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# NTTC Comments on the Proposed Rule Action for Procedures for Chemical Risk Evaluations Under the Toxic Substances Control Act

The National Tribal Toxics Council (NTTC) is an EPA Tribal Partnership Group with the Office of Pollution Prevention and Toxics (OPPT). Since the 2016 TSCA amendments, one of the Council's primary goals has been to propose improvements to the TSCA risk evaluation process so that risks to Tribes are accurately characterized and tribal peoples can be assured, as Congress intended, that their health is protected in all chemical risk management decisions. The NTTC appreciates the USEPA's effort to, as stated, *"ensure that the procedural framework rule does not impede the timely completion of risk evaluations or impair the effective and efficient protection of health and the environment."*

As formal partners in ensuring that TSCA is interpreted and implemented in a way that protects tribal people to the same level as all other Americans, we also appreciate the opportunity to provide our advice through public comment on this effort.

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## 1. Tribal Consultation

Under Section VI G of the relevant published September 23rd rulemaking notice, EPA states [**bold** and underline added]:

> This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000) because it will not have **substantial direct effects** on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, **or on the distribution of power and responsibilities** between the Federal Government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

### Substantial direct effect on tribes

The NTTC has worked with USEPA OPPT since 2012 precisely because of the substantial direct effects on all Tribes from the way TSCA risk evaluations are performed. The significant impacts on Tribes, who are regularly exposed to chemical release from products and their manufacturing and disposal, as are other consumers, *and* uniquely and regularly exposed via release of chemicals into the environment from which they derive food, economy, health, and societal well-being, is the reason NTTC has any members at all, given they are unpaid for their time. And through multiple presentations to OCSPP and much of EPA over more than a decade, NTTC has made it clear that EPA's risk-evaluation procedures directly impact tribes. For one, how can Tribes judiciously determine whether and what steps to take to protect their people, establish water standards, locate housing and business developments, and clean up contaminated sites when their risks aren't evaluated because their lifeways differ so much from the general population? The progress EPA has made over the past 13 years of work together has tangible

positive effects, including, but not limited to, improving tribal awareness of their own unique risks to chemicals in commerce and fostering greater confidence in using commercial products that have been vetted for chemical safety, thereby advancing self-determination.

### Distribution of power and responsibilities is affected

EPA determined on its own that this action has no substantial direct effects on Tribes. NTTC, as the tribal partnership group, was not asked whether Tribes would be substantially affected, and to our knowledge, neither were any other tribal entities or tribal Nations. EPA OPPT did share a slide overview of the proposed rule at the NTTC October 13 regular meeting, after EPA determined that tribal consultation was unnecessary. NTTC is not a tribe and conversation with the Council does not constitute tribal consultation, though NTTC can provide tribal perspectives. The presentation content did not stray from that in the federal register, meaningful dialogue ensued, and EPA did not request NTTC comment and only asked whether there were proposed rule clarifying questions. Indeed, in the notice of the proposed rule, the very next section after the question of whether E.O. 13175 applies is a discussion of the policy on children's health. E.O. 13045 applies, where EPA rightly opines that (bolding added):

> This procedural rule would address how EPA evaluates the risks of existing chemicals under TSCA, including potential risks to children **and other PESS**. EPA must initiate a rulemaking to address the unreasonable risk to human health or the environment that the Agency may determine is presented by a chemical substance as outlined in a TSCA risk evaluation. Although this procedural rule itself would not directly affect the level of protection provided to human health or the environment, EPA expects that **a rulemaking under TSCA section 6(a) could qualify as a covered regulatory action** under E.O. 13045 **and therefore could be subject to EPA's Policy** on Children's Health.

Because Tribes are PESS, as established over several years through the excellent work of ECRAD and other OCSPP and ORD-relevant programs, much of it in collaboration with NTTC, E.O. 13175 should be considered applicable for the same reason that EPA states for E.O. 13045. In other words, even if the Agency believes this procedural rule would not directly affect the level of protection provided to tribal health or the environment, this action could nevertheless be subject to E.O. 13175 due to its potential implications for Tribes and the federal government's trust responsibilities. The Supreme Court has long recognized certain canons of construction when deciding cases involving Indian Tribes, including resolving ambiguities in favor of Tribes and interpreting treaties as Tribes understood them at the time they were signed. Accordingly, the ambiguity canon clearly dictates that the proposed rule action is subject to, and does in fact invoke the consultation requirements of E.O. 13175.

## 2. Identifying and Considering Additional PESS within Risk Evaluations

NTTC requests that EPA insert language stating that Tribes should be considered PESS for all chemicals released to the environment, unless, after initial scoping, EPA can document that Tribes are not more exposed or more medically susceptible than the general population.

EPA is proposing to remove the phrase "overburdened communities" from the list of examples of groups or individuals that may be at greater risk citing that the term is overbroad, vague, and expansive and could be interpreted to include exposures and susceptibilities not tied to specific chemicals substances

under evaluation. Eliminating this term does not prohibit EPA from identifying and considering additional PESS within its risk evaluations, but NTTC believes removing this phrase will discourage EPA from considering populations as PESS who might have unreasonable real-world exposure from aggregated COU and ambient chemical exposures experience.

For Tribes, inclusion in the list of potential PESS would address many of NTTC's concerns with the proposed framework changes. Tribes, after all, are a special population under U.S. law. They are the only Americans who have a government operating separately from State authority. Their treaty rights can extend far beyond reservation boundaries and, under the canon of construction for Indian tribes, are interpreted to guarantee Tribes special rights to these lands in perpetuity – rights that include hunting and fishing, and, in general, to maintain their traditional lifeways. The federal government holds a trust responsibility to ensure the protection of tribal resources and health. Moreover, tribal lifestyles and exposure pathways differ substantially from those of the general population, often resulting in unique chemical exposure risks – yet those lifeways are legally protected and should be separately recognized.

Tribal risks cannot be evaluated alongside the general population because tribal lifeways are not represented in general population exposure analyses. Compared to suburban and urban populations, differences in tribal exposures include longer-term residence as more tribal people tend to live their full lifetimes on the lands on which their tribes govern and which support their diet and lifeways; more hunting, fishing, and harvesting of local foods and a greater range of these foods consumed at greater acute and chronic quantities for all ages than recreational hunters and fishers. And other tribal lifeways can lead to a multitude of exposures also not experienced by the general population (see below).

