AMERICAN PUBLIC HEALTH ASSOCIATION
For science. For action. For health.

May 24, 2019

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460–0001

Re: Methylene Chloride; Commercial Paint and Coating Removal Training, Certification and Limited Access Program (Docket #: EPA–HQ–OPPT–2018–0844; RIN 2070–AK48)

Dear Administrator Wheeler:

On behalf of the American Public Health Association, a diverse community of public health professionals that champions the health of all people and communities, I write to provide comments on the U.S. Environmental Protection Agency's advance notice of proposed rulemaking on a training, certification and limited access program for commercial users of methylene chloride. These comments were prepared in collaboration with the association's Occupational Health and Safety and Environment Sections.

EPA's own risk assessment concluded that methylene chloride (MC) paint removers are "imminently hazardous." The agency identified 49 deaths since 1976 that are attributable to MC and noted that the figure is an underestimate.[1] Since that time, more fatalities from MC exposure have occurred, including in California, Pennsylvania, South Carolina and Tennessee.[2,3,4,5] Methylene chloride is an acute lethal toxic substance that presents an unreasonable risk of injury, including fatal injuries to both consumers and workers. We urge the agency to ban MC for all users, not just consumers. The majority of the fatalities EPA referenced in its determination that MC presents an unreasonable risk of injury were commercial uses (i.e. where occupational exposures would occur).

[1] U.S. EPA. Methylene Chloride and n-methylpyrrolidone; Regulation of certain uses under TSCA Section 6(a). 82 *Federal Register* 7482 (January 19, 2017).
[2] California Department of Public Health, Occupational Health Branch. Fatality Assessment and Control Evaluation Program: Bathtub refinisher dies from methylene chloride exposure while removing paint from a bathtub. Case Report: 17CA002. (Fatal incident occurred in June 2017.)
[3] K. Holsopple. Mother works to ban the chemical that killed her son. *The Alleghany Front*. May 24, 2018. https://www.alleghenyfront.org/mother-works-to-ban-the-chemical-that-killed-her-son/
[4] C. Duncan. Paint thinner killed some who used it, including SC man. *The News Tribune*. March 19, 2019. https://www.thenewstribune.com/news/nation-world/national/article228127574.html
[5] K. Fisher. Tennessee mother plans to sue EPA over son's death from hazardous chemical. *Nashville Tennessean*. Nov. 16, 2018. https://www.tennessean.com/story/news/local/cheatham/2018/11/16/methylene-chloride-deaths-epa-tennessee-lawsuit/2026240002/

APHA urges EPA to ban the use of MC in all paint and coatings removal applications. The grave risk posed by exposure to MC should compel EPA to eliminate the hazard altogether. Doing so is practicable and feasible because safe and effective alternatives to MC are available. These include products that contain ingredients listed by EPA's Safer Choice program, such as: dimethyl adipate, benzyl alcohol, dimethyl sulfoxide, and methyl acetate. A 2017 report by the Toxic Use Reduction Institute describes the effectiveness of safer alternatives to methylene chloride.[6]

APHA urges EPA to follow the hierarchy of controls, a long-standing occupational health and safety principle. Risk management that follows the hierarchy of controls requires the most effective method to protect workers from hazards to be given highest priority. From most effective to least effective, the hierarchy of controls is:

1. Eliminate the hazard
2. Substitute a chemical, tools, or equipment to replace an unsafe one
3. Institute engineering controls to create a barrier between the hazard and the worker
4. Use administrative controls (e.g., warning labels, signage, training)
5. Require personal protective equipment (e.g., gloves, coveralls, respiratory protection)

EPA's current proposal, however, takes a risk management approach that turns the hierarchy of controls on its head. Instead of eliminating the hazard for workers (i.e., a ban on MC) when it is entirely feasible to do so, the agency is promoting the least effective hazard control methods. We have ample evidence that these methods are not sufficient to prevent fatal and disabling illnesses. Moreover, EPA determined previously that the risk of exposure to MC would be unreasonable even if workers wear respirators.[7]

Certification and training programs, which focus on administrative controls and personal protective equipment, are wholly inadequate to address the unreasonable risk of injury (i.e., death) from MC exposure. We are extremely concerned with EPA's decision to postpone making an unreasonable risk determination for occupational exposures because it delays protections for the individuals who are the most common users of this dangerous product.

