



HEALTHIER WORKPLACES | A HEALTHIER WORLD

June 20, 2023

Michael S. Regan
Administrator
United States Environmental Protection Agency

AIHA's Recommendations on EPA's Proposed Rule on Methylene Chloride (Dichloromethane)

Agency/Docket Numbers: EPA-HQ-OPPT-2020-0465 / FRL-8155-02-OCSP
RIN: 2070-AK70

Dear Administrator Regan:

AIHA, the association for scientists and professionals committed to preserving and ensuring occupational and environmental health and safety (OEHS), appreciates the opportunity to provide feedback on the United States Environmental Protection Agency's (EPA) proposed rule on methylene chloride. We hope you find our feedback useful and are happy to answer any questions you may have.

3. Following Panel recommendations in the Panel report (Ref. 6) and in response to SERs recommendations, EPA is requesting comment on the following topics as outlined in the SBAR Panel Report:

a. EPA requests comment on the extent to which a regulation under TSCA section 6(a) could minimize requirements, such as testing and monitoring protocols, recordkeeping, and reporting requirements, which may exceed those already required under OSHA's regulations for methylene chloride.

AIHA believes experienced industrial hygienists are the most qualified professionals to assess methylene chloride occupational exposure hazards/risks and controls. AIHA requests additional clarification regarding the workplace regulatory relationships between the United States Occupational Safety and Health Administration (OSHA) and EPA relating to OSHA permissible exposure limits and EPA ECEs. For example, when and where do employees need to comply with the EPA ECEL, action level and STEL? In a workplace environment, OSHA regulations currently apply for workplace exposures and enforcement. Given that the OSHA PEL and proposed EPA criteria are different, determining which agency has regulatory and enforcement authority is often confusing.

b. EPA requests comment on the feasibility of complying with and monitoring for an Existing Chemical Exposure Limit (ECEL) of 2 ppm. In particular, EPA requests comment on changes that may be needed to meet such a standard, for example changes related to elimination of methylene chloride or substitution, engineering controls, process changes, and monitoring frequency.

AIHA believes an exposure limit of methylene chloride of 2 ppm is feasible with the following considerations: the airborne minimum detectable concentrations for methylene chloride are in a range of 0.2 -0.4 ppm but more information is needed regarding sampling and analytical methods and their limitations. For example, will EPA use NIOSH standard methods for sampling and analyses? These methods perform well for methylene chloride.

We encourage the EPA to develop industry-specific substitution guidance, sometimes known as “Green Chemistry”, for both banned and exempt industries so that less toxic chemicals can be substituted for methylene chloride. Green Chemistry initiatives typically make significant reductions in the overall toxicity of chemicals utilized in a number of processes and reactions carried out in a number of industries such as the chemical and pharmaceutical industries.

c. EPA requests comment on workplace monitoring for implementation of an ECEL. EPA is soliciting information related to the frequency of monitoring, initial monitoring, and periodic monitoring for workplace exposure levels and how a lower exposure level from the OSHA PEL may impact the frequency of periodic monitoring. Specifically, EPA requests comment about when this may impact the frequency of periodic monitoring where initial monitoring shows that employee exposures are above the level that would initiate requirements for compliance with the ECEL or an OSHA STEL.

AIHA requests additional clarification of the relationship between OSHA and EPA relating to OSHA permissible exposure limits and EPA ECELS. For example, when and where do employees need to comply with EPA, or does OSHA have jurisdiction for workplace exposures and enforcement?

d. EPA requests comment on reasonable compliance timeframes for small businesses, including timeframes for reformulation of products or processes containing methylene chloride; implementation of new engineering or administrative controls; changes to labels, SDSs, and packaging; implementation of new PPE, including training and monitoring practices; and supply chain management challenges. EPA also requests comment on establishing differing compliance or reporting requirements or timetables that take into account the limited resources available to small entities.

AIHA believes that additional, specific information is needed on EPA's jurisdiction for workplace safety and health, and that EPA provides guidance similar to OSHA's Process Safety Management guidance.

e. EPA requests comment on the feasibility and availability of various prescriptive engineering controls to reduce exposure levels, and information on any technologies or prescriptive control options used in combination for addressing the unreasonable risk.

