



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

*Ensuring the safety of chemicals*

# Lack of Planning Risks EPA's Ability to Meet Toxic Substances Control Act Deadlines

Report No. 20-P-0247

August 17, 2020

Staff and  
resource  
planning



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## Abbreviations

|      |                                           |
|------|-------------------------------------------|
| EPA  | U.S. Environmental Protection Agency      |
| FY   | Fiscal Year                               |
| HCOP | Human Capital Operating Plan              |
| OIG  | Office of Inspector General               |
| OPM  | U.S. Office of Personnel Management       |
| OPPT | Office of Pollution Prevention and Toxics |
| TSCA | Toxic Substances Control Act              |

**Cover Photo:** Illustration depicting lack of planning for staff and resources. (OIG image)

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# At a Glance

## Why We Did This Project

The U.S. Environmental Protection Agency's Office of Inspector General conducted this audit to determine whether the EPA met the deadlines already imposed by the Frank R. Lautenberg Chemical Safety for the 21st Century Act in 2016, which amended the Toxic Substances Control Act of 1976, and has the staff, resources, and management controls in place to meet future statutory deadlines.

The TSCA provided the EPA with the authority to assess the safety of commercial chemicals and to regulate those chemicals that posed an "unreasonable risk" to human health or the environment. Prior to the 2016 amendments, the EPA only used its authority under the TSCA to limit or ban the use of five existing chemicals in 40 years. The amendments strengthened the EPA's authorities to evaluate and regulate both existing and new chemicals.

### This report addresses the following:

- Ensuring the safety of chemicals.

### This project addresses a top EPA [management challenge](#):

- Improving workforce/workload analyses.

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## Lack of Planning Risks EPA's Ability to Meet Toxic Substances Control Act Deadlines

### What We Found

The 2016 TSCA amendments required the EPA to develop new rules for chemical prioritization for risk evaluation and risk evaluation for existing chemicals. Additionally, the amended law requires the EPA to review all new chemical submissions and make a regulatory determination. The EPA met several of its TSCA deadlines but did not complete all ten required existing chemical risk evaluations by the June 19, 2020 deadline. Because of statutory requirements, the number of required existing chemical risk evaluations doubled at the end of 2019, risking the EPA's ability to meet TSCA deadlines.

**The EPA did not complete a significant TSCA deadline on June 19, 2020, and the Agency is at risk of missing future deadlines due to a lack of staff and resource planning.**

The EPA's ability to assess its TSCA workload—and subsequently estimate the workforce levels necessary to achieve that workload—is critically important. The Office of Pollution Prevention and Toxics has not publicly identified the additional staff and resources it needs to accomplish all mandated TSCA requirements. The OPPT's resource planning is hindered by not complying with the U.S. Office of Personnel Management regulations, which requires developing a workforce plan to manage current and future workforce needs.

The EPA's program offices have not conducted a systematic workload analysis or identified workforce needs for budget justification purposes since 1987. We found this to be true for the OPPT, which is responsible for implementing the TSCA amendments. Though the OPPT expects to hire more staff members to implement the TSCA amendments in fiscal year 2020, the Office lacks a workforce-and-workload analysis to successfully implement and meet the 2016 TSCA deadlines. Additionally, the EPA's annual plans for risk evaluations were neither done in a timely manner nor met the statutory requirements to identify the resources needed to initiate or complete the risk evaluations for the year.

### Recommendations and Planned Agency Corrective Actions

We recommend that the assistant administrator for Chemical Safety and Pollution Prevention (1) publish the annual existing chemical plan including the anticipated implementation efforts and required resources, (2) conduct a workforce analysis to assess the OPPT's capability to implement the TSCA, and (3) specify what skill gaps must be filled in fiscal year 2021 to meet the TSCA requirements.

The Agency provided acceptable corrective actions and estimated milestone dates for all recommendations. We consider these recommendations resolved with corrective actions pending.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

August 17, 2020

**MEMORANDUM**

**SUBJECT:** Lack of Planning Risks EPA's Ability to Meet Toxic Substances Control Act Deadlines  
Report No. 20-P-0247

**FROM:** Sean W. O'Donnell

A handwritten signature in blue ink that reads "Sean W O'Donnell".

**TO:** Alexandra Dapolito Dunn, Assistant Administrator  
Office of Chemical Safety and Pollution Prevention

This is our report on the subject audit conducted by the Office of Inspector General of the U.S. Environmental Protection Agency. The project number for this audit is OA&E-FY19-0127. This report contains findings that describe the problems the OIG has identified and corrective actions that the OIG recommends. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The Office of Chemical Safety and Pollution Prevention is responsible for the issues discussed in this report.

In accordance with EPA Manual 2750, your Office provided acceptable corrective actions and milestone dates in response to OIG recommendations. All recommendations are resolved, and no final response to this report is required. However, if you submit a response, it will be posted on the OIG's website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public. If your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at [www.epa.gov/oig](http://www.epa.gov/oig).

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## Purpose

The U.S. Environmental Protection Agency’s Office of Inspector General conducted this audit to determine whether the EPA has met the already applicable deadlines imposed under the Frank R. Lautenberg Chemical Safety for the 21st Century Act, and has the staff, resources, and management controls in place to meet future statutory deadlines.

### Top Management Challenge

This audit addresses the following top management challenge for the Agency, as identified in OIG Report No. [20-N-0231](#), *EPA’s FYs 2020–2021 Top Management Challenges*, issued July 21, 2020:

- Improving workforce/workload analyses.

