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THE FIGHT TO CLEAN UP THE EPA

Sharon Lerner, The Intercept

https://theintercept.com/2021/04/26/epa-corruption-cleanup/

THE ENVIRONMENTAL PROTECTION AGENCY recently acknowledged what was plain to most outside observers throughout the Trump era. "Over the past few years, I am aware that political interference sometimes compromised the integrity of our science," Michal Freedhoff, acting assistant administrator for EPA's Office of Chemical Safety and Pollution Prevention, wrote it in a March 10 internal memo. Freedhoff pointed to a 2020 risk evaluation of the chemical trichlorethylene, which she said was altered at the direction of White House staff; the 2018 decision to re-register the carcinogenic pesticide dicamba, for which senior leadership directed career staff to discount scientific information on negative impacts; and an assessment of the toxic compound PFBS, which the EPA released on Trump's last day in office and Freedhoff described as containing conclusions that were "the product of biased political interference."

"That interference undermined the agency's scientific integrity policy and eroded the trust that the American public has in EPA, the quality of our science, and our ability to protect their health and the environment," Freedhoff wrote.

The internal reckoning within the EPA is part of the Biden administration's effort to recommit to scientific integrity throughout the federal government. On his first day in office, the new president issued an executive order in which he pledged "to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides." A week later, the White House issued a memorandum that laid out a plan for how federal agencies should go about restoring trust in scientific integrity.

The pledges might come across as banal platitudes if they didn't directly follow four years in which political and corporate interests routinely prevailed over law and expert knowledge. Science took a hit throughout the federal government: at the Fish and Wildlife Service, the Department of Energy, and the Forest Service, and of course in the Oval Office, where Trump altered hurricane forecasts with a Sharpie and hyped ineffective coronavirus drugs. But the EPA weathered the last administration particularly badly, as industry insiders oversaw the disappearance of information about climate change from the agency's website; the reversal of the proposed ban on the neurotoxic pesticide chlorpyrifos; the altering of scientific documents to downplay cancer risks; the invitation of companies by the agency to remove evidence of carcinogenic pollution from the public record; and a wide range of devastating rollbacks hugely consequential to the environment and human health.

Michael Regan, the recently appointed administrator, has already made it clear that he is intent on righting the ship. "Scientific integrity is one of EPA's foundational values," Regan declared in March, as he dismissed more than 40 advisers to the agency's Science Advisory Board and Clean Air Scientific Advisory Committee, which Trump had stacked with industry operatives.

Francesca Grifo, a scientist who has served as the EPA's top scientific integrity officer since 2013, is heading up the delicate work of rooting out the political interference in the agency. "We are on a reset," Grifo told The Intercept, going on to describe a process of informing staff members about the agency's science integrity policy, encouraging them to speak out about violations of it, and identifying gaps that left the agency vulnerable to an

administration that didn't agree with it. "We will be seeking to close the loopholes," said Grifo. "Everything's on the table."

But even as the EPA begins this sweeping effort, some staff and environmental experts are already worrying that the agency's overhaul won't...

3M Sues Over Michigan 'Forever Chemicals' Drinking Water Rules

Alex Ebert, Bloomberg Law

https://news.bloomberglaw.com/environment-and-energy/3m-sues-over-michigan-forever-chemicals-drinking-water-rules?usertype=External&bwid=00000178-feee-d212-a779-feff56390000&qid=7097418&cti=FGOV&uc=1320000080&et=NEWSLETTER&emc=neve_nl%3A44&source=newsletter&item=headline®ion=digest&access-ticket=eyJjdHh0IjoiTkVWRSIsImlkIjoiMDAwMDAxNzgtZmVlZS1kMjEyLWE3NzktZmVmZjU2MzkwMDAwIiwic2lnIjoia085RnZjbnJtQ1pvMWRkT2FLanU0M25YMm9rPSIsInRpbWUiOiIxNjE5NDM1NjY2IiwidXVpZCI6InFpZDR0cGtvamVyUUJTL3A3Q2dDNWc9PWo1RXV1SFlrZnhrOUlWVXFEUUxQVWc9PSIsInYiOiIxIn0%3D

Chemical giant 3M Co. is claiming Michigan regulators rushed the passage of fluorinated chemical drinking water regulations in violation of state administrative procedure rules.

The Michigan Department of Environment, Great Lakes and Energy and the state's Environmental Rules Review Committee enacted some of the country's stiffest standards for seven kinds of per- and polyfluoroalkyl substances (PFAS) in an arbitrary and capricious manner, according to a complaint 3M filed in the Michigan Court of Claims on Wednesday.

The company's legal argument echoed criticism from comments the firm submitted to the rules committee last year, in which it said the state was acting under a "compressed timeframe" due to the Gov. Gretchen Whitmer's (D) goal to get regulations completed quickly.

In the state's haste, regulatory requirements weren't met, and the group creating the limits didn't make a strong enough connection to the levels they were setting and health outcomes, the company alleged.

The department's regulatory impact statement "acknowledged that '[m]ore study on the health benefits and impacts of PFAS exposure reduction and the economic benefit is required before a serious estimate [of the benefits] can be made,'" 3M said in its complaint.

"But, EGLE went ahead and speculated that the Proposed Rule would result in 'a general improvement in public health' and that 'there is likely a significant benefit to the reduction [in] exposure to PFAS chemicals given recent findings of the health effects,'" the company said.

Exposure to PFAS, which have applications ranging from non-stick to waterproofing, have been linked to various diseases such as kidney and testicular cancers. 3M and other PFAS manufacturers are being sued in separate litigation by the Michigan attorney general.

Cause of Action: Michigan's Safe Drinking Water Act, Michigan Administrative Procedures Act.

Relief: Declaratory judgment.

