Message

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Sent: 5/26/2021 9:23:14 PM
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Subject: OCSPP News for May 26, 2021

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EPA Officially Nixes Trump's Science Transparency Regulation
Stephen Lee, Bloomberg Law
https://news.bloomberglaw.com/environment-and-energy/epa-officially-nixes-trumps-science-transparency-regulation

The EPA on Wednesday said it had finalized a rule scrapping the Trump administration's science transparency regulation, which limited the agency's ability to write regulations unpinned by scientific research that can't be reproduced or based on underlying data that isn't public.

The U.S. District Court for the District of Montana had said earlier that the Environmental Protection Agency hadn't justified its decision to put the rule in effect right after its publication in the Federal Register—instead of after 30 days, as is standard practice.

The Trump administration said the rule was an attempt to make the EPA's science transparent and accessible, but critics branded it a bid to stop the agency from issuing tough new environmental regulations.
"This action ensures that EPA can utilize the best available science and data to support our work to protect the public from pollution," Administrator Michael Regan said in a statement.
The vacatur rule ending the science transparency rule is effective immediately upon publication in the Federal Register.

Committee approves EPA, Interior nominees
Hannah Northey, E.A. Crunden, and Michael Doyle, E&E News
https://www.eenews.net/greenwire/2021/05/26/stories/1063733573

The Senate Environment and Public Works Committee today approved three of President Biden's nominees for top slots at EPA and the Interior Department, but not before Republicans voiced concern about the fate of key Trump-era rules.

The panel voted 14-6 on Radhika Fox to lead EPA's Office of Water. The committee voted 19-1 for Michal Freedhoff to lead EPA's Office of Chemical Safety and Pollution Prevention and Shannon Estenoz to serve as the head of fish and wildlife and parks at Interior.

Republican Sen. Dan Sullivan of Alaska voted no on all nominees. His office didn't immediately respond when asked about his opposition.

In addition to Sullivan, senators voting against Fox included ranking member Shelley Moore Capito (R-W.Va.), John Boozman (R-Ark.), Joni Ernst (R-Iowa) and Richard Shelby (R-Ala.).

Before today's vote, Capito said that while she enjoyed getting to know Fox, the nominee failed to commit to keep in place the Trump administration's Navigable Waters Protection Rule, which took effect last summer and drastically narrowed the definition of which waters fall under federal jurisdiction.

Fox also wouldn't say that President Obama's 2015 Clean Water Act rule was an overreach and provided "vague" answers, said Capito.

Fox notably faced a tough grilling over the rule in her confirmation hearing, and Republicans who voted against her nomination today, including Ernst and Boozman, are publicly pushing to keep the regulation intact (E&E Daily, Jan. 28).

Freedhoff at EPA
A former EPW Committee staffer, Freedhoff received a warm welcome from the committee at her hearing earlier this

month. During one exchange, Sen. Jim Inhofe (R-Okla.) joked that Freedhoff "might be the only person in America" to receive equal praise from himself and Sen. Ed Markey (D-Mass.), Freedhoff's former boss (E&E Daily, May 13).

During her time on Capitol Hill, the nominee helped write the 2016 overhaul of the Toxic Substances Control Act. At EPA, Freedhoff will be in a position to execute that law, overseeing critical risk evaluations of major chemicals.

On her agenda will be key decisions on controversial risk assessments released under the Trump administration, as well as regulating per- and polyfluoroalkyl substances.

PFAS are notably a major issue in Capito's state, and the West Virginia senator asked Freedhoff several questions about the chemicals during her hearing, inquiring about EPA's pace in establishing regulations.

Freedhoff, who worked on PFAS while at EPW, told Capito that contamination from the chemicals was a top priority for EPA.

Estenoz at Interior
Estenoz must also be approved by the Energy and Natural Resources Committee, with a markup scheduled for tomorrow. The nominee is almost sure to be confirmed as assistant Interior secretary for fish and wildlife and parks.

Republican Sen. Marco Rubio from her home state of Florida backs Estenoz, as does Republican Sen. Steve Daines of Montana, and her two confirmation hearings were entirely friction free.

While Daines vocally opposed the nomination of Interior Secretary Deb Haaland, he praised the way Estenoz handled questions on issues including the grizzly bear's recovery in the Greater Yellowstone and Northern Continental Divide ecosystems.

The bear's population is doing "very, very well," Estenoz acknowledged, adding that states have a "tremendous amount of expertise and play an absolutely central role when it comes to the Endangered Species Act, particularly when it comes to species' recovery and management."

A fifth-generation native of Key West, Fla., Estenoz formerly was chief operating officer of the Everglades Foundation before joining the Biden administration in January as an Interior principal deputy assistant secretary. The assistant secretary position oversees the National Park Service and the Fish and Wildlife Service.

3M, Daikin America Won't Give EPA 'Forever Chemical' Data (3)
Bobby Magill, Bloomberg Law
https://news.bloomberglaw.com/environment-and-energy/3m-daikin-america-balk-at-giving-epa-forever-chemical-data

3M Co. and Daikin America Inc. are refusing to comply with EPA's voluntary request for information about the future of "forever chemical" manufacturing—data that an ex-agency official says is crucial to regulating contaminants in water systems nationwide.

The Environmental Protection Agency in March announced that it may soon begin setting standards and limitations for per- and polyfluoroalkyl substances in industrial wastewater discharges. It asked companies for a range of information about how PFAS are made now, how they'll be made in the future, whether companies may phase them out and how to identify other PFAS manufacturers.

But in comments provided to the EPA last week, two of the largest PFAS manufacturers refused to reveal future PFAS manufacturing plans to the EPA and declined to give the agency clues about who else makes PFAS.

Future-looking information is "confidential" and "speculative," and shouldn't be considered as part of any federal PFAS-related wastewater regulations, 3M said in its comments.

'Operating in the Dark'

3M said it's previously provided the agency ample information—more than 690,000 pages of data—about PFAS manufacturing and the resulting discharges as part of an earlier EPA request for information.

3M spokesman Sean Lynch declined to comment further on the company's willingness to provide information to the EPA, but said 3M supports PFAS regulations that are "rooted in a fair, thorough and objective review of the best available science."

Daikin also declined to provide data about its plans for future PFAS manufacturing, but didn't give a reason in its comments given to EPA. The company didn't immediately respond to a request for comment.