It is unlikely that a certification and limited-access program for paint and coatings removal products containing MC would be practical or economically feasible. As EPA noted previously, "given the Agency's experience with the training and certification program under the Lead-Based Paint Renovation, Repair, and Painting Rule, EPA viewed the costs and challenges involved in regulating distributors and ensuring that only trained and certified commercial users are able to access these paint and coating removal products as a significant limitation for this approach." (82 *Federal Register*, 7464 (January 19, 2017)).

In comments submitted in March 2017 by APHA's Occupational Health and Safety Section to EPA on the scope of the agency's risk evaluation on methylene chloride, we noted that many

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[6] Toxic Use Reduction Institute (2017). Assessment of Safer and Effective Alternatives to Methylene Chloride for Paint Stripping Products. TURI Report 2017-102. https://bit.ly/2YywLHs

[7] U.S. EPA. Methylene Chloride and NMethylpyrrolidone; Regulation of Certain Uses Under TSCA Section 6(a). 82 *Federal Register* 7471 (January 19, 2017).

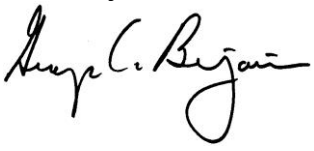
workers who are assigned to use paint and coatings removals containing MC are people of color, non-English speaking workers, workers who are low-skilled, low-wage, low-literacy or undocumented workers. Some employers intentionally hire vulnerable workers precisely because they are less likely to raise safety concerns with a supervisor or other agent of their employer. These workers often report that they rarely receive safety training and often find themselves without necessary supplies such as hearing protectors, gloves or eye goggles. In addition, small businesses do not have the same resources for implementing safety programs as larger ones, yet they account for a very large percentage of MC users. It is difficult to imagine that such employers would provide an air-supplied respirator (which is the type necessary to protect against methylene chloride) and methylene-chloride resistant clothing, along with the necessary training to help protect workers. It is important to note that even with full compliance with this equipment, it is still much less protective than eliminating MC altogether from the workplace.

The agency's assertion that it can rely on its experience with certification programs addressing lead and asbestos removal miss an urgent point: both lead and asbestos exposure can cause disabling and fatal illness, they do not kill immediately, as MC can. Furthermore, both lead and asbestos certification programs are necessary because of the legacy of contamination with both materials and both emphasize the importance of safe removal procedures. By contrast, there are no legacy issues with MC, the certification program instead attempts to regulate a completely unnecessary, lethal hazard for which, as noted above, safer alternatives exist.

The House Energy and Commerce Committee held a hearing in March 2019 on EPA's implementation of the Lautenberg Chemical Safety Act. APHA member Adam Finkel, ScD testified at the hearing because of his expertise on methylene chloride. Dr. Finkel was the director of standards development at the Occupational Safety and Health Administration when the agency developed its methylene chloride standard and promulgated it in 1997. We are attaching a statement prepared by Dr. Finkel in response to a question from Chairman Frank Pallone concerning EPA's recent regulatory decisions about methylene chloride.

In conclusion, the setting where methylene chloride is used does not change its toxicity or the health concerns caused by its exposure. It is illogical for EPA to ban its use in certain settings and not all, leaving workers to be exposed unnecessarily and creating more work for the agency to ensure compliance with such a complicated program. APHA strongly urges EPA to apply the science and data it already possesses to eliminate the use of methylene chloride altogether.

Sincerely,



Georges C. Benjamin, MD
Executive Director

Attachment: Dr. Finkel response to the House Energy and Commerce Committee, March 2019.