Response: EGLE spokesman Scott Dean said in an email that the department hadn't been served yet and declined to comment.

Chipotle plans to remove PFASs from all packaging this year

Julia John, Chemical Watch

https://chemicalwatch.com/254630/chipotle-plans-to-remove-pfass-from-all-packaging-this-year

Chipotle hopes to remove per- and polyfluoroalkyl substances (PFASs) from all food packaging in 2021, potentially making it one of the first major food brands to fully embrace PFAS-free alternatives.

The fast-casual chain recently "achieved its target of eliminating PFASs from its bowls in the US and Canada, with Europe to be complete this quarter", Chipotle spokesperson Erin Wolford told Chemical Watch. "Production is underway to phase out PFASs from other packaging items by the end of this year."

PFASs belong to a class of thousands of long-lived synthetic compounds linked to water, soil and air contamination, with evidence that exposure can lead to a wide range of health effects, including cancer, hormone disruption and immune system problems, according to the US EPA.

Food serviceware manufacturers coat products with these substances to enable them to withstand heat, grease and water.

In 2019, an NGO called The Counter, formerly the New Food Economy, discovered PFASs in Chipotle's compostable bowls. The company subsequently committed to introducing packaging without the compounds last year. Its latest sustainability report, released last week, noted that its bowls are now free from the chemicals, and that it will phase them out of kids' trays this year.

The report also stated that Chipotle's current packing complies with the "regulatory guidelines for the safe use" of PFASs and avoids the three long-chain compounds no longer authorised by the US Food and Drug Administration (FDA).

But "there is no such thing as 'safe use'", according to Mike Schade, Mind the Store campaign director at Safer Chemicals, Healthy Families. Although the FDA permits PFASs in food serviceware, "states such as Washington, New York and Maine have moved forward with bans due to increasing health and environmental concerns", he said.

Chipotle should swiftly replace PFAS-containing kids' trays, particularly "given the vulnerability of children to harmful chemicals", Mr Schade said. Its peers, too, must completely take PFASs out of their food service articles, he added.

Sweetgreen may beat Chipotle to this goal. The smaller salad chain – with stores only in the US – has shifted

away from PFASs in most locations, starting with San Francisco, where PFAS restrictions on food service items took effect in January 2020. The brand collaborated with Footprint, which manufactures biodegradable containers with a non-PFAS coating. Sweetgreen expects "a full rollout in all markets this spring", Kevin Quandt, its vice president of supply chain and sustainability, told Chemical Watch.

Meanwhile, Chipotle is "working with suppliers in its existing network that can accommodate the volume needed" for its multinational customers, Ms Wolford said. "Challenges that come with transitioning to new packaging materials involve ensuring optimal performance, especially in regards to heat resistance."

West Virginia bans PFAS-containing firefighting foam in testing

N/A, Chemical Watch

https://chemicalwatch.com/254147/west-virginia-bans-pfas-containing-firefighting-foam-in-testing

West Virginia has become the latest US state to partially restrict the use of class B firefighting foams containing per- and polyfluoroalkyl substances (PFASs).

Governor Jim Justice signed HB 2722 on 21 April, banning these firefighting foams in testing activities from 1 July 2021. The measure directs the state fire commission to propose rules to ensure "standard safe practices" for use of the foams, which extinguish flammable liquid fires.

The law makes an exception for sites with control, storage, treatment and clean-up methods that prevent the persistent chemicals from spreading into the environment. The statute does not affect the production, sale or distribution of firefighting foams, or their application in training or emergencies.

The state fire commission could create work groups and invite stakeholder comments to inform the rulemaking process.

Several states have enacted policies targeting PFASs in firefighting foam, such as Arkansas, California, Colorado, Michigan, Minnesota, New Hampshire and Wisconsin. Illinois, Iowa, Louisiana, Nevada and Texas are currently looking at similar bills, according to Chemical Watch's legislation tracker.

States are also continuing to consider or adopt PFAS restrictions in food packaging and other products. They include Arizona, California, Connecticut, Iowa, Maine, Maryland, New York, North Carolina, Oregon, Vermont, Virginia and Washington.

There are massive chemical dumps in the Gulf we know almost nothing about

Chris D'Angelo, Grist

Seventy miles off the coast of Louisiana, among a maze of drilling platforms and seafloor pipelines, thousands of 55-gallon drums containing hazardous industrial chemicals litter a vast, dark swath of the ocean floor. They've been sitting there for nearly 50 years.

Charles McCreery was a few months into a new job as an oceanographer and water quality expert at the federal Bureau of Ocean Energy Management when he first learned of the dumping ground. It was 2014, and he was tasked with reviewing oil giant Shell's exploration plans in an offshore leasing area known as Mississippi Canyon, in the north-central Gulf of Mexico. Deep in the document, he came across the company's internal policy for steering clear of toxic waste barrels, and what to do should their operations puncture or disturb one.

"The content, and its toxicity, of each individual barrel is not known," the Shell document reads. "Within the area there are/could be many hundreds of waste barrels. Many of the barrels may have released their contents over time."

The plan detailed potential hazards associated with the drums, from worker exposure while retrieving deep-sea equipment to underwater explosions. Metal salts, one of the many waste materials discarded at the site, react violently when exposed to water.

Starting in 1973, the Environmental Protection Agency issued chemical giants permits to discard thousands of drums of industrial chemical waste at the offshore site. The pollutants included chlorinated hydrocarbons, or CHCs, a family of toxic chemicals that can persist in the environment and become concentrated in marine organisms, potentially migrating up the food chain and posing a risk to human health.

In the decades since, oil companies have built up a vast network of wells and seafloor pipelines in the same portion of the Gulf. The area's largest producer is Shell Offshore Inc., a subsidiary of oil giant Royal Dutch Shell, which operates three platform rigs and three drillships in what's known as the Mars-Ursa oil basin. Shell also happens to be one of the companies that received permits from the EPA to dump huge quantities of industrial chemical waste in the Gulf in the 1970s, albeit at a different location.