## Background

The Toxic Substances Control Act of 1976 provided the EPA with the authority to assess the safety of commercial chemical substances and mixtures, and to regulate those that posed “unreasonable risk of injury” to human health or the environment.<sup>1</sup> The law did not mandate or provide a timetable by which the EPA had to review the estimated 62,000 existing chemical substances that were already in use in commerce at the time. The 1976 Act required the EPA to identify the “least burdensome” method for reducing risk. This put the burden of proof on the EPA to demonstrate whether actions taken under the Act were of sufficient benefit to the public interest compared to the costs to the economy of banning or restricting the product. Even when the EPA had sufficient information to determine that a chemical posed an unreasonable risk, the Agency had difficulty banning or placing limits on the production or use of that chemical.<sup>2</sup> As a result, the EPA limited or banned the use of only five existing chemicals in 40 years.

### ***New EPA Authorities and Responsibilities***

Enacted in 2016, the Frank R. Lautenberg Chemical Safety for the 21st Century Act, or “TSCA amendments,” strengthened the EPA’s authority to evaluate and regulate, where necessary, both existing and new chemicals. As codified in 15 U.S.C. § 2605, the TSCA amendments require the EPA to conduct a prioritization process to determine if chemical substances are a high- or low-priority for risk evaluation and determine whether that substance presents an unreasonable risk of injury to human health or the environment. The risk evaluations are to be done “without consideration of costs or other nonrisk factors.” These evaluations must include information that is relevant to specific risks of injury to health or the environment and information on potentially exposed or susceptible subpopulations.

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<sup>1</sup> Pub. L. 94-469, § 2(b).

<sup>2</sup> Pub. L. 94-469, § 6(c).

The majority of the new TSCA requirements focus on developing and implementing new processes for conducting risk evaluations on existing chemicals. By June 22, 2017, within the first year the amendments were enacted, the EPA was required to develop a framework for prioritizing and assessing existing chemicals and then use that policy framework, including the “Risk Evaluation Rule,”<sup>3</sup> to complete its initial ten existing chemical risk evaluations by December 19, 2019. Because of the requirements in the TSCA amendments, the EPA’s existing chemical workload doubled on December 22, 2019, requiring the Agency to start risk evaluations for 20 additional high-priority substances and to designate another 20 substances as low priority. Further, the TSCA requires that for each risk evaluation completed on a high-priority substance, the EPA must begin a new high-priority risk evaluation. Once the EPA initiates a risk evaluation, it must complete it within three years. The administrator may extend this deadline by no more than six months, which was done for the initial ten existing chemical risk evaluations.

### ***TSCA Amendments Capacity Assessment and Annual Planning***

The TSCA amendments require the EPA to assess its resource and staffing capacity to accomplish several of the statute’s mandates. The amendments also required the administrator to provide Congress with an initial capacity estimate by December 22, 2016. The administrator has to update this assessment at least once every five years and include estimates regarding:

- The Agency’s capacity to conduct and publish required existing chemical risk evaluations and the resources necessary to conduct the minimum number of existing chemical risk evaluations.
- The Agency’s capacity to conduct and publish risk evaluations requested by the chemical manufacturers, including the likely demand for such risk evaluations and the schedule for accommodating that demand.
- The Agency’s capacity to disseminate rules to address unreasonable risks of injury to health or the environment identified for existing chemicals “so that the chemical substance or mixture no longer presents such risk.”
- The actual and anticipated efforts of the EPA to increase the Agency’s capacity to conduct and publish existing chemical risk evaluations.<sup>4</sup>

One of the amendments required the EPA to develop an annual plan for implementing the new requirements of conducting existing chemical risk evaluations. Specifically, it states that:

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<sup>3</sup> As required by 15 U.S.C. § 2605 (b)(4)(B).

<sup>4</sup> 15 U.S.C. § 2625(m)(1)(A-D).

The Administrator shall inform the public regarding the schedule and the resources necessary for the completion of each risk evaluation as soon as practicable after initiating the risk evaluation.

The amendment also states the requirements of the plan:

Publication of plan – At the beginning of each calendar year, the Administrator shall publish an annual plan that—

- (A) identifies the chemical substances for which risk evaluations are expected to be initiated or completed that year and the resources necessary for their completion;
- (B) describes the status of each risk evaluation that has been initiated but not yet completed; and
- (C) if the schedule for completion of a risk evaluation has changed, includes an updated schedule for that risk evaluation.

### ***Federal Requirements for Workforce Planning***

The Chief Human Capital Officers Act of 2002 tasked the U.S. Office of Personnel Management with designing a set of systems to assess the management of human capital by federal agencies, including setting standards for aligning human capital strategies with agencies' missions, goals, and organizational objectives.<sup>5</sup>

As a result, the OPM established the Human Capital Framework, a compilation of four strategic human capital management systems, standards, and focus areas. This framework provides federal agencies definitions and standards for human capital planning, implementation, and evaluation. Specifically, the Human Capital Framework standards require an agency to “plan for and manage current and future workforce needs; design, develop, and implement proven strategies and techniques and practices to attract, hire, develop, and retain talent; and make progress toward closing any knowledge, skill, and competency gaps throughout the agency.”<sup>6</sup> Further, each agency is required to plan and implement its human capital policies and programs “based on comprehensive workforce planning and analysis” and is required to manage skill gaps in mission-critical occupations by using “comprehensive data analytic methods and gap closure strategies.”<sup>7</sup>

The OPM regulations also require agencies to develop a Human Capital Operating Plan to demonstrate how their human capital strategies adhere to the principles and standards of the Human Capital Framework. Agencies must use their HCOP to support their strategic plans because human capital can impact

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<sup>5</sup> Codified at 5 U.S.C. § 1103(c).

<sup>6</sup> 5 CFR § 250.203(b).

<sup>7</sup> 5 CFR § 250.204(a)(2)-(3).



whether a strategy or strategic goal is achieved. The regulations require that agencies review their HCOP annually and approve or update the plan as needed.

## **Responsible Office**

The Office of Pollution Prevention and Toxics, within the Office of Chemical Safety and Pollution Prevention, manages the TSCA programs.