It is well documented in the scientific and medical literature that Native Americans experience significant health disparities as compared to the general population[1]. According to the US Department of Health and Human Services, American Indian/Alaska Native (AI/AN) adults are 50% more likely to be obese than the non-Hispanic white population (NHW)[2], which results in higher body fat content. AI/AN people also have higher rates of chronic diseases than other ethnic groups in the US[3]. For example, AI/AN adults are almost three times more likely than NHW adults to be diagnosed with diabetes and are 2.5 times more likely than NHWs to die from diabetes[4]. AI/ANs are also more likely to have chronic liver disease, heart disease, chronic lower respiratory diseases, and high blood pressure[5]. AI/AN women are 2.3 times more likely to have liver cancer, twice as likely to die from it, and 20% more likely to have

[1] For example, Bauer UE, Plescia M. Addressing disparities in the health of American Indian and Alaska Native people: the importance of improved public health data. Am J Public Health. 2014;104 Suppl 3(Suppl 3):S255-S257. doi:10.2105/AJPH.2013.301602

[2] US Department of Health and Human Services Office of Minority Health https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=4&lvlid=40

[3] Centers for Disease Control and Prevention. CDC Tribal Data, Information, and Resources. https://www.cdc.gov/tribal/data-resources/information/chronic-diseases.html

[4] US Department of Health and Human Services Office of Minority Health https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=4&lvlid=33#:~:text=Diabetes%20and%20American%20Indians%2FAlaska%20Natives,die%20from%20diabetes%2C%20in%202017.

[5] Indian Health Service. https://www.ihs.gov/newsroom/factsheets/disparities/

kidney cancer as compared to NHW women[6]. AI/AN men are also almost twice as likely to have liver cancer as NHW men. Further, while AI/AN lung cancer incidence rates are lower overall, their mortality rate is 17% higher than that for NHW.

Additionally, Alaska Native people have a 53% higher incidence of lung cancer compared to the non-Hispanic White population[7]. Such stark health disparities increase tribal people's susceptibility to chemical exposures. When combined with the higher frequency and duration of exposures associated with tribal lifeways, these factors can substantially increase the risks that TSCA-regulated chemicals pose to tribal communities.. If tribal exposures are excluded from risk evaluations and subsequent risk management decisions fail to be protective of tribal people, health disparities will only increase.

As NTTC has informed EPA in previous comment letters and presentations to the Agency[8], tribes have unique lifeways that place them at greater risk through multiple exposure pathways not experienced by the general population. For example, these lifeways include differences in:

1. Diet, such as significantly higher consumption of locally harvested fish and local aquatic species, as well as higher consumption of locally harvested deer, elk, moose, caribou, and other wildlife that industrial and other releases may contaminate, is a concern for tribal lands.

2. Housing, which tends to be substandard, often contains older household furniture and products, lacks garages (resulting in product storage inside the home), and can be associated with dirt yards and unpaved roads.

3. Worker safety protocols, which tend to be less stringently practiced due to multiple small businesses, self-employment, do-it-yourself practices, and remote access locations, and are unvisited by OSHA.

4. Local water, which can be untreated and unregulated, comes from wells, surface water, and spring water systems. Water is typically used for:

    - Drinking, without filtering or treatment
    - Bathing via daily steam baths and/or immersion in surface water flows
    - Ceremonial use through steam baths and complete body immersion in surface water flows
    - Multiple cultural activities (e.g., reed harvesting, mouthing, weaving);
    - Subsistence activities (e.g., hunting, gathering)
    - Recreational activities (swimming in natural water)

[6] US Department of Health and Human Services Office of Minority Health https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=4&lvlid=31

[7] Source: US HHS, NCI 2020. Seer Cancer Statistics Review, 1975-2016. Tables 1.20, 2.15 through 24.15, Source: NCI 2020. Seer Cancer Statistics Review, 1975-2016. Table 1.20 https://seer.cancer.gov/csr/1975_2016/sections.html and Alaska Native Epidemiology Center, http://anthctoday.org/epicenter/healthData/factsheets/Cancer_Mortality_statewide_09_03_2019.pdf

[8] See www.tribaltoxics.org

- Other lifeways.

### Sentinel Exposure

Using tribes as a 'sentinel' subpopulation for chemicals released to the natural environment could well be a viable methodology to meet the EPA's goal to streamline the chemical evaluation process. Conducting an accurate aggregate evaluation of tribal exposure elucidates the most significant risk to Americans, from that chemical. In fact, tribal children, tribal mothers, tribal workers, and tribal elderly would certainly provide that line in the sand to evaluate exposures for unreasonable risk.

### Defining Potentially Exposed and Susceptible Subpopulation Early in the Process

NTTC urges EPA to consider at the scoping stage the range of unique tribal lifeways that often make Tribes PESS. These include Tribes' unique and often substandard built environment as well as their cultural and customary practices and dependence on health of the local environment – such as aquatic and terrestrial fauna and flora, drinking water, proximities to POTW wastewater releases. Early screening and identification of Tribes as PESS will allow EPA more time to 1) collect needed data for evaluation when that data is unavailable, 2) make justifiable, relevant, and representative inferences based on the best available science, modeling and other methods.

### Use of the Draft Considerations and Resources for Assessing Tribal Exposures in TSCA Risk Evaluations

OCSPP spent approximately four years in the development of a framework for tribal risk evaluation under TSCA, completed by the Existing Chemicals Risk Assessment Division in Sept 2024. EPA provided a consultation and coordination period between September 23, 2024 to January 17, 2025. NTTC submitted its comments on January 17, 2025. Via those comments and subsequent verbal communication at various OPPT meetings, NTTC noted that the document was well-noteworthy of comment incorporation and finalization for use by USEPA as a procedural framework for evaluating tribal risk.

While we will not repeat those comments here, we strongly urge EPA to incorporate that work into the proposed rule via at least one of the following methods.

- Cite the reference to support the especial considerations for Tribes.
- Cite the reference to justify Tribes as PESS and/or a sentinel population for chemicals released to the natural environment.
- Cite the reference to justify the plan to treat tribal COUs as significant unless clear evidence is available to the contrary because tribal exposures are so different that it is impossible to predict tribal risk protection otherwise.

## 3. Tribal Occupational Exposures

Tribal occupational exposures also cannot be captured in a standard occupational exposure assessment. The vast majority of tribal businesses have fewer than 10 people, so recordkeeping and reporting generally do not occur. OSHA enforcement – which the federal government is tasked with, not the State,

is absent on small or remote reservations and in all Alaska rural communities. Workers in non-tribal businesses and off-reservation have the same level of exposure to environmental releases through their customary and traditional practices, such as hunting, fishing, and gathering, while also being exposed at work. However, high-end worker exposure is not considered together with high-end consumer and bystander exposure. Widespread DIY practices in tribal and rural communities that elsewhere would be performed by regulated service businesses similarly lead to exposures not captured in consumer or general population exposure assessments.

The consideration of product disposal as a COU is one example of how tribal exposures are unique and not captured by a general population analysis. Many tribal communities live in close proximity to landfills or other waste-disposal sites, such as transfer stations. In Alaska, three-quarters of rural communities, including over 90% of the 229 Alaska tribal communities, in all representing about 35% of state residents, live within 1 mile of unlined landfills that are not subject to RCRA Subtitle D performance or design standards due to the Land Disposal Program Flexibility Act of 1996. Many, and possibly the majority, are purposely designed and funded for contained open burning of the full waste stream, without any emissions treatment, as an inexpensive strategy to minimize the landfill footprint and keep down construction costs. It is well documented in the literature that inhalation of MSW open burning emissions is fraught with unreasonable health risks, but the Clean Air Act also has a specific exemption for Alaska Village combustion units[9]. To note, Alaska villages are isolated and close-set with local food and water serving as the primary diet. Workers exposed to chemical releases from exempted disposal practices are also exposed as consumer bystanders and consumers, given the landfill's proximity to all community homes.