Shell's exploration plan ultimately led McCreery to a February 2014 notice about an upcoming auction of more than 40 million acres in the central Gulf of Mexico for oil and gas development, in which the BOEM alerted would-be bidders of the "inactive commercial waste disposal site" spanning more than 200 square miles of water south of the mouth of the Mississippi River.

This map shows the offshore leasing blocks where dumped waste barrels have been detected along the seafloor during hazard surveys. MAP: HUFFPOST

The area "should be considered potentially hazardous" and "drilling and platform/pipeline placement may require precautions," the BOEM's notice warned. The agency noted that ocean surveys have turned up barrels as far as 10 miles from the designated dump boundary.

The barrels lie in an important domestic fishery and one of the most active offshore drilling areas on the planet. To this day, with the exception of federal officials and the energy companies drilling in the Gulf, few are aware of this legacy dumping ground.

The ocean dump would come to consume McCreery, who had worked as a geologist for Gulf Oil Co. and Chevron in the mid-1980s and for more than two decades as an environmental consultant specializing in hazardous waste remediation. He submitted public records requests to obtain EPA-issued disposal permits. He combed through company shipping logs and any government documents he could get his hands on.

McCreery wanted to know why fossil fuel exploration and extraction was being allowed on top of a field of hazardous waste and why the EPA had signed off on the dumping in the first place. More than that, he wanted to know the long-term environmental impacts, and the extent to which the federal government is studying and...

EPA Will Seek HBCD Evaluation Remand In Early Marker For TSCA Agenda

David LaRoss, Inside EPA

https://insideepa.com/daily-news/epa-will-seek-hbcd-evaluation-remand-early-marker-tsca-agenda?utm_source=dlvr.it&utm_medium=twitter

EPA intends to seek voluntary remand of the Trump-era TSCA evaluation of hexabromocyclododecane (HBCD) and other flame retardants in order to reconsider its findings that some of their uses pose no unreasonable risks, in what could be the Biden administration's first concrete step to tighten findings in some of the agency' first 10 assessments.

In an April 23 motion to stay briefing in Alaska Community Action on Toxics (ACAT), et al., v. EPA, agency lawyers write that based on President Joe Biden's Jan. 21 executive order requiring officials to review the HBCD evaluation and other Trump-era Toxic Substances Control Act (TSCA) actions, it expects to request a remand by May 28.

"Over the past three months, EPA has been briefing its new leadership on the HBCD Risk Evaluation to decide whether reconsideration of this action is necessary in light of the Executive Order. In that time EPA has closely reviewed this action as well as other actions taken or underway pursuant to [TSCA]. Based on this review, EPA now believes that reconsideration of the HBCD Risk Evaluation may be warranted and intends to request voluntary remand of EPA's . . . no unreasonable risk order for that purpose," reads the motion to the U.S. Court of Appeals for the 9th Circuit.

All parties in the case are proposing to stay merits briefing which was slated to begin on April 30, and instead set a deadline of May 28 for the agency's remand request. That would be followed by a response from environmentalists on June 18, if necessary -- a signal that the challengers have not yet agreed to at least some elements of EPA's plan.

"EPA has reached out to Petitioners to discuss its intent to request voluntary remand without vacatur. The parties are continuing to confer about the basis for voluntary remand and EPA's plans on potential reconsideration. To facilitate these discussions and preserve the parties' resources, EPA and Petitioners request that the Court stay the current briefing deadlines and enter a schedule for EPA to file its motion for voluntary remand without vacatur and for the parties to file responses and replies as appropriate," the agency writes.

The HBCD evaluation -- one of the first 10 the agency conducted under the revised TSCA -- focused on a cluster of flame retardant chemicals known as the "Cyclic Aliphatic Bromide Cluster," all of which are banned under the Stockholm Convention, a global chemical treaty to which the United States is not a party.

They have been widely used as flame retardants in expanded polystyrene and extruded polystyrene in insulation foam used for construction.

EPA's Sept. 24 final evaluation found that six of the 12 uses it studied pose unreasonable risks that must be regulated under TSCA, a change from the draft evaluation which found none of the evaluated uses meet the statutory threshold for regulation.

But several environmental and worker-safety groups nonetheless sued over the study, with the environmental law firm Earthjustice, which represents ACAT in the case, charging in public statements that EPA ignored several requirements in the reformed TSCA.

Specifically, it said the evaluation is flawed because it does not consider exposures from ongoing disposal of building insulation that contains the chemicals, ignores exposures faced by susceptible subpopulations and fails to assess risks faced by firefighters who may be exposed to the chemicals.

'Surgical' Reconsideration

EPA's filing to the 9th Circuit follows a March 25 announcement by Michal Freedhoff, Biden's nominee as head of the Office of Chemical Safety and Pollution Prevention (OCSPP), that she plans to "surgically" reopen specific elements of the 10 TSCA evaluations the Trump administration completed, while continuing risk-management rulemakings for the uses already identified as posing unreasonable risks.

"Our goal is to allow risk management actions on these first ten chemicals to move forward as much as possible, while looking back surgically at...

Judge Maintains Suit Seeking TSCA Fluoridation Ban, But Awaits NTP Study

Maria Hegstad, Inside TSCA

https://insideepa.com/tsca-news/judge-maintains-suit-seeking-tsca-fluoridation-ban-awaits-ntp-study

A federal judge has once again rebuffed EPA's effort to end anti-fluoridation groups' novel TSCA suit over their petition for a ban on drinking water fluoridation but says he will keep the case in abeyance until the National Toxicology Program (NTP) releases a pending report on fluoride's neurotoxicity, calling it "central" to his eventual decision.

