

To: Michael S. Regan, EPA Administrator  
From: [Your Name]

We urge the Environmental Protection Agency to take swift regulatory action to address the historic, ongoing, and future harm caused by phosphate fertilizer production in the United States. To that end, we fully support the legal administrative petition filed with your office on Feb. 8, 2021 under the Resource Conservation and Recovery Act and Toxic Substances Control Act seeking federal regulatory control of the radioactive, toxic fertilizer-production wastes known as phosphogypsum and process wastewater from phosphoric-acid production ("process water").

The EPA has acknowledged the need for a federal regulatory program addressing phosphogypsum and process-water storage for over three decades now. Yet the agency has failed to act beyond its 1989 rule requiring that phosphogypsum — produced at a rate of five tons of waste for every ton of phosphoric acid — be placed in "stacks." These systems of process-water impoundments atop mountainous piles of phosphogypsum waste can be over a mile wide and 200 feet tall, and precariously store up to nearly a billion tons of acidic, radioactive process water. Due to EPA's inaction, there are now over 70 of these looming monstrosities scattered throughout Arkansas, Florida, Idaho, Illinois, Iowa, Louisiana, Mississippi, Missouri, North Carolina, Texas, Utah and Wyoming.

These toxic, radioactive wastes clearly cannot be contained as currently managed. This is evident from numerous cases of groundwater contamination, liner tears, sinkholes, leaks, seepage, lateral movement indicating instability, dam failures, Superfund designations, and intentional releases into the environment in the face of ever-more-frequent heavy rainfall events attributable to climate change.

Despite it being well past time for EPA to develop its promised regulatory program, it has instead recently decided to aid in the diffusion of radioactive phosphogypsum throughout the United States by allowing its offsite use in road construction. We strongly oppose this decision and support the legal petition for reconsideration filed Dec. 18, 2020 by conservation and labor groups.

In addition, the EPA must promulgate rules that accomplish the following to safely contain and manage fertilizer-production wastes:

- 1) Reverse the EPA's 1991 Bevill regulatory determination excluding phosphogypsum and process water from RCRA Subtitle C hazardous waste regulations;
- 2) Govern the safe treatment, storage and disposal of phosphogypsum and process wastewater as hazardous wastes under RCRA Subtitle C;
- 3) Initiate the prioritization process for designating phosphogypsum and process wastewater as high-priority substances for risk evaluation under TSCA §6(b)(1)(B)(i);
- 4) Require manufacturers to conduct testing on phosphogypsum and process wastewater under TSCA §4(a)(1)(A)(ii); and
- 5) Determine under TSCA §5(a) that the use of phosphogypsum in road construction is a significant new use.

Each day many active "gypstacks" grow bigger, at a scale never before seen, causing an ever-greater and to-date-unassessed risk to human health and the environment. EPA must act quickly to bring this industry under control and protect the environment and human health.