



# National Tribal Toxics Council

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January 17, 2017

Maria J. Doa  
Chemical Control Division  
USEPA Office of Pollution Prevention and Toxics (OPPT)  
1200 Pennsylvania Avenue, NW  
Mail Code: 7405M  
Washington, DC 20460

RE: TSCA New Chemicals Review Program, Docket ID: EPA-HQ-OPPT-2016-0658

Dear Ms. Doa,

We appreciate the opportunity to comment on the New Chemicals Review Program which is being changed under the Toxic Substances Control Act as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act (TSCA). The National Tribal Toxics Council (NTTC, or Council) is an EPA Tribal Partnership Group (TPG) supported by the EPA Office of Pollution Prevention and Toxics. The Council is focused on providing Tribes with an opportunity for greater input on issues related to toxic chemicals and pollution prevention.

The amended TSCA now requires EPA to consider whether all new chemicals and significant new uses presents an unreasonable risk to a "potentially exposed or susceptible subpopulation," a group of individuals within the general population identified by the Administrator who, due to either greater susceptibility or greater exposure, may be at greater risk than the general population of adverse health effects from exposure to a chemical substance or mixture, such as infants, children, pregnant women, workers, or the elderly. (TSCA, 15 USC 53 § 2602. Definitions, June 22, 2016)

Tribes are a subpopulation with greater exposure to chemicals in the natural environment based on higher and differing consumption of "wild foods", and higher environmental exposures due to a unique range of traditional activities, customary lifestyles, and community infrastructural circumstances that are associated with environmental media, all of which have not been considered in risk assessments across EPA programs or in EPA's

TSCA risks assessments of individual chemicals prior to determining regulatory action. Tribes are also a subpopulation with whom the U.S. Government has an historical, well-defined, and unique legal relationship, unlike any other subpopulation examples in the definition quoted above.

For your reference and use in making required changes to the New Chemicals Review Program, please find enclosed the Council's document, "Understanding Tribal Exposures to Toxics" which was presented to the EPA Administrator on June 19, 2015. This report provides information to enable readers to recognize situations that require an understanding of how natural resources are used by tribes for food, medicine, cultural and traditional practices, and/or recreation, what is referred to as tribal lifeways. This is important for three reasons:

- (1) Tribes may be exposed to higher doses of contaminants in natural resources than the general population because non-mainstream, traditional and customary ceremonial and subsistence foods may carry higher toxic burdens, which should be utilized in dose calculations,
- (2) Tribes may be exposed to higher doses of certain contaminants due to longer durations or higher frequencies of exposure than the general population, and
- (3) Impairment of natural resource uses affects tribal social and cultural well-being beyond nutrition and physical health, thus also contributing to this group's higher susceptibility to chemical exposure.

This understanding may help EPA and other regulators determine whether or not those uses are adequately protected under implementation of TSCA, and may help regulators develop guidelines for evaluating risks and impacts to tribal health and well-being.

Prior to the amendment of TSCA last year, EPA did not identify tribes as a subpopulation that is highly exposed to some chemicals nor identify exposure pathways specific to tribes when planning human health and ecological risk assessments. For example, EPA's 2010 exposure assessment of polybrominated diphenyl ethers (PBDE) overlooked reasonable risks to fish-consuming tribal populations and thus missed the identification of significant exposure pathways and the need to establish corrective regulatory controls to better protect the health of tribal members as well as the general population. Additionally, OPPT which is responsible for prioritizing work plan chemicals and developing TSCA-chemical risk assessments, did not consider recommendations to include the following factor in prioritizing chemicals for risk assessment: "chemicals detected in subsistence or traditional use resources,<sup>1</sup>" or consider recommendations to include tribal exposure pathways when developing conceptual models of potential pathways for their problem formulation and initial assessments of TSCA Work Plan Chemicals.

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<sup>1</sup> Comment in response to EPA's request for comments in Identifying Priority Chemicals for Assessment and Review, "Recommended prioritization factor," Fred Corey (NTTC Vice-Chair) September 21, 2011.

Tribal exposure must be considered and quantified across all media programs at the beginning of the risk assessment process by engaging tribes in the problem formulation and initial assessments. This also requires EPA technical assistance and funding for tribes to generate the data needed. (“NTTC Letter to EPA Administrator, June 19, 2015.”)

