

July 26, 2021

Administrator Michael S. Regan
Penny Lassiter, Director, Sector Policies and Programs Division, OAQPS
U.S. Environmental Protection Agency

Docket ID No. EPA-HQ-OAR-2014-0471

Comment filed via regulations.gov and email to a-and-r-docket@epa.gov

Comment regarding: Advance Notice of Proposed Rulemaking; Comment Request; Addition of 1-Bromopropane to Clean Air Act Section 112 HAP List; 86 Fed. Reg. 31,225 (June 11, 2021)

Dear Administrator Regan and Ms. Lassiter:

The undersigned Commenters call on EPA to fulfill its commitment to list 1-bromopropane (“1-BP”) as a hazardous air pollutant (“HAP”) by December 31, 2021, and take all necessary steps to regulate this dangerous chemical as expeditiously as possible. Groups submitting these comments include California Communities Against Toxics, GASP (Greater-Birmingham Alliance to Stop Pollution), Sierra Club, and Earthjustice.

While Commenters support EPA’s overdue decision to add 1-BP to the HAP list by the end of this calendar year, listing is only the first step toward securing protections for the communities living near 1-BP-emitting facilities. EPA must therefore issue strong rules that ensure those facilities take prompt action to control and monitor emissions of this new HAP.

The core purpose of the Clean Air Act is “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare.” 42 U.S.C. § 7401(b)(1). In 1990, Congress amended the Act to address, among other things, the unacceptably slow pace of air toxics regulation. *See* S. Rep. 101-228, at 127, 1990 U.S.C.C.A.N. at 3513 (“The law has worked poorly. In 18 years, EPA has regulated only some sources of only seven chemicals.”). As part of the 1990 Amendments, Congress created an initial list of more than 180 hazardous air pollutants, giving EPA a “clear statutory obligation to set emission standards for each listed HAP.” *Nat’l Lime Ass’n v. E.P.A.*, 233 F.3d 625, 634 (D.C. Cir. 2000), *as amended on denial of reh’g* (Feb. 14, 2001).

The 1990 Amendments required EPA to identify all categories and subcategories of industrial facilities that emit the air pollutants on the HAP list (“source categories”). *See* 42 U.S.C. § 7412(c). *See* 42 U.S.C. § 7412(c). For each source category, the Amendments directed EPA to set emission standards that regulate all the HAPs emitted by facilities within each source category. *See* 42 U.S.C. § 7412(d). The agency must review those standards at least once every eight years, to account for developments within an industry that might necessitate strengthening standards for all facilities within that source category, § 7412(d)(6), and to ensure that the standards sufficiently protect public health, § 7412(f).

Congress established the HAP list with the explicit expectation that EPA would revise the list from “time to time” and consider petitions to add new pollutants brought by members of the public. *See* 42 U.S.C. § 7412(b)(2); § 7412(b)(3). On June 18, 2020, EPA granted a petition to add 1-BP to the HAP list, the first new pollutant to be added to the list since the passage of the 1990

Amendments. Once EPA formally adds 1-BP to the HAP list, it must identify all source categories newly subject to regulation for emissions of the pollutant and establish emission standards for the same. For any existing source category, EPA is also required—as part of its regular eight-year review under § 7412(d),(f)—to establish emission standards for the new HAP. *Louisiana Env'tl. Action Network v. EPA*, 955 F.3d 1088, 1096 (D.C. Cir. 2020) (“the Act requires EPA to have in place emission standards to control all the listed pollutants that a source category emits, and requires the Agency to revise existing standards that are underinclusive to add section 112(d)(2)-(3) controls for listed but unaddressed pollutants.”).

Commenters welcome EPA’s decision to gather information about the anticipated impacts of listing 1-BP through an Advance Notice of Proposed Rulemaking (“ANPRM”). That said, the proposed revisions to the General Provisions and other rule amendments discussed in the ANPRM are not prerequisites for listing. The statute is clear that when EPA grants a petition to add a pollutant to the HAP list, it must list the pollutant. *See* 42 U.S.C. § 7412(b)(3)(B) (stating that EPA “shall add a substance to the [HAP] list upon” making an adverse effects finding). Listing of 1-BP is already long overdue. Thus, the information EPA gathers through comments on the ANPRM may not be used to further delay listing.

