

May 19, 2017

Toni Krasnic  
Cindy Wheeler  
Office of Pollution Prevention & Toxics  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
Washington, DC 20460  
Via direct submission to [www.regulations.gov](http://www.regulations.gov)

**RE: Trichloroethylene (TCE); Regulation of Use in Vapor Degreasing Under TSC Section 6(a); Proposed Rule, Docket ID No. EPA-HQ-OPPT-2016-0387 (January 19, 2017)  
Trichloroethylene; Regulation of Certain Uses Under TSCA Section 6(a); Proposed Rule; Docket ID No. EPA-HQ-OPPT-2016-0163 (December 16, 2016)**

Dear Mr. Krasnic and Ms. Wheeler:

The National Association of Chemical Distributors (NACD) submits the following comments in response to the proposed rules published by the U.S. Environmental Protection Agency (EPA) regarding docket no. EPA-HQ-OPPT-2016-0636, Regulation of Use in Vapor Degreasing Under TSCA Section 6(a) and docket no. EPA-HQ-OPPT-2016-0163, Trichloroethylene; Regulation of Certain Uses Under TSCA Section 6(a); Proposed Rule.

#### About NACD

NACD is an international association of nearly 440 chemical distributors and their supply-chain partners. NACD members represent more than 85% of the chemical distribution capacity in the nation and generate 93% of the industry's gross revenue. NACD members, operating in all 50 states through nearly 1,800 facilities, are responsible for more than 155,000 direct and indirect jobs in the United States. NACD members are predominantly small regional businesses, many of which are multi-generational and family owned.

NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution®, the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations.

#### EPA Should Revoke the Proposed Rules and Include Its Updated Analysis in the Larger TCE Evaluation

NACD recommends EPA withdraw the two proposed rules on TCE for vapor degreasing, aerosol degreasing, and spot cleaning. As described below, EPA has not followed the requirements of the Regulatory Flexibility Act (RFA) nor the Small Business Regulatory Enforcement Fairness Act (SBREFA) that are required for all agencies conducting rulemakings. NACD recommends EPA withdraw both rules to re-address and comply with the requirements of these statutes. If appropriate, EPA should then use their analysis from the previous risk evaluations on these

uses to inform the recently initiated TCE chemical risk evaluation, which is intended to cover all other uses.

#### EPA Did Not Properly Conduct the Analysis for the Risk Evaluation of TCE

The draft TCE Work Plan Assessment for the aerosol degreasing and spot cleaning proposed rule was titled “Degreaser and Arts/Crafts Use” and focused on the use of TCE as a degreaser and on consumer use of TCE in the arts and crafts field. In this Work Plan, EPA only mentioned spot cleaning as a use of TCE in a footnote, which stated that “there were several spot cleaners for fabrics marketed to consumers, but none contained TCE.” Yet, when the Work Plan was finalized, the report had been changed to be titled “Degreasing, Spot Cleaning, and Arts & Crafts Uses.” The Work Plan Assessment also stated that various uses of TCE in *large commercial settings* “are expected to be monitored and controlled by the Occupational Safety & Health Administration (OSHA); thus, this use is also not considered in this assessment.” However, EPA then prohibits all commercial use of TCE in vapor degreasing and aerosol degreasing in small and large commercial settings in the proposed rules.

NACD is surprised that EPA considers such drastic changes to be appropriate. As a result of these decisions, small businesses did not properly receive the opportunity to comment on the risk assessment. An attempt to subvert proper procedure by preventing affected business sectors proper notification and comment on work plan assessments could easily carry over to every single chemical that EPA evaluates.

#### EPA Did Not Properly Certify Under the Regulatory Flexibility Act

As a part of its requirements under the RFA, EPA certified that the aerosol degreasing and spot cleaning proposed rule would not have “a significant impact on a substantial number of small entities.” It is not believable EPA could reach this conclusion when the National Cleaners Association estimates that 60-90% of retail dry cleaners routinely use TCE, or approximately 14,000-21,000 dry cleaners. Further, in the proposed rule EPA did not account for the increased costs of alternative products to TCE nor the feasibility of the alternatives. EPA also did not account for the costs in time of switching to alternatives. If the alternatives are not as effective as TCE, this will cause businesses to have to spend more time on each process that used to be done more quickly with TCE. Several associations for dry cleaners have explained in comments that many of the alternatives to TCE are more time intensive because they are not as effective as TCE. NACD recommends EPA reanalyze its certification under the RFA and include the additional costs described by the small business community on how using TCE alternatives will impact their businesses.

#### EPA Did Not Conduct a Small Business Review Panel for TCE for Spot Cleaning and Aerosol Degreasing

EPA did not conduct an SBREFA panel to understand how the TCE proposed regulations on aerosol degreasing and spot cleaning will impact small businesses. Given the other problems with the proposed rule, including the lack of proper certification under the RFA and conducting an analysis without giving proper notification to affected industry, it is imperative EPA convene an SBREFA panel to allow businesses opportunity to comment. NACD strongly recommends EPA conduct an SBREFA panel for the spot cleaning and aerosol degreasing risk evaluation before proceeding with any action on the proposed rule. In its comments to EPA, the U.S. Small Business Administration Office of Advocacy has even urged the agency to withdraw the aerosol degreasing and spot cleaning proposed rule and questioned why EPA did not conduct an SBREFA panel for this rulemaking. Should EPA proceed with the proposed rule,

NACD also wishes to recommend that EPA allow small businesses extended deadlines for coming into compliance with the final rule.

#### EPA Should Provide Accurate Estimates for the Regulatory Burden of the Proposed Rules

In the proposed rules, EPA proposes to require companies to make downstream notification of the use restrictions on TCE. In the preamble to the proposed rules, EPA states that this notification could come in the form of a Safety Data Sheet (SDS). It is unclear if EPA intends for companies to modify their SDS's to include a statement on the restrictions or if the inclusion of an existing TCE SDS would meet the downstream notification requirements. Regardless, EPA should be aware it can be costly and time-consuming to modify an SDS and take this into consideration when conducting cost analyses. It is already common current practice for distributors to send an updated SDS to all the subsequent purchasers of a product when the SDS has been updated. However, the cost of doing so is dependent upon the level of automation within the publishing organization. Additionally, some distributors may prefer an alternative, such as sending a letter and requesting a signed receipt from a customer, instead of providing downstream notification through the SDS. NACD recommends EPA clarify in the final rule that downstream notification should be completed in the manner best suited to each businesses' operations.

#### EPA Should Synchronize the Dates of Recordkeeping for the Proposed Rules

EPA also proposes to require companies to keep records of the distribution of TCE for other uses, including the amount of TCE shipped, a copy of the downstream notification, and contact information of the purchasing company. Companies are then required to retain this data for two years from date of shipment for aerosol degreasing/spot cleaning uses and three years from the date of shipment for vapor degreasing uses. It is unclear why EPA has two different time periods for the proposed rules, and NACD recommends EPA decide on a single compliance period for both proposed rules. Having different reporting periods for different uses of the same chemical is an unnecessary complication. NACD also recommends EPA review their regulatory cost analysis to verify that the burden estimates are appropriate given the ongoing requirements to maintain records and the overall burden of downstream notification.

#### Conclusion

NACD appreciates EPA's consideration of our comments on the two proposed rules on TCE. If you have questions or need additional information about the comments, please do not hesitate to contact me.

Sincerely,



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