AIHA notes that while EPA references NIOSH's methods of control, there is a reference to the ACGIH ventilation manual, *Industrial Ventilation A Manual of Recommended Practice for Design*. Please also note that OSHA references this under [1910.1052 - Methylene Chloride](#) for regulated areas and methods of compliance.

f. EPA requests comment on providing an option of either complying with the ECEL or implementing various administrative and engineering controls, such as those employed in a closed-loop system, including information on how a small business can demonstrate that such controls eliminate the unreasonable risk for that use.

AIHA recommends that EPA provide further clarification on the justification and feasibility of proposed engineering controls.

g. EPA requests comment on establishing a certification program for the use of methylene chloride by the furniture refinishing industry as well as measures to address the unreasonable risk for commercial use of methylene chloride in paint and coating removal for furniture refinishing.

AIHA recommends that EPA provide additional information regarding how the "certification program" will be administered and by whom.

i. EPA requests comment on TSCA section 6(g)(1) exemptions for any MIL–SPEC programs where methylene chloride is specified or required for a specific end-use application.

The hierarchy of controls should be followed for all allowable applications of methylene chloride.

k. EPA requests comment on the extent to which methylene chloride may be used in the same facility for TSCA and non-TSCA uses.

AIHA does not believe that exposure should be monitored for non-users of methylene chloride. Exposure monitoring should be based on a qualitative risk assessment following the most recent edition of the document, “A Strategy for Assessing and Managing Occupational Exposures”.

6. EPA acknowledges that new monitoring methods or technologies may have been developed since 1997 that would allow for greater accuracy, and thus a smaller range for monitoring results, and EPA requests comment on the exposure monitoring accuracy requirements. (Unit IV.A.1.c.i.)

Please refer to the NIOSH Manual of Analytical Methods (Method 3900) for standard sampling and analysis methods.

7. EPA acknowledges that the 25% buffer for the 8-hour and 15-minute TWA potentially could allow some exposures above the exposure limits proposed here. EPA requests comment on these buffers' effects and any alternatives to account for measurement variance or uncertainty. (Unit IV.A.1.c.i.)

AIHA recommends coordination with OSHA to define the meaning and ramifications for the “25% buffer”. EPA should use standardized statistical terms for describing error, confidence intervals and confidence levels. Buffer is not an appropriate statistical term.

8. EPA is soliciting comments regarding how owners and operators could conduct initial exposure monitoring to ensure that it is representative of all tasks likely to be conducted by potentially exposed persons. (Unit IV.A.1.c.ii.)

AIHA believes experienced industrial hygienists are the most qualified to assess methylene chloride hazards, risks, and controls. Exposure monitoring should be based on a qualitative risk assessment for all similarly exposed groups following the most recent edition of the document, “A Strategy for Assessing and Managing Occupational Exposures”.

9. EPA is soliciting comments regarding the proposed requirement for recurring 5-year initial exposure monitoring. (Unit IV.A.1.c.ii.)

AIHA believes that experienced industrial hygienists are the most qualified to assess the proposed requirements of exposure monitoring for methylene chloride based on its known hazards and risks. Monitoring should be repeated as processes using methylene chloride and control measures change. Five-year intervals may not reflect changes in the operation and may be arbitrary.

10. EPA requests comment on the timeframes for periodic monitoring outlined in Unit IV.A.1.c.iii, particularly whether more frequent monitoring may be possible or recommended. (Unit IV.A.1.c.iii.)

AIHA believes that experienced industrial hygienists are the most qualified to assess the proposed requirements of exposure monitoring for methylene chloride based on its known hazards and risks. Monitoring should be repeated as processes using methylene chloride and control measures change.

11. EPA is requesting public comments on the proposed conditions for periodic monitoring for methylene chloride as part of implementation of the WCPP that differ from OSHA's existing monitoring requirements under [29 CFR 1910.1052](#). (Unit IV.A.1.c.iv.)

AIHA believes that experienced industrial hygienists are the most qualified to assess the proposed periodic requirements of exposure monitoring for methylene chloride based on its known hazards and risks, the use of methylene chloride in the workplace, and the possible evaluation for the use of supplied air respiratory protection.

12. EPA requests comment on the degree to which additional guidance related to use of gloves might be necessary. Additionally, EPA requests comment on whether EPA should specifically incorporate dermal protection into the exposure control plan and require consideration of the hierarchy of controls for dermal exposures. (Unit IV.A.1.e.i.)

