



CEH

CENTER for
ENVIRONMENTAL
HEALTH

January 5, 2023

To Whom It May Concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended (“FOIA”), Public Employees for Environmental Responsibility (“PEER”) and Center for Environmental Health (“CEH”) request certain documents from the U.S. Environmental Protection Agency (“EPA”) relating to the formation of Per- and Polyfluoroalkyl Substances (“PFAS”) during the fluorination of plastic containers by Inhance Technologies USA (“Inhance”).

EPA’s Office of Chemical Safety and Pollution Prevention (“OCSPP”) and Office of Enforcement and Compliance Assurance (“OECA”) have been assessing Inhance’s compliance with the Significant New Use Rule (“SNUR”) for long-chain perfluoroalkyl carboxylate (“LCPFAC”) chemical substances promulgated by EPA on July 27, 2020, under the Toxic Substances Control Act (“TSCA”) (85 Fed. Reg. 45109), 40 C.F.R. § 721.10536.

On December 23, 2022, EPA filed suit against Inhance in the District Court for the Eastern District of Pennsylvania to restrain violations of TSCA.

This request applies to all records obtained or created by EPA between July 27, 2020, and the present.

Specifically, we request:

1. EPA’s January 14, 2021, subpoena to Inhance;
2. Inhance’s February 1 and 8, 2021, responses to the January 14, 2021, subpoena;
3. Any other responses by Inhance to the January 14, 2021, subpoena;
4. All data, protocols, analyses, and tests conducted by Inhance or outside laboratories, submitted to EPA by Inhance or otherwise in EPA’s possession with respect to the formation of LCPFAC and other PFAS during fluorination and the presence of these substances in plastic containers fluorinated by Inhance;
5. Other information about the fluorination process submitted to EPA by Inhance relating to or reflecting the presence of PFAS in containers fluorinated by Inhance;
6. All risk assessments or analyses conducted by or for Inhance submitted to EPA regarding the human health impacts of PFAS present in containers fluorinated by Inhance;
7. All other data, protocols, analyses, risk assessments or other information in EPA’s possession referring or relating to the presence of PFAS in plastic containers fluorinated by Inhance;

8. Emails, phone logs, text messages, instant message chats, or other communications between EPA and Inhance referring or relating to the presence of PFAS in containers fluorinated by Inhance;
9. Documents or other information provided to EPA by Inhance referring to, describing, or relating to any changes in its fluorination process affecting or intended to affect the levels of PFAS in fluorinated containers;
10. The Notice of Violation (“NOV”) issued by EPA to Inhance on March 1, 2022;
11. All data and information about Inhance’s fluorination process, analyses, or other testing submitted by Inhance to EPA in response to the March 1, 2022, NOV;
12. Any significant new use notice (“SNUN”), and all attachments and accompanying information, submitted to EPA by Inhance under the LCPFAC SNUR;
13. All emails, text messages, instant message chats, and other communications between EPA and Inhance relating to any SNUN submitted by Inhance under the LCPFAC SNUR; and
14. All documents created by EPA, or its contractors, assessing or analyzing the significant new use activities described in any SNUN submitted by Inhance under the LCPFAC SNUR or any information therein, including, but not limited to, documents relating to the human health or environmental impacts of PFAS present in plastic containers fluorinated by Inhance.

This request includes all final documents that have ever been within the agency’s custody or control, whether they exist in agency “working,” investigative, retired, electronic mail, or other files currently or at any other time. All electronic records should be delivered in their original file format with metadata and any attachments included. Physical records should be scanned or otherwise converted into electronic format.

For electronic records, please provide all records in their native file formats (i.e., not converted to PDF) with all metadata included, and for records such as emails which have files embedded or attached, please provide all attachments in their native formats. For instant messages, plain text is acceptable consistent with guidance issued by the National Archives and Records Administration.

For any documents or portions of documents that you withhold from release due to the claimed application of specific exemption(s) from FOIA requirements, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of *Vaughn v. Rosen* (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why you believe each such exemption applies to the document or portion of a document withheld.

