



# National Tribal Toxics Council

400 D Street, Suite 200 907-277-2111 Office  
Anchorage, AK 99501 1-877-335-6780 Fax

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

[@tribaltoxics](https://www.facebook.com/tribaltoxics)

## COUNCIL MEMBERS

**DIANNE BARTON**  
NTTC Chair

*Columbia River Inter-Tribal  
Fish Commission*

**SUSAN HANSON**  
NTTC Co-Chair

*Shoshone Bannock Tribes*

**FRED COREY**

*Aroostook Band of Micmacs*

**SUZANNE FLUHARTY**  
Yurok Tribe

**RUSSELL HEPFER**

*Lower Elwha Klallam  
Tribe, Tribal Vice-Chair*

**JOLENE KEPLIN**

*Turtle Mountain Band of  
Chippewa*

**JAYSON ROMERO**  
Pueblo de Cochiti

**SHAVONNE SMITH**

*Shinnecock Indian Nation*

**LAURIE SUTER**

*Tohono O'odham Nation*

**SHARRI VENNO**

*Houlton Band of Maliseet  
Indians*

**STEPHEN WOLFE**

*Seneca-Cayuga Nation*

**KELLY WRIGHT**

*Shoshone Bannock Tribes*

August 16<sup>th</sup>, 2021

Ms. Susan Sharkey

Office of Pollution Prevention and Toxics  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue Northwest  
Washington, DC 20460  
Sharkey.susan@epa.gov

Submitted Via: [www.regulations.gov](http://www.regulations.gov); Docket ID No. EPA-HQ-OPPT-2021-0436

**RE: Development of Tiered Data Reporting to Inform TSCA Prioritization, Risk Evaluation, and Risk Management**

Dear Ms. Sharkey:

The National Tribal Toxics Council (NTTC) appreciates this opportunity to submit comments on the Environmental Protection Agency's (EPA's) development of a proposed rule for implementing a tiered data collection strategy under the Toxic Substances Control Act (TSCA). As an EPA Tribal Partnership Group 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 the effects of chemicals and pollution upon tribal people.

The NTTC supports EPA's plans to fill data gaps that limit the Agency's ability to conduct prioritization, risk evaluation, and risk management activities under TSCA. Improving the data collection strategies with a tiered approach through the Chemical Data Reporting (CDR) process and expanding the information collected to include data on exposure, health, and eco-toxicity could improve the fidelity of all phases of the chemical review process, as well as help to meet programmatic deadlines. NTTC is concerned that the information currently collected through the CDR process may not include sufficient data on exposures and risks specific to tribal populations.

EPA needs sufficient information to understand all conditions of use and other exposure-related scenarios for chemical substances, in order to inform the decision

of whether the chemical should be designated as high-priority and, therefore, enter the risk evaluation process. NTTC is concerned that the May 2020 EPA update<sup>1</sup> of the CDR definition of small manufacturers used to determine reporting and recordkeeping requirements under TSCA will limit the collection of sufficient information on conditions of use, exposure, health, and ecotoxicity. The definition in the 2020 CDR Rule was estimated to eliminate reporting entirely for 93 industry sites and reduce reporting by eliminating the need to report at least one chemical substance for an additional 129 industry sites. While consistent with EPA's goal to reduce reporting burden on chemical manufacturers, the definition limits information available to the public on the chemical substances in their environment and for EPA's chemical management process. In addition, the majority of tribal peoples 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 on issues of relevance to tribal people.

Conditions of use (COU) for a chemical substance under TSCA include the circumstances of processing, distribution in commerce, as well as its disposal. Thus, collection of information for all life cycle phases of the substance is essential in prioritizing chemical evaluations to fully understand the potential for environmental release. Processors, manufacturers, and importers hold essential information on conditions of use that could inform the chemical review process and should be required to provide information for the COU Data Set and the Prioritization Data Set. The 2013 GAO's<sup>2</sup> report on how EPA assesses toxic substances notes that "chemical processors are often the downstream users of chemical substances produced by chemical manufacturers and therefore may be in a better position to understand end users' exposure scenarios." EPA stated that it is "considering requiring certain necessary data be reported by chemical manufacturers (including importers)" and that it is also "considering either notifying or collecting information from processors"<sup>3</sup>. NTTC supports EPA in requiring this information from manufacturers, importers, and processors. Because the COUs that EPA identifies in the scoping stage determine how the risk to human health and the environment will be evaluated and how that chemical substance will be regulated, it is imperative that all relevant data and information, especially that pertinent to potentially exposed and susceptible subpopulations like tribes, is available to EPA in the earliest stages of the risk assessment process.

The ultimate purpose of the new TSCA risk assessment process is to evaluate toxic chemical risks to Americans and then to use that information to make decisions that protect them from unreasonable risk. In order to protect all Americans, and not just those Americans that can be represented through general population exposures, TSCA requires that EPA identify and protect potentially exposed and susceptible subpopulations (PESS), which TSCA defines as:

"a group of individuals within the general population identified by

---

<sup>1</sup> EPA, TSCA Chemical Data Reporting Revisions and Small Manufacturer Definition Update for Reporting and Recordkeeping, May 2020, <https://www.epa.gov/chemical-data-reporting/prepublication-version-final-rule-tsca-chemical-data-reporting-revisions-and>

<sup>2</sup> GAO, Toxic Substances, EPA Has Increased Efforts to Assess and Control Chemicals but Could Strengthen Its Approach, March 2013, GAO-13-239.

<sup>3</sup> <https://www.regulations.gov/document/EPA-HQ-OPPT-2021-0436-0001>

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.”

Tribes meet this definition for the majority of chemical substances that are released into the environment but have not been considered as potentially exposed and susceptible subpopulations in any of the risk evaluations performed to date. Unique lifeways and a close subsistence relationship to the environment can lead to increased risk due to multiple exposure pathways not experienced by the general population. Because of tribal reliance on subsistence activities and other lifeway activities taking place in, and/or depending on, local natural environment resources, all reasonably available information on pathways that could result in releases to the environment through product manufacture, use, or disposal should be collected to inform EPA’s mandate to protect potentially exposed and susceptible subpopulations.

EPA can only fulfill its mission to protect public health and the environment if data is available in a timely manner to meet each stage of the TSCA risk evaluation and risk management lifecycle. Often there is insufficient information on the many ways that chemicals are released into the environment and into tribal first foods and water. Improved data reporting is one way that these data gaps can be filled so that all relevant COUs and potentially exposed and susceptible subpopulations can be identified for each high priority chemical substance considered by EPA.

NTTC recommends that, in addition to collecting information and data from industry, EPA also collect information from tribes on subsistence (how tribal foods are harvested, which foods are consumed, how they are processed, etc.), as well as other lifeways that increase exposure to chemicals released into the environment. Such exposures cannot be captured by using general population exposure data. Proximity of tribal communities to conditions of use, such as disposal of consumer products in unlined landfills that may practice open burning of waste, needs to also be considered by EPA. Information on susceptibility of the tribal population to exposure to toxic chemicals is available and such data should also be collected and used by EPA in its TSCA review of chemical substances.

Respectfully Submitted,



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