



MICHAEL P. WALLS
VICE PRESIDENT
REGULATORY & TECHNICAL AFFAIRS

March 23, 2017

The Honorable Scott Pruitt
Administrator
Mail Code: 1101A
U.S. Environmental Protection Agency
1200 Constitution Avenue, NW
Washington, DC 20460

Dear Administrator Pruitt:

I want to bring to your attention a critical issue currently before the Agency with potentially significant and wide ranging impacts on U.S. manufacturing and the U.S. economy. EPA has relied on draft risk assessments under the new chemicals program and has threatened a ban on the manufacture of medium- and long-chain chlorinated paraffins (MCCPs and LCCPs), despite the fact that these substances have been in commerce for decades. The policy implications of this action are quite troubling. These substances are important – in some cases critical – components in a wide variety of applications impacting an equally wide variety of industries (e.g., adhesives and sealants, aerospace, coatings, metals, lubricants, and uses of critical importance to the U.S. government).

Background:

In 2009, EPA brought enforcement actions against two MCCP and LCCP manufacturers, alleging the two companies were manufacturing “new” chlorinated paraffins that were not on the Toxic Substances Control Act (TSCA) Inventory. The actions were brought despite the fact that the TSCA Inventory contains two broad categories of chlorinated paraffins that arguably include all MCCPs and LCCPs.¹ EPA used these broad category entries to identify MCCPs and LCCPs on the Inventory for more than 34 years from 1977 to 2011.²

In 2012, EPA entered into consent orders with the two MCCP and LCCP manufacturers, requiring them to submit premanufacture notices (PMNs) for MCCPs and LCCPs as new chemicals under TSCA Section 5. These two manufacturers were permitted to continue to supply the market with

¹ Section 8(b)(2) and section 26(c)(1) authorize EPA to add categories of chemicals to the TSCA Inventory, which EPA did with two categorical CAS number 61788-76-9, Alkanes, chloro, and CAS number 63449-39-8, Paraffin waxes and Hydrocarbon waxes, chloro. New section 8(b)(3)(A)(iii) clarifies that EPA must consider all members of such Inventory-listed categories to be on the TSCA Inventory.

² See, ACC’s October 30, 2015, Medium-Chain and Long-Chain Chlorinated Paraffins TSCA Analysis.

MCCPs and LCCPs while the PMN process was underway, though other manufacturers were prevented from entering the market.

However, during the same period in 2012, EPA identified MCCPs and LCCPs as priority existing chemical substances on which the Agency was to begin risk assessments under the TSCA Work Plan program. Yet, EPA never pursued the risk assessment of these chemicals under the TSCA Work Plan, which is an open and public process, but instead evaluated them under the closed and private PMN process, which was never intended for chemicals already in commerce. Upon completing the draft risk assessments as “new” chemicals in December 2014, EPA sent action letters to the PMN submitters, indicating that EPA was no longer going to permit the ongoing manufacture and import of MCCPs and LCCPs, claiming the risk assessments found them to be PBTs and that releases to the environment were high.

The U.S. manufacturing industries impacted by this action were not made aware of it by EPA, but only learned of it indirectly when the PMN submitters shared information with their downstream customers. In response to this action, an industry coalition of numerous impacted trade groups was formed in 2015. This coalition has identified significant technical and scientific deficiencies with EPA’s risk assessments, concluding that the assessments overstated the potential for release of these chemicals to the environment and their PBT characteristics.³ To date, EPA has not responded to comments on the assessments.

Significant Problems Presented:

EPA’s current approach has serious disadvantages for both the Agency and affected stakeholders, including the following:

- Pursuing regulation of these substances under TSCA Section 5 will not provide an opportunity for comment on EPA decision making that affects thousands of stakeholders. Unlike the usual PMN situation, in this circumstance there are thousands of stakeholders currently purchasing MCCPs and/or LCCPs directly or indirectly from the PMN submitters. The PMN process, which involves discussions between EPA and the submitters exclusively, precludes affected stakeholders from having their views considered in a meaningful way. The current opportunity to comment on the draft risk assessments is not a substitute for the opportunity to comment on whether risk management is needed in light of concerns with the risk assessments and, if risk assessment is needed, what restrictions would be appropriate.
- The Section 5 approach has a substantial economic impact. Some 48 million pounds of MCCPs and LCCPs were reported for the 2012 Chemical Data Reporting rule (CDR). Downstream processors and end users have told EPA that for some applications they have no substitutes for MCCPs and LCCPs, and for others more than five years would be needed to

³ The industry coalition filing joint comments on March 18, 2016, consisted of the following: Adhesive and Sealant Council, American Chemistry Council, American Wire Producers Association, American Chemistry Council’s Center for the Polyurethanes Industry, Chlorinated Paraffins Industry Association, Independent Lubricant Manufacturers Association, Industrial Fasteners Institute, Motor and Equipment Manufacturers Association, and Vinyl Institute.

identify, qualify, and move to a substitute material. The metalworking fluids industry alone estimated the impact of a ban would cost approximately \$70 billion and more than five years to reformulate all of its products. The proposed ban on MCCPs and LCCPs would result in significant economic disruption.

- The Section 5 approach is neither cost-effective nor procedurally appropriate given the circumstances of this case. Meanwhile, an effective approach to the review and regulation of these substances under TSCA Section 6 is available.⁴

Requested Resolution:

On behalf of the coalition of allied trade associations with which we are working on this issue, we strongly encourage EPA to reconsider use of TSCA Section 5 to review MCCPs and LCCPs, especially given the likely significant and widespread adverse impacts on the economy. EPA should review MCCPs and LCCPs as existing chemicals under TSCA Section 6, and the risk assessments should undergo independent peer review through an open and transparent process. EPA should revise the risk assessments, if appropriate, consistent with the peer reviewers' recommendations. Then, if scientifically justified, EPA should identify any appropriate risk management measures to address any unreasonable risks identified.

We would be happy to provide you with any of the background documents we have referenced in this letter if that would be helpful to you.

Sincerely,



Michael P. Walls
Vice President
Regulatory & Technical Affairs

Cc: Ryan Jackson

⁴ See, February 4, 2016, Memo to Wendy Cleland-Hamnett from ACC regarding EPA Options for Addressing Chlorinated Paraffins outlining three regulatory options other than a ban: 1) complete risk assessments under section 6, obtain peer review, and (if scientifically justified) pursue section 6 rulemaking; 2) complete actions set forth in option 1, seek stakeholder input regarding adopting a significant new use rule with appropriate disposal restrictions; and 3) obtain peer review of risk assessments and issue a "Request for Information" on appropriate risk management controls for MCCPs and LCCPs.