firefighters who support getting rid of the chemicals and believes "the Air Force has learned its lesson."

The General Assembly isn't the only body working on ending fluorine-based chemicals. Colorado Sens. Michael Bennet and Cory Gardner have signed on as co-sponsors of bipartisan legislation that would mandate the Environmental Protection Agency "declare per- and polyfluoroalkyl substances (PFAS) as hazardous substances eligible for cleanup funds under the EPA Superfund law."

**Philly Voice**
**Pennsylvania to set maximum PFAS level in drinking water after EPA takes a pass**
https://www.phillyvoice.com/pennsylvania-maximum-pfas-levels-drinking-water-epa-pass/
**Friday, April 12, 2019**

Pennsylvania will become the first state in the country to set a Maximum Contaminant Level for per- and polyfluoroalkyl substances, or PFAS, after the U.S. Environmental Protection Agency took a pass earlier this year.

The state Department of Environmental Protection announced Friday it would begin the process of setting a maximum level, rather than adopting federal standards, as it has done with all other regulated contaminants in drinking water. The EPA announced in February it would not commit to setting an MCL for PFAS to the consternation of hundreds of families living near former military facilities in Bucks and Montgomery counties.

The DEP also said it would conduct a statewide sampling plan to identify impacted drinking water supplies as part of Gov. Tom Wolf's pledge to investigate PFAS contamination across the state.

According to the DEP, samples will be tested from more than 300 public water supplies with elevated potential for contamination, based on proximity to common sources of PFAS, such as military bases, fire training sites, landfills and manufacturing facilities. The collection of information will begin in May, and the first planned phase will last about one year.

"Addressing PFAS in drinking water is one of the top priorities for DEP," said DEP Secretary Patrick McDonnell in a news release. "DEP is taking unprecedented steps to address PFAS, including beginning the process to set a Maximum Contaminant Level for the first time, and this sampling plan will shed light on the extent of PFAS contamination in Pennsylvania."

"DEP will not hesitate to step up when the federal government fails to," McDonnell said.

Families living in the vicinity of two former naval facilities – the Willow Grove Naval Air Station in Horsham, Montgomery County, and the Naval Air Warfare Center in Warminster, Bucks County, have for years tried to get answers on the health impact of the toxic chemicals in their drinking water. A number of local wells have been closed in recent years in neighborhoods around the former Navy facilities, which are less than four miles apart.

"These communities are dealing with potential poison in their water," Sen. Bob Casey said after a Politico report in late January previewed the EPA decision. "For this Administration to once again fail to address a pressing public health threat is outrageous. I will do everything I can to make sure the water Pennsylvanians drink is free from harmful chemicals."

The sampling plan will be discussed Monday at the next PFAS Action Team meeting at the Abington Senior High School. The team was created by Wolf in September 2018.

**WWMT**
**Michigan names 3 people to serve on panel to recommend PFAS standards for drinking water**
https://wwmt.com/news/state/michigan-names-3-people-to-serve-on-panel-to-recommend-pfas-standards-for-drinking-water
**Mikenzie Frost**
**Thursday, April 11, 2019**

LANSING, Mich. Three people from across the country have been tapped to serve on a panel t — Three people from across the country have been tapped to serve on a panel tasked to help Michigan set an enforceable drinking water standard for per- and polyfluoroalkyl substances (PFAS).

The Michigan PFAS Action Response Team, MPART, named the three people to serve on the Science Advisory Workgroup. During an early April MPART meeting, Executive Director Steve Sliver announced the search was almost complete for the panel.

The Workgroup includes three scientists with expertise in PFAS chemicals and their impact on human health. The experts in toxicology, epidemiology and risk assessment are:

- Dr. David Savitz; chair of the workgroup; professor of epidemiology in the School of Public Health at Brown University. Savitz was a member of the C8 Science Panel that conducted some of the first epidemiological

research on PFAS in the mid-Ohio Valley and has published a number of reports related to potential health effects of PFAS.

- Kevin Cox: managing toxicologist at NSF International, working in the area of human health risk assessment. Cox is a University of Michigan graduate. His areas of work have included health effects assessments for drinking water contaminants, dietary supplements, toy products, and pool and spa chemicals.
- Dr. Jamie DeWitt: associate professor in the Department of Pharmacology and Toxicology of the Brody School of Medicine at East Carolina University. DeWitt's research program particularly focuses on emerging aquatic contaminants, especially PFAS; her laboratory currently assesses the immunotoxicity of emerging PFAS that have been designed to replace those that have been phased out of production and that are of concern in North Carolina.

Savitz previously led MPART's science panel in 2018 that released a 99-page report in December that stated Michigan's 70 parts per trillion standard "may not provide a sufficient margin of safety."

Gov. Gretchen Whitmer directed the Michigan Department of Environmental Quality to start the process for setting an enforceable drinking water standard PFAS. The Environmental Protection Agency has not set an MCL for PFAS. The EPA has however issued a lifetime health advisory of 70 parts per trillion for PFAS.

In February, the EPA released an action plan that included plans for looking at setting an MCL. Michigan has been using 70 ppt as a benchmark for public drinking water supplies.

When Whitmer directed the state to set an MCL for PFAS, she said Michigan could not wait for the Trump Administration to set a standard.

