



# National Tribal Toxics Council

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November 15, 2018

Lance Wormell  
Acting Director, Chemical Control Division  
Office of Pollution Prevention and Toxics  
Environmental Protection Agency  
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Washington, DC 20460-0001

RE: Comments to "A Long-Term Approach for Organizing the TSCA Chemical Inventory,"  
Docket ID: EPA-HQ-OPPT-2018-0659

The National Tribal Toxics Council (NTTC) appreciates the opportunity to provide comments on the above subject and the EPA white paper "A Working Approach for Identifying Potential Candidate Chemicals for Prioritization." We commend EPA and appreciate the Agency's work to develop and publish these internal approaches to guide EPA's work on evaluating risk of chemicals in consumer products. As an EPA Tribal Partnership Group (TPG) supported by the EPA Office of Pollution Prevention and Toxics (OPPT), the NTTC works on issues related to chemical safety, toxic chemicals, and pollution prevention for Indigenous people of the U.S. Through this partnership, we assist OPPT with education and outreach to tribes, and in turn, educate and inform EPA about effects of chemicals and pollution upon tribal people.

### ***Potentially Exposed or Susceptible Subpopulations***

On page 2 of the white paper there is mention of potentially exposed or susceptible subpopulations which includes a footnote to the subpopulation definition in TSCA Section 3(12), and in 15 USC 2602. The white paper itself includes the clause "identified as relevant to the risk evaluation by the Administrator, under the conditions of use" (page 2, paragraph 1). In previous comments, NTTC has provided concerns and asked questions of OPPT about the vagueness of the clause in TSCA stating that potentially exposed or susceptible subpopulations are "identified by the Administrator." There is no proposed process by which the Administrator will identify potentially exposed and susceptible subpopulations, nor by which the Administrator will identify a relevant subpopulation, and NTTC encourages EPA to work with us, tribal governments, and other tribal organizations to transparently develop such a process. We also note that the law specifically requires that EPA define a chemical as high-priority when it is one that "may present an unreasonable risk of injury to health or the environment because of a potential hazard and a potential route of

exposure.” This language of the law does not require EPA to definitely identify the unreasonable risk but the *possibility* of unreasonable risk. NTTC has identified several sources emanating from commercial products and several exposure pathways by which tribes as potentially exposed subpopulations face unreasonable risks, and we have provided this information to OPPT. We look forward to seeing how the agency uses this information to evaluate risks to tribal people.

We encourage EPA to:

- Protect tribal populations who experience both disproportionate exposures and resulting health impacts from toxics.
- Use tribal exposure pathways as the sentinel pathways for risk evaluations. This will protect tribal people as well as other susceptible and sensitive subpopulations that must be considered according to TSCA.
- By protecting tribal populations that are exposed to greater risk, we protect all.
- Use the TSCA language about evaluating risks to highly exposed, susceptible and sensitive subpopulations.

Unlike urban and suburban populations, Tribes have frequent exposure of long duration to the natural environment, dietary reliance on local wild foods, and unique customary and traditional practices that intertwine with harvest and use of local wild materials—plants, animals, fish, water, soil, minerals. There are no viable or acceptable alternatives to the subsistence resources, cultural-spiritual resources, and other resources of tribal lifeways. When these resources are polluted, contaminated, destroyed, and otherwise not available or safely available, then an aspect of a whole culture is also destroyed. This is not speculation. There are tribes who have not been able to conduct ceremony because the wild resource used are not available or contaminated. For example, the Stillaguamish Tribe did not have their annual First Salmon Ceremony between 1985 and 2009 because the Chinook salmon return numbers were so low the whole population was in danger of completely dying out. In Lakota religion, a purification ceremony is conducted with pure water from a specific lake is poured on hot rocks, the resulting steam a significant aspect of the purification rite. The water used must be from the specific lake and carried in specific containers for use. It cannot be bottled water from some disparate location. It cannot even be carried in a metal container. Thus, under TSCA, tribes meet the definition of an exposed subpopulation, and EPA must adequately and transparently evaluate these exposures. There are 576 federally-recognized sovereign tribal nations across the United States, located within all 10 EPA regions; altogether, 6.1 million tribal members are represented.

When will there be a process developed for the Administrator to use in determining whether a subpopulation is “relevant” to a specific risk evaluation? EPA has developed the Systematic Review Process for determining whether or not data is useful, reliable, and relevant to the risk evaluation. Likewise, it would benefit EPA and demonstrate transparency to have such a process in place, for determining the relevancy of a subpopulation in evaluating a particular chemical’s risk and as soon as possible. The NTTC would greatly welcome the opportunity to assist OPPT in developing that process. As noted by EPA, our past working meetings with OPPT, including the Risk Assessment Division, have been constructive to assist in the understanding of, and development of procedures and resources for EPA’s TSCA work and how it pertains to tribal populations.

