Product Stewardship Society, PSX 2021
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Remarks, as prepared

(Introduction)

- Good morning and thank you for inviting me to speak to you today.
- It's always a pleasure to see my friend and colleague Jim Jones, and it was his invitation that led to this very first in-person event I've participated in since coming to EPA in January.
- I want to thank the Product Stewardship Society for working so hard on the safety protocols that really helped increase my comfort levels with attending.
- Product stewardship is an important approach to environmental protection that guides the development and life cycles of the hundreds of products each of us have in our homes.
- In doing so, it catalyzes a more sustainable marketplace and increases the competitiveness of U.S. industry.
- The Product Stewardship Society plays a key role in helping to promote and advance this approach.
- Today, I'd like to spend the majority of my time talking about the nexus between product stewardship and our recent and potential future actions under the Toxic Substances Control Act, – or TSCA.

(Common Goals Around Product Stewardship)

- One reason this kind of gathering is so important is that we share common goals around product stewardship.
- For instance, both EPA and all of you seek the public's confidence that the products they use in their homes, schools and workplaces are safe.
- We also share the goal of implementing chemical safety laws like TSCA in a way that is protective and practical – and in a way that can be trusted by the public.
- These and other common goals are best served when EPA understands the practices and challenges of product stewards, and when product stewards understand how EPA is pursuing its mission to protect human health and the environment.
- An essential ingredient in human health and environmental protection is knowing what chemicals are contained in articles – I'll talk about that more in a moment.

(Achieving Product Stewardship)

- As most of you are aware, Congress amended TSCA in 2016, giving EPA the authority and the responsibility to protect American families and workers from unreasonable risks presented by chemicals.
- Under the amended law, EPA developed new rules, policies and procedures to undertake the broad

sweeping changes now required for both the new and existing chemicals programs.

- A lot has happened in the last five years, and more is to come.
- That's why it's never been more important for industry stakeholders to pay close attention to EPA's actions – and to engage with the Agency about proposed and final rulemakings and other policy changes.

(Regulation of Chemicals in Articles)

- A number of EPA actions this year have affected chemicals in articles and this further highlights the importance of product stewardship.
- Generally speaking, articles are manufactured goods or finished products – and the chemicals in them ARE subject to TSCA.
- Import into the United States of articles containing a chemical is defined as the "manufacture" of that chemical under TSCA.
- Similarly, the processing or distribution in commerce of an **article** containing a chemical is the processing and distribution of that **chemical** under TSCA.
- So the law is very clear that when a chemical enters the United States, or is distributed or processed in the United States – whether in bulk form or in an article – it can be subject to regulation under TSCA.
- As product stewards, you understand that products break down and sometimes those chemicals get into the environment – in dust, the air, the water – and result in exposures.

- EPA is charged under TSCA with ensuring that the public is protected from unreasonable risks presented by chemicals, including from chemicals imported into the United States in articles, and we take those responsibilities seriously.
- As such, EPA can – and indeed already has – imposed regulatory requirements on articles imported under TSCA.
- Furthermore, companies are already required to know what is in their products in order to comply with European Union regulations, which require reporting for products which contain chemicals identified as a "substance of very high concern."
- There are currently over 4 million entries in this searchable database, so we know that it's possible to track chemicals in complex supply chains.

(PBTs/PIP 3:1)

- Following the release of our final rules for five Persistent, Bioaccumulative, and Toxic chemicals, or PBTs, in January, the Agency was informed by a very large number of industry stakeholders that the rulemaking would impact articles containing one PBT called PIP (3:1), that is used in a wide variety of goods, and that there were significant challenges in finding alternatives in the timeframe provided.
- This issue came up within days of my arrival at the Agency, and while I am not at all shy about criticizing some of the previous Administration's TSCA implementation actions, the truth is that from a

process perspective, they repeatedly asked for information on the use of PIP 3:1 in products and articles throughout the rulemaking.

- Despite EPA's extensive outreach conducted during development of the PBT rules, most stakeholders contacting EPA after the rule was finalized never commented on the proposal and didn't otherwise engage with the Agency on the PIP (3:1) rulemaking, and don't appear to have previously surveyed their supply chains to determine if PIP (3:1) was being used.
- As a result, EPA didn't have a full understanding of the impact of what was supposed to be a March 2021 phase-out of the substance prior to issuing the final rules in January.
- Given the expedited nature of these rulemakings and the fact that they were among the first issued under new TSCA, it's certainly possible that industry didn't fully understand the implications of the rule until after it was finalized.
- In any case, given the potential for significant disruptions to supply chains, the Agency initially issued a 6-month "No Action Assurance" in March to ensure supply chains were not interrupted, while also issuing a notice requesting further information from industry stakeholders on the impact of the compliance dates, including specific information about the articles for which the compliance dates would need to be extended and a timeline for removing PIP (3:1) from their supply chains.

