



National Tribal Toxics Council

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April 28th, 2023

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Dr. Alaa Kamel
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RE: Draft Proposed Principles of Cumulative Risk Assessment Under TSCA; Docket EPA-HQ-OPPT-2022-0918

The National Tribal Toxics Council (NTTC) is an EPA Tribal Partnership Group (TPG) with the Office of Pollution Prevention and Toxics (OPPT). Since the 2016 revisions to TSCA, one of the Council's primary goals has been to improve the risk evaluation process such that risk to tribes is accurately characterized and tribal peoples can be assured that, as Congress intended, their lifeways too are protected through chemical risk management decisions. The NTTC appreciates the opportunity to provide comments on the Draft Proposed Principles of Cumulative Risk Assessment Under TSCA ("Principles").

The NTTC supports EPA on finally taking steps towards assessing cumulative risks to human health from chemicals in commerce. Through comment letters and dialogues with OPPT, the Council has advocated for Cumulative Risk Assessment (CRA) under TSCA since its inception in 2012. It is a foundational tenet to capture the complex weave of tribal exposures, and it is required under TSCA.

The NTTC appreciates that the Principles name tribal populations explicitly as 'populations for consideration', along with other groups.¹ As described in previous comments on TSCA actions, our cultures evolved to thrive in specific local environments and continue to do so today. Like the grasses woven into a basket by an Elder, our lifeways are intimately integrated with the local environments in

¹ EPA, Draft Proposed Principles of Cumulative Risk Assessment Under the Toxic Substances Control Act (February 2023), line 165.

thousands of complex ways. Choose a point within the basket and you may follow that source to every other point.

Thus, tribal risks from toxic chemicals cannot be assessed adequately unless they are considered cumulatively. EPA recognizes this in regards to fulfilling the TSCA mandate to assess risks for those most susceptible and/or exposed (i.e. PESS).

~~TSCA does not explicitly require EPA to conduct CRAs. However, TSCA does **require** that EPA, when conducting TSCA risk evaluations in 3 to 3.5 years [15 U.S.C. § 2605(b)(4)(G)], consider the reasonably available information, consistent with the best available science, and make decisions based on the weight of the scientific evidence [15 U.S.C. § 2625(h), (i), (k)]. EPA recognizes that for some chemical substances undergoing risk evaluation, the best available science may indicate that the development of a CRA is appropriate to ensure that any risks to human health and the environment are adequately characterized.~~

NTTC suggests removing the crossed out sentence. TSCA requires EPA to conduct CRAs when the best available science indicates a CRA is appropriate. In the case of Tribes, who are both susceptible and highly exposed in most situations, *risks to tribal human health and environment cannot be adequately characterized without conducting a CRA*. Additionally, the best available science includes Traditional Ecological Knowledge (TEK), and EPA is required to incorporate TEK per the “Guidance for Federal Departments and Agencies on Indigenous Knowledge”². *Tribes are and must be considered Subject Matter Experts and their science accorded equal weight as “best available science”*.

A cumulative risk assessment will only yield an accurate representation of tribal risks if unique tribal exposures, non-chemical stressors, ecological impacts, and tribally relevant data are incorporated appropriately into the Principles.

Tribal exposures

Tribal exposures differ from those of the general population, workers, consumers, or any other population considered under TSCA. Tribal peoples live and subsist in the local environment for the majority of their lifetime. For example, Tribal people are exposed to contaminants while hunting, fishing, and gathering traditional medicine and foods (e.g. fish, other aquatic species, marine mammals, plants, birds, and big game), preparing those foods and medicine, and then ingesting those same foods. Those foods, present within the same local environment, are exposed to and contain the same contaminants. Further, through drying, freezing, fermenting, and smoking processes, a single animal, such as moose, deer, elk, halibut, seal, or whale, is consumed daily over the course of several months, at substantially higher daily ingestion rates than the general population. Ingestion, whole body dermal absorption, and inhalation exposure to the same local chemicals occurs by drinking, cooking, cleaning, bathing and steaming with local waters. Additionally, tribal peoples are exposed at the same time to the same group of

² White House Office of Science & Technology Policy and Council on Environmental Quality Memorandum “Indigenous Traditional Ecological Knowledge and Federal Decision Making, November 2021

chemicals via absorption from touching sediments, soils, and plants. Inhalation exposure to the same chemicals occurs while spending significant time outdoors, as well as via indoor air. Tribal built environments are also different than those of other populations considered under TSCA. A limited list of characteristics shared by multiple tribes that adds to cumulative exposure includes old and substandard housing, unpaved roads, use of ATVs, snow mobiles, and boats for daily transportation, and reliance on wood and fuel oil home heating.

