

**Before the United States
Environmental Protection Agency
Methylene Chloride; Commercial Paint and Coating Removal Training,
Certification & Limited Access Program
84 Fed. Reg. 11,466 (March 27, 2019); Docket EPA-HQ-OPPT-2018-0844**

Comments of the Chemical Users Coalition

The Chemical Users Coalition (“CUC”) appreciates the opportunity to provide these comments regarding the U.S. Environmental Protection Agency’s (“EPA”) Advance Notice of Proposed Rulemaking (“ANPRM”) regarding Methylene Chloride; Commercial Paint and Coating Removal Training, Certification and Limited Access Program.

CUC is an association of companies from diverse industries interested in chemical regulatory policy from the perspective of entities that typically acquire and use, rather than manufacture or import, chemical substances.¹ CUC encourages regulators seeking to develop and implement requirements to protect health and the environment to do so in a manner that enables the regulated community’s ability to pursue technological innovation simultaneously with sustainable economic development in the United States. This is particularly important in the area of chemical regulatory policy, which necessarily addresses how core technologies and products can be adapted to address emerging information about health and environmental risk.

CUC has been supportive of the Agency’s efforts to implement the 2016 amendments to the Toxic Substances Control Act (“TSCA”) and appreciates EPA’s considerable efforts to meet the demanding deadlines imposed by the amended law. CUC encourages the Agency to adopt the most practical regulatory measures appropriate to reduce potential risks of exposure to and inadvertent releases of chemical substances. To do so, the Agency should actively consider the full spectrum of regulatory alternatives available to EPA under Section 6 of TSCA. CUC welcomes the Agency’s willingness to consider the use of the proposed Training, Certification and Limited Access Program for the Commercial Use of Methylene Chloride Paint and Coating Removers (the “Training Program”).

In sum, CUC’s comments support EPA’s authority under TSCA Section 6(a) to implement solutions such as the Training Program consistent with its obligations under TSCA Section 9(a) to consult with other federal agencies. Solutions like this can reasonably reduce risks and protect human health and the environment without unnecessarily restricting commercial and industrial uses of chemical substances for which alternatives may not be available or suitable. CUC encourages EPA to consider whether existing hazard communication and worker training programs already in use by industrial users of methylene chloride-containing paint and coating removers are better suited for large scale operations and offer a suitable alternative to certification under the Agency’s proposed Training Program. CUC recommends

¹ The members of CUC are Airbus S.A.S., The Boeing Company, HP Incorporated, IBM Company, Intel Corporation, Lockheed Martin Corporation, and United Technologies Corporation.

the Agency's proposal be more narrowly tailored to address potential risks identified by EPA: specifically, risks that can arise for small businesses and independent contractors who use methylene chloride paint strippers in residential settings, in small or poorly ventilated spaces, and in a manner inconsistent with product labeling and hazard warnings.

I. TSCA Section 6(a) Enables the Establishment of the Training Program.

Section 6(a)(2) of the amended statute enables EPA to prohibit “or otherwise restrict” the manufacture, processing, or distribution in commerce of a chemical substance to ensure that the chemical substance does not present an unreasonable risk to human health or the environment.² Additionally, Section 6(a)(5) allows the Agency to prohibit “or otherwise regulate” the commercial use of a chemical substance.³ The statute calls upon the Agency to impose risk mitigation measures “to the extent necessary” so that a “chemical substance no longer presents” an unreasonable risk, and leaves EPA significant discretion to determine the most suitable regulatory approach for a specific chemical substance. In determining the most suitable regulatory approach, TSCA Section 9(a) requires EPA to consult with other federal agencies to determine whether the risk “may be prevented or reduced to a sufficient extent” under a law not administered by EPA.⁴

CUC is pleased that EPA is considering regulatory alternatives to a complete prohibition on the use of a chemical substance, and CUC believes that the establishment of the Training Program is an appropriate exercise of the Agency's discretion under Section 6 of TSCA. There are certain commercial uses of chemical substances for which there are no viable alternatives. However, there are many practical steps that can be taken to address potential risks, including properly training and educating users of such chemical substances on the best methods to avoid such risks. Establishing and properly implementing worker training and certification programs may be a cost-effective and appropriate mechanism to ensure commercial entities that rely on methylene chloride-containing paint and coating removers may continue to have access to such products while affirmatively implementing measures that are demonstrated to reduce potential risks to human health and the environment—especially small businesses and independent contractors who acquire such products for uses in residential settings and commercial dwellings with small or poorly-ventilated spaces (such as hotels, nursing homes, managed care facilities, and apartments).

CUC also applauds EPA for seeking stakeholder input early in the development of the Training Program. Many commercial users of methylene chloride-containing paint and coating removers already have in place programs to communicate information to employees who may potentially be exposed to these products about the health risks that can be a consequence of over

² 15 U.S.C. § 2605(a)(2).

³ *Id.* § 2605(a)(5).