The Science Advisory Workgroup is under a July 1, 2019, deadline to develop health-based recommendations for the Michigan Department of Environmental Quality, MDEQ, to consider as part of its rulemaking process for Maximum Contaminant Levels, MCLs, for PFAS in drinking water.

Timeline for an MCL:

- April 4, 2019: Path to an MCL begins
- July 1, 2019: Health based values developed by the yet-to-be-formed Science Advisory Workgroup
- October 1, 2019: Draft rules for MCL developed
- Following six months: Public comment
- April 2020: Final MCL rule adopted

Michigan's future MCL, if set, would mark the second drinking water standard set in the country. New Jersey has issued a standard for one of the PFAS compounds and recently announced plans to look at setting standards for others. Sliver said during the first MPART meeting that while a federal standard could provide more clarity, Michigan is not waiting and doesn't anticipate potential overlap of a federal and state standard.

"We've continued to push for national standards because we think at the end of the day, it would be good for consistency across the country to have that consistent standard but without that, in Michigan, we've got a lot of information that others don't so we can move forward," he explained. "We know what's in our water supplies from the previous testing and we've done a lot of work on what does the science mean. I think the chance of us both being in parallel in the same point in our process is pretty slim."

**Toxics**

**News4Jax**
**Jacksonville neighbors worried about exposure to toxic chemicals**
https://www.news4jax.com/weather/environment/jacksonville-neighbors-worried-about-exposure-to-toxic-chemicals

**Destiny McKeiver**
**Thursday, April 11, 2019**

JACKSONVILLE, Fla. - Cleanup is underway at a Superfund site in Northwest Jacksonville, where neighbors fear the proper precautions aren't being taken to contain the spread of toxic materials.

For over 30 years, residents have endured pollution coming from the former Fairfax Street Wood Treaters plant, a 12-acre property located near two elementary schools, a day care center and a residential neighborhood.

The now-defunct wood treatment plant is considered one of the most contaminated sites in the country, according to the Environmental Protection Agency, which placed the facility on its National Priorities List in September 2012.

Over the years, neighbors have complained of health issues and difficulty breathing. Now, they're concerned that ongoing efforts to remove contaminated soil and debris may be kicking traces of dangerous chemicals into the air.

"I bought a house down the street years ago," neighbor Eddie Rogers told News4Jax. "I got cancer. Everything that causes it, I got."

Rogers is one of several residents who claim living near this site has made them sick. News4Jax interviewed former construction workers in 2015, who said they stacked lumber coated with toxic chemicals. They too had major health issues.

From 1980 to 2010, workers at the facility treated utility poles and lumber products using chromated copper arsenate, or CCA, a wood preservative, and then let them drip-dry. According to the EPA, that chemical seeped into the ground.

When the owners, Wood Treaters LLC, filed for bankruptcy and later shuttered the plant in 2010, they also left behind above-ground storage tanks containing high levels of heavy metals including arsenic, chromium and copper.

The EPA took short-term steps to clean up the site in 2010 in response to a request from the Florida Department of Environmental Protection, including removing those tanks in addition to a mix of contaminated soil, sludge and debris.

As part of those efforts, the regulatory agency also hauled away contaminated soil from the playground at nearby Susie E. Tolbert Elementary School and tainted water and sediment from a retention pond located on school property.

On Thursday, Sky4 drone video captured students playing on an outdoor basketball court right next to the site. Residents who spoke with News4Jax were worried because they didn't see crews using any tarps to keep the dust in place.

"They need to cover up that stuff," said Annette Burroughs, who lives in the area. "They need to do more about it because it's still contamination. It's bad for us around here."

It's not just the site or the schools that have been touched by the chemicals, either. The EPA previously reported finding contamination at several nearby residences, saying people shouldn't live or work near the property.

For some, like Burroughs, picking up and moving is easier said than done.

"You know, I got bronchitis, asthma, I got cancer, so it's bad. You know I been sick a lot, so I'm catching hell. Excuse my language. It's hard for me."

**North Country Public Radio**
**EPA grants EPA "certificate of completion" for Hudson PCB clean-up**
https://www.northcountrypublicradio.org/news/story/38440/20190412/epa-grants-epa-certificate-of-completion-for-hudson-pcb-clean-up

**Brian Mann and Martha Foley**
**Friday, April 12, 2019**

General Electric's clean-up of toxic PCBs on the upper Hudson River hit another milestone yesterday. The Environmental Protection Agency gave the company a certificate of completion for dredging work done between Fort Edward and Troy.

GE spent $1.7 billion pulling tons of contaminated muck out of the Hudson River, but the governor quickly fired back against the EPA yesterday. Gov. Cuomo he will sue to force more clean-up work, likely including more dredging.

Brian Mann joined Martha Foley to talk about these developments.

Martha Foley: Remind us how PCBs got in the river and why they do matter so much.

Brian Mann: Poly-chlorinated biphenyls are an industrial chemical. GE used them for years at its plants in Washington County and for decades the company just dumped contaminated waste oil with PCBs into the river. Scientists now say this chemical is really persistent and it stays in the environment for a long-time without breaking down. It causes deformities in wildlife and also possibly cancer in people.

Martha: We need to remind people that PCBs were banned in the 1977, so this problem has been lingering for a long time and GE was finally forced by the EPA to dredge up a lot of PCBs and it was a huge project; it was very messuy. What did the federal government say yesterday about how it worked?

