



National Tribal Toxics Council

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November 21, 2016

Jennifer Vernon
USEPA Headquarters
Office of Chemical Safety and Pollution Prevention (OCSPP)
1200 Pennsylvania Avenue, NW
Mail Code: 7101M
Washington, DC 20460

RE: OCSPP National Program Manager Guidance – Early Engagement

Dear Ms. Vernon,

Thank you for the opportunity to submit these comments on the development of the FY 2018-2019 OCSPP National Program Manager Guidance after the National Tribal Toxics Council (NTTC) met at their winter in-person meeting. It was valuable for the NTTC members to discuss the FY 2016-2017 Guidance and the FY 2017 Addendum in a face-to-face meeting.

The NTTC is an EPA Tribal Partnership Group whose top priority is to identify tribal exposures to toxics. Tribal people suffer disproportionate levels of exposure to many toxic chemicals due to their closer and frequent interactions with the natural environment than perhaps any other subpopulation in the U.S. The attached comments of the Council address this priority by identifying means for OCSPP to work more closely and fruitfully with tribes, whether by increased enforcement of existing laws, government-to-government consultation, outreach and education, or otherwise increasing EPA's involvement with tribes and their staff.

We look forward to commenting on the draft Guidance when it is available. You may respond to me at 503-731-1259 or bard@critfc.org, or to our NTTC Coordinator, Kristin K'ait, at 907-444-5616 or kkeit@zendergroup.org.

Sincerely,

Dianne C. Barton, Chair
National Tribal Toxics Council

Enclosure

The following are comments of the National Tribal Toxics Council (NTTC or Council) provided to inform the development of the FY 2018-2019 Office of Chemical Safety and Pollution Prevention (OCSPP) National Program Manager Guidance (NPM Guidance).

Comments refer to the OCSPP Final FY 2017 Addendum to the FY 2016-2017 NPM Guidance, Publication Number: 720F16001 April 29, 2016 (hereafter, Addendum), unless otherwise noted

In general, throughout the NPM Guidance and the Addendum, please clarify and correct statements where tribes are not included as entities with whom EPA is to engage, inform, and otherwise collaborate. For example, there are statements in both documents where EPA regional offices are to educate or coordinate with states or with stakeholders, but neither tribes nor tribal consultation are referenced.

Also, as a general comment, the NTTC emphasizes the continued concern previously expressed about facilities that are too small to meet the Toxics Release Inventory thresholds, such as less than ten employees and less than 25,000 pounds of chemicals used.

One of the NTTC's priorities is to identify tribal exposures to toxics so EPA and other agencies can address the adverse health outcomes to tribal members from disproportionate exposure to toxic chemicals. EPA must comply with federal law. TSCA as amended mandates now risk assessments for sensitive subpopulations, so that tribal exposures to chemicals must be included.

TSCA and Chemical Safety

In the Addendum, Section I. C. "Summary of Exceptions-Based Changes in FY 2017", page 3, the first paragraph of that section refers to EPA's request to set up a TSCA chemical safety program in the regional offices. The Council supports this request, and recommends that the office structure emulate that of the Office of Pesticide Programs so that the headquarters and regional TSCA and tribal program staff may work closely with tribes and their programs which address toxics. In implementing this regional program, we recommend that EPA reinstate the structure of a lead regional toxics staff person and a TSCA-specific contact, both of whom reach out to and work with tribes in their region. These EPA regional contacts must be educated in how to best work with tribes and tribal members. Additionally, they need to frequently keep tribes in their region informed about EPA's progress on implementing TSCA, as amended. Furthermore, EPA ought to be the leader in providing opportunities for tribes and states to collaborate on TSCA reform implementation.

In that same paragraph of Section I. C., the Regional offices have a performance measure to report on the number of chemical safety implementation support activities to which they contribute, beginning in FY 2016. This Section doesn't state specifically to whom the reports will go to, and we note that the information needs to be shared with the tribes also.

Continuing to Section II. "Exceptions-Based Changes for FY 2017, Issue Area: Chemical Risk Review and Reduction Program (CRRR)" under subsection A. Description, where it continues on to page 6: "The EPA is continuing to strengthen its program to ensure chemical safety, giving

particular emphasis to addressing risks from exposure to existing chemicals,” and the following first bullet refers to information gaps on existing chemicals. The EPA needs to place greater importance and efforts on addressing the risks caused by tribal population exposures to existing chemicals (included in the group “sensitive subpopulations”). This is a significant gap in EPA’s data. When raising this concern, the Council has been asked to point EPA to sources of such data, and has been providing sources, as well as pointing out the existence of data collected by EPA-funded tribal programs such as the Indian General Assistance Program and the Brownfields Tribal Response Program. This raises the question of why it is the burden of the Council or tribes to find or collect this data. Members of the general population are not expected to provide the data that proves they have been exposed to chemicals.

Continuing on page 6, near the bottom, is subsection B. Regional Office Activities. That paragraph describes EPA’s funding request and efforts to stand up a TSCA Chemical Safety program, including one FTE per regional office.

What is the status of establishing this program? With the NTTC being the EPA Tribal Partnership Group that works with TSCA, none of the Council members are aware of their respective EPA regional offices having gained a TSCA-focused staff person. Meanwhile, until a TSCA chemical safety program is established in each region, who is doing this important work? While the NTTC shares information it learns from OPPT with tribal contacts and other interested groups via our listserv, this is not enough outreach to adequately inform and educate tribes. Increased outreach and collaboration is needed from regional offices with tribes in relation to toxic chemical safety and pollution prevention. It is the regional staff who most often have the long-established working relationships with tribes and can ensure information is reaching tribal leaders and staff. In regards to measuring the success of this objective, the NTTC requests that in the Measures Appendix, EPA add a measure such as “Number of regions that have the position hired and implementing the TSCA CS program by [EPA insert a specific date, such as fiscal year end].”