"The EPA is interested in learning what PFAS compounds are currently being used, phased out or phased into production, and entities who are manufacturing them to help the agency target any additional data collection and potentially help define which facilities might be subject to revised effluent guidelines," agency spokeswoman Andrea Drinkard said.

The information is important because EPA is "operating in the dark" about how companies make PFAS, as well as exactly which companies make them and what's in their effluent because the substances remain unregulated, said Elizabeth "Betsy" Southerland, a former director of the Office of Science and Technology in the EPA's Office of Water.

The EPA can't trace where specific PFAS chemicals are coming from, as well as the amount being released and their concentration, said Daniel Rosenberg, director of federal toxics policy for the Natural Resources Defense Council.

"Filling in these missing gaps will help the EPA develop effluent limitations," Rosenberg said.

Chemistry Council's Stance

The American Chemistry Council, the trade group representing PFAS manufacturers, supports 3M's decision to keep some data confidential because it is not "germane" to the rulemaking, spokesman Tom Flanagin said.

"Our expectation is that EPA already has much of this information for PFAS manufacture, but we do not object to EPA asking for additional information," Flanagin said, adding that 3M has already provided ample data to the agency.

Stephen Risotto, an ACC senior director, said in comments submitted to the EPA that it already has the information it needs regarding PFAS manufacturing and its effluent.

"These data indicate that PFAS releases are well controlled and that the potential for significant reduction of risk to human health and the environment may be limited," Risotto said.

Other PFAS manufacturers, including Chemours Co. and Solvay SA, didn't submit comments to EPA about the rulemaking.

Regulation Resistance

The companies' refusal to provide the information to the EPA may indicate that U.S. chemical companies will fight any agency effort to regulate PFAS, Southerland said.

One of the four regulations the EPA announced in March would provide a needed, national drinking water limit for two PFAS, said...

NGOs, scientists, state AGs call for tougher TSCA rules for five PBTs
Kelly Franklin, Chemical Watch
https://chemicalwatch.com/270850/ngos-scientists-state-ags-call-for-tougher-tsca-rules-for-five-pbts

The US EPA must amend its TSCA regulations to further reduce exposures to five persistent, bioaccumulative and toxic (PBT) substances to comply with the law's requirements, NGOs, academic scientists and state attorneys general have told the agency.

The request comes as the agency continues to adopt TSCA policy interpretations that better align with those advocated by public health groups, raising questions as to whether there are additional restrictions ahead for the substances.

In March, the Biden administration said it would accept public comments on a set of risk management rules finalised in the waning days of the Trump administration that imposed partial bans on five PBTs: decaBDE, PIP (3:1), PCTP, HCBD and 2,4,6-TTBP.

The move to revisit the rules came about, in part, to address industry compliance challenges with a ban on PIP 3:1 in certain articles. But the agency also wanted to hear if the rules "sufficiently reduce exposure to these chemicals" (see box).

The American Chemistry Council was among industry groups that said the agency should maintain exemptions and compliance deadlines in the current rules, except to address industry's concerns with PIP (3:1).

The PBT rules, said the ACC, "are based on substantial evidence in the record. EPA should not now revisit its reasoning for them."

But a coalition of NGOs spearheaded by Earthjustice said the agency must amend its rules to "correct serious overarching legal deficiencies, close unjustified loopholes, and ensure that the final rules reduce exposure to the maximum extent practicable."

'Practicable' reductions
The amended TSCA required EPA to take expedited action on specific PBTs and impose regulations to reduce exposures to them "to the extent practicable".

But several US states and environmental and health advocates said the agency did not follow an appropriate interpretation of what was 'practicable'.

"EPA found numerous restrictions on the five PBT chemicals to be impracticable based on inconvenience, cost, burden, enforcement difficulty and compliance complexity," said a coalition of 14 state attorneys general. "But these subjective considerations of what EPA deems reasonable have no bearing on whether exposures to PBT chemicals feasibly can be further reduced."

"TSCA's exposure-reduction mandate is limited only by the constraints of feasibility," said the Earthjustice coalition. "EPA must respect that mandate."

Additional exposure reductions
Despite the EPA's requirement to reduce exposures to the extent practicable, "substantial additional exposure reductions are achievable for each of the five PBT chemicals", the Earthjustice coalition said.

Several commenting groups told the agency it could achieve additional reductions by directly regulating occupational exposures, rather than relying on adherence to Occupational Safety and Health Administration (Osha) regulations.

"It is EPA's obligation to determine how these exposures can be reduced to the extent practicable through limitations on the use of the chemicals, engineering controls or use of personal protective equipment," said the state attorneys

general.

Throughout the rules, "there are further exposure reductions that can and should be achieved, including reductions for potentially exposed or susceptible subpopulations and the environment," said the state AGs.

Several organisations said the rules also should address recycling and disposal of PBTs. "Disposal is within the TSCA definition of 'condition of use' and section 6(a) [of the law] plainly authorises regulation of disposal," said Safer Chemicals Healthy Families and two other groups.

Another overarching concern focused on how the agency "largely failed" to adopt risk management measures to address the risk posed to environmental health by the use or disposal of the five substances, said the Earthjustice coalition.

Other comments focused on substance-specific 'loopholes'.

For the decaBDE risk management rule – which is the...

Bill would bar Pentagon from buying PFAS-laden products
E.A. Crunden, E&E News
https://www.eenews.net/eedaily/2021/05/26/stories/1063733505?utm_campaign=edition&utm_medium=email&utm_source=eenews%3Aeedaily

A new Senate bill is seeking to reduce exposure to "forever chemicals" for military families as lawmakers increasingly emphasize the risks those substances pose for service members.

Sens. Jeanne Shaheen (D-N.H.) and Richard Blumenthal (D-Conn.) reintroduced the "PFAS Free Military Purchasing Act" yesterday with the intent of curbing Defense Department spending on items containing per- and polyfluoroalkyl substances (PFAS).

That large family of chemicals, some of which are linked to severe health issues, are widespread at military sites because of their presence in industrial foam and among other commonly used products like food packaging, carpets and clothing.

The new legislation focuses on products common in homes and would bar the Defense Department from procuring, purchasing and selling such PFAS-laden items.