What the EPA says now: It's complicated

They didn't find remaining "hot spots" of PCB contamination but they did find what they call "areas of interest"Brian: What they did was they issued a kind of complicated, mixed scorecard. The EPA did give General Electric this certificate of completion for the dredging project. EPA called the project "very successful" and says their studies show that 99% of the areas sampled since the dredging show contamination levels have dropped below the benchmark standards they set. And GE quickly responded to that yesterday. They put out a statement essentially declaring victory.

Martha: But the EPA also reported there are still some areas of concern.

Brian: Absolutely. They say they didn't find remaining "hot spots" of PCB contamination, but they did find what they call "areas of interest" where PCBs remain. They say they'll monitor those sites. They also acknowledge fish are still too contaminated to eat safely. Ultimately, in the decades ahead. the EPA says GE may be forced to come back and do more clean-up if monitoring suggests additional work, possibly even additional dredging, is needed.

Martha: We already know and we could anticipate that that would not be good enough for the Cuomo administration. New York state quickly announced yesterday it'll sue the EPA over this.

Brian: Yeah, it's important to say that a lot of people, including some federal scientists and certainly environmental groups, think the situation on the Hudson with PCB contamination is still much worse than the EPA portrays. New York did its own in-depth study released last year. They concluded that more work is needed right now. The Cuomo administration has been urging the EPA not to issue this certificate of completion. So, right, yesterday Cuomo and New York state Attorney General Letitia James announced they're going to sue the EPA. In her statement, James said, "The cleanup of PCBs is incomplete, and allowing GE to walk away without accountability is dangerous to the health and wellness of New Yorkers."

Martha: So this is obviously going to the court. In the meantime, what happens along this river?

Brian: In these communities, Washington County, Saratoga County, and beyond, monitoring will go on. The EPA also says it's investigating right now to identify possible new places where PCBs were dumped in the floodplain beyond the river's banks, also in the Champlain Canal that connects the Hudson up to Lake Champlain. The EPA says it may request

more specific focused clean-up projects as more of that data comes in. And in its statement, GE says the corporation will "work closely with the EPA, New York State, and local communities on other Hudson environmental projects."

Martha: Okay,. Yesterday, GE wins a certificate of completion for its PCB dredging project on the upper reaches of the Hudson River north of Albany. A new legal fight is starting, though, and meanwhile health advisories still warn against eating fish caught in the river.

**San Francisco Bay View**
**Advancing environmental public health through implementation of a Biomonitoring Program at the Hunters Point Shipyard, a federal Superfund site**
https://sfbayview.com/2019/04/advancing-environmental-public-health-through-implementation-of-a-biomonitoring-program-at-the-hunters-point-shipyard-a-federal-superfund-site/
**Ahimsa Porter Sumchai**
**Thursday, April 11, 2019**

"Biomonitoring is the next logical, critical step for us to take in addressing threats to public health." – Sen. Deborah Ortiz, D-Sacramento, author of SB 680, The Healthy California Biomonitoring Program

Modern scientists can detect toxic chemicals in human tissue and body fluids using the new science of biomonitoring. In 2002, a study called "The Body Burden" found dangerously high levels of toxic chemicals in body fluids of volunteers.

Body burden is a popular term used by environmental scientists to describe the total accumulation of toxins in our bodies or pollution in people! By analogy, climate change and human activities are increasing the body burden of the planet Earth.

The Body Burden of the Earth
Human biomonitoring relies on a laboratory method called mass spectrometry that ionizes chemicals and sorts the ions based on mass to charge ratio. "Mass spec" analyzes samples of urine, blood, tissue, breast milk, umbilical cord and even baby teeth for multiple toxic "analytes."

In 2004, researchers found on average 200 industrial chemicals in umbilical cord blood collected by the Red Cross from 10 babies born in U.S. hospitals. These compounds ranged from pesticides to byproducts of coal, gasoline and garbage.

A 2019 investigation, led by UCSF Professor of Reproductive Medicine Tracey Woodruff, PhD, MPH, used "mass spec" to detect 56 chemicals in umbilical cord blood from women giving birth at two San Francisco hospitals, Mission Bay and San Francisco General. The body burden of toxic chemicals was higher in low income women who gave birth at the county hospital.

In 2003, a network of environmental activists and scientists, public health experts, faith and labor activists championed the California Body Burden Campaign to make California establish a statewide biomonitoring program. In 2008, meetings were conducted in Oakland, California, to guide implementation of the program.

The Bayview Hunters Point community is located in heavily industrialized southeast San Francisco. Historically, it has been one of the nation's high risk communities.

This caution sign is affixed to a barbed wire fence separating a children's playground atop Hunters Point Hill from the federal Superfund site below. There are no medical service providers in this isolated, high risk region.

Epidemiological research documents that this region, less than 2 square miles in area, hosts hundreds of polluting industries, underground petroleum storage tanks, freeways, highways and dozens of pulverizing construction projects, including residential development at the Hunters Point Shipyard, a federal Superfund site. Adjacent to the federal

Superfund site are schools and a densely populated moderate to low income, ethnically diverse neighborhood home to the city's largest childhood population.

