



July 29, 2024

Clara Hull
Existing Chemicals Risk Management Division
Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Submitted via regulations.gov to EPA-HQ-OPPT-2020-0744

Re: n-Methylpyrrolidone (NMP); Regulation Under the Toxic Substances Control Act (TSCA)

Dear Ms. Hull:

ASC appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA's or Agency's) proposed risk management rule under TSCA Section 6(a) for n-methylpyrrolidone (NMP).¹

The Adhesive and Sealant Council (ASC) is a trade association representing the North American adhesive and sealant value chain. The Council is comprised of 117 adhesive and sealant manufacturers, raw material and equipment suppliers and distributors, and industry consultants, representing more than 75 percent of the U.S. industry. Offering education, legislative advocacy, professional networking, and business growth solutions to its members, the ASC is the center of knowledge and a catalyst for industry growth on a global basis for manufacturers, suppliers, and end-users.

EPA's proposal directly impacts ASC members because the Agency proposes to, as part of its risk management approach for NMP, regulate several conditions of use in our industry:

- Proposed uses subject to a Worker Chemical Protection Program (WCPP).
 - Processing incorporation into formulation, mixture or reaction products in multiple industrial sectors, including, but not limited to: adhesives and sealant chemicals in adhesive manufacturing.
- Proposed prescriptive controls (30% concentration level and PPE) or, alternatively, a WCPP.

¹ 88 Fed. Reg. 51134 (June 14, 2024).

- Industrial and commercial use in adhesive removers (except for mission or safety critical components of aircraft, spacecraft, and vessels owned by the U.S. Department of Defense and NASA. These uses have alternative requirements).
- Proposed prescriptive controls (45% concentration level and PPE) or, alternatively, a **prohibition**.
 - Industrial and commercial use in adhesives and sealants including binding agents, single component glues and adhesives, including lubricant adhesives and two-component glues and adhesives including some resins.
- Proposed prescriptive controls (45% concentration level and PPE) or, alternatively, a WCPP
 - Industrial and commercial use in paint additives and coating additives in construction (including adhesives and sealants used in construction).
- Proposed container limits (16 ounce container limit and labeling) or, alternatively, no regulation.
 - Consumer use in adhesive removers.
- Proposed concentration limit (45%) or, alternatively, a **prohibition**.
 - Consumer use in adhesives and sealants in glues and adhesives, including lubricant adhesives.

This rulemaking should be improved to ensure that it comports with the requirements of TSCA. ASC provides the following comments on EPA's proposed rule.

I. Overall Comments on EPA's Risk Management Approach for NMP in Adhesive and Sealant Conditions of Use

Overall, ASC members support WCPP requirements rather than adopting concentration limits for NMP in products, as some members' products exceed the proposed 30% and 45% concentration limits outlined for the conditions of use above. A WCPP can already adequately address identified risks. Further, EPA has not demonstrated how container size limits are helpful or protective for products with low NMP concentration amounts.

For the exemption EPA proposes for adhesive removers used in mission or safety critical components of aircraft, spacecraft, and vessels owned by U.S. DOD and NASA, ASC also requests that EPA allow for the same use exemption for commercial aerospace markets as well. These markets also use high concentrations for industrial and commercial uses of NMP in paints and coatings and for industrial and commercial uses of NMP in paint, coating, and adhesive removers.

We also support an extension of compliance deadlines across the board (phase outs, WCPP, SDS statements, labels, container sizes, etc.) because these measures will take more time for regulated entities to comply with.

We also recommend EPA add more specificity and further define each condition of use. For some ASC members' uses, it is very difficult to categorize products into the conditions of use described in the risk evaluation and risk management rule due to the complexity of their products and their downstream applications. The proposed rule, risk evaluation, and scoping document do not contain enough information on the definition of a condition of use and how to categorize products accordingly.

II. EPA Should Not Prohibit Uses of NMP in Adhesives and Sealants As Proposed in the Alternative Regulatory Option

As the primary *alternative* regulatory option, EPA proposes to prohibit 1) consumer uses of NMP in adhesives and sealants in glues and adhesives, and 2) industrial and commercial use in adhesives and sealants including binding agents, single component glues and adhesives, including lubricant adhesives and two-component glues and adhesives including some resins. EPA's justification for proposing prohibitions is due to "the severity of the hazards of NMP in conjunction with the limited options available to adequately address the identified unreasonable risks to consumers."² TSCA Section 6(a) requires that EPA prevent "unreasonable" risks of injury to health or the environment "to the *extent necessary*" so that the chemical substance or mixture no longer presents such risks.³ EPA has not demonstrated that it is "necessary" to ban these uses of NMP because the agency, as shown in the proposed rule, believes other measures like concentration limits adequately address risks. EPA should not pursue the proposed alternative regulatory option.