AIHA believes that methylene chloride is a dermal exposure hazard and that dermal exposures contribute to total exposures (e.g., exposure to vapors via inhalation and dermal exposures) and that the dermal route can be a significant route of entry under certain circumstances. Very few glove materials offer adequate skin protection against methylene chloride. Viton gloves can provide adequate protection but are costly, limit dexterity, and can interfere with fine manual work activities. The potential for skin exposure should be controlled through elimination, engineering, and administrative controls as determined and evaluated by an experienced industrial hygienist.

13. EPA requests comment on the 15-day timeframe for notification of potentially exposed persons of monitoring results and the possibility for a shorter timeframe, such as 5 days. (Unit IV.A.1.f.ii.)

AIHA believes that experienced industrial hygienists are most qualified to assess the proposed periodic requirements of exposure monitoring for methylene chloride based on its known hazards and risks, and how best to plan to notify potentially exposed persons of monitoring results which should also be made available to medical providers.

14. EPA requests comment relative to the ability of owners or operators to conduct initial monitoring by 180 days after publication of the final rule, and anticipated timelines for any procedural adjustments needed to comply with the requirements outlined in Unit IV.A.1. (Unit IV.A.1.g.)

Methods and analytical capabilities exist to implement the regulation.

17. EPA would like comment on whether it should consider a *de minimis* level of methylene chloride in formulations for certain continuing industrial and commercial uses to account for impurities (e.g., 0.1% or 0.5%) when finalizing the prohibitions described in Unit IV.A., and, if so, what level should be considered *de minimis* (Units IV.A.2., and IV.A.3.)

De minimis needs coordination with OSHA as found in Table D.1—Minimum Information for an SDS in 1910.1200. 1910 Subpart Z, Subpart Title: Toxic and Hazardous Substances Standard Number: 1910.1200 App D, Title: Safety Data Sheets (Mandatory).

18. EPA is proposing that the prohibition of certain industrial and commercial conditions of use described in Unit IV.A.2 would occur 90 days after the publication date of the final rule for manufacturers, 180 days for processors, 270 days for distributing to retailers, 360 days for all other distributors and retailers, and 450 days for industrial and commercial uses. EPA requests comment on whether additional time is needed, for example, for products affected by proposed restrictions to clear the channels of trade. (Unit IV.A.2.)

AIHA believes that EPA should identify appropriate substitutions for methylene chloride.

22. EPA is proposing that the prohibition of manufacturing, processing, and distribution for consumer use described in Unit IV.A.3. would occur 90 days after the publication date of the final rule for manufacturers, 180 days for processors, 270 days for distributing to retailers, and 360 days for all other distributors and retailers after the publication date of the final rule. EPA requests comment on whether additional time is needed, for example, for products affected by proposed restrictions to clear the channels of trade. (Unit IV.A.3.)

AIHA believes that EPA should identify appropriate substitutions for methylene chloride.

24. EPA recognizes that in some situations, certain facilities may do both Federal contractor and commercial aviation work and may use methylene chloride for paint and coating removal from safety-critical, corrosion-sensitive components on military, Federal, or commercial aviation. EPA requests comment on whether such co-located activities in a facility should be subject to the WCPP, rather than the exemption under TSCA section 6(g). Additionally, EPA seeks additional information and requests comment on whether it is possible to distinguish between commercial aviation facilities that would be able to meet the WCPP and those that would not, including what criteria should be used for such distinctions (e.g., size of facility, volume or type of work performed, record of exposure reduction practices). EPA also requests comment on the extent to which specific commercial aviation and aerospace uses or types of facilities could fully comply with the WCPP to address identified unreasonable risk. (Unit IV.A.5.a.i.)

AIHA believes that methylene chloride may be used safely, employing appropriate industrial hygiene practices, including implementation of the hierarchy of controls, exposure evaluations, and medical monitoring surveillance (where appropriate). Where other controls cannot control exposures, it may be necessary to use supplied air respiratory protection in the context of a respiratory protection program consistent with the OSHA requirements.

25. EPA requests comments on all aspects of the proposed TSCA section 6(g) exemption from the proposed prohibition on use of methylene chloride in commercial paint and coating removal for paint and coating removal essential for critical infrastructure by certificated commercial air carriers, commercial operators, or repair stations, or by manufacturers of aircraft or aerospace vehicles and hardware, noting that the proposed exemptions would be limited to the safety-critical, corrosion-sensitive components on aircraft and aerospace vehicles, including safety-critical components. (Unit IV.A.5.a.ii.)

