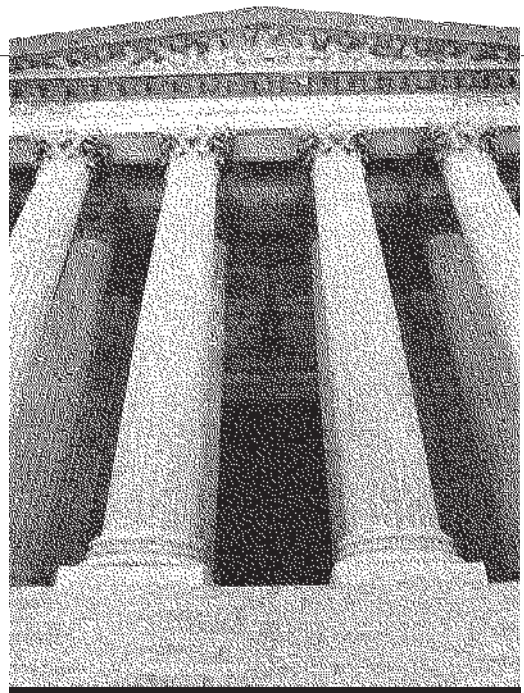

THE DEBATE

The New Toxic Substances Control Act Is Now Five Years Old: A Report Card

JUNE 22 of this year will mark the fifth anniversary since President Obama signed the Frank R. Lautenberg Chemical Safety for the 21st Century Act. Popularly still known by the name of the 40-year-old statute it replaced, the new version of the Toxic Substances Control Act had a vision to follow in reforming a system for evaluating and regulating chemicals in commerce that everyone, from industry to green NGOs to government officials, agreed was weak and ineffective. The new TSCA, promising to fix a broken statute, received bipartisan support and was the first major environmental law in a quarter century.

In assembling a panel to give a report card on implementation of the law on its fifth anniversary, we noted a recent article in *E&E News*:

"A withering new report from one of the country's leading science authorities faults EPA's approach to chemical risk evaluations under the Trump administration — a process the Biden EPA has already pledged to overhaul.

"In an assessment released today, the National Academies of Sciences, Engineering, and Medicine said EPA should make changes to how its toxics office manages the systematic review process under the Toxic Substances Control Act. The study determined EPA fell short in all four areas it scrutinized — comprehensiveness, workability, objectivity, and transparency."

This begets a question, one especially important because the "new" TSCA is now five years old: How well has TSCA been implemented to date? Given what we've seen of the rollout so far, what needs to be improved to realize the goals of the late Senator Lautenberg in pushing this legislation for so many years?

As a note, the *Forum* invited a representative from EPA's toxics office to participate in this DEBATE, but through a spokesman the agency declined, citing a need to study the issue once leadership is confirmed.

"The hard part has been interpreting and implementing critical aspects of TSCA's unrelenting deadlines"

Lynn L. Bergeson
Managing partner
Bergeson & Campbell, PC.

"EPA must make reversing the dismal failures of the past four years a top priority"

Richard A. Denison
Lead Senior Scientist, Health Program
Environmental Defense Fund

"Implementing the new TSCA has been an opportunity squandered with total impunity"

Penelope A. Fenner-Crisp
Independent Consultant
Environmental Protection Network

"The Trump EPA ignored the plight of populations most likely to be harmed by toxic exposures"

Eve C. Gartner
Managing Attorney
Toxic Exposure & Health Program
Earthjustice

"A seeming consensus masked different motivations for fixing TSCA and conflicting visions for the statute"

Bob Sussman
Principal
Sussman & Associates

"Industry will benefit if this administration implements the act to protect health in a collaborative way"

Jean Warshaw
Author
Guide to the Toxic Substances Control Act

It Is a Mixed Bag, but We Are Getting There

By Lynn L. Bergeson

By any measure, the 2016 Toxic Substances Control Act amendments were, to use the vernacular of the day, a BFD. TSCA unquestionably needed a makeover, and a bipartisan Congress worked hard to reform our chemical control law to remedy historic structural failings that, by all accounts, needed urgent attention.

