



National Tribal Toxics Council

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Maureen Lydon, Michele McKeever
EPA Office of Compliance, OECA

National Tribal Toxics Council Early Comment on OECA FY 2016 – 2017 NPM Guidance

The National Tribal Toxics Council (NTTC) appreciates the opportunity to provide comments on the FY 16-17 National Program Managers Guidance for EPA's Office of Enforcement and Compliance Assurance. Reducing exposure to toxic chemicals for tribal members is a priority for the NTTC and we fully support the allocation of resources for TSCA Programs that limit the release of contaminants into the environment.

We are concerned that the Guidance does not specifically address EPA enforcement or compliance monitoring of TSCA regulated chemicals. One example that is of particular concern to the NTTC are TSCA regulations regarding excluded manufacturing processes and excluded PCB products. While current TSCA regulations allow unintentional impurities of PCB in products of less than 50 ppm, a survey by the Japanese Ministry of Economy, Trade, and Industry using state of the art analysis shows that imported pigments can contain PCB in levels exceeding the EPA limits of 25 ppm average/50 ppm maximum for inadvertently generated PCB. In one case, the level of PCB in a yellow pigment product was as high as 2000 ppm.

http://www.meti.go.jp/english/press/2013/0510_02.html and <http://www.p2.org/wp-content/uploads/june-27-pcbs-webinar.pdf>

We are concerned that the current system of regulation of chemicals at our borders is less than effective ("Toxic Substances at Our Borders" by C. O'Sullivan, American Bar Association, February 2014 Newsletter, Vol. 15, No.2). Systemic inefficiency and inadequate monitoring at the border exacerbates the real world problem of PCB contamination where almost 5,600 water bodies in the United States are listed for PCB contamination. We recommend that substantial improvements in this area can be achieved by reworking the existing system (ITDS) to provide needed information to EPA and updating the analytical methods used in compliance monitoring. This would allow gathering of information on specific TSCA regulatory requirements and exemptions claimed by importers on the original forms completed for customs and posting the responses to a common database for EPA review and action. This paves the way for an integrated and more effective real time system of import regulation.

Additionally, EPA needs to have a consistency between media programs in regulating chemicals. A case in point are PCBs which are allowed in products at 50 PPM yet the water quality standard is set at parts per billion, therefore EPA is supporting the pollution of our waters by this particularly dangerous bio-accumulative chemical group through allowing its use in products. EPA should not be allowing the import or use of this chemical at any level considering the long term risks associated with exposure to it at any level. A prime example of this situation are unregulated high levels of PCBs in imported inks, dyes, and pigments making their way into rivers in the Northwest US through paper recycling facility waste stream discharges.

The Council looks forward to continuing early, meaningful involvement opportunities for tribes to support these issues. Please send written responses to these comments to Dianne Barton, NTTC Chair, at bard@critfc.org.

Sincerely,

Dianne C. Barton, Chair, National Tribal Toxics Council

Note: The Members of the Council are offering their opinions on toxics issues and do not speak for individual tribes

Attachment 1. Focus of OECA's Request for Early Engagement and Background Information

1. What should be the focus of the FY 2017 – FY 2019 National Enforcement Initiatives and why?

Strengthening State performance and oversight is currently a concern in the Native American community as the existing EPA oversight allows for significant variations of standards used for water quality standards. States are attempting to use this latitude to reduce the responsibility of regulated communities to protect the water bodies in their states. Currently Washington and Florida are proposing reduced risk levels used in the water quality rules to 10^{-5} from the existing 10^{-6} level. This, combined with other changes in the formula results in little significant change from outdated standards currently imposed. These inconsistencies in water quality standards from state to state have and will result in neighboring states polluting their neighbor's watersheds with impunity. As the national regulatory agency, EPA needs to continually update their standards to improve the water quality and to guarantee that state standards are the most protective possible and not polluting neighboring states or water bodies in Indian Country.

2. What other priorities/areas of focus, beyond the NEIs, should OECA identify in the FY 2016 – FY 2017 NPM Guidance and why?

Environmental Justice issues are of great concern to the Native American community as they have been discriminated against by agency policies. Currently EPA allows risks to be set for Native Americans and subsistence fish consumers as low as one in ten thousand for cancer causing pollutants, while protecting the general population at one in one hundred thousand to as high as one in a million. This policy needs to be changed and subsequently enforced. The original Clean Water Act recognized that fishermen and other high consumers of fish needed to be adequately protected even more than the general public, suggesting a risk level of one in a million cancer risk be applied to protect this group. That concept has been swept aside over the years and the current prejudicial rule in place enables states to use this hypocrisy to lessen water quality standards and put Tribal and subsistence consumers at risk of ten to one hundred times higher than the general population.

Targeted funding for tribes and tribal programs remains a priority for all tribes. Particularly the NTTC requests priorities for funding opportunities to tribes for instituting and implementing the focus areas noted in OECA's FY 2016 – 2017 NPM Guidance document, through partnerships with EPA or direct funding. NTTC also supports funding allocated to the training and support for tribal compliance inspectors seeking federal inspector credentials and, tribal programs responding to environmental, health, and safety emergency situations occurring on tribal lands.