## **Scope and Methodology**

We conducted our work from May 2019 to June 2020. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our scope included evaluating the EPA's staffing, resources, and management control plans for the new and existing chemical requirements enacted by the TSCA amendments. The OIG reviewed information regarding staffing and reorganization plans; management analyses of TSCA requirements; and internal guidance, management control, and process documents regarding the new or expanded processes. We also reviewed annual plans and staffing numbers in the OPPT divisions that are responsible for implementing the TSCA requirements and conducted follow-up meetings to discuss the documents.

## **Results**

As of June 2020, the EPA met several of its TSCA deadlines, including the initial requirements to develop new rules for risk prioritization and existing chemical risk assessment, publication of scopes for the first ten chemical risk evaluations, and publication of several guidance materials. However, the EPA did not complete all ten required existing chemical risk evaluations by the June 19, 2020 deadline.

The EPA's ability to meet future TSCA deadlines are at risk. On December 22, 2019, the number of required existing chemical risk evaluations doubled. The OPPT has not publicly identified the additional staff and resources it needs to accomplish all mandated TSCA requirements. The EPA's resource planning is hindered by not complying with OPM regulations. The OPM requires the EPA to develop human capital policies and programs based on a comprehensive workforce planning analysis. It also requires the EPA to address skill gaps for mission critical positions using data analytics and gap closure strategies. The EPA's program offices have not conducted a systematic workload analysis or identified workforce needs for budget justification purposes since 1987. We found

this to be true for the OPPT, which is responsible for implementing the TSCA amendments.

Though the OPPT expects to hire more than 50 staff members to implement the TSCA amendments in fiscal year 2020, the Office lacks a workforce-and-workload analysis to demonstrate that, even with 50 additional staff, it has the capacity to successfully implement the TSCA amendments within the required time frames. Additionally, a mandated TSCA capacity report assessing the Agency's capacity and resources needed to conduct and publish risk evaluations met minimum requirements but lacked the detail necessary to identify key staffing needs.

### ***EPA Missed the Deadline for the Initial Ten Existing Chemical Risk Evaluations***

As of June 2020, the EPA has completed several of the TSCA amendments on time. Some, while completed, were not finished within the statutory deadline for that requirement. (Table 1). The OPPT was required to complete the first ten existing chemical risk evaluations by December 19, 2019. The TSCA amendments allowed the administrator to grant an extension of no more than six months to the three-year statutory deadline for completing individual risk evaluations. However, the extension was applied for all of the first ten chemical evaluations. The EPA did miss the final statutory deadline because nine out of ten risk evaluations were not completed by the June 19, 2020 extension.

**Table 1: Deadlines and requirements for TSCA amendments**

|                                                                                                                                                                 | Deadline | Status        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|---------------|
| Publish in the Federal Register a list of mercury compounds that are prohibited from export.                                                                    | 9/20/16  | 8/12/16<br>✓  |
| Report to Congress on the EPA's capacity to conduct and publish risk evaluations and the resources necessary to conduct the minimum number of risk evaluations. | 12/22/16 | 1/17/17<br>⚠  |
| Identify and initiate the first ten chemical risk evaluations.                                                                                                  | 12/19/16 | 12/13/16<br>✓ |
| Develop and implement a rule for updating the TSCA existing chemical inventory.                                                                                 | 6/22/17  | 6/22/17<br>✓  |
| Develop and finalize Risk Prioritization Rule.                                                                                                                  | 6/22/17  | 6/22/17<br>✓  |
| Develop and finalize Risk Evaluation Rule.                                                                                                                      | 6/22/17  | 6/22/17<br>✓  |
| Publish scope documents for first ten chemical risk evaluations.                                                                                                | 6/22/17  | 6/22/17<br>✓  |
| Develop guidance for external party risk evaluation development and submission.                                                                                 | 6/22/17  | 6/22/17<br>✓  |
| Develop rule on information requirements for manufacturers of mercury, mercury-added                                                                            | 6/22/18  | 6/21/18<br>✓  |

|                                                                                                                           |                  |                  |
|---------------------------------------------------------------------------------------------------------------------------|------------------|------------------|
| products, and other mercury processes identified by the Agency.                                                           |                  |                  |
| Develop and publish a strategic plan to promote the development and implementation of nonanimal alternative test methods. | 6/22/18          | 6/21/18<br>✓     |
| Develop and finalize a User Fee Rule.                                                                                     | N/A              | 9/27/18<br>✓     |
| Publish Proposed Rule for Certain Confidential Business Information under the TSCA.                                       | 2/19/20          | 4/10/19<br>✓     |
| Publish Proposed Rule for the Regulation of Persistent, Bioaccumulative, and Toxic Chemicals.                             | 6/22/19          | 6/21/19<br>✓     |
| Propose low-priority designation for 20 chemicals.                                                                        | 8/13/19          | 8/13/19<br>✓     |
| Publish an Annual Existing Chemical Risk Evaluation Plan.*                                                                | January 2017     | 2/9/17<br>⚠      |
|                                                                                                                           | January 2018     | 1/31/18<br>✓     |
|                                                                                                                           | January 2019     | 5/14/19<br>⚠     |
|                                                                                                                           | January 2020     | 5/13/20<br>⚠     |
| Identify 20 high-priority existing chemicals.                                                                             | 12/22/19         | 12/20/19<br>✓    |
| Finalize 20 low-priority chemical designations.                                                                           | 12/22/19         | 2/19/20<br>⚠     |
| Publish Final Rule for Certain Confidential Business Information under the TSCA.                                          | 2/19/20          | 2/19/20<br>✓     |
| Complete first ten existing chemical risk evaluations.**                                                                  | 12/22/19–6/19/20 | Incomplete<br>⚠  |
| Publish scoping documents for designated 20 high-priority chemicals.                                                      | 6/30/20          | Incomplete<br>⚠  |
| Publish Final Rule to Address Persistent, Bioaccumulative and Toxic Chemicals.                                            | 12/22/20         | In Progress<br>🕒 |
| Complete risk evaluations on 20 high-priority chemicals.                                                                  | 12/30/22         | In Progress<br>🕒 |

LEGEND:

|                |                     |                 |                  |
|----------------|---------------------|-----------------|------------------|
| Completed<br>✓ | Completed Late<br>⚠ | Incomplete<br>⚠ | In Progress<br>🕒 |
|----------------|---------------------|-----------------|------------------|

Source: The OPPT and the OIG.

