Message

From: Messina, Edward [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=95521FBF4E34496A879E364FAF7E5AA8-MESSINA, EDWARD]
Sent: 5/20/2021 7:42:35 PM
To: Matuszko, Jan [Matuszko.Jan@epa.gov]; Goodis, Michael [Goodis.Michael@epa.gov]
Subject: RE: OCSPP News for May 19, 2021

Want to chat now? **Ex. 5 Deliberative Process (DP)**

Ed Messina, Esq.
Acting Office Director
Office of Pesticide Programs
Office of Chemical Safety & Pollution Prevention
U.S. Environmental Protection Agency
Washington, D.C.
p: (703) 347-0209

From: Matuszko, Jan <Matuszko.Jan@epa.gov>
Sent: Thursday, May 20, 2021 3:42 PM
To: Messina, Edward <Messina.Edward@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>
Subject: RE: OCSPP News for May 19, 2021

- Common Dreams (Center for Food Safety) 05/19; Biden EPA Reveals Prior Approval of Monsanto's Roundup Failed to Account for Risks to Monarch Butterflies and Other Endangered Species, Drift Harm to Farmers

I saw you called. Erin called me just before you did and I was on a teams call with her so that is why I did not answer your call..

From: Messina, Edward <Messina.Edward@epa.gov>
Sent: Thursday, May 20, 2021 3:33 PM
To: Matuszko, Jan <Matuszko.Jan@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>
Subject: RE: OCSPP News for May 19, 2021

Which article are you referencing. Not sure I am tracking your question.

Ed Messina, Esq.
Acting Office Director
Office of Pesticide Programs
Office of Chemical Safety & Pollution Prevention
U.S. Environmental Protection Agency
Washington, D.C.
p: (703) 347-0209

From: Matuszko, Jan <Matuszko.Jan@epa.gov>
Sent: Thursday, May 20, 2021 3:15 PM
To: Messina, Edward <Messina.Edward@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>
Subject: FW: OCSPP News for May 19, 2021

Hey there,

Ex. 5 Deliberative Process (DP)

Jan

From: OCSPPNews <OCSPPNews@epa.gov>
Sent: Wednesday, May 19, 2021 5:34 PM
To: Blair, Susanna <Blair.Susanna@epa.gov>; Carlisle, Sharon <Carlisle.Sharon@epa.gov>; Collazo Reyes, Yvette <CollazoReyes.Yvette@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>; Diaz, Catherine <Diaz.Catherine@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Dunton, Cheryl <Dunton.Cheryl@epa.gov>; Freedhoff, Michal <Freedhoff.Michal@epa.gov>; Garcia, Beth <garcia.beth@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>; Hanley, Mary <Hanley.Mary@epa.gov>; Hartman, Mark <Hartman.Mark@epa.gov>; Harwood, Laura <Harwood.Laura@epa.gov>; Hauff, Amanda <Hauff.Amanda@epa.gov>; Henry, Tala <Henry.Tala@epa.gov>; Hughes, Hayley <hughes.hayley@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Kochis, Daniel <Kochis.daniel@epa.gov>; Kramer, George <Kramer.George@epa.gov>; Labbe, Ken <Labbe.Ken@epa.gov>; Layne, Arnold <Layne.Arnold@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Nguyen, Khanh <Nguyen.Khanh@epa.gov>; OPP Branch Chiefs <OPP_Branch_Chiefs@epa.gov>; OPP Deputy & Associate Directors <OPP_Deputy_&_Associate_Directors@epa.gov>; OPP Division Directors <OPP_Division_Directors@epa.gov>; OPP IO <OPP_IO@epa.gov>; OPPT Managers <OPPT_Managers@epa.gov>; OPS CSID CB <OPS_CSID_CB@epa.gov>; Parsons, Doug <Parsons.Douglas@epa.gov>; Picone, Kaitlin <Picone.Kaitlin@epa.gov>; Pierce, Alison <Pierce.Alison@epa.gov>; Pinto, Ana <Pinto.Ana@epa.gov>; Richmond, Jonah <Richmond.Jonah@epa.gov>; Romanovsky, Anna <Romanovsky.Anna@epa.gov>; Schmit, Ryan <schmit.ryan@epa.gov>; Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Smith, Carolyn <smith.carolyn@epa.gov>; Sullivan, Melissa <sullivan.melissa@epa.gov>; Tyler, Tom <Tyler.Tom@epa.gov>; Vendinello, Lynn <Vendinello.Lynn@epa.gov>; Vernon, Jennifer <Vernon.Jennifer@epa.gov>
Subject: OCSPP News for May 19, 2021

OCSPP Daily News Round-Up

General EPA

- E&E News 05/19; Agency surveys staffers on scientific integrity

Toxics

- Bloomberg Law 05/18; Vermont Bill Banning PFAS From Consumer Products Signed into Law
- Chemical & Engineering News 05/19; There's no need to control PFAS as a class, industry scientists say
- Chemical Watch 05/19; Vermont enacts broadest US restrictions on PFASs in products
- Chemical Watch 05/19; New York should not require testing to secure 1,4-dioxane waiver, industry says
- Chemical Watch 05/19; Maine committee advances bill to ban PFASs in products by 2030
- Chemical Watch 05/19; Anti-asbestos groups want deadline for 'part 2' TSCA risk evaluation
- Inside EPA 05/18; EPA Eyes Proposing PFAS MCLGs This Year, Weighing Exposure Routes
- Inside EPA 05/18; Ewire: EJ campaigners ask Biden to halt 'cancer alley' chemical plants
- Inside TSCA 05/18; Trump Veterans Say Revisiting Methylene Chloride Evaluation Will Tax EPA Resources
- Inside TSCA 05/18; Environmentalists Urge EPA To Back Standardized Definition Of PFAS
- Inside TSCA 05/18; Groups Sue EPA To Force Deadline For 'Legacy' Asbestos Evaluation

Pesticides

- Bloomberg Law 05/18; Syngenta Wants Its Insurers to Pay Paraquat Defense Costs (1)
- Modern Farmer 05/19; Court Rejects Bayer's Glyphosate Appeal

- Reuters 05/19; Judge suggests warning label as part of $2 billion plan to limit Roundup claims

COVID/Disinfectants

- Health 05/17; Do UV Sanitizers Work? Here's What to Know Before Buying One

Blog/OpEd/Other

- Beyond Pesticides Blog 05/19; Canada Quietly Bans Chlorpyrifos, While EPA's 60-Day Deadline For Action Rapidly Approaches
- Bloomberg Law 05/19; PFAS Action Act Would Reinforce, Accelerate Current Priorities
- Common Dreams (Center for Food Safety) 05/19; Biden EPA Reveals Prior Approval of Monsanto's Roundup Failed to Account for Risks to Monarch Butterflies and Other Endangered Species, Drift Harm to Farmers
- JD Supra (Foley & Lardner LLP) 05/19; Environmental Justice and Why You Should Care

++

Agency surveys staffers on scientific integrity

Kevin Bogardus, E&E News

https://www.eenews.net/greenwire/2021/05/19/stories/1063732973?utm_campaign=edition&utm_medium=email&utm_source=eenews%3Agreenwire

EPA today launched an agencywide survey on scientific integrity — a move in line with the Biden administration's vow to uphold science.

"Scientific Integrity is one of the foundational pillars of our work at EPA," Francesca Grifo, the agency's scientific integrity official, said in an internal email obtained by E&E News. Her team seeks staffers' "input and experiences as we continue our work to enhance EPA's culture of scientific integrity."

The federal government's use of and respect for science are top priorities for the Biden administration. It has embarked on a review of how science was handled by the Trump administration after complaints of political interference at EPA and other agencies.

EPA employees will be sent the survey via email. It will be open for two weeks, and the agency is hoping for high participation.

"The utility of the responses depends on a high response rate so please make time to fill out this important survey," Grifo said in the email, which was sent to EPA employees this morning.

Grifo added that the survey will help EPA implement its scientific integrity policy. The policy, issued in 2012, promotes scientific and ethical standards as well as the agency's use of peer review and advisory committees, she said.

"As stated in the Policy, the environmental policies, decisions, guidance, and regulations that impact the lives of all Americans every day must be grounded, at a most fundamental level, in sound, high quality science," Grifo said.

EPA is already undergoing a science review of its own and has pulled back some decisions made by the prior administration. Administrator Michael Regan said in an email in March that he wanted to hear from staff on EPA's use of science and that a scientific integrity survey for employees would be forthcoming (Greenwire, March 24).

The Biden administration as a whole is looking at scientific integrity. Last week, the White House science office held its first meeting on the subject and included Grifo with EPA as a co-chair of a governmentwide task force looking into scientific integrity (Greenwire, May 10).

