

Share with EPA your concerns about making sure Tribal populations are appropriately considered in the risk evaluations for these chemicals. EPA has set two Tribal Consultations calls:

**Wednesday, February 22, 2017, Tribal Consultation 1 from 1:00-4:00 pm (EDT)**

Call-in Number: 1-866-900-8984 Conference ID number: 30653848

**Thursday, February 23, 2017, Tribal Consultation 2 from 1:00-4:00 pm (EDT)**

Call-in Number: 1-866-900-8984 Conference ID number: 30667674

## **TALKING POINTS AND QUESTIONS**

Following are talking points and questions that the NTTCC has gathered that may be of help: (1) about tribes having more exposure to toxic substances with tribal lifeways, and (2) about prioritizing chemicals for risk evaluation and (3) about the process for doing risk evaluations. There are also definitions of some key terms like aggregate exposures and risk evaluations. (The attachment is the same as this email, in case there are other issues with email formatting.)

## **TRIBES ARE SUSCEPTIBLE AND EXPOSED SUBPOPULATIONS**

- The new law says that now EPA must especially consider unreasonable risks to the health of people “potentially exposed or who are susceptible” [or vulnerable] to being exposed to chemicals used for consumer products. We are grateful that TSCA now has this requirement which will allow EPA to look closer at the unreasonable risks that tribal people may experience.
- We are concerned about toxic chemicals getting into our home, our subsistence foods, as well as into the land, water and air around our community. Tribal members can be exposed to chemicals in consumer products after they have been released from commercial products into the environment, like flame retardants breaking down into dust and then people breathe in the dust. Or the flame retardants end up in waters and fish that we eat.
- We know that this is about the products people can buy at stores, and whether it is contaminating anything that is part of our tribal lifeways. Our tribal lifeways include but are not limited to economic, cultural, ceremonial, recreational, and subsistence practices, and always involve our water, soil, air and the plants and animals that are a part of our ecosystems.
- 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. None of these have been considered in risk assessments across EPA programs or in EPA’s TSCA risks assessments.
- 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 of infants, children, pregnant women, workers, or the elderly.

- It is not adequate that the scientific models being used to evaluate risk only look at the average urban lifestyle and their store-bought foods in the lower 48 states and does not account for the higher risk for tribal members through tribal lifeways. Tribal members can be consuming 100's of times more wild fish, and large volumes of marine mammals and wild game, and also have higher and more frequent contact with waters, sediments, and soil.
- Now that the risk evaluations and assessments must include the susceptible populations, tribal lifeways must be included in risk evaluations and assessments. You must look at the harmful effects to tribal people. We are a whole population throughout the country that is negatively affected by chemicals that end up in the environment.
- Identifying exposure pathways for tribes can be done by answering these questions:
  - Are tribal resources affected?
  - How are the resources used?
  - How much are people exposed (frequency, intensity, and duration of exposure)?

## **THE PRIORITIZATION RULE**

- The Prioritization Rule describes a pipelined approach for Chemical Review that results in High-Priority or Low-Priority designations. While the EPA starts with ten in the pipeline from the past Work Plan Inventory, there seems to be no further sorting in the prioritization scheme as more are added to the pipeline. There appears to be no process for jumping ahead in the queue if needed, because of national priorities, such as for emergency response use, or something else. There may be situations that warrant jumping ahead in the pipeline.
- The process to designate Low-Priority is not clearly defined, some detail needs to be added. There is no description of how a low-impact chemical can be quickly vetted and approved for use, for example, one that would replace a toxic compound existing in commerce. This situation needs to be explicitly described, as a way to reward green chemistry alternatives and to incentivize manufacturers.
- As EPA is prioritizing which chemical substances are "High-Priority Substances," and then evaluating them, where will you fit tribes into this process? There are specific sections that point out public participation, but tribal consultation is not at all referenced.

## **THE RISK EVALUATION RULE**

- In the document "Procedures for Chemical Risk Evaluation" is the statement: "One of the key features of the new law [TSCA] is the requirement that EPA now systematically prioritize and assess existing chemicals, and manage identified risks." Under the original law, existing chemical substances that were mostly not

evaluated and were allowed in consumer products we've been using for 40 years. This is a priority concern for tribes because this means that many of these chemicals are now in our environment, which tribes depend upon and are interacting with every day.