## Personal Protective Equipment (PPE) Assumption

NTTC has grave concerns about giving back to EPA the discretion to assume workers are wearing the appropriate PPE based on reasonably available information. In tribal and rural settings and in most small businesses everywhere, workers are less likely to wear PPE. For Tribes in particular, the likelihood is drastically lower due to economic, geographic, and cultural factors that limit access and use.

EPA proposes to eliminate the 2024 rule requirement to consider:

> ''known and reasonably foreseen circumstances where subpopulations of workers are exposed due to the absence or ineffective use of personal protective equipment.''

EPA proposes instead to amend the rule to:

> "In determining whether unreasonable risk is presented, EPA's consideration of occupational exposure scenarios will take into account reasonably available information on the implementation and use of occupational exposure control measures such as engineering and administrative controls and personal protective equipment."

[9] Federal Incinerator Regulations for Remote Alaska Incinerators Commercial/Industrial (CISWI) and Other Solid Waste Incinerators (OSWI) Prepared May 25, 2017 by ADEC Air Compliance Program.

And states the reason as:

> "because [40 CFR 702.39(f)(2) is unnecessarily confusing, it limits what EPA can consider in making an unreasonable risk determination beyond the statutory prohibition on considering non-risk factors, and it appears to be biased in favor of reasonably available information that tends to show noncompliance with mandatory and voluntary exposure control programs."

NTTC notes that whether a rule is confusing is a subjective determination. Additionally, whether a rule is confusing should not be the basis for its recission. Most importantly, the assumption that a significant number of workers, particularly in those businesses where the culture of compliance is adverse to wearing PPE, where few workers are employed and the company may not be profitable or visible, where jurisdictional issues preclude a reasonable chance of inspection, where small business owners themselves must take on the role of Industrial Hygienist without the background or time, and where small governments don't have the resources to regularly supply appropriate gear that fits and is in good condition to all workers.

We note the above paragraph describes in part why the existing rule is biased towards noncompliance, and that point by point:

1. Commercial chemical use products are more likely to be used by DIYers in tribal and rural settings, as noted. OSHA does not apply to these individuals, and the literature is well-documented that instructions for use may not be read or understood fully by the typical lay user[10]

2. OSHA rules are different for small businesses. They are not required to submit compliance reports.

3. A compliance visit by OSHA personnel is much less likely in rural settings due to staffing per square mile and travel costs. While large rural Industrial facilities generally have regular inspections and dedicate staff to industrial hygiene and safety because of it, if not for concern about their workers, smaller ones, whether fewer than 10 or not, have a travel cost/worker ratio that is too high. And because businesses with fewer than 10 employees don't report on OSHA compliance, OSHA receives no red flags that would encourage a visit.

4. Indian Country is rife with cross-jurisdictional issues, and OSHA, like RCRA, is not delegable currently to Tribes. While Tribes work with federal OSHA, fee land communities and businesses that are often located in some large reservations may not be served by federal OSHA or federal OSHA may be reluctant to conduct inspections. Delegated state programs likewise may be unwilling to enter Indian Reservations. The relationships between Tribes and States, and States and the federal government, vary with each situation. The result is that regulatory compliance by tribal, state, or federal OSHA may be underenforced in cases of jurisdictional disputes or poor relationships.

[10] Kim Buchmüller, Angela Bearth, Michael Siegrist, *Consumers' perceptions of chemical household products and the associated risks,* Food and Chemical Toxicology, Volume 143, 2020, ISSN 0278-6915.

5. The use of reasonably available information discounts a large swath of workers for rural American, tribal, and small businesses. The owner themselves may indeed not be aware of the need for their own personal protection due to the issues above. The fact that these businesses don't report automatically means that the EPA does not have reasonably available information. This is not a case of EPA unable to spend the resources to obtain the information and thus could (although not should) presume that the rest of the population falls within the information they have (in this case, large Industry compliance extrapolated uniformly to small business compliance).It is a case in which the EPA's reasonably available information is null because EPA knows that these businesses, which, according to the federal government itself, represent 99.9% of all American companies and nearly half of the nation's GDP, do not report compliance to the EPA. The available information then is a null case, and it is illogical to conclude that workers, for the most part, wear appropriate PPE.

## 4. Rural Communities are Negatively Impacted by the Proposed Action

While our focus in this letter is the protection of tribal health, specifically ensuring that Tribes receive the same level of protection under TSCA as the general population, and all other Americans, we also recognize the potential negative impacts to rural communities, including those both with and without tribal member residents. Regardless of race or ethnicity, rural community consumer, bystander, and worker populations, whose economies, health, and food security will also suffer should the proposed rule be adopted as proposed. Rural communities have a wide range of similar activities and built environments, and indeed many tribal members live outside their reservations in bordering communities and counties. Rural residents are much more likely than the general population to engage in local hunting, fishing, and gathering activities for food, commerce (e.g., fishing, agriculture, adventure, and sightseeing tourism), and recreation. They also face health disparities across all major disease categories for some of the same circumstances presenting healthcare barriers and exposure pathways as Tribes have (e.g. poor access to healthcare, poorer sanitation facilities, reliance on unmonitored groundwater wells, housing disrepair, older commercial products, greater range and depth of DIY replacing OSHA regulated service industries, lack of hazardous waste disposal services, use of and proximity to federally unregulated disposal facilities such as transfer stations and construction and demolition landfills that may be both uncovered and unlined, and more)[11].

## 5. Significant Reliance Interests

EPA states they are not aware of any significant reliance interests as they aver the changes are primarily internal. Indeed, as covered in this letter, these internal changes will impact Tribes. Tribes as sovereign governments responsible for the health of their citizens and lands often have limited access to product information. For example, manufacturers may be less likely to provide information to tribal governments when requesting evaluations. The bulk of Tribes are resource-limited and they have

[11] In past comment letters, NTTC has provided citations for this section. Without a comment extension, we have no way to dedicate resources at pulling up these citations again. As the partnership group with OPPT however, we invite queries from EPA review staff directly should they desire such references.

historically relied on the federal government to provide the necessary information and support to protect their communities. If they must exert additional effort to determine what is in products that are manufactured, released into waste streams and air emissions, or come into contact with workers and consumers, this will impose additional financial and administrative burdens. Furthermore, because most Tribes are small and lack economies of scale, developing the necessary expertise and capacity to identify, manage, and respond to toxic chemical releases would be disproportionately costly.