Vermont Bill Banning PFAS From Consumer Products Signed into Law
Pat Rizzuto, Bloomberg Law
https://news.bloomberglaw.com/environment-and-energy/vermont-bill-banning-pfas-from-consumer-products-signed-into-law?usertype=External&bwid=00000179-8143-d11b-adf9-b9ebfb400001&qid=7110462&cti=FGOV&uc=1320000080&et=NEWSLETTER&emc=neve_nl%3A58&source=newsletter&item=headline®ion=digest&access-ticket=eyJjdHh0IjoiTkVWRSIsImlkIjoiMDAwMDAxNzktODE0My1kMTFiLWFkZjktYjllYmZiNDAwMDAxIiwic2lnIjoiSUxvWGtoQkRkNDZnSEhrYmVOVnFmamZLcWtZPSIsInRpbWUiOiIxNjIxNDIyOTg0IiwidXVpZCI6Im54TUR6d0hlZUlBeFk4SlVuYkVCaVE9PXZPaG5YekJoUEdUdFNuc0ROTVJXd3c9PSIsInYiOiIxIn0%3D

Vermont Gov. Phil Scott (R) signed legislation Tuesday to eliminate "forever chemicals" from certain consumer products and specialized firefighting foams, his office confirmed.

The bill, S. 20, which passed unanimously by the state legislature, bans per- and polyfluroalkyl substances, or PFAS, from rugs, carpets, and chemicals used to make floor coverings stain and water resistant by July 1, 2023.

PFAS and two other groups of chemicals—bisphenols and phthalates—would be banned from food packaging by the same 2023 deadline.
The law also largely bans PFAS from firefighting foams used for fuel and other hard-to-extinguish fires, and requires labeling of firefighting equipment containing the chemicals, by July 1, 2022.
Companies making children's products with three specific types of PFAS must report the presence of those chemicals to the state's health department as of the 2022 deadline.

There's no need to control PFAS as a class, industry scientists say
Cheryl Hogue, Chemical & Engineering News
https://cen.acs.org/environment/persistent-pollutants/no-need-control-PFAS-as-class-industry-scientists-say/99/i19

The number of commercial per- and polyfluoroalkyl substances (PFAS) that need screening for possible regulation number in the hundreds, not thousands, industrial chemists say.

Their analysis counters a policy proposal in the European Union that would restrict production and use of most PFAS—persistent synthetic chemicals designed to resist degradation—as a single class. Exposure to PFAS that are metabolically active is linked to cancer, immune system problems, developmental problems, and other health effects.

"It's not scientifically accurate or appropriate to base regulation on a false premise, which is what some authorities are proposing to do by saying that the number of PFAS is so high that it's impossible to distinguish among them," says lead author Robert Buck, a technical fellow at Chemours.

In the study, Buck's team examined the 4,730 PFAS listed in a 2018 report from the Organisation for Economic Co-operation and Development (OECD). The researchers say that the OECD report included PFAS that were phased out of production, never commercialized, or made in small quantities, such as less than 1 kg, for research purposes. Such chemicals aren't candidates for regulation, they say.

The American Chemistry Council (ACC), the largest association of US chemical manufacturers, assisted the study. The ACC hired a consulting firm to collect data from PFAS makers AGC Chemicals Americas, Chemours, and Daikin; aggregate the information; and protect trade secrets.

The authors, one from each of the three companies along with an independent fluorochemicals consultant, then analyzed the data. They determined that 256 of the PFAS in the OECD report are "commercially relevant," meaning they are present in products offered for sale, used to make those products, or contain impurities or degradation products such as metabolites.

If PFAS from other manufacturers were analyzed similarly, the total number of commercially relevant substances would likely rise above 256 but fall far below the OECD's number, Buck tells C&EN.

And several hundred PFAS, "in our opinion, would not present an unmanageable situation for regulatory authorities," says Jay West, executive director of ACC's Performance Fluoropolymer Partnership. The three participating companies are members of the partnership.

Linda Birnbaum, a former director of the National Institute of Environmental Health Sciences and now an emeritus scientist there, takes issue with the study's numerical conclusions. IThe US Environmental Protection Agency estimates there are some 600 PFAS in commerce and more than 9,000, including breakdown products and by-products, of interest to regulators and found in the environment, says Birnbaum, who was not involved with the industry analysis.

Buck's team suggests that for regulatory risk assessment, commercially relevant PFAS can be divided into five categories: nonpolymer perfluoroalkyls; nonpolymer polyfluoroalkyls; fluoropolymers; perfluoropolyether polymers; and side-chain fluorinated polymers. Each of these groups, Buck says, "possess very different physical-chemical properties and toxicological profiles."

Birnbaum, a toxicologist, disagrees, saying that all metabolically active PFAS exert similar toxic effects.

Vermont enacts broadest US restrictions on PFASs in products
Julia John, Chemical Watch
https://chemicalwatch.com/267886/vermont-enacts-broadest-us-restrictions-on-pfass-in-products

Vermont Governor Phil Scott has signed legislation that will prohibit certain substance classes in a broad range of products, taking the state to the forefront of US action in response to the chemicals' potential environmental and health risks.

The law builds on policies recently embraced by other states. But Vermont now stands out with the nation's first bans on per- and polyfluoroalkyl substances (PFASs) in carpets, rugs, aftermarket treatments and ski waxes, and the potential to also ban bisphenols in food packaging.

Enacted on 18 May, the statute directs the state to phase out PFASs and phthalates in food packaging, as partially done by prior measures passed in New York, Maine and Washington. This provision and the PFAS restrictions mentioned above will enter into force 1 July 2023. The bill also prohibits these persistent substances in firefighting foam and mandates reporting on three compounds – PFHxS, PFHpA and PFNA – when they appear in children's items, starting 1 July 2022.

"By adopting this policy, Vermont takes important steps to halt community contamination by forever PFAS chemicals", according to Sarah Doll, Safer States' national director.

She told Chemical Watch that "there is a lot of momentum to address the PFAS crisis across this country", including "stopping the problem upstream" and focusing resources on clean-up. The bill's enactment "sends a strong message to the chemical industry and manufacturers that PFASs have no place in products", she said.

Vermont's statute also authorises its Department of Health to restrict bisphenols in food packaging if the agency or at least one other state concludes "a safer alternative is readily available in sufficient quantity and at a comparable cost" and "performs as well as or better than bisphenols in a specific application". The agency, however, may exclude from this prohibition any bisphenol lacking strong evidence of potential harm.

After a similar proposal stalled in the state House in 2020 due to the Covid-19 pandemic, this year's bill (S 20) cleared

the Senate in March and the House in early May. And last week the Senate approved House amendments narrowing the legislation's reporting requirements from the entire class of PFASs to only three presently regulated in state drinking water.

Industry response
Vermont's new law will impact various sectors given its unprecedentedly wide scope and class-based consideration of commonly used compounds.

Robert Simon, the American Chemistry Council (ACC)'s vice president of chemical products and technology and chlorine chemistry, objected to the measure "lumping them all together, despite the fact that there's data and science that demonstrate that they're different".

He said this "misguided approach to consumer protection" expands "a patchwork of unworkable laws at the state level". If a federal or state authority has previously determined a substance safe enough to use, "we should continue to be able to utilise it", Mr Simon told Chemical Watch.

He stressed the need to ensure "the availability of some of these innovative materials to provide important performance characteristics. Yet you just have a piece of legislation that quickly gets adopted without full debate, and it's challenging for all stakeholders."

However, Steve Poulin¸ CEO of ski wax producer Swix, which has already moved to PFAS-free waxes, noted that it supports the restriction covering its industry's products. "There is no reason to compromise on the environment when there are fluoro-free alternatives that achieve the same result", he said.

Packaging concerns
Although packaging without PFASs, phthalates and bisphenols likely does exist, it is far less accessible and affordable than conventional options, according to Keith Vorst, director for the Polymer and Food Protection Consortium in Iowa State University's Department of Food Science and Human Nutrition. Companies could struggle to make the changes Vermont requires, he said.

Dr Vorst...

New York should not require testing to secure 1,4-dioxane waiver, industry says
Terry Hyland, Chemical Watch
https://chemicalwatch.com/267884/new-york-should-not-require-testing-to-secure-14-dioxane-waiver-industry-says

Industry groups have asked New York regulators not to require companies to submit tests when requesting a waiver from the state's coming 1,4-dioxane limits for cosmetic, personal care items and cleaning products.

The comments to the state's Department of Environmental Conservation (DEC) came in response to a proposed waiver process for manufacturers seeking relief from the law's tight phasedown requirements for the chemical, which start in 2023.

