



July 26, 2021

VIA ELECTRONIC SUBMISSION

The Honorable Michael S. Regan
Administrator
Environmental Protection Agency
Washington, DC 20460

Re: Addition of 1-Bromopropane to Clean Air Act Section 112 HAP List (Docket ID No. EPA-HQ-OAR-2014-0471)

Dear Administrator Regan:

On June 11, 2021, the Environmental Protection Agency (EPA) published an advance notice of proposed rulemaking (ANPRM) titled “Addition of 1-Bromopropane to Clean Air Act Section 112 HAP List.”¹ In this ANPRM, EPA solicits information to better understand the regulatory implications of listing 1-bromopropane (1-BP) to the list of Hazardous Air Pollutants (HAPs) and to aid in promulgation of necessary amendments to National Emission Standards for HAPs (NESHAPs). This letter constitutes the Office of Advocacy’s (Advocacy) public comments on the proposed rule.

Advocacy is concerned that there are two simultaneous efforts within EPA to address health and environmental risks posed by air emissions of 1-BP from industrial sources: the listing of 1-BP as a HAP, and risk management of 1-BP under the Toxic Substance Control Act (TSCA). While Advocacy recognizes that these efforts fall under two different statutes, with different sets of requirements, EPA should engage in a single coordinated rulemaking, to minimize the complexity and cost of compliance for small entities and to avoid unintended consequences.

I. Background

A. The Office of Advocacy

Congress established Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA); as such the views expressed by Advocacy do not necessarily

¹ 86 Fed. Reg. 31225 (June 11, 2021).

reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),² as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁴ The agency must include, in any explanation or discussion accompanying the final rule's publication in the *Federal Register*, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁵

B. Listing of 1-BP as a HAP

On June 18, 2020, EPA issued a final Federal Register notice granting petitions to add 1-BP to the Clean Air Act (CAA) list of HAPs. The CAA requires EPA to regulate emissions of all HAPs from industrial sources, so EPA is now proceeding with rulemaking to add 1-BP to the list and amend its NESHAP regulations to include 1-BP. However, the NESHAP program is decades old and numerous regulations exist that could be impacted by the addition of a new HAP.

On June 11, 2021, EPA published an ANPRM to solicit information to identify and evaluate the regulatory impacts of adding 1-BP to the HAP list. In addition to the information necessary to develop NESHAP amendments that specifically targets 1-BP, EPA wants to know about the consequences for compliance with the existing NESHAPs. These could include more sources being subject to an existing NESHAP, because adding 1-BP to the total HAP volume for a source would exceed the threshold to become a major source. EPA also suspects that some sources will have to change their compliance strategies for existing NESHAPs, because, for example, 1-BP had been a less-regulated substitute for a HAP.

C. Management of 1-BP under TSCA

EPA evaluated 1-BP under the amended Toxic Substances Control Act (TSCA) and completed the final risk evaluation in August 2020.⁶ The final risk evaluation identified unreasonable risks to workers, occupational non-users, consumers, and bystanders from 1-BP exposure. EPA did not find unreasonable risks to the environment or the general population from the evaluated uses of this chemical. However, EPA did not evaluate risk to the general population from ambient air, finding that "risk from emissions to the ambient air of 1-BP could be eliminated or reduced to a

² 5 U.S.C. §601 et seq.

³ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

⁴ Small Business Jobs Act of 2010 (PL. 111-240) §1601.

⁵ *Id.*

⁶ EPA Office of Chemical Safety and Pollution Prevention, "Risk Evaluation for 1-Bromopropane (n-Propyl Bromide)," EPA Document #740-R1-8013 (August 2020), available at https://www.epa.gov/sites/default/files/2020-08/documents/risk_evaluation_for_1-bromopropane_n-propyl_bromide.pdf.

sufficient extent by actions taken under the CAA.”⁷ The next step in the process required by TSCA is to address the identified risks through risk management in rulemaking, with a proposed rule due by August 2021.

