



Scott Pruitt, Administrator,
United States Environmental Protection Agency
1200 Pennsylvania Avenue N.W., Washington, DC, 20460

July 7, 2017

RE: Comment on Implementation of Toxic Substances Control Act Amendment to Require a Unique Identifier for Confidential Chemical Identities, Docket Identification Number: EPA-HQ-OPPT-2017-0144

Partnership for Policy Integrity (PFPI) is pleased to respond to EPA's request for comments regarding implementation of a Toxic Substances Control Act amendment. This provision requires EPA to assign a unique identifier to each chemical identity for which the agency approves a Confidential Business Information claim. The amendment also requires EPA to consistently assign the identifier to all information related to that chemical substance.¹ PFPI is a nonprofit organization that provides science and legal support so that citizen groups, environmental organizations, and policymakers can better understand energy development impacts on air quality, water quality, ecosystems, and the climate. Our current work focuses on biomass energy, oil and natural gas drilling, and hydraulic fracturing, often known as fracking.

PFPI urges EPA to assign unique identifiers to confidential chemical identities as quickly as possible to help citizens, scientists, and regulators gain a better understanding of the chemicals injected into oil and natural gas wells in drilling and hydraulic fracturing. PFPI supports full public disclosure of the identities of all chemicals injected into oil and natural gas wells and full public disclosure of the identities of all drilling and fracking chemicals that are used commercially following review under EPA's New Chemicals program. We consider full public disclosure of chemical identities to mean disclosure of Chemical Abstracts Service (CAS) numbers, specific chemical names, and trade names. We understand that federal and state laws allow chemical manufacturers and drilling companies to withhold chemical identities as confidential. We also acknowledge that EPA's unique identifier may not provide access to any of the chemical identifiers named above. However, as an interim step on the path to full public disclosure, EPA's assignment of unique identifiers to chemicals with confidential chemical identities could help shine a light on what has been a murky and potentially hazardous practice in oil and natural gas drilling: the use of confidential chemicals.

Of the options for assigning unique identifiers discussed by EPA, the simplest and most promising seems to be the "second alternative": assigning unique identifiers and then applying them to other submissions concerning the same chemical substance, but only to submissions by the same company. Submissions from a different company regarding the same chemical would

¹ Frank R. Lautenberg Chemical Safety for the 21st Century Act § 14(g)(4) codified at 15 USC 2613 (g)(4).

be assigned a different unique identifier. EPA should assign these unique identifiers to chemical identities that the agency has allowed to be listed as confidential before and after passage of the TSCA amendment.

PFPI and other organizations, citizens, and lawmakers have been concerned for many years about the use of confidential chemicals in drilling and hydraulic fracturing for oil and natural gas. Chemical manufacturers and drilling companies can declare these chemicals to be confidential under many laws and regulations including at the federal level under the Toxic Substances Control Act and at the state level under fracking chemical disclosure rules. Records show that companies have exercised this ability frequently. Our concern is that without knowing the chemicals' identities, citizens, scientists and regulators might be unknowingly exposed to harmful substances and would not be able to make informed decisions about drilling and fracking including how and whether to allow these activities in communities, states, and regions such as the Delaware River Basin.

The evidence shows that EPA itself has identified as potentially harmful dozens of drilling and fracking chemicals and that chemical manufacturers have claimed many of these chemicals' identities to be Confidential Business Information. Last year, PFPI analyzed records for 105 new chemicals proposed for use in drilling and hydraulic fracturing that EPA had reviewed between 2009 and 2014 under the New Chemicals program. We obtained the records through a Freedom of Information Act request. We found that EPA had health concerns about 88 of the chemicals ranging from irritation to skin, eyes, and lungs to neurotoxicity, liver toxicity, and developmental toxicity. Records indicated that EPA approved all but seven of these 105 chemicals for commercial use. Chemical makers later manufactured or likely manufactured 70 of the 105 chemicals. Manufacturers frequently declared the chemical identities to be confidential including CAS numbers for 52 of 70 chemicals likely to be produced at higher volumes, and names and CAS numbers for 16 of 33 chemicals likely to be produced at lower volumes.²