Four industry groups representing a variety of product types covered by the law generally pushed for more clarity and flexibility as the DEC develops rules to implement the phasedown. An Albany, New York-based NGO, meanwhile, called for greater transparency in the rules, calling on DEC to make any approved waivers available to the public.

The American Cleaning Institute (ACI), the Consumer Brands Association (CBA) and the Household & Commercial Products Association (HCPA) said that requiring waiver-seekers to test for 1,4-dioxane levels upon request was a new requirement, added without sufficient justification or proper notice and comment procedures.

The Personal Care Products Council (PCPC) called the requirement "duplicative", because companies seeking a waiver already must provide certification and a written explanation of efforts taken to reduce 1,4-dioxane in their products.

Together, the four industry groups also called on the DEC to:

adopt a clearer definition of "manufacturer" to clarify what entities may apply for a waiver;
follow the state's already established procedures when determining if 1,4-dioxane concentration levels in products qualify as confidential business information (CBI);
remove discretionary language around granting waivers to make clear that timely-filed waivers with proper justification will be granted; and
provide a "date of manufacture" or similar provision to let retailers know if in-store products may still be sold.
NGO view
Only one environmental group submitted comments, but it offered a counterpoint to many of the industry group concerns.

Companies should not be allowed to apply for waivers to meet the law's increasingly lower thresholds if they did not seek a waiver at the outset, Citizens Campaign for the Environment said. "Manufacturers should not be able to wait until the second year to submit for their first waiver," the group said.

In addition, the group said, the DEC should avoid including a "sell-through" provision that would allow manufacturers or retailers to continue to sell products with 1,4-dioxane levels after the phase-in of a new regulatory threshold.

The department should also take steps to prevent manufactures of concentrated products from simply increasing the size of their product or packaging to meet the required 1,4-dioxane levels in a product, said the NGO.

The DEC said it "is in the process of evaluating these comments and will consider them as we finalise our programme policy". In the draft process, the department said waiver applications could be available to be submitted as early as 1 October.

TSCA preemption
New York adopted the law to limit 1,4-dioxane levels in products over concerns about 1,4-dioxane contamination in waterways, particularly in Long Island drinking water supplies.

The substance can appear as a byproduct in many cleansing products.

The US EPA finalised a TSCA risk evaluation of 1,4-dioxane in late December 2020, in which it concluded the substance does not pose an unreasonable risk in several consumer uses, including its presence in certain cleaning products.

Those findings could set up New York's law for a potential legal challenge, as a final determination under TSCA can preempt states from taking certain actions.

No challenge, however, has materialised to this point.

Brian Sansoni, senior vice president of communications for ACI said industry groups have been engaging with the state to ensure "an efficient and workable" process.

Maine committee advances bill to ban PFASs in products by 2030
Julia John, Chemical Watch
https://chemicalwatch.com/267735/maine-committee-advances-bill-to-ban-pfass-in-products-by-2030

The Maine legislature's bicameral Committee On Environment and Natural Resources has advanced a bill to phase out nonessential use of per- and polyfluoroalkyl substances (PFASs) in products — bringing the state closer to what would be the most expansive strategy among US states to curb the possible hazards posed by this substance class.

Several US states are adopting prohibitions on the compounds for use in specific product types, such as firefighting foam and food packaging. And Vermont just embraced restrictions across additional categories: carpets, rugs, aftermarket treatments and even ski waxes.

But Maine's proposal (LD 1503) could go even further. It aims to outlaw the sale of most new products and components with intentionally added PFASs, starting with carpets, rugs and fabric treatments. Before that, it would require producers to report to the Department of Environmental Protection (DEP) products with added PFASs sold in the state.

On 12 May, committee members discussed modifying the legislation, introduced a month ago, and in the end voted unanimously to pass the measure with some changes, including adding a programme to decrease environmental PFAS discharges.

"This strong bipartisan support is such an important step towards protecting the health and wellbeing of Maine people from the harmful effects of PFAS exposure," according to state Representative Lori Gramlich (D), the bill's sponsor.

Banning all possible PFASs

Restrictions on PFASs in carpets, rugs and fabric treatments would begin on 1 January 2023.

LD 1503 would then authorise the DEP to prohibit the sale of PFAS-containing product categories, starting with applications it deems most likely to result in land or water contamination. From 2030, any product containing PFASs would be banned, unless the DEP concludes a particular use is unavoidable.

From 2023, the legislation would also mandate up-to-date notifications of PFAS-containing products to the department. Each disclosure would need to include the producer's contact details; a short product description; and the function, quantity and chemical abstracts service (Cas) number of the PFASs used. The DEP would also have the authority to streamline the reporting process and work with other jurisdictions to gather disclosures.

To finance implementation, the legislation would allow the DEP to collect fees from entities submitting notifications.

According to the proposed amendment text, the measure could also launch an initiative to reduce these compounds in environmental discharges "by encouraging the use of safer alternatives and the proper management of PFAS-containing materials". This scheme could provide guidance for industrial PFAS users as well as the public.

Good chance of becoming law

Maine lawmakers considered a right-to-know bill (LD 960) with PFAS reporting requirements this year. But the committee chose to focus on the more aggressive LD 1503 "to avoid any potential conflicts or confusion" between the two, according to state legislative analyst Dan Tartakoff.

Patrick MacRoy, deputy director for Defend Our Health, said LD 1503 is now being formalised, after which the committee must grant final approval to send the measure to the House. "The chance for passage in the full House and full Senate are quite good," he said, as "bills with unanimous support in committee are usually enacted on a voice vote without floor debate."

Mr MacRoy said he expects Governor Janet Mills (D) to endorse the proposal since the DEP testified in its favour.

Mixed reactions

"Our only way out of the next PFAS-induced tragedy is to take it out of products and materials that are going to continue to create pollution," Mr MacRoy said. "LD 1503 represents a common-sense approach to moving forwards: identifying where PFASs are used and eliminating uses unless they are both critically necessary and unavoidable."

However, the American Chemistry Council (ACC) said it was "extremely concerned" by the proposal's...

Anti-asbestos groups want deadline for 'part 2' TSCA risk evaluation
Terry Hyland, Chemical Watch
https://chemicalwatch.com/266964/anti-asbestos-groups-want-deadline-for-part-2-tsca-risk-evaluation

Several public health groups and individual scientists have sued the US EPA in a bid to get the agency to clarify when it will finalise 'part 2' of its TSCA risk evaluation for asbestos, which will detail the potential risks from the material's legacy uses and related disposal.

In a lawsuit filed on 18 May, the Asbestos Disease Awareness Organization (ADAO) – along with five other NGOs and six public health scientists – asked a federal court in California to set "enforceable deadlines" for the EPA to establish the scope of its supplemental risk evaluation of asbestos and to issue a draft and final evaluation.

The lawsuit is the latest action from ADAO and other anti-asbestos groups seeking tougher EPA action on the use of asbestos in the US. The groups are pursuing a three-pronged legal strategy to force the agency to:

require "robust" reporting on asbestos use;
recognise information gaps in "part 1" of the asbestos risk evaluation; and
obtain a clear timeline for completing part 2 of the evaluation.
The first effort could bear fruit the soonest.

Last month, the EPA said it was nearing a settlement deal that could ultimately require broader reporting on asbestos use.

"We're still on track and hope to finalise the settlement next week", Robert Sussman, counsel for ADAO, told Chemical Watch.

ADAO is also leading a coalition in a separate legal challenge to the EPA's original TSCA risk evaluation of asbestos, released in December 2020. That assessment, which looked only at ongoing uses of the chrysotile form of the fibrous mineral, overlooked numerous sources of exposure and risk, the groups said.

The EPA is due to propose a risk management rule to address the risks identified in the evaluation by early next year, with a final rule to follow in early 2023.

As it works to develop that rule, the EPA has said it will conduct a 'part 2' evaluation to look at potential risks from legacy uses and associated disposals of chrysotile asbestos, as well as uses of the other five fibre forms of the substance – crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite and actinolite.

The schedule for the follow-up review remains unclear. When the EPA issued its original risk evaluation for asbestos, it said it would issue the draft scope for assessing legacy and other uses in "mid-year 2021".

That vague timeline prompted the latest legal action from ADAO and the other groups.

The EPA still "has not identified the scope of this evaluation or established a deadline for completing it", the groups said.

"After years of delay, the best way to make sure that EPA performs its legal duty to determine the risks of legacy asbestos is an enforceable court order establishing a deadline for completing this evaluation and defining its scope", Mr Sussman said.

The EPA declined to comment on the actions, saying, "because this is pending litigation, EPA has no additional information to share".

To hear more on what's on the horizon for TSCA, join us at our one-day virtual event TSCA Developments 2021 (9 June). Find out more here.