"It's unacceptable that taxpayer dollars are being spent on household products that expose our military members and their families to these toxic chemicals," said Shaheen in a statement.

"It's past time we require the Department of Defense to purchase safer, PFAS-free alternatives for our service members so they can use everyday products like cleaning supplies and food packaging without worrying about their personal health," the senator said.

Blumenthal said the bill offers DOD the opportunity to "lead the way" on moving to PFAS-free products.

"This bill will help protect the health of our armed forces from highly hazardous PFAS chemicals," the senator said, offering hope that it would "pave the way for the rest of the country to follow suit."

Rep. Elissa Slotkin (D-Mich.) introduced a companion during the last Congress. Items emphasized include food packaging materials, furniture and floor waxes, carpeting, personal care items, dental care, sunscreen, and cooking ware used in galleys and dining facilities.

Advocates quickly applauded the bill. Mapping by the Environmental Working Group has found 703 military sites have

known or suspected PFAS discharges.

Scott Faber, EWG's senior vice president for government affairs, said the Shaheen-Blumenthal bill is important for keeping military families protected from the chemicals.

"Service members risk everything to keep us safe. We should do everything we can to keep them safe as well," said Faber.

PFAS contamination at military sites has drawn significant attention from lawmakers in recent years. The last two versions of the National Defense Authorization Act have placed limitations on the purchase of items with PFAS. House lawmakers have also grilled Pentagon officials over sluggish PFAS cleanup at contaminated sites (E&E Daily, March 25).

The new bill also adds to a growing tally of PFAS bills for Shaheen, whose state is grappling with severe contamination. Along with Sen. Mike Rounds (R-S.D.), she reintroduced the "PFAS Registry Act" last month.

That legislation, S. 1121, would create a national database of PFAS-contaminated sites at military bases, which would help service members track their exposure to the chemicals (E&E Daily, April 20).

Judge rejects linking 'legacy' asbestos suit to CDR litigation
N/A, Inside TSCA
https://insideepa.com/tsca-takes/judge-rejects-linking-legacy-asbestos-suit-cdr-litigation

A federal district court judge has denied environmentalists' request to designate their newly filed suit seeking a deadline for EPA's TSCA evaluation of legacy asbestos uses as "related" to a case over whether to add the substance to the Chemical Data Reporting (CDR) program, siding with EPA's argument that the two involve separate legal issues.

In a May 24 order, Judge Edward Chen of the U.S. District Court for the Northern District of California holds without explanation that the newly-filed case, Asbestos Disease Awareness Organization (ADAO), et al., v. Michael Regan, et al., the legacy-evaluation suit, is unrelated to ADAO, et al. v. Andrew Wheeler, et al., over listing asbestos under the CDR rule.

Since Chen is presiding over the CDR case, finding that the two are related would have required him to also hear the legacy-evaluation suit, in the interests of "judicial economy" and avoiding contradictory results on shared legal issues. That would be an apparent win for environmentalists, since he ruled for ADAO and its allies on adding asbestos to the CDR in December, leading to a tentative settlement with EPA that would commit the agency to take that step.

But he writes in the order that he found no need to take authority over the newer suit. "The court has reviewed the motion and determined that no cases are related and no reassignments shall occur," the order reads.

Under that finding the newer case will be assigned at random to one of the 19 judges in the Northern District of California. The suit argues that EPA has failed to complete its "mandatory duty" under the Toxic Substances Control Act (TSCA) to review risks from legacy asbestos uses – since its recently finished evaluation dealt only with current uses -- and seeks a court-ordered deadline for completing the evaluation.

In their May 19 motion to link the two cases, the CDR plaintiffs said they believe the two meet the California district court's definition of "Related Cases," which they argue covers any suits that "concern substantially the same parties, property, transaction or event,' and [where] '[i]t appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.'"

A, however, opposed the motion, arguing the cases cannot qualify as "related" merely because they both deal with TSCA regulation of asbestos and share some -- but not all -- of the same citizen groups as plaintiffs.

"Here, the only criteria that is even arguably met is that there is some overlap in parties between the Deadline Suit and the Consolidated Data-Reporting Cases. . . . The Deadline Suit is brought under a different provision of TSCA and concerns a wholly distinct legal issue compared to the Consolidated Data-Reporting Cases," the agency wrote.

Following Chen's order, ADAO declined to have the new case proceed before a magistrate judge rather than a Senate-confirmed district judge. Early May 25, the court clerk issued a notice of impending reassignment, explaining that because plaintiffs had declined to proceed before a magistrate judge, the clerk will "randomly reassign" the case.

ADAO and its allies have also challenged EPA's evaluation of current asbestos uses in the U.S. Court of Appeals for the 9th Circuit. Substantive briefing in the case has not yet begun, but it could cover the agency's risk findings as well as its decision to limit the scope of the review to chrysotile asbestos only rather than including other asbestos fiber types that are deemed legacy asbestos uses.

Both sides have agreed to delay the schedule for that suit. The 9th Circuit on May 24 approved environmentalists' request to postpone the due date for their first brief to July 1, with EPA's response due Sept. 20.

Senators Toughen Bill Banning DOD Purchases Of Products Using PFAS
Diana DiGangi, Inside TSCA
https://insideepa.com/tsca-news/senators-toughen-bill-banning-dod-purchases-products-using-pfas

Two Democratic senators are reintroducing their bill to ban the Department of Defense (DOD) from buying many types of products made with per- and polyfluoroalkyl substances (PFAS) with several changes to make the ban more stringent than prior versions, including expanding the list of covered products and using a broader definition of PFAS.

Sens. Richard Blumenthal (D-CT) and Jeanne Shaheen (D-NH) announced May 25 that they were introducing a new version of their "PFAS Military Purchasing Act," which originally appeared as an amendment to the fiscal year 2021 National Defense Authorization Act (NDAA) but was stripped from that bill before it passed Congress.

"It's past time we require the Department of Defense to purchase safer, PFAS-free alternatives for our service members so they can use everyday products like cleaning supplies and food packaging without worrying about their personal health," Shaheen said in a press release announcing the legislation.

While the path forward for any stand-alone PFAS legislation is unclear in the closely divided House and 50-50 Senate, the new bill is even more aggressive than the dropped NDAA amendment, which would have prohibited the Defense Logistics Agency (DLA) from purchasing products made with PFAS unless they represented "essential" uses of the toxic chemicals.

