



April 5, 2024

The Honorable Michal Freedhoff, Ph.D.
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
US Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

The Honorable David Uhlmann
Assistant Administrator
Office of Compliance and Enforcement Assurance
US Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Changes to the Supplier Notification Requirements for per and polyfluoroalkyl substances and other chemicals of special concern under the Emergency Planning and Community Right-to-Know Act and Pollution Prevention Act (40 CFR Part 372.45)

Dear Dr. Freedhoff and Mr. Uhlmann:

The undersigned organizations wish to bring to your attention a significant issue that has arisen as a result of the changes to Toxic Release Inventory (TRI) supplier notification requirements for substances designated as chemicals of special concern (CSC) under the Agency's Toxic Release Inventory (TRI) reporting requirement finalized on October 31, 2023. Below we discuss issues specific to newly listed per- and polyfluoroalkyl substances (PFAS) and the broader issue of implementation of lower supplier notification thresholds for CSCs.

As a result of the CSC rulemaking last October, suppliers whose "best readily available information" indicated the presence of *any* amount of a CSC in their products were required to notify customers beginning January 1 of this year. This requirement extended to the seven additional PFAS that the Agency announced were added to TRI on January 9, 2024.¹ As a result, suppliers were already in violation of the notification requirement for products shipped in the early days of 2024 that contained these seven newly-listed PFAS. It is not clear how suppliers would have known about the automatic

¹ USEPA. EPA Requires Toxics Release Inventory reporting for seven additional PFAS. News Release (January 9, 2024). <https://www.epa.gov/newsreleases/epa-requires-toxics-release-inventory-reporting-seven-additional-pfas>

addition prior to the January 9 announcement, nor how the Agency expects companies to be able to comply without reasonable notification and preparation time. In the case of one of the seven PFAS included in the January 9 announcement, perfluoropropanoic acid (PFPrA), there was no announcement of Agency action beyond a posting to a list serv maintained by the Office of Research and Development's Center for Public Health and Environmental Assessment. Such actions are directly contrary to EPA's commitment "to provide covered facilities with adequate time to incorporate newly listed chemicals into their data collection processes."² The cumulative burden on suppliers of products containing any amount of a CSCs will continue to increase, moreover, with the issuance of the Toxic Substances Control Act (TSCA) significant new use rule (SNUR) for PFAS determined to be inactive on the TSCA Inventory that will add more than 300 substances subject to notification effective January 1, 2025.³

We appreciate that the Agency is following the requirement of the National Defense Authorization Act (NDAA) for Fiscal Year 2020 to automatically list PFAS following completion of specified Agency actions. However, the decision to wait until the beginning of the following year to announce the automatic addition of substances is problematic and has the potential to put suppliers in violation of the notification requirement. The regulated community requires more time to properly assess their products, data, and to determine compliance pathways. While the staff of the Data Gathering and Analysis Division (DGAD) have expressed sensitivity to our concerns about supplier notification, they noted that the Agency feels bound by the language of the NDAA.

Recognizing the 2020 NDAA requirement for automatic listing, we urge the Agency to make every effort to announce the addition of PFAS to TRI as soon as practicable after the completion of one of the actions identified in the NDAA, preferably with the publication of a notice in the *Federal Register*. We further request that EPA issue a No Action Assurance waiving any potential enforcement action against suppliers who do not provide notification of the seven newly listed PFAS to their customers with their first shipment of 2024 and commit to working with industry to ensure timely compliance, similar to the action it took regarding processing and distribution of PIP (3:1).⁴

In addition, we ask EPA to address the broader issue of practical implementation of the elimination of the *de minimis* threshold for supplier notification. While much of the emphasis has been related to products that may contain PFAS subject to TRI reporting, the changes also impact products containing any of the substances designated as CSC, including dioxins, PCBs, and polycyclic aromatic compounds. The change to supplier notification requirements is not consistent with the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard and the global framework for supplier notifications, and complying with it disrupts the systems that companies have in place for meeting U.S. and global hazard communication requirements. The elimination of a *de minimis* threshold for supplier notification of the presence of CSCs creates a significant burden on suppliers up and down

² USEPA. EPCA Section 313 Questions and Answers 2019 Consolidated Document. EPA 745-B-19-001 (Apr. 2019), in response to Question 151 (p. 61),

³ 89 *Fed. Reg.* 1822 (January 11, 2024).

⁴ USEPA. No Action Assurance Regarding Prohibition of Processing and Distribution of Phenol Isopropylated Phosphate (3:1), PIP (3:1) for Use in Articles, and PIP (3:1)-containing Articles under 40 CFR 751.407(a)(1). Memo from Lawrence Starfield, OECA, to Michal Freedhoff, OCSPP (March 8, 2021)

the value chain in sectors across the economy, exposes them to potential violation, and potentially places them at a competitive disadvantage against overseas companies not subject to the same requirement. The regulated community requires additional time to change supplier notifications and we request EPA provide it either by extension of effective date or statement of enforcement discretion.

Please do not hesitate to contact us if you have questions about the above information.

Sincerely,

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