EPA Eyes Proposing PFAS MCLGs This Year, Weighing Exposure Routes
Suzanne Yohannan, Inside EPA
https://insideepa.com/daily-news/epa-eyes-proposing-pfas-mclgs-year-weighing-exposure-routes

EPA is telling states that it expects to propose health-based drinking water goals, known as maximum contaminant level goals (MCLGs), for the two most studied per- and polyfluoroalkyl substances (PFAS) and submit them to its Science Advisory Board (SAB) for review sometime this year, sources say, the first in a series of steps the agency must take before it can regulate the substances.

The agency also is modeling breast milk exposure routes for the two chemicals, one state source says, noting that EPA is looking to update its health advisory support documents with the data.

The source says EPA appears to be trying to find a way to quantify breast milk exposure pathways to these two PFAS as part of an updated reference dose or water concentration, which the source says the agency did not do when it crafted health effects documents for its 2016 drinking water health advisory levels.

Concerns about potential breast milk exposure are heating up, the state source says, noting significant contamination fears among communities with high levels of PFAS as to whether lactating mothers should be advised not to breast feed their infants.

The source believes the documentation EPA is updating will be used for the MCLGs, with both the health document and the proposed MCLGs coming out this year.

An EPA spokeswoman confirmed the agency will submit its plan to SAB for review but could not confirm a schedule. "Input from the [SAB] will be a critical step in assuring a sound scientific foundation to develop the proposed national primary drinking water regulation. The exact timing of the SAB review has not been determined at this time."

Further, she says, the regulatory determinations EPA has already issued affirming agency plans to regulate the chemicals "outline avenues that the agency is considering to further evaluate additional PFAS chemicals and provide flexibility for the agency to consider groups of PFAS as supported by the best available science. EPA will use a strong foundation of science while working to harmonize multiple authorities to address the impacts of PFAS on public health and the environment."

The spokeswoman did not respond to follow-up questions about breast milk exposure modeling.

Proposing MCLGs, which are issued after the agency reviews health effects data, is an early step in EPA's process for developing enforceable drinking water limits for chemicals. In the case of the two PFAS, EPA is under significant pressure from lawmakers, environmentalists and others to set such limits.

But it is unclear whether the agency's plans to move ahead with proposed MCLGs to its SAB this year signals an expedited rulemaking using emergency authority under the Safe Drinking Water Act (SDWA) for the two PFAS, as sought by environmentalists and as Senate Majority Leader Chuck Schumer (D-NY) and others pressure EPA for immediate drinking water standards for the ubiquitous chemicals.

The Biden administration in March reissued final SDWA regulatory determinations for perfluorooctanoic acid (PFOA) and

perfluorooctane sulfonate (PFOS) -- the two most studied PFAS -- confirming determinations made in January by the Trump EPA. That triggered a 24-month timeline for EPA to propose national primary drinking water regulations, typically enforceable maximum contaminant levels (MCLs), for the chemicals, although environmentalists have suggested EPA could invoke emergency authority under SDWA that would allow it to expedite the drinking water standards.

Health Effects

MCLGs are a precursor to setting MCLs, as the former establishes "the maximum level of a contaminant in drinking water at which no known or anticipated adverse effect on the health of persons would occur, allowing an adequate margin of safety," EPA says on its website.

They are non-enforceable goals that only consider public health and not the limits of technologies for detecting or treating the chemicals, and are often "set at levels which water systems cannot meet...

Ewire: EJ campaigners ask Biden to halt 'cancer alley' chemical plants
N/A, Inside EPA
https://insideepa.com/daily-feed/ewire-ej-campaigners-ask-biden-halt-cancer-alley-chemical-plants

Environmental justice (EJ) campaigners are calling on President Joe Biden's administration to halt the construction of new chemical plants in Louisiana's industrial belt that some critics call "cancer alley" because of its pollution levels, posing a test for EPA and other agencies on whether to revoke or block permits for building some facilities.

The Guardian newspaper reported Monday on a march led by the youth climate group Sunrise Movement, "which began last week and traces the path of environmental disasters in the Gulf coast from New Orleans to Houston." The marchers are calling on the federal government to revoke a U.S. Army Corps of Engineers permit for the Taiwanese plastics company Formosa to start construction of a massive petrochemical complex in Louisiana.

"This is the epitome of environmental racism," Varshini Prakash, the co-founder and executive director of Sunrise Movement, told the Guardian. "Biden was elected on a climate mandate rooted in racial and environmental justice, and we demand he fulfill his campaign promise by directing the Army Corps to revoke the federal permits on this plant."

Louisiana's Department of Environmental Quality has approved permits for the company to build 14 separate plastics plants, one of which was the target of Monday's protest. The facility, being developed in St James parish, is located on the banks of the Mississippi River in an area with disproportionately Black and low-income residents.

The Army Corps suspended its federal Clean Water Act Section 404 dredge-and-fill permit for the facility in November, pending a reevaluation, following litigation brought against the project by environmentalists claiming violations of environmental laws. The administration should now revoke the permit, the campaigners argue.

Campaigners have the support of some Democrats in Congress. House Natural Resources Committee Chairman Raul Grijalva (D-AZ) and Rep. Donald McEachin (D-VA) wrote to Biden March 17, asking the president to revoke the Army Corps permit, saying their request is a "test" of Biden's commitment to EJ.

Communities have for years complained of higher cancer incidence they believe is tied to pollution from the numerous industrial facilities in the area, and local campaign group Rise St James helped organize the protest.

Environmental groups are challenging the Biden EPA to tighten regulation of air toxics and other air pollution from Gulf Coast facilities including refineries and chemical plants. Among the pollutants they are targeting is the carcinogenic solvent ethylene oxide (EtO), which would be emitted in large volumes by the proposed Formosa petrochemical plant.

"Even Formosa's own models show that the gargantuan complex could emit more of the carcinogenic compound

ethylene oxide than just about any other facility in the country," the Guardian reports. Further, "If built, researchers found that the Formosa complex would diminish nearby wetlands, which protect the communities from extreme flooding and heavy rain."

Meanwhile, the newspaper reports that one of the broader goals of the Sunrise march "is to pressure the Biden administration into expanding its infrastructure package to include a much-anticipated Civilian Climate Corps."

Trump Veterans Say Revisiting Methylene Chloride Evaluation Will Tax EPA Resources
Maria Hegstad, Inside TSCA
https://insideepa.com/tsca-news/trump-veterans-say-revisiting-methylene-chloride-evaluation-will-tax-epa-resources

Former Trump-era toxics officials are questioning EPA officials' plan to reopen its risk evaluation of methylene chloride and potentially other chemicals the prior administration studied, saying the agency has already struggled to meet TSCA's strict deadlines for action and lacks the resources to take on an even-more-expansive workload.

Alex Dunn, the former assistant administrator of EPA's chemicals office and now a partner at the law firm Baker Botts, tells Inside TSCA that the Biden administration's newly announced plan to reconsider aspects of the methylene chloride evaluation will strain its Office of Pollution Prevention and Toxics (OPPT). That office is already conducting risk evaluations for 25 existing chemicals, and risk-management rules based on its first round of 10 evaluations.

"Many of the people that are now being asked . . . to go backward and look at these first 10 and these policy choices are the same people working on the next 25 [evaluations] as well as 10 risk management rulemakings. The workload in [OPPT] is monumental," Dunn said. "I look at this and am concerned about the agency being able to continue to move forward with this program and all the regulatory work."

And Erik Baptist, a partner at the law firm Wiley Rein and former deputy assistant administrator at the Office of Chemical Safety and Pollution Prevention (OCSPP) that includes OPPT, noted that during his tenure leaders struggled to hire more scientists and technical experts to handle the increased workload mandated by 2016 reforms to the Toxic Substances Control Act (TSCA).

"When I was at the agency, we were looking to bring on more staff. We were looking at ways to pay scientists more money," Baptist said, adding that the agency was at a disadvantage in hiring because it was "asking scientists to come in and work very hard for not much pay" compared to offers they could get in the private sector or academia.

He added that new hires to the TSCA office face a steep learning curve, meaning that even after they join the program they might not be able to immediately contribute to OPPT's difficult workload.

"Even if they were to hire 100 new scientists, it's hard to get up to speed. It does put a strain on the agency. The practical problems associated with that policy shift should be a concern for everybody," Baptist said. "It's a heavy lift no matter who's in charge of running the program. And getting criticism from outside stakeholders is not enviable either. They are trying their best, while under the public microscope."

