



BLUEGREEN ALLIANCE®

Comments on [Methylene Chloride; Regulation Under the Toxic Substances Control Act \(TSCA\)](#)

EPA-HQ-OPPT-2020-0465

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The BlueGreen Alliance unites labor unions and environmental organizations to solve today's environmental challenges in ways that create and maintain quality jobs and build a clean, thriving, and equitable economy. Our partners include American Federation of Teachers (AFT), Environmental Defense Action Fund, International Union of Bricklayers and Allied Craftworkers (BAC), International Union of Painters and Allied Trades, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), League of Conservation Voters, Natural Resources Defense Council (NRDC), National Wildlife Federation (NWF), Service Employees International Union (SEIU), Sierra Club, United Association of Plumbers and Pipefitters (UA), United Steelworkers (USW), and the Union of Concerned Scientists.

The BlueGreen Alliance supports the EPA's November 2022 revised risk determination for methylene chloride and the agency's finding that methylene chloride "presents an unreasonable risk of injury to health" because it "is acutely lethal, a neurotoxicant, a likely human carcinogen, and presents cancer and non-cancer risks following chronic exposures as well as acute risks."

Furthermore, BGA supports EPA's May 3, 2023 proposed risk management rule to prohibit the manufacture, processing, and distribution of methylene chloride for consumer use and to prohibit most industrial and commercial uses of methylene chloride. We note that EPA's Economic Analysis estimates that the costs (\$13.2 million annualized over 20 years at a 3% discount rate) are less than the health benefits (\$17.7 to \$18.5 million) without including the damage to the central nervous system and liver.

The amendments to the 1976 Toxic Substances Control Act (TSCA) in the 2016 Frank R. Lautenberg Chemical Safety for the 21st Century Act clearly include workers as a "potentially exposed or susceptible subpopulation" that must be protected from a chemical's "unreasonable risk." The BlueGreen Alliance strongly supported the inclusion of workers as a vulnerable population under TSCA when the Lautenberg bill was being debated in Congress because of the

inability of the Occupational Safety and Health Administration (OSHA) to provide adequate protections from hazardous chemicals due to antiquated rule-making and regulations, We agree with the summation in the proposed Methylene Chloride rule that states, “the great majority of OSHA’s chemical standards are outdated or do not sufficiently reduce significant risk to workers.”

OSHA acknowledges this failure: The official US OSHA website explains that its Permissible Exposure Limits (PELs) for chemicals are mostly based on the 1968 Threshold Limit Values of the American Conference of Government Industrial Hygienists (ACGIH). Since 1970, OSHA has issued regulations on 31 chemicals. The two most recent of these 31 standards each took 19 years from announcement to implementation. The OSHA methylene chloride standard is now 26 years old.

In the absence of specific, up-to-date regulatory limits on toxic chemicals, OSHA relies on the Hazard Communication Standard (HCS) – or HAZCOM -- which is intended to provide employers and workers with “the right to know and the duty to act.” The hazard warnings on Safety Data Sheets are the basis of this right.

Last December, the BlueGreen Alliance and Clearya’s True Health Hazard Project released “Obstructing the Right to Know,” an analysis showing that 30% of 650 reviewed SDSs had at least one inaccurate health warning in sections 2 and 3. Fifteen percent of the SDSs with cancer causing chemicals failed to warn of carcinogenicity and 21% of the SDSs for products with chemicals that harm reproduction did not contain a warning that they could interfere with fertility or fetal development. ([link](#))

The lack of reliable and enforceable health hazard warnings on Safety Data Sheets strengthens the need for EPA to use TSCA to set standards that will protect workers from both acute and chronic health impacts. If the appropriate health warnings are not included on Safety Data Sheets, employers and workers don’t have the information they need to protect themselves through engineering controls or personal protective equipment (PPE). The findings in “Obstructing the Right to Know” validate EPA’s assumption that workers may not be provided with appropriate PPE.

The estimates in the TSCA 2020 Risk Evaluation for Methylene Chloride that showed that “even when respirators are used by workers, most of the conditions of use evaluated presented an unreasonable risk” demonstrate the importance of moving up the hierarchy of controls from respirators and other PPE to substitution and elimination strategies. These estimates strengthen the BlueGreen Alliance’s support for the proposed prohibitions for most conditions of use and the required consideration of the hierarchy of controls before the use of respirators and other PPE for the proposed remaining allowable conditions of use.

The BlueGreen Alliance recognizes the importance of exemptions and the utility of Workplace Chemical Protection Programs (WCPP). But the proposed monitoring, record-keeping, PPE requirements, ECEL and STEL will not provide the same protections as replacing methylene

chloride with a safer substitute according to the hierarchy of controls. We understand from a retired union health and safety representative that there already are federal aviation contractors who do not use methylene chloride for paint and coating removal without negative consequences for quality or performance. We encourage EPA to not only aggressively inspect facilities with WCPP for methylene chloride to ensure compliance with the ECEL and STEL but also to aggressively monitor how Exposure Control Plans are driving progress towards elimination and substitution with the full participation of employees and their representatives.

Finally, we were disappointed to see that the proposed rule's workplace participation requirement is confined to only encouraging consultation "with potentially exposed persons on the development and implementation of exposure control plans and PPE/respirator programs," and providing access to those plans and record-keeping. To be effective, WCPPs need workers and their unions to be fully engaged in the design, implementation, oversight, and on-going evaluations of the program. In the proposed improvements to EPA's Risk Management Plan regulation, for example, employee participation is required in resolving process hazard analyses, compliance audit and incident investigation recommendations and findings. The Department of Energy (DOE)'s Funding Notice for Regional Hydrogen calls for applicants to "ensure worker engagement in the design and execution of workplace safety and health programs that include a comprehensive analysis and management plan for all risks." We encourage EPA to strengthen the language in this section of the draft plan to mirror OSHA's Recommended Practices for Safety and Health Programs:

To be effective, any safety and health program needs the meaningful participation of workers and their representatives. Workers have much to gain from a successful program and the most to lose if the program fails. They also often know the most about potential hazards associated with their jobs. Successful programs tap into this knowledge base.

Worker participation means that workers are involved in establishing, operating, evaluating, and improving the safety and health program. All workers at a worksite should participate, including those employed by contractors, subcontractors, and temporary staffing agencies.