



National Tribal Toxics Council

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January 8th, 2024

Administrator Michael Regan
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Sent via Regulations.gov

Re: Comments on Decabromodiphenyl Ether and Phenol, Isopropylated Phosphate (3:1); Revision to the Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under the Toxic Substances Control Act (TSCA), Docket No. EPA-HQ-OPPT-2023-0376

The National Tribal Toxics Council (NTTC) is an EPA Tribal Partnership Group (TPG) with the Office of Pollution Prevention and Toxics (OPPT). Since the TSCA 2016 amendments, one of the Council's primary goals is to ensure that risks to Tribes from chemicals in commerce are accurately characterized and tribal peoples can be assured that, as Congress intended, their lifeways and health are protected in all EPA chemical risk management decisions. The NTTC appreciates the opportunity to provide comments on the proposed revisions to the regulations for decabromodiphenyl Ether and Phenol (decaBDE) and isopropylated phosphate (3:1) (PIP (3:1)).

Previous comments on recent TSCA Section 6(h) actions

The NTTC's position on EPA's 2021 PBT Rule as submitted in comments¹ to EPA supports Congress' intention that the 2014 Work Plan chemicals with persistent and bioaccumulative properties require expedited action to protect potentially exposed and susceptible subpopulations (PESS) from exposure. The Council also commented that the 2021 Rule's compliance extensions² did not reflect the urgency that TSCA

¹ Comments submitted to EPA from the NTTC dated October 28, 2019 on Proposed Rule on Persistent, Bioaccumulative, and Toxic Chemical Under Section 6(h) of TSCA and dated December 27, 2021 on Regulation of Persistent, Bioaccumulative, and Toxic Chemicals (PBTs) Under TSCA Section 6(h); Phenol, Isopropylated Phosphate (3:1); Further Compliance Date Extension

² EPA Proposed Rule: Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Phenol, Isopropylated Phosphate (3:1); Further Compliance Date Extension.

<https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0598-0001>

section 6(h) mandates which directs EPA to develop expedited risk management rules to reduce exposure to the substance to the extent practicable.

EPA should consider additional practicable actions

The proposed revisions³ focus primarily on requirements to reduce occupational exposures and releases to water from industrial facilities and while the Council supports these improvements the revisions fail to fully meet the urgency and mandate of 2016 TSCA to address the need to reduce PBT exposures to PESS communities and the environment. The Council suggests that there are multiple practicable actions that EPA should additionally take in order to meet the Congressional intent to reduce exposures to the public from PBT substances in commerce:

- Expand the water release provisions to wastewater treatment plants, landfills and other sites that may act as sources of PBT releases into the environment.
- Require wastewater treatment technologies that have proven effective in reducing concentrations of PBTs in wastewater ⁴
- Require limitations on the release of PBT chemicals in biosolids before land application
- Use EPA’s authority to regulate all disposal and recycling activities that involve decaBDE and PIP (3:1) in articles. Without regulation, articles and products that contain these chemicals will continue to be disposed of in landfills on or near tribal lands that do not monitor for decaBCA and PIP (3:1) and that are likely unlined and not managed for environmental releases.

Tribal implications and consultation

The Council, once again, strongly disagrees that TSCA rules do not have substantial direct effect on tribes particularly in regard to PBT chemicals. The proposed revision states:

“This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000) because it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.”

³ Decabromodiphenyl Ether and Phenol, Isopropylated Phosphate (3:1); Revision to the Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under the Toxic Substances Control Act (TSCA), 88 Fed. Reg. 82,287 (Nov. 24, 2023).