EPA outlined its plan for methylene chloride in a May 13 filing with the U.S. Court of Appeals for the 9th Circuit, seeking a remand of the 2020 evaluation in order to rework or expand on several aspects of the review -- including new findings on the solvent's risks to workers and potential exposures through several avenues the Trump administration declined to consider, such as ambient air.

The agency is also planning to switch away from making separate determinations for whether each "condition of use" it evaluates poses unreasonable risks, and instead make a single "binary" risk finding for the chemical as a whole.

TSCA requires EPA to evaluate the risks posed by existing chemicals in three-year cycles, starting with an initial block of

10 and then expanding the program to consider at least 20 substances at all times. If the agency identifies any "unreasonable risks" in its evaluations, it must then craft rules to manage those risks under a short deadline -- one year to propose a draft rule and, generally, another year for final action.

But EPA struggled to meet the deadlines for that first set of 10 evaluations, leading several current and former officials -- including Dunn -- to raise warnings that it lacks the capacity to complete twice as many risk studies in the same amount of time while also developing risk management rules. Tasking staff with reworking already-finished evaluations will only add to that...

Environmentalists Urge EPA To Back Standardized Definition Of PFAS
Diana DiGangi, Inside TSCA
https://insideepa.com/tsca-news/environmentalists-urge-epa-back-standardized-definition-pfas

Adding to state officials' calls for the EPA to establish a blanket federal definition for per- and polyfluoroalkyl substances (PFAS) under TSCA and other programs, an environmental group is asking the agency to adopt the definition used by the international Organisation for Economic Co-operation and Development (OECD).

"EPA does not define PFAS," said Kyla Bennett, New England director of the whistleblower group Public Employees for Environmental Responsibility and a former career enforcement official at EPA, during a May 18 webinar on PFAS contamination in Long Island hosted by the local environmental group Citizens Campaign for the Environment. "They just simply don't have a definition anywhere on their website."

Members of the agency's state advisory panel for pesticide policy previously warned that the lack of a unified definition of PFAS is causing problems for their programs, and the gap has raised some concern among industry and environmentalist groups that states seeking to impose strict limits on products made with the substances could adopt contradictory tests for what qualifies as a perfluorinated compound.

In her presentation, Bennett specifically backed OECD's approach, saying the intergovernmental entity "does have a very good definition of PFAS, which is 'any compound containing at least one fluorinated carbon.' EPA could start with that."

Her comments echo calls from the joint state-EPA workgroup on the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) for the agency to craft and adopt a single definition of PFAS that would apply to the Toxic Substances Control Act (TSCA) and other federal programs as well as states activities.

Such an initiative would help state officials to avoid contradicting definitions in legislation that requires products to be PFAS-free, members of the panel said.

"The lack of a federal EPA definition for PFAS leaves it to individual state legislation to define what a PFAS is in the context of a pesticide," Carrie Leach, who co-chairs the Joint Working Committee (JWC) within EPA's State FIFRA Issues Research and Evaluation Group (SFIREG), told Inside TSCA.

For instance, they added, EPA's Office of Pollution Prevention and Toxics (OPPT) uses a "working definition" of PFAS that specifies the chemical structure.

EPA has acknowledged the lack of a unified standard for what chemicals qualify as PFAS; its "master list" of the substances says, "There is no precisely clear definition of what constitutes a PFAS substance given the inclusion of partially fluorinated substances, polymers, and ill-defined reaction products on these various lists."

However, the agency has also given no indication that it is working on one and instead points to international efforts, where OECD is a participant with the World Health Organization (WHO).

An agency spokesperson told Inside TSCA earlier this month, "There is currently no universally accepted definition for PFAS, but there is an ongoing international effort via OECD and WHO to create one."

At least one environmental nonprofit is already pushing to adopt the OECD definition for nationwide use, though in an unofficial capacity; GreenScreen For Safer Chemicals, uses the "one fluorinated carbon" test in its standard for certifying products as "PFAS-free." Those certifications can help companies market their products as free of harmful chemicals, or meet state-level legal requirements to avoid perfluorinated compounds.

Shari Franjevic, program manager for GreenScreen, recently told Inside TSCA the program models itself after the European Union's approach to chemical regulation, which is based on the precautionary principle rather than the risk-based approach used in the US.

'We Can't Destroy This Stuff'

During her May 18 presentation, Bennett said a single definition of PFAS is needed to aid efforts to eliminate them from products due to the chemicals' persistence in the environment and the difficulty of destroying them without hazard...

Groups Sue EPA To Force Deadline For 'Legacy' Asbestos Evaluation
David LaRoss, Inside TSCA
https://insideepa.com/tsca-news/groups-sue-epa-force-deadline-legacy-asbestos-evaluation

Environmental and public-health groups are suing EPA over what they say is its unlawful decision not to consider legacy uses of asbestos in its TSCA evaluation of the substance, following through on a legal threat after, they say, the Biden administration "failed to respond to" their formal notice of intent to file the case.

The May 18 complaint in Asbestos Disease Awareness Organization (ADAO), et al. v. EPA opens another front in litigation over the Trump-era Toxic Substances Control Act (TSCA) evaluation of asbestos that environmental groups have argued was both incomplete and too lenient.

Specifically, the suit asks the U.S. District Court for the Northern District of California to set a mandatory deadline for EPA to complete its promised "part two" TSCA evaluation of asbestos, which will cover risks from legacy uses as well as fibers other than the chrysotile type that was the focus of the "part one" document the agency finalized on Dec. 30.

"After years of delay, the best way to make sure that EPA performs its legal duty to determine the risks of legacy asbestos is through an enforceable court order establishing a deadline for completing this evaluation and defining its scope," ADAO attorney Robert Sussman, a former EPA official, said in the group's release announcing the lawsuit.

The complaint asks the court to establish "enforceable deadlines" for EPA to set a formal scope for the legacy evaluation and to issue draft and final versions of the document but offers no detail on what the plaintiffs believe those deadlines should be.

That demand, as well as the groups' legal claims, remains unchanged from the notice of intent to sue they sent to EPA at the same time that they filed their still-pending suit on the merits of the Dec. 30 evaluation itself.

Among other authorities, the complaint cites the U.S. Court of Appeals for the 9th Circuit's landmark 2019 decision, Safer Chemicals Healthy Families v. EPA, that said TSCA requires the agency to evaluate risks from discontinued chemical uses as well as ongoing ones.

"Under the Ninth Circuit decision holding that use and disposal of legacy asbestos are 'conditions of use' as defined in TSCA, EPA has a non-discretionary obligation to determine whether these activities present an unreasonable risk of injury to human health and the environment. . . . By failing to evaluate the risks of use and disposal of legacy asbestos,

defendants violated their non-discretionary duty," the complaint says.

ADAO now says, "EPA failed to respond to" its prior notice, and quotes its president and co-founder Linda Reinstein as saying, "EPA's lack of action on legacy asbestos leaves us with no choice but to file suit to protect public health."

Two-Part Evaluation

When the Trump EPA released the final "part one" asbestos evaluation, officials said work was already beginning on the second phase but declined to set a concrete timeline for the project, instead saying only that a draft scoping document would be available by "mid-year 2021."

ADAO's statement says the groups believe a second evaluation can remedy what they see as the too-narrow scope of the first assessment, but litigation is needed to "guarantee" EPA will follow through on the promise to craft it.

"We expect these shortcomings to be remedied in the Part 2 evaluation along with the failure to address legacy asbestos, but there is no guarantee the agency will do so without further oversight from the Court," the release quotes Sussman as saying.

Biden officials, including EPA Administrator Michael Regan and Office of Chemical Safety and Pollution Prevention nominee Michal Freedhoff, have not explicitly addressed the future of the asbestos evaluation -- though Regan told Sen. Jeff Merkley (D-OR) during his Feb. 3 confirmation hearing that he would "review" the Trump-era document.

Meanwhile, Freedhoff has vowed to reopen at least some of the 10 completed evaluations to tighten them, including a new court motion seeking...

Syngenta Wants Its Insurers to Pay Paraquat Defense Costs (1)
Sylvia Carignan, Bloomberg Law
https://news.bloomberglaw.com/environment-and-energy/syngenta-sues-insurers-in-face-of-growing-paraquat-defense-costs?usertype=External&bwid=00000179-7fae-d8ea-a37b-7fff3a990001&qid=7110462&cti=FGOV&uc=1320000080&et=NEWSLETTER&emc=neve_nl%3A64&source=newsletter&item=headline®ion=digest&access-ticket=eyJjdHh0IjoiTkVWRSIsImlkIjoiMDAwMDAxNzktN2ZhZS1kOGVhLWEzN2ItN2ZmZjNhOTkwMDAxIiwic2lnIjoickw4OW5sUlFvQTVndERRelU4VkY1MEdPQVh3PSIsInRpbWUiOiIxNjIxNDIyOTg0IiwidXVpZCI6Im54TUR6d0hlZUlBeFk4SlVuYkVCaVE9PXZPaG5YekJoUEdUdFNuc0ROTVJXd3c9PSIsInYiOiIxIn0%3D

Syngenta wants its insurers to cover the costs of defending the company against an increasing number of personal injury lawsuits connecting its herbicide paraquat to Parkinson's disease, according to a complaint filed in Delaware court.

