



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
WASHINGTON, D.C. 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

March 8, 2021

**MEMORANDUM**

**SUBJECT:** No Action Assurance Regarding Prohibition of Processing and Distribution of Phenol Isopropylated Phosphate (3:1), PIP (3:1) for Use in Articles, and PIP (3:1)-containing Articles under 40 CFR 751.407(a)(1)

**FROM:** Lawrence E. Starfield  
Acting Assistant Administrator

**TO:** Michal Freedhoff  
Acting Assistant Administrator  
Office of Chemical Safety and Pollution Prevention

The U.S. Environmental Protection Agency is providing a no action assurance (No Action Assurance) to certain entities that are subject to the Toxic Substances Control Act (TSCA) Section 6(h) Rule that prohibits the processing and distribution of PIP (3:1) and PIP (3:1) containing articles under Section 751.407(a)(1) of EPA's final rule, "Phenol, Isopropylated Phosphate (3:1) (PIP (3:1)); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals under TSCA Section 6(h)," 86 Fed. Reg. 894 (Jan. 6, 2021) (Final PIP (3:1) Rule). This No Action Assurance is being issued in response to your request of March 8, 2021. As explained more fully below, this No Action Assurance establishes that the EPA will exercise its enforcement discretion to not pursue enforcement actions for violations of the prohibitions on processing and distribution of PIP (3:1) for use in articles, and the articles to which PIP (3:1) has been added, outlined at 40 CFR § 751.407(a)(1) and for the requirement in 751.407(d)(2) that records required to be kept under 40 CFR § 751.407(d)(1) contain a statement that the PIP (3:1), or the PIP (3:1)-containing articles, are in compliance with 40 CFR § 751.407(a), for those entities covered by the exercise of enforcement discretion regarding 40 CFR § 751.407(a)(1).

As explained in your request, EPA, as required by statute, issued a proposed rule for regulation of five PBT chemicals, including PIP (3:1), on July 29, 2019, and the final rule was published on January 6, 2021. Since the publication of the final rule, many stakeholders, for example from the electronics and electrical manufacturing community and their customers, have raised significant concerns about the March 8, 2021, compliance date in the final rule applicable to the prohibition of processing and distribution of PIP (3:1) and PIP (3:1)-containing articles. These stakeholders requested an extension of the compliance date in order to clear the existing articles through the supply chain, find and certify an alternative chemical, and produce or import new articles or complex goods that do not contain PIP (3:1).

Your request noted the hardships apparently created by the rule as currently promulgated but which were unknown to EPA until after the rule was published.<sup>1</sup> For example, your request stated that stakeholders in the electronics sector and elsewhere are now identifying the presence of PIP (3:1) in articles where it is used as a flame retardant and plasticizer in plastic components such as PVC wire covers and casings. Other components that have been identified, or are being investigated for the presence of, PIP (3:1) include PVC tubes, harnesses, cables, covers, sleeves, and casings, which include AC power cords and USB cables for consumer and commercial articles such as laptops, TVs, and gaming consoles, as well as internal components of high-tech robotics and manufacturing equipment. Your request indicated that stakeholders have identified PIP (3:1) in components in scanning electron microscopes utilized in research, national laboratories, academia, and manufacturing and electronic components utilized for electronic design and assembly. Other examples provided in your request of the articles impacted by the March 8, 2021 compliance date include: (i) machinery to produce semiconductors, such that the production of semiconductors could be adversely impacted if the machinery cannot be serviced as needed; (ii) critical heating, ventilation, air-conditioning, and refrigeration (HVACR) equipment, which are essential during the pandemic and severe climate events; (iii) a wide range of electronic equipment, ranging from acoustic pianos, to radios, to consumer and commercial projectors, to microscopes and medical devices; and (iv) even the forklifts used to move critical supplies in warehouses. Further, we understand this is only a subset of the articles described in the numerous communications with your office since the Final PIP (3:1) Rule was published.

As the above paragraph indicates, a wide range of key consumer and commercial goods could be affected by the prohibitions to varying degrees, and EPA is being alerted of additional articles every day as stakeholders investigate the presence of PIP (3:1) in their supply chains. The request also highlighted concerns raised by stakeholders that the complexity of international supply chains for complex articles such as those described by stakeholders makes locating the presence of PIP (3:1) in components challenging; in addition, once PIP (3:1) is identified, a suitable alternative or replacement component may need to be tested for industry safety or performance standards. Despite these challenges, a majority of stakeholders are not requesting an exclusion from the restriction. Rather, to avoid significant disruption to the supply chain, they request what in their view would be enough time to identify, replace, and certify the absence of PIP (3:1) in their articles. Stakeholder estimates of the appropriate time frame to accomplish the aforementioned activities range from six months to seven years; however, OCSPP believes 180 days is an appropriate timeframe for the No Action Assurance in order to ensure that the supply chain of these important articles is not interrupted while OCSPP continues to collect the information needed to best inform subsequent regulatory efforts and allow for the issuance of a final agency action to extend the March 8, 2021 compliance date as necessary.

