

June 1, 2022

Dr. Michal Ilana Freedhoff

Assistant Administrator of the Office of Chemical Safety and Pollution Prevention

US Environmental Protection Agency

7101M

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Dear Dr. Freedhoff:

The American Chemistry Council (ACC) is misleading members of Congress and the public about the legal structures for worker protections from hazardous chemicals.

On May 10, the American Chemistry Council released their [State of TSCA Report: Fix Implementation Now Before It Is Too Late](#). The ACC report repeats the same claim this chemical industry trade association has used for years and used successfully during the Trump Administration: American workers don't need protections from unreasonable risks from chemicals under the Toxic Substances Control Act (TSCA) because OSHA rules and personal protective equipment (PPE) already fully protect them.

Background:

- According to US OSHA and WHO estimates, toxic chemical exposures in the workplace kill between 50,000 and 130,000 American women and men from occupational disease every year. This estimate is 10 to 26 times greater than the annual number of workers in the United States who die from occupational injuries.
- OSHA admits their failure to protect workers from chemical exposures on their own website. OSHA's inability to promulgate more than 31 chemical rules since 1970 is due in part to the lobbying actions of the American Chemistry Council to block rules and make the process more burdensome.
- Under the 2016 revision of the Toxic Substances Control Act, Congress named workers as a vulnerable subpopulation whose exposures EPA must assess and issue mitigation requirements to ensure they do not pose an unreasonable risk to workers.

At the urging of the chemical industry, EPA made some grave mistakes in assessing and controlling worker exposures under the Trump Administration. With this report and recent advocacy, ACC attempts to reinstate and double down on these myths in order to underestimate risk:

- Against long-standing industrial hygiene practices, measuring workplace exposures and assessing risk assuming that workers already had a protection factor from personal protective equipment. The correct approach is to measure occupational exposures to chemicals without any controls in place, and then use hazard controls to reduce exposures. Control measures should follow the hierarchy of controls with elimination, substitution and engineering controls used first and personal protective equipment used as a last resort.
- Wrongly assuming that workers already have either voluntary industry protection or OSHA protections and therefore regulation to reduce exposures under TSCA is not needed. Where OSHA does not have a permissible exposure limit (PEL) for a chemical, an employer is under no duty to control exposures unless it is deemed a recognized hazard under the OSH Act. But an unreasonable risk under TSCA is not necessarily a “hazard” under OSHA regulations. Of course, voluntary industry practices to control hazards are not consistent, not enforced and can be removed at any time.
- Inaccurately assuming that OSHA’s respiratory protection standard applies under TSCA. When promulgating the respiratory protection standards, OSHA rejected an approach that would rely on “available scientific information” outside of OSHA rules to apply the standard. Even if OSHA’s respiratory protection standard applied when EPA finds an unreasonable risk, that standard does not permit employers to place primary reliance on respirators to protect workers from toxic exposures. Instead, OSHA’s respiratory protection standard requires employers to implement the hierarchy of controls.
- Incorrectly assuming that the OSHA Hazard Communication Standard compels employers to implement the recommended controls listed on safety data sheets (SDS). In addition to there being no obligation to control hazards under this standard, the accuracy and consistency of SDS is questionable with studies finding that 36% or more of SDS and labels understate the danger to workers.
- Erroneously assuming that the OSHA General Duty Clause is widely used to cite employers for hazardous exposures to chemicals that OSHA has not regulated. Use of the General Duty Clause is very rare, not preventive—used only when workers are already sick or have died—and leaves workers at unreasonable risk from workplace chemical exposures.

These flawed policy decisions furthered during the prior Administration have been reversed as occupational health and safety experts and relevant federal agencies (OSHA and NIOSH) have worked with EPA to refine their risk assessment and risk management approaches for worker exposures. We cannot let ACC take us backwards by trying to force on EPA the approaches taken by the previous Administration that would fail to protect workers from hazardous chemicals on the job and that would undermine worker safety protections at OSHA.

Workers lives are at stake. We urge you to reject proposals from the chemical industry that would undermine workplace safety by skewing measurement data, misinterpreting OSHA requirements, and relying on voluntary measures.