Hartford Accident and Indemnity Co., Travelers Casualty and Surety Co., and more than a hundred insurers are named as defendants in the complaint filed by Syngenta Crop Protection LLC and Syngenta Corp. in the Delaware Superior Court Monday.

The Hartford and Travelers policies require the insurers to pay for personal injury or property damage caused by an accident or "occurrence," and to defend and indemnify the insured, the complaint said.

The Syngenta entities are the successors in interest to Imperial Chemical Industries PLC and its subsidiaries, including ICI United States Inc. Syngenta and its predecessors manufactured and sold paraquat.

Hartford provided Imperial Chemical with general liability insurance policies that included coverage for product liability from 1971 through 1974. Travelers provided coverage from about 1974 to 1986, the complaint said.

Travelers also provided excess level liability insurance coverage, including product liability coverage, from 1972 to 1973. Other insurers named as defendants in the complaint provided Imperial Chemical with coverage in the 1970s and 1980s.

Each defendant "has refused to honor or failed to acknowledge its coverage obligations," the complaint said.

The paraquat lawsuits assert claims of negligence, public nuisance, and breach of implied warranty of merchantability, in addition to product liability. Some also include claims brought under state deceptive trade practice or consumer fraud acts, according to the complaint.

Those plaintiffs are seeking monetary damages for medical treatment, lost income, pain, mental anguish, and disability.

"Syngenta denies all liability to the underlying plaintiffs" in those lawsuits, the complaint said. "Substantial costs have been and continue to be incurred by, or on behalf of, Syngenta to defend the paraquat actions."

Cause of Action: Declaratory judgment; breach of contract.

Relief: Declare Hartford and Travelers are obligated to defend and indemnify Syngenta and pay defense costs; declare insurers are obligated to indemnify Syngenta for sums the company may be obligated to pay in connection with the paraquat litigation; award attorneys' fees.

Response: Hartford didn't immediately respond to a request for comment. Travelers declined to comment.

Attorneys: Berger Harris LLP represents Syngenta.

The case is Syngenta Crop Protection LLC v. Hartford Accident & Indemnity Co., Del. Super. Ct., No. N21C-5-143, 5/17/21.

Court Rejects Bayer's Glyphosate Appeal
Dan Nosowitz, Modern Farmer
https://modernfarmer.com/2021/05/court-rejects-bayers-glyphosate-appeal/

The number of cases alleging that Roundup, Monsanto's former flagship product, causes cancer exceeded 10,000.

The second of those cases to receive a verdict, in which the plaintiff was a California school groundskeeper named Edwin Hardeman, was first decided in March of 2019. Monsanto and its parent company, Bayer AG, vowed to appeal, and that appeal does not seem to be going well for the agrochemical giant.

The huge crop of lawsuits generally allege that Roundup and its major active component, glyphosate, are responsible for causing cancer when used according to manufacturer instructions. Hardeman's case went to a jury verdict, and he was awarded just less than $5.3 million to compensate for his cancer and, initially, $75 million in punitive damages. Monsanto appealed that, and the damages were reduced to $20 million. (We are referring to the company as "Monsanto" here for clarity; Monsanto technically no longer exists and is merely a division of Bayer AG.)

But Monsanto continued to appeal and, on Friday, judges at the US Court of Appeals for the Ninth Circuit ruled that this $25.3-million fine was reasonable and should be upheld. In the decision, the judges wrote: "The panel held that evidence supported a punitive damages award, punitive damages were properly reduced, and the reduced award—while close to the outer limit—was constitutional."

In June of 2020, Monsanto announced a settlement package of about $10 billion to settle about 95,000 similar cases, which gives each settlement considerably less than the $25.3 million for which Hardeman is fighting. But there are also around 25,000 cases not covered by this settlement, although the judges in this ruling are careful to note that there are specific details in each case and that this ruling should not be viewed as a ruling on all other cases.

The Ninth Circuit Court of Appeals, which is based in San Francisco, would be the end of the line for Monsanto, unless the company wants to apply for a US Supreme Court review—and, of course, if the court accepts to hear the case.

Judge suggests warning label as part of $2 billion plan to limit Roundup claims
Tom Hals, Reuters
https://www.reuters.com/article/us-bayer-glyphosate/bayer-seeks-approval-of-2-billion-plan-to-limit-roundup-claims-idUSKCN2D011B

A U.S. judge suggested on Wednesday that Bayer AG include a warning label on Roundup as part of a proposed $2 billion settlement to resolve future claims that the top-selling weedkiller causes cancer.

FILE PHOTO: A bridge is decorated with the logo of a Bayer AG. REUTERS/Wolfgang Rattay
Bayer has spent years and committed $9.6 billion to resolve lawsuits alleging non-Hodgkin lymphoma is caused by Roundup, a glyphosate-based herbicide it inherited in its $63 billion acquisition of Monsanto in 2018.

The company has said that decades of studies have shown Roundup and glyphosate are safe for human use.

On Wednesday, the company was seeking preliminary approval from U.S. District Judge Vince Chhabria in San Francisco for a separate $2 billion deal to create a framework to resolve lawsuits by people who will get sick in the future.

"For years I've been wondering why Monsanto wouldn't do that voluntarily to protect itself," said Chhabria, of a warning label. He said a label would prevent lawsuits going forward and could free up money that could be used to create a better settlement offer for people already exposed.

He even suggested wording for a label and tweaked it as he got feedback from Bayer's lawyer.

Bayer last year defeated an attempt by California to require a cancer warning label on the weedkiller, but Chhabria said the company could probably come up with a label less definitive about the link to cancer than the one sought by California.

William Hoffman, a lawyer for Bayer, said he doubted the label suggested by Chhabria would protect against future lawsuits.

The settlement would cover two types of Roundup users, those who currently have non-Hodgkin lymphoma but have not retained a lawyer, which the judge described as "class one." The other class covers people who have been exposed to Roundup and become sick in the future.

"A settlement of this type could potentially be reasonable for class one," said Chhabria at the start of Wednesday's hearing.

Chhabria acknowledged that he was more receptive to aspects of the plan than on Tuesday, when he posted questions in a court filing asking why class members would agree to the deal when jury trials have gone well against Bayer.

If the settlement gets preliminary approval, Roundup users can opt out in the coming months and retain their full legal rights. Those who become part of the class would be eligible for free medical exams and up to $200,000 if they develop non-Hodgkin lymphoma during the agreement's four-year period.

The agreement would pause all litigation for four years and prevent class members from seeking punitive damages if they refuse compensation and ultimately decide to sue.

The stakes are high. Bayer has said that more than half of its herbicide revenue, which totaled nearly 5 billion euros ($6 billion) in 2020, was related to glyphosate.

Critics of the settlement say the proposal would unfairly limit consumers' legal rights.

Chhabria said the biggest risk facing Roundup users who opt out was a ruling by the U.S. Supreme Court adopting Bayer's view that a federal pesticide law barred lawsuits that the company failed to warn users about glyphosate.

Bayer has said the law has been misapplied in the three cases that went to trial, each of which resulted in tens of millions of dollars for plaintiffs.

One of those trials, a $25 million federal jury verdict against Bayer, was upheld by an appeals court on Friday.

Bayer said it will ask the U.S. Supreme Court to review the case.

Do UV Sanitizers Work? Here's What to Know Before Buying One
Claire Gillespie, Health
https://www.health.com/home/do-uv-sanitizers-work

These two experts say they wouldn't recommend them.

Makers of UV sanitizers claim their products can sterilize anything in minutes. Many say that their sanitizers can kill up to 99.99% of germs on whatever object you put into the device's UV radiation. But do the UV sanitizers actually work? Here's the lowdown.

First of all, what is UV radiation?
UV stands for ultraviolet, a form of electromagnetic radiation. The most common form of UV radiation is sunlight, which produces the three main types of UV rays: UVA (which is linked to skin aging), UVB (which can cause sunburn), and UVC (which is blocked by the Earth's atmosphere before it can even reach us). It's UVC—the highest-energy UV ray of the three—that's used in UV sanitizers.

