



INTRODUCTION TO THE NATIONAL TRIBAL TOXICS COUNCIL



Columbia River Basin Restoration Program Working Group
October 26, 2021





WHAT IS THE NTTC?



An EPA Tribal Partnership Group (TPG) started in 2012 with Office of Pollution Prevention and Toxics (OPPT).



OPPT is the office responsible for administering:

Pollution
Prevention Act

Toxics Release
Inventory (TRI)

**Toxic Substances
Control Act
(TSCA)**



WHAT DOES THE NTTC DO?



Provide information to tribes so they can **voice their concerns** with consumer toxics and pollution.



Enhance formal consultation on OPPT issues



Serve as technical resource to tribes




Network, collaborate, presentations



Advocate for Tribal scenarios in EPA risk evaluations

NTTC COMMENT LETTERS

**National Tribal
Toxics Council**

NTTC WorkAbout UsTSCATribal ConsultationResourcesTrainings

Public Comments

TSCA Risk Evaluations

- [Comments on TSCA Rules for Chemical Risk Evaluations \(March, 2017\)](#)
- [Comments on Identifying Chemicals for Prioritization under TSCA \(Nov, 2018\)](#)

First 10 high priority chemicals

- [Comments on First 10 Chemicals Scope Documents for Risk Evaluations \(March, 2017\)](#)
- [Comments on Perchloroethylene, Draft TSCA Risk Evaluation \(July, 2020\)](#)
- [Comments on Asbestos, Draft TSCA Risk Evaluation \(June, 2020\)](#)
- [Comments on N-methylpyrrolidone \(NMP\) Draft Risk Evaluation \(Jan, 2020\)](#)
- [Comments on Methylene Chloride Draft Risk Evaluation \(Dec, 2019\)](#)
- [Comments on Carbon Tetrachloride Draft Risk Evaluation \(March, 2020\)](#)
- [Comments on HBCD Draft Risk Evaluation \(Aug, 2019\)](#)
- [Comments on Trichloroethylene \(TCE\) Draft Risk Evaluation \(Apr, 2020\)](#)

Next 20 high priority chemicals

- [Comments on high priority designation for next 20 chemicals \(Nov, 2019\)](#)
- [Comments on the Draft Scopes of the next 13 chemicals \(May, 2020\)](#)
- [Comments on scopes of next 7 chemicals \(June, 2020\)](#)

Science Advisory Committee on Chemicals

- [Comments on SACC Nominations 2017](#)
- [Comments on SACC Ad-Hoc Nominations 2019](#)
- [NTTC nominates Chris Chaisson to the SACC](#)

EPA's Science Transparency Rule

- [Comments on Transparency in Regulatory Science \(May, 2020\)](#)

Chemical Data Reporting

- [Comments on TSCA Chemical Data Reporting \(CDR\) \(June, 2019\)](#)

Polychlorinated bisphenyls (PCBs)

- [NTTC Request for EPA to Investigate PCB Exposures to Tribal Communities \(March, 2014\)](#)
- [Comments on Tribal Consultation on PCB Use \(Nov, 2013\)](#)

Persistent, Bioaccumulative, and Toxic Chemicals

- [Comments on Proposed Rule on Persistent, Bioaccumulative, and Toxic Chemicals \(PBTs\) \(May, 2021\)](#)
- [Comments on Proposed Rule on Persistent, Bioaccumulative, and Toxic Chemicals \(PBTs\) \(Oct, 2019\)](#)
- [Comments on Chlorinated Paraffins \(Feb, 2016\)](#)

2014 – 2021

[https://tribaltoxics.org/
/?page_id=301054](https://tribaltoxics.org/?page_id=301054)

TSCA New Chemicals

- [Comments on TSCA New Chemical Review Program \(Jan, 2017\)](#)

Flame Retardants

- [Response to Tribal Consultation on Flame Retardants \(Dec, 2015\)](#)

PFAS

- [Comments on PFAS \(Sept, 2018\)](#)

TSCA Rulemaking

- [Comments on TSCA Rulemaking—Methylene Chloride, TC \(June, 2015\)](#)

Environmental Justice

- [Comments on EPA's Proposed Policy on Environmental Justice for Tribes \(June, 2014\)](#)

EPA Strategic Plan FY2018-2022

- [Comments on EPA Draft Strategic Plan FY2018-2022 \(Oct, 2017\)](#)

Guidelines for Human Exposure Assessment

- [Tribal Comments on EPA Draft Guidelines for Human Exposure Assessment \(Sept, 2016\)](#)

Hydraulic Fracturing

- [Comments on Fracking Rule \(Sept, 2014\)](#)

National Program Manager

- [Comments on QCSPP National Program Manager Guidance \(Nov, 2016\)](#)
- [Early Tribal Input on OECA National Program Manager Guidance \(Sept, 2016\)](#)
- [Comments on OECA NMP Guidance \(July, 2014\)](#)

Integrated Risk Information System (IRIS)

- [Comments on the ORD Staff Handbook for Developing IRIS Assessments \(March 2021\)](#)

UNDERSTANDING TRIBAL EXPOSURE TO TOXICS

June 2015

Understanding Tribal Exposures to Toxics



Clockwise from top left: Weaving and Maple Bark Workshops - Karuk and Yurok Tribes; Fish Processing - Yurok Tribe; Tulle Harvesting; Fish Processing - Bad River Band of Lake Superior; Clam Harvesting - Coeur d'Alene Tribe; Duckabush Clam Harvest - Port Gamble S'Klallam; Clam Harvesting - Lower Elwha Tribe; Cedar Bark Harvesting - Lower Elwha Tribe

*This Report has been developed under the direction of the
National Tribal Toxics Council
as a first step to identifying the state of toxics affecting tribes.*

To provide feedback to NTTC, contact us at www.tribaltoxics.org



Federal Trust Responsibility
The US Environmental Protection Agency (EPA) is responsible, in concert with Tribes, for ensuring that federal environmental laws are carried out on Tribal lands and that the Tribal government is not degraded. In November 1984, the EPA published its agency policy for the development and implementation of tribal environmental protection programs. The EPA Indian Policy provides the guidance necessary for the administration of environmental protection on Indian lands. This Policy was reaffirmed in the current administration by then-EPA Administrator Lisa Jackson in 2009 and is consistent with President Obama's Executive Order on Government-to-Government relationships when working to "protect the land, air, and water in Indian country."



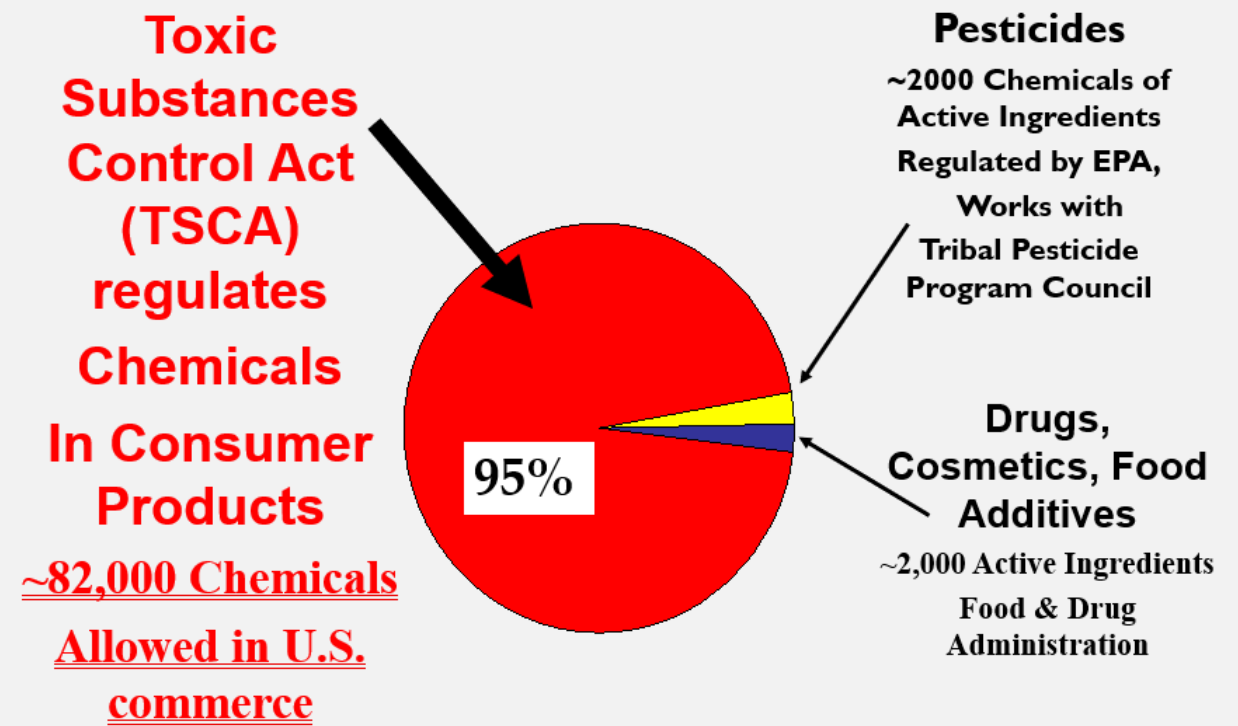
- Delivered to EPA Administrator McCarthy in June 2015 and Administrator Pruitt in June 2018
- Requests that EPA institutionalize a process to consider tribal exposure in risk assessments
- Currently being updated

WHY TSCA?

