



# National Tribal Toxics Council

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February 14<sup>th</sup>, 2022

Sarah Cox

Office of Pollution Prevention and Toxics  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460-0001

Via: <http://www.regulations.gov>- EPA-HQ-OPPT-2019-0237

RE: Cyclic Aliphatic Bromide Cluster (HBCD); Draft Revision to Toxic Substances Control Act (TSCA) Risk Determination

Ms. Cox,

The National Tribal Toxics Council (NTTC) is an EPA Tribal Partnership Group (TPG), supported by the Office of Pollution Prevention and Toxics (OPPT), that works to provide Tribes with information on issues and rulemakings related to toxic chemicals and pollution prevention. On behalf of Tribes, the NTTC works to ensure that tribal risks are accurately characterized and evaluated in EPA's risk assessment process by informing and educating the EPA on tribal lifeways, exposures, and risks. The NTTC appreciates the opportunity to provide comments on the revised risk determination of HBCD.

The NTTC commends EPA on taking a whole chemical substance approach to determining that HBCD presents an unreasonable risk to human health and the environment. We also agree with the Agency that the assumption in the Draft Risk Evaluation of proper PPE at all times while handling HBCD and HBCD-containing articles would result in an underestimation of risk for many workers. Because EPA did not amend the underlying scientific analysis of the HBCD risk evaluation in the risk characterization section, NTTC has the following concerns as EPA moves into the risk management stage for this PBT chemical:

1. Tribal risks remain unevaluated
2. Disposal, other than demolition on-site, remains unconsidered
3. Legacy Use and associated disposal remain unconsidered
4. Fenceline communities living near disposal sites were not considered as potentially exposed and susceptible subpopulations (PESS)

5. Any risk management actions cannot be considered to be protective of Native Americans and other populations not considered in the original analysis, with the exception of a full ban.
6. Even with a full ban on HBCD, risk management actions cannot be considered to be protective of risks from legacy use and associated disposal.

In the letter NTTC submitted to EPA on the Draft Risk Evaluation of HBCD in August 2019, we outlined in detail the exposures to HBCD tribal people experience and how these exposures are unique and not captured by the central tendency or even the high exposure scenarios EPA used in that document. These exposures occur most notably via 1) disposal and associated environmental releases of HBCD, 2) via fish and other aquatic life consumption, and 3) via legacy use. We include that letter with this submission for reference and to ensure that the exposures outlined in that letter are included in the record of this risk determination revision.

On page 7 of the revised Section 5 of the Draft Risk Evaluation of HBCD<sup>1</sup>, EPA states that it considers the central tendency and high-end exposure levels in occupational settings when determining unreasonable risk for a chemical substance and that risk estimates of the 95<sup>th</sup> percentile will cover sub-populations with greater exposure (i.e. PESS). The NTTC contends that the risks HBCD poses to tribal populations are significant and not captured in the 95<sup>th</sup> percentile of the occupational or central tendency analyses that were included in the Draft Risk Evaluation.

In Alaska Native Villages, "pink board" and "blue board" insulation containing HBCD is widely used, is ubiquitous, and not confined to roofing use. In addition to inhalation exposures from exposed insulation, these products are disposed in unlined and uncovered landfills without leachate treatment that often flood and drain into water bodies the community uses as a source of water for drinking, bathing, and recreation, as well as a source of food. None of these exposures were captured in the draft risk evaluation and, since no additional scientific or technical analyses were performed by EPA in the revised risk determination of HBCD, NTTC is concerned that the risk management actions that the Agency undertakes will not be protective of tribal people. EPA did not identify non-cancer adverse effects from ingestion exposures. Although, EPA estimated risks to highly exposed populations following acute ingestion exposures based on high end rates of fish consumption, it failed to consider lifetime chronic risks via fish ingestion and did not aggregate either acute or chronic exposures with other risk factors, such as living within 1,000 meters of waste disposal sites, which according to the State of Alaska Solid Waste Information System, three-quarters of Alaska tribal communities do. Native Americans and Alaska Natives were not considered as PESS despite being more highly exposed than the general population via the practice of tribal lifeways and via circumstances common to life on tribal lands, such as unlined and unmanaged open dumps in close proximity to the community, older and substandard housing, older furniture and electronics, indoor air pollution, much lower residential mobility, and more.