"Whatever we do, my intent in this case is to not adjudicate, frankly, until I see the final NTP report as a minimum," Judge Edward Chen, of the U.S. District Court for the Northern District of California, said during an April 22 hearing. "The Plaintiff may not want to hear that. I don't know what EPA's view is. But this is so critical, so central, it would frankly be irresponsible of the court to make findings without seeing what NTP ultimately does. That's going to come in."

He said he expects to conduct a new trial in the case, Food & Water Watch, Inc. (FWW), et al., v. EPA, once the NTP report is available -- following on a 2020 trial that produced no definitive decision on whether EPA should accept the plaintiffs' 2016 petition for a Toxic Substances Control Act (TSCA) fluoridation ban.

During the hearing, Chen said his "intent is to reopen the evidence because there would have been some significant developments . . . and do phase two of this trial."

Instead of a definitive ruling on the merits of EPA's denial, the "phase one" trial led to an August order where Chen put the case in abeyance and directed FWW and its allies to file an updated TSCA petition, which the Trump EPA rejected in January.

Following that denial, FWW and its allies sought to resume the case based on EPA's decision with an amended complaint that would bolster their standing to sue -- -- which Chen said faced "serious" concerns following the trial --

and also introduce more research published since 2016.

However, EPA has instead sought to dismiss the case, arguing that since the suit was originally based on its treatment of the first petition it would be improper to also consider new scientific and policy issues there. Instead, the agency's position has been that Chen should close the case with an order for the anti-fluoridation groups to file a third petition which the Biden EPA would review.

Justice Department (DOJ) attorney Simi Bhat reiterated that point at the April 22 hearing, saying that the proper step after NTP issues its report would be a new petition. She said that when Congress wrote TSCA, it "created this process where EPA would have the first shot at the evidence. There is value in following this administrative process in light of NTP's final conclusion."

Chen has focused on the pending NTP process as a key factor in the case, though EPA and the plaintiffs have recently sparred over its value. NTP announced in February that it intends to downgrade the report from a monograph in which it reaches conclusions on hazards posed by fluoride to a "state of the science" document following a second, critical peer review from the National Academy of Sciences, calling its significance to the court into question.

But on April 22 Chen appeared open to the idea of a supplemental petition based on that document, suggesting that he could require plaintiffs to file another petition with EPA once the NTP completes its work.

'Profound' Prejudice

In response, Michael Connett, an attorney for the plaintiffs, warned that under TSCA a new petition could trigger a requirement for new litigation rather than continuing the case, a situation he said would be "fundamentally counter to judicial efficiency. . . . We've been working on this case for four years. The prejudice to plaintiffs [would be] quite profound."

He suggested that instead, plaintiffs could file a supplemental petition, allowing the existing case to continue if EPA rejected it.

Chen appeared to agree, concluding that he would allow plaintiffs to amend their complaint but hold the case in abeyance "until at least the NTP study is complete...

In case you missed it: Top stories from the past week

N/A, Inside TSCA

https://insideepa.com/tsca-takes/case-you-missed-it-top-stories-past-week-40

IRIS pilots unified analysis methods, ACC will fight California PFAS listing, Judge approves record TSCA settlement, groups seek TSCA drinking-water protections, industry downplays formaldehyde risks.

DOJ Finalizes Landmark $20 Million TSCA Settlement But Rejects SEPs
A federal judge has approved what the Department of Justice (DOJ) says is the largest enforcement settlement in TSCA's history, over more than 600 alleged lead-paint violations by the Home Depot, but the final deal rejects health groups' calls to add supplemental environmental projects (SEPs) that the Trump administration banned.

Citing PFAS, Water Groups Urge EPA To Broaden TSCA Protections
Water utilities and regulators are urging EPA to make TSCA "the first line of defense" for drinking water protection through stricter controls on new and existing chemicals, warning that the government's failure to prevent widespread per- and polyfluoroalkyl substances (PFAS) contamination shows the need for a "holistic" approach.

As EPA Ramps Up Evaluations, Industry Downplays Formaldehyde's Risks
Formaldehyde manufacturers and users are touting recent studies they say show the link between inhalation of the common chemical and leukemia is weaker than environmental groups and some EPA findings have claimed, extending the long-running clash over the substance as the agency gears up to evaluate its risks under TSCA.

IRIS Weighs Adapting Cancer Risk Analysis Methods For Non-Cancer Studies
Responding to years of stakeholder calls, EPA's influential Integrated Risk Information System (IRIS) program is moving to develop a unified approach for calculating risk estimates, launching a pilot project to apply methods designed to estimate cancer risks to non-cancer assessments -- though the effort is still in its early days, an agency official says.

ACC Vows To 'Challenge' California's Sweeping PFAS Listing Proposal
The American Chemistry Council (ACC) says it will "challenge" California's precedent-setting plan to list many uses of per- and polyfluoroalkyl substances (PFAS) under its green chemistry program on the basis of their persistence in the environment, reinforcing the potential for policy or legal battles over the class-based PFAS approach.

ACC pushes back on formaldehyde asthma literature review

N/A, Inside TSCA

https://insideepa.com/tsca-takes/acc-pushes-back-formaldehyde-asthma-literature-review

The American Chemistry Council (ACC) says a new literature review that concluded "sufficient evidence" exists to link formaldehyde exposures to new or worsened asthma diagnoses ignores the "most recent" research on the subject, a possible preview of battles over EPA's pending TSCA evaluation of the chemical.

Sarah Jane Scruggs, ACC's senior director for communications, tells Inside TSCA that the March 31 review by university researchers of formaldehyde's respiratory effects "does not present any new evidence for a causal

association of formaldehyde exposure and asthma, as recognized by the authors."