"Science is creating new compounds and chemicals that are finding their way into mother's milk and causing new problems. A central element of the precautionary approach is careful assessment of available alternatives using the best available science." – Precautionary Principle Ordinance in the Environment Code of the City and County of San Francisco

"Primum, nil nocere" is a Latin phrase that means "First, do no harm."
In July of 2003, the San Francisco Board of Supervisors adopted the Precautionary Principle as the first chapter of its Environment Code. The ordinance states, "Where threats of serious or irreversible damage to people or nature exist, lack of full scientific certainty about cause and effect shall not be viewed as sufficient reason for the City to postpone cost effective measures to prevent degradation of the environment or protect the health of its citizens." Thus, the Precautionary Principle Policy Statement codifies the civic duty to take anticipatory action to prevent harm.

A Superfund site is any land in the United States that has been contaminated by hazardous waste and identified by the Environmental Protection Agency as a candidate for cleanup because it poses a risk to human health and the environment. These sites are placed on the National Priorities List and assigned a Hazard Ranking Score.

The average HRS for over 1,300 properties nationwide on the NPL is 50 percent. The overall EPA HRS for the Hunters Point Shipyard pre-clean was 80 percent. The HRS for groundwater migration was 100 percent risk to nearby sensitive receptors.

Despite the adoption of the Precautionary Principle, in 2004 the San Francisco Board of Supervisors accepted transfer of land slated for residential development on the federal Superfund site at the Hunters Point Shipyard. The environmental impact review for the proposed development documented numerous unmitigated hazards to human health and safety from toxic air and residual soil contaminants including particulates, volatile organic compounds, lead and asbestos.

Another one of countless caution signs at the Hunters Point Shipyard – Photo: Dan Chambers, SF Examiner
The environmental impact report (EIR) withstood legal challenge on grounds the economic benefits of the project to the low income minority community outweighed well documented risks to public health.

From the very beginning, life threatening problems arose due to grading of asbestos laden bedrock and the failure of construction site air monitors to detect toxic dust exposures. Many believed the air monitors were deliberately deactivated to conceal dangerous exceedences in asbestos and particulate emissions.

The Environmental Health Section of the San Francisco Department of Public Health documented a surge in hospitalizations for adult and pediatric asthma, empyema and congestive heart failure by 2005 when construction activities began. The Bay Area Air Quality Management District 2007 report card found air pollution in Bayview Hunters Point ranked in the 80th percentile for particulates, carbon monoxide, nitrogen oxides and volatile organic compounds and in the 90th percentile for sulfur.

EPA mapping of particulate emissions in Bayview Hunters Point documents more than 20 tons per year.
The EPA Office of Air and Radiation identifies particulate matter to be a mixture of solid and liquid droplets suspended in air made of acids, organic chemicals, metals, soil, dust, allergens and, in the case of the Hunters Point Shipyard where radiation contaminated soils are undergoing remediation, volatilized radionuclides!

Particulate exposure has been directly linked to hypertension, heart attacks, pediatric and adult asthma, congestive heart failure and pre-term infant births and increased infant mortality rates. The World Health Organization recognizes air pollution as a carcinogen and a leading cause of lung cancer among non-smokers.

All of these conditions are health disparities in Bayview Hunters Point, where infant mortality rates increased from 12.5 per 1,000 live births to 15 per 1,000 live births – across all ethnic groups.

Community scientist Raymond Tompkins conducts soil sample analysis using mass spectrometry with students of the UC Berkeley summer math and science "boot camp." Tompkins worked with San Francisco State University Chemistry Professor Peter Palmer, using NASA grade air monitors in 2007 to detect elevations in volatile organic compounds including benzene and toluene in room air testing of schools located adjacent to the federal Superfund site at the Hunters Point Shipyard.

On March 1, 2009, community scientists in partnership with academic researchers from the University of California San Francisco and San Francisco State University applied for $2 million in funding from the National Institute of Environmental Health Sciences to conduct community exposure research drawing upon the powerful new science of biomonitoring to establish cause and effect relationships between toxins in the environment, their detection and disease expression among members of the exposed community.

The investigative team was led by myself, along with Raymond Tompkins, Peter Palmer, PhD, and UCSF Clinical Professor of Pediatrics Carol Miller, MD. Dr. Kim Hooper of the California Environmental Laboratory in Berkeley and Lori Copan, PhD, MPH, of the California Biomonitoring Project consulted on the proposal. While the 2009 research initiative was not funded, it planted seeds that have germinated a decade later to advance the implementation of a community-based biomonitoring program in partnership with academic medicine and research.

Driving the environmental health and justice movement in southeast San Francisco is a sense of urgency and a need to protect current and future residents from an "avalanche" of toxic chemicals linked to the community's inordinate incidences of cardiopulmonary disease, cancers, and immune, neurological, and behavioral disorders.

On March 29, 2019, community scientists in partnership with academic researchers from the University of California San Francisco presented preliminary findings from the January 2019 launch of the Hunters Point Community Biomonitoring Program to the California Office of Environmental Health Hazard Assessment.

The preliminary investigation relies on a simple urinalysis conducted by Genova Diagnostics Laboratory using mass spectrometry to detect 35 toxic and nutrient elements including many of the major toxic metals and radionuclides known to be present in industrial and occupational settings. Many of the documented chemicals and radionuclides of concern at the federal Superfund site can be analyzed with a seven-day turnaround.

