



June 30, 2023

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Office of Pollution Prevention and Toxics
Environmental Protection Agency (EPA)
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Washington, D.C. 20460-0001

Submitted via regulations.gov to [EPA-HQ-OPPT-2020-0465](https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0465)

Re: EPA Proposed Rule on Methylene Chloride; Regulation Under the Toxic Substances Control Act (TSCA)

Ms. Feustel,

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, distributors and industry consultants, representing more than 75% of the U.S. industry. Offering education, legislative advocacy, professional networking and business growth solutions for its members, the ASC is the center of knowledge and catalyst for industry growth on a global basis for manufacturers, suppliers and end-users. ASC appreciates the opportunity to submit comments to EPA in response to its proposed risk management rule for methylene chloride under Section 6 of TSCA.¹ EPA's proposal directly impacts ASC members because the Agency proposes to, as part of its risk management approach for methylene chloride, prohibit the following conditions of use in our industry:

- Industrial and commercial use of methylene chloride in adhesives, sealants and caulks.
- Industrial and commercial use of methylene chloride in adhesive and caulk removers.
- Consumer use in adhesive and sealants.
- Consumer use in adhesive and caulk removers.

EPA proposes no alternative to these prohibitions. Our comments primarily pertain to industrial and commercial uses of methylene chloride in adhesives, sealants and caulks. As drafted, the proposed rule takes a broad approach to banning conditions of use of methylene chloride without providing evidence that industries such as ours cannot adequately mitigate unreasonable risks with a worker protection program (WCPP) so that they can continue to stay in business. We are also concerned with EPA's overall approach to considering existing Occupational Safety and

¹ 88 Fed. Reg. 28284 (May 3, 2023).

Health Act (OSHA) standards for methylene chloride in risk management, and any other chemical already regulated by OSHA. We are also concerned that the proposed implementation deadlines are not feasible for companies to meet. Finally, EPA should establish a *de minimis* level of methylene chloride in formulations for industrial and commercial uses to account for impurities.

This rulemaking should be improved to ensure that it comports with the requirements and intent of TSCA. EPA must also ensure that it is feasible for impacted industries to comply with the WCPP provisions. In that regard, ASC proposes the following changes to EPA's proposed rule.

1. EPA Must Allow Businesses to Comply with a WCPP Instead of Banning All Conditions of Use of Methylene Chloride

Under Section 6(a) of TSCA, if EPA determines that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance presents an unreasonable risk of injury to health or the environment, it must issue risk management rules only to the extent necessary so that the chemical substance or mixture no longer presents such risk.² As proposed, EPA goes beyond what is necessary to mitigate unreasonable risks by proposing to ban conditions of use, including for use in adhesives, sealant and caulks (and removers), because it purports that it does not have data to “confirm” with “certainty” that the conditions of use can comply with a WCPP or the proposed Existing Chemical Exposure Limit (ECEL) of 2 ppm based on an 8-hour time weighted average (TWA). EPA defines the proposed ECEL for methylene chloride as a level below which the adult human would be unlikely to suffer “adverse effects” if exposed for a working lifetime.³ EPA also states that ensuring exposures remain at or below the ECEL will eliminate any unreasonable risk.⁴ Therefore, EPA is effectively setting the unreasonable risk standard at a level which it can prove with certainty prevents *any likelihood of any adverse effect*. There is no requirement in TSCA indicating that this broad interpretation is an appropriate approach to determining “unreasonable risks” or how EPA should approach risk management to mitigate unreasonable risks to the “extent necessary.”

