

Senate EPW TSCA Hearing (January 2024)

Written Testimony

Good morning, Chairman Carper, Ranking Member Capito, and other Members of the Committee. Thank you for inviting me back to testify on EPA's implementation of the Toxic Substances Control Act, or TSCA.

I last testified before this Committee a year and a half ago on TSCA's sixth anniversary. At that time, I described the impacts of the years of significant underfunding of the new law— which had delayed our work to review existing chemicals, put essential protections in place for communities across our country, and enable new chemistries to power our economy and to keep America on the leading edge of technological innovation in industries like semiconductor manufacturing, battery production for electric vehicles, and clean energy. While that problem hasn't been entirely solved, thanks to an increase in our Fiscal Year 2023 budget and a lot of hard work from our dedicated staff, I am proud to say that we have come a long way – even though I know more work must still be done.

Today, I will share some updates on our TSCA implementation efforts, including the impressive progress we have made in the prioritization, evaluation and management of existing chemicals, and the review and management of new chemicals. But I would also like to spend some time on what we have not been able to do under current funding levels and what we would be able to do with our full FY 2024 budget request. Although we are focused on building an efficient and sustainable scientific and regulatory infrastructure for this still young law, in order for the TSCA program to work as Congress and the American public expect and deserve, we simply must have more resources.

I will start with existing chemicals. As many of you who authored or supported the 2016 legislation already know, there were tens of thousands of existing chemicals on the market at the time Congress passed the original TSCA, and all of them were effectively left unreviewed and unmanaged in that 1976 law. Although EPA tried to use the authority it did have, litigation on EPA's asbestos ban ultimately rendered the 1976 law even less able to address the way chemicals are made and used in order to avoid the creation of future Superfund sites or contaminated drinking water. In 2016, Congress provided EPA with both the authority and the requirement to systematically prioritize and evaluate existing chemicals,

and to write rules to safeguard the public and vulnerable communities against risks. This was the promise of the new law, and we're just now starting to make good on it.

We have already proposed rules for asbestos, methylene chloride, trichloroethylene, perchloroethylene, and carbon tetrachloride, and expect four more proposals in the coming months. It is hard for me to overstate the importance of these actions. Collectively, these five proposals would protect over 1 million workers and over 15 million consumers from chemicals known to cause cancer and other adverse health conditions. We have known for decades that many of these chemicals are dangerous. I know that I, and everyone at EPA, feels a strong sense of urgency to finish the job and get these important protections in place for communities across the country – which we expect to do later this year. While we have missed the statutory deadlines for all of the first 10 chemical rules, with some increased staff we have been working to improve the efficiency of both our intra- and inter-Agency processes, and I believe we will meet the statutory requirement that we issue a final rule within a year of issuing the proposal for at least some of these chemicals as a result.

At the same time, we also realized that there was more EPA could have done as those first chemicals were undergoing risk evaluation during the previous Administration to proactively engage with the companies who make and use those chemicals to ensure we had a realistic understanding of the safety measures they already take. I can confidently say that EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) is doing far more to engage with industry and federal Agency users of the chemicals we are prioritizing, reviewing, and regulating than ever before, and our final rules and future risk evaluations will see the fruits of those efforts realized. I personally met with companies that think we have missed the mark on some of our proposed rules when it comes to the way they make and use these chemicals, and I can assure you that we are taking their input seriously and will be making some needed adjustments along the way.

We are also continuing to advance existing chemicals through the prioritization and risk evaluation pipeline. Only one of the risk evaluations for the more than 30 existing chemicals that have finished or are currently in the risk evaluation process was completed within the statutory deadline. In November 2021, EPA's Office of Inspector General identified TSCA risk evaluations as a "Top Management Challenge," estimating that we would

need to increase our capacity by 140 percent in order to meet deadlines for just the 24 risk evaluations we had ongoing at that time. While the additional resources from the FY 2022 and FY 2023 budgets have helped to an extent, we also think there are additional opportunities to make our risk evaluations more focused and efficient.

