



# National Tribal Toxics Council

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Shoshone Bannock Tribes

June 5, 2014

Daniel Gogal  
U.S. EPA Office of Environmental Justice  
1200 Pennsylvania Avenue, NW  
Washington, DC 20004

RE: NTAA Comments on U.S. EPA's proposed Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples.

Dear Mr. Gogal:

The National Tribal Toxics Council (NTTC) is a USEPA Tribal Partnership Group working with EPA's Office of Pollution Prevention and Toxics (OPPT) to advance tribal toxics management policies and programs consistent with the needs, interests, and unique legal status of American Indian Tribes, Alaska Natives, and Native Hawaiians. NTTC provides Tribes with an opportunity for greater input on issues related to toxic chemicals and pollution prevention. We provide a forum for feedback to EPA on their chemical management and pollution prevention programs that affect tribes and seek to help EPA more efficiently address, evaluate, and understand the unique chemical exposures in Indian country, expand Tribal pollution prevention, and incorporate safer chemical initiatives for Indian country.

We thank EPA for the opportunity to comment on their Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples. The following comments offer our recommendations on how EJ should be incorporated into EPA's chemical programs to ensure that EPA rules and guidance documents are protective of all people. While we applaud EPA's efforts to assure greater and more meaningful engagement, we strongly support the need for improvements that incorporate EJ principles into toxics chemical risk and exposure assessment procedures and believe that their incorporation offers an effective means of providing protection from disproportionate impacts and significant risks to human health and the environment.

The NTTC is actively working with OPPT to review and provide culturally appropriate and sound scientific information into EPA's toxics' assessments. We are also producing an assessment of toxics in Indian Country to assist with the issue of disproportionate adverse health outcomes to tribal members from increased exposure to toxics experienced through their unique cultural, ceremonial, and subsistence practices.

NTTC proposes that EPA start implementing their Policy by taking the recommended steps to incorporate meaningful and appropriate metrics for toxic exposures that Tribal Members experience through their unique cultural, ceremonial, and subsistence practices. Our recommendations are presented in Table 1 below. In addition, we would like to point out that many of our recommendations echo and support numerous previous ones, such as those presented by another Tribal group, the National Environmental Justice Advisory Council (NEJAC) in the report entitled “National Environmental Justice Advisory Council Fish Consumption and Environmental Justice, *November 2002*”:

<[http://www.epa.gov/environmentaljustice/resources/publications/nejac/fish-consump-report\\_1102.pdf](http://www.epa.gov/environmentaljustice/resources/publications/nejac/fish-consump-report_1102.pdf)>.

The following excerpts from their transmittal letter not only support NTTC’s recommendations but specifically emphasize the need for funding to monitor toxics in the environment and stronger regulations for persistent bioaccumulative toxics (PBTs) in order to protect the health of those highly exposed:

- **NEJAC Recommendation (2)** Work expeditiously to prevent and reduce the generation and release of those contaminants to the Nation’s waters and air that pose the greatest risk of harm to human health and aquatic resources, including but not limited to persistent bioaccumulative toxics (PBTs) e.g., mercury, dioxins, and polychlorinated biphenyls (PCBs) and other toxic chemicals
- **NEJAC Recommendation (3)** Protect the health of populations with high exposure to hazards ... by making full use of authorities under the federal environmental laws and accounting for the cultural, traditional, religious, historical , economic, and legal contexts in which these affected groups consume and use aquatic and terrestrial resources
- **NEJAC Recommendation (5)** Because many American Indian and Alaska Native (AI/AN) communities are particularly prone to environmental harm due to their dependence on subsistence fishing, hunting, and gathering, conduct environmental research, fish consumption surveys, and monitoring...

It is NTTC’s perception that EPA has not adequately considered tribal concerns regarding exposure to toxic chemicals, which could begin to be addressed today through chemical risk assessments’ incorporating data already available but underutilized as scientific evidence to regulate chemicals. Although EPA recognizes tribal sovereignty, and despite the 1984 EPA Indian Policy principle five that states “the agency, in keeping with the federal trust responsibility, will assure that tribal concerns and interests are considered whenever EPA’s action and/or decisions may affect reservation environments”; it remains difficult for tribal exposure scenarios to be incorporated into federal policy. It is hoped that this will begin to change by the incorporation of the recommendations in Table One (below) into EPA practice.

The Council looks forward to EPA’s assistance with early meaningful involvement opportunities for tribes to support these efforts. Please send written response to this comment to Dianne Barton, NTTC Chair, at [bard@critfc.org](mailto:bard@critfc.org).