For EPA to propose bans absent data demonstrating with absolute certainty that exposures of methylene chloride can be reduced to below 2 ppm for a particular condition of use is inconsistent with the TSCA standard to promulgate risk management requirements “only to the extent necessary” so that the chemical substance or mixture no longer presents such risk. EPA is unlikely to have exposure data from regulated entities showing that they currently meet the proposed ECEL for a given condition of use, as this ECEL is far below the existing OSHA permissible exposure limit (PEL) of 25 ppm and it has never been required before. However, this does not mean that individual companies are not already reducing exposures to below this ECEL. Nor does it mean that companies are incapable of meeting the ECEL. In EPA's risk evaluation for methylene chloride, EPA even acknowledges that a ban is not necessary for use in adhesives and sealants when proper PPE is used by workers.⁵

² 15 U.S.C. § 2605(a).

³ See EPA Memorandum on the ECEL For Occupational Use of Methylene Chloride, Dec. 10, 2020, available at: <https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0465-0092>.

⁴ 88 Fed. Reg. 28291.

⁵ See EPA Risk Evaluation for Methylene Chloride, June 2020, where EPA findings show that when using PPE, workers at the central tendency did not support an unreasonable risk determination, at page 473. Though EPA found

Rather than only permitting some conditions of use to continue under a WCPP, EPA should permit all conditions of use, including use in adhesives, sealants and caulks (and removers), to continue under a WCPP. The burden should be on businesses to ensure they meet the WCPP requirements, otherwise they will be out of compliance with TSCA. EPA has a host of tools under Section 6 of TSCA to use to reduce exposures of methylene chloride to both workers and consumers.⁶

EPA's default approach should not be to ban uses when there are other alternative approaches, including the WCPP or other restrictions on use which can mitigate unreasonable risks. EPA should also consider the value of training and certification programs that are used under other statutes, also under EPA's authority, to mitigate risks to harmful exposures.⁷ Bans should only be used as a last resort because they result in significant economic consequences for companies that rely on methylene chloride in various critical applications. These losses are not hypothetical as EPA predicts business closures and job losses for some sectors that use methylene chloride. And, EPA is required to factor in the economic consequences of a risk management rule and consider the availability of alternatives when it proposes to ban substances.⁸

2. 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's methylene chloride standard as much as possible to prevent confusion and a patchwork of conflicting requirements in the workplace.⁹ For example, EPA should evaluate whether the proposed ECEL, which assumes a 40-year exposure period over 250 days per year and 8 hours per day, is appropriate for all conditions of use. We also urge EPA to have the ECEL peer reviewed given that the process for developing the ECEL is novel, and we want to ensure the approach complies with TSCA's scientific standards to use the best available science.¹⁰

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 duplicative regulation (thus, reducing regulatory burdens) and reinforce TSCA's original "gap filling" purpose. Sections 9(a), 9(b), and 9(d) 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, the Consumer Product Safety Commission (CPSC), or other federal agencies, or even other EPA authorities *cannot, when considered together*, sufficiently mitigate unreasonable risks of

risks for high-end workers and occupational non-users, these risks can be mitigated by work practices such as the WCPP. Available at: https://www.epa.gov/sites/default/files/2020-06/documents/1_mecl_risk_evaluation_final.pdf.

⁶ *Id.*

⁷ See, for example, the Lead-Based Paint Renovation, Repair, and Painting (RRP) and Abatement Programs; the Asbestos Certification Program under the Asbestos Hazard Emergency Response Act; the regulation of restricted use pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); and the Refrigerants Certification under the Clean Air Act.

⁸ 15 U.S.C. § 2605(c)(2)(A) and (C).

⁹ 29 C.F.R. § 1910.1052.

¹⁰ 15 U.S.C. § 2625(h).

methylene chloride. Rather, EPA simply argues that other authorities have differing factors to consider in safety standards, and that each individual authority (other than TSCA) only addresses exposures to certain populations rather than addressing all populations and all exposures under one law. EPA assumes that because other statutes have differing standards these statutes cannot possibly mitigate unreasonable risks to a “sufficient extent.” Notably, EPA speculates that if OSHA were asked to update the existing OSHA standard for methylene chloride, it “*could* result in the OSHA [permissible exposure limit] PEL still being set at a higher level than the risk-based exposure limit for methylene chloride....”¹¹

EPA should not skirt its obligations under TSCA Section 9 to perform the required analysis of each pertinent authority, particularly OSHA’s authority, in explaining why it believes no other authority other than TSCA is able to address unreasonable risks to methylene chloride. 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.