The broad scope of changes proposed in this rulemaking makes it challenging to identify every change that triggers the significant reliance interest question. The changes include less information requested of manufacturers, the move to separate risk evaluation, and reliance on other environmental statutes to prevent the release of chemicals. The latter, in particular, will cause Tribes to develop additional environmental quality standards within their jurisdictions. Tribal governments elected by their members routinely adopt ordinances that prioritize protecting the environment, which is critical to their communities' well-being. The proposed rule undermines these plans, imposes unexpected financial burdens, and could force Tribes to sacrifice beneficial projects for their communities.

## 6. Conditions of Use

EPA proposes to remove the phrase *''EPA will not exclude conditions of use from the scope of the risk evaluation''* [12] because it believes otherwise that "*each and every condition of use and each and every exposure route and pathway"* must be considered. NTTC disagrees with this somewhat hyperbolic interpretation and opines that the phrase was inserted to address arbitrary exclusion of significant COU or worse, exclusion of COU(s) based on financial, political, or other determinations.

Instead of the exclusion phrase, EPA believes that:

> … TSCA section 3(4) provides the Agency with discretion to determine whether a use falls under the two buckets: (1) known, intended, or reasonably foreseen, and (2) manufactured, processed, distributed in commerce, used, or disposed of. Under the interpretation proposed in this action, if EPA determines that a use falls into each of these buckets, the Agency would conclude that the use is a condition of use. Next, the Agency would determine in its discretion under TSCA section 6(b)(4)(d) whether EPA ''expects to consider'' the given condition of use in the risk evaluation.

While NTTC agrees with the definition of COU, our concern lies with how EPA would exercise its discretion in determining whether the COU should be considered. Removing the phrase in question would most likely result in the exclusion of COUs to the detriment of populations with more unique lifeways, such as Tribes.

[12] Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act (TSCA). 40 CFR Part 702 [EPA–HQ–OPPT–2025–0260; FRL–8529.1– 01–OCSPP] RIN 2070–AL27. https://www.govinfo.gov/content/pkg/FR-2025-09-23/pdf/2025-18431.pdf

For example, the original draft evaluation of asbestos noted that consumer exposure risk from the chemical use of asbestos in brakes and gaskets for snowmobiles and ATVs was *de minimus* and would be excluded from consideration because these vehicles were assumed to be recreational in nature, and service repair businesses would carry out repairs. However, for Tribes and many rural populations, these vehicles are essential and used as everyday transportation and repairs are performed as do-it-yourself. NTTC raised this issue and the assumption was subsequently reversed. If the exclusion language is removed, there is no guarantee that Tribes, or other populations could challenge the exclusion of a COU or demonstrate their exposure scenarios differ substantially. One reason NTTC exists is precisely to help EPA recognize and account for tribal lifeways and ensure that actions taken under TSCA risk evaluations reflect these realities.

**Tribal people have unique exposures through their lifeways that are not captured in general population exposure analyses**. These exposures always occur because it is part of what being an Indigenous person is, and **it is these exposures that could drive risk for this subpopulation**. NTTC has provided many comment letters in the past that list these exposures

Tribal members as a population are defined as medically susceptible and experience significant health disparities across all major disease categories. Unreasonable exposure risk to one or more toxic chemicals is associated with precipitation, predisposition, or worsening of symptoms and outcomes in the majority of these diseases[13]. In fact, these disparities heavily contribute to American Indian /Alaska Native parents facing the devastating expectation that their babies will live a full ten years less than babies born to non-Hispanic white parents.

By not evaluating the conditions of use and exposure pathways for a chemical that are reasonably known or foreseen for tribal peoples, tribal people's exposures and risks from their lifeways stand to be excluded. Axiomatically, **risk management actions are protective only if they address the ways that** people are exposed. And it is not just tribes in this situation.

Without knowing the ways Tribes and other groups may be exposed to unreasonable risk, the only way EPA can be sure of protecting all Americans would be to ban the chemical completely so that questions of how, how much, and whether anyone was ever exposed would no longer matter. NTTC believes that banning every chemical is neither wise nor an appropriate alternative to taking the time to understand the risks faced by Tribes and rural communities. A blanket ban on all TSCA chemicals, though it might initially appear to offer a swift solution, would cause widespread disruption and havoc.

[13] Fuller R, Landrigan PJ, Balakrishnan K, Bathan G, Bose-O'Reilly S, Brauer M, Caravanos J, Chiles T, Cohen A, Corra L, Cropper M, Ferraro G, Hanna J, Hanrahan D, Hu H, Hunter D, Janata G, Kupka R, Lanphear B, Lichtveld M, Martin K, Mustapha A, Sanchez-Triana E, Sandilya K, Schaefli L, Shaw J, Seddon J, Suk W, Téllez-Rojo MM, Yan C. Pollution and health: a progress update. Lancet Planet Health. 2022 Jun;6(6):e535-e547. doi: 10.1016/S2542-5196(22)00090-0. Epub 2022 May 18. Erratum in: Lancet Planet Health. 2022 Jul;6(7):e553. doi: 10.1016/S2542-5196(22)00145-0. PMID: 35594895; PMCID: PMC11995256.

NTTC recommends that the use of the phrase "'EPA will not exclude conditions of use from the scope of the risk evaluation'' be retained or modified in a way that ensures protection of PESS and the general population. For example, the phrase could be changed to "'EPA will not exclude conditions of use of which EPA learns through reasonably available information from representatives of subpopulations, consumers, bystanders, or the general population are considered significant or where there is significant potential for that identified COU to drive risk or a subpopulation." Otherwise, empowerment of EPA or discretion in picking and choosing what aspects of a chemicals use, and which population it serves, or doesn't serve, runs the risk of population ill health, high medical cost, and authoritarianism.

## Byproducts

EPA cites the example of byproducts to support its search for, or wider latitude in, determining the scope and nature of a risk evaluation. NTTC strongly agrees with EPA that byproducts may present a substantial risk regardless of whether the byproducts or impurities are intentional or are inseparable. Where a byproduct poses significant harm to the environment or human health (and, in the case of Tribes, to the health of each), the goal should be to move into the risk management phase for that byproduct as soon as possible. At the same time, the NTTC recognizes that in some cases, the most effective approach is to evaluate risks from byproducts in a separate risk evaluation while in others it may be more appropriate to include them within the risk evaluation of the parent chemical's evaluation.

NTTC's concern is how EPA will determine which methodology to use, particularly given EPA's apparent reduced commitment to conducting aggregate and cumulative evaluations. When the exposure routes from a non-intentionally produced byproduct are not coincident with routes associated with the intentionally produced chemical, the resulting analysis may lead to inadequate risk management action. Similarly, intentional or not, byproduct exposure is still exposure. It would be illogical to presume that cumulative exposure to the chemical whether from intentional production or as a byproduct - would not influence appropriate management actions.

