

Charlotte Bertrand
Deputy Assistant Administrator for Programs
US Environmental Protection Agency
Washington DC 20460

May 2, 2019

Dear Ms. Bertrand:

We are writing in response to your letter of August 27, 2018 in which you denied our request under section 14 (d)(3) of the Toxic Substances Control Act (TSCA) to disclose the confidential identities of 41 chemicals used in drilling and fracking for oil and natural gas. In our request to disclose these identities, submitted November 15, 2017, we noted that EPA had found health concerns about each of these chemicals in reviews under TSCA, yet allowed the chemicals to be used in oil and gas wells, in most cases without health testing that EPA can require under the law. Additional evidence showed that the chemicals were used or probably used in oil and gas wells. These chemicals' identities, particularly their Chemical Abstracts Services numbers, were withheld from the public by the chemicals' manufacturers. We noted that without these identities, it is virtually impossible to know where the chemicals were used, potentially exposing people unknowingly to serious health risks. We pointed out that such a possibility is not just hypothetical. In recent investigations, people living near oil and gas wells have reported some of the same health problems identified by EPA as concerns in its reviews of these 41 chemicals.

On March 18, 2018, 33 members of Congress wrote to EPA with a similar request to disclose the identities of all chemicals used in hydraulic fracturing and oil and gas drilling that EPA has identified as potentially harmful to human health under its New Chemicals program. The members of Congress noted, among other things, that "by keeping these chemical identities confidential, the EPA is putting our brave first responders in harms way." These responders, including those who signed our November 2017 request, may face particularly severe risks and disadvantages due to chemical confidentiality. In the event of an emergency at a well site, they will likely be asked to rush to the scene. In these situations, hazardous materials teams and other responders depend on knowing what chemicals are present, especially during the first 30 minutes after an incident when they can best contain a spill and effectively evacuate people at risk. But if the responders do not know which, if any, chemicals are present, they may be initially and unknowingly exposed to dangerous substances. Once they determine that unknown chemicals are present, they may have no choice but to back out to protect themselves, evacuate large areas that may or may not be impacted, and watch as a spill worsens and contamination spreads.

Despite these risks, you denied our request, stating "while our reviews identified some potential hazards associated with these chemical substances, EPA's assessments also indicated that, under the intended conditions of use, exposures would be adequately controlled to prevent any unreasonable risk."

This response is troubling because, as nonprofit Partnership for Policy Integrity (PFPI) established in a 2016 report, *Toxic Secrets*, EPA, in its reviews of new oil and gas chemicals had assumed since the 1990s that in most cases these substances never leaked, spilled, migrated underground, or became airborne despite mounting evidence of such unintentional releases dating to at least the 1980s.¹ Some of this evidence had been compiled by EPA itself.²

In 2016, EPA officials essentially told PFPI and another nonprofit, Earthworks, that these prior assumptions concerning possible pathways to exposure were unrealistic, stating that EPA would be developing new exposure assumptions for hydraulic fracturing chemicals (though apparently not for drilling chemicals) that would acknowledge risks of leaks and spills.³ We are not aware that EPA has completed or implemented these new assumptions and, in any event, EPA would certainly not have used them for the chemicals in our petition, which were reviewed between 2003 and 2014. Therefore, it is likely that EPA used unrealistic exposure assumptions in making the conclusion contained in your letter.

