

CHAPTER THREE

PFAS, TSCA AND CHEMICAL TESTING (pages 225-228)

In an op-ed in The Hill on July 30, 2021 a top environmental scientist and two high-level EPA officials (Linda Birnbaum, Betsy Sutherland and Robert Sussman) argue that EPA should use TSCA to regulate PFAS as a class. They argue:

“What the agency should not do is address the PFAS chemicals one at a time. There are 9,252 PFAS chemicals on EPA’s Master List of PFAS; regulating them individually would take forever. Thus, we and others propose that EPA approach PFAS regulation with a class-based approach. The goal should be to eliminate all except essential or critical PFAS uses in order to prevent their continuing buildup in people and the environment. If we continue to produce and use PFAS for which we have replacements, the result will be more unnecessary contamination and avoidable harm to health. This will add hundreds of millions — if not billions — of dollars to the costs we are now incurring for PFAS-related cleanup and medical care.

The federal Toxic Substances Control Act (TSCA) gives EPA the tools for a class-based approach. TSCA authorizes EPA to treat chemicals as a ‘category’ if they are ‘similar in molecular structure, in physical, chemical or biological properties, or in mode of entrance into the human body or into the environment.’ Using this authority, EPA can define all existing PFAS chemicals, including byproducts and transformation products, as a ‘category’ and restrict or ban their uses if the category is determined to pose an unreasonable risk of injury to health or the environment.

PFAS chemicals meet these criteria because of their similarities in persistence, mobility, and toxicity and the potential for all PFAS to cause the same adverse effects as well-characterized compounds such as PFOA and PFOS. The determination of unreasonable risk can be based on available data for representative PFAS, which can then be applied to other chemicals in the category that have common characteristics and similar conditions of use, exposure and environmental release.

Because it takes at least seven years under TSCA for EPA to impose use restrictions on chemicals, the most efficient approach would be for EPA to define all existing PFAS as a single category. That’s what Maine did in adopting a state law to ban all intentionally added PFAS in products unless the use is deemed unavoidable.”

Birnbaum & Sussman, EPA Must Protect Public Health by Regulating PFAS as a Class,” The Hill, Jul 30, 2021, <https://thehill.com/opinion/energy-environment/565528-epa-must-protect-public-health-by-regulating-pfas-as-a-class>