AIHA believes that methylene chloride may be used safely, employing appropriate industrial hygiene practices including implementation of the hierarchy of controls, exposure evaluations, and medical monitoring surveillance (where appropriate). Where other controls cannot control exposures, it may be necessary to use supplied air respiratory protection in the context of a respiratory protection program consistent with the OSHA requirements.

26. EPA requests comment on this TSCA section 6(g) exemption for continued emergency use of methylene chloride in the furtherance of NASA's mission as described in this unit, and whether any additional conditions of use should be included, in particular for any uses qualified for space flight for which no technically or economically feasible safer alternative is available. Additionally, EPA requests comment on what would constitute sufficient justification of an emergency. (Unit IV.A.5.b.ii.)

AIHA believes that more research funding by EPA is needed to identify substitutes. AIHA also believes that methylene chloride may be used safely, employing appropriate industrial hygiene practices including implementation of the hierarchy of controls, exposure evaluations, and medical monitoring surveillance (where appropriate). Where other controls cannot control exposures, it may be necessary to use supplied air respiratory protection in the context of a respiratory protection program consistent with the OSHA requirements.

27. EPA requests comments on all aspects of the preliminary determination that a TSCA section 6(g) exemption is not warranted for the use of methylene chloride in furniture refinishing, including information on the availability of alternatives and the time needed to implement alternatives. EPA emphasizes that the Agency is seeking input regarding whether an exemption is needed and welcomes information related to this condition of use during the public comment period. (Unit IV.A.5.c.)

AIHA believes that more research funding by EPA is needed to identify substitutes. AIHA believes that methylene chloride may be used safely, employing appropriate industrial hygiene practices including implementation of the hierarchy of controls, exposure evaluations, and medical monitoring surveillance (where appropriate). Where other controls cannot control exposures, it may be necessary to use supplied air respiratory protection in the context of a respiratory protection program consistent with the OSHA requirements.

28. Primary alternative regulatory action: EPA requests comment on the ways in which methylene chloride may be used in the additional conditions of use that would be subject to a WCPP under the primary alternative regulatory action, and the degree to which users of methylene chloride in these sectors could successfully implement the WCPP, including requirements to meet an ECEL and EPA STEL, as described in Unit IV.A.1., for the conditions of use listed for the primary alternative regulatory action in Unit IV.B. EPA is also requesting comment on whether to consider a regulatory alternative that would subject more conditions of use to a WCPP, instead of prohibition, than those currently contemplated in the primary alternative regulatory action. EPA also requests monitoring data and detailed descriptions of methylene chloride involving activities for these conditions of use to determine whether these additional conditions of use could comply with the WCPP such that risks are no longer unreasonable. (Unit IV.B.)

AIHA recommends that EPA consult OSHA on monitoring data or OSHA compliance inspections for methylene chloride.

31. EPA requests comment and further information regarding the Agency's expectations that Federal and Federal contractor facilities would be subject to a higher level of oversight than non-Federal or contractor facilities, and that existing or expected controls would be successful in achieving the requirements of the WCPP. (Unit V.A.1.)

AIHA encourages EPA to clarify the relationship between OSHA's methylene chloride standard 1910.1052 for general industry and EPA with respect to its Workplace Chemical Protection Plan based on the OSHA methylene chloride standard, but with an existing chemical exposure limit 92% lower than the OSHA permissible exposure limit.

34. EPA is requesting comment on the inclusion of a certification, training, and limited access program for any uses that would be subject to a WCPP, in addition to the requirements outlined in Unit IV.A.1. (Unit V.A.4.)

Please see our above comments.

If you have any questions about AIHA's comments on EPA's proposed rule on methylene chloride or other matters, please contact me at mames@aiha.org or (703) 846-0730. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Ames', with a horizontal line underneath.

Mark Ames
Director, Government Relations
AIHA

About AIHA

AIHA is the association for scientists and professionals committed to preserving and ensuring occupational and environmental health and safety in the workplace and community. Founded in 1939, we support our members with our expertise, networks, comprehensive education programs, and other products and services that help them maintain the highest professional and competency standards. More than half of AIHA's nearly 8,500 members are Certified Industrial Hygienists, and many hold other professional designations. AIHA serves as a resource for those employed across the public and private sectors as well as to the communities in which they work. For more information, please visit www.aiha.org.