NTTC suggests that EPA insert language clarifying that determination the evaluation of byproducts will be guided by whether aggregate exposure has the potential to present an unreasonable risk or whether risk management actions could be inadequate or misdirected as a result. This clarification would help ensure that the treatment of byproducts cannot be used in ways that subverts Congressional intent to protect the health of people and the environment

## Legacy products

NTTC agrees with EPA that legacy product use and associated disposals are conditions of use and appreciates this decision. Relatedly, since EPA is promulgating changes to the framework, NTTC requests that the risk to consumers, workers, and bystanders from the use and disposal of legacy products purchased via resale markets such as thrift stores be included as a condition of use. It is inequitable that those American families who buy used furniture, clothes, and appliances are not afforded the same level of protection as those who purchase new. Thrift store commerce is, after all, commerce.

Likewise, recycled products made from legacy products should not be excluded. If American health and environment are harmed by the use of recycled products, such as through the release of chemical additives from plastic products, then it is incumbent upon the EPA to address such risks under TSCA to ensure protection to a level of reasonable risk.

### Separate conditions of use

EPA proposes to return to separate chemical risk determinations for each COU (e.g., workplace use, consumer product use, environmental release). While, at face value, this procedure could be practicable if every condition of use, exposure, and pathway were considered, as the above discussion calls out, this is not the case. The populations most likely to bear resulting health burden from exposure to chemicals are those PESS whose inclusion-or the inclusion of all relevant exposure pathways-EPA may forego due to limited information and an accelerated pace of chemical review.

Without comprehensive information on and consideration of the exposure pathways unique to Tribes for each COU, the resulting risk management rules may fail to protect tribal populations from risk associated with the COUs that EPA decides to address. The NTTC is concerned that mandating EPA to exercise its own discretion in determining which COUs and exposure pathways to consider will not be protective of tribal populations. Although the preamble of the proposed rule states that its primary intent is to rescind or revise the 2024 rule, it is important to recognize that **the 2024 rule helped to establish for the first time, meaningful consideration for Tribes under TSCA**.

## 7. TSCA Nexus with Other Federal Statutes

EPA proposes to return to the approach taken in the first 10 risk evaluations by deleting the following language from the 2024 rule: "*EPA will assess all exposure routes and pathways relevant to the chemical substance under the conditions of use, including those that are regulated under other federal statutes.*"[14] EPA states that several TSCA authorities allow the Administrator to use other EPA-administered statutes to address risks to health or the environment, if the Administrator determines that these risks "could be eliminated or reduced to a sufficient extent" by actions taken under other EPA-administered statutes[15].

The NTTC is highly concerned that this approach will result in risk evaluations that are neither representative nor relevant to Tribes, further disenfranchising Tribes from chemical risk safety via any management actions taken. If actions under the other environmental statutes were indeed effective in reducing toxic chemical exposures, we would be living in a different world with no new brownfields, where 50,000 older Americans annually didn't die prematurely of heart disease due to their exposure to phthalates[16], and childhood lead exposure was a thing of the past. Instead, where we see progress is in the regulation of harmful chemical production – which products can contain them and how much is too

[14] Ibid.
[15] Ibid
[16] Hyman, Sara et al. Phthalate exposure from plastics and cardiovascular disease: global estimates of attributable mortality and years life lost. eBioMedicine, Volume 117, 105730.

much. For example, the reduction in use of BPA, PBDEs, and DEHP due to regulatory action and voluntary product use reduction was examined in a 2024 study[17]. Hundreds of thousands fewer deaths and millions of additional IQ points in children just in the United States could have been saved if regulatory actions had been instituted earlier. These chemicals were all known to be toxic, but the primary environmental statutes did little.

It is TSCA that can best address Americans' exposure to harmful chemicals because it is the only law that can address the contamination source—the generation of the chemical itself, regardless of media. It is TSCA that Congress intended to address chemical risk to Americans from commercial products, not the other statutes. These media statutes —the Clean Water and Air Acts, Safe Drinking Water, and the Resource Conservation and Recovery Act — work for local cases; that is why administration of these Acts is delegated to the states. They make sense in the context of a local community and the specific conditions it has – e.g., facility treatment type, industries, population, weather, and so on - to nearly an infinite variety of factors, including what the local population votes to do. The local community or tribe can determine the standards they need but most cities and counties and even states couldn't possibly have sway over the multitude of companies using a chemical in multiple ways and the various population exposures that occur. Nor could they afford to monitor for this chemical in every use. The onus would bring governments to a standstill. But regulating the chemical is doable. And that is what TSCA risk management is supposed to do.

Beyond the impracticality of relying on environmental statutes to reduce risk "sufficiently" (a term which surely should be struck for its vagueness and ease by which Industry could determine what they considered sufficient), a host of exemptions, exceptions, and protective tiers to every environmental statute. These can apply to businesses, facilities, media, and individuals. And while tribal peoples and rural communities often bear the brunt of lesser protections afforded by substandard and under-resourced facilities, general permits with a multitude of lower standards, narrower breadth of chemicals to be monitored, less frequent testing, and more – large, urban businesses, industries, and public and privately owned treatment facilities and can also be exempt for obscure reasons – grandfathering, financial cost, political sway, dubious science, and simply Administration preference. Under the current Administration, industries were encouraged to apply for exemptions from compliance with any standard or limitation on HAPS from stationary air sources that would otherwise be subject to Section 112 of the Clean Air Act. The Presidential Exemption criteria was not in any way health-based nor confined to clear national emergency or need and provides for a non-finite period into the future by which to apply for exemption extensions[18].

NTTC requests that EPA not delete the 2024 rule phrase "*including those that are regulated under other federal statutes* "until such time as it has conducted due diligence through identifying every current

[17] M. Cropper, S. Dunlop, H. Hinshaw, P. Landrigan, Y. Park, & C. Symeonides, The benefits of removing toxic chemicals from plastics, Proc. Natl. Acad. Sci. U.S.A. 121 (52) e2412714121, https://doi.org/10.1073/pnas.2412714121 (2024).

[18] https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-section-112-presidential-exemption-information

exemption, waiver, tiered treatment, exclusion from environmental laws, including those from delegated programs, and how they can vary and play out at the local community level. NTTC understands the review would be time-consuming but would ultimately yield beneficial information for EPA and very welcome data for industry, consumers, advocates, and governments across the board.

TSCA tasks EPA with addressing human and environmental health risks, while other environmental statutes may have standards that are not health-based. TSCA section 6(b)(4)(A) states:

> "The Administrator shall conduct risk evaluations pursuant to this paragraph to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use."

Many statutes require the EPA to consider other non-health factors when setting its standards. For example, on June 4, 2020, the EPA released a proposed rule that will require it to conduct a cost-benefit analysis for all significant Clean Air Act rulemakings. According to that proposal, additional cost-benefit analysis rulemakings can be expected for other federal pollution control laws. None of the other environmental statutes that EPA administers has a mandate to consider PESS, and each regulates only one medium, with TSCA being the only cross-media statute.

