

**Motor & Equipment Manufacturers Association**

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*Via Regulations.gov*

May 19, 2017

Ms. Cindy Wheeler  
Chemical Control Division  
Office of Pollution Prevention and Toxics  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460-0001

**RE: Proposed Rule: Trichloroethylene (TCE); Regulation of Use in Vapor Degreasing Under TSCA Section 6(a)** [Docket No. EPA-HQ-OPPT-2016-0387]

Dear Ms. Wheeler:

The Motor & Equipment Manufacturers Association (MEMA) offers the following comments in response to “Trichloroethylene (TCE): Regulation of Use in Vapor Degreasing Under TSCA §6(a)” issued by the U.S. Environmental Protection Agency (EPA) on January 19, 2017.<sup>1</sup>

MEMA represents more than 1,000 companies that manufacture motor vehicle systems and parts for use in the light- and heavy-duty vehicle original equipment and aftermarket industries.<sup>2</sup> Motor vehicle component manufacturers are the largest sector of manufacturing jobs in the U.S. and directly employ over 871,000 workers in all 50 states.

MEMA supports a cohesive federal chemical law set by the “Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act” (LCSA) amending the Toxic Substances Control Act (TSCA). The reformed law will provide certainty for our members who manufacture, supply and sell motor vehicle components across the United States. An updated federal chemical regulation framework that improves the regulation of chemicals in commerce will give consumers, our customers and public health advocates confidence that chemicals in commerce are being used safely. Therefore, it is critical to our industry that risk management rulemakings abide by the provisions added by LCSA.

MEMA members have indicated that they do not use TCE as a vapor degreaser. MEMA is providing these comments to EPA due to the precedent this rule may set for future

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<sup>1</sup> 82 Fed Reg at 7432

<sup>2</sup> MEMA represents its members through four divisions: Automotive Aftermarket Suppliers Association (AASA); Heavy Duty Manufacturers Association (HDMA); Motor & Equipment Remanufacturers Association (MERA); and, Original Equipment Suppliers Association (OESA).



risk management rulemakings. MEMA urges EPA to consider these points as it proceeds through the risk management process with respect to the implementation of LCSA.

MEMA has concerns on the following issues in the risk management proposal for TCE:

- Compliance with the requirements of TSCA §6;
- Interpretation of conditions of use; and,
- Requirements for downstream notification.

### **Compliance with the Requirements of TSCA §6**

In TSCA §6(c)(2)(C) Congress directs the EPA to determine “whether technically and economically feasible alternatives” for the regulated chemical “will be reasonably available as a substitute when the proposed prohibition or restriction takes effect.”<sup>3</sup> Congress intended the analysis on the technical and economic feasibility of chemical alternatives to be transparent, clear, and robust. The alternative analysis EPA conducted for the TCE vapor degreasing does not meet the requirements set forth in the statute since it did not provide data or explain details of the process used in the alternative analysis. EPA needs to document its due diligence in its alternative assessments by clarifying its assumptions and documenting the data used to support the proposal’s conclusions and analysis.

Further, Congress intended that the agency conduct a much more in-depth alternative analysis than what it appears EPA conducted for TCE. For instance, in the situation where EPA is conducting an alternative analysis for chemicals used in articles, Congress directs the agency to interpret a feasible alternative substance to mean an alternative chemical that can be used in the product where the product can continue to comply with other regulations, including applicable safety standards. A feasible alternative substance is also intended to mean a chemical for which the consumer continues to accept the product with the alternative substance.<sup>4</sup> Therefore, MEMA urges EPA to undertake a more robust and transparent alternative analysis accounting for all the criteria Congress intended.

### **Conditions of Use**

MEMA is concerned with EPA’s interpretation of conditions of use under TSCA as demonstrated by the TCE proposed rule. EPA’s proposal would use the definition of conditions of use to address what it sees as inadequacies in the Occupational Safety and Health Administration’s (OSHA) Permissible Exposure Levels (PELs) for workers in facilities that use TCE for vapor degreasing. Congress left in the statute TSCA §9(d), which requires EPA to consult and coordinate with OSHA “for the purpose of achieving the maximum enforcement of [TSCA] while imposing the least burdensome duplicative requirements on those subject to [TSCA] and for other purposes.” MEMA opposes EPA using TSCA as a substitute for OSHA action under its authority under the Occupational Health and Safety Act of 1970. If EPA has indeed consulted and coordinated with OSHA on

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<sup>3</sup> 15 USC §2605(c)(2)(C)

<sup>4</sup> See Congressional Record at page E785, <https://www.congress.gov/crec/2016/05/25/CREC-2016-05-25-pt1-PgE785-4.pdf>

this matter, it should be documented and discussed in the final rule. EPA must ensure that there are clear signals to regulated parties that its regulations of the workplace will not result in duplicative and burdensome requirements.

### **Downstream Notification Requirements**

The proposed rule states that manufacturers, processors, and distributors will be required to “provide downstream notification of these prohibitions throughout the supply chain as well as associated recordkeeping requirements.”<sup>5</sup> Since this rulemaking could set an important regulatory precedent, MEMA requests that EPA specifically identify exactly who in the supply chain is responsible for these notifications. The rule needs to clarify the content and the method of notification required. Given the complexity of a multi-layered motor vehicle supply chain compounded with the sheer volume of parts, it is therefore impractical to have absolute transparency and consistent notification throughout the chain. If EPA is going to require these downstream notifications, it is critical that EPA considers the burden, feasibility, and costs of downstream notification requirements, particularly for articles such as complex durable goods.

### **Conclusion**

MEMA urges EPA to reevaluate whether the TCE risk management proposed rule fully meets the requirements of TSCA §6(c)(2)(C) and §9(d) and sets the appropriate precedent for downstream notifications. It is crucial that EPA implements all TSCA rulemakings giving full consideration of congressional requirements and intent of LCSEA. MEMA welcomes the opportunity to work further with EPA on this and other critical TSCA implementation issues. Please contact me at (202) 312-9247 or [lholmes@mema.org](mailto:lholmes@mema.org) if you have questions or require any further information on these comments.

Respectfully Submitted,



Laurie Holmes  
Senior Director, Environmental Policy

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<sup>5</sup> 82 Fed Reg 7434