February 10, 2023

Barry N. Breen
Acting Assistant Administrator
Office of Land and Emergency Management
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Mail Code: 5301P
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:

On behalf of NUCA and our 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).

The National Utility Contractors Association (NUCA) represents represent construction contractors, manufacturers, and distributors who build and maintain a wide range of underground facilities and transportation infrastructure. Member companies provide the manpower and equipment needed to build, repair, and maintain the infrastructure needed for water and wastewater infrastructure, gas distribution, broadband, electric and as well as the nation's surface transportation system. NUCA has over 2,000 member companies across 35 chapters in states and regions across the nation, and as the only nationwide trade association representing the American utility construction industry, NUCA members are uniquely positioned to comment on this petition regarding materials used subsurface utility infrastructure.

NUCA supports the EPA's tentative denial of the aforementioned rulemaking petition submitted by CBD.

For the reasons set out below, the denial should be finalized and made permanent.

I. NUCA Agrees that the Petition is Unwarranted

We agree with EPA that CBD failed to provide the necessary evidence that discarded PVC products should be regulated under RCRA.

PVC plastic is a commonly used material in subsurface utility projects. The attractive characteristics of PVC in this industry include its relatively low price, its resistance to environmental degradation (as well as to chemicals and alkalis), high hardness, and outstanding tensile strength for plastic. PVC pipe is widely available, commonly used, and easily recyclable.

PVC pipes, unlike other piping materials, are resistant to corrosion and flames, require little maintenance, are simple to install, and are inexpensive. Further, these pipes are perfect for a broad variety of applications in utility projects, including the delivery of drinking water, wastewater drainage systems, and even in commercial fire-sprinkler systems.

PVC is widely used in many of our member's subsurface utility infrastructure projects, especially those involving water service distribution lines. PVC pipe is used when replacing hazardous and obsolete lead service lines into residential and businesses in older American cities.

Today, PVC pipe is used to distribute safe and treated drinking water into millions of American homes. PVC is installed using established national code standards and inspected by local building inspectors for safe installation. PVC is one of the safest materials used to deliver drinking water to customers.

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.

Currently, this material can be discarded as surplus to project needs after being used in new construction. New discarded PVC is disposed of using established solid waste management for jobsites. Older PVC pipes discarded as part of a rebuild or refurbishment are similarly disposed of using the same solid waste management processes. There is no special handling performed or currently required when discarding PVC pipe, since it does not pose any known environmental hazard.

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.

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.

II. NUCA 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

[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.

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.

If discarded PVC pipe products are classified as hazardous waste by EPA, it would create significant regulatory risk and new liability exposure for utility construction companies building new water and wastewater infrastructure, as well as demolition subcontractors engaged in removed used or obsolete PVC pipe materials. New hazardous waste regulations would significantly increase construction costs both in materials and labor, impact current waste management processes, and put at risk existing beneficial recycling activities.

NUCA also worries that if discarded PVC plastic pipe is unnecessarily categorized as hazardous waste, it would place into jeopardy current projects to replace a truly dangerous product, obsolete lead water service lines. PVC is used to re-establish water connection into homes after these lead pipes are removed. There are 6.1 million lead service lines that must be replaced, and it is estimated that a majority of them will be replaced by PVC because of this material's ease of use and cost-effective replacement expenses. Other materials would have to be sourced, a task that is already difficult in today's material environment suffering from existing shortages in steel, copper, composite, cast-iron, or other plastic pipes.

EPA should also note that if PVC classification is changed, it would create unnecessary fears against using this inert material in other construction products that contain this material. Replacing one material with another in today's environment of shortages will only exacerbate current supply chain delays found in infrastructure projects seeking to fulfill the Biden Administration's goal of building new water and wastewater infrastructure for American communities.

[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.

It is estimated by the Biden Administration White House that $45 billion will be needed to replace 100% of lead service lines. That cost is assumed using safe and inexpensive materials like PVC will be used for these lines' replacement. Reclassifying PVC as hazardous waste will significantly disrupt those cost estimates and national replacement timeline.

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

Respectfully submitted,

[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 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).