- While we got enough information to conclude that there would still be a significant supply chain disruption for a very wide range of products if we imposed a quick phase-out date, we did NOT get all of the information we hoped we would get in response to that notice.
- Many companies told us they needed more time to figure out where PIP 3:1 was in their supply chains, but in some cases didn't tell us how much time. In other cases, they didn't justify years-long extension requests with specificity, or describe the complications that their operations would experience without additional time.
- To ensure that supply chains continue uninterrupted, EPA issued a final rule providing a short-term extension of the specified compliance dates for PIP (3:1) articles until March 8, 2022, while working on a proposed rule for a longer extension.
- But in response to that upcoming proposed rule, EPA will expect industry commenters to provide documentation of the specific uses of PIP (3:1) in articles throughout their supply chains, documentation of concrete steps taken to identify, test, and qualify substitutes for those uses, documentation of specific certifications that would require updating and an estimate of the time that would be required.
- Without this more specific information, EPA will be unlikely to extend the compliance dates again.
- In addition to the PIP 3:1 compliance deadlines, this new rulemaking effort will consider a variety of other

issues like whether additional measures to reduce exposure to all five of the PBTs could be taken, and ensuring the rules align with TSCA and this Administration's executive orders and other guidance.

(PFAS 8(a)(7) Rule)

- EPA also recently proposed a reporting rule in June that would require all manufacturers of PFAS – including importers of PFAS in articles – in any year since 2011 to report information related to chemical identity, volumes manufactured, byproducts, categories of use, environmental and health effects, worker exposure, and disposal to EPA.
- This PFAS reporting rule would be the most comprehensive data collection EPA has undertaken focused on PFAS manufactured in, or imported to, the United States.
- This is another example of the Agency's use of its authority to propose regulatory requirements applicable to imported articles under TSCA.

(Lessons for Product Stewards)

- There are a number of lessons to be learned for product stewards.
- First and foremost: companies should seek to know what chemicals are in their products – and in their supply chains.
- Secondly, companies should know how those chemicals are or might be regulated.

- Some early feedback on the proposed PFAS reporting rule is from companies who say it will be too difficult for them to figure out whether the articles they import contain PFAS.
- And some of those companies are the very same ones who say that they need more time to comply with the PIP 3:1 rule because they have not yet had the time to analyze their supply chains for the presence of THAT chemical.
- It's simply not tenable for industry to complain about a rule regulating articles because they don't know what's in them, while simultaneously complaining about a proposed rule that simply asks them to survey their supply chains and tell the Agency what they found.
- And let's not forget that the point of these rules is to help advance EPA's mission to protect human health and the environment.
- If you're a parent buying a consumer product in a store, and you're told that the company that makes it doesn't know what's in it and also doesn't want to find out, what do you suppose the reaction to that will be?
- Of course, EPA will continue to provide outreach and to engage with stakeholders during future rulemakings in order to provide ample opportunity for feedback **before** rules are finalized. But we need that feedback to be specific and documented in order to write protective rules that are also implementable and legally defensible.

- These lessons are all key elements of product stewardship, which centers on the responsible design, development, and management of products throughout their life cycle.

(TSCA Actions of Interest)

- Another area of change at EPA that is important for product stewards surround the policy changes EPA announced in late June for its existing chemicals program.
- Among other things, these changes cover the risk evaluations issued under TSCA by the previous administration.

(PPE)

- One change EPA made involves revisiting the previous administration's assumption in the first 10 risk evaluations that personal protective equipment – or PPE – is always used by workers in certain occupational settings.
- As an affiliate of the American Industrial Hygiene Association, I know that PPE use - and worker safety in general - is an area of keen interest for the Product Stewardship Society, and an area where both organizations continue to lead.
- Despite many companies' hard work, however, there is clear evidence that PPE is **NOT** used, or used correctly, as universally as was often assumed.
- For example, respirator safety violations are always high up on the Occupational Safety and Health

Administration's, or OSHA's, annual list of the top 10 most frequent types of violations.

- EPA is therefore revisiting the assumption that PPE is always properly used in occupational settings when making risk determinations for a chemical. Instead, the agency plans to consider information on use of PPE, or other ways industry protects its workers, as a potential way to address unreasonable risk during the risk management process.
- The first 10 risk evaluations already include exposure analysis with and without PPE, so removing this assumption does not create need for new analysis. However, this shift could change some of the conclusions about risk on some conditions of use for six of the first 10 chemicals for which "no unreasonable risk" findings were made based on the use of PPE.
- Of course, while the law says we have to analyze the risk from chemical substances, which includes risk to workers exposed to those chemicals – we also know that finding that a risk exists in the ABSENCE of safety measures doesn't mean that safety measures are ABSENT at all workplaces.
- I assure you the Agency KNOWS that many companies provide and require PPE for their workers.
- We KNOW that many companies comply with applicable OSHA standards.
- And we KNOW that many companies go beyond what OSHA requires to keep their employees safe.

- I am committed to a sensible consideration of all the things that companies do to protect their workers in the risk MANAGEMENT phase, and the Agency will write rules that reflect real world practices and are scientifically and legally justified while protecting workers.