Five years later, it is clear that was the easy part. The hard part has been interpreting and implementing critical aspects of TSCA's unrelenting deadlines. It is beyond the scope of this writing to describe the complexity of the tasks Congress mandated EPA to complete. Those of us who practice extensively in the chemicals space appreciate the "near mission impossible" nature of Congress's ask. The agency has likened its effort to building an airplane while in flight, an apt simile in our view. As hard as EPA has worked, however, and under uniquely challenging circumstances, implementation efforts to date are a mixed bag.

First, the successes. Despite diminished staff, resources, and morale, EPA has largely met most of the deadlines imposed under the law. EPA timely issued the framework rules, completed most of the Section 6 risk evaluations, and timely issued the persistent, bioaccumulative, and toxic chemical rules, among other accomplishments. This was not easy, and EPA has done well.

The Office of Pollution Prevention and Toxics' organizational integrity has improved since the amendments were enacted. OPPT's new structure leverages better the skills and resources needed to undertake the amount and type of work required to meet Congress's expectations.

The new chemicals review program under TSCA Section 5 is more transparent than it was pre-Lautenberg. There are fewer opportunities to claim Confidential Business Information, the CBI claims substantiation process is more robust, and EPA is now required to issue and make available a report on its new chemicals decisions. Formidable challenges remain and, as discussed below, the new chemicals bias persists in ways that seemingly impede "unduly" and create "unnecessary economic barriers to technological innovation" contrary to TSCA Section 2(b)(3).

EPA's approach to risk evaluation under TSCA Section 6, while a work in progress, has identified conditions of existing chemical use that EPA believes pose unreasonable risks for the first set of ten chemicals. EPA's implementation of TSCA has launched a regulatory process that will eliminate those risks. Detractors express concern with "delays" implementing these risk mitigation measures, but the law provides for one year to propose and another year to promulgate risk management rules (and certain extensions are available).

Whether new TSCA, as implemented, has restored the public's confidence in EPA's ability to ensure the safety of industrial chemicals in commerce, a key congressional goal, is hard to answer. The question may be premature. Given all our distractions, including the pandemic and extreme weather events, chemical safety may now be less urgent than other, existential threats to life. On balance, EPA's implementation of TSCA has raised the profile of industrial-chemical safety and enhanced the chemical value chain's awareness of TSCA and its expanding application to certain articles, all for the good.

Now, the less successful aspects of EPA's implementation. The agency's implementation of Section 6 is flawed. This is less an opinion than it is a judicial conclusion — see *Safer Chemicals v. EPA*, decided two years ago by the Ninth Circuit. The most prominent concerns relate to EPA's exclusion of legacy uses of asbestos and its limited consideration of "potentially exposed or sensitive subpopulations" in the risk evaluation process.

While that process routinely considers chemical exposures to infants and workers, it does not consistently consider exposures to the public, including exposures to chemicals regulated by other federal laws. Aligning the risk evaluation process with the plain text of the law and the Biden administration's commitment to eliminating environmental injustices will focus intensely on these deficiencies, but how to resolve them is unclear. Fixes are neither easy nor self-evident, especially with regard to the 10 completed risk evaluations.

As alluded to above, while EPA's implementation of Section 5 has improved the transparency of the review process, other aspects of Section 5 implementation have been decidedly less successful. Since January 2021, EPA has completed only 10 premanufacture determinations, as compared with an average of 15 to 30 per month in recent years and over 75 per month pre-Lautenberg. The review process is badly broken, unpredictable, and unwelcoming to chemical innovators. EPA's March 29 "updates" to the new chemicals program are guaranteed to impede chemical innovation all the more. For an economy desperate to green itself as quickly as possible, the new chemicals review process is itself not sustainable.

EPA should consider initiating a stakeholder dialogue to identify creative and efficient solutions to TSCA's most pressing problems. We are still relatively early on in the implementation process, and there is much good work on which to build to ensure TSCA is all that Congress, and other stakeholders, intend it to be.

Lynn Bergeson is managing partner at Bergeson & Campbell, PC.

Reversing New Chemicals Program a Priority

By Richard A. Denison

As with so much else these past four years, implementation of the 2016 reforms to the Toxic Substances Control Act was not normal.

Despite bipartisan support for TSCA's overhaul and the chemical industry's acknowledgment that it needed a stronger federal system to restore public confidence in its products, this progress evaporated virtually overnight with the ascendance of the most anti-environmental and anti-public health administration in our lifetimes.

