



August 31, 2017

Organohalogen Flame Retardants Petition; Oral Presentation

Daniel Rosenberg, Senior Attorney

Natural Resources Defense Council

**On the Petition Requesting Rulemaking on
Products Containing Non-polymeric Additive Organohalogen Flame Retardants,
Docket No. CPSC-2015-0022**

Submitted by email to cpsc-os@cpsc.gov

Thank you for this opportunity to testify today in support of the Organohalogen Flame Retardant Petition submitted by Earthjustice, the American Academy of Pediatrics and several other health, environmental and consumer protection organizations.

My name is Daniel Rosenberg and I am a Senior Attorney in NRDC's Health and Environment Program and the Director of NRDC's Toxics and Community Health Project.

Today you will receive compelling testimony from scientists and other experts on the health threats posed by exposure to Organohalogen Flame Retardants, and the need to treat them as a class, and to remove them from specific categories of uses as outlined in the Earthjustice petition. This testimony provides valuable updated information for the Commission, since the previously held hearing in December 2015.

The purpose of my testimony today is to disabuse the Commission of the notion that actions sufficient to protect the public from these toxic flame retardants have been, or are likely to be, taken by EPA in the foreseeable future under the Toxic Substances Control Act (TSCA).

When the Commission previously held a hearing on this petition, TSCA legislation was still being considered and crafted by Congress. However, in June 2016, final legislation to revise TSCA was enacted and signed into law.

Now, approximately 15 months since the revised law took effect, the chances are exceedingly remote that EPA will take any meaningful action to protect the public from organohalogen flame retardants in the foreseeable future. Such action is, at best, years away, and truly may never happen at all, making it all the more critical for the CPSC to act to protect the public, by granting the pending petition.

While the revisions to TSCA are a potentially positive step toward improving the assessment and regulation of chemicals by EPA, the truth is that the scope and pace of the new law, relative to the

number of chemicals in commerce, is exceedingly modest. For example, under the revised TSCA, EPA was required to identify by December 2016 the 10 “Workplan” chemicals that would be the first to undergo risk evaluation (and potential restriction). EPA met this deadline and identified 10 chemicals only one of which – HBCD -- is a flame retardant. EPA now has approximately 3 years to complete its risk evaluation of HBCD and the other nine chemicals, and then an additional two years in which to propose and adopt any restrictions on HBCD, if the Agency concludes that it poses an unreasonable risk to health or the environment under its conditions of use. A potential restriction imposed by EPA could be delayed from taking effect for up to 5 years after the Agency finalizes the restriction. In short, it could be another decade before any EPA-initiated action to address the health threat posed by HBCD takes effect, and it is uncertain whether EPA will actually take any such action.

After identifying and evaluating the first 10 chemicals, the next major milestone for EPA under the revised TSCA is the end of 2019, at which time the Agency is required to have initiated risk evaluations of the first 20 chemicals deemed “high priority” under the prioritization process mandated under the new law. Each of those 20 high priority chemicals will be subject to a similar statutory timeline as the first 10 Workplan chemicals: 3 years to complete the evaluation, two years to propose and finalize any restriction deemed necessary, and up to 5 years before the restriction may take effect. Thus, for those first 20 High Priority chemicals, the earliest one might reasonably expect to see restrictions in place and in effect is 2025, and 2030 is a more likely estimate. Moreover, there is no reason to assume that one or more organo-halogen flame retardants will be included among the first 20 high priority chemicals. And, even if one or more organohalogen flame retardants is actually selected as one of the first 20 high priority chemicals, it is by no means certain that EPA will choose to evaluate or regulate the organohalogen flame retardants as a class, as the Earthjustice petition asks the CPSC to do.

Although EPA has selected HBCD as one of its first 10 Workplan chemicals for evaluation and potential restriction under the revised TSCA, that is a wholly insufficient basis for the CPSC to choose not to take action under its independent existing authority. HBCD is only one flame retardant, and it is one whose primary use is not in the consumer products for which the petition seeks CPSC action. Rather, most of HBCD’s use is in building materials, a product category not covered by the Earthjustice petition.

Thus, the Commission should reject any suggestion that because EPA is in the very earliest stages of evaluating HBCD, or because a newly revised TSCA is on the books, the CPSC should not grant the petition and take the steps necessary to protect the public from exposure to toxic flame retardants from key product categories.

Although chemical industry advocates would have you believe that the revised TSCA is the “gold standard” for evaluating and regulating chemicals, and therefore no action is needed by the CPSC, the reality is that the new TSCA has several significant limitations and that it is highly unlikely to adequately address the threats posed by toxic flame retardants within any meaningful timeframe. And, while chemical industry advocates may call on the CPSC to withhold from taking action and defer to EPA, there is little doubt that those same advocates will fight tooth and nail to ensure that EPA itself takes no meaningful action to protect the public from toxic flame retardants.

Proof of the chemical industry’s success in preventing meaningful action to address flame retardants under TSCA is the Agency’s continued failure to finalize a Significant New Use Rule (SNUR) for PBDE flame retardants, which was initially proposed in April 2012. The proposed rule would have required notice of new uses of the PBDEs in articles, including furniture, being imported into the U.S. EPA would then have an opportunity to consider whether the use of the PBDEs in imported articles posed an

unreasonable risk to health or the environment. EPA's failure to finalize the Significant New Use Rule means that PBDEs may still be imported in furniture and other articles, without any notice to EPA or the public, and no protection from these additional exposures.

In short, the CPSC cannot and should not pass the buck to EPA, it should grant the petition and take the steps necessary to eliminate the use of non-polymeric additive organohalogen flame retardants from the consumer product categories requested by the petitioners.

Thank you again for the opportunity to speak with you today.