This confidentiality likely makes it difficult to locate wells in which the chemicals are being used. EPA does not track where new chemicals are used after the agency approves them. Nor does the agency monitor for these chemicals in the environment.³ The only likely way to find the chemicals is by searching for them in FracFocus and California's well stimulation disclosure database, repositories of fracking chemical disclosure for more than 125,000 wells in at least 23 states. Citizens must search for chemicals by CAS number, chemical name, or trade name. PFPI recently searched these two databases for 41 drilling and fracking chemicals with confidential identities for which EPA regulators had found health concerns. We could document only two of the 41 chemicals as being used in specific oil and gas wells. Even here, the search results may

² Toxic Secrets: Companies Exploit Weak U.S. Chemical Rules to Hide Drilling Risks. Partnership for Policy Integrity (April 7, 2016). See <http://www.pfpi.net/toxic-secrets-companies-exploit-weak-us-chemical-rules-to-hide-fracking-risks>.

³ 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).

have been incomplete because the chemicals' CAS numbers were confidential, and FracFocus has noted that CAS numbers are the best way to search for chemicals because they are unique. In contrast, chemicals can have multiple names or trade names.⁴ While it is possible that most of the 41 chemicals were not used in wells contained in the databases, it is also possible that many of them were used but cannot be linked to particular wells due to confidentiality claims. What is certain is that confidential chemical identities make it impossible to know for sure where these potentially harmful chemicals are being used. This scenario leaves citizens in the dark and creates an unreasonable risk of harm.

The assignment of unique identifiers by EPA to drilling and fracking chemicals with confidential chemical identities would help alleviate this problem if state governments also modified their chemical disclosure requirements. State governments that require disclosure of hydraulic fracturing or stimulation chemicals used in oil and natural gas wells could require chemical manufacturers or companies to list EPA's unique identifier whenever these companies declared confidential a chemical that EPA had assigned such a unique identifier. States should also ensure that such unique identifiers were listed in FracFocus and other fracking chemical disclosure databases. In turn, citizens, scientists, and regulators searching for chemicals used in particular wells could match this unique identifier with EPA records such as Structure Activity Reports that show whether EPA regulators had health concerns about the chemical. In the rare cases in which chemical manufacturers had submitted health testing data to EPA, citizens could match the unique identifier with such data. (Manufacturers should submit health testing data to EPA with all applications to produce new chemicals.) The unique identifier would likely help citizens, scientists, and regulators learn at least some valuable information about chemicals that would otherwise simply be listed in state fracking disclosure records as "confidential," "proprietary," or "trade secret." State laws should be broadened to require not just disclosure of hydraulic fracturing chemicals but also other chemicals injected into oil and natural gas wells. If states took this additional step, it is likely that under state disclosure requirements, drilling companies would list unique identifiers for chemicals claimed confidential for both fracking and other activities important to energy extraction such as drilling.

While the amendment seems ambiguous about whether the requirement to assign unique identifiers applies to both chemical identities labelled confidential before and after passage of the TSCA amendment, we believe that EPA should assign the identifiers to both types of identities. The language of the amendment says that "the administrator shall...develop a system to assign a unique identifier to each specific chemical identity for which the Administrator approves a request for protection from disclosure." The word "approves" could be read as forward-looking only or it could be read more broadly to mean "approves" or "has approved." If the word is interpreted to be forward-looking only, then EPA should still be required to assign a unique identifier to chemical identities claimed as confidential when companies are required to resubstantiate confidentiality claims under the new TSCA amendments and EPA approves these requests.

⁴ FracFocus. What Chemicals Are Used? Accessed online at <http://fracfocus.org/chemical-use/what-chemicals-are-used>.

The assignment of unique chemical identifiers, when combined with changes in state fracking chemical disclosure laws, could help provide important information to citizens. However, it should be only an interim step on the way to full disclosure of chemicals used in oil and natural gas wells.

We appreciate this opportunity to comment and are happy to answer any questions.

Respectfully submitted,

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