December 23, 2022

Carolyn Hoskinson, Director
Office of Resource Conservation and Recovery
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Mail Code: 5301P
Washington, DC 20460
Hoskinson.Carolyn@epa.gov

Re: Center for Biological Diversity 2014 RCRA Petition to List PVC as Hazardous Waste

Dear Director Hoskinson:

The undersigned associations represent virtually every facet of the US economy; from healthcare to agriculture, from water infrastructure to housing, and all the men and women whose livelihoods depend on the manufacture, use, assembly, and recycling of PVC (Polyvinyl Chloride) products that allow for and enhance our modern way of life. Simply put, the CBD Petition to list PVC as a hazardous waste should be denied as unwarranted[1], unworkable, and counterproductive.

The Petition is Unwarranted

PVC products are safe during use and when discarded.

- PVC pipe is widely used to deliver safe drinking water consistent with federal and state regulations with compliance verified under an independent, third-party certification program administered by NSF International.[2]
- Consistent with regulations and building codes, durable vinyl flooring, wall covering, carpet backing, roofing, windows, doors, decks, and fences are safe to live with and play on.
- The Food and Drug Administration deems PVC medical devices, such as life-saving blood bags, to be safe.

The petitioner claims that these products and many more suddenly become hazardous at the end of their useful lives and are not fit to recycle or be managed as ordinary solid waste. The constituents of concern that are found in some such products have been regulated under

[1] *See 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* (Jul. 24, 2014) Document ID EPA-HQ-OPPT-2014-0684-0002; *see also Proposed Consent Decree, Unreasonable Delay Claim Regarding Discarded Polyvinyl Chloride Listing*, 87 Fed. Reg. 26,351 (May 4, 2022).

[2] https://www.nsf.org/testing/building-construction/plumbing-products/plastic-piping-system-components

the Toxic Substances Control Act (TSCA) for decades; moreover, the vast majority of PVC products do not contain the constituents of concern.

The CBD petition assumes that PVC products will be improperly managed, but none of the information in the petition demonstrates mismanagement of waste in the United States. The agency's 2020 report on solid waste management does not support the Petition's allegation of improper management, but the opposite.[3] Further, the information in the petition has little connection to discarded PVC products.

The Petition is Unworkable

Nevertheless, CBD's 2014 petition asks EPA to reject or ignore the regulatory program it has consistently applied since RCRA's enactment. The CBD requests that discarded PVC products be listed as hazardous waste, even if the discarded products are not deemed hazardous under RCRA regulations and even if the products do not contain the chemicals of concern cited in the Petition. The CBD asserts that the mere presence or possible presence of a substance of concern is sufficient to label all PVC as hazardous waste, rather than the presence of risk. This conflicts with the RCRA constituents' policy, which has served the public interest well, and no workable alternative or criteria have been recommended. Indeed, the constituents on which the petition focus are addressed under both RCRA and TSCA.

As it stands, PVC products are widely used in construction, with applications ranging from water and sewer pipe to siding, windows, and doors, fencing and decks, wire and cable, electrical conduit, wall coverings, irrigation, and roofing. If the agency listed discarded PVC products as hazardous waste, nearly every construction site would need to alter its operations to ensure that discarded PVC products are identified and handled as hazardous waste. While PVC construction products have a long life and are deemed durable goods, all remodeling or demolition work practices would unnecessarily need to be adjusted with separation, management, and transportation appropriate for hazardous waste.

This same scenario would be repeated for most health care settings, from hospitals to doctors' offices, since PVC is widely used to provide safe and necessary services. Similar consequences apply to municipal and private drinking water systems given the wide use of PVC for water pipes, not to mention America's agricultural infrastructure. Granting the CBD's request would create massive disruption and costs without corresponding benefits and would not be a wise use of agency resources given other, more pressing regulatory priorities.

Granting the Petition Would be Counterproductive

---

[3] Advancing Sustainable Materials Management: 2018 Fact Sheet Assessing Trends in Materials Generation and Management in the United States, published in December 2020, reveals improved solid waste management in the United States. https://www.epa.gov/facts-and-figures-about-materials-waste-and-recycling/advancing-sustainable-materials-management

The CBD's Petition is inconsistent with Executive Order (E.O.) 12866, which established criteria for "a regulatory system that works,"[4] and urges agencies seeking to promulgate regulations to "assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating."[5] Even without a formal regulatory impact analysis, it is obvious that the requested hazardous waste listing would be a significant regulatory action that would exceed the $100 million annual effect on the economy and trigger multiple aspects of E.O. 12866. Besides the economic and productivity disruptions, the proposed action would conflict with other EPA Office of Resource Conservation and Recovery programs such as the Office's circular economy efforts.[6]

Finally, much has changed since the Petition was initially filed in 2014. EPA is already undertaking comprehensive reviews of the hazardous chemicals discussed in the Petition under the 2016 amendments to TSCA, and Congress has already directed how marine waste should be addressed in 2020 with the enactment of the Save Our Seas 2.0 Act.[7] Moreover, granting the petition and regulating as hazardous waste material that has been demonstrated safe over decades would cause significant disruptions to multiple sectors across our economy, at a time when the post-pandemic recovery remains fragile and vulnerable to other ongoing crises and would undermine implementation of circular economy practices.

For all these reasons, EPA should deny the 2014 CBD Petition to regulate discarded polyvinyl chloride (PVC or vinyl) as hazardous waste.

Sincerely,

American Chemistry Council
Associated General Contractors
Chemistry Council of New Jersey
Chemical Fabrics and Film Association
Chemical Industry Council of Illinois
Chlorine Institute
Flexible Vinyl Alliance
Hydraulic Institute
Leading Builders of America

---

[4] Regulatory Planning and Review (September 30, 1993) 58 Fed. Reg. 51735 (Oct. 4, 1993). See also, Executive Order 13610, Identifying and Reducing Regulatory Burdens, 77 Fed. Reg. 28469 (May 14, 2012); and E.O. 13990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis, 86 Fed. Reg. 7037 (Jan. 25,2021).

[5] E.O. 12866, Section 1(a).

[6] https://www.epa.gov/rcra/epas-office-resource-conservation-and-recovery-orcr

[7] The Frank R. Lautenberg Chemical Safety for the 21st Century Act, Pub.L.114-182 2018 (2016), significantly amended TSCA and required EPA to review all existing chemicals; Save Our Seas 2.0 Act, Pub. L. 116-224 (Dec. 2020). Further, EPA has issued more stringent regulation of PVC through the PVC MACT. *See*, Polyvinyl Chloride and Copolymers Production: National Emission Standards for Hazardous Air Pollutants (NESHAP) - 40 CFR 63 Subparts J & HHHHHHH and 40 CFR 63, Subpart DDDDDD, which include lower limits on residual vinyl chloride monomer. The PVC MACT is under reconsideration by the agency 85 Fed. Reg. 71490 (Nov. 9, 2020).

Louisiana Chemical Association
Massachusetts Chemistry and Technology Alliance
Michigan Chemistry Council
National Association of Manufacturers
National Electrical Manufacturers Association
National Roofing Contractors Association
National Association of Chemical Distributors
National Association of Clean Water Agencies
National Association of Home Builders
New York State Chemistry Council
Ohio Chemistry Technology Council
Plastic Pipe and Fittings Association
PVC Pipe Association
Water and Wastewater Equipment Manufacturers Association
Society of Chemical Manufacturers and Affiliates
Single Ply Roofing Industry
Spay Polyurethane Foam Alliance
United States Chamber of Commerce
Water Systems Council
Vinyl Institute
Vinyl Siding Institute