⁴ M. Kim et al., Parameters Affecting the Occurrence and Removal of Polybrominated Diphenyl Ethers in Twenty Canadian Wastewater Treatment Plants, 47 Water Research 2213 (2013) **and** Dang, Y.; Tang, K.; Wang, Z.; Cui, H.; Lei, J.; Wang, D.; Liu, N.; Zhang, X. Organophosphate Esters (OPEs) Flame Retardants in Water: A Review of Photocatalysis, Adsorption, and Biological Degradation. *Molecules* 2023, 28, 2983. <https://doi.org/10.3390/molecules28072983>

As NTTC has communicated to EPA on multiple occasions in meetings, in comment letters, and in presentations to the Agency, any regulatory action that pertains to PBTs and other chemicals that release to the environment has the potential for substantial effects on tribal governments that are entrusted with the health of their communities and lands. Tribal lifeways are rooted in and revolve around the local environment and are thus likely to result in much higher exposure to any PBT in that environment. The US government has a Trust responsibility to Tribes and a legal obligation to uphold their Treaty-protected rights to safe resource use within and far beyond reservation boundaries.

According to EPA's Tribes Approved for Treatment as State (TAS) website⁵, 84 tribes currently have TAS regulatory status to set water quality goals and to establish treatment controls and strategies to protect water quality for a Tribe's water resources. The Keweenaw Bay Indian Community and the Yurok Tribe of the Yurok Reservation both have TAS status and both submitted comments during the development phase of the PBT rules. Tribal governments must be consulted during **all** phases and especially rule-making phases of regulatory decisions that impact the safe practice of tribal lifeways.

Data that could aide in the quantification of human health impacts

EPA is requesting feedback and comments on “data that could aide in the quantification of human health impacts to exposed populations in order to assess the extent to which impacts to communities with environmental justice concerns are reduced by the proposed rule.” The Agency must recognize that the lack of data from PIP (3:1) monitoring in environmental media and its exposure pathways⁶ is reflective of the difficult challenge that the Agency faces in keeping up with the number of chemicals in use today. This is particularly concerning since PIP(3:1) was a 2014 Work Plan Chemical which provided ample opportunity to collect data on environmental release, exposure and hazard. How can Tribes, PESS, and the general public be expected to provide data or even share an understanding of exposures and impacts when the Agency itself has no formal Action Plan in place to acquire data and address the increasing use of organophosphate ester flame retardants.

No data and lack of understanding does not necessarily translate to no risk and EPA should take a leadership role in developing new policies as well as new analytical methods to move ahead of the rapid adoption of new chemicals into commerce. EPA could currently acquire the monitoring and hazard data necessary to inform risk management actions by using TSCA's data gathering authorities even on Section 6(h) chemicals. In addition, given the extensive expertise and capabilities of the EPA's Office of Research and Development and Office of Water, we recommend that these Agency resources be integrated into developing data on exposure pathways to TSCA chemicals and monitoring chemical sources, chemical byproducts, and chemical degradation products in the environment.

⁵ <https://www.epa.gov/tribal/tribes-approved-treatment-state-tas>, accessed 1/7/2024

⁶ EPA, 2020, Exposure and Use Assessment of Five Persistent, Bioaccumulative, and Toxic Chemicals,

Blum et al. (2019)⁷ suggest that the number of chemicals in use today demands policy changes and a new approach to risk management through consideration of regulation of chemical subclasses. The Council agrees with this proposition on emerging flame retardants and suggests that EPA must go much further in ensuring the most vulnerable and susceptible populations are protected from chemical exposures and impacts.

As always, we welcome any opportunity to collaborate with EPA in advancing the protection of tribal people and lifeways from the impacts of toxic chemicals. Should you or your staff have questions or comments regarding this letter, please contact myself, Dianne Barton, NTTC Chair, at (503) 731-1259 / bard@critfc.org.

Sincerely,

A handwritten signature in black ink that reads "Dianne C. Barton". The signature is written in a cursive, flowing style.

Dianne C. Barton, Ph.D.
Chair, National Tribal Toxics Council

⁷ Blum et. al, 2019, Organophosphate Ester Flame Retardants: Are They a Regrettable Substitution for Polybrominated Diphenyl Ethers?, Environ. Sci. Technol. Lett. 2019, 6, 638-649.