\* Pursuant to 15 U.S.C. § 2625(n), these plans are due at the “beginning of each calendar year.” The OIG interprets this to be no later than January 31.

\*\* The EPA utilized an optional six-month extension authorized by 15 U.S.C. § 2605(b)(4)(G)(ii).

## ***Chemical Risk Evaluation Requirements Doubled at the End of 2019***

In addition to completing the first ten risk evaluations, the Agency was also required to initiate the next 20 high-priority risk evaluations by December 22, 2019. The Agency was also required to designate 20 chemicals as low-priority by December 22, 2019, but the Agency did not finalize its low-priority designations until February 19, 2020. Given the high-priority designation date of December 20, 2019, the EPA must complete all 20 of the high-priority risk evaluations no later than December 20, 2022.<sup>8</sup> Successful implementation of the TSCA amendments requires that the Agency must designate another chemical for evaluation every time it completes a high-priority existing chemical risk evaluation. As shown in Table 1, the EPA has missed the existing chemical risk evaluation deadline and has been delayed in meeting several more. The EPA's and the OPPT's lack of workforce-planning analyses to allocate sufficient staff and determine resource capacity has directly contributed to delays in fulfilling these statutory responsibilities.

## ***EPA Has Not Demonstrated Capacity to Meet Future Deadlines***

The U.S. Government Accountability Office also identified the OPPT's current capacity challenges as a concern in a March 2019 TSCA status report.<sup>9</sup> The report reviewed the EPA's initial implementation of the Act's requirements and also reviewed the OPPT's staffing levels. On page 33 of that report, the agency stated:

Some OPPT officials told us that they have concerns about staff capacity within OPPT. Officials in both the Chemical Control Division (responsible for risk management) and the Risk Assessment Division (responsible for risk assessment) said that they do not have sufficient resources to do their work. This included staff from all five technical teams we interviewed in the Risk Assessment Division.

In addition, page 34 of the report included the following information regarding staffing and staff management:

Officials from the Chemical Control Division told us that the Risk Assessment Division is struggling more because its work requires more technical employees. The officials said that EPA is hiring additional full-time equivalents, but it takes time to train new people, and this will initially increase workload.

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<sup>8</sup> Subject to a six-month extension. 15 U.S.C. § 2605(b)(4)(G)(ii).

<sup>9</sup> *Status of EPA's Efforts to Produce Assessments and Implement the Toxic Substances Control Act*, [GAO-19-270](#), March 4, 2019.

On page 35, the agency wrote, “OPPT senior officials said that now that OPPT has many new responsibilities and a heavier workload, they are taking steps to improve capacity by implementing the reorganization and hiring new staff.” The report noted that EPA officials anticipated implementing the reorganization in early 2019. However, the OPPT informed us during this audit that the reorganization effort was currently on-hold to avoid short-term disruption of the existing and new chemical programs.

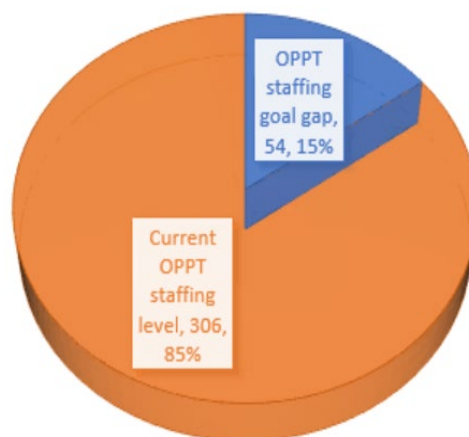
In December 2019, the OPPT provided us with internal documentation that outlined its hiring needs in FY 2020. These internal, unofficial documents outlined the OPPT’s need to hire additional staff members to successfully complete its existing chemical risk evaluation work, in addition to other TSCA implementation work. According to the FY 2020 hiring estimate, which reflects estimates of staffing needs from

“discussions” between the OPPT deputy division directors and division directors to fill mission-critical positions, the OPPT expects to hire about 54 staff members to work on TSCA implementation efforts. In a follow-up discussion, the OPPT indicated it needed to increase its overall staffing from 306 full-time equivalent staff in FY 2019 to 360 by the end of FY 2020 to support the requirements of the TSCA

amendments (Figure 1). On February 26, 2020, the OPPT informed us that it hired 24 people since the beginning of the fiscal year. On July 22, 2020

the OPPT stated that it is planning to hire an additional 18 staff members for a new branch within OPPT’s Risk Assessment Division dedicated to conducting risk evaluations. Even after the additional staff are hired, the OPPT will still have a staffing gap between its current staff level and its projected staffing needs.

**Figure 1: Gap to reach FY 2020 staffing goal of 360 full time equivalents**



Source: The OPPT.

