



Flexible Vinyl Alliance

February 13, 2023

Mr. Barry N. Breen
Acting Assistant Administrator
Office of Land and Emergency Management
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Response to Denial of Petition to Classify Discarded Polyvinyl Chloride as Hazardous Waste

Submission to Docket EPA-HQ-OLEM-2022-0971 by the Flexible Vinyl Alliance

Dear Assistant Administrator Breen:

On behalf of the Flexible Vinyl Alliance (FVA) we appreciate the opportunity to comment on EPA's tentative denial of the petition filed by the Center for Biological Diversity (CBD) requesting that discarded polyvinyl chloride (PVC or vinyl) be listed as a hazardous waste under the Resource Conservation and Recovery Act (RCRA).

Flexible Vinyl Alliance

As background, the Flexible Vinyl Alliance is a coalition of companies and trade organizations representing materials suppliers, compounders, formulators, molders, and fabricators/converters who are currently concerned with regulatory and legislative attempts to limit or "de-select" flexible vinyl products in commerce. The FVA provides messaging and advocacy on the proven safety, economy, and utility of flexible PVC, including the relevant plasticizers used to impart function and performance to hundreds of safe and sustainable products. Flexible PVC is a critical and widely used plastic incorporated in a wide range of health care, recreational, military, automotive, building and construction, and packaging applications.

Support for Draft Denial by EPA of January 12, 2023: "Response to Petition to Classify Discarded Polyvinyl Chloride as RCRA Hazardous Waste."

At the outset, allow us to vigorously state FVA's support for the multiple rationales in EPA's recent draft denial as published in the *Federal Register* as *FR Doc.2023-00478*. This support extends not just to the quality of the narrative of the denial, but also to the criticality of the comprehensive twelve supporting endnotes in the denial, which are the bedrock arguments for such a denial, in our view.

Additionally, the lack of scientific rigor in support of several claims in the Petition (as the denial points out) is lacking, as is the prospect of any meaningful positive environmental impact if the Petition were to be implemented. Additionally, the significant federal/EPA cost burdens that would be incurred, in the cause of massive redundancy of effort, is unwarranted. As you note, the current Code of Federal Regulations, augmented by EPA's Strategic Plan, as well as RCRA, *the Clean Air Act (40 CFR 240.205)*, and *Save our Seas*, P.L. 116-224 fully exemplify the **lack** of need for the Center for Biological Diversity petition of 2014.

Supplemental Information: FDA's Safety Assessment of Phthalates in Food Contact

We are also compelled to add another regulatory decision of late, which is germane to the CBD discussion which delves into the safety of phthalates aka "ortho-phthalates," – plasticizers which are often used in flexible PVC products.

Recently, the U.S. Food & Drug Administration denied a petition filed by a collective of environmental groups that sought to de-authorize all phthalates in food contact and food packaging for health/safety reasons.

To that end, and further to the issue of phthalate safety, as it relates to food contact and packaging, the U.S. Food and Drug Administration (FDA), after 6 years of study and deliberation, stated on May 19, 2022: "**... based on the information currently available to FDA, we do not have a basis to conclude that dietary exposure levels from approved ortho-phthalates exceed a safe level...**" ([Source](#): Natural Resources Defense Council, et al.; **Denial of Food Additive Petition; Denial Without Prejudice of Food Additive Petition**)

The FVA fully concurred with that decision made last year by FDA and noted that the FDA decision is aligned with existing conclusions reached by other similar food safety agencies around the world, including the EU,¹ Australia,² UK,³ and Ireland⁴. All these agencies agree, exposures to phthalates in food are low and pose no public health concerns in the diet. Like the U.S. FDA, other countries continue to maintain authorizations for the use of some of these phthalates in food contact applications, including DEHP, DINP, and DIDP.⁵

We hope that the irony of attempting to list PVC as hazardous waste, considering the recent FDA decision which re-affirms the safety of several essential PVC phthalate plasticizers in food contact, is also deemed relevant to **the final and permanent denial** of the 2014 CBD petition.

¹ [Update of the risk assessment of di-butylphthalate \(DBP\), butyl-benzyl-phthalate \(BBP\), bis\(2-ethylhexyl\)phthalate \(DEHP\), di-isobutylphthalate \(DINP\) and di-isodecylphthalate \(DIDP\) for use in food contact materials | EFSA \(europa.eu\)](#)

² [Survey of Plasticisers in Australian Foods \(foodstandards.gov.au\)](#)

³ [Microsoft Word - phthalates statement 04-11.docx \(food.gov.uk\)](#)

⁴ [FSAI publishes results of total diet study](#)

⁵ See COMMISSION REGULATION (EU) No 10/2011

Thank you for your kind consideration of our comments on this important matter to the PVC industry and its constituents.

Sincerely,

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