III. In Finalizing a WCPP, EPA Should Ensure the Restrictions Properly Align with OSHA Requirements and are Feasible for Regulated Entities

In finalizing a WCPP, EPA should ensure that the program is feasible for companies and aligns with OSHA requirements as much as possible to prevent confusion and a patchwork of conflicting requirements in the workplace. In terms of coordination with OSHA, Section 9 of TSCA is intended to require EPA to coordinate with other federal agencies when it takes actions on chemical substances to prevent unnecessary and duplicative regulation, thus reducing regulatory burdens. Section 9 reinforces TSCA's original "gap-filling" purpose. Sections 9(a), 9(b), and 9(d) specifically direct EPA to coordinate with other federal agencies when those agencies have the authority to take or have already taken action to address risks, including OSHA.

In the proposed rule, EPA fails to provide an analysis for why OSHA and other federal agencies, or even other EPA authorities, cannot, when considered together, sufficiently mitigate unreasonable risks of NMP. Rather, EPA simply argues that other authorities have differing statutory factors to consider in setting safety standards, and that each individual authority (other than TSCA) only addresses exposures to certain populations, rather than all populations and all exposures under one law. EPA inappropriately assumes that, because other statutes have differing standards, these statutes cannot mitigate unreasonable risks of NMP to a "sufficient extent." EPA therefore concludes that TSCA is the only authority able to address unreasonable

² 88 Fed. Reg. at 51162.

³ 15 U.S.C. § 2605(a) (emphasis added).

risks of NMP. Notably, EPA justifies its reasoning on the basis that it does not know the timelines in which OSHA or other EPA authorities would regulate NMP, while TSCA has an accelerated timeline.

EPA cannot skirt its obligations under TSCA Section 9 to perform the required analysis of each pertinent authority, particularly OSHA's authority, in explaining why it should not defer to other authorities to address unreasonable risks of NMP to workers. EPA's view that one statute should be used to mitigate all risks is contrary to the plain language of TSCA and should not be a substitute for a careful analysis of existing law and regulation.

Additionally, ASC members request a longer phase in period for implementation of the WCPP to give regulated entities enough time to implement the new requirements.

IV. ASC Continues to Oppose the Whole Chemical Approach and No PPE Assumption Used in Risk Determination for NMP

As explained in more detail in our comments in response to EPA's proposed Risk Evaluation Framework Rule,⁴ ASC continues to oppose EPA's approach (now finalized in the Risk Evaluation Framework Rule) to applying the "whole chemical" approach to its risk determinations for chemicals, including NMP. This approach violates Section 6 of TSCA because EPA is making one determination of risk for a chemical "as a whole" rather than for each condition of use, and is resulting in unscientific risk determinations that are based on only certain conditions of use (or even a single condition of use) that supposedly "drive" the unreasonable risk determination. We also disagree with EPA's conclusion that it cannot assume that workers wear sufficient PPE or that EPA should make determinations of unreasonable risk based on scenarios that do not assume compliance with OSHA standards generally. This assumption is inappropriate and does not represent real-world, current workplace safety and health practices. These assumptions result in highly conservative and overly restrictive risk management decisions for NMP exposures.

V. ASC Supports EPA's Proposed *De Minimis* Level for NMP

ASC supports EPA's proposal that products containing NMP at concentrations less than 0.1% by weight would not be subject to the NMP risk management rule. A *de minimis* level is necessary to account for impurities of NMP in products and will aid in implementation of the final rule.

* * *

Our members would be happy to meet with EPA and provide any additional information that may be helpful. We support upholding the rigorous scientific standards that are part of the Lautenberg Amendments and would be happy to make available any necessary exposure information to ensure the risk evaluation is based on best available and representative data. Please feel free to contact me if you have any questions at bill.allmond@ascouncil.org or (301) 986-9700, ext. 1111.

⁴ See comments in the docket at: <https://www.regulations.gov/comment/EPA-HQ-OPPT-2023-0496-0218>.

Sincerely,

A handwritten signature in blue ink that reads "W E Allmond". The signature is written in a cursive style with a large, stylized "W" and "E" at the beginning, followed by "Allmond".

William E. Allmond, IV
President
The Adhesive and Sealant Council
510 King Street, Suite 418
Alexandria, VA 22314