The amended TSCA preempts state authority to regulate chemicals based on local conditions but also requires that EPA consider susceptible subpopulation exposures in their assessments. In the presentation “Reviewing New Chemicals under the Toxic Substances Control Act —Science Issues” during EPA’s December 14, 2016 public meeting, Dr. Henry explained that consideration of subpopulations was not a new feature in EPA’s exposure assessment program. Slide number 12 of that presentation indicates that general population fish consumption would be used to evaluate exposure in sensitive subpopulations. The Council fervently disputes this assertion. The default fish consumption rate for the general population has often been cited as about one 8-ounce portion per month or 6.5 grams per day which is sometimes referred to as one bite per day. In Washington and Oregon, the recognized rate is 175 grams per day. Tribal fish consumption surveys in those states showed modern, suppressed rates closer to 800 grams per day and historic average rates at 1,000 grams per day. You will see in our report that these significantly higher rates by fish-consuming tribal populations can lead to toxic exposures for our Elders, children, and other sensitive individuals that are 10-100 times greater than that of the general population living a suburban lifestyle.

Finally, use of a general population consumption rate for tribes does not capture the reason why tribes are a susceptible subpopulation group, i.e. greater exposure to the natural environment, in this case greater exposure to a wild food contaminant.

The NTTC contends that the standard assessment protocols currently in use must be expanded to meet the amended TSCA goals of fully considering susceptible subpopulations, to better consider unique regional and local conditions and exposures rather than taking a central tendency perspective. In this way, the preemption of state authority to limit the use of chemicals in commerce that are regionally problematic will be more easily accepted by those who must now rely on federal rules and authority.

In light of state preemption, the three presentations during the public meeting did not appear to address how to better engage states, tribes, or other local stakeholders who have the best knowledge of unique, but significant local exposure pathways. The National Tribal Toxics Council would recommend that EPA develop a process with state and tribes to explicitly gather this information as part of its high level review in order to ensure that federal regulations are adequately addressing local concerns.

While TSCA includes the requirement to consider the disposal of a chemical substance when determining risk, long absent has been the consideration of disposal outside of sophisticated, well-funded solid waste facilities. For instance, Alaska Tribal villages and other rural communities face higher exposures to toxics from their permitted landfill facilities. These are unlined as a result of a singular rule for about 275

communities, including over 200 tribal communities, under the Resource Conservation and Recovery Act (RCRA), the federal statute regulating solid waste. Their landfills have no liner, use open waste burning as a management practice, and lack monitoring wells. About three quarters of these are less than a mile from the communities and about one third within a quarter mile. They are typically located nearly adjacent to a river that is a drinking water source and are flooded each year, often several times. On-the-ground burning and contained, untreated burning is a common practice as a means to affordably reduce waste volume and minimize animal vectors. But it releases hazardous gases and particulates for over 12 hour periods often several times per week. A self-report database indicates residents in over one quarter of those communities smell the smoke nearly every day. The waste burning and landfill leachate contaminate drinking water and traditional food and cultural resources with petroleum products, waste oil, battery acid, raw sewage, and the other chemicals and hazardous household wastes from consumer products containing chemicals previously approved under TSCA. Similarly, across the contiguous United States, other tribal communities face exposures to toxics leachate and open burning at illegal dump sites on rural reservations lands with inadequate law enforcement resources. These toxic exposures from disposal must be considered in risk assessments as EPA includes tribal communities as exposed and susceptible subpopulations.

The NTTC is focused on representing tribal interests in chemical risk management and pollution prevention initiatives that impact tribal lifeways. We look forward to continuing our work with OPPT and with the chemical industry to support assessment of impacts to subsistence based populations and encouraging innovation that leads to safer chemicals and consumer products in the market as soon as possible.

You may respond to me at 503-731-1259 or [bard@critfc.org](mailto:bard@critfc.org), or to our NTTC Coordinator, Kristin K'eit, at 907-444-5616 or [kkeit@zendergroup.org](mailto:kkeit@zendergroup.org).

Sincerely,



Dianne C. Barton, Chair  
National Tribal Toxics Council

CC: EPA OPPT Liaison Branch

Enclosure: "Understanding Tribal Exposures to Toxics," June 19, 2015