(Potentially Exposed or Susceptible Subpopulations)

- Another change EPA is pursuing is addressing the previous administration's decision to not assess specific exposure pathways – such as the air we breathe, or the water we drink – in most of the first ten risk evaluations.
- They argued that these exposures were – or theoretically COULD BE – regulated under other EPA-administered laws, and that was why they could be excluded from consideration under TSCA. In essence, they said for purposes of TSCA, it doesn't count if you breathe it, and it doesn't count if you drink it.
- As a first step toward addressing these exposures, EPA will evaluate additional relevant exposure routes utilizing a screening methodology to determine whether fenceline communities are accounted for and ultimately protected from unreasonable risk due to air or water exposure.

- EPA plans to use this screening methodology to assess the potential for fenceline air or water exposures for six of the first 10 chemicals.
- We'll then use the results of this screening methodology to determine our next steps for these chemicals.
- If it turns out that this screening methodology shows that there are no likely added fenceline community risks for a substance, or if it turns out that the rule we are contemplating for that substance would also address any of these risks, we will move to rulemaking quickly.
- By contrast, if the screening methodology tells us that the rule that would be supported by the last Administration's risk evaluation is not going to be sufficiently protective of these communities, we will perform additional analysis and supplement the risk evaluation prior to proposing a rule.
- Additionally, for 1,4-dioxane, it's clear the risk evaluation finalized under the previous administration didn't include all exposure pathways or conditions of use.
- I expect that the supplemental analysis that will be required for 1,4-dioxane will take some time, and that of the first ten chemicals, 1,4-dioxane is likely to be the last of the first ten chemicals to go to rulemaking.
- By planning to assess additional pathways and include relevant potentially exposed or susceptible subpopulations we are following the law and ensuring the most vulnerable are protected.

(Chemicals to Move to Risk Management)

- For three chemicals that have undergone risk evaluation – HBCD, PV29, and asbestos, part 1 – the Agency currently believes that the risk evaluations are likely sufficient to inform the risk management approaches being considered, and that these approaches will be protective.
- Moving forward, EPA intends to soon reissue the draft risk determinations that amend the approach to PPE and, where appropriate, include a draft determination of unreasonable risk for the whole chemical being evaluated, rather than separate determinations for each condition of use.

(Proactive Product Stewardship: Pollution Prevention)

- I'd like to turn now to another area where EPA and product stewards share goals and values - our pollution prevention programs, – or P2.
- Pollution prevention is a true win-win, reducing both financial and environmental costs, and strengthening economic growth through more efficient production in industry and less need to handle waste, all while protecting the environment by conserving and protecting natural resources.
- Before I close today, I want to briefly highlight a few P2 programs under my office.
- One is the Environmentally Preferable Purchasing program –which harnesses the power of the 650

PLUS billion-dollar federal pocketbook for product stewardship.

- It does this is by coordinating the federal government's participation in the development of sustainability standards and helps federal purchasers identify and procure environmentally preferable products and services.
- Another program is Safer Choice, which certifies and allows the use of the Safer Choice label on products with ingredients that meet stringent health and environmental criteria.
- Companies have invested heavily in this EPA partnership, with more than 400 partner companies and approximately 2,000 certified products in the marketplace.
- Over the next few years, we plan to strengthen the Safer Choice program by updating and strengthening its standards, adding new product categories and identifying additional safer chemicals for use in products.
- Safer Choice outreach and partnership activities will work to enhance awareness of Safer Choice-certified products, including for people of color and low-income communities, which supports EPA's overall commitment to environmental justice.
- Last week, EPA also recognized 33 Safer Choice Partner of the Year award winners for achievement in the design, manufacture, selection and use of products with Safer Choice chemicals – some of the award winners may be here today. Many of this

year's awardees' work will help further the goals of addressing climate change and advancing environmental justice

- One more program I want to mention is green chemistry.
- Earlier this year EPA announced the winners of the 2021 Green Chemistry Challenge Awards and we are now accepting nominations for the 2022 awards.
- In support of the Biden-Harris Administration's commitment to tackling the climate crisis, EPA is adding a new award category to recognize technology that reduces or eliminates greenhouse gas emissions.
- Nominations are due to the agency by December 10 of this year, and you can find more information about the 2022 awards on the EPA website.

(Closing)

- In closing, I want to reiterate and acknowledge the importance of product stewardship in supporting our shared goals and values.
- We all seek a more sustainable marketplace and more competitive U.S. industry.
- Dedication to product stewardship by EPA's stakeholders can help support the goals and promise of TSCA.
- It can also help address other challenges, like the need to reduce greenhouse gas emissions and the need to reduce exposures to pollution, especially to communities that have environmental justice concerns.

- It can also help strengthen EPA’s collaboration with its stakeholders that is key to achieving the Agency’s mission of protecting human health and the environment.
- We’ll have some time for questions and answers, and I am looking forward to hearing from you.
- Thank you again for inviting me to speak today.