⁴ CUC reminds EPA of its comments in regard to EPA's TSCA Section 9(a) obligations which were submitted in response to the Agency's December 16, 2016 proposed TSCA Section 6(a) rule governing the use of trichloroethylene in commercial degreasing (Docket EPA-HQ-OPPT-2016-0163). CUC incorporates those prior comments by reference here. The desirability of EPA consultation with other federal agencies is highlighted here by the potential for significant overlap, and possibly conflict, between the workplace standards for methylene chloride promulgated by the Occupational Safety & Health Administration and the training and certification program that is being considered by EPA.

exposure and the protective measures that must be taken in light of these risks. EPA's solicitation of input from stakeholders prior to the establishment of the Training Program will help to ensure that any final Training Program is designed to protect human health and the environment while seeking a practical solution that avoids redundancy for non-residential industrial applications. CUC encourages EPA to seek further input from stakeholders during the development of the Training Program. CUC urges EPA to be particularly purposeful in the establishment of this Training Program, as it may serve as a template for similar programs for other chemical substances that may be regulated under Section 6 of TSCA in the future.

II. Training Program Requirements Should Be Aimed at Smaller Commercial Users, Rather Than Industrial Users with Comprehensive Environmental, Health, and Safety Programs.

Industrial users of methylene chloride-containing paint and coating removers already have in place training programs that cover many of the areas that appear to be within the scope of EPA's proposed Training Program. Through these programs, industrial users provide information to employees about the potential risks associated with exposure to methylene chloride in paint and coating removers, the use of personal protective equipment, and training necessary to review and comprehend a material safety data sheet (SDS). OSHA's methylene chloride standard requires entities that use methylene chloride and methylene chloride-containing products to monitor employee exposures, perform medical surveillance of exposed employees, implement engineering controls, provide personal protective equipment, and comply with employee hazard communication and training requirements.⁵ To comply with the training requirements under OSHA's methylene chloride standard, an employer must inform employees who are working with methylene chloride about the potential risks of exposure to the substance.

EPA recognized in the Training Program ANPRM that "workplaces that have robust environment, safety and health protection programs and are in compliance with OSHA's methylene chloride standard... are likely to address any risks EPA could potentially find to be present from exposure to methylene chloride during commercial paint and coating removal so that they are no longer unreasonable."⁶ CUC concurs with the Agency in its assessment that many larger commercial users of methylene chloride-containing paint and coating removers already have in place environmental, health and safety programs that are as or more protective than the Training Program envisioned by the ANPRM. CUC therefore encourages EPA to focus on developing a training program aimed at smaller commercial users that may not have in place such robust environmental, health and safety programs.

EPA should specifically tailor a final Training and Certification program for small-scale users who work in residential and similar settings in which small spaces with inadequate ventilation can be present. The definition for "commercial use" initially considered in the Agency's proposed TSCA Section 6(a) rule governing methylene chloride-containing paint and coating removers was overly broad and ill-suited for such a narrowly-tailored final rule. That definition would have covered "paint and coating removal performed by an individual,

⁵ 29 C.F.R. § 1910.1052. OSHA's methylene chloride standard applies to all occupational exposures to methylene chloride in general industry, construction and shipyard employment. Generally speaking, the standard applies equally to all employers in those sectors subject to some lessened recordkeeping requirements for small employers.

⁶ 84 Fed. Reg. 11,466, 11,470 (Mar. 27, 2019).

government entity, or company, for which an individual, government entity, or company receives remuneration or other form of payment.”⁷ This definition failed to distinguish between industrial users like some CUC members (who might have dedicated paint-stripping facilities and comprehensive environmental, health and safety programs), and other small business commercial users such as residential painters and independent contractors. CUC urges EPA to revisit this definition and clarify its final program to target the kinds of risks EPA identified with respect to small businesses and independent contractors who acquire such products for uses in residential settings and commercial dwellings with small or poorly-ventilated spaces.

CUC suggests that any final Training Program should distinguish between “industrial” users, who as the ANPRM indicates are likely to have in place comprehensive environmental, health and safety programs, and other “commercial” users, who would be expected to satisfy the contemplated training and certification requirements before they could acquire and use methylene chloride-containing paint stripping products outside of industrial settings. For example, the European Union restricts the use of methylene chloride-containing paint and coating removers by “professional” users unless the use is undertaken in an “industrial installation.”⁸ The regulation defines an “industrial installation” as “a facility used for paint stripping activities,” and requires industrial installations to meet other requirements similar to those imposed by OSHA’s methylene chloride standard—engineering controls to ensure ventilation, employee training, and the provision of personal protective equipment. CUC suggests that EPA adopt an approach similar to that of the European Union, allowing industrial users like certain of CUC’s members to continue commercial use of methylene chloride-containing paint and coating removers while requiring other commercial users that are likely to have less robust environmental, health, and safety programs to participate in the Training Program.

Conclusion

CUC appreciates the Agency’s interest in soliciting public input on the methylene chloride training, certification, and limited access program ANPRM, and would be pleased to meet with EPA personnel to discuss these comments and related issues as the Agency continues to develop the Training Program.

⁷ 82 Fed. Reg. 7,464, 7,530 (Jan. 19, 2017).

⁸ 2010 O.J. (L 86/7) 86/11–86/12.