Nowhere was this more apparent than in the Trump EPA's systematic undermining of the new TSCA's enhancements of safety reviews for the hundreds of new chemicals entering commerce each year. The chemical industry, its army of law firms, and its political plants inside EPA went for broke.

EPA's initial lawful, health-protective implementation led, as expected, to many more new chemicals being subjected to orders and required testing — which the law requires when a new chemical is found to present concerns or lack adequate safety information. But industry used its clout with then Administrator Scott Pruitt to implement policy changes that flouted the law and rendered such orders and testing rare.

In 2019, EPA's "Working Approach" restricted safety reviews to companies' intended uses of new chemicals. That review excluded reasonably foreseen uses TSCA explicitly requires be concurrently evaluated. While the agency has sometimes required companies to notify EPA before starting a reasonably foreseen use, any ensuing review was separate from the first review and hence did not consider the combined impact. Moreover, EPA so narrowly defined what it would consider reasonably foreseen that the agency must effectively prove such a use is highly likely to occur.

These changes serve to break up the review of a new chemical into small pieces, increasing the likelihood it will be deemed safe — but frustrating Congress's intent that EPA conduct comprehensive reviews that anticipate the multiple ways chemicals can be used and cause exposure. The changes allowed EPA to approve — without any conditions or testing — nearly three quarters of the 600-plus chemicals subsequently reviewed.

EPA instituted other measures to gut protections for workers, who are on the front lines of new chemical exposures. In 2017, the industry's New Chemicals Coalition demanded that EPA stop imposing workplace restrictions on new chemicals even when significant worker risks were identified, and instead simply forward the concern to the resource- and authority-strapped Occupational Safety and Health Administration.

I thought it unlikely this extreme position would gain traction at EPA. After all, TSCA expressly identifies workers as facing greater risk than the public, requiring the agency to ensure they are protected from chemical risks. Instead, the Trump EPA more than granted industry's wish: it dismissed any worker risk the agency identified by asserting workers will protect themselves by donning personal protective equipment, despite no requirement their employers even provide such equipment. No pesky referral to OSHA either.

This approach — which EPA also adopted in all 10 of its risk evaluations of existing chemicals — became rampant for new substances. Of the 400-plus new chemicals cleared for unfettered market access under the Trump EPA's policies, the agency found nearly 80 percent posed risks to workers – but cleared them anyway by asserting PPE use. Our close examination of several dozen such decisions revealed that the risks EPA dismissed — which should have triggered issuance of an order — exceeded its own benchmarks by 32-fold, on average.

Meanwhile, EPA approval of "low-volume exemptions" proliferated, providing companies with a path of even less resistance for getting new chemicals approved. By agreeing to a production limit, companies get an expedited 30-day review. Since the new policies came in, EPA granted nearly 600 LVEs; only 4 were denied, with 48 withdrawn. LVEs have been used in particular for PFAS, highly persistent and often toxic chemicals that contaminate most Americans' blood. Over the past year, EPA received several dozen LVEs for PFAS. While claiming it was acting aggressively to rein in PFAS, the agency approved two thirds of these, with decisions on the remainder pending.

Finally, despite some efforts to comply with its own regulations regarding public access to information on new chemicals, EPA scaled back transparency in key respects. The agency stopped informing the public when its initial review of a new chemical raised concerns. EPA recently stopped providing public access to new chemical orders it has issued. Most recently, our FOIA request turned up extensive evidence of collusion on new chemicals between EPA political appointees and industry.

Clearly the Biden EPA is inheriting a hot mess. It should immediately rescind the illegal Working Approach; issue binding orders whenever worker risks are identified; halt approval of new PFAS and abuse of the LVE process; and commit to full transparency by providing timely access to robust information on new chemicals and agency decisions concerning them.

TSCA reform yielded long-needed improvements in this core component of our nation's chemical safety system. EPA must make reversing the dismal failures of the past four years a top priority.

Richard A. Denison is lead senior scientist for Environmental Defense Fund's Health Program. Web site is at http://blogs.edf.org/health/.