EPA's environmental statutes do not guarantee protection against exposure, particularly for tribes. Tribes are generally remote, rural, and have small populations, and federal statute variances, exemptions, population-based and other exclusions, and local flexibilities tend to be explicitly promulgated for these very demographics. Because exceptions for small systems, businesses, and communities are standard across federal statutes, and tribes use resources in ways not considered in granting such exceptions, evaluating all primary tribal exposure pathways under TSCA is critical. Blanket protections under RCRA, CWA, SDWA, CAA, or OSHA cannot be assumed for tribes or other rural, remote, and small populations, which essentially slip through regulatory cracks.

There are multiple exemptions to the Safe Drinking Water Act (SDWA) that leave Tribes and other rural communities partially or fully unprotected. For example, 13 million rural households (some 50 to 60 million people) across the United States rely on private drinking water wells that the SDWA does not regulate[19]. Due to the rural and remote nature of most reservations, multiple Tribes have residents relying on individual groundwater wells or community water systems serving less than 25 people, which are also exempt from the SDWA. This unregulated and unmonitored water is used for drinking, cooking, bathing, daily steam baths, ceremonies, home crops, and more, and exposures via these pathways will not be managed under SDWA. Other groundwater wells not designed or located for drinking water and

[19] USEPA Private Drinking Water Wells webpage, accessed May 23, 2020. https://www.epa.gov/privatewells, using data from the US Census American Housing Survey 2017

household use, such as agricultural purpose wells for livestock and farms, are used by families for this purpose, particularly in unplumbed homes[20].

Additionally, hauling water for unplumbed homes can be from natural surface and groundwater sources and may be untreated and unregulated. Native American households are 19 times more likely than other households to lack indoor plumbing[21]. Nearly 14% of Native households lack access to a public water system, compared to 0.6% of the USA as a whole; some tribes lack access for more than 30% of their populations, relying more on unregulated sources[22]. Even when water standards and testing used by tribes are regulated by statute, the EPA does not account for violations. For example, in 2015, nearly 21 million people relied on community water systems that violated health-based quality standards under the SDWA[23]. In 2013, tribal water systems were 19 times more likely to have violations than other water systems[24]. EPA clearly cannot assume that these exposures are adequately managed by the SDWA for tribes and other small or rural populations and these exposure pathways cannot be left out of TSCA risk evaluations.

Multiple Clean Water Act (CWA) exemptions and exceptions leave Tribes and other small communities unprotected by this statute as well. For example, many publicly owned wastewater treatment plants (POTWs) discharging into marine waters operate under NPDES variances under the CWA or general permits that require lesser reporting, testing, and monitoring. Tribes consume fish, shellfish, marine mammals, and aquatic plants at far greater quantities than the general population and are exposed to the water and sediment while harvesting these resources. One example is the NPDES permit administered by EPA for the city of Anchorage POTW, which comprises nearly half the population of the state of Alaska and discharges primary treated effluent into an inlet used by tribal people for multiple customary and traditional practices, including local harvesting, preparation, and ingestion of such foods as salmon, stickleback, hooligan, herring, seal, and clam[25]. This NPDES permit has been administratively extended since 2005. In issuing variances under the CWA for discharges, tribal customary and traditional uses are not specifically included for consideration, which is why TSCA risk evaluations needs to include COUs and exposure pathways relevant to tribal lifeways and not assume protections under the CWA.

Another example of an exclusion in the CWA is the Navigable Waters Protection Rule, which EPA published on April 21, 2020. This Rule, to which the NTTC strongly objects, excludes ephemeral waters

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[20] Lewis J, Hoover J, MacKenzie D. Mining and Environmental Health Disparities in Native American Communities. *Curr Environ Health Rep*. 2017;4(2):130-141. doi:10.1007/s40572-017-0140-5

[21] US water alliance, Closing the Water Access Gap in the United States, 2019 closethewatergap.org

[22] Lewis J, Hoover J, MacKenzie D. Mining and Environmental Health Disparities in Native American Communities. *Curr Environ Health Rep*. 2017;4(2):130-141. doi:10.1007/s40572-017-0140-5

[23] Allaire M, Wu H, Lall U. National trends in drinking water quality violations. *Proc Natl Acad Sci U S A*. 2018;115(9):2078-2083. doi:10.1073/pnas.1719805115

[24] Note, 2013 was the last year that EPA published this statistic. Providing Safe Drinking Water in America: National Public Water Systems 2013 Compliance Report, https://www.epa.gov/sites/production/files/2015-06/documents/sdwacom2013.pdf

[25] The Community Subsistence Harvest Information System (CSIS), Alaska State Department of Fish and Game. www.adfg.alaska.gov/index.cfm?ADFG=subsistence.harvest

and wetlands not adjacent to navigable waters. Because these waters are often critical in supporting native plants, fish, and wildlife[26], they are vital to tribal lifeways. Exposures include harvesting and mouthing of plants and resources for cultural, ceremonial, and consumption purposes, as well as ingestion of terrestrial and aquatic species exposed to chemical releases. Exposures resulting from chemical releases to such water need to be evaluated and considered when regulating chemical substances.

Additionally, tribal communities and reservations typically support multiple small businesses and self-employed contractors. The Small Business Exemption under CWA § 122.21(g)(8) does not consider local use of water for the wide variety of tribal uses, and the vast majority of tribes at this time have no specific delegated authority to make the exemption more stringent.

The human health assessment methodology used by EPA to develop Ambient Water Quality Criteria under Section 304(a) does not meet the congressional mandate in TSCA to protect PESS that may have higher exposures and different exposure pathways than the general population. EPA's 2000 human health methodology guidance[27], "Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health" states:

> EPA's national 304(a) criteria are usually derived to protect the majority of the general population from chronic adverse health effects. EPA has used a combination of **median, mean**, and percentile estimates to set parameter values for its national 304(a) criteria. (emphasis added, page 34)
>
> EPA considers that its target protection goal is satisfied if the **population as a whole** is adequately protected by the human health criteria when the criteria are met in ambient water. (emphasis added, page 34)
>
> The default fish consumption value for the general adult population in the 2000 Human Health Methodology is 17.5 grams/day…. This **default value is chosen to protect the majority of the general population**. (emphasis added, page 31)

Congress through the Frank R. Lautenberg Chemical Safety for the 21st Century Act amended TSCA to require consideration of PESS. Water quality criteria developed under CWA 304(a) are calculated to be protective of the general population, not subpopulations such as Tribes. A more representative tribal fish consumption rate is an order of magnitude higher than 17.5 gm/d[28]. By mistakenly assuming that the CWA protects unique exposure pathways or high-end users, EPA fails to meet its responsibility under the Lautenberg amendments to evaluate chemical risks comprehensively for all PESS, including Tribes.

