



# National Tribal Toxics Council

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April 28<sup>th</sup>, 2023

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Dr. Alaa Kamel  
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US Environmental Protection Agency  
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RE: Draft Proposed Approach for Cumulative Risk Assessment of High-Priority Phthalates and a Manufacturer-Requested Phthalate under the Toxic Substances Control Act

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 TSCA 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 Approach for Cumulative Risk Assessment of High-Priority Phthalates and a Manufacturer-Requested Phthalate under the Toxic Substances Control Act.

The NTTC supports EPA's draft conceptual model for estimating cumulative risk from phthalates and the steps the Agency has taken to build exposure scenarios for non-attributable and non-TSCA sources and assessment of pathways of exposure for fenceline communities.

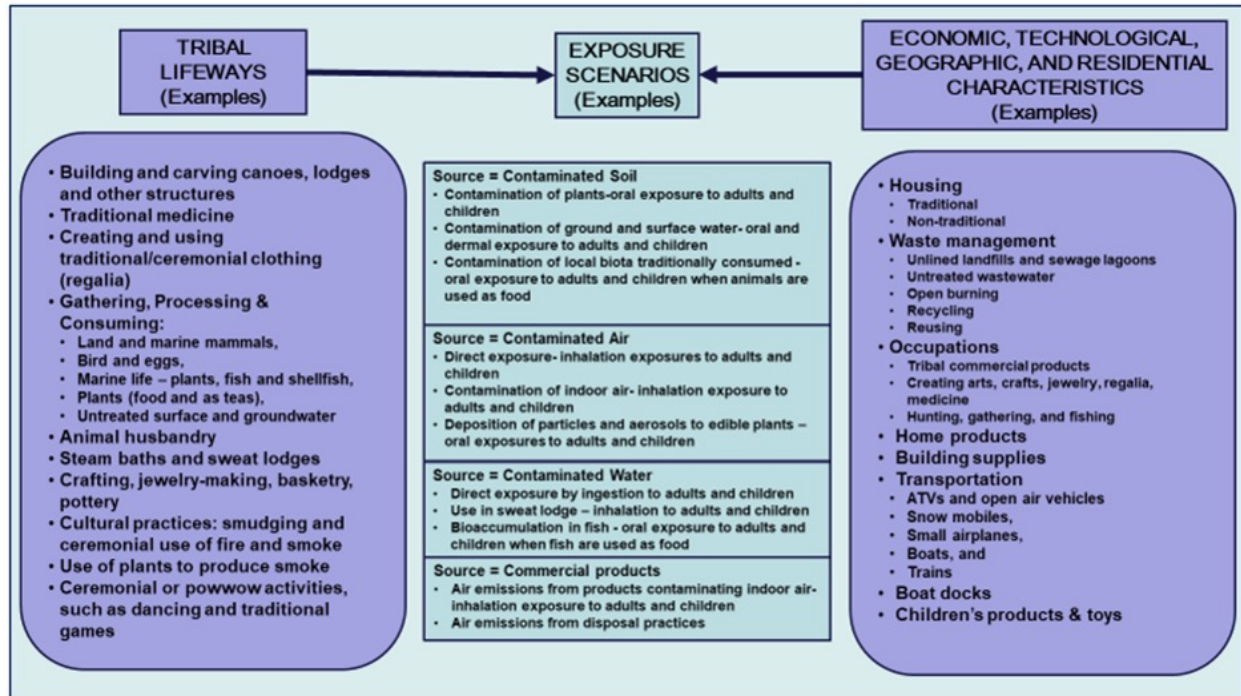
### **Accounting for Non-Attributable and non-TSCA Exposures**

The NTTC has long advocated for the consideration and accounting for non-attributable and non-TSCA exposures as part of TSCA risk evaluations<sup>1</sup> because these sources can greatly impact tribal populations with traditional lifeways. EPA acknowledges in the Proposed Approach that these can be major contributors of

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<sup>1</sup> NTTC, Understanding Tribal Exposures to Toxics, Accessible as a tool on USEPA ExpoBox: Exposure Assessment Tools by Lifestages and Populations - Highly Exposed or Other Susceptible Population Groups at <https://www.epa.gov/expobox/exposure-assessment-tools-lifestages-and-populations-highly-exposed-or-other-susceptible>

phthalate exposure leading to cumulative risk<sup>2</sup>. The NTTC concurs with this assessment and suggest that these sources present the most likely risk of exposure to tribal populations.



