TOP 10 MYTHS & FACTS

ABOUT THE TOXIC SUBSTANCES CONTROL ACT (TSCA)

Industry has been dishonest about TSCA. We have the facts.

What is TSCA?

TSCA is a law enacted in 1976 to regulate chemicals used in our everyday lives, aimed at protecting the health of Americans and the environment. Prior to TSCA, many chemicals were allowed on the market without any safety review. TSCA is meant to oversee the safety of chemicals in common items like household cleaners, furniture, electronics and more. It covers the full lifecycle of chemicals (from manufacture to disposal), chemical mixtures and chemical-containing products. It also plays a crucial role in keeping chemicals out of our air, water and soil.

Four decades after TSCA's creation, it became clear that the law was not sufficiently protecting Americans from harmful chemicals. That's why after a decade of debate, Congress gave TSCA a badly needed update in 2016 when it passed the bipartisan Lautenberg Act—with broad support from health, environmental organizations and industry.

TSCA helps keep harmful chemicals out of our lives

Examples of everyday products and places where TSCA chemicals show up

Cleaning products

Electronics

Furniture

Construction materials

Production facilities & nearby communities

Plastic products

How has TSCA made a difference for our health?

Thanks to the Lautenburg Act improvements, many harmful chemicals—including several that cause cancer—have been kept out of our communities, homes and products. And some of the most toxic chemicals are now being phased out—including trichloroethylene (TCE), methylene chloride and asbestos. The 2016 reform also made a big difference for Americans' health by mandating that new chemicals be cleared by EPA as meeting a safety standard before being released onto the market—a requirement that did not exist before.

Industry is attacking TSCA not because it is broken, but because it is working

The chemicals industry is working to dismantle safety protections that are crucial to keeping our homes and communities from being flooded with toxic products. They appear ready to place their profits over Americans' health. The industry is spreading the same tired disinformation about TSCA on Capitol Hill to convince Congress to weaken the law. TSCA as written is designed to keep Americans safe—that's why it's under attack.

The top 10 myths being spread about TSCA—and the truth

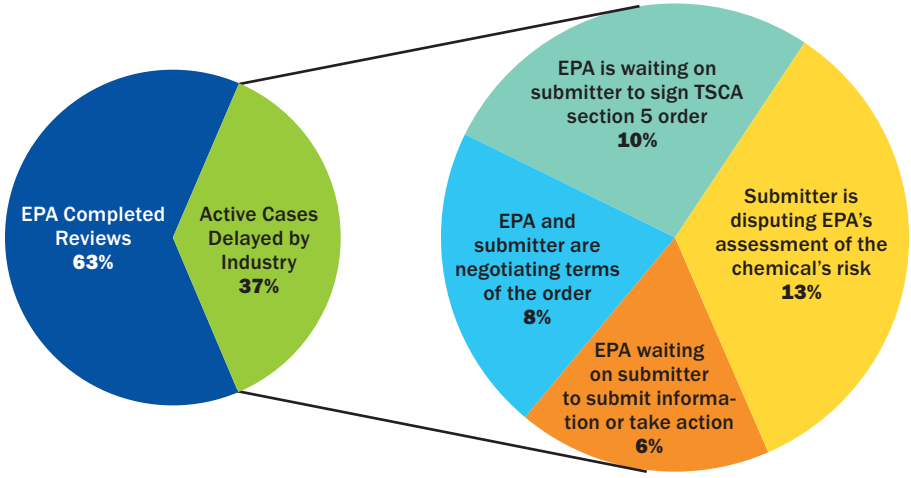
Here are the top 10 most common TSCA myths being spread on Capitol Hill—and the truth, backed by science.

MYTH 1: EPA routinely takes longer than 90 days to review new chemicals.

FACT: Submitters are responsible for most of the length of the review of a new chemical. Many cases take longer than 90 days (1) because new chemical applicants submit information that should have been included in the initial new chemical submission later in the process and (2) because the submitters frequently object to EPA's risk determinations and the restrictions it deems necessary to eliminate the unreasonable risk that the new chemical may present.

How industry stalls new chemical reviews

From Oct. 2022–Sept. 2023, EPA completed reviews for 145 of the 230 valid cases submitted (63%). The remaining 85 (37%) active cases are waiting on industry action.



MYTH 2: EPA asks for new information out of the blue and does not explain why it is needed.

FACT: EPA generally does not ask for additional information out of the blue. Rather, industry often provides information during the middle of the review that the company has and should have included in the original submission, including how the chemical is made and how it is intended to be used. This is basic information about the company's processes, how much of the chemical will be released to air, water and land and how many workers will be exposed. This information is provided by industry so that EPA will refine its risk assessment after the Agency has preliminarily identified an unreasonable risk.

There are instances where a company will make an unsubstantiated claim about the properties of a chemical, the hazard of the chemical or anticipated exposure that conflicts with what EPA knows about similar chemicals. In that case, EPA may say that, in the absence of information on the new chemical, it intends to use the information it has on the similar chemical. The new chemical submitter may then choose to develop new information to try to support its unsubstantiated claim, particularly if EPA has determined that the new chemical may present an unreasonable risk. Most Americans would agree that EPA should evaluate this information before it approves a chemical that may end up in our air, water and bodies.

MYTH 3: Most new chemicals are not very toxic.