Instead, the new bill would bar DOD as a whole from making those purchases, and expands the restrictions themselves, with a longer list of products that would have to be PFAS-free and a more expansive definition of the chemical class that a chemist says would cover more chemicals than its predecessor.

The 2021 bill defines property that is "under the jurisdiction of DOD," and therefore subject to its limits, as "commissaries, facilities operated by the Army and Air Force Exchange Service, the Navy Exchange Service Command, the Navy Resale and Services Support Office, Marine Corps exchanges, online exchange shops, and ships' stores."

The proposed bill would bar the Secretary of Defense from "permitting the sale" of "any covered item" containing a chemical considered PFAS.

Covered items include "non-stick cookware or food service ware; food packaging materials; floor waxes; carpeting, rugs, curtains, or upholstered furniture; personal care items; dental floss or toothpaste; sunscreen; umbrellas, luggage, or

bags; ski wax; car wax and car window treatments; cleaning products," and shoes and clothing treated with PFAS for any non-essential purpose.

By contrast, the NDAA amendment's "covered items" included only non-stick cookware or food service ware; food packaging materials; furniture or floor waxes; carpeting, rugs, or upholstered furniture; personal care items; dental floss; and sunscreen.

Broader 'PFAS' Definition

The 2021 version also uses an updated – and broader – definition of PFAS, as "a man-made chemical containing at least one fully fluorinated carbon atom and at least one nonfluorinated carbon atom."

Rainer Lohmann, director of the University of Rhode Island's Superfund Research Center (STEEP), tells Inside TSCA that the new definition will cover more individual chemicals than the 2020 version, which applied to any "man-made chemical containing a mix of fully fluorinated carbon atoms, partially fluorinated carbon atoms, and nonfluorinated carbon atoms."

"The new definition is more encompassing," Lohmann said.

That change comes as states, industry and environmental groups have recently clashed over how to decide when any particular chemical is PFAS, with environmentalists and many states seeking to regulate the substances increasingly backing an expansive definition used by the international Organisation for Economic Co-operation and Development (OECD).

OECD considers "any compound containing at least one fluorinated carbon" to be part of the PFAS class.

Shaheen and Blumenthal's bill is just part of a renewed push for action on PFAS in both chambers of Congress, including Rep. Debbie Dingell's (D-MI)...

EPA, pesticide makers stand behind 2020 dicamba registration
Jacqui Fatka, Farm Progress
https://www.farmprogress.com/regulatory/epa-pesticide-makers-stand-behind-2020-dicamba-registration

The Environmental Protection Agency's 2018 decision to extend registrations for three dicamba pesticide products varied from typical operating procedures, according to a new investigative report from the EPA's Office of Inspector General. However, EPA and the pesticide makers are confident science-based procedures uphold the safety of the widely-used pesticide in its latest 2020 re-registration.

Dicamba is an herbicide that is widely used on agricultural crops, fallow land, pastures, turfgrass and rangeland to control emerged broadleaf weeds and provides some residual control of geminating weeds. Dicamba was first registered in the United States in 1967. In late 2016 and early 2017, the Agency conditionally registered three "over the top," or OTT, dicamba products for use on post-emergent crops – after growth begins. These dicamba products were to be used on genetically modified dicamba-tolerant cotton and soybean plants in 34 states.

In its report, OIG says the EPA did not conduct the required internal peer reviews of scientific documents created to support the dicamba decision. "While division-level management review is part of the typical operating procedure, interviewees said that senior leaders in the [Office of Chemical Safety and Pollution Prevention's] immediate office were more involved in the dicamba decision than in other pesticide registration decisions. This led to senior-level changes to or omissions from scientific documents," the report notes.

The report notes for instance, these documents excluded some conclusions initially assessed by staff scientists to

address stakeholder risks. "We also found that staff felt constrained or muted in sharing their concerns on the dicamba registrations," the report notes.

Related: Environmental groups sue EPA on dicamba registration

Office of Pesticide Programs divisional scientists provided examples of where scientific analyses were changed to support senior officials' policy decisions. According to one scientist, OCSPP senior management and policy makers decided to use plant height as the standard measure of dicamba effect on plants.

"This varied from the EPA scientists' recommended approach to use visual signs of plant injury—an approach used in academic and registrant direct-spray toxicity studies, in field studies evaluating off-field movement, and in information reported in state investigations of dicamba damage," the report explains.

According to another scientist, OCSPP senior management provided direction to use registrants' data for reported dicamba damages instead of OPP divisional data sources. In its ruling to vacate the dicamba registrations, the Ninth Circuit Court found the dicamba damages to be substantially understated. "Divisional scientists told us their original source data would have addressed the court's concerns," the report adds.

Multiple scientists in one division reported, and emails confirmed, that after OCSPP senior management review, scientists were provided with an outline from the assistant administrator's office for rewriting their benefits and impact analysis document, the report adds. "The outline removed several sections of the original document which the scientists said were relevant based on the analysis they completed," the Inspector General found.

EPA actions made decision vulnerable in courts
The OIG notes that these actions left the dicamba registrations legally vulnerable, which resulted in the Ninth Circuit Court of Appeals vacating the 2018 registrations for violating the Federal Insecticide, Fungicide, and Rodenticide Act, or FIFRA, by substantially understating some risks and failing to acknowledge others entirely.

The EPA's OTT conditional registrations were time-limited with automatic expiration dates unless the Agency granted an extension. On October 31, 2018, the EPA announced that it would extend these three conditional registrations until December 20, 2020, with some changes to the registrations and labeling...

EPA Admits to Altering Science Under Trump, Pledges New Course
Eric Katz, Government Executive
https://www.govexec.com/management/2021/05/epa-admits-altering-science-under-trump-pledges-new-course/174295/

Senior leaders at the Environmental Protection Agency improperly meddled in the work of career scientists when reviewing the approval of certain pesticides in 2018, according to a new report and the agency's own admission.

The top officials changed and omitted items from documents related to the decision to grant licenses to three dicamba pesticides, the EPA inspector general found, and created a culture in which career employees felt "constrained" and "muted" from speaking up. In addition to violating EPA's scientific integrity policies, the tampering left the agency vulnerable to lawsuits. The IG report followed widespread allegations of political interference in the work of career scientists under the Trump administration and comes amid a governmentwide Biden administration review into instances of such meddling.