- TSCA now requires EPA to consider whether chemicals present 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)
  - How will the EPA Administrator decide to consider or include "potentially exposed or susceptible subpopulations"?
  - How do tribes bring their exposure to the attention of the Administrator so their risk will be considered in the risk evaluation?
- Regarding the requirement that "each risk evaluation must also: (1) integrate and assess available information;"
  - What happens if information is not available, yet under new TSCA, all exposure assessments in the "pipeline" must be complete within three years with possible 6 months extension? How is this requirement balanced when there is no information to make an adequate assessment, especially information on exposure to susceptible sub-populations.
  - How will the EPA insure they are including all the data that is tribally-collected under EPA-approved QAPPs? The EPA Regional Offices collect this data from tribes via IGAP and via media-specific grant funding, like Office of Water, Office of Air, etc.
- We whole-heartedly support that risk evaluations must now "encompass all manufacture, processing, distribution in commerce, use, and disposal activities that constitute the conditions of use... all known, intended, and reasonably foreseen activities associated with the subject chemical substance."
- When considering existing chemicals, consider that there are 100's or 1000's of consumer products with labels directing that the product should be disposed of **only** in certain types of landfills or as a household hazardous waste. Unfortunately, that does not account for communities where disposal occurs outside of sophisticated, well-funded solid waste facilities. This includes more than 200 Alaska tribal villages and many tribal lands in the lower 48 states where residents face higher exposures to toxics from their permitted landfill facilities. The on-the-ground 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.

- It is necessary for EPA to particularly include tribes in implementing these rules. There will be times when there seem to be holes in the data. How will EPA account for those situations where manufacture, use and disposal is in or near tribal communities? In the past these are not considered because data is not coming from the manufacturers, even though tribes may have commented on these concerns.
- There is specific reference to opportunities for public participation but there is no reference to tribal consultation. EPA needs to include that earlier in the time frame than public participation to allow for the meaningful consultation process.
- In the background material provided with the announcement for tribal consultation, there is this statement: "The Agency has evaluated the risk of chemical substances to all sectors of the population, with particular attention to workers, indigenous peoples, pregnant women," and so on.
  - Please provide examples and references to where EPA has evaluated with particular attention to indigenous peoples as it would help tribes to see where this was done in the past and provide EPA with guidance to improve this in future evaluations. The PBDE data used values for store-bought fish at urban consumption rates which are significantly lower than tribal exposure rates with consumption of wild-caught fish. Neither did it account for the bioaccumulation of PBDE.
  - Not only must the Agency simply "consider" subpopulations they must act to protect these groups. Consideration is not sufficient in an era when States are pre-empted from implementing local protections and banning toxics. Central tendency is no longer acceptable when States cannot act to protect local populations/lifeways because of new TSCA.
- Please explain the reference to "draft risk-evaluations by interested parties" in the background information document. Who is an example of an interested party?
- Under Section 6. Metals and metal compounds. EPA must use the March 2007 "Framework for Metals Risk Assessment: "
  - The exposures described in this document may not consider all tribal exposures that we describe in the NTTC report, can these be added, amended if needed.

## DEFINITIONS

- Aggregate exposures: exposure to a single chemical by multiple pathways and routes of exposure. The pathway of exposure refers to our patterns of behavior potentially interact with chemicals in the environment. For example, multiple pathways could include the pesticide residues in food and drinking water, as well as residues from pesticide use in residential, non-occupational environments. The routes of exposure refer to the ways we may be exposed to a chemical, such as through our mouth (oral exposure), our skin (dermal exposure), or by breathing in a chemical (inhalation).

- Sentinel exposures: the most significant exposures, the exposure with highest risk, or the first exposures.
- Conditions of use: broadly defined as “the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.” 15 U.S.C. 2602.
- Risk assessment: the qualitative or quantitative evaluation of the risk posed to human health and/or the environment by the actual or potential presence or release of hazardous substances, pollutants or contaminants.
- Risk evaluation: A component of risk assessment in which judgments are made about the significance and acceptability of risk.
- Tribal lifeways: inclusive of but not limited to, economic, cultural, ceremonial, recreational, and subsistence practices, often occurring in complex and intense relation to the natural environment. Many tribal cultures are essentially synonymous with and inseparable from the land and its resources. Examples include, but are not limited to:
  - Hunting, fishing, gathering
  - Husbandry (farming/growing)
  - Gathering, consumption, and everyday use of plants and plant materials (food, teas, different types of combustibles for smoke generation, collection of firewood or tipi poles, etc.)
  - Water collection (untreated)
  - Collecting materials for, and making baskets and other weaving, arts, tools, clothes (using feathers, skin, bones, hides, oils, antlers, etc.; wood or stone carvings)
  - Building/carving canoes, sweat lodges, other structures
  - Bathing/sweat lodge use
  - Traditional medicine
  - Ceremonial or powwow activities (dancing, traditional games)
  - Smoke houses and ceremonies with smoke (fire, sage, cedar, alder, etc.)
  - Making and use of traditional pottery (made from local clays, etc.)

## **National Tribal Toxics Council**

[www.tribaltoxics.org](http://www.tribaltoxics.org)

The NTTC is a USEPA Tribal Partnership Group that is focused on providing Tribes with an opportunity for greater input on issues related to toxic chemicals and pollution prevention.

The NTTC will give tribes a forum for providing advice on the development of EPA's chemical management and pollution prevention programs that affect tribes. Given the uniqueness of tribal cultures, communities and environmental problems, the forum will help EPA better tailor and more efficiently address a variety of issues, expand pollution prevention and safer chemical initiatives in Indian country, and better evaluate unique chemical exposures on tribal lands.