Household & Commercial Products Association (HCPA)
Impact22
May 11, 2022
Michal Freedhoff Remarks, as prepared

Good afternoon, everyone! Thanks for the invitation to be here today.

Last year around this time, I was just getting started in my role at EPA and I was speaking to you all virtually. It's so nice to be here in person, talking face-to-face instead of face-to-computer-monitor.

Our work overlaps with yours in so many areas, especially with our joint efforts on COVID-19 and your dedication to increasing access to disinfectants.

Your work on antimicrobials, new chemicals, and the Safer Choice Program is much appreciated.

Our partnership is critical to achieving our mutual goal of increasing, and increasing access to, safer chemicals in the marketplace.

A year may seem like a long time, but it's definitely not long enough to unravel some of the more problematic past decisions, let alone do all that we want to do to move the ball forward on a wide range of TSCA, pesticide, and pollution prevention initiatives.

And, on top of having to correct the missteps of the past, we also have to grapple with the fact that our mission is being hindered by a severe lack of resources.

As I'm sure you're all aware, OCSPP has been functioning with its head just barely above water since we came together almost six years ago to support the 2016 amendments to TSCA.

This was an exciting time when we began to chart a new path forward: a sustainable and credible TSCA program where EPA had the authority to provide strong chemical safety protections when needed.

This meant evaluating both new and existing chemicals so the public would have confidence that when YOU develop a chemical and WE say it's safe, it's actually safe. And as I'm sure you all remember, the point of having a strong and comprehensive federal approach was also intended to ensure

industry wouldn't end up with a patchwork of state-specific laws on different uses of different chemicals in different places.

Before the law was changed, EPA NEVER did comprehensive risk evaluations of how some of the most dangerous chemicals are made and used – chemicals like TCE, methylene chloride, and formaldehyde. Before the law was changed, EPA's hands were tied when it came to banning even the most dangerous chemicals following a court decision that threw out much of EPA's 1989 asbestos ban.

Under the new law, EPA now HAS to be working on at least 20 of these existing chemicals at once and it HAS to put strong protections into place to address the risks it finds.

Before the law was changed, EPA did formal reviews on only about 20% of new chemicals, which is part of the reason why chemicals like flame retardants and some PFAS were allowed into commerce without a complete review – but under the new law, the Agency has to formally review ALL new chemicals, so we can be sure they're safe before they're used.

And before the law was changed, EPA wasn't actually ALLOWED to issue orders to companies to require them to provide data on PFAS or any other chemical. Now, we can request the data we need through test orders to support our work.

But the implementation of new TSCA went off track in the previous Administration.

The previous Administration NEVER asked for ANY additional resources despite the massive increase in responsibilities and statutory deadlines that came with new TSCA.

The previous Administration wouldn't even authorize senior career managers to undertake an analysis of how much additional funding it would take to implement the law. In fact, EPA's Inspector General said the agency's ability to meet future TSCA deadlines was at risk because we didn't identify the additional staff and resources needed to perform the work.

The IG said that just to meet the pace of TSCA risk evaluation deadlines, capacity for that work would have needed to increase by 140 percent beginning in fiscal year 2020. A 2019 GAO report echoed this sentiment, saying a key challenge to implementing TSCA is ensuring adequate resources.

Moreover, although Congress expected the agency would collect up to 25% of some TSCA costs from fees, the last fees rule didn't kick in until fiscal year 2019. On top of that, the baseline costs used to set those original fee amounts were the costs of the old broken TSCA. And, even with that artificially low baseline, EPA STILL only managed to collect about 13% of the authorized costs, not the 25% Congress envisioned. I'll also note that the first 10 risk evaluations – the costliest activities that would be undertaken during those first years – were excluded from being subject to fees at all.

So, since the previous Administration seemed to be allergic to asking Congress for additional resources, what did they do instead?

They took what they needed from other programs to meet TSCA needs, robbing them of their resources.

You all know that's what happened to Safer Choice. This program was all but disbanded under the previous Administration to shift resources to TSCA work.

I don't have to exhaustively spell out what this series of management failures meant for our productivity or our ability to meet our statutory deadlines, because you all watched the movie as well.

In those first years, the agency met the statutory deadline for only one of the first 10 risk evaluations and struggled with doing new chemical reviews in the way Congress intended.

In the fiscal year 2022 budget, we asked for the first-ever increase for the TSCA program since the 2016 amendments were enacted. We were looking for an increase of $15.6 million, and, while we got something, we didn't get everything we asked for.

This means our TSCA program remains incredibly underfunded.

Particularly worrisome is the funding for the new chemicals program, which sits at about half of what we need to review new chemical submissions.

We'll continue to advocate for receiving the additional TSCA funds we requested in the fiscal year 2023 budget, but in the best case scenario, we're months away from that budget getting enacted.

I KNOW you understand our frustrations because Steve's recent blog in The Hill explained the dynamics of the issue perfectly.

In his blog, Steve said, "EPA should have sufficient staff and resources to go through its regulatory and scientific processes within a predictable timeframe. Companies flourish on certainty and deserve to know what to expect and how long it will take to get their products to market. Instead, delays and backlogs continue to grow."