Facilities that emit 1-BP have been on notice that they should take steps to address this pollutant for years—more than ten years since the submission of petitions to add 1-BP to the HAP list and one year since those petitions were granted. Accordingly, Commenters caution against the adoption of an overly lengthy compliance timeline for facilities immediately impacted by the listing. On the contrary, EPA should prioritize the health and safety of communities living near these polluting facilities and utilize all available tools to curb emissions of this harmful chemical.

Commenters also urge EPA to review and consider these specific comments as the agency prepares to list 1-BP by the end of this calendar year.

Environmental Justice Considerations

Many 1-BP-emitting facilities, including some of the largest emitters, are located in and around mostly Black and Brown communities that are already surrounded by polluting industries and other environmental hazards. Effective regulation of 1-BP would make a real difference to the residents of these communities and should be a major environmental justice priority for EPA.

One major emitter, American Cast Iron Pipe Company, which has reported over 10,000 pounds of 1-BP emissions each year since 2016, is located in a predominantly Black community in north Birmingham, Alabama. The neighborhoods in the area are dotted with industries such as coke oven plants, steel producing facilities, quarries, and asphalt production plants. Decades of industrial pollution and contamination led EPA to declare part of north Birmingham a Superfund site in 2014. A significant proportion of residents living within a mile of the facility identify as low-income and/or older than 65, demographic indicators of vulnerability to negative health outcomes resulting from air pollution.

Another heavy emitter, American Tubing Arkansas LLC, sits in a predominantly Hispanic/Latinx and majority low-income community in Springdale, Arkansas. This facility reported 78,600 pounds of 1-BP emissions in 2019. The facility’s surrounding neighborhoods

include many grade schools and daycare centers, reflecting the population's high proportion of young children—who are also particularly sensitive to the effects of air pollution.

Compliance Considerations

EPA has called for comments on the appropriate compliance timeframe for facilities immediately impacted by the listing of 1-BP.

1. The Clean Air Act does not permit EPA to provide additional time for compliance with existing emission standards or regulations. Facilities must be ready to comply with any regulatory consequences of listing on day one.

First, Section 112 of the Clean Air Act does not provide additional time for compliance for sources affected by the addition of a new pollutant to the HAP list, but it does provide additional time for compliance in other circumstances, confirming that Congress did not authorize EPA to provide additional time after adding a new HAP. Several provisions in the statute address compliance timelines for new or existing sources affected by a new “emission standard, limitation or regulation” promulgated under Section 112. *See* Clean Air Act § 112(i)(1) (providing that new sources constructed or reconstructed “[a]fter the effective date of any emission standard, limitation, or regulation under subsection (d), (f) or (h)” must generally comply upon startup); Clean Air Act § 112(i)(3) (providing that existing sources subject to a new “emission standard, limitation, or regulation promulgated under this section and applicable to a source” must comply with compliance dates set by the Administrator for each source category, “which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard.”). Because the listing of a new HAP pollutant is not a new “emission standard, limitation, or regulation,” these compliance provisions do not govern the obligations of new or existing sources impacted by the listing itself. *See, e.g.*, 42 U.S.C. § 7602 (defining “emission standard” and “emission limitation”). Congress chose not to include similar compliance timelines for new or existing sources impacted by listing of a new HAP, which reflects Congress's determination that any compliance obligations caused by listing a new HAP should be effective immediately.

Second, EPA's own regulations mandate that for “an area source that otherwise would be subject to an emission standard or other requirement established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source, such source shall be subject to the relevant emission standard or other requirement.” 40 C.F.R. § 63.6(a)(2). Thus, major source standards are immediately applicable to any source that is considered an area source (including any so-called synthetic minor source) prior to the listing of 1-BP, where the inclusion of 1-BP in the source's emissions brings its HAP emissions above the major source threshold.

Third, the listing of 1-BP and associated regulatory obligations should come as no surprise to potentially impacted facilities, which have been afforded ample time to prepare for this eventuality. Not only was the petition to list 1-BP filed more than ten years ago, and granted just over a year ago, EPA has announced its intention to list six months in advance. There is, therefore, no practical reason that these facilities should not already be preparing for new obligations

triggered by the listing of 1-BP, and no justification for lack of readiness to comply by the date of listing.

2. Alternatively, should EPA decide to provide additional compliance time through rulemaking, Commenters favor an amendment to the General Provisions—specifically 40 C.F.R. § 63.6—including amendments to each subpart of Part 63 affirming the application of that provision to every affected source category. Commenters believe that an amendment to the General Provisions would be the most straightforward and efficient way to ensure that sources adapt to the listing of 1-BP, and any future additions to the HAP list, as quickly as possible. Introducing a blanket compliance period for all affected sources is also preferable to EPA making individualized determinations for each source category affected by a new listing. A category-by-category approach is likely to result in a more drawn-out process, adding further delay to EPA’s progress toward meaningfully limiting 1-BP emissions.

