



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

May 6, 2021

OFFICE OF CHEMICAL SAFETY  
AND POLLUTION PREVENTION

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Dear Ms. Curran and Ms. Lopez:

The U.S. Environmental Protection Agency is responding to the petition filed pursuant to section 21 of the Toxic Substances Control Act, received on February 8, 2021, by you on behalf of the following petitioners: People for Protecting Peace River, Atchafalaya Basinkeeper, Bayou City Waterkeeper, Calusa Waterkeeper, Center for Biological Diversity, Cherokee Concerned Citizens, Healthy Gulf, ManaSota-88, Our Santa Fe River, RISE St. James, Sierra Club's Florida and Delta chapters, Suncoast Waterkeeper, Suwanee Riverkeeper, Tampa Bay Waterkeeper, Waterkeeper Alliance, Waterkeepers Florida, and WWALS Watershed Coalition. The petition requests the EPA to take several actions under section 7004(a) of the Resource Conservation and Recovery Act; section 21 of TSCA; and section 553 of the Administrative Procedure Act related to phosphogypsum and process wastewater. In addition to seeking action under RCRA, the petition asks EPA to (1) initiate the prioritization process for designating phosphogypsum and process wastewater as high priority substances for risk evaluation under TSCA section 6(b)(1)(B)(i), (2) issue a test rule under TSCA section 4(a)(1)(A) requiring phosphogypsum and process wastewater manufacturers to develop information with respect to health and environmental effects relevant to a determination that the disposal of these chemical substances does or does not present an unreasonable risk of injury to health or the environment, and (3) make a determination by rule under TSCA section 5(a) that the use of phosphogypsum in road construction is a significant new use.

Because TSCA section 21 only provides for petitions for EPA to initiate a rulemaking proceeding for the issuance, amendment, or repeal of a rule under TSCA sections 4, 6, or 8, or an order under TSCA sections 4 or 5(e) or (f), EPA is only addressing the request for the issuance of a TSCA section 4 test rule under TSCA section 21 and is considering the requests for action under TSCA sections 5(a) and 6(b)(1)(B)(i) as petitions for action under the APA. This response letter specifically addresses the portion of the petition under TSCA section 21, not the portions of the petition under the APA, or under section 7004(a) of RCRA.

As a general matter, EPA shares the petitioners' concern regarding the potential for disproportionate impacts in communities with environmental justice concerns.

EPA has reviewed the information submitted in your petition. Based on this review and after careful consideration of your specific requests, EPA is denying the request to initiate a proceeding for the issuance of a rule under TSCA section 4 because the TSCA section 21 petition does not set forth the facts establishing that it is necessary for the Agency to issue such a rule. The Agency's reasons for denying this portion of the petition will be published in a forthcoming edition of the *Federal Register*. A pre-publication copy of that *Federal Register* document is enclosed.

Under TSCA section 21, the petitioners have the right to appeal the Agency's denial of its petition by commencing a civil action in a U.S. district court to compel initiation of the requested proceeding within 60 days of a denial. If you would like to discuss this matter further, please contact Tanya Hodge Mottley, Director, Existing Chemicals Risk Management Division, Office of Chemical Safety and Pollution Prevention, at (202) 564-3152 or by email at [mottley.tanya@epa.gov](mailto:mottley.tanya@epa.gov).

Sincerely,

**MICHAL  
FREEDHOFF**

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Michal Freedhoff, Ph.D.  
Principal Deputy Assistant Administrator

Enclosure