



VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

July 7, 2023

Administrator Michael S. Regan
U.S. Environmental Protection Agency
Office of the Administrator, Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Attorney General Merrick B. Garland
U.S. Department of Justice
10th and Constitution Ave., NW
Washington, D.C. 20530

Re: Sixty-Day Notice of Violations of the Toxic Substances Control Act’s Deadlines for Completion of Twenty-Two Risk Evaluations

Dear Administrator Regan and Attorney General Garland:

On behalf of our clients, Community In-Power and Development Association (“CIDA”), Learning Disabilities Association of America, Louisiana Environmental Action Network, Texas Environmental Justice Advocacy Services (“t.e.j.a.s”), and the Sierra Club, we write to provide notice in accordance with the citizen suit provision of the Toxic Substances Control Act (“TSCA”),¹ that the U.S. Environmental Protection Agency (“EPA” or the “Agency”) is in violation of section 6(b)(4)(G) of TSCA due to the Agency’s failure to complete twenty-two risk evaluations by the statutory deadlines.² Specifically, EPA has failed (1) to complete risk evaluations for twenty “high-priority” chemical substances³ (the “High-Priority Risk

¹ 15 U.S.C. § 2619(b); *see also* 40 C.F.R. §§ 702.61(a), 702.62. This letter constitutes our notice of intent to sue.

² *See* 15 U.S.C. § 2605(b)(4)(G) (requiring EPA to “complete a risk evaluation for a chemical substance as soon as practicable, but not later than 3 years after the date on which [EPA] initiates the risk evaluation” and permitting EPA to extend this deadline “for not more than 6 months”).

³ High-Priority Substance Designations Under the Toxic Substances Control Act (TSCA) and Initiation of Risk Evaluation on High-Priority Substances; Notice of Availability, 84 Fed. Reg. 71,924-02, 71,934 (Dec. 30, 2019). The high-priority chemicals with overdue risk evaluations include: (1) 1,3-butadiene; (2) butyl benzyl phthalate; (3) dibutyl phthalate; (4) o-dichlorobenzene; (5) p-dichlorobenzene; (6) 1,1-dichloroethane; (7) 1,2-dichloroethane; (8) trans-1,2-dichloroethylene; (9) 1,2-dichloropropane; (10) dicyclohexyl phthalate; (11) diethylhexyl phthalate (“DEHP”); (12) di-isobutyl phthalate; (13) ethylene dibromide; (14) formaldehyde; (15) 1,3,4,6,7,8-hexahydro-4,6,6,7,8,8-hexamethylcyclopenta [g]-2-benzopyran (“HHCB”); (16) 4,4’-(1-methylethylidene)bis[2, 6-dibromophenol] (“TBBPA”); (17) phosphoric acid, triphenyl ester; (18) phthalic anhydride; (19) 1,1,2-trichloroethane; and (20) tris(2-chloroethyl) phosphate.

Evaluations”) and (2) to complete two manufacturer-requested risk evaluations⁴ (the “Manufacturer-Requested Risk Evaluations”) (collectively, the “Past Due Risk Evaluations”) within three years and six months of the date EPA initiated these risk evaluations.⁵

EPA’s failure to complete the Past Due Risk Evaluations by the statutory deadlines poses a significant threat to public health and deprives communities across the country of the protections Congress guaranteed them in the amended TSCA. The High-Priority Risk Evaluations are being conducted on highly toxic chemicals that EPA itself has determined “may present an unreasonable risk of injury to health or the environment.”⁶ Many of these chemicals, such as formaldehyde and 1,3-butadiene, can cause cancer and other serious health harms and are released in very high volumes in communities across the country, including in communities where members of the signatory organizations live and work. Further, several of the Past Due Risk Evaluations are focused on chemicals found in widely used consumer products and are linked to reproductive harm and harm to the developing brain. Because EPA’s management of these chemicals’ risks takes place *after* the completion of the risk evaluations, EPA’s delay means these chemicals will remain unregulated and will continue to harm communities.⁷