WHY TRIBES?

WHY **NOW**?

U.S. Chemical Universe



Failures of the 1976 Toxics Substance Control Act

TSCA was intended to be the primary means of regulating the production/use of industrial chemicals with the authority to restrict use through the entire life cycle



- TSCA provided limited assurance that health and environmental risks are identified before chemicals enter commerce (GAO Report to Congress - June 2005)
- Risk evaluations were based on general population and **central tendency exposures**.

FRANK R. LAUTENBERG CHEMICAL SAFETY FOR THE 21ST CENTURY ACT

- Legislated the consideration of **potentially exposed and susceptible subpopulations**
- Removes the cost-benefit standard for risk evaluation
- Significant preemption of state authority to restrict the use of chemicals.



June 22, 2016

BEFORE NEW TSCA

EPA 2010 PBDE EXPOSURE ASSESSMENT

Tribal Tendency

- Fish in the wild were found to have substantially higher tissue levels than farm-raised or store-bought fish
 - 45 – 148 ng/g Great Lakes
 - 35 ng/g (mean) to 1059 ng/g (max) Washington State
 - 8 – 88 ng/g marine off FL
- Fish consumption rate
 - 175 g/day – Oregon State
 - 389 g/day – Umatilla
 - 865 g/day – Spokane Tribe

Central Tendency

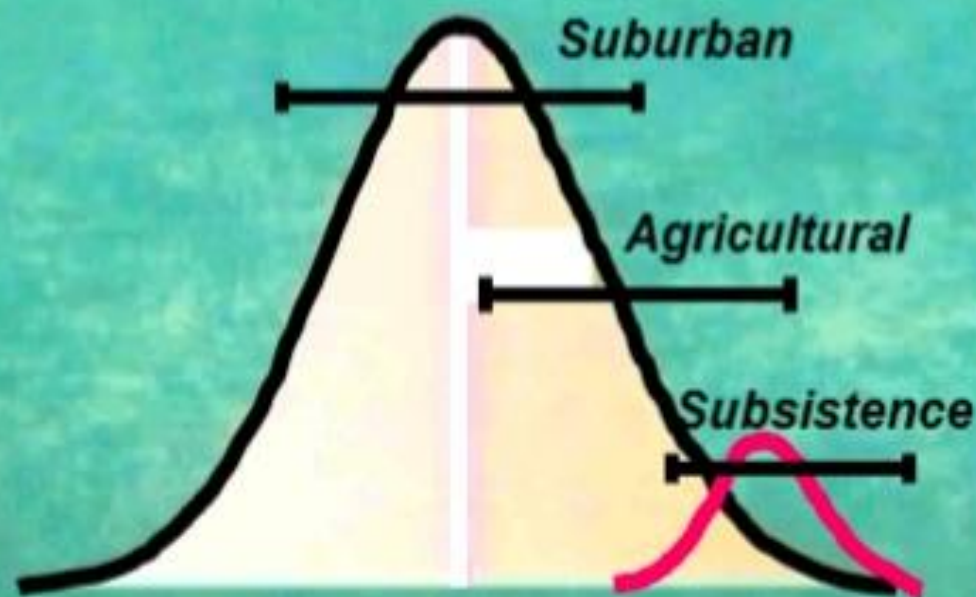
- Representative food profiles was based on fish taken from a retail market place in Texas
 - .32ng/g - finfish
 - 5.7 ng/g – shellfish
- Fish consumption rate
 - 11.6 g/day finfish
 - 3.8 g/day shellfish
- Doses via food/water ingestion were considered “reasonably certain”


EPA 2010 Exposure Assessment of PBDE

- “unusually high exposures at the high end of the general population”
- “even the highest dust concentrations might not be able to explain” the 95th percentile level of 291 ng/g versus mean 31 ng/g in adults
- “suggests the possibility that there are other exposures not identified in this assessment”

HIGH-END OF GENERAL
POPULATION EXPOSURE IS NOT
PROTECTIVE OF A SENSITIVE
SUBPOPULATION

Tribal lifestyles are not just the
extreme tail of a general
population exposure range





NEW TSCA
-
AMENDED
JUNE 22,
2016

EPA risk evaluations are required to consider potential risks to human health of **potentially exposed and susceptible subpopulations.**

TRIBES AND AMENDED TSCA



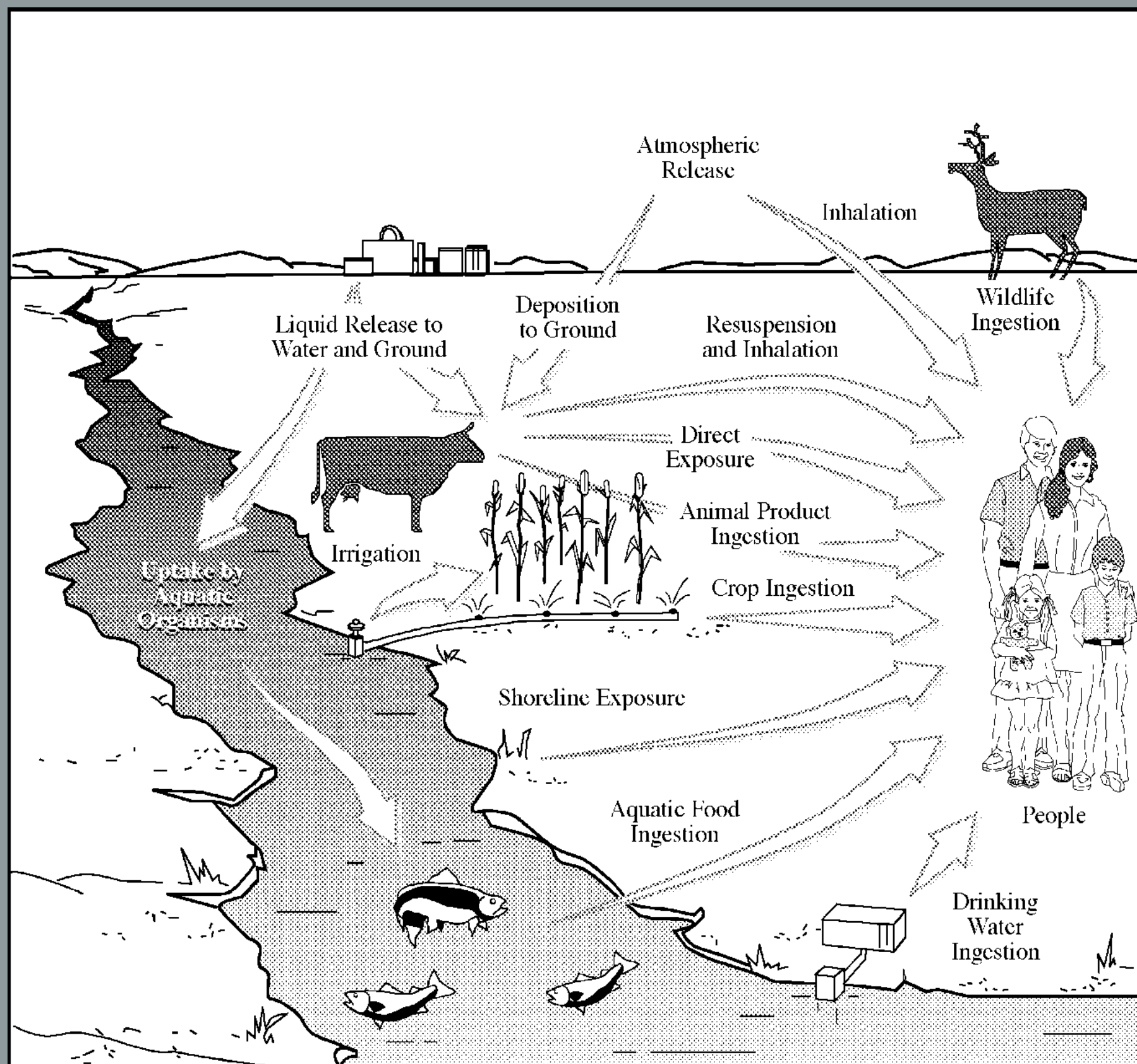
(4) Risk evaluation process and deadlines

(A) In general

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.