The Hunters Point Community Biomonitoring Program investigative team is led by UCSF Associate Professor Rupa Marya, MD (left), and community scientists Ahimsa Porter Sumchai, MD, and biochemist and executive director of Bayview Community Advocates J. Michelle Pierce (right).

The community-academic partnership has blossomed to include the support of UCSF Vice Chancellor and Dean of the School of Medicine Talmadge King, MD; Tracey Woodruff, PhD, MPH; retired UCSF clinical epidemiologist Mark Alexander, PhD; Daniel Hirsch, founder of the Committee to Bridge the Gap, a non-profit nuclear policy organization and pathologist; and UCSF Associate Professor Robert Gould, MD, president of Physicians for Social Responsibility. Community scientist Raymond Tompkins consulted on the launch of the program.

The people of Bayview Hunters Point deserve nothing less than protection from the adverse impacts to health and safety from poverty, racism and environmental injustice.

The medical necessity for implementation of a human biomonitoring program for residents living within a one mile radius of the federal Superfund site at the Hunters Point Shipyard is met by understanding the scope of contamination of this property placed on the National Priorities List in 1989 and assigned Hazard Ranking Scores of 80-100 percent based on risk of exposure, number of toxins and proximity to sensitive receptors, including over 20 schools and daycare centers, vulnerable neighborhoods and San Francisco Bay.

The Hunters Point Community Biomonitoring Program strives to advance environmental public health through the establishment of a voluntary toxic registry and hazard mapping surveillance system designed to:

**TSCA**

**National Law Review**
**EPA Announces Proposed Procedures for Review of CBI Claims for the Identity of Chemicals on the TSCA Inventory**
https://www.natlawreview.com/article/epa-announces-proposed-procedures-review-cbi-claims-identity-chemicals-tsca
**Thursday, April 11, 2019**

On April 10, 2019, the U.S. Environmental Protection Agency (EPA) released a proposed rule regarding its plan to review certain confidential business information (CBI) claims to protect the specific chemical identities of substances on the confidential portion of the Toxic Substances Control Act (TSCA) Inventory. The CBI claims that would be reviewed under this plan are those that were asserted on Notice of Activity (NOA) Form A's filed in accordance with the requirements in the Active-Inactive rule. Once the proposed rule is published in the Federal Register, a 60-day comment period will begin.

BACKGROUND
TSCA Section 8(b)(4)(C) requires EPA to promulgate a rule establishing a plan to review all CBI claims to protect the specific chemical identities of chemical substances on the confidential portion of the TSCA Inventory that were asserted in an NOA Form A. This rule must be promulgated not later than one year after the publication of the first TSCA Inventory containing all "active" substance designations. TSCA also requires EPA to implement the CBI review plan so as to complete all CBI claim reviews not later than five years after such TSCA Inventory publication, with the possibility of a two-year extension. EPA states that since it released the updated TSCA Inventory on February 19, 2019, the deadline for issuing a final rule is February 19, 2020, and the deadline for completing all the CBI claim reviews is February 19, 2024. If EPA invokes the two-year extension under TSCA, the deadline for completing all the CBI claim reviews would then become February 19, 2026. As reported in our February 21, 2019, memorandum, "EPA Releases Updated TSCA Inventory," of the 40,655 chemicals in commerce, more than 80 percent (32,898) have identities that are not CBI and fewer than 20 percent (7,757) have identities that were claimed as CBI.

EPA notes that other types of CBI claims are outside the scope of the review plan under TSCA Section 8(b)(4)(C) through (E), and hence are outside the scope of the proposed rule. Those claims are governed by other statutory and regulatory provisions. Substantiation and review of CBI claims for other data elements in an NOA Form A are governed by TSCA Section 14(g) and 40 C.F.R. Section 710.37(b) and (c)(1). EPA states that substantiation and review of CBI claims for specific chemical identity in an NOA Form B -- "a forward-looking reporting form required when reintroducing an 'inactive' chemical substance into U.S. commerce for a nonexempt commercial purpose" -- are governed by TSCA Section 8(b)(5) and 40 C.F.R. Section 710.37(a)(2).

PROPOSED RULE
Confidentiality Claims for Specific Chemical Identities that Would Be Substantiated under the Rule
CBI Claims Subject to Substantiation
Subject to the exemptions described below, the substantiation requirement in the proposed rule would apply to all CBI claims for specific chemical identities that manufacturers (which as defined in the proposed rule includes importers) or processors requested to maintain in NOA Form A's filed in accordance with the Active-Inactive rule.

Exemptions from Substantiation Requirement
Pursuant to TSCA Section 8(b)(4)(D), EPA proposes exemptions from the requirement to submit new substantiation in certain cases where the CBI claims have already been substantiated in a recent submission to EPA. The proposed exemptions would be available to manufacturers or processors who provided substantiations for specific chemical identity CBI claims either: (1) pursuant to the voluntary substantiation process associated with the Active-Inactive rule; or (2) in another submission made to EPA less than five years before the substantiation deadline that will be set in the final rule.

For those manufacturers or processors who filed voluntary substantiations with their NOA Form A's pursuant to the process set forth in the Active-Inactive rule, no further action would be required. Those persons would automatically be deemed exempt from the substantiation requirement under the proposed rule.

