

ENVIRONMENTAL PROTECTION AGENCY

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Lowrey, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery, (5304T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: 202-566-1015; email address: lowrey.daniel@epa.gov.

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I. Public Participation

A. Does this Action Apply to Me?

The Agency is not proposing any regulatory changes at this time. Entities that may be interested in this tentative denial of the rulemaking petition include any facility

that manufactures, uses, or generates as waste any materials containing polyvinyl chloride (PVC) or its components. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. Written Comments

Submit your comments, identified by Docket ID No. **EPA-HQ-OLEM-2022-0971**, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). Please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

II. General Information

A. List of Abbreviations and Acronyms

APA Administrative Procedure Act

CAS Chemical Abstract Services

CBD Center for Biological Diversity

BBP Butyl benzyl phthalate

DBP Dibutyl phthalate

DEP Diethyl phthalate

DEHP Diethylhexyl phthalate

DIDP Diisodecyl phthalate

DINP Diisononyl phthalate

DMP Dimethyl phthalate

DnOP Di-n-octyl phthalate

EPA Environmental Protection Agency

g grams

kg kilogram

L liter

mg milligram

NSF/ANSI Approved American National Standard

ppm parts per million

PVC Polyvinyl chloride

RCRA Resource Conservation and Recovery Act

TCLP Toxicity characteristic leaching procedure

wt% percent by weight

B. What action is the EPA taking?

The EPA is providing notice of and requesting comment on its tentative denial of CBD's 2014 rulemaking petition concerning the regulation of discarded polyvinyl chloride (PVC) and associated chemical additives under the Resource Conservation and Recovery Act (RCRA). With this action, the Agency is publishing its evaluation of the

petition and supporting materials and requesting public comment on the tentative denial.

C. What is the EPA's authority for taking this action?

On July 24, 2014, the Center for Biological Diversity (CBD) petitioned the EPA to list discarded PVC as a hazardous waste under RCRA (“Petition”). The Agency is responding to this petition for rulemaking pursuant to 42 U.S.C. 6903, 6921 and 6974, and implementing regulation 40 CFR part 260.21. Authority for the identification and listing of hazardous wastes is granted pursuant to 42 U.S.C. 6903 and 6921, and implementing regulations 40 CF.R parts 260 and 261.

D. What are the incremental costs and benefits of this action?

As this action proposes no regulatory changes, this action will have neither incremental costs nor benefits.

III. Background

widely based on the desired properties of the final material. Rigid forms of PVC contain little to no plasticizers while more flexible forms require the addition of more plasticizers. Common plasticizers include but are not limited to: di(2-ethylhexyl) phthalate (DEHP, CAS 117-81-7, U028), dibutyl phthalate (DBP, CAS 84-74-2, U069), diethyl phthalate (DEP, CAS 84-66-2, U088), dimethyl phthalate (DMP, CAS 131-11-3, U102), di-n-octylphthalate (DnOP, CAS 117-84-0, U107), and benzyl butyl phthalate (BBP, CAS 85-68-7, on Appendix VIII only) (Carlos, de Jager, and Begley 2018; Hahladakis et al. 2018, 185; @E, 30j0# Pankalla, and Turczyn 2021). Common plasticizers that are not RCRA hazardous constituents include adipates, trimellitates, and other phthalates such as diisononyl phthalate (DINP, CAS 28553-12-0) and diisodecyl phthalate (DIDP, CAS 28761-40-0) (Carlos, de Jager, and Begley 2018; Hahladakis et al. 2018; @E, 30j0# et al 2021).

Typically, plasticizers constitute from zero up to about 50 percent of the product by weight, although higher concentrations have been reported (Carlos, de Jager, and Begley 2018; Hahladakis et al. 2018; Kim et al. 2020; European Commission 2022).

It is difficult to determine the proportion of PVC products that contain plasticizers because PVC manufacturers and PVC product manufacturers are not generally required to report this information. Voluntary data from 2000 indicates about two thirds of PVC is of rigid grades that do not contain significant amounts of plasticizers (Borelli et al. 2005). In the United States, concentrations of certain phthalates are prohibited in some children's products (16 CFR 1307), but no single standard covers all PVC.