In 2016, EPA officials also told PFPI that in EPA's TSCA reviews, the Agency considered chemical manufacturers' assumptions about how people might be exposed to oil and gas chemicals – assumptions that may also have understated chemical exposures due to manufacturers' self-interest in avoiding regulation. It is difficult to evaluate many of the manufacturers' assumptions because in records obtained from EPA as of 2016 for 104 drilling and fracking chemicals reviewed under TSCA, PFPI found that the manufacturers withheld exposure assumptions as confidential or that the exposure assumptions were missing for more than 60 chemicals. However, of the remaining 41 chemicals for which exposure assumptions were clearly available, manufacturers stated in only two cases that the chemical would leak, spill, or migrate underground. This percentage of chemicals that could leak or spill – 2 of 41 – seems unrealistically low considering the evidence of widespread leaks and spills in the oil and gas industry, including admissions that leaks and spills are common in disclosures filed by oil and gas companies with the U.S. Securities and Exchange Commission.⁴ In any event, you should have told us in your August 2018 letter exactly what exposure assumptions were considered,

¹ Dusty Horwitt. *Toxic Secrets*. Partnership for Policy Integrity (April 7, 2016), at 22-27 (citing Organization for Economic Cooperation and Development, *Emission Scenario Document on Chemicals Used in Oil Well Production* (Mar. 19, 2012). Accessed online October 14, 2015 at <http://www.oecd-ilibrary.org/content/book/9789264220966-en>. U.S. Environmental Protection Agency. (1991). *New Chemical Scenario for Oil Well Treatment Chemicals*. U.S. Environmental Protection Agency. (1991). *New Chemical Scenario for Drilling Muds*. U.S. Environmental Protection Agency. (1994). *Generic Scenario: Application of Chemicals in Enhanced Oil Recovery Steam Stimulation, Steam Flooding, and Polymer/Surfactant Flooding, Final Draft*).

² See, e.g., Dusty Horwitt. *Toxic Secrets*. Partnership for Policy Integrity (April 7, 2016), at 6 FN10 (citing U.S. Environmental Protection Agency. *Report to Congress: Management of wastes from the exploration, development, and production of crude oil, natural gas, and geothermal energy* (Report No. EPA/530-SW-88-003) (1987), at 4-22, 4-23. See <http://www3.epa.gov/epawaste/nonhaz/industrial/special/oil/530sw88003a.pdf>).

³ Dusty Horwitt. *Toxic Secrets*. Partnership for Policy Integrity (April 7, 2016), at 27 (citing electronic mail from Greg Schweer, Chief New Chemicals Management Branch, Office of Pollution Prevention and Toxics, to Dusty Horwitt, Senior Counsel at Partnership for Policy Integrity (July 14, 2015). Meeting with Greg Schweer et al., Chief New Chemicals Management Branch, Office of Pollution Prevention and Toxics, Dusty Horwitt, Senior Counsel, Partnership for Policy Integrity, Aaron Mintzes, Policy Advocate, Earthworks (February 10, 2016)).

⁴ See *id.*, at 22-25.

especially in light of EPA's own apparent awareness that its exposure assumptions are unrealistic.

Please let us know what exposure assumptions EPA used for the 41 chemicals that were the subject of our petition and when, or if, EPA intends to follow through on its plan to develop and use new exposure assumptions for hydraulic fracturing chemicals. In addition, we urge EPA to conduct and publish field tests for each of the 41 chemicals to determine whether the Agency's exposure assumptions are accurate or whether, instead, people and the environment are being exposed to the chemicals through unpredicted routes. EPA told PFPI in 2016 that the Agency does not track where oil and gas chemicals reviewed under TSCA are used and lacks staff to conduct tests for chemicals in water supplies near oil and gas drilling sites.⁵ The Agency should conduct such testing as soon as possible. If the Agency's exposure assumptions were inaccurate, we urge you to revisit your decision to deny our petition. It is essential that EPA use realistic exposure assumptions and follow-up testing to protect health and the environment, especially when the Agency identifies health concerns about chemicals. If EPA lacks the resources to conduct follow-up testing, then disclosure of the identities for the chemicals we requested becomes even more important, as a first step in allowing members of the public, health professionals, scientists, and first responders to take action in cases of potential exposure.

We look forward to hearing from you.

Sincerely,

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⁵ Dusty Horwitt. Toxic Secrets. Partnership for Policy Integrity (April 7, 2016), at 23.