While most debate over EPA's long-awaited reviews of risks posed by formaldehyde exposure has centered on its link to leukemia, the asthma study could elevate respiratory effects as a focus for either the Integrated Risk Information System (IRIS) assessment or the agency's Toxic Substances Control Act (TSCA) evaluation, which it formally opened in 2020.

Specifically, the literature review says recent human studies show that higher formaldehyde exposures correlate with childhood asthma diagnoses and more severe symptoms, with the strength of that evidence rated as "moderate." It was crafted by researchers affiliated with the University of California San Francisco's Program on Reproductive Health and the Environment (PRHE), including the program's Director Tracey Woodruff -- a former EPA scientist.

EPA included possible asthma risks in its draft IRIS assessment, but peer reviewers criticized the study's treatment of the subject as inadequate at the time, and the PRHE study could help make it a higher priority for the IRIS study, which the agency recently resumed after that process had been shelved under the Trump administration, or the TSCA evaluation.

But Scruggs counters that the new literature review fails to grapple with "authoritative assessments" of formaldehyde conducted by intergovernmental agencies, including a 2010 World Health Organization (WHO) study and a European Chemicals Agency (ECHA) report finalized in 2020.

"The authors' conclusion is not aligned with the most recent authoritative assessments done by [WHO] and [ECHA], that both concluded there is not a causal association between formaldehyde and asthma. ACC supports the conclusions reached by the WHO and ECHA," she told Inside TSCA.

And she added, "Further, in 2013, a bit later than the original WHO standard, the WHO representatives confirmed recent data supported the determination that asthma and formaldehyde are not causally related."

DOJ Finalizes Landmark $20 Million TSCA Settlement But Rejects SEPs

David LaRoss, Inside TSCA

https://insideepa.com/tsca-news/doj-finalizes-landmark-20-million-tsca-settlement-rejects-seps

A federal judge has approved what the Department of Justice (DOJ) says is the largest enforcement settlement in TSCA's history, over more than 600 alleged lead-paint violations by the Home Depot, but the final deal rejects health groups' calls to add supplemental environmental projects (SEPs) that the Trump administration banned.

The consent decree, entered on April 22 by Judge Mark H. Cohen of the U.S. District Court for the Northern District of Georgia, includes a $20.75 million monetary penalty as well as a commitment from the home-improvement giant to perform new inspections and lead remediation at some homes and adopt a company-wide compliance program for the Lead-Based Paint Renovation, Repair and Painting Rule (RRP).

"This penalty is the largest assessed in the history of the Toxic Substances Control Act [TSCA]. The substantial

penalty is appropriate given the number of alleged violations, their nationwide scope, and the culpability the governments ascribe to some of the violations," reads the Department of Justice's (DOJ) April 19 motion to approve the decree in United States of America, et al., v. Home Depot.

Of the $20.75 million, the federal government will receive $19.218 million, with the remainder split between three states that worked with the federal government on the enforcement action: $750,000 to Utah, $732,000 to Massachusetts and $50,000 to Rhode Island.

In their joint complaint, DOJ and the state governments claimed that Home Depot worked on at least 603 homes in violation of the RRP, which requires contractors at homes or childcare facilities that may contain lead-based paint -- generally buildings built before 1978 -- to be certified by EPA or a delegated state.

The rule also says that building owners and managers use only lead-safe certified contractors in older buildings and that contractors must follow lead-safe work practices.

"EPA discovered the alleged violations when investigating five customer complaints about Home Depot renovations (in Illinois, Maine, Michigan, Minnesota and Wisconsin), which showed Home Depot subcontracted work to firms that in some cases did not use lead-safe work practices, perform required post-renovation cleaning, provide the EPA-required lead-based paint pamphlets to occupants, or maintain records of compliance with the law," the complaint says.

According to a DOJ statement, in addition to the monetary penalties, the consent decree requires Home Depot to "implement a company-wide program to ensure that the contractors it hires to perform work for its customers comply with the RRP Rule during renovations of homes built before 1978," including a new electronic system to verify contractors' certification under the rule.

DOJ also says that "[f]or the most serious violations addressed by the settlement, Home Depot offered its customers inspections using certified professionals and, if dust lead hazards were found, it performed specialized cleaning and verification."

Supplemental Projects

But the settlement rejects calls from environmental and health groups that sought even broader environmental remediation in the final decree, in the form of SEPs -- despite the fact that the Biden DOJ has withdrawn its Trump-era ban on the projects.

SEPs are environmentally beneficial projects courts can order defendants to fund as part of an EPA enforcement case. Prior to 2017, DOJ had included them in settlements involving EPA as a way to offset penalties and encourage defendants to settle.

But the Trump DOJ banned their use as violations of the legal requirement for payments to the government to be deposited to the Treasury and spent only as directed by Congress.

The Biden administration scrapped that prohibition through a Feb. 4 memo from Deputy Assistant Attorney General Jean Williams.

In comment letters filed after the Williams memo's release, the groups National Center for Healthy Housing, Center for Environmental Health and Green & Healthy Homes Initiative (GHHI) each...

How US chemical industry lobbying and cash defeated regulation in Trump era

Tom Perkins, The Guardian

https://www.theguardian.com/environment/2021/apr/26/us-chemical-companies-lobbying-donation-defeated-regulation

The nation's top PFAS manufacturers executed a lobbying and campaign donation blitz in recent years as the federal government attempted to regulate the toxic compounds.

A Guardian analysis of campaign finance records found spending on PFAS issues jumped as lawmakers introduced over 100 new pieces of legislation in 2019 and 2020, and the Environmental Protection Agency (EPA) developed strong new restrictions. Observers say the results are clear: industry's congressional allies defeated nearly all PFAS legislation while the Trump EPA killed, watered down or slowalked new rules that never went into effect.