B. Summary of the Petitioner's Requested Changes

The EPA has been petitioned to “promulgate regulations governing the safe treatment, storage and disposal of PVC, vinyl chloride and associated dialkyl- and alkylarylestere of 1,2-benzenedicarboxylic acid, commonly known as phthalate

waste, i.e., requiring disposal at a hazardous waste facility, would not change the types of controls required for existing landfills containing discarded PVC.

that led to a new hazardous waste listing in 2002 (Paint) required more than 2 full-time equivalent (FTE) staff for 5 years. In addition, funding to maintain and advance RCRA regulations has been flat or reduced for more than 20 years. By comparison, the number of FTE for the entire hazardous waste listing program in RCRA is currently 1.5. Because of the scope and required analysis, the EPA estimates that the resources required to propose listing discarded PVC as a hazardous waste would require more than 2 FTE over the course of 5 years. Meanwhile, OLEM is currently considering more than 20 petitions, including more than 10 regarding RCRA (<https://www.epa.gov/petitions/petitions-office-land-and-emergency-management>), and is also engaged in rulemaking. Acting on the proposed listing of discarded PVC as a hazardous waste would delay rulemakings that address hazards specifically identified by the EPA where regulating the treatment, storage, transport, or disposal of the hazard would meaningfully improve public health and the environment.

Agencies are generally given significant discretion in setting priorities and determining where the limited resources will be devoted. The Petition does not present evidence that discarded PVC presents a substantial present or potential hazard to human health or the environment when solid waste is improperly treated, stored, transported or disposed of, or otherwise managed. Accordingly, at this time and considering the constraints discussed above, the EPA will not divert limited resources from priority actions for a rulemaking to list discarded PVC as a hazardous waste.

V. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by the EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For

assistance in locating these other documents, please consult the technical person listed under FOR FURTHER INFORMATION CONTACT.

1. CBD. Petition for Rulemaking Pursuant to section 7004(a) of the Resource Conservation and Recovery Act, 42 U.S.C. 6974(A), and section 21 of the Toxic Substances Control Act, 15 U.S.C. 2620, Concerning the Regulation of Discarded Polyvinyl Chloride and Associated Chemical Additives. July 29, 2014.
2. Borelli, F. , de la Cruz, P. , and Paradis, R. 2005. Residual Vinyl Chloride Levels in U.S. PVC Resins and Products: Historical Perspective and Update. *Journal of Vinyl & Additive Technology*, June 2005 65-69. <https://doi.org/10.1002/vnl.20040>
3. Carlos, K. , de Jager, L., and Begley, T. 2018. Investigation of the primary plasticisers present in polyvinyl chloride (PVC) products currently authorized as food contact materials. *Food Addit. Contam. Part A Chem. Anal. Control Expo. Risk Assess.*, 35(6):1214-1222. <https://doi.org/10.1080/19440049.2018.1447695>.
4. @E, 30j0H J., Pankalla, E., and Turczyn, R. 2021. Recent Attempts in the Design of Efficient PVC Plasticizers with Reduced Migration. *Materials (Basel, Switzerland)* 14(4): 844. <https://doi.org/10.3390/ma14040844>.
5. European Commission, Directorate-General for Environment. 2022. The use of PVC (poly vinyl chloride) in the context of a non-toxic environment: final report. Publications Office of the European Union. <https://data.europa.eu/doi/10.2779/375357>.
6. Hahladakis, J., Velis, C., Weber, R., Iacovidou, E., and Purnell, P. 2018. An overview of chemical additives present in plastics: Migration, release, fate and environmental impact during their use, disposal and recycling. *Journal of Hazardous Materials* 344, 179-199. <https://doi.org/10.1016/j.jhazmat.2017.10.014>.

12. United States Environmental Protection Agency. 2022. FY 2022-2026 EPA Strategic Plan. Washington, D.C.: U.S. Environmental Protection Agency, March 2022. Periodical. <https://www.epa.gov/system/files/documents/2022-03/fy-2022-2026-epa-strategic-plan.pdf>.

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