



National Tribal Toxics Council

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December 14th, 2023

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RE: Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act; EPA- HQ-OPPT-2023-0496

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 revisions, the Council's primary goal has been to suggest improvements to the TSCA risk evaluation process such that risks to tribes are accurately characterized and tribal peoples can be assured that, as Congress intended, their lifeways, environment, and health are protected through chemical risk management decisions. The NTTC appreciates the opportunity to provide comments on the proposed rule on Procedures for Chemical Risk Evaluation Under TSCA.

The NTTC's position on the first 10 risk evaluations of chemical substances under TSCA was that human health risks were underestimated in general, and tribal health risks were not specifically considered and evaluated. By excluding conditions of use (COUs) and exposure pathways, not identifying all potentially exposed and susceptible subpopulations (PESS), not quantifying differences in risks for PESS groups, not identifying data gaps, not considering aggregate exposures and cumulative risks, and using a systematic review process that excluded evidence relevant to tribal risks, the risks to tribal people and tribal lifeways were not evaluated. We, therefore, strongly support EPA in amending the 2017 rule that addressed how the Agency conducts chemical risk evaluations under TSCA. The NTTC supports the inclusion of all conditions of use and all exposure pathways into each chemical risk evaluation, as well as the consideration of legacy uses and associated disposals as conditions of use, the

consideration of aggregate exposures and cumulative risks, the addition of “overburdened communities” to the PESS list, regulating categories of chemicals in similar ways, not assuming risk reduction via PPE use, regulation of a chemical’s upstream manufacture, processing or distribution in commerce if necessary, and the whole chemical risk determination approach.

We consider these amendments as significant improvements to the rule and have several recommendations for EPA on how the amended rule might be strengthened to better protect human health and the environment from harmful chemicals.

The NTTC has long emphasized the importance of considering aggregate exposures and cumulative risks to tribes and other overburdened communities and PESSs. We are encouraged by the steps EPA is taking to include these considerations in the risk evaluations and by the recent progress towards developing methods and providing guidance on the consideration of cumulative risks to human health^{1,2}. However, aggregate exposures and cumulative risks in chemical risk assessments are proposed to only be considered by EPA “as appropriate” and at EPA’s discretion. The NTTC’s position is that, when it comes to evaluating risks to PESS, consideration of aggregate exposures and cumulative risks is always “appropriate” and we ask that EPA make these considerations a mandatory part of their PESS analyses. While the lack of data is often cited as a reason for omitting such analyses, no data does not necessarily translate to no risk and EPA should work to acquire the data necessary to conduct aggregate and cumulative risk assessments by using TSCA’s data gathering authorities. 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 could be used to do more than “systematically collect and evaluate literature”, but in fact should be integrated into developing data on exposure pathways to TSCA chemicals and monitoring chemical sources and the concentrations of chemicals, chemical byproducts, and chemical degradation products in the environment.

The NTTC commends EPA for the steps it is taking to protect human health, but EPA can go much further in prioritizing and carrying out robust assessments of risks to the environment. EPA’s February 2023 guidance for cumulative risk assessment explicitly proposes to focus their efforts on human health and not on ecological taxa until ecological cumulative risk guidance documents are available. Environmental health and human health are intertwined, particularly for tribal people. Risks to the plants and animals that support and sustain human life and risks to human health cannot be separated and one cannot be considered without the other. The NTTC asks that EPA fully implement its mandate to protect human health **and** the environment from the risks of harmful exposure to chemical substances and mixtures and strengthen their capabilities to fulfill this requirement.

¹ [Draft Proposed Principles of Cumulative Risk Assessments under the Toxic Substances Control Act](#)

² Draft Guidelines for Cumulative Risk Assessment: Planning and Problem Formulation.

We fully support including “overburdened communities” as a PESS through the use of EPA tools, like EJSCREEN and EnviroAtlas, but EPA needs to go much further in ensuring the most vulnerable and susceptible populations are protected from chemical exposures and impacts. The NTTC recommends that whenever a community has exposure routes, sources, or impacts that may be unique, as is often the case for tribal lifeways, EPA cannot rule out a PESS determination without first performing some preliminary analyses. A community with unique exposure factors (e.g. unique living conditions, unique environmental conditions, or unique food sources, as is often the case for tribal people) that are not represented in a “general population” exposure and risk assessment, has to be treated as a PESS, until proven otherwise. If EPA does not have enough information to perform a preliminary analysis, in order to determine whether a community is a PESS or not, EPA should use its TSCA authority to gather or generate the necessary data and assume the community is a PESS in the meantime. Otherwise, the risks to the most vulnerable and susceptible communities, the ones that TSCA specifically aspires to protect, may be missed and that would be unacceptable.

The proposed rule states that known, intended and reasonably foreseen production of a chemical as a byproduct or an impurity within an article will be included within the scope of risk evaluations. The NTTC recommends that chemical degradation products also be included in the categories of circumstances that EPA intends to consider. Given the recent example of the acute toxicity of the degradation product of the widely used chemical 6PPD, 6PPD-quinone, it is essential that degradation products also be included in risk evaluations and subsequent risk management actions.

EPA is requesting comments on how the Agency could consider potential climate-related risks in risk evaluations. The NTTC recommends that, when considering disposal, EPA account for unlined and uncovered landfills, as occur in most Alaska Native Villages, and incorporate the exposures that currently occur in proximate tribal communities, as well as the exposures will occur with permafrost melt in Arctic communities. As permafrost thaws and melts, soil hydrologic conditions change, which will directly impact leachate from unlined landfills. Many landfills in Alaska are also adjacent to rivers and are already substantially impacted by climate change associated-erosion. Thawing permafrost and erosion increase flooding risks and are causing hazardous substances to be released to the ocean and Alaska’s rivers, contaminating the water and impacting fish and wildlife, as well as tribal people whose subsistence lifeways depend on these waters, fish, and animals.

We do not agree with EPA that this proposed rule does not have tribal implications or will not have substantial direct effect on tribes. Tribal consultation on this groundbreaking rule should have been a necessary first step to protect PESS. In the future, the NTTC offers to work with EPA in supporting outreach to tribal leadership on TSCA related actions.

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 cursive script that reads "Dianne C. Barton".

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