The licenses for the pesticides, aimed at protecting cotton and soybean plants, were granted without the typical peer review panels. EPA scientists told the IG such reviews would not have impacted the results, due to the unusual level of involvement by several officials at the deputy assistant administration level. Those leaders removed career employees' assessment of concerns raised by stakeholders, the IG found, and the career staffers ultimately did not sign their names

to final documents due to management's revisions.

"Scientists reported that changes from senior management did not make sense and seemed to convey a lack of understanding of the data or analyses," the IG said. "Multiple scientists said they felt directed to change the science to support a certain decision and that the reasons for senior managers' requested changes were not documented."

A decision to use plant height, rather than damage to the plant, to measure the pesticides' effects, was among management's changes. Career scientists said that alteration "changed the division's scientific conclusions." Management also based decision-making on data provided by the pesticides' manufacturers, rather than data sources from EPA's Office of Pesticide Programs. The IG further determined that one of the managers rewrote the scientists' benefits and impact analysis.

The investigators instructed EPA to conduct more training sessions on the agency's scientific integrity policy as one recommendation to eradicate such interference going forward, but EPA management said the former officials serving in the Trump administration were trained on the policies and decided to interfere anyway.

"The dicamba incident described in this draft report did not occur due to a lack of awareness of or training on the agency's scientific integrity policy," said Michael Freedhoff, principal deputy assistant administrator, Office of Chemical Safety and Pollution Prevention. "It occurred because [the office's] past senior leadership consciously chose to advance a policy outcome in a manner inconsistent with the scientific integrity policy."

Shortly after taking office, President Biden created the Scientific Integrity Task Force to combat political interference in the scientific work by federal agencies' career employees. In addition to reviewing each agency's policy for protecting against interference, the task force will examine what went wrong in both the Trump and Obama administrations. Several dozen career scientists from 28 agencies participated in the panel's first meeting earlier this month. The task force is set to issue its findings in September and later will create a framework for scientific integrity policies across government.

Employees at EPA and other scientific agencies spoke out contemporaneously during the Trump years about the unprecedented interference they said they faced from political leadership, including rollbacks of previous work and tampering with research. Scientists reported being left out of key meetings, feeling fearful in their offices and a general sense of low morale.

Four advocacy groups sued EPA after it issued the licenses...

Glyphosate exposure may increase risk for preterm birth
Madison Weller, Healio
https://www.healio.com/news/primary-care/20210525/glyphosate-exposure-may-increase-risk-for-preterm-birth

Prenatal exposure to glyphosate, one of the most widely used herbicides in the world, was associated with an increased odds for preterm birth, according to researchers.

"Given the widespread use of [glyphosate], mounting concerns from the toxicological literature, the methodological limitations of the currently available epidemiological literature, as well as a dearth of information about the potential health effects of [aminomethylphosphonic acid], further investigation of potential adverse pregnancy outcomes following prenatal [glyphosate] and [aminomethylphosphonic acid] exposure is warranted," Monica K. Silver, PhD, MPH, CPH, a postdoctoral research fellow at the University of Michigan School of Public Health, and colleagues wrote in Environmental Health Perspectives.

Adjusted odds for preterm delivery based on environmental exposures at 26 weeks gestation: glyphosate, aOR = 1.35; aminomethylphosphonic acid, aOR = 1.67

Data derived from: Silver MK, et al. Environ Health Perspec. 2021;doi:10.1289/EHP7295.
Silver and colleagues conducted a nested case-control analysis using data from the PROTECT cohort. The study enrolled pregnant women aged 18 to 40 years who lived in Puerto Rico, where rates of preterm birth are "particularly high," even for the U.S., which "has some of the highest rates of [preterm birth] in the developed world," according to the researchers. They collected urine samples around 18 weeks and 26 weeks gestation and measured levels of glyphosate and aminomethylphosphonic acid, which they wrote is "a highly persistent environmental degradate" of glyphosate, for 53 cases and 194 randomly selected controls.

In controls, glyphosate detection rates were 77.4% at 18 weeks gestation and 77.5% at 26 weeks gestation, and aminomethylphosphonic acid detection rates were 52.8% at 18 weeks gestation and 47.7% at 26 weeks gestation. According to the researchers, geometric means were 0.44 g/L at 18 weeks gestation and 0.41 g/L at 26 weeks gestation for glyphosate, and 0.25 g/L at 18 weeks gestation and 0.2 g/L at 26 weeks gestation for aminomethylphosphonic acid.

The adjusted ORs for preterm delivery based on exposure at 26 weeks gestation were 1.35 (95% CI, 0.99-1.83) for glyphosate and 1.67 (95% CI, 1.26-2.2) for aminomethylphosphonic acid, according to the researchers.

"This study provides evidence for associations between urinary concentrations of [glyphosate] and its environmental degradate, [aminomethylphosphonic acid], measured around the 26th week of pregnancy, and increased odds" for preterm birth, the researchers wrote.

In an invited commentary, Manolis Kogevinas, MD, PhD, a senior researcher and scientific director at ISGlobal, wrote that more research with larger cohorts is needed.

"The study is important, and the findings indicate potential reproductive health effects of low-level glyphosate exposures in the general population that are relevant globally," Kogevinas wrote. "However, it certainly is far from conclusive."

Kogevinas added that "apart from classical cohort epidemiologic studies, we now also need transdisciplinary research and action applying planetary health approaches to capture and eventually prevent the broader health effects of pesticides."

Off-label application can do more harm than good, industry experts say
Dave Bergmeier, High Plains Journal
https://www.hpj.com/bergmeier/off-label-application-can-do-more-harm-than-good-industry-experts-say/article_c51fedd6-bd60-11eb-a2ef-9f952b255250.html

A neighbor says when applying a certain herbicide or pesticide he gets the added bonus of additional benefits. Does this mean I should do it too?

The question can be complex. Those who work with the herbicides and pesticides understand why there is pressure to stretch treatment dollars. Still, going off label can be troublesome, too.

Ryan Bryant-Schlobohm, technical service manager for the south and central regions with UPL, stresses that producers need to follow the label regardless of what brand they use, and they need to know what results to expect. That means understanding the formulation in that product.