Accordingly, CIDA, Learning Disabilities Association of America, Louisiana Environmental Action Network, t.e.j.a.s., and the Sierra Club are prepared to file suit in sixty days against EPA and Administrator Regan, in your official capacity, for failure to timely complete the twenty-two Past Due Risk Evaluations as required under TSCA section 6(b)(4)(G).⁸ EPA’s failure to complete the Past Due Risk Evaluations by the deadlines set in section 6(b)(4)(G) constitutes a failure to perform nondiscretionary duties within the meaning of TSCA’s citizen suit provision.⁹

⁴ The overdue manufacturer-requested risk evaluations are for di-isodecyl phthalate and di-isononyl phthalate. Di-isodecyl Phthalate (DIDP); Final Scope of the Risk Evaluation To Be Conducted Under the Toxic Substances Control Act (TSCA); Notice of Availability, 86 Fed. Reg. 48,695, 48,695 (Aug. 31, 2021) (explaining that EPA initiated DIDP risk evaluation on January 2, 2020); Di-isononyl Phthalate (DINP); Final Scope of the Risk Evaluation to Be Conducted Under the Toxic Substances Control Act (TSCA); Notice of Availability, 86 Fed. Reg. 48,693, 48,694 (Aug. 31, 2021) (explaining that EPA initiated DINP risk evaluation on January 2, 2020); *see also* Letter from Jeffery T. Morris, EPA, to Eileen Conneely, Am. Chem. Council, (Dec. 2, 2019), <https://www.regulations.gov/document/EPA-HQ-OPPT-2018-0435-0011> (granting manufacturer request for risk evaluation of DIDP); Letter from Jeffery T. Morris, EPA, to Eileen Conneely, Am. Chem. Council (Dec. 2, 2019), <https://www.regulations.gov/document/EPA-HQ-OPPT-2018-0436-0012> (granting manufacturer request for risk evaluation of DINP).

⁵ 15 U.S.C. § 2605(b)(4)(G).

⁶ *Id.* § 2605(b)(1)(B)(i).

⁷ *Id.* § 2605(a).

⁸ *Id.* § 2605(b)(4)(G).

⁹ *Id.* § 2619(a)(2).

I. The Toxic Substances Control Act

Congress enacted TSCA to “prevent unreasonable risks of injury to health or the environment associated with the manufacture, processing, distribution in commerce, use, or disposal of chemical substances.”¹⁰ While other federal environmental laws focus on regulating pollution from specific environmental media, such as air or water, Congress recognized that none gave EPA authority to “look comprehensively” at the risks of a chemical “in total.”¹¹ TSCA was developed as a vehicle to achieve this comprehensive review and regulation.

TSCA establishes a multi-step process for evaluating and managing the health and environmental risks posed by toxic chemicals.¹² The initial step in this review process is the prioritization of chemicals for risk evaluation.¹³ By December 22, 2019, EPA was required to initiate risk evaluations for at least twenty chemical substances designated as high-priority substances—*i.e.*, “chemical substance[s] that . . . without consideration of costs or other nonrisk factors, may present an unreasonable risk of injury to health or the environment.”¹⁴ “EPA’s general objective” when selecting these high-priority substances is to select chemicals “with the greatest hazard and exposure potential first.”¹⁵

Once EPA designates chemicals as “high-priority,” it must initiate risk evaluations for each chemical substance.¹⁶ When conducting these risk evaluations, EPA must determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, “including an unreasonable risk to a potentially exposed or susceptible subpopulation” such as workers, children, or people living near the fenceline of polluting facilities.¹⁷ EPA must complete each risk evaluation within three years and six months from the date the Agency initiates the risk evaluation.¹⁸ If EPA determines that a chemical presents unreasonable risk, EPA must regulate the chemical “to the extent necessary so that the chemical substance . . . no longer presents such risk.”¹⁹

In addition to the high-priority chemicals review process, TSCA also allows chemical manufacturers to request EPA conduct a risk evaluation for a chemical substance.²⁰ If EPA

¹⁰ S. Rep. No. 94-698, at 1 (Mar. 16, 1976).

¹¹ *Id.* at 2.

¹² *See* 15 U.S.C. § 2605.

¹³ *Id.* § 2605(b)(1)–(2).

¹⁴ *Id.* § 2605(b)(1)(B)(i);(b)(3)(A).