For environmental exposures tribes may represent the potentially exposed or susceptible subpopulation as required by regulation

Typical Conceptual Model of Exposure to Contaminants in the Environment



Looks
Outdoorsy



Actually
Suburban/
Recreational
Exposures

**RESOURCES VARIED & NOT
LINKED TO HOME ADDRESS**

**CULTURAL ACTIVITIES INCREASE BOTH
DIRECT AND INDIRECT EXPOSURES**



Tribes are Unique

574 Sovereign Nations in the USA

2020 Census 9.2 million, 2.9% total

Approximately 368 tribal treaties were negotiated and ratified from 1777 – 1868.

“the contours of environmental injustice are different for Native Americans than for other affected groups, and so remedying the injustice will require consideration of the unique historical and legal aspects of Native American claims.”*

* O’Neil (2000), *Variable Justice: Environmental Standards, Contaminated Fish, and “Acceptable” Risk to Native Peoples*, Stan. Env’tl. L.J. 3, 37.



Tribal Lifeways are Not Historical Anachronisms



- 92-100% of surveyed households in rural Alaska use wild fish and 75 – 98 % harvest fish (Cultural Survival Quarterly, Sept 1998)
- 98% of Nez Perce and 88% of Shoshone Bannock on-reservation members consume fish EPA 2015 Idaho Fish Consump. Survey
- 25% (Fish), 37% (Medicinal Tea), 68% (Consumed Food) use reported by Navajo focus groups for the San Juan River area (2021)
- 69% of 40 surveyed CA tribes report that fish is consumed at least once/week – (CA State Water Resources Board 2014)

CHALLENGES

No “legacy” products considered

From: Problem Formulation for Cyclic Aliphatic Bromides Cluster (HBCD), EPA, May 2018.

Groundwater not considered

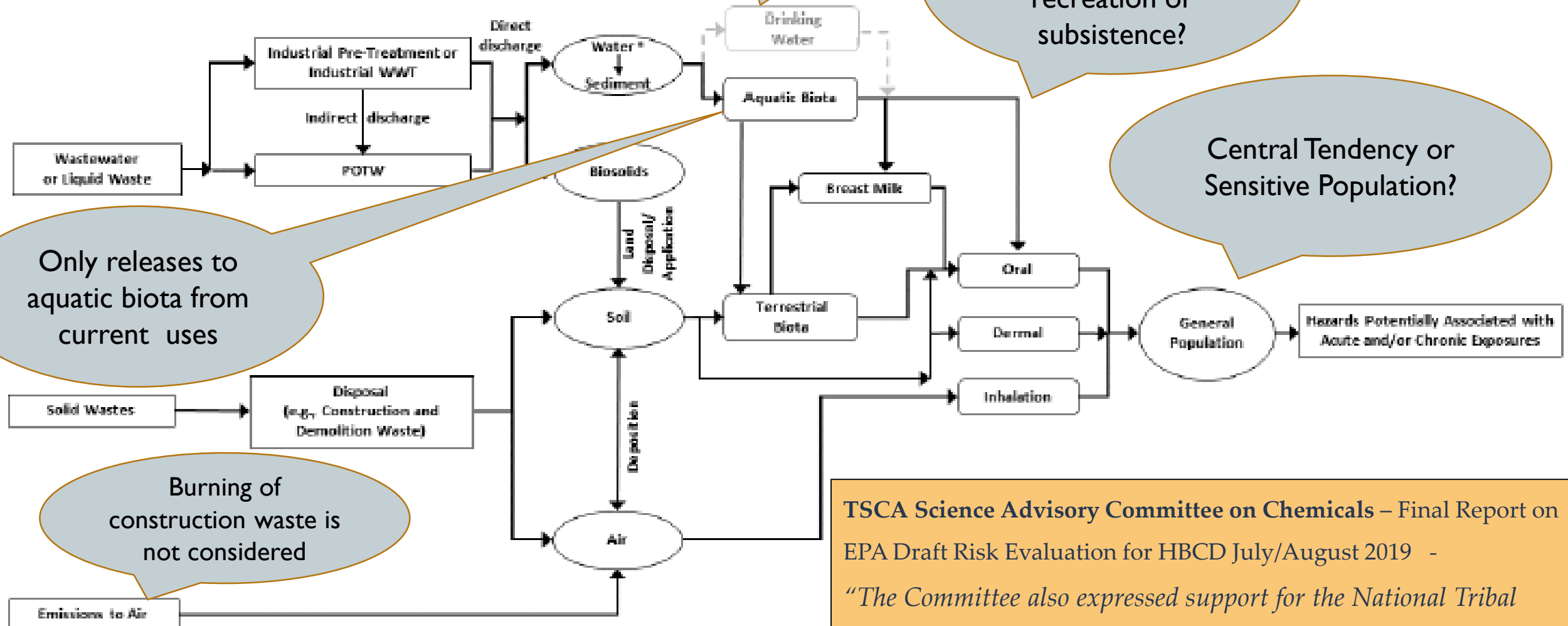
Do consumption rates reflect recreation or subsistence?

Central Tendency or Sensitive Population?

RELEASES AND WASTES FROM INDUSTRIAL / COMMERCIAL / CONSUMER USES

EXPOSURE PATHWAYS

HAZARDS



TSCA Science Advisory Committee on Chemicals – Final Report on EPA Draft Risk Evaluation for HBCD July/August 2019 -
“The Committee also expressed support for the National Tribal Toxics Council and the Environmental Defense Fund call for consideration of all exposure routes in this TSCA evaluation.”

Figure 2-4a. HBCD Conceptual Model for Environmental Releases and Wastes: General Population Exposures and Hazards
 The conceptual model presents the exposure pathways, exposure routes and hazards to human receptors from releases and wastes from industrial and commercial uses of HBCD.

^a Industrial wastewater or liquid wastes may be treated on-site and then released to surface water (direct discharge), or pre-treated and released to POTW (indirect discharge). For consumer uses, such wastes may be released directly to POTW (i.e., down the drain). Drinking water will undergo further treatment in drinking water treatment plant. Ground water may also be a source of drinking water.

^b Receptors include potentially exposed or susceptible subpopulations (see Section 2.3.5.4).

Fish Consumption in the HBCD Risk Evaluation

In choosing to use central-tendency fish ingestion rates for chronic exposure, EPA fails to understand the meaning of subsistence users and tribes --and fails to protect those populations.



EPA selected high-end fish ingestion rates for to represent acute exposures. Central-tendency ingestion rates represented chronic exposure which are expected to be more representative of the most populations over a sustained period. "Risk estimates for chronic exposure scenarios may therefore underestimate risk to these populations, however it is uncertain whether any of these subpopulations with significantly elevated fish ingestion rates actually live nearby a HBCD facility". EPA Risk Evaluation for Cyclic Aliphatic Bromide Cluster (HBCD)

- Landfills and transfer stations should be considered a facility and HBCD releases should be modeled. 229 tribes in Alaska live near a designated C&D disposal site and multiple tribal members live near C&D landfills and transfer stations. The bulk of tribal transfer stations accept foam board. Environmental release data used for facilities includes disposal site near-release.

HBCD Landfill Environmental Releases

- Over 99% of landfill releases are expected from the insulation use: 408,687 out of 411,948 kg/year. There is potential for HBCD released to landfill to migrate to the nearby environment **However, typical management controls such as coverings, liners, and treatment may partially or fully mitigate this. No federal standards and C&D landfills often have none of these.**
- HBCD is expected to strongly sorb to soil particle, is not volatile and would likely only escape to air through windblown soil particles. Due its high KoC, HBCD any potential migration through the landfill to effluent would be slow. **Foam board breaks up readily and can escape to air directly. Fugitive dust is not considered. EPA seems to be characterizing C&D landfills as if they are municipal waste landfills which does not mirror reality. Foam board may lie directly in effluent, be exposed to snowmelt, rain and flooding and leachate release of HBCD particulate-phase can occur, including direct drainage to surface water.**
- EPA itself notes:** One recent experimental study noted that HBCD migration from materials into effluent can occur and is influenced by experimental conditions mimicking real-world conditions (Stubbings and Harrad, 2014). **This study is ignored, as are Brandsma (2015) and Tang et al (2014b), used in wildlife exposure and facility soil release considerations respectively, which both found release from disposal sites in highly organic matrix via leachate particulate-phase migration in the water. both studies which showed elevated to extremely elevated off-site HBCD particulate-phase concentrations from disposal sites.**
- Pg 257:** However, even though the total annual releases appear large, EPA provides the following context. If the annual releases were divided by the number of active landfills in the US and the average size of a landfill in the US, and divided this mass into the top of layer of soil in a landfill this concentration would approximate central tendency estimates from extracted soil monitoring data. **This is a faulty scenario as that demolition and insulation sites are limited to those contractors that use HBCD board and these contractors will tend to use the same landfills for each of their multiple projects.**
- In summary, under some conditions it is possible that landfills represent a potential source of exposure to the nearby environment. **EPA demonstrates their expertise at modeling facility releases and exposures to all populations but fails to do so in the case of disposal sites, workers, ONU's, and near-site general and highly exposed populations.**
- In assessing HBCD in soils for facilities, EPA references in the risk evaluation Tang et al (2014b) and in assessing exposure to wildlife, EPA noted Brandsma (2015), Yet, EPA chose to ignore these studies.