As a necessary first step, we have been working to get our initial evaluations back on track. For example, we issued a draft supplement to the 1,4 dioxane risk evaluation – a chemical that can cause liver toxicity and cancer – to follow our science advisory committee’s recommendations to consider the air and water exposure pathways that were previously excluded because of the previous Administration’s policy not to consider them. We have been steadily working towards issuing the second part of our asbestos evaluation that will consider risks from legacy uses and additional fiber types that were also previously excluded – both contributors to exposure to this cancer-causing chemical. Likewise, we are pushing forward on evaluations for the next high-priority substances and manufacturer-requested risk evaluations. We published a draft risk evaluation for TCEP – a flame retardant linked to neurological effects, reproductive effects, developmental effects, kidney effects, and cancer – last month and expect to release additional draft and final risk evaluations this coming year for two phthalates, a chlorinated solvent, and formaldehyde. To ensure the Agency follows the science and the law in future risk evaluations, we proposed a rule updating the procedural framework for conducting TSCA risk evaluations, incorporating advice from our scientific advisory committee and lessons we learned along the way – a rule we hope to finalize later this Spring.

Just over a month ago, we announced five more candidates for prioritization for risk evaluation, including vinyl chloride – a chemical known to cause cancer, and the same one involved in the recent East Palestine, Ohio train disaster and of concern to communities near where it is made and used, like the Gulf Coast. The Nixon Administration actually exemplified this chemical, and the cancer risks it posed to workers, when it asked Congress to write the original TSCA in the early 1970s.

Moving forward, we are aiming to shift to a five-chemical-per-year risk evaluation prioritization process – an approach we think will help EPA, and really all stakeholders, better manage the workload and make the entire multi-year review and regulatory process more sustainable. Before we even

start the prioritization process, we are taking stock of available data on potential candidate chemicals to help inform selection decisions, talking to other parts of EPA, industry and environmental stakeholders, Tribal communities, state and local governments, and other federal agencies, in order to get their views on potential candidates, facilitating timely use of our data gathering authorities, and opening opportunities for more engagement with industry to better understand uses or sectors.

We are also trying to further focus our risk evaluations. Not every use of a chemical warrants the same level of analysis. Our risk evaluations will reflect a fit-for-purpose approach, diving deeper into the exposures that merit the most attention because they are likely to pose the most risk, while providing more qualitative descriptions of uses that we do not think are likely to contribute to the unreasonable risk posed by the chemical. Together, these changes will help us achieve the clear statutory deadlines in the law, while also staying true to our mission to protect human health and the environment, including vulnerable populations.

We are also working to advance our scientific tools and approaches to ensure we are using the best available science in all of our work products. For example, we released a framework in February 2023 for considering the cumulative risks of multiple chemicals under TSCA and an approach for applying those principles to the phthalate chemicals currently undergoing risk evaluation. We are also continuing to refine our approaches for exposure analyses, including consideration of aggregate exposures across multiple uses or pathways, as well as improving exposure assessment processes for workers. In fact, we hosted two workshops in 2023 that included a range of stakeholders including industry, representatives from the public health and environmental community, academia, and other interested federal agencies. To date, these have been focused on the identification of ways to improve exposure assessment for workers and how we identify occupational exposure scenarios using a variety of data sources. A third workshop focused on exposure data and modeling is being scheduled for late spring of this year.

I would also like to touch on our efforts in the new chemicals program. EPA plays an important gatekeeper role in ensuring the safety of new chemicals before they enter commerce. Robust, upfront safety reviews of these chemicals can prevent legacy contamination issues like we have seen with flame retardants or PFAS—chemicals linked to cancer and reproductive

harms and that are nearly ubiquitous today. The program also plays a critical role in getting new and innovative chemistries to market. We recognize there are continuing concerns that we are not moving fast enough, and I know there is more we can improve upon – but I refuse to accept that we have to choose between safety and speed. While we have made good progress towards more timely and efficient new chemical reviews, our resource shortfalls have ultimately prevented us from implementing some of these improvements as quickly as we'd like.

The 2016 amendments to TSCA brought about a dramatic increase in EPA's workload, especially for new chemicals. Previously, EPA only made formal risk determinations for around 20 percent of new chemicals submittals. The remaining 80 percent went into commerce automatically, when the 90-day review period the old law provided for EPA to complete its work expired. The new law requires EPA to conduct assessments and make formal safety findings for 100 percent of new chemicals *before* they can enter commerce. Despite these significant new responsibilities, the program's budget stayed essentially flat for the first six years of the new law. EPA has struggled since 2016 with the new law's requirements to ensure new chemicals can be used safely *and* can quickly enter commerce. We prioritized the resources needed by the new chemicals program when we received budget increases in FY 2022 and FY 2023, but we will continue to struggle for as long as our budget continues to be insufficient.