While OCSPP recognizes that allowing articles indicated by industry as containing the chemical PIP (3:1) leaves a PBT chemical in commerce longer than was deemed “as soon as practicable” in the final rule, the request for a compliance deadline extension is in the public interest based on the information stakeholders have provided to EPA that EPA will subsequently further review and verify during the next 180 days. As noted above, and in your request, the processors and distributors for which OCSPP is requesting the application of enforcement discretion serve large swaths of the consumer and industrial market and facilitate the distribution of critical supplies. It would not benefit the general public for these entities to immediately cease the processing and distribution of these articles and disrupt complex supply

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<sup>1</sup> The articles that may be covered by this No Action Assurance include, but are not limited to, electronics, electronic components, electrical equipment and components, home appliances, manufacturing equipment for semiconductors, heavy equipment, offroad vehicles, curtains used in mining applications, military tents, and vehicles that do not qualify as motor vehicles for purposes of this rule.

chains. OCSPP indicated it was clearly not EPA's intent during the development of the rule to have such a broad, disruptive impact. In other words, since the publication of the final rule, industry stakeholder's have indicated that EPA established a compliance deadline that cannot be feasibly complied with as intended.

Additionally, your request indicated the agency's intention to begin developing a final agency action to extend the processing and distribution in commerce compliance dates for these articles as necessary. You indicated that this action should occur no later than 180 days from March 8, 2021.

These extremely unusual circumstances could cause undue hardship as a result of the possible significant disruption of domestic and international supply chains potentially impacted by the prohibition in the final rule. Moreover, because numerous companies and trade associations only commented after the final rule publication that PIP (3:1) is present or may be present in a wide range of articles for industrial and consumer markets in the United States, the final rule potentially has a broad ranging impact that the agency did not intend when finalizing the rule and the March 8, 2021 compliance deadline. In other words, absent industry stakeholder participation in the rulemaking process, EPA established a compliance deadline that cannot be feasibly complied with as intended. To address these extremely unusual circumstances, EPA will exercise its enforcement discretion to not pursue enforcement regarding the prohibition on processing and distribution of PIP (3:1) for use in articles, and PIP (3:1)containing articles, for the following violations:

- Prohibitions on processing and distributing in commerce of PIP (3:1) for use in articles; including in PIP (3:1)-containing articles (*see* 40 CFR § 751.407(a)(1).)
- The requirement in 40 CFR § 751.407(d)(2) that records required under 40 CFR § 751.407(d)(1) must include a statement that the PIP (3:1), or the PIP (3:1)-containing articles, are in compliance with 40 CFR § 751.407(a). This exercise of enforcement discretion applies only to entities covered by the enforcement discretion in the prior bullet regarding 40 CFR § 751.407(a)(1).

I emphasize that this No Action Assurance applies only to the requirements stated above. The exercise of enforcement discretion is conditioned on compliance with all other applicable aspects of the Final PIP (3:1) Rule, including:

- 40 CFR § 751.407(c) Prohibition on releases to water. After March 8, 2021, all persons are prohibited from releasing PIP (3:1) to water during manufacturing, processing and distribution in commerce of PIP (3:1) and PIP (3:1) containing products, and all persons are required to follow all applicable regulations and best management practices for preventing the release of PIP (3:1) and PIP (3:1)-containing products to water during commercial use.
- 40 CFR § 751.407(d) Recordkeeping. (1) After March 8, 2021, persons who manufacture, process, or distribute in commerce PIP (3:1) or PIP (3:1)-containing products or articles must maintain ordinary business records, such as invoices and bills-of-lading, related to compliance with the prohibitions, restrictions, and other provisions of this section. These records must be maintained for a period of three years from the date the record is generated.
- 40 CFR § 751.407(e) Downstream notification.  
(2) Each person who processes or distributes in commerce PIP (3:1) or PIP (3:1)-containing products for any use after July 6, 2021 must, prior to or concurrent with the shipment, notify persons to whom PIP (3:1) is shipped, in writing, of the restrictions described in this subpart.

This exercise of discretion is subject to the following additional conditions:

- Records required to be kept under 40 CFR § 751.407(d)(1) must contain a statement that the PIP (3:1), or the PIP (3:1)-containing articles, are complying with all other aspects of the rule consistent with this No Action Assurance.
- This No Action Assurance is to remain in effect until either (1) 11:59 PM ET, September 4, 2021, or (2) the effective date of a final action addressing the compliance date for the prohibition on processing and distributing in commerce of PIP (3:1); including in PIP (3:1)-containing articles, whichever occurs earlier.
- EPA reserves the right to revoke or modify this No Action Assurance at any time.

Your request notes that protective requirements such as prohibition on release to water and downstream notifications remain in effect. Additionally, this No Action Assurance is appropriate to avoid widespread disruption of critical supply chains, while OCSPP develops a final agency action to ensure the appropriate timeline to prohibit critical complex articles. As such, this application of enforcement discretion will not jeopardize the agency's efforts to ensure the protection of health and the environment under TSCA.

If you have any further questions regarding this matter, please contact Phil Milton of my staff at (202) 564-5029 or [milton.philip@epa.gov](mailto:milton.philip@epa.gov).

cc: Acting Administrator Jane T. Nishida  
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