¹⁵ 40 C.F.R. § 702.5(a).

¹⁶ 15 U.S.C. § 2605(b)(3)(A).

¹⁷ *Id.* § 2605(b)(4)(A); *id.* § 2602(12).

¹⁸ *Id.* § 2605(b)(4)(G); *see also* 40 C.F.R. § 702.49(b)(2) (“The total time elapsed between initiation of the risk evaluation and completion of the risk evaluation may not exceed 3 and one half years.”).

¹⁹ 15 U.S.C. § 2605(a).

²⁰ *Id.* § 2605(b)(4)(C)(ii); 40 C.F.R. § 702.37.

grants a manufacturer's request for a risk evaluation, this evaluation must also be completed within three years and six months from the date the Agency initiates the risk evaluation.²¹

II. The Past Due Risk Evaluations

EPA has failed to meet the statutory deadlines for completing twenty-two pending TSCA risk evaluations. These violations are detailed below.

(a) The High-Priority Chemicals Risk Evaluations

On December 20, 2019, EPA initiated the risk evaluations for twenty high-priority chemicals.²² Under TSCA, EPA was required to complete its final risk evaluations for these high-priority chemicals no later than three years and six months after initiating the evaluations.²³ As such, the deadline to complete the risk evaluations for these chemicals was June 20, 2023. As of the date of this notice, EPA has not completed even the *draft* risk evaluation for any of the high-priority chemicals, much less the final risk evaluations for which the deadline has already passed. EPA's own regulations establish that the Agency will not be completing the Past Due Risk Evaluations imminently, as they require the Agency to publish a draft risk evaluation and provide at least sixty days for public comment, after which EPA must consider and respond to the comments it receives prior to finalizing a risk evaluation for publication.²⁴ None of these actions has been taken.

(b) The Manufacturer-Requested Risk Evaluations

On May 24, 2019, ExxonMobil Chemical Company, through the American Chemistry Council's High Phthalates Council, requested that EPA conduct a risk evaluation for di-isodecyl phthalate ("DIDP"), a toxic phthalate widely used in consumer and commercial products and industrial applications.²⁵ EPA granted this request and initiated the risk evaluation process for DIDP on January 2, 2020.²⁶ EPA was obligated to complete its final risk evaluation for DIDP by July 2, 2023.²⁷

²¹ 15 U.S.C. § 2605(b)(4)(G).

²² 84 Fed. Reg. at 71,924 ("[T]he designation of these chemical substances as high-priority substances constitutes the initiation of the risk evaluations on the substances. . . . The designations of High-Priority Substances for risk evaluation in this notice are effective December 20, 2019.").

²³ 15 U.S.C. § 2605(b)(4)(G).

²⁴ 40 C.F.R. § 702.49(a).

²⁵ Di-isodecyl Phthalate (DIDP); Manufacturer Request for Risk Evaluation Under the Toxic Substances Control Act (TSCA); Notice of Availability and Request for Comments, 84 Fed. Reg. 42,914, 42,914–95 (Aug. 19, 2019).

²⁶ 86 Fed. Reg. at 48,695.

²⁷ 15 U.S.C. § 2605(b)(4)(G).

Also on May 24, 2019, ExxonMobil Chemical Company, Evonik Corporation, and Teknor Apex, through the American Chemistry Council's High Phthalates Council, requested EPA conduct a risk evaluation for di-isononyl phthalate ("DINP"), a toxic phthalate used as a plasticizer and paint additive in consumer and commercial products and industrial applications.²⁸ The Agency granted this request as well and initiated the risk evaluation process for DINP on January 2, 2020.²⁹ As with DIDP, EPA was obligated to complete its final risk evaluation for DINP by July 2, 2023.³⁰

As with the High-Priority Chemical risk evaluations, EPA has also failed to release even a *draft* risk evaluation for either DIDP or DINP, let alone the final risk evaluations which are now past due.

III. EPA's Failure to Complete the Past Due Risk Evaluations by the Statutory Deadlines Is Unlawful and Threatens Human Health

EPA's failure to complete the Past Due Risk Evaluations within three years and six months of initiation violates TSCA and prolongs communities' exposure to toxic chemicals.