### ***Criteria for Meeting Future Deadlines Will Become More Rigorous***

In addition to the challenges of meeting existing deadlines, the EPA needs to revise its approach to conducting its ongoing risk evaluations. On November 14, 2019, the U.S. Court of Appeals for the Ninth Circuit issued a ruling in *Safer Chemicals, Healthy Families, et al. v. U.S. EPA*, which required changes to the EPA’s existing chemical Risk Evaluation Rule implemented under the TSCA amendments.<sup>10</sup> The ruling impacted the part of the “Framework Rule” that addressed the scope of the EPA’s existing chemical risk evaluations. When

<sup>10</sup> 943 F.3d 397 (9th Cir. 2019).

conducting a risk evaluation, the EPA’s rule did not consider what it termed “legacy uses” of a chemical, meaning “circumstances associated with activities that do not reflect ongoing or prospective manufacturing, processing, or distribution.”<sup>11</sup>

The Court held that the EPA’s exclusion of “legacy uses” and the “associated disposals” were contrary to the language in the TSCA amendments.<sup>12</sup> The Court also held that the EPA must consider these uses when evaluating the risks in chemicals. This ruling requires the EPA to revise its risk-evaluation process to include the legacy uses and associated disposals of the chemical substance being evaluated. The resulting expansion of the scope of the EPA’s risk-evaluation process will require the Agency to devote more staffing and resources to existing chemical risk evaluations. As of May 26, 2020, the EPA has not published any official impact assessment of the legacy uses and associated disposals of the first ten or the next 20 chemicals. Given the delays discussed above, as well as the Ninth Circuit’s ruling requiring the EPA to expand its risk-evaluation process to include legacy uses and associated disposal, the OPPT cannot demonstrate that it has the capacity to successfully implement the TSCA amendments within the required time frames.

### ***EPA’s Resource Planning Process Does Not Meet OPM Requirements***

The EPA’s ability to assess its workload—and subsequently estimate workforce levels necessary to carry out that workload—is critically important to mission accomplishment. The EPA is still not meeting the OPM’s regulations pertaining to workforce planning and analysis requirements. When we requested documents specific to its TSCA amendments implementation efforts, the OPPT provided numerous hiring policies and guidance, as well as documents detailing past hiring efforts. The OPPT did not provide a comprehensive analysis showing how the Agency’s HCOP had changed to address its new TSCA statutory mandates. The OPPT indicated that it had only developed a few straw proposals but planned to develop its own portion of the Agency’s HCOP in FY 2020.

On October 9, 2019, the OPM evaluated and provided comments on the EPA’s HCOP for FY 2019, as well as other human capital services. The OPM found deficiencies and instructed the EPA to:

- Prepare a workforce plan which manages current and future workforce needs, identifies competency gaps, and incorporates strategies to promote

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<sup>11</sup> Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act, 82 Fed. Reg. 33,726, 33,729 (July 20, 2017).

<sup>12</sup> The ruling in the *Safer Chemicals* case used the following example: “[A]lthough asbestos is now infrequently used in making new insulation, it remains in place in previously installed insulation. According to EPA’s interpretation, the use of asbestos in insulation is a ‘legacy use’ of that chemical. ‘Associated disposal[s]’ refers to future disposals from legacy uses, such as removal of asbestos-containing insulation to a landfill during a building’s renovation.”

gap closure as well as provide evidence of action planned or taken to ensure future compliance.

- Monitor and address skill gaps within governmentwide and Agency-specific Mission Critical Occupations by using comprehensive data analytic methods and gap closure strategies as well as provide evidence of action planned or taken to ensure future compliance.

In response to the OPM's findings, the EPA outlined a corrective action plan where it agreed to finalize a workforce plan and update its HCOP by the end of FY 2020. The EPA also agreed to identify competency gaps and closure strategies in its workforce plan by the end of the second quarter in FY 2021.

The OIG develops and publishes a list of the EPA's key management challenges every year. These challenges are issues identified in previous audits where the OIG sees greater vulnerability for waste, fraud, abuse, or mismanagement, and that could seriously affect the EPA's ability to achieve its mission or goals. Every year since 2012, the OIG has identified workforce planning and workforce analysis as a key management challenge. Both the OPM and the OIG have found that the EPA has not addressed the workforce planning requirements of 5 C.F.R. Part 250, Subpart B, *Strategic Human Capital Management*. The OIG and the Government Accountability Office reported that the EPA had not incorporated workload analysis into its resource allocations. Specifically, the EPA had not fully implemented controls and a methodology to determine workforce levels based upon analysis of the Agency's workload.

In response to the OIG's ongoing identification of workforce analysis as a key management challenge, the EPA said in its FY 2018 Agency Financial Report that it "deliberately discontinued using comprehensive workload analyses because they require substantial work to develop, maintain, and refine." The EPA said in that same report that it "believes there is value in using trend and macro-level workload reviews to estimate program needs and using workload analyses of task-driven functions."

Based on the OIG's analyses in its key management challenges reports and our review of information provided by the OPPT, the EPA's program offices have not conducted a systematic workload analysis or identified workforce needs for budget justification purposes since 1987. Further, the Agency has not updated its HCOP to include resource needs related to the TSCA amendments. As a result, the lack of a workforce-and-workload analysis adversely impacts the ability of the EPA's TSCA-related programs to efficiently and effectively carry out their mission.

## ***EPA's Initial TSCA Capacity Report and Annual TSCA Amendments Implementation Plans Lack Information on Staffing Needs***

### **Initial Capacity Report**

The EPA issued its initial TSCA capacity report to Congress in January 2017. The report addressed, in general terms, the EPA's capacity and resources necessary to meet the new TSCA requirements for risk evaluations. For example, the EPA estimated that each risk evaluation would cost approximately \$1.2 million per year to conduct, and that the total cost of conducting 30 risk evaluations at the same time would be approximately \$36 million per year. The EPA's capacity report did not, however, detail how many existing staff had the necessary skills to conduct such work, or how many additional staff the EPA would need to hire to complete all the required tasks. Similarly, the initial capacity assessment did not include a workload analysis of how the EPA would initiate the actual and anticipated efforts necessary to increase the Agency's capacity to meet the TSCA amendments deadlines for existing chemical-risk evaluations.