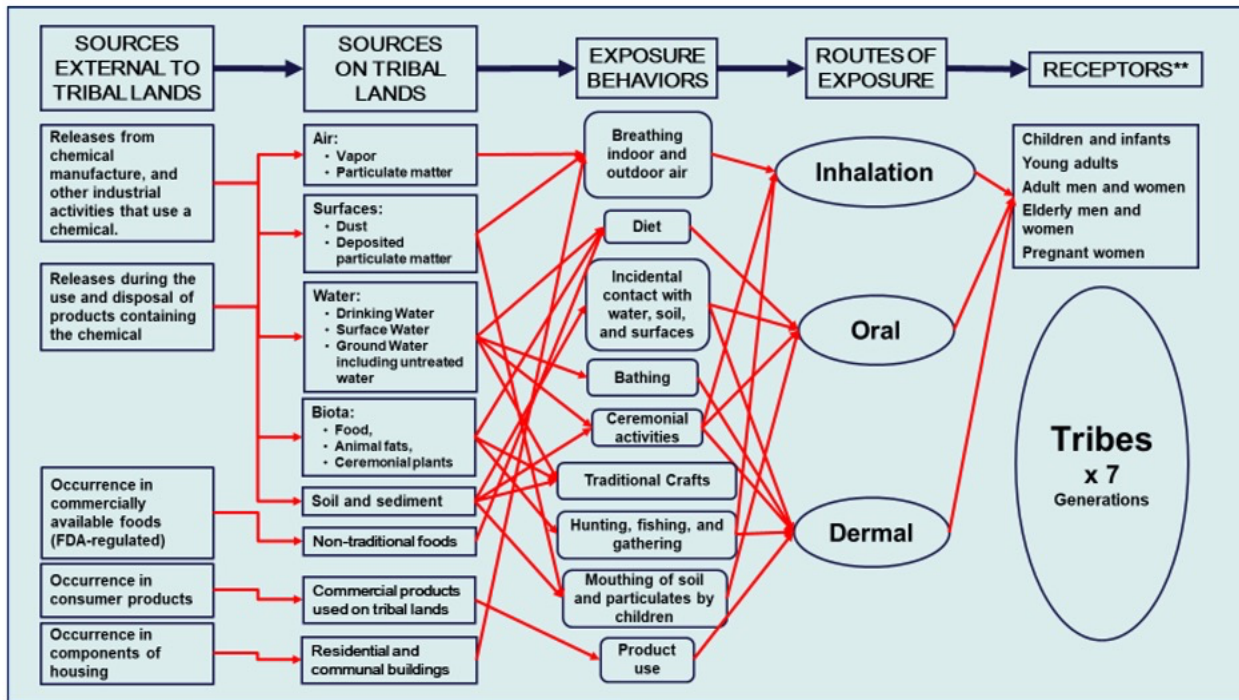
EPA suggests two approaches to estimate non-attributable and non-TSCA exposures: scenario-based and reverse dosimetry approaches. To further develop the sources outlined in Figure 6-1<sup>3</sup> and support the development of the scenario approach, the NTTC suggests additional exposure sources be considered for tribal communities. As our conceptual models on this and the next page illustrate, 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 peoples 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.

The reverse dosimetry approach as proposed by EPA appears to be limited because of the lack of detail on all phthalates contained in NHANES datasets, concerns about “double counting” non-TSCA and TSCA COU sources, and few controlled human exposure studies. Because the NHANES datasets are only representative of the general U.S. population, the NTTC is concerned that the unique PESS communities will be overlooked by reliance on general population sources. Unique communities can and do exist anywhere, from remote locations to the heart of our largest cities, and have previously been invisible to regulatory science. Yet, compared to the

<sup>2</sup> EPA, Draft Proposed Approach for Cumulative Risk Assessment of High-Priority Phthalates and a Manufacturer-Requested Phthalate under the Toxic Substances Control Act, Line 529, Section 6.2.2 at line 2994 - 2999.

<sup>3</sup> Id at line 3069 .

population currently considered by regulatory risk assessment, they may experience higher and more frequent exposure to TSCA chemicals and be more susceptible to adverse health impacts from these exposures. The NTTC suggests that EPA get ahead of data needs and develop data collection projects that account for communities like tribes, which live and eat further from the urban lifestyle and supermarket-based diet used in models and closer to a subsistence way of life and its array of food sources. We recommend the consideration of the combined scenario dosimetry and community based approach taken by Aker et. al (2023)<sup>4</sup> and Aker et. al. (2022)<sup>5</sup>.



Section 6.4.3<sup>6</sup> describes EPA’s approach for building cumulative exposure scenarios for the general population by consideration of fenceline communities. The approach relies on EPA’s Draft Fenceline Screening Approach<sup>7</sup>. The NTTC supports the choice that fenceline communities should be represented as PESS in the general population exposure assessment. However, the assumption that fenceline communities are only those located close (within 10,000 meters for air exposures) to industrial facilities, as shown in Figure 5-1<sup>8</sup>, ignores communities near other significant sources of TSCA chemicals. For example, those landfills with no liner, cover, or

<sup>4</sup> Aker, A., Ayotte, P., Caron-Beaudoin, E., De Silva, A., Ricard, S., Gaudreau, E., and Lemire, M., 2023, “Plasma concentrations of perfluoroalkyl acids and their determinants in youth and adults from Nunavut, Canada. *Chemosphere* 310. <http://creativecommons.org/licenses/by-nc-nd/4.0/>

<sup>5</sup> Aker, A., Ayotte, P., Furgal, C., Kenny, T., Little, M., Gauthier, M., Bouchard, A., and Lemire, M., 2022. “Sociodemographic patterning of dietary profiles among Inuit youth and adults in Nunavik, Canada: a cross-sectional study”. *Canadian Journal of Public Health*, <https://doi.org/10.17269/s41997-022-00724-7>.