An Opportunity Squandered With Total Impunity

By Penelope Fenner-Crisp

The headline above sums up the Trump administration's implementation of the new Toxic Substances Control Act. While the law made some modifications to the process for evaluating new chemicals prior to their introduction into commerce, the most significant changes were to EPA's review of existing chemicals.

The new statute streamlines the process for requesting new data from the regulated community, lowering the burden of proof for identifying potential risk and replacing rulemaking with test orders. The law creates a three-step process: priority setting, risk evaluation, and risk management. The law carefully separates risk evaluation, which determines whether or not a chemical poses an "unreasonable risk," and risk management. An "unreasonable risk" finding then obliges the agency to consider non-risk factors when selecting risk management options.

So, what grade does the previous administration earn for implementing this new existing chemicals program? In my view, a big, fat "F." Here's why.

The rules for prioritization and risk evaluation were proposed in mid-January 2017 and finalized after the Trump administration took office. By then, the promise of transformation into a majestic blue spruce looked more like Charlie Brown's woeful Christmas tree, with drooping branches bereft of needles.

This shift was not immediately apparent but unfolded as the agency released draft risk evaluations for the first 10 chemicals for review and comment. Detailed scrutiny revealed what had been stripped from the tree, disclosing the agency's moves to identify as few scenarios as possible that presented an unreasonable risk.

The Environmental Protection Network (and many others) submitted comments on these drafts, as did the agency's own external Science Advisory Committee on Chemicals. These comments identified missing and flawed information and analysis.

Among the most significant blunders was the use of an unvetted, ill-conceived systematic review process for study identification, selection, grading, and evaluation.

The draft risk evaluations excluded some existing and all legacy conditions of use from evaluation. EPA failed to employ Section 4 of the law to require chemical sponsors to fill critical data gaps. Furthermore, the agency did not account for these data deficiencies when deriving benchmark margins of exposure, a key metric in the determination of unreasonable risk.

Other deficiencies led to underestimation of risks to workers, consumers, and bystanders. The agency refused to incorporate ambient environmental exposures into the consumer/bystander evaluations or to aggregate inhalation, dermal, and oral exposures in any evaluation. EPA further relied on misguided assumptions in its occupational risk determinations, claiming workers would use personal protective equipment. But the agency had little assurance that companies provide PPE routinely to workers, that the equipment fits properly, and that it was worn throughout the work shift.

Finally, not all risk evaluations included detailed, specific findings for susceptible or higher-risk subpopulations (e.g., children, pregnant women, those with significant health conditions), as mandated in the law.

In a final act of disregard, the Trump EPA scheduled the scientific peer reviews of the draft evaluations during, rather than after, the public review and comment period. This deprived the SACC's independent expert reviewers of valuable insights for their consideration.

The final risk evaluations for the 10 chemicals were released in late 2020 and early January 2021. But the agency repaired none of the flaws in response to public input. Furthermore, it pursued no risk mitigation measures in which the agency identified significant acute risks of concern. EPA brushed off requests to immediately propose and promulgate rules under Section 6(a) and use its authority under Section 6(d) to expedite their effective dates.

To add insult to injury, rules proposed on three chemicals prior to January 2017 gathered dust for four years, only to be wiped off the agency's regulatory agenda in late December 2020, forcing EPA to start the rulemaking process all over again.

So, how can the agency rectify this ignominious implementation of the new TSCA program for existing chemicals? The good news is that the Biden administration has already expressed its commitment to review and overhaul it. I believe it can be done without having to revise the rules that govern prioritization and risk evaluation. The Ninth Circuit has held that exclusion of legacy uses and associated disposal contradicts TSCA's plain language and, therefore, they will be evaluated.

The recent report from the National Academy of Sciences made it clear that the systematic review guidance requires significant modification and consistency of approach across the agency. In a recent letter to EPA, the Environmental Protection Network recommended a path forward, using Section 4 of the law, to fill critical data gaps without compromising mandated timelines. Proper coordination of peer review and public comment can occur through better planning and time management. The other flaws can be fixed by revising internal risk assessment guidance and practices.

Let's hope, in the end, that Charlie Brown's tree will be reincarnated as a blue spruce, after all.

Penelope A. Fenner-Crisp is an independent consultant working with the Environmental Protection Network. She is a former division director in EPA's Office of Pollution Prevention and Toxics.

