ENVIRONMENT

Trump's EPA May Be Weakening Chemical Safety Law

The agency has released controversial new rules for evaluating a chemical's risk

By Annie Sneed on August 16, 2017

Credit: Brendan Smialowski Getty Images

Asbestos, trichloroethylene, pigment violet 29—these are just three of thousands of chemicals the U.S. Environmental Protection Agency is assessing for risks to human health and ecosystems under the revamped Toxic Substances Control Act (TSCA). Congress overhauled the chemical safety law last summer, with wide bipartisan and industry support. Many viewed the legislation as a much-needed update to old, feeble regulations. Now, though, the Trump administration may be undermining the reformed law.

After Congress amended the old chemical safety act, it tasked the EPA with writing what are called the “framework” rules for how the agency will implement the reformed law. Outside experts and environmental groups express deep concern that the EPA’s new framework rules for TSCA, which took effect in July, could seriously subvert the law’s purpose in favor of industry. “These are major rules that will set the conditions for how TSCA is implemented—potentially for the next few decades,” says Noah Sachs, director of the University of Richmond Law School’s Center for Environmental Studies.

The TSCA framework rules establish formal guidelines for how the EPA will assess tens of thousands of existing chemicals. For the most part, they specify how the agency will prioritize and evaluate chemicals for risks. The Obama administration had already proposed a version of the rules. The current administration took over and finalized them—but not without significantly rewriting them first. “The law is much, much less stringent” with the latest rules, says Rena Steinzor, a professor of law at the University of Maryland.

One of the most controversial parts of the framework is how the EPA changed a key term

known as the “conditions of use.” It defines which applications of a chemical the EPA will examine in risk evaluations. For a given chemical, usages could range widely—from a consumer product like a kitchen countertop cleaner to various business and industrial applications. “Uses are critical, because they define exposure” to people and the environment, Steinzor says.

The Obama administration interpreted “conditions of use” broadly, experts say, but Pres. Trump’s EPA has significantly narrowed the term. For instance, the definition now excludes “legacy” applications—a past use of a chemical that has been discontinued. One example of this is a class of chemicals called polybrominated diphenyl ethers used as flame retardants, which were added to furniture cushions until recently. Experts say the EPA still needs to consider exposure to these legacy uses. “When you’re assessing a chemical, it’s important to look at all the uses to understand the actual risk in the real world,” says Richard Denison, a lead senior scientist at the Environmental Defense Fund. That’s because previous or ongoing exposure to a legacy use of a chemical could complicate a person’s exposure to the chemical’s present-day uses. “You have to recognize that the way someone responds to a new risk is partly based on what else they’ve already been exposed to,” Denison says. Sachs agrees: “Congress’s concern is about aggregate exposure, and that makes sense, because that’s what matters to human health,” he notes. “If this rule stands, it is a weakening of TSCA and not at all what Congress intended.”

Karyn Schmidt, senior director of Chemical Regulation, Regulatory and Technical Affairs at the industry group American Chemistry Council (ACC), disagrees. “It’s clear that the legacy uses are cases where EPA does not think it needs to prioritize its resources,” she says.

The framework rules do specify that EPA may consider background exposure to legacy uses of a chemical on a case-by-case basis, but Denison is skeptical about this approach. The rules “don’t provide any criteria as to how they would make that decision—when something would be considered and when it would not be,” he says.

Critics also claim the EPA is giving itself an alarming amount of discretion to decide in general what qualifies as a “condition of use” and what does not. In essence, Denison says, the agency can decide not to look at something because it does not think it is important. He notes the EPA has not provided criteria for how it would make this decision. “It could

do anything it wants," he says.

Nicholas Ashford, director of the Technology and Law Program at Massachusetts Institute of Technology, voices a similar concern. "A shift has been made under the present administration. They have decided not to go very far in looking at all the uses a chemical might have. They're basically subverting the purpose of the act, which is protection."

The EPA and industry leaders dispute that the framework rules undermine the TSCA. "I thought they were clearer, cleaner and more focused," says Lynn Bergeson, a lawyer whose firm Bergeson & Campbell specializes in chemical issues. She adds the new rules will result in a "better use of EPA resources." Schmidt says the law will allow the agency to focus on the highest risks, rather than getting bogged down in looking at all the different uses for a substance. "A chemical might be used in hundreds, thousands of commercial applications," she notes. "Risk evaluations need to be driven by public health…, and also yield results on a timeline."

The EPA maintains its rules will support TSCA. "The agency will make determinations for chemical substances in ways that are both protective and efficient," an EPA spokesperson wrote to *Scientific American* in an e-mail. "This means directing greatest attention to those uses that pose the greatest potential for risk to health and the environment."

Other experts point to the Trump administration's pro-industry stance as well as its connections with the chemical business as motivation for rewriting the rules. "Industry wants to control what the use is stated to be," Steinzor says. They point to Nancy Beck, who previously worked for the ACC and is now deputy assistant administrator for the EPA office that oversees TSCA. "Our concerns are magnified by the fact that…Nancy Beck, who has a reputation over many years of being very favorable toward industry…, is in charge of implementing TSCA at EPA," Steinzor wrote in an e-mail to *Scientific American*.

According to Sachs, Beck has “incredibly close ties to the chemical industry,” adding that with EPA personnel “coming from those backgrounds, the discretion they have will be tilted in favor of the chemical industry.”

Steinzor acknowledges that no one knows yet how the agency will actually enforce the law. But skeptics say their apprehensions are amplified by the anti-regulatory attitude of those leading the administration, including the president himself and EPA head Scott Pruitt as well as by the White House’s proposal to dramatically cut the agency’s funding. “My worries go beyond the wording of the framework rules to things like the budget and personnel who head the office,” Sachs says. Environmental groups, however, intend to make sure the EPA fully enforces the TSCA—last week the Environmental Defense Fund, the Natural Resources Defense Council and others filed lawsuits intended to force the EPA to strengthen the framework rules.

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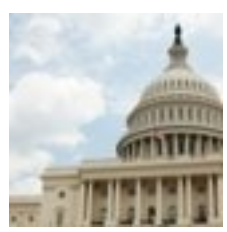

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