Multiple exemptions to the Clean Air Act (CAA) leave tribes unprotected from exposure through this medium as well. For example, the majority of Native American tribes live in rural areas where

[26] For example, US EPA ORD, NERL, Environmental Sciences Program, The Ecological and Hydrological Significance of Ephemeral and Intermittent Streams in the Arid and Semi-arid American Southwest, 2008. ephemeral_streams_report_final_508-kepner.pdf

[27] *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health*. U.S. Environmental Protection Agency, Office of Water, Washington, D.C., EPA-822-B-00-004 (Oct. 2000), 185 pp.

[28] https://fortress.wa.gov/ecy/publications/publications/1209058.pdf

individuals, farms, and ranches often employ open barrels for burning of household, small farm, and ranch operation wastes—an exposure pathway not regulated under the CAA. Another example is the application of Other Solid Waste Incinerator (OSWI) rules under the Clean Air Act in Alaska. While landfills elsewhere do not allow municipal solid waste to be burned without meeting emissions standards, under 40 CFR 60.2887, burnboxes in Alaska rural landfills qualify for a complete exclusion from any standards:

> *Incinerators and air curtain incinerators in isolated areas of Alaska.* Your incineration unit is excluded if it is used at a solid waste disposal site in Alaska that is classified as a Class II or Class III municipal solid waste landfill, as defined in § 60.2977.

Some 85% of rural Alaska communities, including most Tribes, use a passive, open steel cage or tank to incinerate their entire community waste stream to achieve volume reduction, releasing untreated toxic emissions directly into ambient air[29]. A self-report database with information collected from tribal environmental professionals, whose positions are paid and trained through EPA Indian General Assistance Program (IGAP) monies, indicates residents in over one-quarter of those communities smell the smoke three or more days each week, with nearly nine in ten communities breathing emissions in town at least monthly. Without burn controls, the fire is left to self-extinguish and can smolder for up to 2 days, with associated low-temperature emissions and higher dioxin formation. While Alaska burnboxes have their own exemption under the Other Solid Waste Incineration rules, all Very Small Municipal Landfill incinerators qualify as Other Solid Waste Incineration (OSWI) and are subject to less reporting and less monitoring. Under Part 129, they must monitor only for nine pollutants: Organics (dioxin/furans), metals (lead, cadmium, mercury), acid gases (hydrochloric acid, sulfur dioxide), particulate matter, NOx, and opacity (visual). This classification of landfill accepts waste from about 15,000 persons per day, so only a small handful of tribes would operate reservation waste sites that do not qualify for this CAA monitoring exception[30].

Beyond the sections of the CAA dealing with waste disposal, States, local governments, and Tribes can be given delegated responsibilities for developing emission plans for area sources and small businesses (non-major source emitters). These sources may be under general permits, which, again, do not guarantee monitoring or compliance with HAPs and may thus be subject to little or no enforcement. In addition, many tribes are affected by state-issued permits that are often violated, leaving tribal lands with elevated levels of contamination. Tribal members are left unprotected by the CAA and are relying on the intent and foundation of TSCA to offer some protections.

Assuming that RCRA is universally protective is also inaccurate, especially for tribes and their potential exposure to waste disposal. Most tribal populations are in rural areas and operate or use waste transfer

[29] Federal Incinerator Regulations for Remote Alaska Incinerators Commercial/Industrial (CISWI) and Other Solid Waste Incinerators (OSWI) Prepared May 25, 2017 by ADEC Air Compliance Program.

[30] https://www.cdc.gov/tribal/tribes-organizations-health/tribes/reservations.html

stations, which RCRA does not regulate. They are not subject to federal design or monitoring requirements, typically allow public access, and are often located near residences for convenience.

Additionally, tribal communities often live proximate to tribal or county landfills receiving less than 20 tons per day, equivalent to a population base of about 10,000 persons. Under RCRA and the 1996 Land Disposal Program Flexibility Act (LDPFA), such landfills are also exempted from the design requirements of larger facilities, including daily cover, leachate treatment, gas recovery, and liners. Further, small landfills that receive less than 25 inches of precipitation per year are not subject to groundwater monitoring requirements. Additionally, approved State RCRA programs can grant a No Migration Exemption to larger landfills, waiving groundwater monitoring requirements. Several states do not even require site-specific data for landfills to be given such an exemption[31].

Beyond these waste-disposal exceptions, other landfill types are not covered by RCRA. These include Construction and Demolition waste landfills, which are unlined in many states and often lack cover, monitoring, or leachate and gas collection and treatment. Construction waste landfills are typically sited in rural areas. Except Subtitle C for Iowa and Alaska, for which EPA retains primacy, RCRA is currently delegated only to states. States, therefore, issue permits, and how the state manages the program is outside tribal influence. Some states do not provide information on releases to tribal governments, placing tribal populations at even greater risk when a release occurs. Many industrial facilities that require RCRA permits may not coordinate with Tribal governments on release notifications, and, again, by the time Tribal governments are informed of an RCRA release or violation, the tribal membership living in the vicinity of the facility has already been exposed.

Waste disposal and transfer facilities, common on tribal lands, are either not covered by RCRA or not required under RCRA to have liners, leachate treatment, groundwater monitoring, daily cover material, and/or other protective features, and result in exposures not captured in a municipal landfill exposure analysis. All rural landfills in Alaska lack these protective features. Used consumer products are managed by burning or by placement nearby in unlined, uncovered landfills that commonly flood at least annually, where residents walk and children play. Most of the state of Alaska is located in a wetland. Landfills are often only a few feet above the water table and are proximate to surface drinking water intakes and to traditional untreated household-use water, particularly in unplumbed communities. Chemicals are released to rivers and ponds, from which Alaska tribes obtain drinking water and food. About three-quarters of landfills are less than one mile from homes, and about one-fifth are within one-quarter mile. Inhalation of emissions from the disposal site is prevalent. Emissions can adhere to, or ash settle on, fish and marine mammals that are placed on in-town drying racks and that may represent a full year's supply of a family's dietary protein.

As the exposures resulting from these disposal circumstances are clearly not managed by RCRA, tribal exposures and risks from unlined, unmonitored, and unmanaged landfills need to be evaluated and

[31] USEPA, Preparing No-Migration Demonstrations for Municipal Solid Waste Disposal Facilities: A Screening Tool, EPA530-R-99-008 February 1999

managed under TSCA. These exposures have significant human and environmental health implications and if they are not evaluated under TSCA, then any risk assessment conducted under TSCA is not relevant to tribal people, and their risks have not been evaluated.

The Nexus with OSHA is discussed above under the Occupational Exposures Section, concluding that tribal peoples, tribal businesses, and small business owners, and self-employed will note be protected if the PPE and meeting other standards for larger businesses with OSHA is assumed.

Finally, under EPA's current deregulatory agenda, the NTTC is concerned that EPA-administered environmental statutes are in the process of being amended to be less protective instead of more. Thus, NTTC cannot conceive of a case where reliance on other environmental statutes to protect the health of tribal peoples from chemical risk would be sufficient.