In determining an appropriate compliance timeline for sources affected by a new HAP listing, EPA must heed its responsibility to obtain compliance “as expeditiously as practicable.” Clean Air Act § 112(i)(3). The agency should consider the time frames provided in the General Provisions for sources to demonstrate compliance with new emission standards—90 days for sources subject to new 112(f) standards, and up to three years for sources subject to new 112(d) or (h) standards. Area sources that increase their emissions to major source levels must ordinarily comply with applicable major source standards immediately, and at most within three years of reclassifying as a major source. *See* 40 C.F.R. § 63(c)(5). In evaluating the compliance timeline options from immediate to a maximum of three years, EPA should err as close as possible to the immediate compliance end of the spectrum, considering the risk posed by a new HAP and the full range of technical options for achieving compliance.

Finally, in the interest of transparency, EPA should publish the list of NESHAP the agency has reviewed in the course of assessing 1-BP’s impact on compliance requirements and place it in the docket.

Enforcement Considerations

As the agency considers how best to implement the listing of a new HAP into the existing regulatory structure of Section 112 and other air pollution provisions, EPA should consult with Office of Enforcement and Compliance Assurance staff to ensure that the agency creates rules that (1) are designed to assure compliance; (2) include necessary reporting to EPA, state air permitting agencies, and to the public; and (3) include monitoring.¹

With respect to 1-BP specifically, EPA should make public the list of facilities the agency believes will be affected by the listing of 1-BP and place it in the docket. The agency should require those facilities to—within 90 days of the effective date of listing—submit to the agency an initial report that includes, at a minimum, the following information:

- Name and address of owner or operator;

¹ *See* Cynthia Giles, Next Generation Compliance: Environmental Regulation for the Modern Era (Sept. 10, 2020), <https://eelp.law.harvard.edu/2020/09/next-generation-compliance-environmental-regulation-for-the-modern-era/>.

- Address of affected source;
- An identification of the relevant standard, or other requirement that is affected by the listing and is the basis of the notification;
- A brief description of the nature, size, design, and method of operation of the source and an identification of the types of emission points within the affected source subject to the relevant standard;
- The source's current known 1-BP emissions;
- The source's current known emissions of any other HAPs;
- The source's potential to emit 1-BP and/or other HAPs;
- The method the source used to determine its emissions, and whether this method included emission testing, air monitoring, or estimates (and if estimates, what factors or parameters were used to estimate the emissions);
- A statement of whether the affected source is an area source or a major source and if a major source, whether the listing caused the source to reclassify as a major source;
- A statement of whether the listing impacted the affected source's compliance status with respect to any previously applicable NESHAP and/or newly applicable NESHAP; and
- The steps taken by the affected source to verify and/or effect compliance with all applicable NESHAP.

This initial report should be made public on EPA's website. Any new regulatory obligations resulting from the listing of 1-BP should be reflected in any ongoing Title V permitting reviews. And EPA should notify EPA regions and state/local air permitting authorities and local communities near all existing 1-BP sources of the impending regulations, provide information on which standards and permits should be changed and on what timeline, and give communities the opportunity to participate in notice-and-comment on these actions.²

Updates to Emission Standards to Control 1-BP

Although the listing itself may cause some sources to reduce their use of 1-BP or implement other control measures to reduce total facility HAP emissions, meaningful reductions from the heaviest emitters will require EPA to set emission standards targeting 1-BP specifically. EPA must therefore prioritize setting technology-based standards for all source categories that emit 1-BP and immediately incorporate 1-BP into ongoing and upcoming risk and technology reviews. *See Nat'l Lime Ass'n*, 233 F.3d at 634 (Clean Air Act § 112 requires EPA to set emission standards for all

² *See, e.g.*, EPA OIG, Management Alert: Prompt Action Needed to Inform Residents Living Near Ethylene Oxide Emitting Facilities About Health Concerns and Actions to Address Those Concerns (Mar. 31, 2020), https://www.epa.gov/sites/production/files/2020-03/documents/epaig_20200331-20-n-0128_0.pdf.

listed HAPs); *Louisiana Env'tl. Action Network*, 955 F.3d at 1096 (During Section 112(d)(6) review, EPA must set limits on any HAPs that are missing limits).