### **Annual Plans**

The TSCA amendments also require the EPA to publish an annual plan for existing chemical risk evaluations at the beginning of each calendar year that identifies the risk evaluations that will be initiated or completed that year, the resources necessary for completing the risk evaluations, and an updated schedule for completing risk evaluations.<sup>13</sup> These annual risk-evaluation plans, however, are structured more as a status report than an implementation plan that identifies a specific set of processes to reach their goals. The annual plans for 2018, 2019, and 2020 published on the Agency website are referred to as "reports" and focus on actions already accomplished. These annual plans do not identify the specific amount of financial and staff resources needed to initiate or complete the risk evaluations for the year. Though the reports include a section titled, "Resources Necessary for Risk Evaluations," the only resources mentioned are referrals to the fees rule published in 2018. The documents do not list the chemicals under review or their evaluation status, and do not mention the number of staff necessary to complete the work, the skills or expertise required, or which branch or division will be tasked. As a result, these annual plans do not meet the statutory requirement to identify the resources necessary to initiate or complete the risk evaluations for the year.

The annual plans have also not been developed in a timely manner. The TSCA amendments require that annual plans be published at the beginning of the calendar year. For the purpose of our evaluation, we consider an annual plan published by the end of January as timely. Further, we believe that the annual

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<sup>13</sup> 15 U.S.C. § 2625(n)(2).



plans should include a description of the financial and staff resources necessary to complete each of the evaluations. The annual plans for 2019 and 2020 were not published until May 14, 2019, and May 13, 2020, respectively. The lack of statutorily required necessary resources, late publication, and lack of implementation details in the annual plans indicate gaps in the OPPT's existing chemical evaluation annual planning process. These challenges, as well as the concerns raised about workforce planning and capacity assessments, show that the OPPT cannot demonstrate its ability to meet future TSCA deadlines for risk evaluations.

## Conclusions

The EPA did not meet its existing chemical risk evaluation deadline of June 19, 2020, and the Agency has not developed a plan demonstrating that it has the capacity to meet future requirements. In February 2020, the Agency told us that it hired 24 additional staff, and as of July 22, 2020, the OPPT outlined plans to hire an additional 18 staff—this would still leave a staffing gap from its 2019 TSCA staffing analysis. Further, that analysis was conducted prior to Ninth Circuit's ruling in *Safer Chemicals, Healthy Families, et al. v. U.S. EPA*, which required the Agency to expand its existing chemical-risk-evaluation process to include legacy uses and associated disposals. The EPA's annual plans for risk evaluations were neither done in a timely manner nor met the statutory requirements to identify the resources needed to complete the risk evaluations for each year. Lastly, the Agency has not conducted workforce analysis or resource planning required by OPM regulations. Due to these missed deadlines and resource planning and analysis deficiencies, the EPA risks not meeting the TSCA deadlines.

## Recommendations

We recommend that the assistant administrator for Chemical Safety and Pollution Prevention:

1. Complete and publish the 2021 Annual Existing Chemical Risk Evaluation Plan by the beginning of calendar year 2021 and include the anticipated implementation efforts and financial and staff resources to implement the actions detailed in the plan.
2. Conduct a workforce analysis that accurately assesses the capability of the Office of Pollution Prevention and Toxics to implement the requirements of the Toxic Substances Control Act.
3. Specify what skill gaps must be filled to achieve the Toxic Substances Control Act implementation capacity and how and when those gaps will be filled in the fiscal year 2021 workforce plan that the EPA agreed to develop in its corrective action plan to the U.S. Office of Personnel Management.

## Agency Response and OIG Assessment

In the EPA's initial response, the Agency agreed in part with Recommendation 1, agreed with Recommendations 2 and 3, and provided proposed corrective actions and scheduled completion dates for all recommendations.

The Office of Chemical Safety and Pollution Prevention initially only agreed in part with Recommendation 1. However, in a follow-up memorandum, which we included in Appendix B, the Office stated that it will add additional information from internal planning documents to the annual plans, including the status of each risk evaluation, as well as the full-time equivalent staff and extramural resources allotted for the given fiscal year. The Office provided the OIG with an example of the table that will be included with the annual plans with such information. The OIG concluded that this is an acceptable corrective action. Recommendation 1 is resolved with corrective actions pending.

Recommendations 2 and 3 are resolved with corrective actions pending. In responses to Recommendations 2 and 3, the Office of Chemical Safety and Pollution Prevention agreed to conduct a workforce analysis specifically focused on the capability of the OPPT to implement the TSCA's requirements. It also agreed to use the workforce analysis to complete a skill gap analysis and use its hiring plan to fill identified gaps.

The Agency provided technical comments on the draft report, which we incorporated into our final report as appropriate. The Agency's initial response to the draft report is in Appendix A. The Agency's supplemental comments to the draft report are in Appendix B.

## ***Status of Recommendations and Potential Monetary Benefits***

| RECOMMENDATIONS |          |                                                                                                                                                                                                                                                                                                       |                     |                                                                      |                         | Potential Monetary Benefits (in \$000s) |
|-----------------|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|----------------------------------------------------------------------|-------------------------|-----------------------------------------|
| Rec. No.        | Page No. | Subject                                                                                                                                                                                                                                                                                               | Status <sup>1</sup> | Action Official                                                      | Planned Completion Date |                                         |
| 1               | 12       | Complete and publish the 2021 Annual Existing Chemical Risk Evaluation Plan by the beginning of calendar year 2021 and include the anticipated implementation efforts and financial and staff resources to implement the actions detailed in the plan.                                                | R                   | Assistant Administrator for Chemical Safety and Pollution Prevention | 1/31/21                 |                                         |
| 2               | 12       | Conduct a workforce analysis that accurately assesses the capability of the Office of Pollution Prevention and Toxics to implement the requirements of the Toxic Substances Control Act.                                                                                                              | R                   | Assistant Administrator for Chemical Safety and Pollution Prevention | 12/31/20                |                                         |
| 3               | 12       | Specify what skill gaps must be filled to achieve the Toxic Substances Control Act implementation capacity and how and when those gaps will be filled in the fiscal year 2021 workforce plan that the EPA agreed to develop in its corrective action plan to the U.S. Office of Personnel Management. | R                   | Assistant Administrator for Chemical Safety and Pollution Prevention | 3/31/21                 |                                         |

<sup>1</sup> C = Corrective action completed.