Environmental release for C&D and “other landfill” disposal sites—direct release to water bodies or sub- and surface organic matrix, and exposed wildlife.



C&D unlined landfill snowmelt/flooding direct drainage to creeks – Lower 48 and Alaska. Note that many or most C&D landfills are uncovered and exposure to wind, sun, and water results in degradation.



Birds flying (left) and walking on snow (below) – which will turn slush/ponding & landfill located in drainage area.



Snow to C&D landfills results in direct leaching and flooding.

Disposal is a TSCA Condition of Use Tribal and many Rural Communities Are Fenceline Communities

School

Landfill



IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 17-72260
Consolidated with Docket Nos. 17-72501, 17-72968,
17-73290, 17-73383, 17-73390

SAFER CHEMICALS, HEALTHY FAMILIES et al.,
Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY et al.,
Respondents.

IPC INTERNATIONAL, INC. et al.,
Respondents-Intervenors.

On Petition for Review of Final Rules of the U.S. Environmental Protection Agency

REPLY BRIEF OF PETITIONERS:

ALASKA COMMUNITY ACTION ON TOXICS; ALLIANCE OF NURSES
FOR HEALTHY ENVIRONMENTS; ASBESTOS DISEASE AWARENESS
ORGANIZATION; CAPE FEAR RIVER WATCH; ENVIRONMENTAL
DEFENSE FUND; ENVIRONMENTAL HEALTH STRATEGY CENTER;
ENVIRONMENTAL WORKING GROUP; LEARNING DISABILITIES
ASSOCIATION OF AMERICA; NATURAL RESOURCES DEFENSE
COUNCIL; SAFER CHEMICALS, HEALTHY FAMILIES; SIERRA CLUB;
UNION OF CONCERNED SCIENTISTS; UNITED STEEL, PAPER AND
FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION,
AFL-CIO/CLC; VERMONT PUBLIC INTEREST RESEARCH GROUP;
and WE ACT FOR ENVIRONMENTAL JUSTICE

Dated: November 9, 2018

Counsel listed on the following page

Id. at 2, 17. Rather, what EPA dismisses as “legacy activities” unambiguously fall within the “conditions of use” definition because they consist of ongoing and future “use” and “disposal” that create continuing exposures. 15 U.S.C. § 2602(4); Pet’rs’ Br. 41-44.

chemical. EPA Br. 10. Nothing in the definition of “disposal” excludes future disposal of a product—such as of asbestos-containing debris from building demolition or renovation—merely because the product being disposed is no longer manufactured. EPA cannot “exclude from coverage certain items that clearly fall

³ EPA cannot save its unlawful legacy exclusions through a vague suggestion that it “may consider background exposures” from legacy activities “as a tool” to assess a chemical’s risks. EPA Br. 30 (quoting ER 5) (emphasis added). If legacy activities are not conditions of use, then they cannot be included in the scope of EPA’s determination of unreasonable risk, and thus cannot be addressed through a risk-management rule.

November 2019 – US Court of Appeals for the Ninth Circuit found that EPA violated TSCA by excluding legacy uses from consideration in TSCA risk evaluations.

“LEGACY” USE IS AN ENVIRONMENTAL JUSTICE ISSUE.

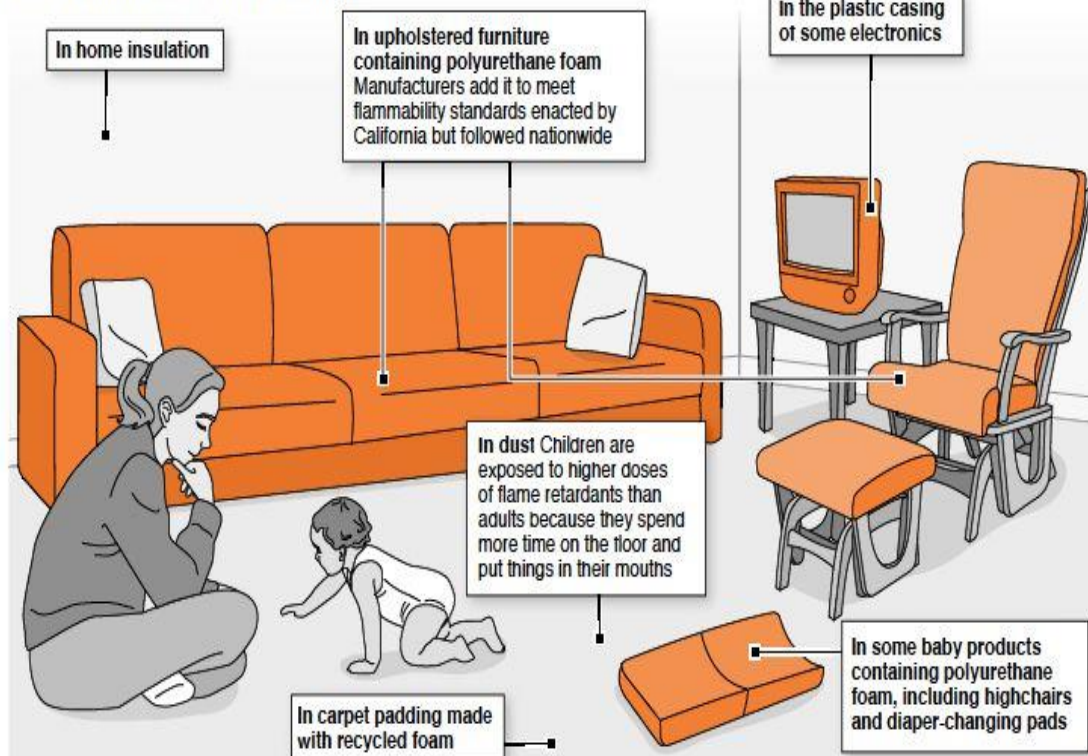


- *Legacy use needs to be included in TSCA risk assessments*
- *Disparities in the built environment can lead to greater toxics exposures, and contribute to health problems such as chronic diseases and injuries, and can have harmful effects on childhood development.*
- *End of life disposal and disposal circumstances common to tribes result in greater risk*

AND OLDER FURNISHING IS FOUND IN THOSE HOMES .

Flame retardants are present in virtually every American home even though some of the compounds have been linked to neurological deficits, developmental problems, impaired fertility and other health risks.

Where flame retardants are found



Source: EPA, Chicago Tribune reporting

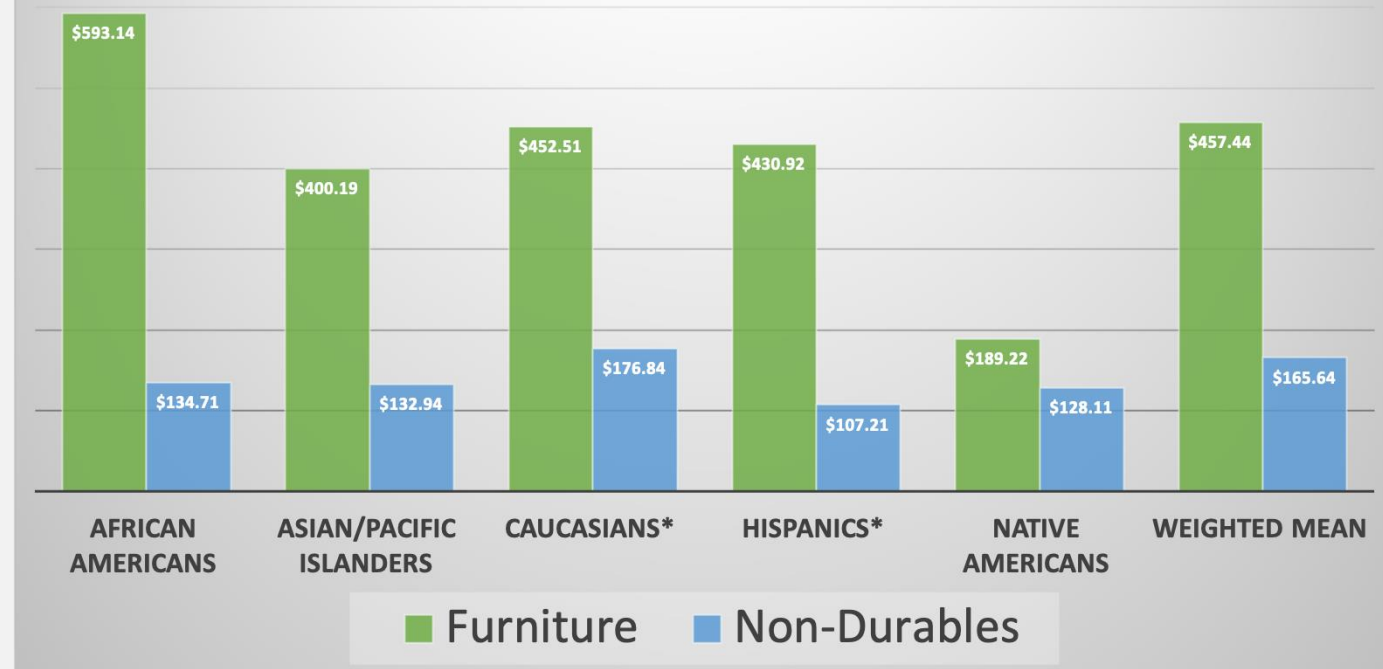
Graphic: Katie Nieland, Chicago Tribune

© 2012 MCT

Older items can contain chemicals of greater toxicity and can abrade tear, and releasing dust and larger particulates that may be inhaled or ingested.