EPA proposes to require manufacturers and processors who wish to establish eligibility for an exemption based upon any other recently-submitted substantiation to report and identify for EPA the following about that recently-submitted substantiation: submission date; submission type; and case number, transaction ID, or equivalent identifier that uniquely identifies the previous submission that includes the substantiation upon which the manufacturer or processor is relying. EPA states that previously submitted substantiations might include, for example, those submitted pursuant to a regulatory up-front substantiation requirement (such as 40 C.F.R. Section 711.30(b)(1) or 40 C.F.R. Section 720.85(b)(3)(iv)), the statutory substantiation requirement at TSCA Section 14(c)(3), or the comment process described in 40 C.F.R. Section 2.204(e).

When Substantiation Would Be Required

EPA proposes to require that all substantiations be filed not later than 90 days after the effective date of the final rule. EPA proposes the same filing deadline for submissions identifying a previously submitted substantiation for purposes of establishing eligibility for an exemption. If a substantiation or notice of prior CBI substantiation was not filed within the 90-day filing period in accordance with all requirements of the proposed rule or voluntarily filed in accordance with all requirements of 40 C.F.R. Section 710.37(a)(1), EPA proposes to consider the confidentiality claim to be deficient and would treat the specific chemical identity as not subject to a confidentiality claim, such that EPA may make the information public without further notice.

EPA states that this treatment of unsubstantiated confidentiality claims as deficient would be consistent with how EPA has handled unsubstantiated confidentiality claims in other regulations, e.g., 40 C.F.R. Section 710.37(a)(2) and (b) (Active-Inactive rule) and 40 C.F.R. Section 711.30(e) (Chemical Data Reporting (CDR) rule). EPA nevertheless requests comment on the validity of making this information public without further notice, particularly where a claimant may have previously submitted a substantiation to EPA less than five years before the substantiation deadline that will be set in the final rule, but failed to report and identify that previously-submitted substantiation to EPA within the 90-day filing period.

How CBI Claims Would Be Substantiated

EPA proposes to require that non-exempt manufacturers and processors substantiate any CBI claim for a specific chemical identity that they requested to maintain in an NOA Form A by submitting answers to the questions below, by providing the certification statement described below, and by requiring that the submission be signed and dated by an authorized official.

Substantiation Questions

Do you believe that the information is exempt from substantiation pursuant to TSCA Section 14(c)(2)? If you answered yes, you must individually identify the specific information claimed as confidential and specify the applicable exemption(s).

Will disclosure of the information likely result in substantial harm to your business's competitive position? If you answered yes, describe with specificity the substantial harmful effects that would likely result to your competitive position if the information is made available to the public.

To the extent your business has disclosed the information to others (both internally and externally), what precautions has your business taken? Identify the measures or internal controls your business has taken to protect the information claimed as confidential: non-disclosure agreement required prior to access; access is limited to individuals with a need-to-know; information is physically secured; other internal control measure(s). If yes, explain.

Does the information appear in any public documents, including (but not limited to) safety data sheets, advertising or promotional material, professional or trade publication, or any other media or publications available to the general public? If you answered yes, explain why the information should be treated as confidential.

Is the claim of confidentiality intended to last less than ten years? If so, indicate the number of years (between one to ten years) or the specific date/occurrence after which the claim is withdrawn.

Has EPA, another federal agency, or court made any confidentiality determination regarding information associated with this chemical substance? If you answered yes, explain the outcome of that determination and provide a copy of the previous confidentiality determination or any other information that will assist in identifying the prior determination.

Is the confidential chemical substance publicly known to have ever been offered for commercial distribution in the U.S.? If you answered yes, explain why the information should be treated as confidential.

Certification Statement

An authorized official of a manufacturer or processor substantiating a request to maintain an existing claim of confidentiality for specific chemical identity would be required to certify that the submission complies with the requirements of the rule by signing and dating the following certification statement:

I certify that all claims for confidentiality made or sought to be maintained with this submission are true and correct, and all information submitted herein to substantiate such claims is true and correct. Any knowing and willful misrepresentation is subject to criminal penalty pursuant to 18 U.S.C. 1001. I further certify that it is true and correct that:

My company has taken reasonable measures to protect the confidentiality of the information;

I have determined that the information is not required to be disclosed or otherwise made available to the public under any other Federal law;

I have a reasonable basis to conclude that disclosure of the information is likely to cause substantial harm to the competitive position of my company; and

I have a reasonable basis to believe that the information is not readily discoverable through reverse engineering.

How Information Would Be Submitted to EPA

The proposed rule would require persons submitting substantiations or information on previously submitted substantiations to follow the electronic reporting procedures set forth in the Active-Inactive rule at 40 C.F.R. Section 710.39. Any person submitting a substantiation under this proposed rule could claim any part or all of the substantiation as CBI. Submitters would be required to use EPA's electronic reporting portal, Central Data Exchange (CDX), and EPA's web-based reporting tool, Chemical Information Submission System (CISS). Because all submitters under this proposed rule would have previously filed NOA Form A's under the Active-Inactive rule using these electronic reporting procedures, EPA states that it expects that all submitters are already registered with CDX and familiar with the electronic reporting procedures. EPA proposes mandatory electronic reporting because it is expected to allow for more efficient data transmittal, support improved data quality, minimize respondent burden, and reduce EPA administrative costs associated with information submission and recordkeeping.