3. EPA Should Extend its Proposed Timelines for Compliance

If the prohibitions are finalized, which is a position ASC does not support, ASC provides recommendations for each of EPA’s proposed compliance dates. These recommendations are based on the need to have realistic and feasible timeframes for researching, testing and qualifying alternatives, as well as ensuring there is sufficient time provided for making necessary engineering changes to allow for the manufacturing, processing, and use of alternatives. EPA must also allow sufficient time for existing products to move through the supply chain. We recommend the following revisions to the compliance dates:

- 90 days after date of publication of the final rule- all persons are prohibited from manufacturing (including import) methylene chloride, for the uses listed in paragraphs (a)(1) and (2) of this section except for those uses specified in paragraph (b)(7) of this section. ASC requests **270 days** rather than 90 days for compliance with this prohibition.
- 180 days after publication of the final rule- all persons are prohibited from processing methylene chloride, including any methylene chloride-containing products for the uses listed in paragraphs (a)(1) and (2) of this section except for those uses specified in paragraph (b)(7) of this section. ASC requests **550 days** rather than 180 days for processing.
- 270 days after publication of the final rule- all persons are prohibited from distributing in commerce methylene chloride, including any methylene chloride-containing products, to retailers for any use. ASC requests **640 days** for distribution to retail rather than 270 days.

¹¹ *Id.* at 28330 (emphasis added).

- 360 days after publication of the final rule- all retailers are prohibited from distributing in commerce (including making available) methylene chloride, including any methylene chloride-containing products, for any use. ASC requests **730 days** rather than 360 days.
- 360 days after publication of the final rule: all persons are prohibited from distributing in commerce (including making available) methylene chloride, including any methylene chloride-containing products for any use described in paragraphs (a)(1) and (2) of this section except for those uses specified in paragraph (b)(7) of this section. ASC requests **730 days** rather than 360 days.
- 450 days after publication of the final rule: all persons are prohibited from industrial or commercial use of methylene chloride, including any methylene chloride containing products for the uses listed in paragraph (a)(2) of this section except for those uses specified in paragraph (b)(7) of this section. ASC requests **820 days** for industrial and commercial use rather than 450 days.
- 10 years after publication of the final rule: all persons are prohibited from manufacturing (including import), processing, distribution in commerce, or use of methylene chloride, including any methylene chloride containing products, for industrial or commercial use for paint or coating removal from safety critical, corrosion-sensitive components of aircraft or spacecraft as described in § 751.115(b)(1) through (3). ASC supports this time frame.

ASC also requests that EPA extend the proposed time frame to update safety data sheets and labels for downstream user notifications to **180 days** (for manufacturers/importers) and **270 days** (for distributors), rather than the proposed 150 days and 210 days respectively.

4. EPA Should Implement a *De Minimis* Level for Methylene Chloride to Account for Impurities

EPA has asked for input on whether it should include a *de minimis* level of methylene chloride in formulations for certain continuing industrial and commercial uses.¹² ASC agrees that EPA should implement a 0.5% *de minimis* level (as EPA suggests) to account for impurities. This will be critical to enhance compliance with the rule and avoid prohibiting conditions of use of methylene chloride that do not result in exposures that present an unreasonable risk.

Please feel free to contact me if you have any questions at bill.allmond@ascouncil.org or (301) 986-9700, ext. 1111.

¹² 88 Fed. Reg. at 28307.

Sincerely,

A handwritten signature in blue ink that reads "W E Allmond". The signature is written in a cursive style with a long horizontal flourish extending to the right.

William E. Allmond, IV
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