Cleaning tools maybe less efficient – sweeping or using older vacuums.

HOUSEHOLD FURNISHING EXPENDITURES



Dyer et al, Ethnicity and Household Expenditures: Furnishings, Fashion, and Flux, Family and Consumer Science Research Journal 2009

OUTCOME – FINAL RISK EVALUATION OF HBCD UNDER AMENDED TSCA - SEPTEMBER 2020

EPA found no unreasonable risks to the general population.

EPA found no unreasonable risks to consumers.

EPA found unreasonable risks to the environment from six conditions of use.

EPA found unreasonable risks to workers and occupational non-users from the use and disposal of HBCD in building and construction materials.

EPA REVIEWS HBCD EVALUATION

AUGUST 2021

9th Circuit grants EPA request to remand new TSCA risk evaluations thus allowing EPA to redo the analyses. EPA reanalysis supports the original HBCD risk evaluation in being sufficient to inform upcoming risk management actions

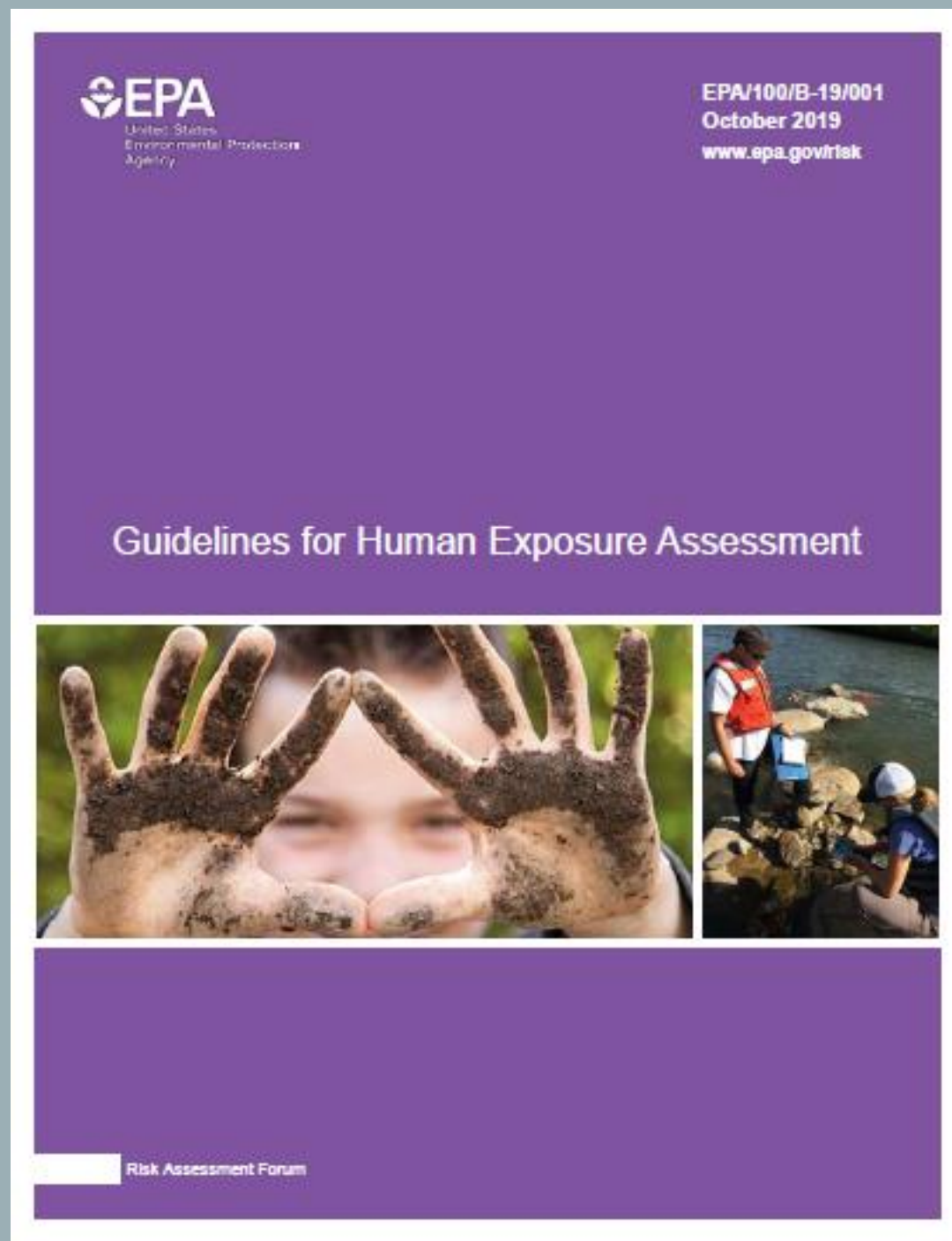
**THE STOCKHOLM CONVENTION ON PERSISTENT
ORGANIC POLLUTANTS VOTED FOR A GLOBAL BAN OF
HBCD IN 2013**

CHAPTER 4. CONSIDERATION OF LIFESTAGES, VULNERABLE GROUPS AND POPULATIONS OF CONCERN IN EXPOSURE ASSESSMENTS

Assessments involving potentially vulnerable populations can consider economic, public health and other factors along with environmental conditions.

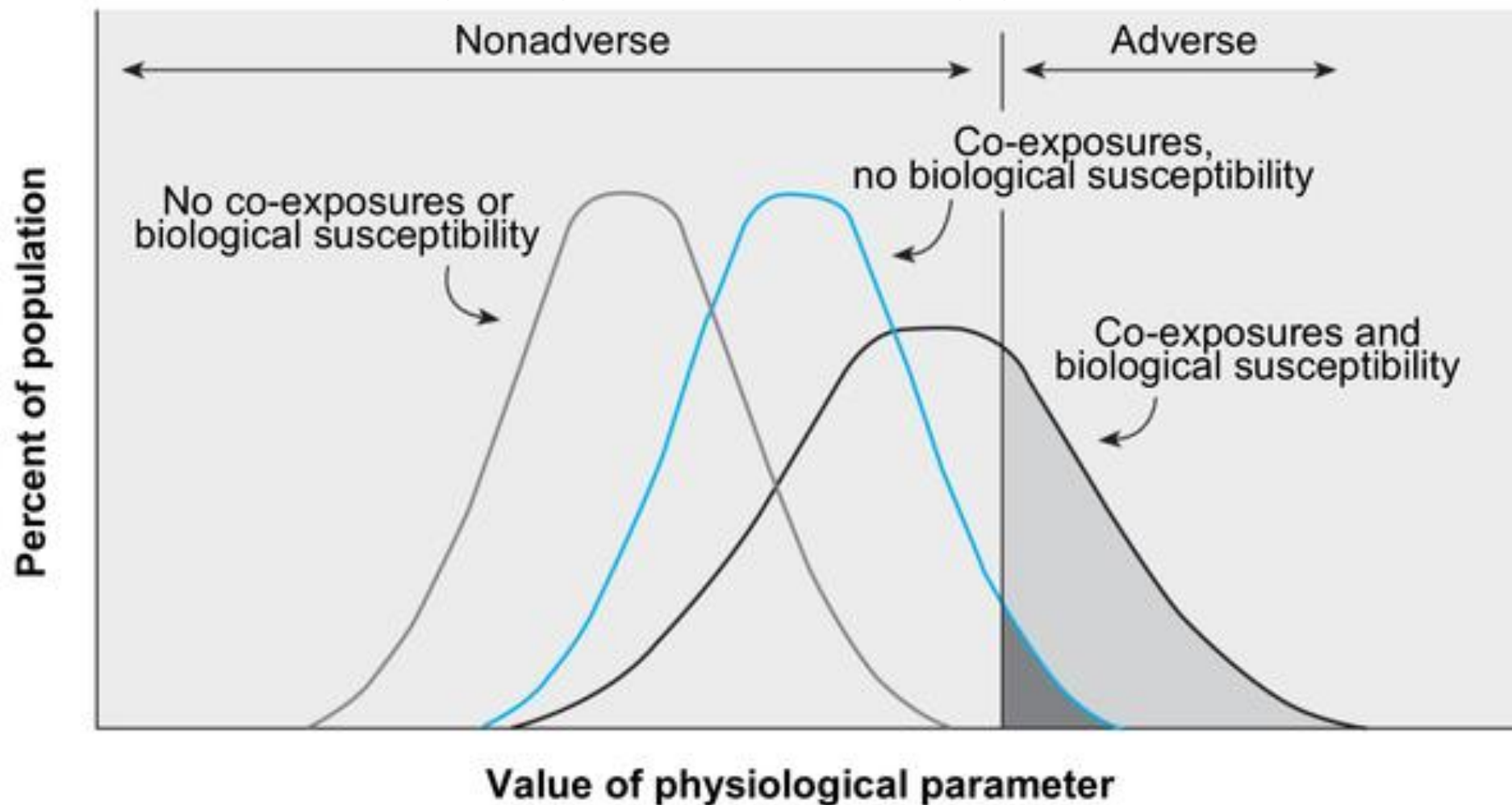
As appropriate, exposure assessors identify and characterize those conditions that lead to the highest agent intensities and resulting exposures and those situations that lead to exposure for the most susceptible receptors (U.S. EPA 2009a).