Failing the People Most Likely to Be Harmed

By Eve C. Gartner

Twenty times the Toxic Substances Control Act commands EPA to take into account "potentially exposed or susceptible subpopulations" — groups at greater risk of harm from chemicals because they are more exposed or more susceptible or both. But the Trump EPA did not get the message.

Or, more likely, it simply chose to ignore that some subpopulations — often Black, Indigenous, and other people of color — suffer disproportionate harm from chemical exposure. This can be because of where they live or work, or because they eat a subsistence diet involving contaminated fish or marine mammals, or because they have health problems that make them more susceptible.

The only way to protect these "greater risk" subpopulations, as Congress required, is to identify all of them and separately calculate the risks they face. Yet the Trump EPA finalized 10 risk evaluations — and finalized the "scope" documents for 20 more — and not a single one identified communities near polluting facilities as being a greater-risk subpopulation.

This is especially troubling because people living near high-volume chemical facilities have greater exposures than the general population — and higher rates of illness and disease. For example, Mossville, Louisiana, and surrounding towns, which are predominantly Black, are home to seven industrial facilities that manufacture, process, and dispose of chemicals that are now undergoing TSCA risk evaluation —and home to many other facilities that release chemicals not yet being reviewed.

The Mossville area is subjected to more than 36 percent of all U.S. environmental releases of TBBPA, a carcinogenic flame retardant whose risks EPA is currently evaluating under TSCA, and further bears the burden of receiving nearly 18 percent of national shipments of TBBPA waste. Yet the area accounts for only .06 percent of the national population.

A true analysis of greater-risk subpopulations requires consideration of cumulative impacts from exposure to multiple chemicals. People who live and work around industrial facilities are rarely exposed to one chemical in isolation; the Mossville area alone is subjected to 15 percent or more of the nation's environmental releases of four of the 20 high-priority chemicals undergoing TSCA review.

Moreover, different chemicals often affect the same bodily organs or systems, or have cumulative effects, such that exposure to one can leave a community more vulnerable to harm from another. If TSCA's directive to consider subpopulations at greater risk means anything, it must mean that frontline communities whose risks are many times higher than most should be designated "potentially exposed or susceptible" so their risks, including combined risks, can be considered — and, most importantly, managed — without dilution by general population risks. The Trump administration never attempted that analysis.

Even when the Trump EPA identified greater-risk subpopulations, it frequently ignored or understated the likelihood they would be harmed. For instance, the agency acknowledged that workers face greater exposures to, and risks from, each of the first 10 TSCA chemicals. But EPA improperly discounted those risks by assuming workers would protect themselves with personal protective equipment, and it completely ignored the risks to people who clean for a living, such as domestic workers and janitors, by assuming that no one uses cleaning products containing 1,4-dioxane, a known carcinogen, more than 30 minutes per day. EPA also found that nearly one in three people have a genetic condition that makes them more likely to develop cancer from methylene chloride exposure, but EPA didn't calculate that chemical's cancer risks based on this greater-risk subpopulation, ignoring its science advisory committee's recommendation.

To make matters worse, the Trump EPA also opted not to use its fact-gathering authority to obtain information about the extent to which communities are exposed to chemicals undergoing risk evaluation. These data gaps, which will take time to fill because studies and monitoring cannot happen overnight, threaten the credibility and reliability of the agency's TSCA risk evaluations. The primary data tool EPA uses to estimate chemical exposure is the Toxics Release Inventory. But more than 19 months after the Trump administration announced the first batch of high-priority chemicals to undergo risk evaluation, 30 percent of those are still not listed on the TRI. Nor has EPA required on-site monitoring of releases by major emitters, which is necessary since, as recent reports show, at least some are not accurately reporting the volume of carcinogens and other toxics they are releasing.

Given TSCA's mandate that EPA protect greater-risk subpopulations and consider risks in combination, coupled with the agency's authority to gather health and exposure data, the statute could be a major tool for combating environmental injustices for frontline communities, workers, and others at high risk. The Trump EPA undermined a core purpose of TSCA by systematically elevating chemical industry interests while ignoring the plight of populations most likely to be harmed by toxic exposures.

Eve C. Gartner is Earthjustice's managing attorney, toxic exposure and health program. She expresses her gratitude to her colleague Jon Kalmuss-Katz for his contributions to this article.