### ***Conditions of Use***

On page 2 of the white paper, EPA references both the law and the implementation of the U.S. code in regards to the term “conditions of use.” In the fifth endnote, “For purposes of prioritization, the Administrator may determine that certain uses fall outside the definition of “conditions of use”.” This is

another scenario of decision-making that is vague and unsettling. The very definition of “conditions of use” in the law includes disposal (TSCA, as amended, §3(4)). NTTC has presented to OPPT known and reasonably foreseen completed chemical exposure pathways via product disposal; which thus meet the definition of “conditions of use.” This information is relevant to several aspects of TSCA. The law specifies that in determining a significant new use of a chemical, relevant factors must be considered, including “the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and *disposal* of a chemical substance (TSCA, as amended, §5(a)2(D)). Other sections of the law require EPA to consider disposal alone or disposal in conjunction with the manufacture, distribution in commerce, processing, or use; the other uses in the definition of “conditions of use.”

NTTC’s provided information also aligns with the prioritization language in TSCA §6(b)1(B)(i)—Risk Evaluations. Prioritization for Risk Evaluations. Identification of Priorities for Risk Evaluation. High-Priority Substances: “The Administrator shall designate as a high-priority substance a chemical substance that the Administrator concludes, without consideration of costs or other nonrisk factors, may present an unreasonable risk of injury to health or the environment because of a potential hazard and a potential route of exposure under the conditions of use, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator.”

In this light, NTTC wishes to make clear that *disposal of a product or its byproducts should always be fully considered a condition of use*. It would be an unconscionable decision to evaluate a chemical without considering explicitly the ramifications of its disposal. It is via disposal that many chemicals find their way into the natural environment. It is via the natural environment that tribal populations consistently face the significantly higher exposures than the general population – warranting their explicit separate consideration as a subpopulation – in every step of the risk evaluation process, including chemical prioritization.

Spurious determinations could have the greatest detrimental outcome for sensitive, susceptible, and highly exposed populations, as their unique exposure pathways almost inherently affect smaller populations, which tend to be more feasible to ignore politically. We note it is for these very reasons, that subpopulations were specifically included in the 2016 TSCA amendments.

There is also the issue of local conditions. Now that TSCA preempts state regulation of chemicals, it also prevents states from protecting unique local populations as they did before the amendments to TSCA in 2016. Now, EPA must protect those unique local populations. This can only be done when EPA, the Administrator specifically, explicitly considers the most vulnerable subpopulations. Therefore, it is not just the lack of political voice, it is inherent in the diversity of cultures in the United States as a whole. For tribes, these local conditions, local resources, access to such, and availability of such is inherent to the tribal rights specified in Tribal-US treaties and in the federal trust responsibility, of which every federal agency is beholden.

Additionally, it is NTTC’s strong opinion that legacy use of a chemical is a condition of use. It is unscientific and unethical to presume the U.S. population is not being exposed to a chemical during use of a product’s life span simply because the chemical is no longer being used to manufacture such products. A clear case is consumer electronics which are ubiquitous in homes. Simply because certain flame retardants are no longer being used in their electronic manufacture does not mean the population is not being exposed to them via inhalation and ingestion of computer dust. Thus, legacy exposure must be considered in chemical prioritization.

EPA describes receiving 43 relevant comments in the docket for the December 11, 2017 public meeting for prioritization. NTTC notes with interest that among the whole of the public comments, the most consistent support was for using the 2014 TSCA Work Plan for Chemical Assessments as the starting point to identify the high-priority chemical candidates. This support is consistent with or reflects the report of the U.S. Senate Committee on Environment and Public Works (June 2015), "It is the Committee's intention that EPA rely on existing processes, such as those established under the Agency's TSCA Work Plan Chemical program, to manage the process as new policies and procedures are developed."

### ***Sufficiency of Information***

NTTC appreciates EPA's transparent discussion regarding the sufficiency of information when determining prioritization of a chemical candidate. We support the Agency's ideal to fill identified information gaps early in the prioritization process. NTTC further supports the factors EPA identified for the screening process when updating the TSCA Work Plan, especially the factors that a chemical is a known persistent, bio-accumulative, and toxic, or a chemical that is detected in biomonitoring programs. These two factors are significantly relevant to tribal populations whose tribal lifeways put them at risk of higher exposure to the vast array of chemicals that enter the natural environment, primarily by disposal and use. In the white paper Section 4 "Near-Term Approach for Identifying Potential Candidate Chemicals for High-Priority Designation," EPA described three factors it intends to consider for selecting potential chemicals for prioritization: Priorities, Quantity and Quality of Information, and Work Load.