As EPA acknowledged in its Petition Grant, a substantial number of 1-BP emitters are in the Halogenated Solvent Cleaning source category, 40 C.F.R. § 63, Subpart T.³ Because the current emission standards for Halogenated Solvent Cleaners apply only to sources that use solvents containing methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethylene, carbon tetrachloride, or chloroform, the listing of 1-BP, alone, would not result in the reduction of 1-BP emissions from this source category. That said, the design, technology, and work practice control measures prescribed in those existing standards can reasonably be expected to reduce 1-BP emissions when deployed by sources that use 1-BP as a cleaning solvent. Accordingly, amending these emission standards to encompass controls for 1-BP should involve fairly straightforward changes. Commenters also note that EPA's reconsideration of Clean Air Act § 112(f) standards for Halogenated Solvent Cleaners has been pending since 2008. The agency should use the listing of 1-BP as an opportunity to finally complete its reconsideration process, as well as to conduct a now overdue section 112(d)(6) review, considering "developments in practices, processes, and control technologies" in the industry over the last decade.

In the ANPRM, EPA cited the NESHAP for Dry Cleaning Facilities (40 C.F.R. § 63, Subpart M) as another possible candidate for revision, as the current standard only regulates the use of perchloroethylene in dry cleaning operations.⁴ Commenters support EPA's call for data on actual levels of 1-BP use in the industry, and encourage EPA to make that data available to the public. While 1-BP use in the dry cleaning industry may be declining, due in part to state regulation, EPA must still set standards to control this pollutant and further encourage phaseout.

Because EPA has set a deadline for listing 1-BP, the agency should also immediately incorporate 1-BP into its ongoing risk and technology reviews. For example, EPA should revise its proposed rule on Flexible Polyurethane Foam Fabrication Operations by setting emission standards for 1-BP, as required under the Clean Air Act. The proposed rule fails to address this pollutant at all, nor does it explain the agency's failure to examine data on emissions of 1-BP from sources within the source category.⁵ These shortcomings must be addressed and should not be repeated in other ongoing or future risk and technology reviews.

Data and Information Gathering

While the ANPRM is a first step in gathering information to guide the implementation of new regulatory obligations accompanying the listing of 1-BP, EPA must take a proactive role with respect to data collection and analysis. EPA should use its powers under Section 114 of the Clean Air Act to compel the submission of emissions data from all facilities known through Toxics Release Inventory reporting to be emitting 1-BP. The agency should also examine its Chemical

³ See Notice, Granting Petitions To Add 1-bromopropane (Also Known as 1-BP) to the List of Hazardous Air Pollutants, 85 Fed. Reg. 36,851, 36,854 (June 18, 2020).

⁴ See Advance Notice of Proposed Rulemaking, Addition of 1-Bromopropane to Clean Air Act Section 112 HAP List, 86 Fed. Reg. 31,225, 31,232 (June 11, 2021).

⁵ See Comments by Sierra Club and Earthjustice, Proposed Rule, NESHAP: Flexible Polyurethane Foam Fabrication Operations Residual Risk and Technology Review and Flexible Polyurethane Foam Production and Fabrication Area Source Technology Review, 86 Fed. Reg. 1868 (Jan. 11, 2021), at 4-5.

Data Reporting data, consider whether this data corresponds with that collected through the National Emissions Inventory, and take steps to address any gaps or discrepancies. This critical information should guide the agency's determination of whether all sources of 1-BP are covered by existing source categories and whether any new source categories are needed.

Conclusion

Commenters are encouraged by EPA's commitment to list 1-BP by the end of this calendar year. At the same time, listing alone will not alleviate the burden on communities living near facilities that have been emitting uncontrolled amounts of 1-BP for years. Commenters, therefore, urge EPA to press forward with the work of collecting emissions data and promulgating meaningful emissions controls with continued urgency and attention.

Thank you for your time and consideration of these comments.

Sincerely,

Adrienne Y. Lee
Associate Attorney*
Earthjustice
alee@earthjustice.org

Tosh Sagar
Senior Attorney
Earthjustice
tsagar@earthjustice.org

Neil Carman
Clean Air Director
Lone Star Chapter
Sierra Club
Austin, TX
Neil.carman@sierraclub.org

Haley Colson Lewis
Staff Attorney
GASP
haley@gaspgroup.org

Jane Williams
Executive Director
California Communities Against Toxics
Rosamond, California

** Admitted only in New York; not admitted to practice in D.C.; supervised by attorneys admitted in D.C.*