

EPA'S SECRET CHEMICAL PROBLEM, UNVEILED

As EPA conceals industry health risk studies, chemicals are flooding our homes



Pulp mill on edge of fast moving river. Devon OpdenDries / Getty Images

In early 2017, an unknown U.S. company applied to the U.S. Environmental Protection Agency (EPA) for permission to produce a new type of PFAS, a class of 5,000 chemical substances that includes substances that are known to be extremely toxic substances that can stay in the environment, and our bodies, for decades. Used in everyday products such as waterproof jackets, food packaging, and nonstick pans, PFAS have been dumped in drinking water sources across the country, exposing millions of people to chemicals linked to deadly diseases, such as birth defects, immune system dysfunction, and myriad cancers.

During the company's application process, EPA career scientists said this new PFAS substance could not only cause respiratory illnesses, such as asthma, but it could also trigger DNA changes – harming cells and causing diseases such as cancer.

Despite these warnings, the Trump administration's EPA approved the company's application to manufacture the new type of PFAS without any restrictions in April 2019. What's more, the EPA withheld almost

all documents submitted by the company during the approval process – including health and safety information – which is against the law. This makes it impossible to know whether the company will dump PFAS

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into the soil, air, or water. And, because the company refused to disclose its name or location, communities surrounding the chemical's manufacturing site won't know to protect themselves from toxic harms.

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Earthjustice and Environmental Defense Fund (EDF) reviewed the applications for hundreds of different chemicals and found that the EPA routinely conceals documents, including health and safety studies, which industry has wrongly claimed to be “confidential business information” (CBI).

These findings demonstrate that Trump's EPA has consistently violated disclosure requirements of the Toxic Substances Control Act (TSCA), the law that governs the manufacture, use, and distribution of chemicals. In 2016, Congress updated TSCA for the first time in 40 years to ensure that the EPA would conduct a transparent review of every new application, so that the public can provide input before EPA approves or disapproves the production of a new chemical substance. Instead, this investigation demonstrates that Trump's EPA has repeatedly withheld key documents and information about such chemicals from the public. Even when EPA does disclose information to the public it often comes either very late in the review process, or, after a new chemical has already been approved.

In late 2019, Earthjustice – on behalf of EDF, Environmental Health Strategy Center, Center for Environmental Health, Natural Resources Defense Council, and Sierra Club – told the EPA we planned to sue. In response, EPA took a few small steps to address some issues – including an unfulfilled prom-

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ise to post all application documents on the agency's website. However, these actions were insufficient to address the continuing lack of disclosure. In March 2020, we moved forward with our plan to sue EPA over its violations of the TSCA. The findings below summarize the basis for the lawsuit, and reveal the extent of EPA's secret chemical problem.

Findings

To understand EPA's chemical review practices, Earthjustice and EDF requested from EPA and reviewed in detail 204 out of some 1,100 applications for new chemical approval, or PMN applications, submitted to the agency from August of 2016 through April of 2019. In addition, Earthjustice and EDF reviewed all notices informing the public of the applications the agency got through early 2020, for about 1,700 PMNs. EDF began this years-long investigation to learn how EPA was determining

whether new chemicals like PFAS and isocyanates – a class of chemicals used in paints, foams, and varnishes – are safe. This investigation was significantly hindered by EPA. To the extent EPA disclosed documents about new chemical applications, it did so only if EDF staff physically collected the files from an EPA reading room, or waited weeks for EPA to send them by mail.

Our review of this robust sample clearly shows that:

1. EPA doesn't alert the public that a new chemical is under review and may soon be approved to go on the market as required by law.
2. EPA allows companies to conceal crucial information about chemicals under review, especially health and safety information.
3. EPA doesn't audit companies' CBI claims to determine whether they are warranted, encouraging companies' unlawful attempts to hide information that should be public.

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When an application for a new chemical is submitted to EPA, the agency must alert the public by publishing a notice in the Federal Register within five business days. This notice is supposed to identify the chemical and the manufacturer, but unfortunately, TSCA allows the manufacturer to mask its identity and the specific chemical identity as “confidential business information,” or CBI. The latter is replaced by a generic description. For example, instead of listing a specific chemical, the application will simply use a broad “generic name” like “cyclic amide”. This means that people aren't even told which new chemical – if approved – might soon be manufactured in their backyard.

Earthjustice and EDF reviewed all the Federal Register notices EPA published between TSCA's

amendment and February 2020, covering applications for about 1,700 new chemicals, and found that EPA never timely published these required notices in the Federal Register.

In fact, on average EPA publishes the notice 87 days late, a troubling finding since by law EPA is supposed to make a decision on each new chemical within 90 days.

What's more, for approximately one in every six applications the agency didn't publish the notice until after the chemical was approved, preventing anyone from having a chance to weigh in, and potentially prevent a toxic chemical, like a new PFAS, from reaching the homes or workplaces of millions of people.