## 8. Aggregate Exposures

Aggregate exposures are defined under TSCA as "the combined exposures to an individual from a single chemical substance across multiple routes and across multiple pathways" (40 C.F.R. § 702.33). Aggregate exposure risk evaluation mirrors the actual risk to Americans because both TSCA populations and subpopulations are commonly exposed to the chemical of interest via multiple pathways and routes. The NTTC is concerned that if EPA exercises its discretion to exclude certain essential conditions of use or exposure pathways relevant to Tribes, the resulting aggregate exposure analysis could underestimate risk. Such an analysis might then be used to justify continued chemical use that would threaten the health of tribal members and resources.

Because risk management for a chemical is only invoked if a chemicals use is found to be unreasonable, the NTTC requests that an aggregate risk evaluation for each condition of use be the presumed method unless a scientifically credible justification as to why it would not significantly add to information needed for risk determination and management. Additionally, an aggregate analysis for ambient exposure should be completed whenever good cause exists. This is particularly urgent for Tribes given the prevalence of bio-accumulative and biomagnifying chemicals likely to enter and remain within the natural environment. An expression of Southeast Alaska Tribes is that "when the tide goes out, the table is set", meaning that tribal people harvest and consume and use a wide variety of foods that are not considered game animals or fish. In this way, tribal communities often occupy the top of the food web within their local ecosystems, heightening the risk from persistent chemicals.

## 9. Opportunity for Further Public Comment

The EPA is requesting comment on changes to many specific and interdependent TSCA risk evaluation procedure changes. The interdependency, in which changes in one section are likely to affect the practical implementation of another, makes comments complex. Each modification carries practical implications that when combined could significantly alter the overall risk evaluation framework. While several of the individual proposed rule changes could, at face value, be simple, they collectively create ambiguity about their actual impact because of the general tendency for each change to shift more

discretion to EPA, more favor towards Industry, and less visibility for subpopulations, including Tribes, who could bear the brunt of diminished protections if the rules are applied in bad faith. Rules exist to protect all people from the actions of a bad actor-regardless of intent or motivation.

NTTC trusts that EPA has a sincere interest in protecting tribal health; however, it is NTTC's duty to ensure that, regardless of Administration, intent of the Lautenberg amendments to TSCA is faithfully carried out. These amendments strengthened EPA's authority to evaluate and regulate chemicals based on risk rather than cost considerations and to protect PESS. Towards this end, and given that EPA may receive new information or modify the proposed rule in ways NTTC cannot anticipate, **we request that a 2nd public comment period be opened after received comments have been reviewed, responded to, and incorporated**. EPA has provided second and/or reopened comment periods in the past for similar reasons including, but not limited to, the complexity of the rule, new information, or a change in the proposal.[32]

## 10. Implications of the Revised "Weight of Scientific Evidence" Definition under TSCA

Because major general population assumptions concerning diet, activities, built environment, work-life, etc. don't apply to tribes, tribal-specific data can provide the most relevant evidence about the real-world exposures. Such data include locally collected environmental samples, elder observations, traditional knowledge accumulated over centuries, small-scale health studies, and larger regional and tribal consortia studies, state fish and game subsistence database. Much worthwhile and credible data is contained in technical reports and proprietary tribal studies.

However, these studies may not meet formal scientific standards of replicability or peer review. Replicability requires resources and has a practical barrier as well, borne of, for example, smaller communities and inherently dynamic natural settings. Peer review is much less common for tribal studies due to issues of privacy, resources, and lack of tribal academic experts with the knowledge and interest to review work. Tribal scientists may be less interested in publications and more likely to perform implementation research because their focus of interest is in helping their communities.

Under the proposed weight of scientific evidence definition, tribally relevant studies then could be given less weight or excluded, while higher-quality, but less relevant general population studies dominate the assessment. Tribes' unique exposure pathways — such as traditional food consumption, small-scale industrial work, or cultural practices — may be overlooked, leading to an under-estimation of the true chemical exposure risk faced.

Further, by shifting the weight off scientific evidence definition to emphasize formal quality criteria, the evidence base itself could become biased toward conventional studies that reflect average exposures

[32] For example recently, TRI & monitoring methods rule EPA-HQ-OPPT-2024-0507 & 0328 were reopened due to complex technical rulemaking requiring more time to review, likewise Chlorpyrifos tolerance revocation – EPA HQ-OPP-0431 due to significant public interest and complexity.

while discounting locally relevant or observational data. This could systematically under-represent exposure risks for tribes, small, and rural communities, even when Tribal real-world exposure pathways differ significantly from general assumptions. Tribal diets are derived from the local environment versus a supermarket with foods sourced globally. Tribal artisanal practices, as well as Tribal religious and spiritual ceremonies may produce higher exposure levels that are not captured by national-level studies. If tribal-specific evidence is given minimal weight, the resulting risk evaluation could conclude "no unreasonable risk" despite elevated exposures, thereby delaying or precluding necessary risk-management actions.[33]

To mitigate these risks, EPA should explicitly state that inclusion of locally relevant and nontraditional studies will be given especial consideration when they are fit for purpose and provide otherwise scarce or nonexistent information for populations with atypical exposures, like tribes. Additionally, the weight of scientific evidence framework should allow contextual weighting, where highly relevant studies despite lower formal quality — can be given greater weight for specific subpopulations. This can help capture unique exposure pathways, aligning with TSCA's requirement to consider PESS.[34]

## 11. Concluding Remarks

NTTC is deeply concerned that, under this proposed rule, tribal exposures will often not be considered, their risks will go unevaluated, and any resulting management actions by EPA cannot be protective of tribal people. Tribal populations are highly exposed and highly susceptible to many chemicals released into the environment, and the NTTC urges EPA to evaluate them accordingly.

Exemptions and exceptions provided by EPA-administered environmental statutes must be examined in detail before these statutes are assumed to be universally protective. In practice, many existing EPA statutes and policies leave Tribes unprotected because tribal lifeways and circumstances are rarely considered. By relying on these other statutes to protect the American people in risk evaluations under TSCA, EPA is excluding risks Native Americans face. Rather than deferring to other environmental regulations to limit the impact of chemicals on human and ecological health, TSCA could serve as the primary regulatory backstop in preventing harmful chemicals from endangering the health and safety of all people in the United States.

The NTTC considers chemical regulation under TSCA to be one of EPA's most powerful tools for protecting human and environmental health from the impacts of chemical substances. EPA should take

[34] Environmental Protection Network, Comments on Chemical Risk Evaluation under TSCA, December 2023, 3-4, https://www.environmentalprotectionnetwork.org/wp-content/uploads/2023/12/EPN-Comments-on-Chemical-Risk-Evaluation-under-TSCA.pdf.

advantage of the authority granted by the Frank R. Lautenberg Chemical Safety for the 21st Century Act and work to improve TSCA risk evaluations by fully applying them to those subpopulations with the highest potential for exposure and those that are most susceptible.

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 me, Dianne Barton, NTTC Chair, at (503) 731-1259 / bard@critfc.org.

Sincerely,

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