That said, we have taken a number of key actions to improve the program – and I believe we can and must do more. First, with the FY 2023 budget increase, we were actually able to hire more people to tackle the increased workload. Last time I testified, we had just 2 human health assessors to review the hundreds of submissions that come into the new chemicals program each year. Now, we have a dozen. Since the end of FY 2022, we have increased staff in the New Chemicals Program by a total of 14, with two additional hires about to join us and five additional recruitments in process – some much-needed reinforcements for a staff that has been stretched razor thin.

And we're putting those resources to good use:

- We proposed an update to our procedural regulations aimed at ensuring better quality upfront submissions – which means faster reviews;
- We created a standardized review approach for mixed metal oxides, which are used for batteries, electric vehicles, semiconductors, and renewable energy generation;
- We developed a framework for reviewing and managing new PFAS, which will ensure the continued availability of these chemistries for sectors like the semiconductor industry that plan to use them in ways that will not result in environmental releases, while generally expecting to prohibit new PFAS from being used in a way that will result in releases or exposures, like in cleaners or furniture polish;
- We are working collaboratively with the semiconductor sector to ensure a predictable regulatory approach for chemistries they rely on like photo-acid generators, while additional testing is ongoing, and hope to expand the collaboration in the coming months;
- We developed a broad industry outreach campaign to reduce late submission of key engineering-related information that often results in the need for EPA to re-work its assessments and longer review times;
- With more people, we have been able to do more and faster quality assurance reviews and identify areas for improvement, and to assemble problem solving teams to tackle longstanding science and science policy issues that can hold up the finalization of assessments;
- We recently issued a decision framework related to identifying eye irritation or corrosion hazards that will help ensure a consistent and transparent approach to this issue and reduce animal testing. This decision framework will be considered for every new chemical submission going forward;
- Later this month, we are holding an expert workshop to discuss science issues related to chemicals used in the fragrance industry, for which there are roughly 21 submissions in our queue; and

- We continue to improve the reliability of our IT systems to avoid significant disruptions to our reviews, like the outage that paralyzed the program for two weeks in 2022.

All of these efforts are designed to shore up our processes to ensure new chemicals are safe before they can enter commerce, make our reviews more consistent and more efficient, and build the scientific and regulatory infrastructure that was simply not tended to in the early years of the new law. And these efforts are working.

The program has undeniably gotten more efficient. But you do not have to take my word for it – the proof is in the numbers that we post each month on our redesigned statistics webpage. In FY 2023, we completed risk assessments for 270 notices and 202 exemption applications – 472 in total. That is compared to 280 in FY 2022 – a nearly 70 percent increase. With respect to the backlog of notices and exemption applications submitted in FY2022 or earlier, we have closed out 219 cases or 48 percent of the total. The program also made big gains in scientific throughput. Starting in June of last year, we are more than doubling the monthly average number of risk assessments completed from the previous year. As a direct result of our hiring efforts, we have sustained those increases and, over the last six months, have averaged about 42 risk assessments completed each month.

We are going to continue to do our best with the resources we have, and – given the foundational steps we have taken to advance the program – I think you can expect these numbers will only get better with time.

Despite all the positive improvements we have made in the TSCA program and the progress we have been able to achieve, the truth is we are not yet able fully achieve Congress' intent under the law. We know that our stakeholders on all sides are frustrated. We have a responsibility to do better. But there is a clear problem: the TSCA program is underfunded. It is the overwhelming conclusion of EPA's own internal workforce analysis, multiple reports by EPA's Office of the Inspector General, and the Government Accountability Office. The program cannot fulfill the direction provided by Congress without the necessary resources.

And the solution is equally clear. We do not need a new law. We need funding to implement the one we have.

The enacted budget for the TSCA program in FY 2023 was \$82.8 million. In the President's FY 2024 budget request, we have asked for a nearly \$48 million increase – \$130.7 million total.

Full funding for the TSCA New Chemicals Program would mean hiring 25 new employees to support the review process. It would allow continued investment in stabilizing and modernizing the EPA's IT platforms and infrastructure for managing case workflows, reducing or eliminating system downtime. It would allow more focused review and development of standard operating procedures and science policies to support consistency and efficiency in program implementation. It would mean more time for staff training. It would result in the development of new science through a fully funded collaborative research program with EPA's Office of Research and Development. It would enable staff to increase engagement with stakeholders to improve models and assumptions that feed into our risk assessments. It would enable quicker progress towards the elimination of the backlog and review of new submissions within 90 days.