Five Years of Missed Opportunities

By Bob Sussman

Passage of the Lautenberg Chemical Safety Act in 2016 was a rare moment of bipartisan agreement in the increasingly fractured politics of environmental protection. Congress united around the simple proposition that the 1976 Toxic Substances Control Act was broken and regulation of unsafe chemicals had reached a dead end.

But this seeming consensus masked different motivations for fixing TSCA and conflicting visions of what a new law would accomplish. NGOs demanded action on a long list of chemicals that threatened health and the environment and wanted them removed from commerce or severely restricted without delay. Facing attacks on its products and operations, industry wanted to defuse public concerns about chemical safety by pointing to a more robust federal program and at the same time create a bulwark against activist states and NGOs.

Whether industry would actually put its products and profits at risk to earn public confidence was conveniently ignored, as Congress closed ranks to get the new law across the finish line.

Once TSCA took effect, however, conflicts immediately surfaced. The new law gave EPA broad authorities, but much depended on the willingness of the agency to implement them forcefully. With strong direction from the top, the new TSCA could produce tangible public health protection, but it was all too easy for weak leaders to create the illusion of progress by measuring success through bureaucratic activity (such as meeting statutory deadlines) rather than improvements in chemical safety.

Predictably, the Trump EPA opted for the appearance rather than the reality of chemical risk reduction, and the industry publicly touted the program's success — while working behind the scenes to protect its chemicals from meaningful regulation. For four years, the Trump EPA went through the motions of creating a functioning program while making questionable legal, scientific, and policy calls that favored industry at the expense of at-risk communities.

With new EPA leadership under President Biden, frustrated advocates have now called for reprioritizing EPA's public health mission over accommodation of industry. The starting point in building a better TSCA program is understanding where the Trump EPA went wrong, and how the tools in the new law can be used more effectively.

The central innovation of the Lautenberg Act is a requirement to conduct comprehensive risk evaluations of high-concern or high-exposure substances in order to identify unreasonable risks of injury, and then eliminate them using EPA's regulatory authority. Congress directed the agency to immediately begin work on evaluating 10 chemicals; completing these evaluations has been EPA's primary task over the last five years. All 10 have now been assessed and determined to present unreasonable risks of injury, confirming the central premise of TSCA reform that many widely used chemicals have been poorly assessed and inadequately controlled.

At the same time, EPA's independent Scientific Advisory Committee on Chemicals faulted the 10 evaluations for serious gaps and limitations and expressed concern that the agency was understating risks and overlooking vulnerable subpopulations which the law required it to protect. These flaws reflected unwise and often unlawful policy choices by the agency's political leadership that detracted from the hard work of many career scientists who toiled around the clock to complete the evaluations by management's deadlines.

One example is the failure of the evaluations to account for the presence of the 10 chemicals in air, surface water, drinking water, and waste. Carcinogens like methylene chloride and trichloroethylene are pervasive in the environment. Levels found in air and drinking water expose millions of people to elevated cancer risks. Large segments of the population are also exposed to these chemicals when using consumer products or during their jobs.

The overall cancer risk they face is a function of total exposure from multiple pathways. But this risk will be understated if the evaluation excludes important contributors to exposure and fails to aggregate exposures across pathways. The losers from this approach will be the subpopulations at greatest risk, people who live and work in communities with the highest exposures.

The agency has argued that it is unnecessary for TSCA to address the presence of unsafe chemicals in the environment because other laws perform this function. However, these laws are narrow in scope, provide less protection than TSCA, and in many cases have simply not addressed air emissions or drinking water contamination that endangers public health. TSCA is unique in its ability to provide a comprehensive picture of chemical risk across conditions of use and environmental media, and drive reductions in exposure that EPA's stovepipe environmental programs cannot achieve alone. This ability to evaluate and address chemical risks holistically should play a central role in the Biden EPA's efforts to revitalize the law.

Rebuilding the TSCA program will not be easy but must be a top priority of the EPA administrator.

Bob Sussman is principal of Sussman & Associates.