On page 7, under the sentence “TSCA Chemical Safety Risk Management Implementation Activities,” the first bullet is regarding EPA educating stakeholders. NTTC reminds EPA that tribes are not stakeholders, but rather sovereign nations. As such, EPA ought to refer to them independently, rather than as an inferred subcategory of stakeholders. Additionally, with the new requirements of TSCA, as amended, to consider harmful exposure of sensitive populations, which inherently includes tribes and tribal members due to their heightened environmental interactions, the NTTC recommends the second sentence in this bullet be amended as “i.e., tribes, elderly and children”.

Following that, in the third bullet, EPA must include tribes as entities to be engaged, separate of “states and other stakeholders,” as noted in the paragraph above. Risk management activities may also apply to tribes, and to entities working with tribes on or near tribal lands and resources, and tribes must be aware of the requirements for compliance, to ensure protection of tribal members.

For the fourth bullet, the NTTC is willing to assist in outreach activities to tribes, particularly in discussing effective outreach methods and in reviewing and commenting on outreach materials.

The section on Regional Office Activities section continues on page 8. Under the sentence “Other TSCA Chemical Safety Support Activities,” the third bullet refers to the efforts and purpose for engaging local stakeholders. A bullet must be added about tribal consultation, dialogue and collaboration with tribal governments regarding the same information and purposes. These actions will be especially important during the problem formulation work, or scoping. The NTTC suggests that a measure of success for this topic include tribal outreach: “Two tribal workshops held for problem formulations of workplan chemicals.”

In the fourth bullet, regarding Regional enforcement staff to help focus core TSCA enforcement work, to whom does this refer? NTTC members are not aware of existing enforcement staff in Regional offices doing such work at this time.

Pollution Prevention

Moving to the subsection “Exceptions-Based Budgetary Change: Pollution Prevention Program” which begins on page 8. The first paragraph describes the implementation of the Pollution Prevention Act. First, the NTTC has noticed the need for better education and outreach at the regional level for publicizing the Pollution Prevention (P2) grants. We recommend that the program include past tribal projects and descriptions of how those projects were successful in the past. For example, the Toxics Release Inventory (TRI) website has done this with tribal success stories.

Lead Risk Reduction

The next subsection begins on page 9 and is “Exceptions-Based Budgetary Change: Lead Risk Reduction Program.” The EPA’s Lead Renovation, Repair and Painting Rule (RRP) is not being fully implemented by EPA, and many tribal communities are afflicted with homes and facilities that were constructed prior to the 1978 ruling to end the use of lead-based paint. We reiterate recommendations from the National Tribal Caucus to EPA as presented in the Budget Requests and Priorities for FY 2017. The NTTC suggests that the considerably low tribal participation in the Lead RRP could be increased by improved tribal outreach, and by the EPA’s Lead Program working in partnership with EPA’s Office of Enforcement and Compliance Assurance. Many states have chosen to not take on this program, and thus, EPA maintains responsibility for implementing it in those states. Unfortunately, EPA does not have the regional staff to enforce compliance or implementation and the health of tribal members continues to be negatively affected by the large prevalence of lead-containing materials around them. EPA must also provide tribes with more support to communicate with the child-occupied facilities in their tribe. Local implementation is key through regional and local levels. NTTC recommends that EPA provide additional outreach and technical assistance to tribes on TSCA Section 402/404 Lead-Based Paint Renovation Programs and fund a national tribe-to-tribe mentor program to engage more tribes in administering these programs. Furthermore, we request that EPA extend

its reinterpretation of TAS for the Clean Water Act to 40 CFR §745.324(b)(4) for the Lead-Based Paint Program in order to better facilitate program authorization.

OECA's work includes looking for patterns of non-compliance in other programs, such as the pesticides program. By doing such for the Lead Rule, the Lead Program will become informed of the minimal compliance results, and can work towards solutions, such as improved and increased education and outreach efforts, more training and certification of lead abatement vendors and tribal staff.

Toxics Release Inventory

Section VI. National Areas of Focus for the Office of Pollution Prevention and Toxics, 4. National Area of Focus: Toxics Release Inventory (TRI). The NTTC recommends that EPA create a tribal TRI national analysis office. This office would be responsible for working directly with tribes to access and analyze TRI data, conduct outreach to tribal leaders including providing the list of TRI chemicals, and collaborate on ways that the TRI program and data can be more relevant to tribes, among meeting other needs. Similar to EPA using TRI data submissions to analyze for water quality parameters, the NTTC recommends that EPA apply that action to TRI data, making it relevant to tribes and tribal lifeways. For example, present analyses of TRI data showing facilities, and releases —total and media-specific releases— within certain radii of tribal lands and Alaska Native villages. At this time, the TRI National Analysis online map shows “Facilities that reported to tribes.” This likely does not account for facilities on, near and otherwise affecting tribes that are not reporting to tribes but may be reporting to EPA. This data is important to tribes for understanding health risks as in the example of the Winnebago Tribe of Nebraska working with the TRI Program at EPA Headquarters to determine the source of mercury contaminants in local fish.

Continuing in this section of the Addendum, under B. Regional Office Activities, page 11, after the sentence “The TRI Headquarter Program and regional offices will work together to implement the TRI Program to: ...” The last bullet states that regional TRI staff will meet with headquarters staff and the state TRI representatives; this bullet needs to include tribes. As part of ongoing outreach to increase awareness of the TRI Program among tribal governments, EPA must provide a recurring invite to tribal leaders and their environmental and emergency response staff. Additionally, provide the tribes with the list of TRI chemicals.