Considering vulnerability and susceptibility when making risk management decisions is essential for **protecting not only the general population but also those populations at greatest risk** (U.S. EPA 1995b; U.S. EPA 2010b).



Tribal health disparities can mean greater population susceptibility.

Fig 1. How coexposures to other chemical stressors and variability in biological susceptibility combine to influence population risk.



Excerpted from Koman PD, Singla V, Lam J, Woodruff TJ (2019) Population susceptibility: A vital consideration in chemical risk evaluation under the Lautenberg Toxic Substances Control Act. PLOS Biology 17(8): e3000372. <https://doi.org/10.1371/journal.pbio.3000372>
<https://journals.plos.org/plosbiology/article?id=10.1371/journal.pbio.3000372>

Indian Country & Health Disparities

Graphic from Families USA, 2018

AMERICAN INDIAN & ALASKA NATIVE HEALTH DISPARITIES: CHILDREN

Compared to non-Hispanic white children, American Indian and Alaska Native children are more likely to suffer from the following:

infant mortality

55%
more likely to die as an infant⁷

SIDS

x2
as likely to die of SIDS⁷

obesity

90%
more likely to be obese as a preschooler⁸

50%
more likely to be obese as a high-schooler⁹

depression

x2
as likely to attempt suicide as a high-schooler¹⁰

How do we reduce racial and ethnic health disparities?
We must work together to improve our health care system to make it high-quality, comprehensive, affordable, and accessible for everyone.

AMERICAN INDIAN & ALASKA NATIVE HEALTH DISPARITIES: ADULTS

depression

60%
more likely to experience feelings of sadness or hopelessness¹

tuberculosis

40%
more likely to have tuberculosis³

heart disease

15%
more likely to have heart disease¹

obesity

45%
more likely to be obese¹

diabetes

x2
as likely to be diabetic¹

60%
more likely to have end-stage renal disease⁴

90%
more likely to die from diabetes⁵

emphysema

x2
as likely to have emphysema²

liver disease

x2
as likely to die from liver disease or cirrhosis⁵

stomach cancer

15%
more likely to die of stomach cancer⁵

HIV

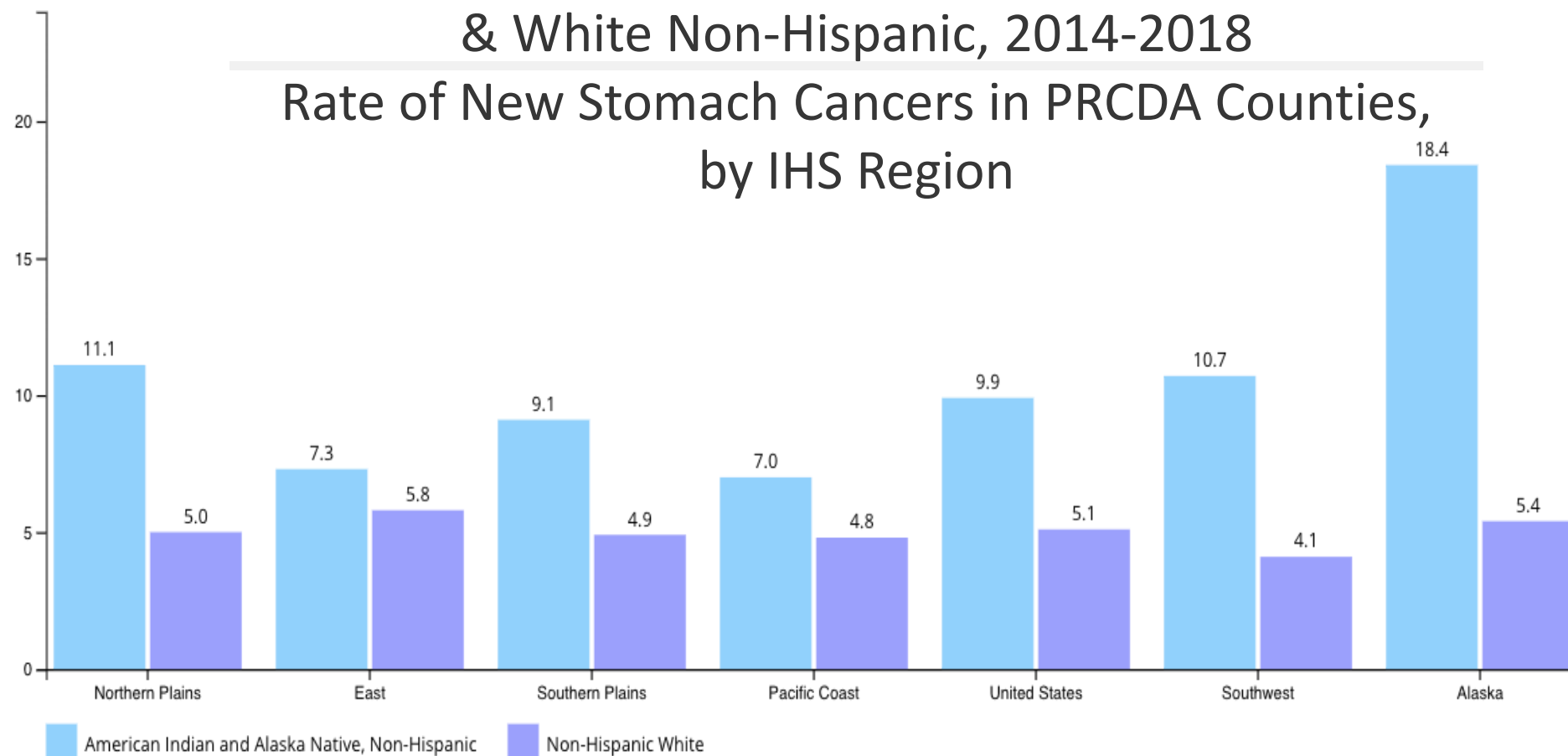
30%
more likely to be diagnosed with HIV⁶

10%
more likely to die from HIV⁵

Differences differ by Region. But are still different.

