



February 7, 2023

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 Petition to Classify Discarded Polyvinyl Chloride as RCRA Hazardous Waste; 88 Fed. Reg. 2,089 (January 12, 2023)

Dear Assistant Administrator Breen:

The Window and Door Manufacturers Association (WDMA) is a national trade association representing the nation's leading producers of windows, doors and skylights for domestic and export markets. Our members sell to distributors, dealers, builders, remodelers, homeowners, architects, contractors, and other specifiers in the residential, commercial, and institutional construction markets. WDMA members manufacture high quality products designed and constructed to performance-based standards that provide improved safety, comfort, and energy efficiency, in both new construction and renovation of homes, residential buildings, and other commercial buildings.

On behalf of WDMA and its members, we appreciate the opportunity to comment on EPA's tentative denial of the rulemaking 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). For the reasons set out below, the denial should be finalized and made permanent.

I. WDMA Agrees that the Petition is Unwarranted

WDMA agrees with EPA that CBD failed to provide the necessary evidence that discarded PVC products should be regulated under RCRA. We support the comments filed by the Vinyl Institute demonstrating that CBD has failed to show that discarded PVC products meet the RCRA listing requirements for hazardous waste.

In short, CBD has failed to directly address or demonstrate that discarded PVC products pose a substantial hazard to human health or the environment or that discarded PVC products are being improperly managed in the United States.

EPA's 2020 report on solid waste management does not support the Petition's allegation of improper management, but rather the opposite.¹ Further, the information in the petition has little connection to discarded PVC products.

II. WDMA Agrees that the Petition is Unworkable

In its Federal Register notice, the agency recounts the resources it would need to expend to list PVC as a hazardous waste, why this is unwarranted and how it would preclude the Agency from pursuing more pressing rulemakings, implementation, and reviews with respect to currently identified hazards under RCRA.²

While we defer to EPA on the Agency's assessment of its resources, we agree that 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 more pressing regulatory priorities.

Moreover, CBD is effectively asking EPA to reject or ignore the regulatory program it has consistently applied since RCRA's enactment. At its core, CBD is asking that discarded PVC products be listed as hazardous waste, even if the discarded products are not deemed hazardous under RCRA's hazardous constituents rules, and even if the products do not contain the chemicals of concern cited in the Petition. In other words, CBD asks EPA to announce that the mere presence or possible presence of a substance of concern is sufficient to label all PVC as hazardous waste. Such an approach is inconsistent with the RCRA constituents policy, which has served the public interest well.

Beyond the policy considerations, the CBD's request is unworkable from a practical and logistical standpoint.

¹ 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>.

² 88 Fed. Reg. 2,091.

III. Granting the Petition Would Undermine Current Recycling and Sustainability Efforts

The legislative and regulatory framework for chemical control and waste management have significantly evolved during the eight years 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 the Toxic Substances Control Act (TSCA).

As EPA notes, in 2020, Congress has directed how marine waste should be addressed with the enactment of the Save Our Seas 2.0 Act.³ Granting the petition would regulate as hazardous a material that has been demonstrated safe over decades would cause significant disruptions to our industry and the U.S. economy.

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

Thank you for your consideration of these comments. For any questions, please contact Jacob Carter, WDMA Director of Government Affairs, at jcarter@wdma.com.

Sincerely,



Michael P. O'Brien, CAE
President & CEO
Window & Door Manufacturers Association

³ 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 DDDDDDD, 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).