Sincerely,



Dianne C. Barton, Chair  
National Tribal Toxics Council

**Table 1. NTTC’s Recommendations for Implementing EPA’s EJ Policy Principles into EPA’s Toxic Chemical Risk and Exposure Assessments**

EPA’s EJ Policy Principle	Toxic Chemical Risk and Exposure Assessment Recommendations
<p>1. The EPA consults with tribes and provides meaningful involvement opportunities for indigenous peoples and others living in tribal areas, and considers the potential impact of Agency actions that may affect their human health or environmental interests.</p>	<ul style="list-style-type: none"> <li>• EPA should incorporate tribal consumption rates into risk and exposure assessment analysis for chemicals that are persistent and bioaccumulate in tribal foods and cultural materials.</li> <li>• EPA should utilize data on contaminant levels found in tribal resources and not rely solely on data from public marketplaces when developing conclusions and recommendations.</li> <li>• EPA should include exposure paths from subsistence foods such as lamprey eels, freshwater mussels, seaweeds, etc., that are unique for tribal members.</li> <li>• Require that program and research offices within EPA seek tribal input on the front end of projects like risk and exposure assessments of persistent bioaccumulative and toxic (PBT) chemicals rather than only seeking input from the most affected communities during consultation and comment periods on projects that are nearly complete and in a Federal Register comment period process.<sup>1</sup></li> </ul>
<p>3. The EPA works to understand definitions of human health and the environment from the perspective of tribes, indigenous peoples, and others living in tribal areas.</p>	<ul style="list-style-type: none"> <li>• EPA should provide culturally informed peer review of highly influential scientific risk assessments that adhere to guidelines issued by the director of OMB and laid out in Executive Memorandum M-05_03, “Final Information Quality Bulletin for Peer Review.”<sup>2</sup> Specifically as regards the Selection of Reviewers for risk assessments, ensure that annual peer review panels include a specialist with expertise to address potential tribal exposures that result from their often unique lifeways, including cultural, ceremonial, and subsistence practices and those utilized resources. Additionally, the Scoping Process of the Review should ensure that all models representing human exposure are inclusive of these tribal exposures.</li> <li>• EPA should ensure protection of tribal resources is carried out, all levels of employees should be trained on the meaning and implementation of Federal Indian Trust Responsibilities and the special legal status of tribes and understand that tribes are not equivalent to common stakeholders.</li> <li>• Toxics Release Inventory reporting thresholds should incorporate exposure pathways for subsistence lifestyles (i.e. water ingestion rates, respiration rates, sediment ingestion, wild plant and animal ingestion) that may be higher than the generalized population. Screening level assessments that are designed to be conservative (protective) and offer a set degree of protectiveness may currently be underestimated and wrongly reported when tribal exposures are not included.</li> </ul>
<p>5. The EPA strives to understand cultural and communication differences of tribes and indigenous peoples to establish common understandings of, and opportunities to address, environmental justice issues.</p>	<ul style="list-style-type: none"> <li>• A training program should be developed for EPA risk assessors to improve understanding of Tribal exposure issues with regard to national risk assessment models and site specific or local risk assessment models currently used by Tribes. This could be accomplished by development of a pilot project for cross-training EPA and Tribal risk assessors in Tribal exposure factors.</li> <li>• Default exposure factors in EPA’s Exposure Factors Handbook (EFH) need to be made directly relevant to subsistence communities in order to be protective of Tribal Members and other subsistence communities. Subsistence Lifestyles need to be added to the sensitive sub-populations<sup>3</sup> category as well as a high exposure category created that captures the full spectrum of exposure scenarios experienced by Tribal Members exercising their cultural, ceremonial, and subsistence lifeways. EPA should recognize that local expertise is relevant information and seek permission to utilize and gather Tribal departments’ and staff’s unpublished studies and information on local uses and potential exposures not already available through the existing journal literature. This could be accomplished through inclusion in chemical risk assessments of a separate literature review of non-EPA Agency and tribal grey papers.</li> </ul>

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

<sup>1</sup>For example, EPA's 2010 exposure assessment of polybrominated diphenyl ethers (PBDE) used a sampling of fish from supermarkets in Dallas, TX for its baseline fish to human dose estimate for the US population instead of fish from open water environments, as tribal fisheries would be. These fish tended to carry PBDE at levels that are orders of magnitude higher than the marketplace fish. By utilizing market fish and non-tribal fish consumption rates in modeling studies, tribal exposure to PBDEs was substantially underestimated. The reports' conclusions and recommendations did not suggest any measures to counter the disproportionate exposure to flame retardants experienced by tribal communities.

<sup>2</sup>In Bulletin for Peer Review, Section II. Peer Review of Influential Scientific Information, Expertise and Balance include: Peer reviewers shall be selected based on expertise, experience and skills, including specialists from multiple disciplines as necessary. The group of reviewers shall be sufficiently broad and diverse to fairly represent the relevant scientific and technical perspectives and fields of knowledge.

<sup>3</sup>Sensitive sub-populations refer to people who are physiologically or socially more susceptible to a given exposure (such as children, the ill, the poor, those with poorer health care, etc.). Other populations may also be more exposed (e.g., subsistence fishermen and migrant workers). Some people fall into both categories, more sensitive and more exposed. These categories should be kept separate because they relate to very different things. A case can also be made that tribes would be expected to fall into both categories, in other words both types of co-risk factors tend to cluster in tribal communities. We sometimes say that tribal children are the canaries, since they clearly fall into both categories.