FACT: Most new chemicals raise significant concerns for toxicity, such as the metal-based chemicals used for electric vehicle batteries, the persistent and bioaccumulative chemicals, including new PFAS, used to make microchips and the new chemical complex mixtures derived from plastic waste.

There is little incentive for industry to design truly safer chemicals given the risk framework of TSCA. Risk is a combination of hazard (toxicity) and exposure. The regulation of new chemicals is primarily regulation of exposure to the new chemical, e.g., through worker protections, limitations on releases to water, or concentration limitations.

MYTH 4: EPA impedes the development of innovative chemicals.

FACT: Truly innovative chemicals are both functional and safe. When industry develops chemicals, safety typically takes a backseat to function. Many new chemicals raise significant concerns for toxicity and may present unreasonable risks at low levels of exposure. Risk is a function of toxicity (hazard) and exposure. When there are significant concerns for the toxicity of a new chemical, the only way to prevent the identified unreasonable risk is by controlling exposure. However, the information needed to determine the exposure is often lacking in industry's new chemical submissions—adding time to the review process. And controls needed to mitigate the unreasonable risk that the chemical may present, such as limiting exposure either through worker protections, limits on releases or restrictions on uses, are things that industry often argues with EPA about—again adding time to the review process.

If the industry were developing chemicals that were truly innovative by being safe as well as functional, the level of exposure would be less critical and there would need to be fewer restrictions.

MYTH 5: Significant New Use Rules (SNUR) are stifling innovation. Nobody wants to use or buy a chemical with a SNUR attached.

FACT: Many new chemicals that raise significant concerns for toxicity may present unreasonable risks at low levels of exposure. While they may be used safety under certain restrictions required by a section 5(e) order, they may present unreasonable risks under other unintended uses or reasonably foreseen uses. Even if the unreasonable risk can be controlled for industrial or commercial uses, they often cannot be controlled for consumer uses. The requirements of the consent order only apply to the new chemical submitter, not other companies that may produce or use the new chemical. In these circumstances, SNURs that mirror the section 5(e) consent order are intended to address a gap in protection and level the playing field for the company subject to the section 5(e) consent order.

Disregarding a chemical's potential unreasonable risks and failing to put a warranted SNUR on the chemical will not foster innovation and the development of safe alternatives.

In addition, failing to put a warranted SNUR on a chemical will not simply displace an existing chemical alternative that poses unreasonable risks. It will just add another chemical on the market that may present an unreasonable risk. It is much more costly to deal with a chemical after it becomes an existing chemical without a SNUR than to address the potential unreasonable risks via a SNUR. True innovation would be to develop a chemical that is both functional and safe.

MYTH 6: EPA is holding up chemicals critical to green energy (e.g., EV batteries, solar, wind), including chemicals critical to producing microchips.

FACT: EPA routinely approves the chemicals used to make microchips and in green energy. For example, EPA has approved about 50 photoacid generators (including PFAS photoacid generators) used in etching microchips, even though they are persistent bioaccumulative toxic (PBT) chemicals. EPA also continues to approve other PFAS and other chemicals for use in solar and wind, despite the availability of safer and/or environmentally less harmful alternatives. While the risks of many of these chemicals warrant "may present" determinations and section 5(e) orders, these orders do not block or delay the chemicals' use and EPA's limitations on exposure provide important protections to workers and other exposed populations.

EPA routinely approves highly toxic mixed metal oxides that are used in the production of EV batteries. EPA has a special program to facilitate approval of these chemicals Integrated Approach for Mixed Metal Oxides New Chemicals Review.

MYTH 7: EPA takes a hazard-based approach to new chemicals.

FACT: EPA takes a risk-based approach to new chemicals because TSCA is a risk-based statute. TSCA requires that EPA affirmatively determine whether a new chemical poses an unreasonable risk. In determining the risk posed by a chemical, EPA considers the toxicity (hazard) of the chemical, its exposure and whether the level of exposure is anticipated to result in harmful effects. There is no evidence that EPA makes "may present" findings (or any other TSCA section 5 finding) based on hazard alone.

MYTH 8: EPA assumes unreasonable worker protection scenarios; most workers use PPE.

FACT: This is a double fallacy. Scientific evidence shows that many workers do not use PPE and that the use of PPE is not the standard for worker protection.

MYTH 9: EPA overestimates risks by considering all uses of the chemical (the "whole chemical").

FACT: Considering exposures from all uses of a chemical and all pathways of exposure, e.g., air, water, land, is a more accurate way to assess risk based on the best available science. When we are exposed to a chemical it can be from different sources—and what is in our body is an aggregate from different sources. To not consider all the sources would underestimate exposures and health risks.

MYTH 10: Congress is required to reauthorize TSCA to renew the fees that expire in 2026.

FACT: TSCA does not require reauthorization in 2026. The chemical lobby is attempting to create a false sense of urgency by claiming that TSCA generally needs to be authorized, when only the fee provision expires in 2026. The chemical lobby is using the expiration of the fee authority as a Trojan horse to push for rollbacks that have nothing to do with fees and will weaken EPA's ability to protect the public from unsafe chemicals.

When it comes to chemical policy, the facts are essential.

Scan the QR code to see all our TSCA fact sheets.

Contributing organizations:

Environmental Defense Fund (edf.org)
Earthjustice (earthjustice.org)
Center for Environmental Health (ceh.org)
Toxic-Free Future (toxicfreefuture.org)