The Principles document provides three examples of exposure pathways “ingestion of contaminated groundwater, inhalation of volatile compounds emitted in an indoor environment, or dermal exposure to products during use”³. While the NTTC recognizes that this is an incomplete list, it is equally important to consider non-TSCA pathways to fully evaluate PESS communities. Across Indian Country, local groundwater is used daily in a myriad of ways. In Alaska, daily hours-long 'steambaths' are taken by everyone in the community, from infants to Elders. Local groundwater is used for preparing foods that were harvested in base flow lakes and rivers with the same source water table. Groundwater will feed the wetland grasses in Central California, whose harvesting includes half-body immersion and whose preparation for weaving includes mastication. And in Michigan, it will feed the rice the Ojibwe harvest through half-body immersion, then prepare and consume all year from that single source. Local groundwater will be drawn in the unregulated wells of the Navajo, who make use of that water for drinking, gardening, ceremonies, and watering the sheep that are then consumed within the family, inclusive of all ages, over months.

These examples of tribal exposures are not exhaustive but meant to illustrate that tribal lifeways result in exposures different than those of the other populations considered under TSCA. When characterizing co-exposure, as outlined in the Proposed Principles of CRA⁴, such unique exposures would require the consideration of magnitude, frequency, and duration appropriate to these exposures. For instance, the frequency and duration of exposure to a group of chemicals under consideration within the timeframes of 1 day, 1 month, and 1 year is much greater for people with tribal lifeways than for other populations, resulting in greater magnitude. The likelihood of co-exposures of tribal people within all relevant timeframes is certain, and these co-exposures are also different for the general population, which consumes market fish, plants, and meat that are likely not sourced from the same contaminated place every day. Any principles or methodology must account for this fact, or it would be meaningless for tribes. Subsistence is not a choice or recreation, but is lived every day of a life.

Non-Chemical Stressors Non-chemical stressors are very important in the context of tribal people’s risks. As we have discussed in detail in previous letters to EPA, Native Americans experience higher prevalence of disease, higher prevalence of many types of cancer, higher mortality rates, higher allostatic load, higher Adverse Childhood Event scores, higher rates of smoking, less access to healthcare, and are disproportionately affected by suicide. Such non-chemical stressors result in greater vulnerability and susceptibility to chemical exposure and

³ CRA Principles at line 223.

⁴ Id at 304.

cannot be excluded from the consideration of cumulative exposures and risks, given the mandate to specifically consider susceptible populations under TSCA. In the Principles⁵, EPA recognizes the importance of non-chemical stressors and how they lead to increased vulnerability to chemical stressors. It is not clear to NTTC why in the Principles, which should set the definition of CRA, EPA states that it will limit its CRA assessments to chemical stressors 'until Agency-wide guidance and established methodologies have been developed...'. This statement, and other methodology statements, such as the very limited exposures to be initially considered and the decision to exclude any ecological taxa, fall under the definition of guidance and implementation, *which clearly are an action or decision for which EPA should carry out tribal consultation.*

Non-chemical stressors are certain to be present in tribal populations and do impact tribal people's response to chemical exposure. Therefore, the NTTC recommends that until EPA has developed the methodology to quantitatively incorporate them into the assessment, a qualitative discussion of those stressors and their potential impact be included in each risk evaluation.

Ecological taxa

The EPA proposes to exclude cumulative risks to ecological taxa⁶. In the case of tribal people, risks to their environment and risks to human health are one and the same and one cannot be considered without the other. The NTTC recommends including cumulative risk assessment for ecological taxa exposed to TSCA chemicals as a principle and commit to its implementation at a future time.

Tribally relevant data

Under TSCA, EPA has a responsibility to evaluate risks to tribal people, and other populations that are more highly exposed and/or more susceptible to chemical exposures. EPA also has a trust responsibility to protect tribal resources in perpetuity, outside of TSCA. EPA cannot do that without the necessary tribally relevant data to conduct accurate cumulative risk assessments for tribal people and it is EPA's responsibility to generate those data and to finance the effort. NTTC recommends that EPA fund a forum on tribal risk and the formation of a panel of experts to best accelerate the full implementation of CRA, inclusive of relevant exposures, inclusive of non-chemical stressors, inclusive of ecological impacts, and inclusive of tribal data. NTTC volunteers to help develop this suggestion as soon as possible.

Consideration of cumulative risks is highly significant to the health of tribal communities and natural resources. In the future, the NTTC requests that consultation be offered to tribes on any proposed principles, guidelines, or rules that involve how OPPT assesses risk to vulnerable communities.

The NTTC welcomes the opportunity to work with EPA on ensuring tribal exposures and risks are accurately evaluated and mitigated.

⁵ Id at 177

⁶ Id at 162, 530.

Should you or your staff have questions or comments regarding this letter, please contact Dianne Barton, at (503) 731-1259 / bard@critfc.org or Susan Hanson at susanthanson9@icloud.com.

Sincerely,

A handwritten signature in cursive script that reads "Dianne C. Barton".

Dianne C. Barton, Ph.D.

Chair, National Tribal Toxics Council