<sup>6</sup> Id at line 3998.

<sup>7</sup> EPA, Draft TSCA Screening Level Approach for Assessing Ambient Air and Water Exposures to Fenceline Communities, Version 1.0.

<sup>8</sup> EPA, Draft Proposed Approach for Cumulative Risk Assessment of High-Priority Phthalates at line 2921.

leachate treatment, and/or where potentially open waste burning is employed as a volume reduction strategy, such as is the case for approximately 200 Alaska tribes, are a significant source of pollution, and proximate communities should be considered “fenceline”. The same is true for communities in close proximity to under-designed and exempted wastewater lagoons and their discharge points, particularly those subject to minimal secondary biological treatment standards. The Fenceline Screening approach similarly does not capture exposures of tribal people and others who use “fenceline” resources but do not reside in the fenceline community. The NTTC suggests EPA adjust the model accordingly so these exposures are captured.

#### **Product Disposal as a TSCA Condition of Use**

The summary of conditions of use as outlined in Table 6-1<sup>9</sup> does not specifically include disposal. While disposal is cited in the narrative section, its omission as a specific condition of use in Table 6-1 could lead to mischaracterization of fenceline communities that are subjected to risks from phthalates released from disposal facilities. Consideration of disposal, as a mandated condition of use by TSCA, is of critical importance to tribal populations.

Landfills and transfer stations should be considered as a TSCA COU<sup>10</sup> exposure source similar to industrial facilities for risk evaluations. Handling of waste containing phthalates from commercial products occurs regularly at these facilities. There are also tribal communities in close proximity to unregulated landfills and common dumpsters that are often dilapidated, rusted and have no further design, lining, or fencing and which are used as transfer stations. For example, all but seven of the 229 federally recognized tribes in Alaska have access only to unlined landfills, with no leachate treatment, and only infrequent cover. These landfills are also fully accessible by the general population. Alaska is also one of numerous states that allow Construction and Demolition landfills to be unlined. In tribal communities, C and D project wastes are often placed in a site-specific unlined area away from the Subtitle D landfills. Neither the design nor operation of transfer stations is regulated by RCRA, and rural locations are most often unstaffed.

#### **Data Needs for General Population/Fenceline Community Exposure Assessment**

Section 6.4.3.1 outlines data needs for fenceline community exposure assessment. In addition to the data sources listed by EPA, sources should include the collection of possibly unpublished data from tribal and other PESS communities. Each community’s unique knowledge and expertise is essential. As the National Environmental Justice Advisory Council (NEJAC) summarized: “tribes have expertise that is simply not going to be able to be replicated by non-member researchers.”<sup>11</sup> The NTTC volunteers to support EPA’s efforts to gather these data.

#### **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

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<sup>9</sup> Id at line 2972.

<sup>10</sup> Id at line 3034.

<sup>11</sup> National Environmental Justice Advisory Council, *Fish Consumption and Environmental Justice* (2002).

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 cannot be excluded from the consideration of cumulative exposures and risks, given the mandate to specifically consider susceptible populations under TSCA.

EPA's 2019 *Guidelines for Human Exposure Assessment* catalogues the considerable developments in data and methods (e.g., in accounting for children's unique exposures and susceptibilities; in considering cumulative risks) since the previous, 1992 version.<sup>12</sup> Notably, these guidelines devote an entire chapter to "Consideration of Lifestages, Vulnerable Groups and Populations of Concern in Exposure Assessments."<sup>13</sup>

"Differences in exposure and varied responses to exposure can occur across individuals, lifestages, specific groups and populations. Addressing one or more contributors of human vulnerability and susceptibility in exposure assessment presents a challenge. Where appropriate, exposure assessors consider unique characteristics and sociodemographic factors that might increase exposure or predispose an individual, lifestage, specific group or population to greater health risk. These factors include age, sex, genetic variation, cultural characteristics, behaviors, occupation, socioeconomic status, race/ethnicity and geographic location."

### **Conclusion**

Consideration of risks from TSCA chemicals including phthalates can be 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 the ways the OPPT assesses risk to communities at risk<sup>14</sup>. The NTTC welcomes the opportunity to work with EPA on ensuring tribal exposures and risks are accurately evaluated and mitigated.

Should you or your staff have questions or comments regarding this letter, please contact Dianne Barton, at (503) 731-1259 / [bard@critfc.org](mailto:bard@critfc.org) or Susan Hanson at [susanhanson9@icloud.com](mailto:susanhanson9@icloud.com).

Sincerely,



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<sup>12</sup> EPA, *Guidelines for Human Exposure Assessment* 20-21 (2019) <https://www.epa.gov/risk/guidelines-human-exposure-assessment>.

<sup>13</sup> *Id.* at 41-56.

<sup>14</sup> U.S. EPA, 2011. *EPA Policy on Consultation and Coordination with Indian Tribes*. <https://www.epa.gov/sites/production/files/2013-08/documents/cons-and-coord-with-indian-tribes-policy.pdf>

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