



National Tribal Toxics Council

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June 24, 2019

Susan Sharkey
Chemical Control Division
Office of Pollution Prevention and Toxics
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460-0001

RE: Comments on Chemical Data Reporting Revisions and Small Manufacturer Definition Update for Reporting and Record Keeping Requirements under TSCA Section 8(a), Docket ID EPA-HQ-OPPT-2018-0321

Dear Ms. Sharkey:

The National Tribal Toxics Council (NTTC) appreciates the opportunity to provide comments on the proposed Chemical Data Reporting (CDR) revisions. 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.

On April 25, 2019, the EPA announced several changes it is proposing to the CDR requirements under TSCA, stating that these proposed changes will improve the data collected through CDR to support the implementation of TSCA, while potentially reducing the reporting burden on chemical manufacturers. One of these proposed changes is an updated definition of small manufacturers, in accordance with TSCA section 8(a), which would increase the number of manufacturers considered small and thus exempt them of the CDR requirements. The EPA stated that the proposed regulatory modifications may better address EPA and public information needs by providing additional information that is currently not collected and improving the usability and reliability of the reported data.

The central goal of TSCA reporting requirements is to enable the EPA to collect, and the public to have access to, information on chemical use and exposure, in order to evaluate chemical safety and risks to human health and the environment. The proposed definition of a "small manufacturer" is estimated to eliminate reporting entirely for 93 industry sites and reduce reporting by eliminating the need to report at

least one chemical substance for additional 129 industry sites. While consistent with EPA's goal to reduce reporting burden on chemical manufacturers, this definition update would result in less data collected by EPA and thus less information available to the public on the chemical substances in their environment. The majority of Indigenous people and lands are located in rural areas, where smaller businesses are the norm. NTTC is concerned that reporting exemptions for small manufacturers will result in disproportionately less data available to tribal people. Tribal peoples are more highly exposed to contaminants with environmental fate and transport than other populations, and in unique ways, because their lifeways revolve around environmental activities for dietary sustenance, socio-cultural activities, ceremonial and spiritual purposes, recreation, and general well-being.

The "small manufacturer" exemption provides protections against reporting costs for businesses lacking the financial capability to handle them, but it must be interpreted in the context of the important human and environmental health implications of CDR and the safeguards already in place to limit the scope of reporting. The current EPA standard for small manufacturers and importers under section 8(a) is as follows:

"Small manufacturer or importer means a manufacturer or importer that meets either of the following standards:

(1) First standard. A manufacturer or importer of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than \$40 million. However, if the annual production or importation volume of a particular substance at any individual site owned or controlled by the manufacturer or importer is greater than 45,400 kilograms (100,000 pounds), the manufacturer or importer shall not qualify as small for purposes of reporting on the production or importation of that substance at that site, unless the manufacturer or importer qualifies as small under standard (2) of this definition.

(2) Second standard. A manufacturer or importer of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than \$4 million, regardless of the quantity of substances produced or imported by that manufacturer or importer."

NTTC sees no need to raise the first standard. Industry commenters and the Small Business Administration have requested adjustment of the standard, however adverse financial consequences of not doing so have not been identified. EPA published an Economic Impact analysis with the proposed rule using a general total cost savings per year, not savings per business, and not savings as a percent of total cost and revenue. We see no reason to conclude that manufacturers with total annual sales of between \$40 million and \$110 million cannot afford the modest costs of TSCA reporting. The annual volume threshold under which an otherwise qualified manufacturer would be considered "small" is 100 000 pounds for each chemical at each site. This is well above the minimum volume of 25 000 pounds annual production per site that triggers reporting under EPA's CDR rule. This current standard already allows for significant underreporting of production activities for chemicals that the EPA is screening for risk evaluations or other actions. Raising the annual sales standard would further contribute to underreporting of the production or import volume of chemical substances and thus further limit the data available to tribal people on their exposures to

potentially hazardous substances. Because of Indigenous people's heavy reliance on subsistence activities and other lifeway activities taking place in, and/or depending on, local natural environment resources, Tribes require information on which chemical substances are produced, and in what quantities, near their subsistence lands and waters, including those lands and waters whose use in perpetuity is promised them via their Treaty rights.

Data collected through CDR are important and are used by the EPA for a variety of purposes, including identifying the chemicals commonly used in specific industries, estimating the number of potentially exposed workers, and developing estimates of human exposures and environmental releases. Basic exposure data collected through CDR informs many EPA activities, from choosing chemicals for prioritization and carrying out risk evaluations, to informing response actions in the face of natural disasters. We do not agree with updating the "small manufacturer" definition because it would lead to less data collected and ultimately less information for these critical uses. Tribes and other rural populations will be disproportionately affected by a loosened annual sales standard, due to the prevalence of smaller businesses in rural areas, and they are substantially less protected via other avenues. Tribes and other rural populations must already contend with less access to health care, monitoring data, advanced water treatment systems, agency technical assistance, OSHA personnel site visits, and much more. These populations face environmental health disparities from the general population and less contaminant manufacturing and use data can only compound this issue of national importance.

Though not included in EPA's proposed rule for CDR revisions under TSCA Section 8(a), NTTC strongly urges EPA to end the partial reporting exemptions under CDR currently in place for Petroleum Process Streams (Title 40 Part 711.6). The hazards of soil and water contamination by petroleum and chemicals used in hydraulic fracturing are well established in the scientific literature. Because of the proximity of many hydraulic fracturing activities to tribal lands, NTTC believes no reporting exemptions should exist for Petroleum Process Streams. The chemical substances used and produced in hydraulic fracturing are transported to lands and waters that tribes depend on and the use of hydraulic fracturing as a petroleum recovery method is increasing, while its regulation is lacking. The US Congress intended that its 2016 Amendments to TSCA would ensure the risk to American people's health from chemical substances used in commerce would be assessed and appropriate steps would be taken to reduce or eliminate it. It is not possible to protect the general population, much less sensitive or highly exposed populations, including tribes, without information on these petroleum process chemicals.

In closing, NTTC would like to emphasize that tribal consultation on significant rulemaking should be carried out by EPA and that none occurred before or after this proposed rule was published. This rulemaking is significant due to the proposed reduction in data available to tribes and yet EPA did not engage in an effort to seek tribal consultation. NTTC believes consulting with tribes is a clear mandate of Federal Indian Trust responsibility, Treaty rights, Executive Order 13175, and EPA's 1984 Indian Policy, and we expect no such omission in future significant rulemaking.

We look forward to the Agency's written response to these comments within 90 days. 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 or Fred Corey, NTTC Vice-Chair, at (207) 764-7765 / fcorey@micmac-nsn.gov.

Sincerely,

A handwritten signature in cursive script that reads "Dianne C. Barton".

Dianne C. Barton, Chair
National Tribal Toxics Council