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EPA Takes Action to Protect People from PFAS that Leach from Plastic Containers into Pesticides and Other Products

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Contact Information

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WASHINGTON – Today, the U.S. Environmental Protection Agency (EPA) issued orders <<https://epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/long-chain-pfas-significant-new-use>> to Inhance Technologies LLC (Inhance) directing it not to produce per- and polyfluoroalkyl substances (PFAS), chemicals that are created in the production of its fluorinated high-density polyethylene (HDPE) plastic containers. This action, taken under the authority of the Toxic Substances Control Act (TSCA), will help protect the public from exposure to dangerous PFAS chemicals in containers used for a variety of household consumer, pesticide, fuel, automotive and other industrial products.

“PFAS should not be in the plastic containers people use every day, period,” said

Assistant Administrator for the Office of Chemical Safety and Pollution Prevention Michal Freedhoff. “EPA’s action today is one more way we are furthering the Biden-Harris Administration’s Strategic Roadmap to combat PFAS pollution.”

Long-chain PFAS chemicals build up in our bodies and the environment over time. Even small amounts can significantly contribute to people’s long-term exposure and health risk. People may be exposed to these PFAS through their drinking water, fish they eat from PFAS-contaminated waters, and through groundwater that has been contaminated by PFAS. Centers for Disease Control and other data show that nearly 100% of people tested have at least one of seven of the types of PFAS that Inhance manufactures in their blood already. Even without further exposure, it would take more than a decade for PFOA from a single exposure, one of the types of PFAS manufactured by Inhance, to leave people’s bodies.

In 2019, the drinking water used by the town of Easton, Massachusetts, tested positive for PFOA. A local waterbody was later tested and PFAS was found that was traced back to a mosquitocide used by state officials. In September 2020, EPA was made aware of this PFAS contamination in the mosquitocide. EPA scientists then determined that the PFAS found in the mosquitocide came from the fluorinated HDPE plastic container used to store the product, which was manufactured by Inhance. EPA determined that when Inhance fluorinates containers, it manufactures many types of PFAS, including perfluorooctanoic acid (PFOA). EPA announced <https://epa.gov/newsreleases/epa-releases-testing-data-showing-pfas-contamination-fluorinated-containers> in March 2021 that these PFAS can migrate into liquid products like pesticides and can continue migrating over time.

In March 2022, EPA issued a Notice of Violation to Inhance for its failure to notify the Agency before it began manufacturing PFAS. Inhance had five years from the proposal of EPA’s long-chain PFAS significant new use rule in 2015 to when it was finalized in 2020 to inform EPA that it was manufacturing long-chain PFAS as part of its process. Following this notice, EPA’s Office of Enforcement and Compliance Assurance (OECA) engaged with Inhance to determine if Inhance had ceased manufacture of the regulated PFAS. Upon determining that Inhance was still manufacturing the regulated PFAS and intended to continue to engage in its fluorination process, OECA referred enforcement to the Department of Justice (DOJ) and DOJ filed suit on behalf of EPA against Inhance in December 2022. Only after these actions did Inhance submit significant new use notices (SNUNs) for the nine PFAS it manufactures to EPA for review on Dec. 30, 2022.

Inhance has historically fluorinated up to 200 million containers annually, which is more containers than there are households in America. The release of 2.2 Kg of these 9 PFAS could cause significant contamination of drinking water supplies leading to risks of adverse health effects in millions of people. For example, EPA recently proposed a Maximum Contaminant Level of 4 parts per trillion for PFOA in drinking water <<https://epa.gov/newsreleases/biden-harris-administration-proposes-first-ever-national-standard-protect-communities>>. Additionally, EPA has also proposed that there is no level of PFOA in drinking water that is without risk of adverse health effects. If 2.2 Kg of PFOA were released to drinking water sources, it would contaminate more than 145 billion gallons of water to levels that would exceed this proposed enforceable level. This corresponds to almost three years' worth of water use in the City of New Orleans.

Upon review of the SNUNs and consistent with the Framework for Addressing New PFAS and New Uses of PFAS <<https://epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/framework-addressing-new-pfas-and>>, EPA has determined that three of the PFAS (PFOA, perfluorononanoic acid (PFNA) and perfluorodecanoic acid (PFDA)) are highly toxic and present unreasonable risks that cannot be prevented other than through prohibition of manufacture. Therefore, under TSCA section 5(f), EPA is prohibiting the continued manufacture of PFOA, PFNA and PFDA that are produced from the fluorination of HDPE. EPA also determined that the remaining six of the nine PFAS chemicals manufactured by Inhance may present an unreasonable risk of injury to health or the environment and, under TSCA section 5(e), is requiring the company to cease manufacture of these chemicals, and to perform additional testing if it intends to restart production. However, Inhance's current fluorination process for plastics produces all nine of the PFAS chemicals subject to these orders simultaneously, including PFOA, PFNA, and PFDA. Thus, the production of the other six PFAS could not restart so long as the fluorination process continues to produce PFOA, PFNA and PFDA. These orders become effective February 28, 2024.

Alternatives to this fluorination process exist that will allow for many sectors to continue to provide products with the necessary protective packaging. Additionally, EPA understands that Inhance is working on changes to its process with a stated goal of eliminating all PFAS production.

As always, EPA will review options for ensuring compliance with the orders, consistent with its enforcement policies, either through further litigation or an appropriate

settlement. EPA also notes that TSCA provides waivers for national defense purposes.

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