Regarding the first topic under Priorities, "Factor," by what method will the Agency make public its "overarching" priorities? It is efficient for EPA to include in its internal evaluation process the priorities of other EPA program offices. The selection of those chemicals due to their priority for EPA programs outside of OPPT must be clear and shared with sufficient notice and allowance for tribes and the public to respond. We have noted in the past that some aspects of the risk evaluation process implemented by the Office of Pesticide Programs (OPP) were inclusive of tribal governments and the Tribal Pesticide Programs Council (TPPC), the Tribal Partnership Group which works with OPP. We have appreciated OPP and TPPC sharing their experience with NTTC and OPPT, and anticipate continued learning opportunities among our four groups.

Regarding the second topic in the first Factor under Priorities, EPA's engagement and collaboration with partner federal agencies prior to and during the prioritization process, NTTC is eager to see the fruit of this engagement. Members of NTTC have shared with OPPT and OCSPP staff the opportunities for data and other information collected, housed, and managed by other agencies, such as Indian Health Service, the CDC's Agency for Toxic Substances and Disease Registry, National Institute for Health, and the National Institute of Environmental Health Sciences.

Furthermore, we encourage EPA to begin engaging with tribal governments' hospitals and clinics which are funded via contracts with IHS under the Indian Self-Determination Act, P.L. 93-638, representing over 56% of the IHS budget. EPA's partnership with IHS and outreach to the National Indian Health Board can begin this engagement with the intention of collaboration to protect tribal people from preventable exposures to toxics in the use and disposal of consumer products, as well as their manufacturing byproducts. IHS and tribal health organizations house environmental health data which are applicable to EPA's prioritization and risk evaluation work. Additional information can be found at [https://www.nihb.org/tribal\\_resources/indian\\_health\\_101.php](https://www.nihb.org/tribal_resources/indian_health_101.php) and at [www.ruralhealthinfor.org/topics/rural-tribal-health](http://www.ruralhealthinfor.org/topics/rural-tribal-health). These comments are also

relevant to Section 5 in terms of EPA's work on "data landscaping" – conducting the high-level survey of available information and evidence from a variety of data sources.

Finally, under the third topic of the first Factor, Priorities, EPA describes that the public can provide input by identifying chemicals as "particularly suitable" as candidates for prioritization. NTTC, as a partner to OPPT, looks forward to this opportunity to provide EPA names of emergent chemicals that appear to especially be of concern to tribal lifeways and that EPA will diligently consider.

EPA identified the second factor it intends to consider for selecting potential chemicals for prioritization as "Quantity and Quality of Information," which is another topic of deep interest and concern for NTTC and tribes. In past discussions with OPPT, it has been stated that insufficient data is available concerning tribal exposures to certain chemicals and that NTTC or tribes essentially 'welcome to provide information'. We agree that EPA needs enough information of quality to develop scientifically sound risk evaluations which then inform potential risk management activities as required. NTTC's concern lies in the lack of procedure or assurance for prioritizing the development of information for those chemicals that are persistent in the environment and for chemicals whose structure is similar to previously-identified high-priority or previously-evaluated toxic chemicals.

Clearly, a procedure that is overly dependent on prioritizing only chemicals with large data pools is vulnerable to underprioritizing chemicals that are newer, that are less topical or of less research interest, or that are more difficult to study. EPA should be proactive in devising mechanisms to minimize this advent and should share these mechanisms with the public. Without this vigilance, we risk as a society the continued manufacture of more chemicals with little regard to their long-term effect, simply because there is no governmental check until decades later, when data deemed of sufficient quantity has finally accumulated. By then, the manufacturer may be out of business and worse, the damage may be done.

This concern relates to the third Factor, "Work Load," and specifically to the idea of selecting a category of chemicals for prioritization. NTTC strongly supports this possible option as we have provided multiple comments at various opportunities regarding categories or groups of chemicals which enter tribal member bodies through the foods and water and air consumed, and through conducting which cultural activities in various natural environments.

Regarding the white paper reference to the aid of machine learning for title and abstract screening in the process of data gathering and prioritizing literature searches (page 14); in previous discussion with OPPT, NTTC noted multiple words or phrases relevant to tribes, tribal resources and tribal lifeways were not used in literature searches and data gathering for the scoping and problem formulations for the first ten chemicals undergoing risk evaluation. In the near future, NTTC will finalize and provide a list of recommended words and terms that will assist EPA in finding data relevant to tribal lifeways. Our expectation is that such a list can evolve as NTTC and OPPT evaluate the effectiveness of it for identifying studies which demonstrate the exposures and potential risks for tribal people practicing their tribal lifeways.