I really appreciated your blog, Steve, because it touched on the many ways that our resource constraints affect businesses and consumers alike.

You're right. New products and innovations *are* being delayed from reaching American households because we don't have the resources.

By bringing attention to this important issue, we can work together to further improve our processes and make things more efficient for everyone. But I'll be honest with you – until we get more resources, we'll continue to struggle.

So, given that, we need to decide where to focus.

Since TSCA's goal is to provide chemical safety protections to ALL communities, we're going to start there. We'll continue working to draft risk management rules for the first 10 chemicals.

We recently proposed banning all ongoing uses of chrysotile asbestos, which is our first rule issued following the risk evaluation process under amended TSCA.

The next chemical up for risk management rulemaking will likely be methylene chloride.

We'll also continue work on the next 20 chemicals and the asbestos part two risk evaluation.

Overall, it shouldn't come as a surprise that we expect to miss every single deadline for the final risk management rules for these first 10 and every single deadline for the next 20 risk evaluations. It wasn't possible to meet the deadlines when we had less work, and it's not possible now.

I hope to share more chemical-specific information on timing when we have worked through the implications of our financial picture –just like a business that has to give its shareholders a realistic picture of what milestones they will and won't meet, I feel very strongly that if we come to the conclusion that we simply cannot do 20 risk evaluations without more resources, we'll let everyone know which ones we'll continue to work on and which ones we'll hit the pause button on until our financial picture improves.

It also shouldn't surprise anyone that we are on year six – and counting – of struggling to meet Congress's expectations that we quickly review new chemicals and put any needed protections in place. We're utilizing the resources we do have to streamline our work wherever possible. For example, we've standardized the review of new chemicals in the biofuels sector with the goal of making it easier for companies to submit PMN packages and making our review more efficient.

We've also announced a joint effort with the Office of Research and Development to draw on their expertise to modernize our approach to reviewing new chemicals. This includes digitizing and consolidating scientific data, updating models, and finding ways to use new technologies and methods in our risk assessments to avoid the use of animal testing.

I'm also hopeful you'll help us work more efficiently. We hear your frustrations regarding the pace of our reviews. We understand that the chemicals that are going through the review process are the ones that end up in your products.

We ask that you continue to be patient with us as we review these chemicals.

We need to make sure we're using good science and putting the needed protections in place. We can't sacrifice one or the other for the sake of getting these chemicals out the door.

But, it's not just TSCA that's underfunded. The pesticides program has experienced declining resources for many years now.

We've been losing staff, particularly seasoned and experienced staff, over the past 15 years. We've gone from a high of more than 800 FTE in 2005 to a low of almost 600 FTE in 2021. Now, we're at less than 600 and declining.

Meanwhile, the number and scientific and legal complexity of pesticide submissions has increased significantly. Not having enough staff means that our backlog has been growing because the work is taking longer to complete. The total number of pesticide actions coming into the agency has ranged from 10,000 to 20,000 a year since 2004. While we've continued to complete an increasing number of PRIA actions, right now, we've got a growing backlog of more than 11,000 pending non-PRIA pesticide actions that still haven't been completed from previous years.

This backlog includes pending actions that are decades old, in some cases. Most of the applications are for conventional pesticides, but antimicrobial pesticide products and biopesticides are also represented.

And, our PRIA deadline renegotiation rate has been increasing – now we need to negotiate new PRIA due dates nearly 50% of the time because we don't have the people we need to get them done by the original deadlines. Current funding levels, fewer people, and more work is not a great combination!

There are a number of factors that have contributed to this increase in the renegotiation rate. Our response to COVID-19 certainly played a part. Resources within and outside of the Antimicrobials Division were re-directed to expediting the review of disinfectants and other products.

For biopesticides, the number and complexity of PRIA applications has also increased.

Before 2017, the biopesticides division received 5-7 new active ingredient submissions a year. That number has grown to around 17-20 submissions a year over the last several years.

Biochemical and emerging technology submissions have gotten more complicated in terms of science over that same time period and require the same thorough review as other pesticides.

In the Registration Division, submissions for conventional pesticides have also increased while resources declined steadily over the past ten years. This division has had a high renegotiation rate of more than 60% for each of the past three years. They experienced a loss of 42 FTE between 2009 and 2019 – immediately pre-dating the spike in the renegotiation rate. And we continue to see an increase in number of PRIA submissions for conventional products which has resulted in significant increases in pending actions - a 75% increase of pending actions between 2014-2021. We simply don't have the staff to keep up with the work.

Our budgetary shortfalls clearly affect our ability to meet our goals, including improving how our office meets its duties under the Endangered Species Act when registering pesticides.

EPA and the Endangered Species Act are just about the same age – and in those five decades or so, we've only met our ESA obligations for less than five percent of our pesticide decisions. As a result, we've struggled with lawsuits, which have increased in frequency in recent years.