TSCA sets a mandatory timeframe in which EPA must complete risk evaluations.³¹ Adherence to this statutory timeframe is critical as the chemicals subject to the Past Due Risk Evaluations are both highly toxic and produced and used in high volumes, including in communities threatened by substantial co-exposures to multiple toxic chemicals.

Exacerbating this issue, many of these chemicals are manufactured and used in, and released from, facilities clustered close together *in the same communities*.³² For example, the residents of Port Arthur, Texas live among facilities releasing large volumes of 1,3-butadiene and formaldehyde, which are both carcinogens with Past Due Risk Evaluations, as well as p-dichlorobenzene. In communities along the Houston Ship Channel, facilities report manufacturing, importing, and/or releasing at least *eleven* of the chemicals with Past Due Risk Evaluations: (1) DEHP; (2) DINP; (3) 1,3-butadiene; (4) HHCB; (5) formaldehyde; (6) phthalic anhydride; (7) dibutyl phthalate; (8) 1,2-dichloroethane; (9) 1,1,2-trichloroethane; (10) ethylene dibromide; and (11) p-dichlorobenzene. Multiple communities located in Cancer Alley, the area along the Mississippi River between Baton Rouge and New Orleans, Louisiana where many petrochemical facilities and refineries are located, are also exposed to many of these chemicals, including Geismar, Louisiana, where community members are exposed to at least the following *eight* high-priority chemicals: (1) 1,2-dichloroethane; (2) 1,1,2-trichloroethane; (3) 1,2-dichloropropane; (4) 1,1-dichloroethane; (5) dibutyl phthalate; (6) formaldehyde; (7) 1,3-

²⁸ Di-isononyl Phthalate (DINP); Manufacturer Request for Risk Evaluation Under the Toxic Substances Control Act (TSCA); Notice of Availability and Request for Comments, 84 Fed. Reg. 42,912-02, 42,912-93 (Aug. 19, 2019).

²⁹ 86 Fed. Reg. at 48,694.

³⁰ 15 U.S.C. § 2605(b)(4)(G).

³¹ *Id.*

³² The chemical exposure information cited in this letter is based on 2019–2021 Toxics Release Inventory data, 2020 Chemical Data Reporting rule data, 2020 National Emissions Inventory data, and 2021 Discharge Monitoring Reports.

butadiene; and (8) p-dichlorobenzene. These community members are subject to cumulative risks arising from exposure to these chemicals, in addition to other toxic chemicals released in their communities and non-chemical stressors (such as economic insecurity and racial discrimination) that exacerbate the harm. EPA's delay in completing the Past Due Risk Evaluations is at odds with the Agency's duty and stated commitment to address environmental injustice in fenceline communities such as these.

Further, the wide variety of consumer products that contain these toxic chemicals (from air fresheners to printer ink) continuously threaten the health of the public, particularly higher risk groups like children in critical stages of development. Because risk evaluations are a prerequisite to risk management regulations, EPA's delay means fenceline communities, young children in sensitive stages of development, and other higher-risk groups will continue to be exposed to the highly toxic chemicals EPA is evaluating without rules to manage those risks on the horizon.

* * *

EPA's failure to complete the Past Due Risk Evaluations within three years and six months violates TSCA and harms communities across the country—including those that are disproportionately exposed to and affected by these chemicals who desperately need EPA to swiftly regulate them. This delay deeply concerns the signatory organizations whose members are exposed to the toxic chemicals that EPA has failed to review in a timely manner. Accordingly, the below-listed organizations are prepared to bring suit within sixty (60) days of your receipt of this letter:

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Port Arthur, TX 77640
409-498-1088

Learning Disabilities Association of America
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Suite 224B
Allison Park, PA 15101
412-341-1515

Louisiana Environmental Action Network
P.O. Box 66323
Baton Rouge, LA 70896
225-922-9247

Texas Environmental Justice Advocacy Services
900 Wayside Drive
Houston, Texas 77011
713-371-7721

Sierra Club
2101 Webster Street
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Oakland, California 94612
415-977-5500

If you would like to discuss the legal violations addressed in this letter, please contact us using the information below.

Respectfully submitted,

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