Environmental Protection Network

(202) 656-6229
environmentalprotectionnetwork.org
info@environmentalprotectionnetwork.org

EPN Comments for the Public Meeting of the Science Advisory Committee on Chemicals Regarding the Draft HBCD Risk evaluation Under TSCA Oral Comments

July 31, 2019

Good afternoon. I am Penelope Fenner-Crisp. I will be providing additional comments on behalf of the Environmental Protection Network (EPN). EPN is an organization comprised of over 450 U.S. Environmental Protection Agency (EPA) alumni volunteering their time to protect the integrity of the agency, human health and the environment. We harness the expertise of former EPA career staff and confirmation-level appointees to provide an informed and rigorous defense against current administration efforts to undermine public health and environmental protections.

As I noted in my earlier remarks, our initial comments are focused primarily on some of the critical policy issues that affect not only these 1,4-Dioxane and Cyclic Aliphatic Bromide Cluster (HBCD) but, potentially, all existing chemicals selected for risk evaluations under the new Toxic Substances Control Act (TSCA).

I have already shared EPN's opinion with regard to the use of the draft systematic review guidance. Today, I will focus on three additional generic policy issues:

1) EPN and several other organizations submitted what we considered to be persuasive reasons why the problem formulations for the first 10 chemicals should NOT exclude pathways of exposure which could be regulated under other environmental statutes. Standards and non-regulatory guidance established under these other legislative mandates may be years out of date, may be technology-based rather than risk-based, and may not be complied with at all times or in all locations. In addition, these pathways add to the cumulative risk of highly exposed people such as workers or residents near the fence line of point sources and should be aggregated with their exposures determined under "conditions of use." It appears that EPA will be ignoring these comments in some or all of the risk evaluations, choosing, for instance, not to evaluate risks to the general public, including children and pregnant women, because these other statutes "adequately assess and effectively manage risks from _____," in this case, 1,4-Dioxane. EPN would argue that, for 1,4-Dioxane, EPA cannot justify the exclusion of drinking water exposure when there is a 30-year old health advisory and no maximum contaminant level (MCL) for this chemical, which has known occurrences in ground and surface water. In addition, ambient air levels of this contaminant must be taken into consideration, even though there is an established standard, which also has not been revisited in a while. A comprehensive analysis of all pathways of exposure under TSCA may lead to recommendations that a drinking water or air standard or other regulatory action should be promulgated or updated rather than a restriction placed on a chemical's use via an action under TSCA. Recommendations for action under another statute should be seen as an appropriate end result of a TSCA evaluation and is consistent with Section 9 of TSCA, which directs the Administrator "to coordinate actions taken under TSCA with actions taken under other federal laws

administered by EPA, such as the Clean Air Act and the Clean Water Act. If risk is already managed effectively (*emphasis added*) under a different statute, regulation under TSCA is not necessary." We interpret this section to indicate that TSCA evaluations should include an assessment of exposure scenarios such as drinking water or ambient air so that a decision can be made on the need for action under other statutes, with or without action under TSCA, in a manner which will result in the most effective risk reduction.

Turning now to worker protection, EPN is deeply concerned that workers will not be adequately protected under TSCA because of two policy decisions EPA has made.

2) The first policy decision of concern is EPA's statement in the 1,4-Dioxane draft risk evaluation that the agency is "more likely to determine unreasonable risk exists for workers where risks greater than the acceptable benchmarks are identified for both central tendency and high end exposures under the conditions of use." Where risks greater than acceptable benchmarks are identified only for workers with high-end exposures, EPA will not make the determination that unreasonable risk occurs unless there are special circumstances. We view this policy as problematic because the agency is not factoring in worker exposure to contaminants in drinking water or other "regulated pathways" under either central tendency or high-end conditions. Thus, worker exposures and their attendant risks are being underestimated under both scenarios.

3) Lastly, the other problematic worker-related policy is that when the agency finds unreasonable risk to workers, it minimizes that risk by assuming workers will use personal protective equipment (PPE) for the entire duration of the work activity throughout their careers, even when such equipment is not required, provided or used. This approach was demonstrated in the case of HBCD, for which there is no Occupational Safety and Health Administration (OSHA) standard or National Institute for Occupational Safety and Health (NIOSH) guidance. In this case, EPA discounted the risks to workers by assuming constant use of respirators and gloves. We would argue that, consistent with longstanding OSHA practice, EPA should assess and characterize worker risk without the use of PPE. This is especially important in the absence of occupational regulatory standards or guidance for a substance.

Thank you for your attention.