"The information is a foundation and that is what is going to guide you on how you want to incorporate this product and how you are going to incorporate it with other products and how to use all of the products in an efficient manner that will optimize your performance," Bryant-Schlobohm said.

When he looks at a label he wants to understand what is in the formulation and what is it most effective against the

insect or disease pressure.

"We want to know what pest we are targeting and if that pest is on the label," he said, "and does it have enough activity to meet our satisfaction and what we are hoping to achieve."

Products, for many herbicides, can be deployed with pre-emergence and others are designed for better efficacy post-emergence treatment. "We want to know if for a particular weed species what treatment works best."

A company representative or Extension specialist can help answer questions, too, Bryant-Schlobohm said.

Fungicides may also be time sensitive meaning they may have a short window of time when they are most effective is another aspect to having an optimum treatment program, he said.

"A lot of our fungicides, for example, they are going to do very well before you even see a lot of disease development," he said.

Some products are designed to have a more preventive mode of action, he said. For example on weeds, after emergence, the growth can be so fast that treatment cannot stay up with the growth.

"Know what pest you are targeting, know the product you are using and use it at the right time," he said.

Nothing can be more disappointing to a grower than to have a promising crop derailed by weed or insect pressure that was not treated effectively, he said, plus with higher than normal per bushel prices for wheat, corn, sorghum and soybeans it is even more costly to lose valuable bushels this year.

Application rates are not a suggestion, either, he said. Most labels will have an application range to give growers discretion but he strongly suggests they stay within those rates.

Trying to stretch dollars by cutting the application can also cause problems, not only with a less effective kill rate but in the case of weeds it can actually increase the potential for herbicide resistance, which a grower wants to avoid, Bryant-Schlobohm said.

"Best use practices will intertwine with resistance management and the labels will have a big implication on a resistance management program when we follow the labels and follow the guidelines that is going to ensure we not only optimize the product and its performance and ultimately optimizing the lifespan of that product where we are putting off resistance development for as long as we can."

Another reason to follow labels is that cropping practices might change for a particular year. Some of those common practices include double cropping such as planting sorghum after wheat or a grower may see potential in growing another crop that might be more profitable. He said when a rotation change occurs a grower needs to check the labels for pesticides and herbicides and think ahead to the following year's crop.

"What you spray this year might have an effect on what you can plant next year," he said, adding it all boils down to understanding your product, its impact...

Freedhoff Vows New Science Integrity Policies, Training After OIG Finding
David LaRoss, Inside TSCA
https://insideepa.com/tsca-news/freedhoff-vows-new-science-integrity-policies-training-after-oig-finding

EPA's top chemicals official will mandate new, office-wide science integrity training as well as a detailed plan to prevent future interference at the pesticides office that could become a model for TSCA after the Office of Inspector General

(OIG) found that Trump-era appointees improperly intervened in a pesticide risk analysis.

Michal Freedhoff -- the highest-ranking current appointee at OCSPP and President Joe Biden's nominee as its next head -- said in response to a draft version of the OIG report that she will "establish clear expectations of behavior to uphold scientific integrity" across the chemicals office, including through annual training for staff, managers and "policy makers," and set new science-integrity policies for the pesticides program.

"OCSPP joins the Office of the Inspector General in affirming the importance of the Scientific Integrity Policy and its emphasis on communication, transparency, and respect for differing scientific opinions. OCSPP welcomes the OIG's efforts to strengthen scientific integrity in OCSPP," Freedhoff wrote in an April 19 response to OIG.

OIG's final version of the report, released May 24, found that senior Trump-era officials at the Office of Chemical Safety and Pollution Prevention (OCSPP) overrode staff scientists' risk findings for the 2018 registration of the weed-killer dicamba and bypassed the agency's internal peer-review process.

Freedhoff had already attacked the dicamba registration decision as "political interference" in OCSPP's scientific work, as part of a March 10 staff memo that grouped it with the controversial Toxic Substances Control Act (TSCA) evaluation of the solvent trichloroethylene (TCE), and the toxicity evaluation of a perfluorinated substance known as PFBS, as incidents where Trump-era officials improperly overrode career staff.

She and other top OCSPP officials have also joined EPA Administrator Michael Regan in urging staffers to report past incidents of political interference in their work, but Freedhoff's letter to the watchdog agency provides a new look at how she intends to bolster safeguards moving forward.

Her roadmap includes a heavy focus on training, with annual sessions for all OCSPP staff and political appointees in addition to a series of six "Town Hall-style" events over the next year, each focused on a different aspect of the policy -- including "Understanding and honoring the difference between science and policy (risk assessments and risk management)," a key element of the science underlying TSCA.

It also requires an annual memo from the OCSPP assistant administrator "to all OCSPP staff and management to affirm their own and the Office's commitment to the Scientific Integrity Policy and to establish clear expectations of behavior to uphold scientific integrity."

But Freedhoff's response also sets out a plan for new "Standard Operating Procedures (SOPs) or formal Best Practices on ensuring scientific integrity" at the Office of Pesticide Programs (OPP) that could serve as a model for similar efforts to protect TSCA staff from interference.

'Material Change'

Freedhoff writes that she intends for OCSPP to finalize those policies by March 31, 2022, and that they will require any "material changes to the risk assessment, risk characterization, and science documents" made outside of the OPP division responsible for that work to be "clearly documented" and attributed.

She continues, "A 'material change' to a scientific conclusion or analysis is one that affects the scientific content or how it may be understood and/or excludes, includes, downplays or otherwise manipulates key data. The SOPs will also make clear that scientific opinions, analyses, and conclusions may be changed only on scientific, not policy, grounds."

While some elements of those policies will be specific to OPP's operations, the general requirement to attribute material changes in a scientific document, as well as the definition of "material changes," could be...

EPA Considering Expanded TSCA CDR and TRI Reporting Requirements, Environmental Justice Analyses

Joseph Green, JD Supra (Kelley Drye & Warren LLP)
https://www.jdsupra.com/legalnews/epa-considering-expanded-tsca-cdr-and-3113147/

The new 2021-2023 strategic plan of the U.S. EPA's Office of Pollution Prevention and Toxics (OPPT) floats a series of potential expanded reporting requirements under the agency's Toxic Substances Control Act (TSCA) Chemical Data Reporting (CDR) and Environmental Protection and Community Right-to-Know Act (EPCRA) Toxic Release Inventory (TRI) programs. The TRI and CDR programs are the most significant and wide-reaching chemical reporting programs administered by the agency and the source of much of the data EPA relies on to guide regulatory actions involving all of the agency's programmatic offices, including air, water, waste, pesticides and chemicals.