Likewise, full funding for the TSCA Existing Chemicals Program would make a significant and positive difference. We could hire around 75 additional people to support the TSCA existing chemicals work – prioritization, risk evaluation and risk management - from start to finish. We could staff three additional risk assessment branches consisting of interdisciplinary scientists and engineers dedicated to more timely completion of risk evaluations, which means that the protections workers and communities have been waiting for decades will also come more quickly. We could staff an additional branch of rule writers to complete the necessary TSCA rulemakings within the aggressive statutory deadlines. We could staff a new branch dedicated to implementing TSCA existing chemicals rules and regulatory programs, including experts in engineering and industrial hygiene who could focus on engagement with impacted industries to ensure our rules are implementable and reflect modern industrial and technology practices. Full funding would enable us to build a robust data management infrastructure to effectively and efficiently manage receipt, tracking, and integration of information received from data gathering efforts for use in TSCA risk evaluation and risk management.

Full funding for the program would also help us better tackle the problems of emerging contaminants like per- and polyfluoroalkyl substances, or PFAS. These "forever chemicals" are an urgent public health and

environmental threat that are linked to a number of negative health outcomes, and we have been taking a whole-of-agency approach to addressing the issue under EPA's PFAS Strategic Roadmap. Over the last year, my office has taken numerous actions to address PFAS chemical safety—including finalizing rules for PFAS reporting, announcing a framework for reviewing new PFAS, proposing to eliminate exemptions for new PFAS and to restrict certain legacy PFAS, and issuing test orders to better understand categories of PFAS.

Understanding where and how PFAS are used is key to ensuring protections for people and the environment, and to advancing the science on PFAS used in commerce. In October of last year, to carry out a provision authored by this Committee, we finalized a reporting rule under TSCA to collect the largest-ever dataset of PFAS manufactured in the United States. We also finalized a rule that will improve communities' right to know by eliminating an exemption that allowed facilities to avoid reporting PFAS information to the Toxics Release Inventory (TRI) when those chemicals are used in small concentrations and continue to add additional PFAS to the list of chemicals subject to TRI reporting. And we have continued to advance efforts under the National PFAS Testing Strategy to require development of new information representative of categories of PFAS, releasing our second and third orders on PFAS used to make plastics and GenX chemicals. We're anticipating more orders in the year which will help accelerate research and innovation and amplify the effectiveness of regulatory and policy solutions to restrict and remediate PFAS.

We have also made significant progress last year in establishing policies that ensure the safety of new PFAS before they enter commerce. In May of last year, we proposed a rule to eliminate eligibility for exemptions that had allowed some PFAS to go through an abbreviated analysis – and would instead require that all new PFAS undergo a full safety review. And in June, we announced a framework for evaluating new PFAS and new uses of existing PFAS, to ensure they do not pose risks to people's health and the environment before new PFAS are approved for use. We recognize in this framework that PFAS can be used responsibly in many products and critical industries, like semiconductor manufacturing. Our approach to managing risks distinguishes uses that could result in environmental releases—and those with expected human exposures—from those that will not, and will require upfront testing for many PFAS. And earlier this month,

we finalized a rule that prevents companies from starting or resuming the manufacture or processing of more than 300 PFAS that have not been made or used for many years without a complete EPA review and risk determination.

Ultimately, our ability to effectively implement these important efforts to address PFAS – and to take further actions to protect public health as we learn more about PFAS or other emerging contaminants – is contingent on sufficient funding for the program.

No matter what the budget scenario looks like ahead, you have my assurance that we're going to continue to push for even more progress on both new and existing chemicals. We are going to continue to put in place the foundation for a chemical safety program that can deliver both the promised health and environmental protections and the regulatory certainty that Congress envisioned in 2016.

We have already demonstrated that more resources yield demonstrably better and faster results. But the takeaway is that we cannot get all the way there without sufficient funding. We certainly cannot continue to do more and more with less – though we will continue to try to find efficiencies and invest in solutions to make the program more sustainable over the long term.

Finally, I want to emphasize that industry, state and local governments, and environmental and community organizations all know that our door is always open and will remain so. While we have also had regular engagements with Congress on various issues, I hope you and your staffs also will not hesitate to ask for additional briefings, calls, meetings, or answers to your questions. If an EPA visit to companies or communities in your home state would help bring more clarity to the issues in front of us, we will do our best to make it happen. We all want this law to work as Congress intended, and I am fully committed to doing whatever it takes to get there.

Thank you again for the opportunity to testify and I look forward to your questions.