However, on June 30, 2021, EPA announced a change in its policy regarding exposure pathways that could be addressed under other statutes, such as the CAA.⁸ EPA now intends to conduct a screening analysis to determine whether there is a “potential for unreasonable risk to fenceline communities associated with air and water exposure. . . if the agency finds through the application of the screening-level approach that there may be unreasonable risk to these communities that cannot be addressed without supplementing the risk evaluation or through the risk management approaches the agency is already considering, EPA will conduct a more comprehensive exposure assessment of fenceline communities and supplement the risk evaluation for that chemical with the new information.”⁹ With its commitment to make the screening analysis approach available for public comment and subject to peer review, it is uncertain when EPA would take regulatory action on the risks presented by 1-BP.

D. Coordination of Risk Management Actions among TSCA and other statutes

Under TSCA Section 9, EPA is required to coordinate its actions under TSCA with its actions under other statutes that are administered by the agency.¹⁰ Specifically, if EPA “...determines that a risk to health or the environment associated with a chemical substance or mixture could be eliminated or reduced to a sufficient extent by actions taken under the authorities contained in such other Federal laws, the Administrator shall use such authorities to protect against such risk...” unless EPA determines that it is in the public interest to protect against the identified risks under TSCA.¹¹ Moreover, TSCA provides that the public interest determination should be made based on all relevant aspects of the identified risks and a comparison of estimated costs and efficiencies of the action to be taken under TSCA and the other statute.¹²

II. Advocacy recommends EPA promulgate one rule under both TSCA and CAA.

Advocacy is concerned that EPA is engaged in multiple pathways towards regulation of the same entities to address the same risks.

A. There is no bright line between risk management measures to address ambient air and those to address other exposure pathways.

When EPA establishes a NESHAP, it reviews all aspects of the facilities that may contribute to air emissions. Most NESHAPs are written to apply to the emissions from specific pieces of

⁷ *Id.* at 59.

⁸ EPA, “EPA Announces Path Forward for TSCA Chemical Risk Evaluations,” Press Release (June 30, 2021), available at <https://www.epa.gov/newsreleases/epa-announces-path-forward-tsca-chemical-risk-evaluations>.

⁹ *Id.*

¹⁰ 15 U.S.C. § 2508(b)

¹¹ 15 U.S.C. § 2508(b)(1)

¹² 15 U.S.C. § 2508(b)(2)

equipment rather than as a performance standard for total emissions. Therefore, although the purpose of the NESHAP is to limit pollutants in the air outside of a facility, the result is often emission controls that reduce chemical concentrations within the facility and thus reduce risk through exposure pathways not specifically targeted by the NESHAP.

For example, in 40 CFR Part 63 Subpart HHHHHH National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources, EPA requires “[s]pray booths and preparation stations used to refinish complete motor vehicles or mobile equipment must be fully enclosed with a full roof, and four complete walls or complete side curtains, and must be ventilated at negative pressure so that air is drawn into any openings in the booth walls or preparation station curtains.”¹³ Although the primary purpose of this NESHAP provision is to reduce air emissions from surface coating operations, this provision will also reduce exposure to HAPs for employees, occupation non-users and bystanders.

Advocacy believes that EPA must be cognizant of this crossover between the provisions of the NESHAPs and the effects on health targeted by TSCA. EPA should explicitly take into consideration any risk reduction due to changes in the NESHAP in its TSCA rulemaking for 1-BP.

B. EPA should evaluate the need for risk management measures under TSCA after considering the impact of the listing of 1-BP as a HAP.

EPA recognizes that listing of 1-BP as a HAP will have immediate consequences. One of those consequences will be the need for EPA to issue revisions to existing NESHAPs to account for 1-BP emissions. In recent years, when EPA sets a NESHAP for a source for the first time, it interprets the statute to require an initial minimum stringency for major sources that is set based on the best performing sources within the subcategory. EPA has considered this to be a nondiscretionary duty. For this reason, Advocacy expects EPA would issue technology-based revisions to existing NESHAPs to account for 1-BP.