There Is Still No New Asbestos Ban

By Jean Warshaw

Implementing the new, reformed version of TSCA has been predictably slow. The statute incorporates long time frames, programs have been underfunded, and the Trump administration was not committed to environmental programs. As often happens, litigation over new rules and frameworks has brought uncertainty and implementation difficulties. The Biden administration is more committed to environmental progress, but funding may continue to be a roadblock.

The original Toxic Substances Control Act was passed over 40 years ago. EPA was empowered to restrict unreasonable risks primarily by analyzing existing data on chemicals before they were commercialized, and using industry-submitted reports on commercial chemicals. The statute had no comprehensive mechanism for reviewing 64,000 existing chemicals on the 1979 inventory of substances already in commerce. Notably, when EPA restricted asbestos — a deadly carcinogen — the Fifth Circuit cited statutory impediments when it overturned most of those restrictions in its 1991 decision *Corrosion Proof Fittings v. EPA*. That case brought new restrictions on existing chemicals to a halt.

Asbestos became a rallying cry for TSCA reform. In 2009, Representative Bobby L. Rush said, "If TSCA is incapable of providing EPA with the regulatory tools to ban asbestos, then the statutes seem to be in direct need of serious repair." The response was the 2016 Frank R. Lautenberg Chemical Safety for the 21st Century Act, which reformed TSCA. The Lautenberg Act gives EPA broad authorities for regulating asbestos and other chemicals.

Five years later, there are no new TSCA restrictions on asbestos. Last December, the agency published a risk evaluation finding that use of several products containing chrysotile asbestos presents unreasonable risks. EPA must address those risks, but the statutory deadline is December 2022 and compliance may be delayed until December 2027. Meanwhile, the agency did not evaluate five other forms of asbestos, legacy uses of asbestos and associated disposal, or consumer products with asbestos impurities, sidetracking regulation of these uses.

EPA issued a Significant New Use Rule requiring notifications 90 days before manufacturing or processing any type of asbestos for a novel application. Some sources assert this is a restriction on asbestos, but it is only a notification requirement. The agency may choose not to restrict a new use. Although many stakeholders are disappointed in EPA's omissions, the reform law does not require restrictions for another two years. This flaw in the statute can be remedied by an administration committed to exceeding the minimum requirements.

The Lautenberg Act process for evaluating commercialized chemicals is slow by design. If chemicals were evaluated at the pace required in the statute, it would take until 2028 to perform risk evaluations on the first 100 chemicals, and until 2040 to perform 120 more. For context, there are over 41,000 chemicals actively in commerce, and over 8,000 chemicals that are made or imported in volumes over 25,000 pounds per year (lower volumes if the chemical was proposed for or subject to specified restrictions). The agency has already missed statutory deadlines, and is on track to miss substantially more. Again, adequate funding and staffing would facilitate progress.

Industry functions most effectively when regulations are transparent, objective, and based on rigorous science. That depends on robust risk evaluations. EPA's drafts of the first risk evaluations under TSCA reform left regulated entities scrambling to backfill missing worker exposure data and update obsolete data. The agency's implementation of systematic review in risk evaluations has been criticized as not comprehensive, workable, objective, or transparent. While it is welcome news that the current administration will not rely on the prior interpretation of systematic review, the primary concern to industry is evaluations that meet those objectives, which can only be achieved with adequate resources.

Adequate resources and a commitment to communicating with industry would have eliminated problems in Lautenberg Act implementation, as shown by two examples. First, the act requires reporting chemicals that had been in commerce during 2006-2016. EPA says some companies did not understand that even if the agency knew a substance was actively in commerce, a firm had to report to maintain confidentiality claims, leaving some companies at risk of losing confidentiality protections. Second, the agency required notifications of making substances about to undergo risk evaluation so EPA could collect fees to support that endeavor. The agency's fee rule required payment even if the substance was an impurity.

A problem arose because formaldehyde was one of the subject chemicals, and it is generated by incomplete fuel combustion, which other branches of the EPA knew, so any person who burns fuel would have had to pay fees. The agency backtracked on its regulation but did not have time to amend the rule before the due date. A more collaborative process and outreach to industry and other EPA programs could have avoided these problems.

Industry will benefit if this administration implements the Lautenberg Act to protect health and the environment in a consistent, collaborative, and well-conceived way.

Jean Warshaw is a lawyer and author of *Guide to the Toxic Substances Control Act*, published by Matthew Bender.