How EPA Would Review Claims of Confidentiality for Specific Chemical Identities

Consistent with how EPA handles the review of other TSCA confidentiality claims, EPA states that it would carefully consider the facts provided in the substantiations, any pertinent previously issued confidentiality determinations, and other reasonably available information that it finds appropriate to determine the information's entitlement to confidential treatment. EPA would apply the substantive criteria for confidentiality determinations set forth in 40 C.F.R. Sections 2.208 and 2.306(g), which provide in relevant part that information is entitled to confidential treatment for the benefit of a particular business if: (a) the business has asserted a confidentiality claim that has not expired by its terms,

nor been waived nor withdrawn; (b) the business has satisfactorily shown that it has taken reasonable measures to protect the confidentiality of the information, and that it intends to continue to take such measures; (c) the information is not, and has not been, reasonably obtainable without the business's consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of need in a judicial or quasi-judicial proceeding); (d) no statute specifically requires disclosure of the information; and (e) the business has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position.

In instances where there are multiple NOA Form A's asserting the confidentiality of the same chemical identity, EPA states that it may choose to review these NOA Form A's together "as a matter of efficiency."

In instances where EPA denies a CBI claim, EPA would notify the submitter, in writing, of EPA's intent to disclose the specific chemical identity and of EPA's reasons for denying the claim. The notice would be furnished by certified mail (return receipt requested), by personal delivery, or by other means that allows verification of the fact and date of receipt. EPA would not disclose the specific chemical identity until the date that is 30 days after the date on which the submitter receives the denial notice. Submitters can challenge EPA's denial of a CBI claim by commencing an action to prevent disclosure in an appropriate federal district court. In instances where a CBI claim is approved, EPA would so inform the submitter, and the chemical substance would be identified in subsequent publications of the TSCA Inventory by a unique identifier assigned under TSCA Section 14(g)(4), in addition to the accession number, generic name, and, if applicable, premanufacture notice case number.

Annual Review Goals and Results, Extension

EPA proposes to use its website to publish its annual goal for reviews completed under this review plan at the beginning of each calendar year, starting with its goals for 2020, which EPA anticipates would be posted in February 2020. EPA also proposes to track the number of CBI reviews completed under this review plan each year and is proposing to use its website to publish that number at the beginning of the following year, starting with the number of reviews completed in 2020, which EPA anticipates would be posted in February 2021.

EPA intends to implement the CBI review plan described in this proposed rule to complete reviews of all CBI claims for specific chemical identities not later than five years after the publication of the first TSCA Inventory containing all "active" substance designations based on NOA Form A's, as required under TSCA Section 8(b)(4)(E)(i). Since the initial list of active substances was published on February 19, 2019, EPA intends to complete all reviews by February 19, 2024. EPA states that it intends the annual review goals to take into consideration this target completion date, the number of claims needing review, and available resources. According to the proposed rule, before the effective date of the final rule, EPA may begin reviewing and deciding claims that were voluntarily substantiated under the Active-Inactive rule (subject to the outcome of pending litigation involving that rule), or that appear to be clearly not entitled to protection from disclosure based upon other information available to EPA. TSCA Section 14(i)(2) expressly permits EPA to review, require (re)substantiation of, and decide TSCA CBI claims before the effective date of such rules applicable to those claims as EPA may promulgate after June 22, 2016. EPA states that it believes that TSCA Section 14(i)(2) clearly authorizes it to begin its reviews under TSCA Section 8(b)(4) prior to publication of this final rule, and that "doing so is appropriate in light of the Congressionally-mandated timeline for the completion of reviews."

TSCA Section 8(b)(4)(E)(ii)(I) provides that after an adequate public justification, EPA may extend the five-year deadline for completion of reviews for not more than two additional years. EPA states that while it does not currently anticipate a need for an extension, "possible justifications for an extension might include, among other things, competing TSCA obligations which prevent the Agency from completing the reviews within five years, intervening events that divert the Agency's resources from completing the required reviews, or litigation involving the claim substantiation and review process that may delay EPA's commencement of CBI claim reviews." Should an extension become necessary, EPA proposes to announce the extension and its justification to the public via a notice in the Federal Register.

Duration of Protection from Disclosure

TSCA Section 8(b)(4)(D)(ii)(III) provides that specific chemical identities for which EPA has approved a CBI claim under TSCA Section 8(b)(4)(D) must be protected from disclosure for a period of ten years, unless, prior to the expiration of

that period, the claimant notifies EPA that they are withdrawing the confidentiality claim, in which case EPA cannot protect the information from disclosure; or EPA otherwise becomes aware that the information does not qualify for protection from disclosure, in which case it must take the actions described in TSCA Section 14(g)(2) (i.e., to notify the claimant of EPA's intent to disclose the information). EPA states that TSCA Section 8(b)(4)(D)(ii)(III) does not explicitly state when the ten-year period of protection begins, but TSCA Section 8(b)(4)(D)(ii) provides as a general matter that EPA's actions under the review plan must be "in accordance with section 14." Under TSCA Section 14(e)(1)(B)(i), as amended on June 22, 2016, the duration of protection from disclosure lasts "for a period of 10 years from the date on which the person asserts the claim with respect to the information submitted to the Administrator."