Spending is expected to remain high this legislative cycle as the Biden EPA has already advanced industry-opposed restrictions and Democrats have promised to re-introduce failed legislation and billions in revenue are at stake. Chemours, one top PFAS manufacturer, in fiscal year 2020 reported about $5bn in earnings, of which fluorinated chemicals represented about $2.2bn.

"They see the chemicals as a profit center and don't want to give up that product, and they oppose any regulation that could cut into their revenue," said said Erik Olson, a lobbyist with the Natural Resources Defense Council who has worked opposite the PFAS manufacturers.

PFAS, also called per- and polyfluoroalkyl substances, are a class of 4,500 fluorinated compounds that for decades have been used to make thousands of products water and stain resistant. They're increasingly ubiquitous in the environment and human bodies because they don't naturally break down, and they've been strongly linked to cancer, liver disease, kidney disease, birth defects and a range of other serious health problems.

The seven largest PFAS producers and their industry trade groups tallied at least $61m in federal political spending during 2019 and 2020, the bulk of which was directed at lobbying Congress and the Trump administration instead of campaign donations.

Loose campaign finance rules in the US make it difficult to know with precision exactly how much chemical companies spent lobbying on PFAS proposals and who they lobbied in Congress and at the EPA.

However, finance records broadly show that industry focused on killing multiple proposals that could've forced them to cover the astronomical costs for cleaning up widespread PFAS pollution. In other cases, proposed bills don't present a serious threat to companies, and lobbying costs for those are largely "lobbyists running their meters to justify their existence", said Scott Faber, a lobbyist with the Environmental Working Group, which advocates for stricter regulations.

The main tactic used by industry lobbyists is to employ sophisticated strategies out of the tobacco and oil lobbies' playbook that aim to "create a cloud of doubt'' over clear science that demonstrates the chemicals' health threat, Olson said. The strategies have so far successfully delayed new regulations.

"The longer they can stretch things out, the longer they continue making money," he said.

'Everything was slowalked'
By some estimates, toxic PFAS are in drinking water for well over 100 million people and are contaminating 98% of Americans' blood. Though industry has for decades known of the chemicals' environmental and human toll, they continue sending PFAS to the market. Still, the untold billions in cleanup costs has largely fallen on the the American public.

Rules proposed by the EPA and Congress last session largely would've shifted the cost burden to industry, but chemical companies fiercely opposed the proposals and mobilized their lobbyists.

"That's because [the rules] are going to cost them money," said Michigan representative Debbie Dingell. She introduced the PFAS Action of 2019 and an amendment to last year's National...

Lawmakers propose PFAS Accountability Act in Congress; bill would create federal cause of action for victims, proponents say

Sheri McWhirter, Traverse City Record Eagle

https://www.record-eagle.com/news/local_news/lawmakers-propose-pfas-accountability-act-in-congress-bill-would-create-federal-cause-of-action-for/article_12130e86-a3ab-11eb-9621-7f8cd1e4ecc6.html

A trio of Democratic lawmakers — including one from Michigan — last week introduced new legislation in an effort to seek what they called justice for the victims of PFAS contamination.

U.S. Sen. Kirsten Gillibrand of New York, and both Congresswoman Madeleine Dean of Pennsylvania and Congressman Dan Kildee of Michigan, sponsored the PFAS Accountability Act. The bill would create a federal cause of action for victims to bring claims against manufacturers and polluters, and allow courts to award those victims access to medical monitoring and studies at the polluters' expense.

That type of care is often financially out of reach for those who suffered PFAS poisoning, Gillibrand said.

"Many families I've spoken to tell me their insurance won't pay for it," the senator said, arguing the approval of this new bill would provide improved access to that medical treatment for victims.

"It's the right thing for us to do and it cannot come soon enough," Gillibrand said.

Kildee, whose congressional district includes the old Wurtsmith Air Force Base in Oscoda where extensive PFAS contamination has been discovered, said it's long past time when polluters should be held accountable and all PFAS pollution victims should be able to take polluters to court and get the health care "they deserve."

"We know it's an imminent, substantial danger and we have to start acting like that," Kildee said.

Tony Spaniola, a Michigan-based lawyer and advocate for PFAS cleanup, spoke during a Thursday press conference about the recently introduced legislation. He also sits on the Michigan PFAS Action Response Team's Citizen's Advisory Workgroup.

Spaniola said he's eager to see the legal barriers that stand in the way of recourse for PFAS pollution victims torn down, and he's ready to help get it passed in Congress.

"People in my community are suffering," he said.

The lawmakers and proponents of the new bill even enlisted the help of well-known actor, producer and environmental activist Mark Ruffalo to stump for the cause.

Ruffalo produced and acted in the film "Dark Waters," in which he portrayed West Virginia lawyer Rob Bilott who drew attention to PFAS contamination as an environmental pollutant and human health hazard through a lawsuit against chemical-producer DuPont.

The celebrity environmental activist said this proposed bill may help encourage those companies still discharging PFAS into the environment to think twice before they continue to treat the public like "test subjects" in a "massive laboratory experiment without our consent."

Ruffalo argued this proposed bill would help reverse decades of lawmaking that allowed polluters to avoid accountability for the damage they've caused.

"They are safe from us and that's about to change," he said.

Bilott himself also endorsed the proposed legislation during Thursday's press conference. He said it was because of court-ordered medical monitoring that the victims of PFAS poisoning in Parkersburg, West Virginia, got the justice they deserved; all such PFAS victims should have the same recourse, he said.

Bilott successfully represented a farmer who sued DuPont after his cows were falling ill and dying from PFAS exposure.

Spokespeople for Michigan's U.S. senators, Democrats Debbie Stabenow and Gary Peters, confirmed their teams are reviewing the proposed legislation. Officials for Congressman Jack Bergman, R-1st Congressional District, did not respond to requests for comment about the bill.