UVC radiation is a "known disinfectant for air, water, and nonporous surfaces," according to the US Food and Drug Administration (FDA). In fact, the agency reports that UVC radiation has been used successfully for decades to reduce the spread of bacterial diseases like tuberculosis. Although the viruses they studied are different from the SARS-CoV-2 virus that causes COVID-19, researchers recently published a paper in Scientific Reports showing that UVC radiation can inactivate at least two types of coronavirus. But so far, there's very little data about the wavelength, dose, and duration of UVC radiation that may be effective in inactivating the SARS-CoV-2 virus specifically, according to the FDA.

The Centers for Disease Control and Prevention (CDC) describes high-intensity UV radiation as an "alternative disinfection method." But the CDC also points out that UV lights aren't on List N, a list of all disinfectants reviewed and approved by the Environmental Protection Agency (EPA) to kill the SARS-CoV-2 virus.

How do UV sanitizers work?
UV sanitizers destroy viruses and kill bacteria by using their lights to emit UV rays, targeting proteins and genetic material (DNA and RNA). "They speed up cross-linking of this genetic material, which reduces the ability of the genetic material to participate in healthy replication," Karen Dobos, PhD, professor in the department of microbiology, immunology, and pathology at Colorado State University, tells Health.

UV sanitizers are designed to disinfect a wide range of surfaces, from cell phones to jewelry to stuffed animals. It's important to remember that the sanitizers definitely shouldn't be used on hands (or the skin on any other part of your

body, for that matter), William L. Schreiber, PhD, chair of the department of chemistry and physics at Monmouth University in New Jersey, tells Health. The FDA notes that there have been reports of skin and eye burns resulting from improper installation of UVC lamps in rooms accessible to humans.

There are different types of UV sanitizers that are available—from wands to zip-up pouches—to sanitize different types of items. For example, while a wand might be good for targeting household items like doorknobs, a pouch might be best for fitting smaller items like a phone.

Do UV sanitizers actually work?
Again, UV rays have been used as a disinfectant for years. Some hospitals rely on them to help sterilize surfaces, and a large study published in The Lancet found that UVC light used in hospitals cut transmission of four major superbugs by 30%.

But UV sanitizers designed for personal use may not be as powerful. "The energy emitted from these bulbs has to be very low to be sold for personal use, which isn't the case for industrial applications," Dobos says. Because they are lower energy, they...

Canada Quietly Bans Chlorpyrifos, While EPA's 60-Day Deadline For Action Rapidly Approaches
N/A, Beyond Pesticides Blog
https://beyondpesticides.org/dailynewsblog/2021/05/canada-quietly-bans-chlorpyrifos-while-epas-60-day-deadline-for-action-rapidly-approaches/

(Beyond Pesticides, May 19, 2021) Last week Health Canada quietly announced its intent to cancel all remaining registrations of the brain-damaging insecticide chlorpyrifos. The decision by Canada's federal pesticide regulators comes shortly after a U.S. federal court gave the U.S. Environmental Protection Agency (EPA) a 60-day deadline to make a final decision on whether to amend or cancel the chemical's registration. With Europe and now Canada eliminating use of this hazardous insecticide, advocates are urging that the Biden Administration, under EPA administrator Michael Regan, finally puts an end to the decades of harm caused after chlorpyrifos was first registered in 1965.

Up until recently, Canada and the U.S. had relatively similar provisions regulating chlorpyrifos use. Officials in both countries eliminated homeowner use, and tightened up on agricultural uses in the 2000s and early 2010s, requiring additional personal protective equipment and drift mitigation measures.

However, Health Canada began to look at significant restrictions on chlorpyrifos in 2019, when it proposed eliminating a range of uses that threaten environmental health. Under its draft decision, regulators planned to eliminate all uses except for mosquito control, structural pest control, outdoor ornamentals, and greenhouse ornamentals. Certain agricultural uses were provided an extended phase-out period with additional risk mitigation measures.

Meanwhile, throughout the late 2010s, EPA set out to defend chlorpyrifos use. Former EPA administrator Scott Pruitt reversed a pending order during the Obama Administration that would have cancelled chlorpyrifos, raising serious concerns around conflict of interest with the pesticide's primary registrant, Dow Chemical. Lawsuits continued to work their way through the courts, but by the end of 2020, EPA proposed a reregistration of chlorpyrifos with risk mitigation measures health experts regarded as wholly inadequate. The agency proposed label amendments, additional personal protective equipment, and limited, additional drift mitigation measures.

Health Canada published its draft decision at the end of 2020, and indicated that it was subject to further review based on the results of its human health risk assessment, which had yet to be completed. As part of that review the agency requested a "data call-in," indicating that in order to maintain the registration of the chemical, its manufacturers needed to provide regulators with specific studies or information on certain health impacts. According to a release published by Health Canada last week, chlorpyrifos manufacturers "failed to satisfy the data requirements." As a result, regulators decided to cancel all remaining uses, including those they had considered retaining at the end of last year. Under the

cancellation, final retail sales will stop in December 2022, and remaining agricultural uses have a December 2023 cut-off date.

As Canada cancels and phases out chlorpyrifos, EPA has less than 60 days to make a final decision whether to continue to allow uses of the chemical. As it stands, chlorpyrifos is currently allowed on a range of food crops, from almonds, to apples, broccoli, cucumbers, onions, peppers, strawberries, and walnuts. Fruits and vegetables are part of a healthy diet, but the cumulative levels of chlorpyrifos on food products and in our environment pose significant risks to health, particularly children with developing bodies. And within that group, the children of farmworkers are likely to be the most at risk, given the numerous routes of potential exposure (from family members returning home from work, from air in an agricultural region, as well as in food and water).

The range of food products chlorpyrifos is allowed on underlines the importance of choosing organic whenever possible. Consumer choices in the marketplace can make a big difference. Feeling public pressure, the insecticide's main registrant, Corteva...

PFAS Action Act Would Reinforce, Accelerate Current Priorities
Stephanie Feingold, Jeremy Esterkin, Drew Cleary Jordan, and Sarah Carter, Bloomberg Law
https://news.bloomberglaw.com/environment-and-energy/pfas-action-act-would-reinforce-accelerate-current-priorities?usertype=External&bwid=00000179-570d-df04-af79-f7afffa10001&qid=7110462&cti=FGOV&uc=1320000080&et=NEWSLETTER&emc=neve_nl%3A2&source=newsletter&item=headline®ion=featured-story&access-ticket=eyJjdHh0IjoiTkVWRSIsImlkIjoiMDAwMDAxNzktNTcwZC1kZjA0LWFmNzktZjdhZmZmYTEwMDAxIiwic2lnIjoiRzdORTE2YWF5OUVnOU5MaDlQNEF5NUVXL2EwPSIsInRpbWUiOiIxNjIxNDIyOTg0IiwidXVpZCI6Im54TUR6d0hlZUlBeFk4SlVuYkVCaVE9PXZPaG5YekJoUEdUdFNuc0ROTVJXd3c9PSIsInYiOiIxIn0%3D

The PFAS Action Act would, among other things, require creation of a national drinking water standard for various PFAS chemicals. Morgan Lewis environmental attorneys say the act could also significantly accelerate the timeline for classifying certain PFAS compounds as hazardous substances and allows the EPA significant discretion over future PFAS regulation.

The PFAS Action Act, introduced April 13 by Reps. Debbie Dingell (D-Mich.) and Fred Upton (R-Mich.), is a bipartisan bill that directs the Environmental Protection Agency to enact multiple significant regulations related to per- and polyfluoroalkyl substances (PFAS). The bill largely mirrors legislation approved by the House in the last session of Congress in a 247-159 vote. Proponents are optimistic that the new Congress may be able to advance it into law this session.

Key Provisions
PFAS are a group of thousands of chemicals used in consumer and commercial products for their heat resistance and ability to repel moisture, oil, and grease, among other properties. The most sweeping proposals in the bill concern the two most studied PFAS compounds—perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS)—but certain provisions apply more broadly.

If passed, the bill would require the EPA to promulgate PFAS regulations by certain deadlines, including, in part:

Establishing a national drinking water standard under the Safe Drinking Water Act (SDWA) for PFOA/PFOS within two years;
Determining whether to list PFOA/PFOS as "hazardous substances" under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) within one year, and all other PFAS compounds within five years; and
Designating PFOA/PFOS as "hazardous air pollutants" under the Clean Air Act (CAA) within six months.
Other significant provisions include an annual $200 million grant to water utilities to treat PFAS in wastewater over four years; limiting industrial releases of PFAS under the Clean Water Act; prohibiting incineration of PFAS waste under the

Solid Waste Disposal Act; voluntary labeling for PFAS in cookware products; requiring comprehensive toxicity testing of PFAS under the Toxic Substances Control Act (TSCA); and imposing a five-year moratorium on approvals of new PFAS uses under TSCA.

