

**Before the United States
Environmental Protection Agency**

**Methylene Chloride and N-Methylpyrrolidone;
Regulation of Certain Uses under TSCA Section 6(a)
(Docket EPA-HQ-OPPT-2016-0231)**

Comments of the Chemical Users Coalition

The U.S. Environmental Protection Agency recently issued for comment a proposed rule under Section 6 of the Toxic Substances Control Act (“TSCA”), at 82 Fed. Reg. 7464 (January 19, 2017) to restrict the manufacture, processing, distribution, and commercial use of methylene chloride (“MC”) and n-methylpyrrolidone (“NMP”) for certain paint-stripping applications. (Hereinafter, the “MC/NMP Rule”.) This proposed rule raises important precedential issues for the TSCA program, as modified by the Frank R. Lautenberg Chemical Safety for the 21st Century Act (“LCSA”). The Chemical Users Coalition (“CUC”) appreciates the opportunity to provide comments concerning those issues.

CUC is an association of companies from diverse industries that are interested in chemical management policy from the perspective of those who use, rather than manufacture, chemical substances.¹ CUC believes in the importance of aligning protection of health and the environment with the pursuit of technological innovation, two goals that can and must be made compatible if our society is to achieve sustainable economic development. Aligning these goals is particularly important in the area of chemical management policy, which necessarily addresses how core technologies and products should be adapted to address emerging information about health and environmental risk.

CUC supported passage of the LCSA and has a strong, continuing interest in implementation of the new law to assure that it results in an effective and efficient TSCA program. In commenting on the MC/NMP Rule, CUC is focusing on specific statutory interpretations of TSCA and regulatory strategies set forth in EPA’s proposed rule and preamble that may set important precedents for the program. Specifically, these comments address (a) EPA’s interpretation of its Section 9 obligations; (b) the rationale for EPA’s decision to regulate commercial users of MC and NMP; and (c) recommendations for how EPA should implement Section 6(g).

¹ The members of CUC are Intel Corporation, Procter & Gamble Company, American Honda Motor Corporation, Lockheed Martin Corporation, HP Incorporated, IBM Company, The Boeing Company, General Electric Company, and Airbus S.A.S.

1. EPA's Interpretation of Section 9(a) is Inconsistent with the Statute

On December 16, 2016, EPA issued a proposed rule (identified by the Agency as the "TCE1 Rule") to prohibit specific uses of TCE.² CUC filed comments on this proposed rule noting that the preamble provided an inadequate rationale for EPA's decision not to initiate consultation with other agencies under Section 9(a) of TSCA.

In this proposed MC/NMP rule, EPA similarly provides an inadequate explanation for its decision not to initiate Section 9(a) consultation with other agencies. In fact, the basic arguments for the MC/NMP Rule, and in some cases the preamble text itself, are identical to that of the TCE1 Rule on this topic.

Accordingly, CUC is incorporating by reference, and including in this submission on the MC/NMP Rule, the comments filed for the TCE1 Rule. EPA should reconsider its decision under Section 9(a) for the MC/NMP Rule for the same reasons that it should reconsider its decision for the TCE1 Rule.

2. EPA Has Not Established a Reasonable Rationale for Regulating Commercial Users of MC and NMP

Another common issue arising in this proposed rule and the TCE1 Rule is EPA's decision to regulate commercial users of MC and NMP for paint stripping. In the TCE1 Rule, EPA argued that it was necessary to regulate commercial users of TCE because these parties could divert TCE from authorized uses to the uses for which manufacture, processing and distribution had been prohibited. EPA offered no record support indicating that this scenario was likely. The Agency also did not factor into its analysis the fact that Section 15(2) of the statute already prohibits "use for commercial purposes" of a chemical that was manufactured, processed or distributed in violation of a Section 6 rule.

These same flaws are present in the MC/NMP Rule as well. Accordingly, CUC incorporates by reference its comments on this topic from the TCE1 Rule into these comments as further support for its recommendation that EPA reconsider the need for a regulatory ban on commercial use of MC and NMP for paint stripping, which has no independent support in the record and is duplicative of an existing statutory provision.

² 81 Fed. Reg. 91592 (December 16, 2016).

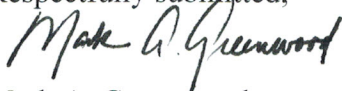
3. EPA's Process for Issuing Individual Section 6(g) Exemptions Should Be Integrated into the Overall Rule and Be Transparent for Exemption Submitters

In the preamble to the proposed rule, EPA explains its rationale for including an exemption for MC and NMP as used in certain military paint-stripping operations, which is authorized under Section 6(g) of the statute. As part of this discussion, EPA also indicates that it “will consider granting additional time-limited exemptions, under the authority of TSCA section 6(g), for a specific condition of use for which EPA can obtain documentation.”³ This preamble discussion further request public comment on “a process for receiving and evaluating petitions” seeking such exemptions.⁴

CUC recommends that EPA's approach to Section 6(g) exemption requests be integrated into EPA's overall approach to the feasibility of alternatives under Section 6(a), Section 6(c) and Section 6(d) in the following manner. First, Section 6(g) exemptions should be adopted in the general Section 6(a) rule for a chemical substance, to the extent feasible. Such an approach is, by far, the most efficient approach to address questions related to the technical and economic feasibility of alternatives, and is fully consistent with the provisions of Sections 6(c) and 6(d), which set expectations for Section 6(a) rules regarding evaluation of alternatives and regarding reasonable transition periods. CUC appreciates that EPA has taken this approach in the proposed MC/NMP Rule for military paint-stripping operations.

Second, if EPA defers decisions on these matters to a future process, EPA has a responsibility to define clearly what specific additional information, besides the information already presented to the Agency during the Section 6(a) rulemaking, would be needed to make these later decisions. Third, the timeline for EPA decision making on exemption requests should not punish the applicants. If, for example, EPA decides that it “may need to develop additional information” as noted in the preamble to the proposed rule⁵, or if EPA receives many exemption requests that may delay its responsiveness, there should be a process in place that tolls the effective date of the Section 6(a) rule to allow for review and decisions on exemption requests. The general Section 6(a) rule, particularly a rule that bans use of the chemical, should not apply to a party that has filed a timely request for an exemption while EPA deliberates on that request.

Respectfully submitted,



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For the Chemical Users Coalition

³ 82 Fed. Reg. 7464 (January 19, 2017) (“FR Notice”), at 7490.

⁴ Id.

⁵ Id.