### ***Binning the TSCA Inventory***

In Section 7, EPA described the idea for, and proposed steps it will take in, "binning" the TSCA Active inventory chemicals for use within TSCA programs and other agency programs. As stated, the agency is clearly committed to frequent engagement with the public and transparency in the application of binning and the interpretation of results. It is further stated the "calculation of the susceptible population

component score would be based on the potential for exposure to children.” NTTC would support this proposed idea except then EPA limits the exposure to that of chemicals only in children’s products. While it is certainly necessary for EPA to evaluate children’s exposures to toxic chemicals specifically in children’s products, *it is entirely inadequate to base the entire potentially exposed and susceptible subpopulation component score on only children’s products.* Tribal children, and certainly other children in rural and minority populations, are unfortunately exposed to other toxic chemicals in scores of other consumer products. Children as young as 7 or 8 are known to work on ATV’s and snow machines in rural Alaska villages. Also, children are exposed to smoke while in school from open, on the ground burning of village trash occurring upwind. Children participate in gathering and processing food and cultural materials, thus being exposed to chemicals in the environment.

Further, subpopulations under TSCA include those groups that are potentially most exposed as well as those most susceptible. The proposed approach is missing explicit consideration of these groups. NTTC proposes that EPA include an analogous binning to look at highly exposed populations, and using Tribes as the potentially exposed subpopulation just as the agency is using children as the “susceptible population.” We understand, and are tracking, the time constraints under which TSCA has placed the agency. In the least, EPA should use exposure by tribes as a separate bin for the initial catch-all for highly exposed.

The persistence and bioaccumulation component is discussed in section 7.7. It is known by EPA programs, other federal agencies, as well as the international community of scientists and health experts, that the Arctic populations are the most exposed to PBT chemicals due to the mechanism of the Arctic sink, and the reliance and cultural fulfillment of marine mammal dietary consumption. Surely there is no doubt and certainly there is no lack of data substantiating this.

The NTTC looks forward to the referred-to forthcoming white paper that “will further describe how the bins will inform selection of candidate chemicals for prioritization, in combination with the remaining Work Plan chemicals, Administrator priorities, and other considerations.” Additionally, the NTTC strongly supports EPA’s plan to adapt the various methods within the binning process to accommodate the TSCA active inventory’s mixtures and substances of unknown or variable composition, complex reaction products, and biological materials, otherwise known as UVCBs.

In regards to the caveats and potential limitations, again NTTC understands that the agency is restricted by TSCA to specific timelines. Is this the reason behind the agency deciding that “[o]ther routes of exposure and potentially susceptible populations may be added over time?” Tribal populations cannot wait. In most cases, they have no means to limit the chemical exposures they experience in largely living in lower income, rural communities, and depending on the collection and use of local foods and other natural resources for health and societal well-being. Waiting is incongruent with the intent of Congress in amending TSCA – to protect the health of all citizens, including those most vulnerable to chemical exposure, whether due to sensitivity or frequency and dose. Do not let perfect be the enemy of good.

Therefore, NTTC believes it is the duty of EPA to base the calculation of the potentially exposed population component score on the potential for exposure by tribal populations. But, even if the time is insufficient, in the least then the prioritization process must clearly state that highly exposed populations were or were not explicitly considered sufficiently.

Once again, due to their frequent and long-time interactions with the natural environment, NTTC asserts that tribal populations are the most highly exposed subpopulation for all or the vast majority of PBT chemicals. As such, it behooves EPA to develop a model of tribal exposures.

In conclusion, we summarize our strong recommendations to EPA as follows:

- Disposal of a product or its byproducts should always be fully considered a condition of use.
- Legacy exposure must be considered in chemical prioritization.
- EPA must engage with tribal governments' hospitals and clinics which are funded via contracts with IHS under the Indian Self-Determination Act, P.L. 93-638.
- NTTC strongly supports the option of selecting a category of chemicals for prioritization.
- It is entirely inadequate to base the entire potentially exposed and susceptible subpopulation component score on only children's products.
- EPA must include an analogous binning to look at highly exposed populations, and use Tribes as the potentially exposed subpopulation just as the agency is using children as the "susceptible population."
- NTTC strongly supports EPA's plan to adapt the various methods within the binning process to accommodate the TSCA active inventory's mixtures and substances of unknown or variable composition, complex reaction products, and biological materials.
- If EPA will not use tribes as the potentially exposed subpopulation then the prioritization process must clearly state that highly exposed populations were or were not explicitly considered sufficiently.

We look forward to the Agency's written response to these comments. Should you or your staff have questions or comments regarding our letter, please contact myself, Dianne Barton, NTTC Chair, at (503) 731-1259 / [bard@critfc.org](mailto:bard@critfc.org) or Fred Corey, NTTC Vice-Chair, at (207) 764-7765 / [fcorey@micmac-nsn.gov](mailto:fcorey@micmac-nsn.gov).

Sincerely,



Dianne C. Barton, Chair  
National Tribal Toxics Council