Apart from the doubling of the annual grant to water utilities, the 2021 bill is nearly identical to the prior legislation.

Significance of the Proposed Legislation
The proposed legislation aligns with the Biden administration's environmental priorities and "whole-of-government" approach to environmental regulation. Candidate Biden had pledged to prioritize the study and regulation of PFAS, and President Biden's actions to date are consistent with that pledge.

For example, the administration's proposed infrastructure bill would dedicate $10 billion toward PFAS monitoring and remediation, while its fiscal 2022 budget earmarks $75 million toward PFAS research. New EPA Administrator Michael Regan echoed this commitment at his Senate confirmation hearing, pledging to make PFAS an agencywide priority by designating PFAS hazardous substances, setting discharge limitations, prioritizing substitutes through procurement policies, and accelerating toxicity research.

While the legislation would compel the EPA to take action on PFAS in a relatively short time frame, the agency has already made progress in implementing its PFAS action plan—first issued in February 2019 and updated in 2020—which adheres closely to the legislation's goals. To date, the EPA has (among other things) established an "EPA Council on PFAS"; issued groundwater cleanup guidance for PFOA/PFOS; taken steps to develop a national drinking water regulation for PFOS/PFOA; issued final guidance under TSCA addressing new uses of certain PFAS compounds; begun the regulatory process for potentially listing PFOA/PFOS as "hazardous substances" under CERCLA; and validated new analytical methods for PFAS testing in drinking water...

Biden EPA Reveals Prior Approval of Monsanto's Roundup Failed to Account for Risks to Monarch Butterflies and Other Endangered Species, Drift Harm to Farmers
George Kimbrell, Common Dreams (Center for Food Safety)
https://www.commondreams.org/newswire/2021/05/19/biden-epa-reveals-prior-approval-monsantos-roundup-failed-account-risks-monarch?cd-origin=rss

WASHINGTON - In a federal court filing yesterday the Biden Administration's Environmental Protection Agency (EPA) effectively admitted grave errors in EPA's 2020 interim registration of glyphosate, best known as the active ingredient in Monsanto's Roundup pesticides, and asked the court for permission to re-do the agency's faulty assessments. However, the agency stated that, despite its misgivings, Roundup should nonetheless stay on the market in the interim—without any deadline for a new decision.

EPA's request comes as part of the agency's response to two lawsuits, including one brought by a coalition of farmworkers, farmers, and conservationists represented by Center for Food Safety (CFS), challenging the agency's glyphosate decision. CFS and allies, which filed their opening legal arguments in December, seek to reverse the Trump EPA's unlawful approval, which would mean a prohibition on use or sale of glyphosate herbicides.

Now, instead of continuing to defend its decision in full, EPA is asking the court to permit it to "reconsider" a number of serious failings raised in the lawsuits, including: the impacts to monarch butterflies from sprayed Roundup, which kills the milkweed they require for survival; harm to other endangered species raised in the agencies' own 2020 biological evaluation; the economic and social costs to farmers from Roundup off-field drift; and potentially other unspecified ecological and economic risks. The deficiencies are such that EPA admits it can no longer affirm glyphosate's putative benefits outweigh its risks and costs, or that measures imposed to mitigate risks are at all effective.

"Rather than defend its prior decision, at the 11th hour EPA is asking for a mulligan and indefinite delay, despite having previously spent far too long, over a decade, in re-assessing it," said George Kimbrell, CFS legal director and counsel in

the case. "Worse, EPA admits its approval risks harms to farmers and endangered species, but makes no effort to halt it. We will ask the Court to deny this extraordinary request to paper over glyphosate's ecological harms only to approve it anyway down the road. Time to face the music, not run and hide."

EPA also bases its request in part upon its own draft Biological Evaluation, issued in November 2020, which found that glyphosate is likely to adversely affect 93% of exposed species protected under the Endangered Species Act, and 96% of their critical habitats.

In their lawsuit, the coalition addressed the issues EPA wants to reconsider and others as well. For instance, the coalition also presented ample evidence that glyphosate is a human health threat, posing the risk of cancer in particular to farmworkers and others who spray glyphosate-based herbicides. The courts recently re-affirmed a judgment against Monsanto for cancer from Roundup. The coalition additionally demonstrated that glyphosate herbicides have imposed enormous yet uncounted costs on U.S. farmers in the form of glyphosate-resistant superweeds, which have emerged in epidemic manner with the spraying of massive quantities of glyphosate on crops genetically engineered to withstand the herbicide.

EPA is required by law to re-assess each pesticide every 15 years in a process known as registration review. EPA completed part of its registration review of glyphosate in 2020, designating it an "interim" decision because it had failed to assess glyphosate's impacts to endangered species, or complete other key assessments, such as glyphosate's potential to disrupt hormonal systems and harm pollinators. The 2020 interim decision represented EPA's first comprehensive assessment of the herbicide since 1993.

In December 2020, the U.S. Fish and Wildlife Service determined that Endangered Species Act protection for iconic and once-ubiquitous monarch butterflies was needed in order to protect it from extinction, with its steep decline mainly driven by Roundup and Roundup Ready crop systems.

Represented by...

Environmental Justice and Why You Should Care
Gary Rodner and Hilary Vedvig, JD Supra (Foley & Lardner LLP)
https://www.jdsupra.com/legalnews/environmental-justice-and-why-you-8498292/

"Environmental Justice" is the concept that all people - regardless of race, color, national origin, or income - should receive fair treatment and have meaningful involvement with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Environmental justice has been discussed in concept since President Clinton issued an Executive Order on the subject in the mid-1990s, but until recently that concept has rarely been translated into any real-world impact. Now, the Biden Administration has signaled an intention to implement principles of Environmental Justice across a wide swath of federal actions. Recent developments, including a decision by the Fourth Circuit and action taken by the City of Chicago in response to a request from the Environmental Protection Agency ("EPA") Administrator Michael Regan, suggest that Environmental Justice will in fact be a central focus for environmental engagement going forward.

In January, President Biden issued an Executive Order that created the White House Environmental Justice Interagency Council (the "Council"). The Council is notable because it expands the purview of Environmental Justice concerns beyond just EPA. The Council includes the Attorney General and the Secretaries of Agriculture, Commerce, Defense, Energy, Health and Human Services, Housing and Urban Development, Interior, Labor, and Transportation. Previously, EPA spearheaded the oversight and incorporation of Environmental Justice into its agency actions only. The expanded scope of oversight and enforcement of Environmental Justice metrics beyond just EPA suggests that we will now see Environmental Justice principles implemented in projects, initiatives, and enforcement actions across all of these federal agencies. The Executive Order directs the Council to develop "a strategy to address current and historic environmental injustice," to develop clear performance metrics for federal agencies to ensure accountability, and to publish

performance scorecards on its implementation publically.

Perhaps even more relevant, acting chief of EPA's enforcement office, Lawrence Starfield, recently issued an internal memorandum directing EPA regulators to increase oversight of locations in areas that raise Environmental Justice concerns.

Both developments harken an increased focus on Environmental Justice with real world impacts to facility management, ongoing remediation and enforcement matters, and risk management in merger and acquisition due diligence.

Environmental Justice Metrics
In employing Environmental Justice principles, agencies are to measure a specific population's exposure to pollution.1 This can be measured by analyzing factors such as proximity to emission sources, any unique exposure pathways, any physical infrastructure that may exacerbate the issue (such as housing conditions or water infrastructure), and/or the potential for multiple or cumulative exposures across these various factors. In addition, Environmental Justice principles include allowing a meaningful opportunity for communities to participate in decisions that will affect their environment and/or health. Whether an agency provided a meaningful opportunity to participate can be measured by the distribution, frequency, and translation of notices relating to the decision in question, and the mechanisms for providing and incorporating public comment(s) into the final decision. Moreover, federal agencies must consider Environmental Justice in any National Environmental Policy Act ("NEPA") analysis. EPA developed the EJSCREEN tool to show where current Environmental Justice communities are located. We note that the Biden Administration recently announced that it will be developing a new Climate and Economic Justice Screening Tool to identify additional communities threatened by the cumulative impacts of the multiple stresses of climate change, economic and racial inequality, and multi-source environmental...

++

For more news, visit:

- Inside EPA: https://insideepa.com/
- Inside TSCA: https://insideepa.com/inside-tsca-home
- Bloomberg Environment and Energy: https://news.bloombergenvironment.com/environment-and-energy/

If you'd like to be removed or would like to add someone to the listserv please contact Bailey Rosen at Rosen.Bailey@epa.gov. Feedback and interesting articles are welcomed. Thanks and enjoy!

And while you're reading.... Remember to shoot your coworkers a shooting star!