The internal EPA planning document (recently obtained and released by Inside EPA) includes a number of noteworthy changes under consideration, though lacks additional explanation or detail, including:

"Develop option for annual CDR reporting for priority chemicals": CDR currently requires manufacturers and importers of chemicals to report on-site production and downstream use and exposure information to EPA every four years. It is unclear whether the plan refers to (as some accounts have suggested) "optional" facility reporting on an annual basis or — more likely in this author's view — development of a rulemaking "option" for OPPT to establish mandatory annual CDR reporting for certain chemicals of high interest;
Expansion of TRI reporting to additional industry sectors, including, specifically, Natural Gas Processing;
Expanding the list of PFAS chemicals subject to TRI reporting; and
Enhanced CDR and TRI data analysis to support environmental justice (EJ) and TSCA chemical prioritization initiatives.
For OPPT, the CDR and TRI databases are critical sources of information for chemical risk evaluations, the pace of which is increasing substantially as EPA implements the aggressive chemical assessment mandates from the 2016 TSCA amendments. While annual reporting may make sense for certain chemicals/activities — such as TRI, where environmental releases may vary on a year-to-year basis (e.g., due to one-time release events), the utility of annual CDR reporting is questionable, as production volumes and the downstream exposure patterns for most chemicals typically do not vary substantially for the large majority of reporting facilities. Balancing these factors will be critical in ensuring that any revised CDR rule does not simply result in repetitive "busy work" for most companies.

In keeping with the Biden Administration's focus on environmental justice, the plan alludes to a greater emphasis on utilizing the CDR/TRI data to identify underprivileged communities (e.g., "conduct TRI/EJ mapping projects") and the chemicals that pose heightened risks to those communities.

A copy of the OPPT strategic plan is available here.

Addressing Environmental Justice through EPA's Enforcement Tools
Alexander Bullock, Jeffrey Davidson, and Susan Richardson, JD Supra (Kilpatrick Townsend & Stockton)
https://www.jdsupra.com/legalnews/addressing-environmental-justice-9523910/

The Biden Administration has made environmental justice and equity a key pillar of its environmental policy, directing EPA to incorporate this concept at all levels of its decision-making process. EPA's Administrator Michael Regan announced on April 7, 2021 that "[t]oo many communities whose residents are predominantly of color, Indigenous, or low-income continue to suffer from disproportionately high pollution levels and the resulting adverse health and environmental impacts. As a result, Administrator Regan directed his staff to take "immediate and affirmative steps" to engage with communities overburdened by pollution and underserved in resources, including a command to "strengthen enforcement of violations of cornerstone environmental statutes" in those communities .[1] To that end, on April 30, 2021, Lawrence Starfield, Acting Assistant Administrator issued a Memorandum – Strengthening Enforcement in Communities with Environmental Justice Concerns (epa.gov) ("EJ Memo") identifying a number of measures that may be implemented to advance protection of these communities:

1. Increase Inspections. EPA intends to increase inspections in overburdened communities. The EJ Memo indicates that

EPA currently is evaluating the types of programmatic inspections that would address the "most serious threats to overburdened communities" and will develop new inspection goals once that evaluation is complete. The EJ Memo also encourages the use of "offsite compliance monitoring tools" for facilities in EJ areas. As a result, predictions are that there will be increased scrutiny of "low hanging fruit" such as Clean Water Act Discharge Monitoring Reports, Emissions Reporting under the Clean Air Act and Toxics Release Inventory Reports.[2] Thus, facilities located in EJ communities should anticipate increased scrutiny and inspections as EPA implements this policy.
2. Strengthen Enforcement. The EJ Memo states that EPA will strengthen enforcement in overburdened communities by resolving noncompliance through remedies with "tangible benefits" for the community and encourages "creativity" to fulfill this tangible benefit goal.[3] Beyond seeking penalties for noncompliance and preventing future pollution, the EJ Memo also suggests that "tangible benefits" could include mitigation of past impacts for pollution, fence-line monitoring and transparency tools and restitution for victims of environmental crimes. In addition, EPA will consider issuing administrative orders in judicial cases or other interim measures to speed implementation of pollution controls. The EJ Memo also encourages incorporation of Supplemental Environmental Projects in settlements.[4] As a result, potential defendants can expect to see settlement terms that go beyond a typical Administrative Order or Consent Decree to incorporate potential injunctive relief that provides immediate "tangible" results to EJ communities.
3. Increase Community Engagement. EPA intends to increase transparency and information about enforcement cases that could most directly impact overburdened communities through a variety of options including press releases, public meetings, and increased awareness of online compliance history information.
4. State/Tribal Partners. The EJ Memo states that EPA intends to continue sharing responsibilities with their state/tribal "co-regulator" partner but will not "hesitate to step in and take necessary action" where EPA believes the co-regulator is not taking timely or appropriate action where a community's health may be impacted by noncompliance. In other words, EPA will have no issue with taking over/directly initiating an enforcement action and explicitly rebukes EPA's 2019 policy that directs deference to states with regard to environmental enforcement.[5]

It is anticipated that this is the first of a number of "Environmental Justice" memos to be issued with EPA and more are expected on the horizon as EJ concerns take center stage at EPA. Whether this...

The Infuriating Case of Toxic Chemicals in Breast Milk
Sonya Lunder, Ms. Magazine
https://msmagazine.com/2021/05/25/toxic-chemicals-breast-milk-pfas-pbde/

We can no longer position worried moms as the front line of defense between their child's health and the chemical industry. We need a government that regulates chemicals.

Last week, pandemic-weary parents were hit with more heavy news: A scientific study reported toxic per- and polyfluoroalkyl substances (PFAS) chemicals in milk from 50 Seattle area mothers. While none of the study participants lived in a known hotspot, each of the milk samples contained PFAS—which are known to impact the thyroid, immune system, reproductive system and are linked to several types of cancer.

How does this happen?