Fee Waiver Request

PEER and CEH request that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor” (5 U.S.C. 552 (a) (4)(A)):

1. The records concern the operations or activities of the Government.

The FOIA request is, by its terms, limited to identifiable activities of EPA and information submitted by industry regarding compliance with EPA regulations under TSCA for the PFAS a class of chemicals.

2. The disclosure of the requested records is likely to contribute to public understanding of EPA's activities to assure compliance with TSCA.

The requested material consists of communications and information concerning the PFAS class of chemicals, which have raised significant public health concerns because of their persistence, bio-accumulation and toxicity. The regulation of PFAS is of great interest to the general public and environmental advocates, and further information from the agency will help clarify its role and process in understanding PFAS and the impacts of particular PFAS on health and the environment enforcing TSCA regulations limiting manufacture and processing of PFAS.

3. The release of these requested records will contribute significantly to public understanding of the governmental activities.

The nature of the information should enhance public understanding of the agency's regulation of PFAS.

PEER and CEH intend to provide the requested information to the general public through:

- Release to the news media;
- Posting on their web pages which draw between 1,000 and 10,000 viewers per day;
- Publication in PEER's newsletter that has a circulation of approximately 20,000, including 1,500 environmental journalists; and
- Publication in CEH's email newsletter, which reaches over 30,000 members of the public and dissemination through social media channels that have a total of over 100,000 followers.

PEER and CEH have engaged in considerable advocacy and public education regarding the health and environmental impacts of PFAS and have considerable expertise in these issues.

PEER has a long track record of attracting media and public attention to the internal records of federal agencies. Through these methods, PEER generates an average of 1.5 mainstream news articles per day. Moreover, extensive media coverage of EPA's actions underlines the broad public interest in this material. Moreover, PEER believes that EPA also considers this information to be of interest to the general public.

For 26 years, CEH has worked to protect people from toxic chemicals by engaging with communities, consumers, workers, government, and the private sector to demand and support business practices that are safe for public health and the environment. Its work has been featured in numerous local, state, national and global news outlets. In 2022, CEH's work was mentioned in 1092 news articles (roughly 91/month). CEH engages with organizations and members of the public from the grassroots to the global level, and shares information via listservs with a large number of networks and coalitions, and through in-person and virtual events.

CEH has a long track record of ground-breaking consumer education and rights victories related to ingredient disclosure, consumer right to know, and corporate accountability for product

reformulation and pollution controls. Some key examples are advocating for the establishment of comprehensive federal limits on lead in children's products through the Consumer Product Safety Improvement Act, ending toxic heavy metal threats from jewelry, the elimination of chlorinated tris (or TDCPP) flame retardant chemicals from baby products, and ending lead poisoning risks from candy. CEH's consumer right-to-know campaigns educate and equip members of the public, especially those in disproportionately impacted communities, to protect themselves from toxic exposures, including from toxic chemicals in products marketed to them or emitted into the environment. In such campaigns, CEH partners closely with the media to develop stories on these hazards, amplifying the issues through traditional and social media.

4. Disclosure would not serve a commercial interest of the requestor.

Disclosure is in no way connected with any commercial interest of the requestors. PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. CEH is a nonprofit organization focused on protecting people and the environment from toxic chemicals through policy advocacy, public interest litigation, institutional engagement, community partnerships and scientific research. To that end, PEER and CEH are designated as tax-exempt organizations under section 501(c)(3) of the Internal Revenue code.

If in the process of conducting a search for records responsive to this request it appears that a large quantity of irrelevant material is being included or further relevant material may not be captured by the specific terms of the request, or any other concerns related to the timeliness or completeness of the response arise, please contact the undersigned at cteubner@peer.org.

If you have any questions about this FOIA request, please contact me at (202) 464-2293 or cteubner@peer.org. I look forward to receiving the agency's final response within 20 working days.

Sincerely,

A handwritten signature in black ink that reads "Colleen E Teubner". The signature is written in a cursive, flowing style.

Colleen E. Teubner
Staff Litigation and Policy Attorney
PEER