American Indian and Alaska Native
& White Non-Hispanic, 2014-2018

Rate of New Stomach Cancers in PRCDA Counties,
by IHS Region



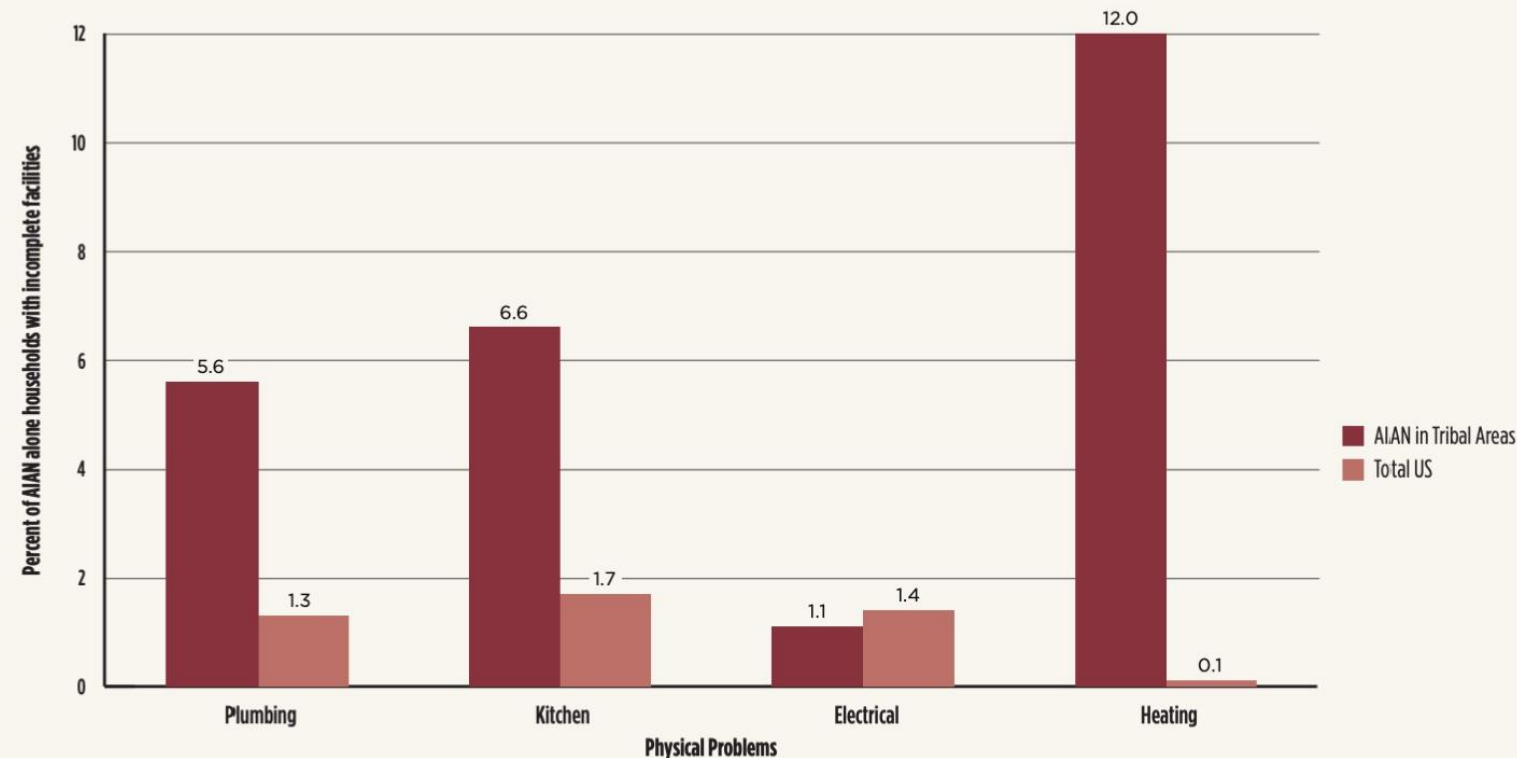
Overall, the rate of cancer deaths among AN/AI was 50% higher (AJPH 2014). A 2020 life expectancy of 2.2 years less than Non-Hispanic Whites (HHS Minority Health)

U.S. Cancer Statistics Working Group. U.S. Cancer Statistics Data Visualizations Tool, based on 2020 submission data (1999-2018): U.S. Department of Health and Human Services, Centers for Disease Control and Prevention and National Cancer Institute; www.cdc.gov/cancer/dataviz, released in June 2021.

Housing Disparities are Health Disparities

Percent of households with incomplete facilities

Exhibit ES.2 - Individual Housing Problems in Tribal Areas and United States



Source: Urban Institute Household Survey 2013-2015; American Housing Survey, 2013.

Plumbing

Kitchen

Electrical

Heating



Photo source: Sen. Lisa Murkowski Twitter Feed



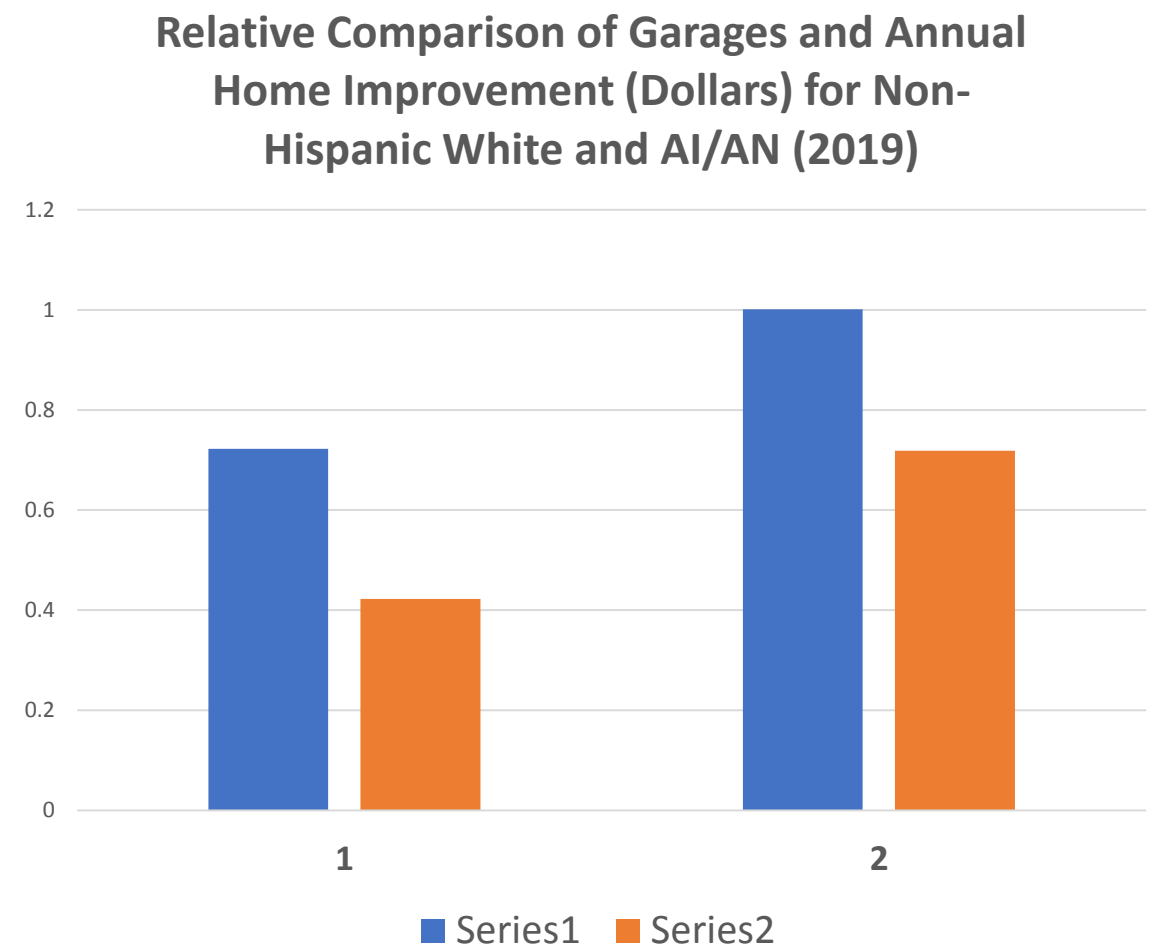
House on the Navajo Reservation. Image courtesy Elizabeth Rudd, Program Evaluation Division of the Office of Policy Development and Research, HUD

(HUD, OPR)

HUD Office of Policy and Research. Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs. **Authors:** [Pindus, Nancy](#) [Kingsley, G. Thomas](#) [Biess, Jennifer](#) [Levy, Diane](#) [Simington, Jasmine](#) [Hayes, Christopher](#) [Urban Institute](#) January 2017

Disparity in Housing Toxics Exposures.

- **Garages are much less common for AI/AN households** – But DIY is prevalent due to cost and ruralness. Storage of vehicle care products & hazardous products are more likely to be in-home.
- **Less Home repair & maintenance is performed in AI/AN homes.** Cracks, holes, & abrading can lead to chemical exposures in insulation, **lead-based paint**, wiring, panels, tiling, appliances.



U.S. Census American Housing Survey, 2019

WHY NOW?

Gap Filling or Preeminent Statute

EPA-ADMINISTERED STATUTES AND REGULATORY PROGRAMS IS CONSISTENT WITH STATUTORY TEXT AND LEGISLATIVE HISTORY, PARTICULARLY AS THEY PERTAIN TO TSCA'S FUNCTION AS A "GAP-FILLING" STATUTE
(EPA, AUGUST 2020)

OR

ADEQUATE AUTHORITY SHOULD EXIST TO REGULATE CHEMICAL SUBSTANCES AND MIXTURES WHICH PRESENT AN UNREASONABLE RISK OF INJURY TO HEALTH OR THE ENVIRONMENT, AND TO TAKE ACTION WITH RESPECT TO CHEMICAL SUBSTANCES AND MIXTURES WHICH ARE IMMINENT HAZARDS
(15 USC CH. 53, 1976)

“TSCA requires the consideration of potentially exposed or susceptible subpopulations in the EPA’s evaluation of chemicals. While TSCA is not the only environmental law with provisions for susceptible or vulnerable subpopulations, the direct, repeated emphasis across multiple sections of the law that the EPA consider potentially exposed or susceptible subpopulations **may be unique in US environmental law.**”

Aspirations of the Clean Water Act 1972



- “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters” 33 U.S.C. § 1251(a)
- Fishable Goal - “water quality which provides for the protection and propagation of fish, shellfish, and wildlife” 33 U.S.C. § 1251(a)(2) and (3)
- Zero-Discharge Goal – “discharge of pollutants be eliminated by 1985”
- “the criteria shall support the most sensitive use”

40 C.F.R. § 131.11

Clean Water Act as Practiced in 2019

EPA Approval of the State of Idaho’s Human Health Water Quality Criteria for Toxics (April 2019)

“The EPA’s 2000 Methodology provides that members of a community that consume more fish than the general population, like subsistence fishers (tribal and non-tribal), are accounted for and protected as high consuming subpopulations. Consistent with the 2000 Methodology, a 10-5 risk level is appropriate to protect the general population, as long as the criteria ensure that highly exposed populations (sport fishers or subsistence fishers) do not exceed a 10-4 risk level.”