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<sup>1</sup>Section 5. Unreasonable Risk Determination for HBCD. [https://www.epa.gov/system/files/documents/2021-12/9823-01\\_risk-determination.pdf](https://www.epa.gov/system/files/documents/2021-12/9823-01_risk-determination.pdf)

In the revised Section 5 of the Draft Risk Evaluation of HBCD<sup>1</sup>, EPA states that dietary exposure to HBCD is likely for aquatic and terrestrial organisms but limits risk to soil organisms (e.g. earthworms). Given the documented levels of HBCD found in marine mammals, and the common Alaska tribal practice of consuming them, limiting acknowledgement of the environmental risks to soil organisms is insufficient.

NTTC's emphatic position on Persistent Bioaccumulative Toxic (PBT) chemicals that release to the environment is that a complete ban on their production, import, and use in commerce is necessary and should be taken quickly. In this regard, we encourage EPA to implement the Agency position taken in the DRAFT TSCA Screening Level Approach for Assessing Ambient Air and Water Exposures to Fenceline Communities Version 1.0 on page 17, line 56-57 "the Agency believes that the law requires, and the public is entitled to, protections from the identified risks as quickly as those protections can be finalized and implemented"<sup>2</sup>. Since manufacture of HBCD no longer occurs in the US, we urge EPA to employ its authority under TSCA to ban its import and use and to also regulate its disposal, including consumer product disposal. A ban of HBCD import and use alone will not address the exposures tribal people will continue to experience via legacy use of products containing HBCD and via environmental releases from proximate landfills into the local environment and food chain.

On page 1 of the revised Section 5 of the Draft Risk Evaluation of HBCD, EPA states that:

"EPA will initiate risk management for HBCD by applying one or more of the requirements under TSCA section 6(a) to the extent necessary so that HBCD no longer presents an unreasonable risk. Under TSCA section 6(a), EPA is not limited to regulating the specific activities found to drive unreasonable risk and may select from among a suite of risk management options related to manufacture, processing, distribution in commerce, commercial use, and disposal in order to address the unreasonable risk. For instance, EPA may regulate upstream activities (e.g., processing, distribution in commerce) in order to address downstream activities driving unreasonable risk (e.g., use) even if the upstream activities are not unreasonable risk drivers."

Regulating upstream activities would not sufficiently reduce downstream exposures on tribal lands and near tribal communities from the use and disposal of products containing HBCD, or from the application of biosolids. It is not possible to ensure no unreasonable risk to tribal people if tribal lifeways and other circumstances unique to tribal communities are not considered. It is only possible with selecting a full ban as the risk management option. Risk management efforts can then focus on the critical question of how to protect tribal peoples from HBCD exposure via the use and disposal of legacy products.

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<sup>2</sup> Draft TSCA Screening Level Approach for Assessing Ambient Air and Water Exposures to Fenceline Communities Version 1.0, <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/tsca-screening-level-approach-assessing-ambient-air-and>

NTTC welcomes the opportunity to work closely with EPA, as their Tribal Partnership Group, to ensure that risk management actions the Agency undertakes are protective of Tribes and tribal lifeways. Please contact myself, Dianne Barton, NTTC Chair, at (503) 731-1259 / [bard@critfc.org](mailto:bard@critfc.org) or Susan Hanson, NTTC Co-Chair, at [susanthanson9@icloud.com](mailto:susanthanson9@icloud.com).

Sincerely,

A handwritten signature in black ink that reads "Dianne C. Barton". The signature is written in a cursive style with a large initial "D".

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