For the infants whose parents donated milk for the study, the story began decades before they were born, when PFAS were invented, giving rise to modern everyday items, such as cosmetics, fast food wrappers, cleaning products and more. Now, due to their incredible persistence, the chemicals are measured in the blood of nearly every American, including those who are pregnant.

PFAS pass through the placenta to reach the gestating fetus, and are measured in amniotic fluid (which is mostly water anyway). Our bodies are sponges for chemicals in our environment, not an armor against them. It is not surprising then, that PFAS and other chemical pollutants also make their way into nature's first food: mothers' milk.

For me, this story did not start with PFAS, but with a different chemical: polybrominated diphenyl ethers, or PBDEs. In

2003, I recruited 20 people for a first-ever study measuring PBDEs in milk. We too found the chemicals in everyone we tested.

Since then, I've had two kids and spent a total of one and a half years pregnant and three years nursing. Baby on hip, I lobbied to support bills to ban harmful chemicals from food, cosmetics and industrial uses. Epidemiologists built a national biomonitoring program to reveals the complex mixture of industrial chemicals in our bodies. Congress overhauled the Toxic Substances Control Act, giving the Environmental Protection Agency (EPA) more power to regulate harmful chemicals. Most recently, Sierra Club and activist partners sued the EPA to force it to consider chemical exposures for people who are pregnant, who work with chemicals, or for tribal communities who eat highly contaminated wild foods.

The year we found PBDEs in breast milk, they were removed from commerce, and over decades the concentrations in Americans' bodies have declined. But it isn't enough.

The chemical industry is slippery like Teflon. It substituted PBDEs with other harmful replacement chemicals in baby furniture, nap mats, car seats and foam furniture. It has phased out two harmful PFAS, but literally thousands of others are still in use and PFAS are found in things like burger wrappers, dental floss, makeup, furniture, compostable foodware, and waterproof clothing.

Savvy shopping isn't enough, as chemicals aren't listed on product labels, nor are uses disclosed to the government. Scientists are required to be detectives too, looking for clues, or even stumbling upon chemical crime scenes by accident.

The findings in last week's study are an affront to parents, mostly moms, who labor to provide their kids with a healthy home and diet. The fact is that despite this worrisome news, breast milk remains the healthiest way to feed a baby. It has antibodies to fight COVID and other infectious diseases, irreplaceable healthy fats, and its complex flavors prime kids' palettes to enjoy a varied diet. But nursing is hard work, and stark demographic differences in nursing rates for Black and Indigenous moms, as well as lower-income moms of all races, underscore the privilege and external support it takes to breastfeed their baby.

There is a valid concern that sensational headlines about chemicals in breast milk do more harm than good, as the news may be scary for new moms. I get it. But you know what is "alarming"? That it is still legal to put PFAS in food wrappers and raincoats, dump them in rivers and spew them...

Judge shoots down Bayer's plan to limit future Roundup legal liability, issues harsh criticism
Carey Gillam, U.S. Right to Know
https://usrtk.org/monsanto-roundup-trial-tracker/judge-shoots-down-bayers-plan-to-limit-future-roundup-legal-liability-issues-harsh-criticism/

The federal judge overseeing nationwide Roundup litigation on Wednesday denied Bayer's latest attempt to limit its legal liability from future cancer claims associated with its glyphosate-based herbicides, citing numerous "glaring flaws" in a settlement proposed to apply to Roundup users who have not yet sued the company but may want to do so in the future.

Saying parts of the plan were "clearly unreasonable" and unfair to cancer sufferers who would be part of the class settlement, U.S. Judge Vince Chhabria castigated Bayer and the small group of lawyers who put the plan together in conjunction with Bayer.

He pointed out that the company has been "losing trials left and right" in claims brought by people suffering from non-Hodgkin lymphoma (NHL) who alleged exposure to Monsanto's Roundup and other glyphosate-based herbicides were the cause.

Bayer has owned Monsanto since 2018 and has been struggling to defend the cancer claims ever since. Cancer victims have won three trials held to date and tens of thousands of other plaintiffs have filed lawsuits alleging exposure to Monsanto's herbicides caused them to develop NHL while Monsanto spent decades hiding the risks.

Bayer did not respond to a request for comment about the ruling.

Evidence favors plaintiffs, judge says
Judge Chhabria said in his decision that the company's desire to set up a "science panel" to determine whether or not the herbicides actually cause cancer rather than leave that question to future juries is because of the trial losses the company has so far suffered.

The "reason Monsanto wants a science panel so badly is that the company has lost the 'battle of the experts' in three trials, the judge wrote in his order. "At present, the playing field on the issue of expert testimony related to causation is slanted heavily in favor of plaintiffs."

The ruling comes after a lengthy hearing last week held to discuss widespread opposition by personal injury attorneys across the United States to the settlement proposal. The proposed plan called for Bayer to put up roughly $2 billion for a series of actions that would help the company avoid future Roundup cancer trials.

The class action settlement would apply to people exposed to Roundup products as of Feb. 3, 2021 who have not yet sued Monsanto or retained a lawyer to do so. The settlement plan would set up a framework for addressing new claims brought by those exposed individuals who develop NHL they attribute to their Roundup exposure. It would apply to people who already have NHL but who have not yet sued the company and to people who develop NHL in the future.

The plan was structured by Bayer in coordination with a small team of plaintiffs' lawyers who stood to be paid millions of dollars for their participation.

Proponents of the proposed class action plan told the judge it "will save lives," and provide "speedy compensation" to people who get NHL they blame on Roundup exposure.

But opponents said the proposal actually did little for cancer patients while benefiting Bayer and the lawyers who helped develop the plan.

At the heart of the objections is the view that if approved, the class action plan could limit the due process rights of people to go to trial and seek punitive damages awards in the future if they are diagnosed with NHL after Roundup exposure, while allowing Bayer to keep selling Roundup products with no express warning of a cancer risk on the label.

The limiting of plaintiffs' ability to seek punitive damages while not limiting Bayer's ability to keep selling Roundup distinguishes this settlement from any similar class action, according to an opposition brief filed by the nonprofit legal group Public Justice. The plan is a "blueprint for how manufacturers can cut off victims' rights to seek punitive damages from injuries caused by hazardous pesticides, the group said.

Another key problem with the plan, according to critics, is that everyone in the United States who meets the criteria...

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