



TSCA Fees: EPA Must Adequately Justify Increasing TSCA Fees

Background

The 2016 amendments to the Toxic Substances Control Act (TSCA) provide EPA the authority to collect fees from chemical manufacturers and importers to help defray up to 25 percent of the costs associated with the Agency implementing the TSCA program. TSCA further required EPA to issue a rule establishing a fee structure and in October 2018, EPA finalized its Fees Rule for the administration of TSCA.

Section 26 of TSCA allows EPA to review, and if necessary and after consultation with those businesses subject to TSCA Fees, adjust TSCA Fees every three years. EPA is given this authority to ensure it has the necessary resources to effectively administer the TSCA program to meet its statutory requirements.

In January 2021, EPA published a revised proposal to the current TSCA Fees Rule. The revised rule proposed increasing the Section 6 risk evaluation fees by approximately 89%, created three new fee categories, and included an additional fee associated with test orders and test rules. The increases and new fee categories were proposed without substantiation of the TSCA program costs and the Agency's need for increased funding.

In Spring 2022, EPA warned industry to prepare for "sticker shock" as the Agency considers even higher fees to administer TSCA, with a supplement to the 2021 proposed rule expected later this year.

While EPA continues to propose increases to TSCA Fees, the Agency has consistently failed to provide an accounting of what it is doing with the fees it is already collecting. EPA must provide Congress with a detailed accounting for the operating costs of the TSCA program, including allocation of the TSCA Fees and resources the Agency currently receives to perform TSCA activities.

Problem

- EPA continues to increase the amount it charges chemical manufacturers without fiscal discipline or accountability.
- The Agency's latest supplement to the 2021 proposed rule, expected in 2022, would further increase these fees. Rather than provide a meaningful rationale for increasing fees, the Agency warned the regulated community to prepare for some "sticker shock" on TSCA Fees.
- While these significant costs are being paid directly by industry, it remains unclear what EPA is doing with this money. Currently, EPA has not accounted for the Congressional funding provided for the TSCA program, nor the TSCA Fees paid by manufacturers and importers.
- The Agency's throughput in conducting and completing risk evaluations and new chemical reviews is also not consistently meeting statutory timeline requirements thus it continues to remain unclear how EPA is utilizing the fees collected to administer the TSCA program

Solution

Good governance, fairness, and accountability require agencies to be good stewards of both public funds and fees paid by the regulated community. EPA should immediately provide justification for its proposal for increasing fees. EPA's rationale should demonstrate efficient use of resources and that expenditures will avoid duplication of efforts and wasteful spending.

EPA's forthcoming Fees Rule should also clearly explain how revenue from increased fees is spent and should show how fees collected for one program or activity are directed to that specific program or activity. For example, EPA must show how it is applying TSCA Section 6 fees collected for risk evaluations to meet its responsibilities for those risk evaluations. EPA also must send a report to the Senate Committee on Environment and Public Works (EPW) and the House Energy and Commerce Committee, as required by TSCA Section 26.

EPA's rationale for fee increases should document how these will deliver better service, improved timeliness, and improved adherence to the TSCA science standards. EPA should also commit going forward to regular reviews and accounting to demonstrate fiscal discipline with respect to use of Congressional funding and TSCA fees.