We currently have over 50 pesticide ingredients, covering more than 1,000 pesticide products, with court-enforceable deadlines or in negotiations that will result in court-enforceable deadlines. We expect to finish all of the court-ordered work sometime in the 2040s, and even then, that work will only represent about five percent of EPA's ESA obligations over the next decade.

To put it plainly, we're drowning in lawsuits and making little progress in actually protecting endangered species. It's not hard to imagine that a future court, faced with the continued slow pace of EPA's ESA efforts, might drastically curtail pesticide use, or halt it altogether, possibly for years, until EPA meets its obligations.

Nobody wants that to happen. EPA should be the regulator – not the courts. So a major change is needed and we need to act quickly.

Last month, we shared a new strategy for how we can best rehabilitate the ESA-FIFRA program. In this workplan, we outlined our vision of a successful program and strategies to get there.

Nonetheless, we've got to be realistic about our limitations.

We have a lot of commitments to meet, and we have significant resource needs when it comes to our ESA work.

We're also continuing our work on registration review. In December 2021, we released a schedule that lays out the next several years of our registration review program.

There were 726 pesticide cases registered before October 2007 and, under FIFRA's registration review requirements, we need to complete our review of all of them by October 1st of this year.

We've made good progress over the past several years but our review for some of these pesticides will extend past this deadline.

It's been a challenging process given the demands of responding swiftly to COVID antimicrobial actions, delays in receiving data from registrants, and our need to increase resources to respond to litigation.

And of course, the chemicals that have waited until the end of the 15-year cycle are often also the more complicated ones. Our priority registration review actions for the remaining fiscal year - some of which are also being driven by litigation, ESA review or human health review - include atrazine, malathion, chlorpyrifos, ethylene oxide, rodenticides, neonicotinoids, and wood preservatives.

Regardless of whether it's pesticides or TSCA, I know none of this is new or surprising to you and that you feel our pain because you're directly impacted.

Now there are some bright spots in this rather bleak picture I've painted, and one of them is Safer Choice, a program I know you're all interested in.

As I touched on earlier, the OCSPP reorganization that occurred under the previous Administration eliminated the Safer Choice branch and really limited the program's capabilities and potential.

I'm happy to say that effective last month, we reestablished Safer Choice as a stand-alone branch in OCSPP.

Support for re-establishing the Safer Choice branch was nearly universal. It's widely known that the program is influential in driving a market for products with safer chemical ingredients.

I know you, in particular, support this program, because HCPA was included along with dozens of representatives of state and local governments and environmental organizations in a letter we received last June calling for the revitalization of Safer Choice.

You were also a Safer Choice Partner of the Year in 2021, a major honor and recognition of the work you do to design, manufacture, and promote products with safer chemicals.

Moving forward, we plan to partner with organizations who serve communities with environmental justice concerns, to help increase access to Safer Choice-certified products for custodial staff and house cleaning companies.

We also intend to reach out to federal, tribal, state, and local government procurement officials and institutional and industrial purchasers to communicate the benefits of Safer Choice and other environmentally preferable products.

Speaking of labels, I'm happy to say that today we're launching a new, modernized logo for Design for the Environment, or DfE, that will roll-out on products later this year. This is for products like disinfectants and sanitizers, including wipes and sprays used to treat surfaces like countertops, tubs, tile, and toilets.

If you attended Clive Davies' session earlier today, you'll already have the full picture of how important and timely this logo refresh is for companies like yours who are invested in delivering products to the American public that meet the requirements of the DfE certification.

But, in case you missed it earlier, the DfE logo has been around for a while and was first made available to be used on antimicrobial products after a federal advisory committee asked that EPA find a way to differentiate antimicrobial products that met the criteria of the program.

Increased use of antimicrobial products over the course of the pandemic accelerated an already-widespread surge of interest in the health and environmental effects of these products.

In 2021, industry and NGO stakeholders reached out asking that we update the DfE logo to make it more appealing to retailers, consumers, and purchasers.

To qualify for the DfE certification, every ingredient in these products is reviewed to ensure they meet some very stringent criteria.

This includes ensuring products protect fish and other aquatic life, minimize polluting air or waterways, and do not add harmful chemicals to the land.

We've also taken a close look at ALL the ingredients in these products and certified that they don't contain any ingredients that may cause long-term risks to human health and that they work as intended.

I know that the companies that already have DfE-certified products have invested heavily in research and reformulation to make sure their products meet these requirements.

The updated logo should make DfE-certified products easier for consumers and other purchasers to find, which we hope, in turn, will encourage more companies to seek certification for their products and work toward achieving their sustainability goals.

If your company has DfE-certified products carrying the old logo and you'd like to add the new DfE logo, you can start submitting your non-PRIA fast track label amendments now.

As you can see, even though we haven't received the resources we need, we're taking important steps NOW and focusing on the things we think will have the biggest impact on protecting human health and the environment. We're also not giving up on fighting for the resources we need and deserve. We've already put in our fiscal year 2023 budget request and are hopeful that this time we'll get what we've asked for.

While we work with what we have, I ask for your cooperation, patience, and understanding. We have many challenges to work through this year, but we continue to be committed to sound science and improved efficiency in all we do.

Thanks again for inviting me to speak.