R = Recommendation resolved with corrective action pending.

U = Recommendation unresolved with resolution efforts in progress.

## ***Agency's Response to Draft Report***



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
WASHINGTON, D.C. 20460

OFFICE OF CHEMICAL SAFETY  
AND POLLUTION PREVENTION

**May 26, 2020**

### **MEMORANDUM**

**SUBJECT:** Response to Draft Report entitled "Lack of Planning for Staff and Resources Puts EPA's Ability to Meet TSCA Deadlines at Risk," Report No. 19-P-0127

**FROM:** Alexandra Dapolito Dunn, Esq.  
Assistant Administrator

**TO:** Sean W. O'Donnell  
Inspector General

**ALEXANDRA  
DAPOLITO DUNN**

Digitally signed by  
ALEXANDRA DAPOLITO DUNN  
Date: 2020.05.26 17:30:09  
-04'00'

This memorandum responds to the Office of Inspector General's (OIG's) April 24, 2020 Draft Report entitled "Lack of Planning for Staff and Resources Puts EPA's TSCA Deadlines at Risk," Report No. 19-P-0127 (Draft Report). The Office of Chemical Safety and Pollution Prevention (OCSPP) appreciates the OIG's effort in evaluating whether EPA met the deadlines imposed by the Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act, and whether OCSPP has the staff, resources, and management controls in place to meet future statutory deadlines.

### **I. General Comments on the Draft Report**

OCSPP has reviewed the Draft Report and has several broad areas of concern with its statements and conclusions. In addition, our review identified a series of factual errors and significant omissions, which we describe in a Technical Comments document transmitted with this memorandum. A few of the factual errors and omissions are summarized below.

The Draft Report concludes first that “EPA missed its first significant deadline in December 2019” to complete the first 10 existing chemical risk evaluations.<sup>1</sup> However, TSCA provides that EPA may invoke a six-month extension beyond the December 19, 2019 deadline to June 19, 2020. No action was necessary on EPA’s part to use the extension. We suggest a more accurate statement regarding our progress on the first 10 risk evaluations in the Technical Comments.

**OIG RESPONSE 1:** On May 20, 2020, the administrator said that the EPA will not meet its statutory deadline for completing final evaluations for ten chemicals by June 19, 2020, at the U.S. Senate Committee on Environment and Public Works hearing. We have edited the report to state that the EPA missed the June 19, 2020 deadline.

The Draft Report discusses the TSCA program’s staffing needs too broadly and draws inaccurate conclusions about the program’s readiness and capacity to meet future deadlines. In the Technical Comments, OCSPP provides updated information which should assist the OIG in reassessing these staffing conclusions.

Similarly, the Draft Report also draws broad conclusions regarding the timeliness of TSCA actions. If the OIG is relying on the publication date of Federal Register Notices to assess timeliness, this is inconsistent with how EPA has historically determined dates of completion. OCSPP follows the long-standing Agency practice that the date of signature of an action is considered the completion of the action, even if the publication in the Federal Register is later, so long as EPA also makes the action publicly available.

As such, on numerous occasions since the 2016 TSCA amendments, the Administrator signed final TSCA actions on or before the statutory deadline, and EPA announced those actions via press releases and list serves and posted them to the EPA website. Notably, the Office of General Counsel and the Office of the Chief Financial Officer use the date of signature to evaluate OCSPP’s compliance with TSCA’s deadlines. In the Technical Comments, OCSPP provides revised completion dates to the Draft Report’s Table 1 to reflect how EPA tracks completion of TSCA actions.

**OIG RESPONSE 2:** We have edited the table in the final report to indicate the signature date as the date of completion.

The Draft Report also omits several additional TSCA actions and deadlines relevant to the scope of this audit. This is significant given the stated purpose of the audit to determine whether EPA met the deadlines required by TSCA and has the resources to meet future statutory deadlines. Accordingly, in our Technical Comments, OCSPP adds several additional requirements and deadlines to the Draft Report’s Table 1, to reflect more accurately the scope of TSCA actions completed in the timeframe of the OIG audit.

**OIG RESPONSE 3:** We have included the additional TSCA actions and deadlines to the table in the final report.

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<sup>1</sup> See page 10 of the Report.

Finally, in the Draft Report, OIG indicates that EPA's resource planning process does not meet Office of Personnel Management (OPM) requirements. The Agency position is that the document entitled: "The Fiscal Year 2021 Justification of Appropriation Estimates for the Committee on Appropriations,"<sup>2</sup> (February 2020), meets OPM's requirements. In that document, the Agency specifically states that "EPA has addressed the workforce planning requirements of 5 CFR Part 250, Subpart B, Strategic Human Capital Management by completing an EPA FY 2019 HCOP (Human Capital Operation Plan) and beginning work to update the plan for FY 2020." Notwithstanding, in the proposed corrective actions, OCSPP agrees to conduct additional specific analysis to implement the OIG's recommendations for improvements to resource planning for the TSCA program.

**OIG RESPONSE 4:** While the EPA may have developed an FY 2019 HCOP, the OPPT staff we interviewed clearly informed us in November 2019 that they had not participated in the HCOP development process. Given the resource planning improvements that the entire Agency is undertaking, we do not consider the FY 2021 congressional justification document to be evidence of an endemic HCOP infrastructure and look forward to seeing the OPPT's plans regarding the resources necessary to successfully implement the ongoing TSCA amendment requirements.

## **II. Response to the Recommendations**

**Recommendation 1:** Complete and publish the 2021 Annual Existing Chemical Risk Evaluation Plan by the beginning of calendar year 2021 and include the anticipated implementation efforts and required financial and staff resources to implement the actions detailed in the plan.

**OCSPP Response:** OCSPP agrees, in part, with Recommendation 1. OCSPP agrees to publish the 2021 Annual Existing Chemical Risk Evaluation Plan by the beginning of calendar year 2021. However, OCSPP disagrees with expanding the scope of the annual plan beyond what is statutorily required. Congress specified its expectations for the content of the report<sup>3</sup>, and to expand it would compete with resources required to implement TSCA and meet deadlines. Further, Recommendation 2, to which OCSPP agrees, will address the OIG's request.