Respectfully,

AFL-CIO

American Federation of Teachers

Arts, Crafts & Theater Safety

Association of Flight Attendants, CWA

BlueGreen Alliance

Communication Workers of America (CWA)

Environmental Defense Fund (EDF)

Green America

International Chemical Workers Union

International Union, UAW

Laborers' Health and Safety Fund of North America

Maine Labor Group on Health

Moms Clean Air Force

National Black Worker Center

National Nurses United

Occupational And Environmental Health Network India

SafeWork Washington

Selikoff Fund for Occupational and Environmental Cancer Research

United Steelworkers (USW)

Utility Workers Union of America

Nicholas A. Ashford
Professor of Technology and Policy
Massachusetts Institute of Technology
Boston, MA

Ellie Barbaresh
Certified Professional Environmental Auditor
Philadelphia PA

Debbie Berkowitz
Former OSHA Chief of Staff and Senior Policy Advisor
Bethesda MD

William S. Beckett MD. MPH
Cambridge MA

Linda S. Birnbaum
Scholar in Residence
Duke University
Chapel Hill NC

Lundy Braun
Professor of Africana Studies and Pathology and Laboratory Medicine
Brown University
Cranston RI

James Brophy, PhD
Environmental Researcher
Morpeth ON

Carl F. Cranor
Distinguished Professor of Philosophy and Faculty Member Environmental Toxicology
University of California, Riverside
Riverside CA

Miriam L Diamond
Professor
University of Toronto

Toronto ON

Tom Duffy
United Steelworkers Health, Safety and Environment
Pittsburgh PA

Alice Freund
Industrial Hygienist, Science Teacher
Montclair NJ

David Foust
University Teacher
Guadalajara, Jalisco, MX

Kenneth Geiser, PhD
Distinguished University Professor Emeritus
University of Massachusetts Lowell
Somerville MA

Frances I. Gilmore
Certified Industrial Hygienist (retired)
Wyndmoor PA

Joseph T Hughes Jr. MPH
Chapel Hill NC

Peter F. Infante DrPH., FACE
Former Director, Office of Carcinogen Identification and
Classification and Office of Standards Review
OSHA Directorate of Health Standards 1978-2002
Falls Church VA

Sharon Itaya, MD, MPH
Austin TX

Bill Kojola
Industrial Hygienist
Silver Spring MD

Wolf Mehling, MD
Professor, UCSF
San Francisco CA

David Michaels, PhD, MPH
Professor

George Washington University School of Public Health,
Former Assistant Secretary of Labor for OSHA (2009-2017)
Washington DC

Celeste Monforton, Dr.PH, MPH
Lecturer, Public Health
San Marcos TX

Karen B. Mulloy, DO, MSCH
Associate Professor
Case Western Reserve University
Cleveland OH

Gilbert S. Omenn, MD, PhD
Distinguished University Professor
University of Michigan
Ann Arbor MI

Peter Orris, MD, MPH, FACP, FACOEM
Professor & Senior Attending Physician
University of Illinois School of Public Health
Chicago IL

Laura Punnett, Sc.D.
Professor
University of Massachusetts Lowell
Lowell MA

Kathleen Rest, PhD, MPA
Senior Fellow
BU Institute for Sustainable Energy
Boston MA

Jordan S. Rinker MD, MPH
Occupational Medicine Medical Consultant and Clinical Professor of Medicine
UCSF
Corte Madera CA

Michael Silverstein MD MPH
Retired Director
Washington State OSHA
Lacey WA

Craig Slatin, ScD, MPH
Professor Emeritus

University of Massachusetts Lowell, Department of Public Health
Medford MA

Ted Smith
Coordinator
International Campaign for Responsible Technology (ICRT)
San Jose CA

Rosemary Sokas
Professor of Human Science and of Family Medicine
Georgetown University
Silver Spring MD

Mitch Steiger
Sacramento CA

Patricia Tropa, PhD
Uberlândia Brazil

Dorothy Wigmore
Occupational Hygienist
Kingston ON

Weyman Wong MD
Foster City CA