Notably, all specific chemical identity CBI claims subject to review under TSCA Section 8(b)(4) and this proposed rule had already been asserted by one or more persons prior to June 22, 2016, resulting in the placement of the chemical substance on the confidential portion of the TSCA Inventory. Pursuant to TSCA Section 8(b)(4)(B)(ii) and the Active-Inactive rule, manufacturers and processors submitting NOA Form A's were only permitted to indicate that they seek to maintain an existing claim for protection against disclosure of the specific chemical identity of the chemical substance. TSCA Section 8(b)(4)(C) describes these requests to maintain existing claims as "claims . . . asserted pursuant to [TSCA section 8(b)(4)(B)]," and TSCA Section 8(b)(4)(D)(i) refers to "manufacturers or processors asserting claims under [TSCA section 8(b)(4)(B)]." Thus, EPA states that it believes Congress intended that the filing date of the request seeking to maintain the CBI claim (i.e., the filing date of the NOA Form A) may function as the date of claim assertion for purposes of determining the period of protection from disclosure. In cases where the same specific chemical identity was subject to a CBI claim in another submission filed on or after June 22, 2016, however, "EPA believes it would be incongruous to effectively re-start the 10-year period of protection from disclosure based upon the subsequent submission of a request (i.e., an NOA Form A) seeking to maintain that claim." Accordingly, EPA proposes to interpret the date of assertion for purposes of calculating the duration of protection under TSCA Section 8(b)(4)(D)(ii)(III) as the date of submission of the first filing in which the specific chemical identity was claimed as CBI after June 22, 2016. This interpretation would impact the calculation of the period of protection from disclosure where there are multiple submitters of the NOA Form A that are asserting confidentiality claims on the same specific chemical identity, as well as where one or more submitters of information to EPA outside the context of the NOA Form A has asserted a specific chemical identity confidentiality claim after June 22, 2016. Companies will be notified of the date from which the ten-year period of protection will be calculated.

For example, if on July 1, 2016, a company addressing a CDR rule reporting requirement filed a report for a subject chemical substance and asserted a CBI claim for the specific chemical identity, and if EPA subsequently approved the company's confidentiality claim, then EPA states that the ten-year time period of protection from disclosure would begin on July 1, 2016. If that company subsequently filed an NOA Form A on January 1, 2018, and sought to maintain the confidentiality claim for that specific chemical identity, and if EPA subsequently approved that claim, the ten-year period of protection from disclosure would continue to run from July 1, 2016, and would not restart on the date of the NOA filing. If a second company then filed an NOA Form A on February 1, 2018, seeking to maintain a CBI claim for that same specific chemical identity, and the second company's claim were approved, the ten-year period of protection from disclosure would still run from July 1, 2016. In cases where an NOA Form A was the first submission to assert the CBI claim for a specific chemical identity after June 22, 2016, the ten-year period of protection for an approved claim would begin on the date of that NOA filing.

The Record Retention Requirements

EPA proposes to require that persons subject to the final rule retain records that document any information reported to EPA. The proposed rule would require such records to be retained for a period of five years beginning on the last day of the submission period, which is consistent with the statutory mandate in TSCA Section 8(b)(9)(B).

COMMENTARY

We congratulate EPA on the timely issuance of the proposed rule that should enable it to promulgate the final rule within the one-year statutory deadline. We appreciate the clarity and concision of the discussion in the proposed rule text and believe it has set out most of the issues on which stakeholders can be expected to comment.

In our view, EPA has appropriately interpreted the statutory text at Section 8(b)(4)((B)(ii) as broadly applying to any existing claim for protection from disclosure of confidential chemical identity. As EPA states in the proposed rule, all specific chemical identity CBI claims that would be subject to the proposed rule "had already been asserted by one or more persons prior to June 22, 2016, resulting in the placement of the chemical substance on the confidential portion of the TSCA Inventory." EPA is thus viewing any such claim to confer confidential chemical identity status for the chemical's Inventory listing. Under this interpretation, any manufacturer or processor can seek to maintain and appropriately substantiate such a CBI claim even if they did not make the original claim for confidential chemical identity.

One aspect that may benefit from consideration during the comment period and clarification in the final rule concerns withdrawals of confidentiality claims in situations where there are multiple claims for protection from disclosure. The proposed regulatory text at 40 C.F.R. Section 710.55(b) discusses the situation wherein, prior to the expiration of the ten-year period of protection from disclosure, "the claimant notifies EPA that the person is withdrawing the confidentiality claim, in which case EPA will not protect the information from disclosure" (emphasis added). This language strikes us as more categorical than necessary and may not adequately consider situations that involve multiple manufacturer or processor claims for confidential chemical identity.

Another aspect that may draw comment concerns EPA's proposed approach under which it will start the ten-year clock for protection from disclosure from the date on which the claim was first asserted by any submitter after June 22, 2016. While we appreciate the simplicity and administrative efficiency of the proposed approach, stakeholders may argue that the approach is inconsistent with Section 14(e)(B)(i) that describes the duration for protection from disclosure to be "a period of 10 years from the date on which the person asserts the claim" (emphasis added).

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