There are nearly 5,000 varieties of PFAS, which DuPont created in 1938 and first put into use for nonstick cookware. Industries use them in countless consumer items — food packaging, carpets and couches, dental floss and outdoor gear — to repeal grease, water and stains.

The chemicals also are found in firefighting foam, which military officials call irreplaceable in suppressing jet-fuel fires. Especially around military bases and PFAS facilities, decades of use have built up levels in water, soil and some...

Trade Groups Ask Courts to Preserve EPA's Pesticide Decisions

Sylvia Carignan, Bloomberg Law

https://news.bloomberglaw.com/us-law-week/trade-groups-ask-courts-to-preserve-epas-pesticide-decisions

Pesticide trade association CropLife America and multiple agricultural industry groups want two federal appeals courts to deny public health advocates' requests to vacate the EPA's pesticide registrations.

The pesticides, sulfoxaflor and aldicarb, are essential to healthy crops and highly effective against destructive insects, the groups said in amicus briefs filed Thursday in the U.S. Court of Appeals for the Ninth Circuit and the D.C. Circuit. Vacating the challenged registrations would significantly disrupt the agricultural economy, CropLife said.

In the sulfoxaflor case before the Ninth Circuit, the Environmental Protection Agency admitted it neglected to determine whether sulfoxaflor may affect, or has no effect, on Endangered Species Act listed species and their critical habitat.

The Center for Food Safety and the Center for Biological Diversity sought to vacate the sulfoxaflor registration in part because of the agency's ESA error.

But the error isn't serious enough to warrant vacatur because it considered the pesticide's ecological impacts in amendments to the registration, the agency said. CropLife America said the EPA should be allowed to revise its registration without the threat of vacatur.

The Farmworker Association of Florida sought the D.C. Circuit's review of the EPA's aldicarb registration for citrus fruit in Florida because of a similar ESA error, and because the agency didn't support its registration decision with substantial evidence, the petitioners' statement of issues said.

Aldicarb has been essential for citrus growers' battle against citrus greening, a disease spread by insects called psyllids, the Florida Fruit and Vegetable Association and Florida Citrus Mutual said in their brief.

The EPA's aldicarb registration "is a scientifically valid means of saving much of what remains of Florida's citrus production," the brief said.

Vacating the aldicarb registration would dissuade many companies from making the multi-million dollar, multi-year investments needed to bring pesticides to the market, CropLife said in its amicus brief in the aldicarb case.

The aldicarb and sulfoxaflor registrations are significant property interests that CropLife's members have invested in and want to maintain, the trade association's briefs said. CropLife's briefs were filed April 21 and 22.

The 10 agricultural trade associations who filed an amicus brief in the sulfoxaflor case, including the National Cotton Council and American Soybean Association, said the pesticide is "uniquely and highly effective against destructive sap-feeding insects," including pests that are resistant to other insecticides.

Arent Fox LLP represented CropLife in the sulfoxaflor case. Bradley Arant Boult Cummings LLP represented the trade associations. The Center for Food Safety and Center for Biological Diversity are representing themselves.

Crowell & Moring LLP represented CropLife in the aldicarb case. Gunsterrepresented the Florida groups. The Center for Biological Diversity is representing the Farmworker Association of Florida.

The cases are Ctr. for Food Safety v. EPA, 9th Cir., No. 19-72109, 4/22/21 and Farmworker Ass'n of Florida v. EPA, D.C. Cir., No. 21-1079, 4/22/21.

FDACS Issues Denial of Aldicarb Pesticide Usage Application in Florida

N/A, Florida Trend

https://www.floridatrend.com/article/31080/fdacs-issues-denial-of-aldicarb-pesticide-usage-application-in-florida

Today, the Florida Department of Agriculture and Consumer Services denied AgLogic Chemical LLC's state pesticide registration application for the pesticide aldicarb on citrus crops in the state of Florida. The pesticide registrant's application failed to comply with requirements of federal law, specifically Section 7(a)(2) of 16 U.S.C. § 1536(a)(2), and therefore does not meet the requirements of Florida state law, specifically 487.041(2), Florida Statutes.

"Florida's vital citrus industry has faced so many challenges, from natural disasters and production issues to the terrible effects of citrus greening. I stand shoulder to shoulder with our citrus growers and we're proud to support them, fighting for state funding and facilitating innovative new practices as they produce our state's signature crop," said Florida Agriculture Commissioner Nikki Fried. "While there are promising new horizons for fighting citrus greening, like recent breakthroughs at UF/IFAS on genetic resistance, aldicarb poses an unacceptable risk to human, animal, and environmental health in Florida, is one of the world's most toxic pesticides, and is banned in more than 100 countries. The registrant's application does not meet the requirements of state law, and we must therefore deny the registration of aldicarb for use in the State of Florida. I look forward to working with our citrus growers, the EPA, and all partners to continue supporting Florida citrus in an environmentally conscious way."

Background: Aldicarb is an N-methyl carbamate insecticide primarily used as a nematicide. Responsible for the worst known outbreak of pesticide poisoning in North America, aldicarb is one of 28 active pesticide ingredients deemed extremely hazardous (Class Ia) by the World Health Organization, the WHO's highest hazard designation. According to the U.S. Environmental Protection Agency (EPA), aldicarb can cause weakness, blurred vision, headache, nausea, tearing, sweating, and tremors, and high doses can cause death by paralyzing the respiratory system. The pesticide has been banned in 125 countries.

Phaseout: In 2010, the EPA phased out aldicarb's use in the United States under an agreement with the pesticide's manufacturer, with citrus and potatoes phased out first. According to the EPA, the agency's 2010 risk assessment "indicates that aldicarb no longer meets the Agency's rigorous food safety standards and may pose unacceptable dietary risks, especially to infants and young children," and to protect the food supply, "EPA is initiating action to terminate uses of aldicarb, and also plans to revoke aldicarb tolerances."