Listing of 1-BP may also have other impacts that are likely to reduce 1-BP exposures. It is possible that adding 1-BP emissions to the total HAP emissions would push a facility above the threshold to become a major source, which would be a powerful incentive to reduce 1-BP emissions. Other businesses that used 1-BP as a substitute for other chemicals because it wasn't regulated as a HAP will have an incentive to find other solutions, even in the absence of changes to the NESHAPs related to 1-BP.

For these reasons, Advocacy recommends that EPA evaluate the effects of the changes to the NESHAP program due to the listing of 1-BP before developing risk management measures under TSCA to address any relevant unreasonable risks for this chemical. TSCA Section 9 supports this approach. It requires EPA to determine whether these actions under the CAA for 1-BP would eliminate or reduce the risk from 1-BP “to a sufficient extent” before taking risk management actions under TSCA.

¹³ 40 C.F.R. 63.11173(e)(2)(ii).

C. EPA should issue a single rulemaking to cover 1-BP exposures from sources subject to the NESHAP.

Due to previously discussed administrative actions, EPA is now obligated to regulate 1-BP under the CAA and TSCA. Although these two statutes are structured differently and impose different requirements for rulemaking, regulations under both statutes are likely to focus on similar work practices, equipment, and emissions controls, especially now that EPA has announced its intent to consider under TSCA exposures through the air at the fence line.

For major sources, the overlap between the two statutes is unavoidable. With respect to area sources, if EPA intends to address air emissions of 1-BP using its authority under TSCA, EPA should set no standards for area sources under the NESHAP. Alternatively, if EPA sets a standard for area sources under the NESHAP, it should avoid setting additional standards under TSCA for area sources.

As stated above, Advocacy believes EPA should be considering the impact of listing 1-BP as a HAP before determining the need for additional risk management measures. However, setting two overlapping sets of standards on the same facilities, separated by a few months or a few years is too likely to produce two separate rulemakings that are inconsistent, even in the best of circumstances. For example, when EPA was engaged in revisions of the CAA new source performance standard for municipal solid waste landfills, some inconsistencies with the NESHAP for the same sources were not identified until after the final rule. Even if the two rulemakings were consistent after the fact, small businesses would not be able to rely on amendments to the NESHAP to make decisions about operations and compliance since the uncertainty about the outcome of the TSCA rulemakings would be too great. In the worst-case scenario, they would engage in compliance strategies under the NESHAP that EPA would then prohibit or make cost-prohibitive in a TSCA rulemaking.

For these reasons, EPA should issue a single rule that satisfies the requirements of both statutes to ensure consistency between programs and minimizes the cost and complexity of compliance.

EPA has engaged in this kind of coordination before and, in the most notable case, across Federal agencies. EPA and the Department of Transportation (DOT) collaborated on the setting of fuel economy standards for passenger vehicles in 2012 and then again in 2020, even though DOT sets its Corporate Average Fuel Economy standards following the Energy Policy and Conservation Act of 1975 and EPA set greenhouse gas emission standards under the CAA. EPA and DOT published a single rule that covered both programs. This action reassured industry that the Federal government had fully considered the effects of these two different programs and designed a regulatory system that satisfied both. This made it possible to plan future business operations and compliance strategies with significantly less uncertainty.

Advocacy therefore strongly recommends that EPA issue a single rulemaking in which it amends the NESHAPs to cover 1-BP emissions and fulfills its obligation to address the unreasonable risk of 1-BP.

III. Conclusion

EPA is engaged in two rulemakings under different statutes that have similar goals, reductions of 1-BP exposures, and will impact many of the same facilities, industrial users of 1-BP. To minimize the total cost of compliance to small businesses and eliminate the complexity of having to follow two different sets of regulations addressing the same equipment and same emissions, EPA should promulgate a single regulation to satisfy both statutes.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel Dave Rostker at (202) 922-6091 or by email at david.rostker@sba.gov.

Sincerely,

/s/

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Copy to: Sharon Block, Acting Administrator
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