- **Proposed Corrective Action 1:** EPA will publish the 2021 Annual Existing Chemical Risk Evaluation Plan consistent with the statutory requirements.
- **Target Completion Date:** January 2021

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<sup>2</sup> See page 775 of <https://www.epa.gov/sites/production/files/2020-03/documents/fy21-cj-14-appendix.pdf>.

<sup>3</sup> See 15 U.S.C. 2625(n).

**OIG RESPONSE 5:** At a July 22, 2020 follow-up meeting to discuss Recommendation 1, the Office of Chemical Safety and Pollution Prevention stated that, to meet the intent of the OIG recommendation, it would add additional information from internal planning documents to the annual plans, including the status of each risk evaluation, as well as the full-time equivalent staff and extramural resources allotted for the given fiscal year. The Office of Chemical Safety and Pollution Prevention provided the OIG with an example of the table that will be included with the annual plans with such information. We concluded that this is an acceptable corrective action. We consider this recommendation resolved with corrective actions pending.

The July 22, 2020 meeting is documented in a July 28, 2020 memorandum, which we have included in Appendix B of this report.

**Recommendation 2:** Conduct a workforce analysis that accurately assesses the capability of the Office of Pollution Prevention and Toxics to implement the requirement of the Toxic Substances Control Act.

**OCSPP Response:** OCSPP agrees with Recommendation 2. Specifically, OCSPP agrees to develop a workforce analysis that is specifically focused on the Office of Pollution Prevention and Toxics and its ability to implement the requirements of the Toxic Substances Control Act.

- **Proposed Corrective Action 2:** OCSPP will conduct a workforce analysis specifically focused on the Office of Pollution Prevention and Toxics capability to implement the requirements of the Toxic Substances Control Act.
- **Target Completion Date:** December 31, 2020

**OIG RESPONSE 6:** The Agency agreed with Recommendation 2 and provided an acceptable corrective action and estimated completion date. We consider this recommendation resolved with corrective actions pending.

**Recommendation 3:** Specify what skill gaps must be filled to achieve the Toxic Substances Control Act implementation capacity and how and when those gaps will be filled in the fiscal year 2021 workforce plan that the EPA agreed to develop in their Corrective Action Plan to the U.S. Office of Personnel Management.

**OCSPP Response:** OCSPP agrees with Recommendation 3. OCSPP will use the workforce analysis developed in response to Recommendation 2 to identify skill gaps and develop a hiring plan to fill the remaining identified gaps.

- **Proposed Corrective Action 3:** OCSPP will complete a skills gap analysis by March 31, 2021 and will utilize its hiring plan to fill the remaining identified gaps.
- **Target Completion Date:** March 31, 2021

**OIG RESPONSE 7:** The Agency agreed with Recommendation 3 and provided an acceptable corrective action and estimated completion date. We consider this recommendation resolved with corrective actions pending.

cc: All OCSPP DAAs  
Program Office OD, DOD  
Jeff Harris  
OIG Team Members  
Janet L. Weiner, OCSPP Audit Liaison  
OPPT Program Office Audit Liaison



## ***Supplemental Comments on Draft Report***



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF CHEMICAL SAFETY  
AND POLLUTION PREVENTION

### **MEMORANDUM**

**SUBJECT:** Amended Corrective Action Plan for Draft Report No. 19-P-0127 (Evaluation of Lautenberg Act Resource Planning and Management)

**FROM:** Alexandra Dapolito Dunn  
Assistant Administrator

**ALEXANDRA  
DAPOLITO DUNN**  
Digitally signed by  
ALEXANDRA DAPOLITO DUNN  
Date: 2020.07.28 09:51:07  
-04'00'

**TO:** Sean W. O'Donnell  
Inspector General

The Office of Chemical Safety and Pollution Prevention (OCSPP) has reviewed the April 24, 2020 Draft Report, and with this memo amends our proposed Corrective Action Plan for Recommendation 1. OCSPP believes this amended Corrective Action Plan will address the concerns raised by the Office of the Inspector General in the Draft Report No. 19-P-0127 (Evaluation of Lautenberg Act Resource Planning and Management).

### **Amended Response to Recommendation 1:**

**Recommendation 1:** Complete and publish the 2021 Annual Existing Chemical Risk Evaluation Plan by the beginning of calendar year 2021 and include the anticipated implementation efforts and required financial and staff resources to implement the actions detailed in the plan.

**Amended Corrective Action:** OCSPP maintains that it has met the statutory requirements of TSCA since enactment by submitting an Annual Plan which describes the schedule and the resources necessary for the completion of each Risk Evaluation for the year. However, to be responsive to the OIG recommendation, OCSPP will add additional information from internal planning documents to this Annual Plan, including the status of each Risk Evaluation and the FTE and extramural resources allotted for the given Fiscal Year. EPA will publish the 2021 Annual Existing Chemical Risk Evaluation Plan consistent with the statutory requirements.

**Target Completion Date:** January 31, 2021

**OIG RESPONSE 1:** The Agency provided an acceptable corrective action and estimated completion date for Recommendation 1. We consider this recommendation resolved with corrective actions pending.

If you have questions or concerns regarding this response or the proposed Corrective Action Plan, please contact the OCSPP Audit Liaison, Janet Weiner at (202) 564-2309.

cc: All OCSPP DAA/AAAs  
Program Office OD, DODs  
Jeffrey Harris, OIG  
Jee Kim, OIG  
Ryan Maxwell, OIG  
Thane Thompson, OIG  
Michael Wilson, OIG  
Janet L. Weiner, OCSPP Audit Liaison  
John Latham, OPPT Program Office Audit Liaison  
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## ***Distribution***

The Administrator  
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