Federal Approval: On January 12, 2021, the EPA granted approval for aldicarb's use in Florida on up to 100,000 acres of oranges and grapefruit for three years through 2023. The product was to be used as a nematicide to combat the invasive pest Asian citrus psyllid, which transmits the citrus greening bacterial pathogen. This approval was challenged in a lawsuit filed by the Center for Biological Diversity, Farmworker Association of Florida, and Environmental Working Group. Pesticides must be registered with the State of Florida through the Florida Department of Agriculture and Consumer Services, and must receive approval by the department for use in Florida.

State Denial: On April 19, 2021, the EPA acknowledged in its filing with the U.S. Court of Appeals for the D.C. Circuit that "it did not make an Endangered Species Act (ESA) effects determination prior to conditionally approving the use of aldicarb on oranges and grapefruit in Florida." Therefore, the department has determined

that the registrant's application does not meet the requirements of current state and federal law for the below reasons. The applicant will have the opportunity to request an administrative hearing to challenge the department's determination.

The Registrant's application does not satisfy the substantive and procedural requirements set forth in Section 7(a)(2) of...

RISE Research: Americans Support Strong Federal Framework for Pesticide Regulation

PCT Staff, Pest Control Technology Online

https://www.pctonline.com/article/rise-americans-support-federal-framework-pesticide-regulation/

ARLINGTON, Va. – RISE (Responsible Industry for a Sound Environment) announced new public opinion research about specialty pesticide regulation during the association's annual CropLife America/RISE/Council of Producers and Distributors of Agrotechnology 2021 Regulatory Conference.

The research shows strong support for the current federal and state pesticide regulatory framework. Key findings include:

• Eight in 10 consumers believe pesticides play an important role in protecting their home, health and community, and more than six in 10 have used pesticides in or around their home this year.
• A majority (78%) of consumers trust the U.S. Environmental Protection Agency (EPA) to effectively regulate pesticide products.

"Pesticides are essential to maintaining our health and safety at home, in public spaces and buildings and to protecting infrastructure and the environment, and it's encouraging to learn that with everyone's focus on public health during the past year, people understand the important role pesticides play in keeping them safe and healthy," said Megan J. Provost, RISE president.

Consumers showed substantial trust in the U.S. EPA's ability to regulate pesticide products, along with a high degree of trust in the role of state-level product regulation. Survey respondents also overwhelmingly agree (82%) that the rigorous scientific review and regulatory process ensures that pesticide products can safely and effectively protect public health, safety and property.

"The strong federal and state framework for scientific review and regulation of pesticide products gets strong support from people when they have some basic information about the process. This learning reinforces why it is so important for everyone in our industry to be ready to have those conversations," Provost added.

Florida Department Of Agriculture Denies AgLogic Permits For Aldicarb

Valerie Vande Panne, WMFE Central Florida News

https://www.wmfe.org/florida-department-of-agriculture-denies-aglogic-permits-for-aldicarb/179263

Just before Trump left office, the EPA approved the use of a systemic pesticide and known neurotoxin called aldicarb for use on orange and grapefruit groves in the state of Florida. But that federal approval required a subsequent state approval by the Florida Department of Agriculture and Consumer Services.

Yesterday, that office denied aldicarb's approval.

As a result of the state agriculture office's denial, aldicarb will not be used on citrus crops in the state of Florida.

"This is an absolutely stunning turn of events," says Nathan Donley, senior scientist at the Center for Biological Diversity, which is suing the EPA over its approval of the known neurotoxin.

"We have a state agency basically standing up for young children and farmworkers and endangered species when seemingly no one else would. So, it's an absolutely amazing thing that they've done today and will help keep Florida much safer."

Agriculture Commissioner Nikki Fried issued a statement, noting that aldicarb poses an unacceptable risk to human, animal and environmental health in Florida, is one of the world's most toxic pesticides and is banned in more than 100 countries.

Fried added that aldicarb manufacturer AgLogic's application does not meet the requirements of state law.

The pesticide is considered highly toxic, and is responsible for one of the worst documented cases of known pesticide poisoning in the U.S. That's when, more than thirty years ago, 2,000 people got sick after eating California watermelons that likely took up the poison through runoff from a neighboring cotton field.

AgLogic does have the opportunity to request an administrative hearing, to challenge the department's determination.

EPA Announces Univar Solutions USA Will Pay $165,000 for FIFRA Violations

Carla N. Hutton, Bergeson & Campbell Blogs

http://pesticideblog.lawbc.com/entry/epa-announces-univar-solutions-usa-will-pay-165000-for-fifra-violations

The U.S. Environmental Protection Agency (EPA) announced on April 19, 2021, that Univar Solutions USA, Inc. of Portland, Oregon, will pay a $165,000 penalty for violating the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) when it failed to label properly its "Woodlife 111" pesticide, which is used as a wood

preservative. EPA notes that under FIFRA, "a pesticide is misbranded if, 'the labeling accompanying it does not contain directions for use which are necessary … to protect health and the environment' and if '…the label does not contain a warning or caution statement which may be necessary … to protect health and the environment.'" According to the press release, EPA alleged that between approximately January 1, 2017, and December 31, 2018, Woodlife 111 labels "omitted several required sections important for the protection of the handler and for the environment, including user safety requirements, first aid directions, use of personal protective equipment, and portions of the storage and disposal section." EPA states that it cited the company for 33 FIFRA violations when Univar sold and distributed the misbranded pesticide via bulk shipments. According to the press release, the case resulted from a March 5, 2019, inspection of the Univar facility by the Oregon Department of Agriculture's EPA-credentialed inspectors.

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