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Once an application arrives, EPA is supposed to put the entire application in a “public file.” online. But EPA never placed any of hundreds of the applications we reviewed. EPA instead took a 19th-century approach to disclosure. The agency required people to request the documents through an email to EPA's “Docket Center.” We would then have to wait for EPA to assemble the documents and then either go to EPA's office in Washington D.C. to pick up the files in person, or wait even longer for them to arrive via mail. Rather than prompt access required by EPA's own regulations, EPA's antiquated process took weeks or months. By the time we obtained the files, chemicals were far along in the review process or already approved to enter the market.

To make matters worse, when EPA provided the public files, they were grossly incomplete.

EPA is obligated to release all health and safety information submitted with an application to the public. TSCA unambiguously says that health and safety information has to be disclosed, unredacted, except when specific information included could



Looking at chimney stalks. Azgek / Getty Images

reveal details about the manufacturing process, or the composition of a chemical mixture. Health and safety studies and related information show the effects a chemical may have on health or the environment and the extent of potential exposure to a chemical. These studies are crucial to understanding toxic threats.

Yet, EPA regularly allows chemical companies to claim that entire health studies are CBI, so this critical information is blacked out in full or in large part. Therefore the public has no ability to judge whether a new chemical is safe or not, and no way of telling whether EPA's decision to approve a chemical is sound or not.

For the 204 chemical applications Earthjustice and EDF requested and reviewed in detail, EPA unlawfully withheld or redacted hundreds of health and safety studies, including 150 studies unlawfully withheld in their entirety; in some cases, multiple studies on the same chemical were withheld.

Numerous additional documents submitted during the review of an application have also been withheld by EPA. For example, applicants often submit multiple versions of the application. This can happen when EPA provides informal guidance to the manufacturer to address problems with the original application that could lead to regulation. The manufacturers then amend the application to get the agency to approve it without restriction. Yet, EPA typically only releases one version to the public (which itself is often incomplete) thereby obscuring changes that could reflect whether EPA identified potential problems with the chemical and how EPA arrived at its ultimate decision.

Out of the 204 files Earthjustice and EDF checked, in 94 cases there appeared to be multiple versions yet EPA provided us with only one.

A similar practice took place with Safety Data Sheets, which describe specific hazards and tell workers how to handle chemicals to avoid harm. Because these documents comprise or contain health and safety information, they cannot be withheld under TSCA. And yet, EPA withheld Safety Data Sheets for approximately 50 chemicals, or about 25 percent of the 204 files reviewed for this report.

After the coalition informed the agency of our intent to sue, EPA said it began making all versions of applications it is now receiving available on its website. However, EPA continues to allow companies to heavily redact applications. EPA's

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change is too little, and for hundreds of chemicals, it comes too late. It also does nothing to address all the chemicals that EPA

approved to enter the market, and for which the information EPA received about them is still not available to the public.

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EPA has mandatory obligations to review at least 25 percent of CBI claims made by chemical manufacturers, and then to publish a CBI determination. Then it has to release any information that does not qualify as CBI. This process is intended to deter manufacturers from frivolously claiming CBI protections, just like the possibility of an Internal Revenue Service audit should deter tax cheats.

But prior to the plaintiffs' threat to sue in September 2019, and extending until December 2019, EPA had not released even a single determination for a CBI claim.

EPA should by now have completed its reviews of CBI claims in hundreds of new chemical applications (at least a quarter of the 1,250 applications for which it has completed safety reviews). Instead, in the three-and-a-half years since TSCA was amended, EPA has completed reviews of the CBI claims in only 27 applications. And our examination of these cases is already revealing unlawful approvals of CBI claims by EPA. These failures only serve to incentivize manufacturers to continue making unlawful confidentiality claims.

Conclusion

This Earthjustice and EDF investigation found that EPA is approving hundreds of new chemicals each year without giving the public access to important information or opportunities to provide input. In violation of TSCA, Trump's EPA has made it much more likely that dangerous chemicals are reaching the market, putting workers and families at risk. We know that once a chemical is approved, it becomes nearly impossible to pull it off the market, and remove it from the environment and, sometimes, our bodies, as the PFAS contamination crisis shows.

The public has a right to know about these potentially harmful chemicals. Yet they are left in the dark.

The EPA's secret chemical problem has allowed the Trump administration to help its chemical-industry friends by quickly approving hundreds of new chemicals a year under a cloak of secrecy. The agency needs to change its ways and follow the law

"The agency needs to change its ways and follow the law to protect people."

to protect people – particularly children, who are often the most vulnerable to harm from toxic chemicals.

That is why Earthjustice, on behalf of EDF, Environmental Health Strategy Center, Center for Environmental Health, Natural Resources Defense Council, and Sierra Club, filed a lawsuit against Trump's EPA in March 2020 that alleges numerous TSCA violations. Our organizations are committed to ending the EPA's chemical secrecy problem and ensuring the public's right to know.

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