JUNE 30, 2021

EPA Announces Path Forward for TSCA Chemical Risk Evaluations

<https://www.epa.gov/newsreleases/epa-announces-path-forward-tsca-chemical-risk-evaluations>

- **Expanding Consideration of Exposure Pathways and Fenceline Community Exposure Screening Level Approach**
 - The first 10 risk evaluations did not assess air, water or disposal exposures to the general population because these exposure pathways were already regulated, or could be regulated, under other EPA-administered statutes such as the Clean Air Act, Safe Drinking Water Act, or Clean Water Act
 - EPA plans to further examine whether the policy decision to exclude certain exposure pathways from the risk evaluations will lead to a failure to identify and protect fenceline communities
- **Use of Personal Protective Equipment**
- **Whole Chemical Approach**
 - EPA made separate unreasonable risk determinations for every condition of use of a chemical...the agency plans to make the determination of unreasonable risk just once for the whole chemical when it is clear the majority of the conditions of use warrant one determination.

Objective 2.2: Embed Environmental Justice and Civil Rights into EPA's Programs, Policies, and Activities

Integrate environmental justice and civil rights in all of the Agency's work to maximize benefits and minimize impacts to underserved and overburdened communities.

EPA 2022-2026 Strategic Plan

Environment & Energy

The Toxic Substances Control Act Under Biden: Impact on Tribal, Fenceline Populations

By Jeffery Morris

Nov. 30, 2020, 1:01 AM

The Biden administration will soon assume leadership over implementation of the Toxic Substances Control Act. Public policy consultant Jeffery Morris, a former EPA senior executive, explains how one of the act's requirements regarding subpopulations and communities next to facilities may be applied in evaluating chemical risks.

Environmental laws can play important roles in addressing social injustice. The Toxic Substances Control Act (TSCA), the U.S. law for chemical management, has powerful tools to identify people who may be disproportionately affected by exposure to chemicals, and if risks are found, to mitigate those risks.

INSIDE EPA'S

INSIDE TSCA

Exclusive news and analysis on the new
Toxic Substances Control Act

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October 25, 2021

SACC Will Review EPA 'Fenceline' Screening Approach For TSCA Evaluations

October 15, 2021

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EPA's Science Advisory Committee on Chemicals (SACC) will peer-review a draft screening approach to identify any risks to "fenceline" communities excluded from Trump-era TSCA chemical evaluations, giving the panel a key role in the process that will determine whether officials rework those reviews before using them as the basis for rulemaking. In an Oct. 12 status report in litigation over states' and environmental groups' challenge to the Toxic Substances Control Act (TSCA) evaluation of methylene chloride, EPA writes that the...

FULFILLING THE PROMISE OF THE LAUTENBERG ACT

OCTOBER 27, 2021

Hearing Announcement

E&C Announces Environmental Hearing on Fulfilling the Promise of TSCA Reform

Washington, D.C. – Energy and Commerce Committee Chairman Frank Pallone, Jr. (D-NJ) and Environment and Climate Change Subcommittee Chairman Paul Tonko (D-NY) announced today that the Environment and Climate Change Subcommittee will hold an oversight hearing on the Toxic Substances Control Act (TSCA) on **Wednesday, October 27, at 10:30 a.m. (EDT) in the John D. Dingell Room, 2123 of the Rayburn House Office Building**. The hearing is entitled, “TSCA and Public Health: Fulfilling the Promise of the Lautenberg Act.”

“The Frank L. Lautenberg Act made crucial reforms to TSCA that improve how the federal government protects Americans from dangerous chemicals, and now we must ensure those reforms are implemented effectively and honestly,” said Pallone and Tonko. “Unfortunately, during the last administration chemical risk evaluations were skewed in favor of industry to the detriment of workers and communities. We must protect consumers from exposure to toxic substances and ensure the Environmental Protection Agency is using the tools Congress granted it to protect public health. We look forward to discussing the implementation of this important law and hearing more about EPA’s efforts to get TSCA back on track.”

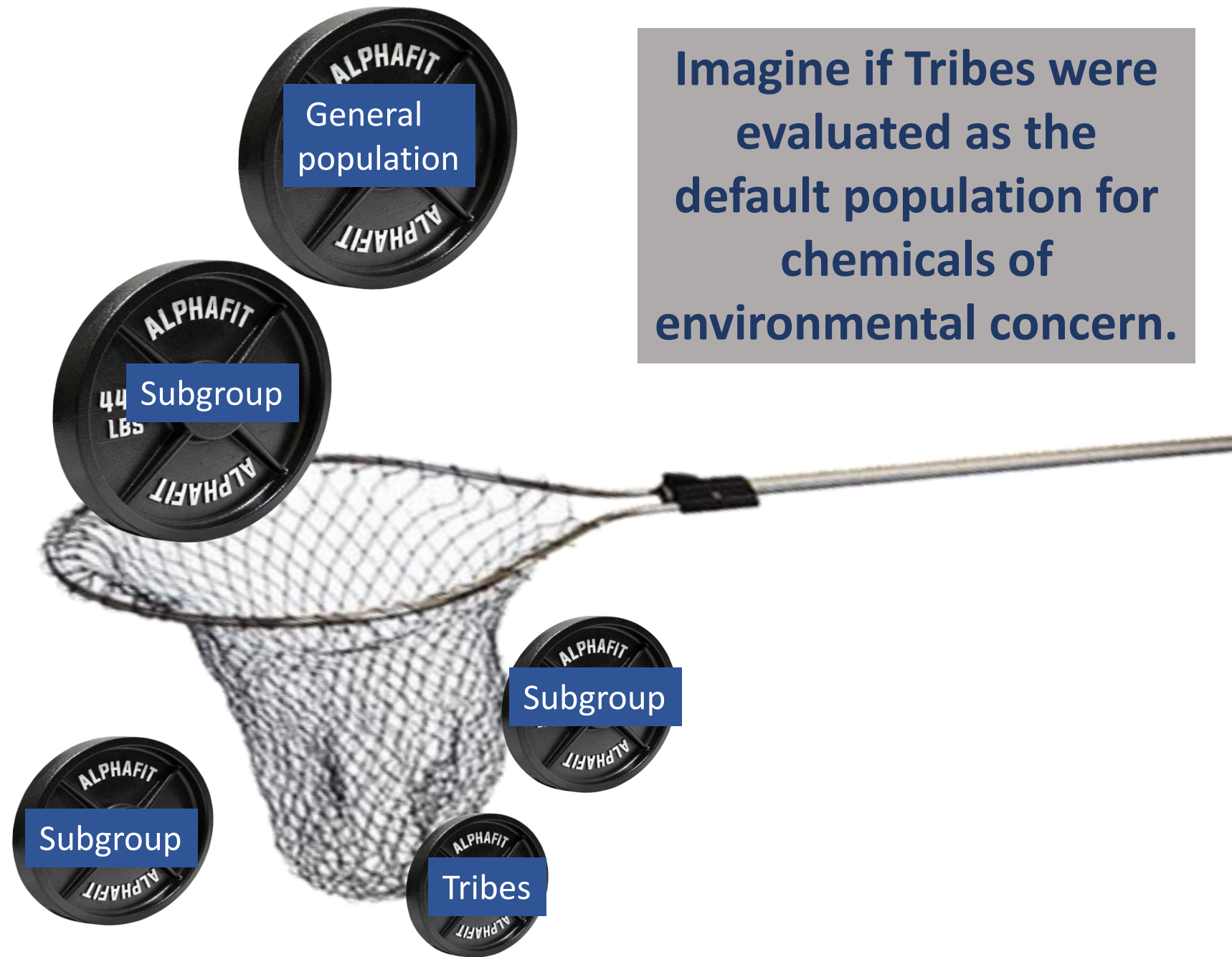
Protecting all people with one risk evaluation.

Protecting the general population is not protecting the full population.

But evaluating the risk for each additional subgroup is another "weight" of effort, time, and money.

Capturing risks for everyone may not be feasible. This is the existing framework.

Imagine if Tribes were evaluated as the default population for chemicals of environmental concern.



MIIGWECH

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