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halogenated  
solvents  
industry  
alliance, inc.

June 30, 2014

Safer Consumer Products  
c/o Heather Kessler  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812

Re: Initial Priority Products Listing of Paint Strippers Containing  
Methylene Chloride

Dear Ms. Kessler:

The Halogenated Solvents Industry Alliance, Inc. (HSIA) represents US producers and users of methylene chloride (dichloromethane or DCM, CAS No 75-09-2). In March 2014, the Department of Toxic Substances Control (DTSC) identified paint strippers containing methylene chloride as one of three "Priority Products" under its Safer Consumer Products regulation. These comments are provided in response to that designation.

I. Importance of DCM in Paint Stripping Products

DCM is the dominant ingredient in products formulated to remove paints and varnishes; DCM-based products historically have comprised 60 to 80 percent of the organic nonflammable paint strippers on the market. There are no alternatives for DCM in these products.

Even flammable organic paint strippers usually contain 30 to 40 percent DCM to enhance stripping effectiveness. Some varnishes and lacquers can be stripped with a combination of hydrocarbon and oxygenated solvents such as toluene, xylene, mineral spirits, acetone, and methanol, but such solutions are not as effective as those containing DCM.

Strippers based on caustic soda (sodium hydroxide) are not viable alternatives to organic strippers because they are not effective at room temperature and present a significant

danger of injury upon skin or eye contact. Caustic strippers can also damage wood surfaces and destroy the patina on antique furniture and veneers. Heat guns are satisfactory on some wood products such as moldings, but are not effective on furniture having curved surfaces. And decomposing coatings give off noxious and possibly toxic fumes.

Many small, independent furniture stripping shops in California depend on DCM-based strippers for their continued existence. No acceptable alternative for antique furniture stripping has been developed. Hot caustic soda dip tanks are used to some extent in stripping, but this process raises the grain of the wood and changes its appearance and loosens the glue joints, making it unacceptable for fine wood furniture and antiques. Moreover, veneers cannot safely be stripped with this process. This technique is satisfactory only for stripping wood prior to repainting where the surface appearance is not critical.

Of the organic chemicals, benzene, chloroform, propylene dichloride, acetone, and n-methyl pyrrolidone have been used, but have generally been replaced by DCM on the basis of flammability, toxicity, and stripping efficiency. Substitution of a flammable stripper for DCM could result in significantly increased insurance rates, judging from inquiries received from a number of insurers. Reportedly, some shops would not be able to obtain insurance if they used flammable strippers. Moreover, DCM-based strippers, because of their greater effectiveness, cannot be replaced in certain furniture stripping applications as noted above.

## II. Deficiencies in Process to Date

DTSC has focused on hazard reduction as the principal means to accomplish the goals of the green chemistry program. Hazard reduction is one approach to reducing the potential risks posed by chemicals of concern in a product, but the green chemistry law expressly envisions the alternative approach of limiting exposure to the chemical of concern.<sup>1</sup> Rather than rejecting the traditional regulatory approach of risk reduction in favor of a sole focus on intrinsic hazard, we ask DTSC to recognize both approaches as being equally valid and not to concentrate solely on evaluating the hazards of chemical-product combinations.

California Health and Safety Code § 25252 requires the Department to adopt regulations to establish a process to identify and prioritize chemicals of concern in consumer products, including criteria by which chemicals and their alternatives may be evaluated. Regulations adopted by the Department specify:

“Other Regulatory Programs. The Department shall next consider the scope of other California State and federal laws and applicable treaties or international agreements with the force of domestic law under which the product or the Candidate Chemical(s) in the product is/are regulated and the extent to which these other regulatory requirements address, and provide adequate protections with respect to the same potential adverse impacts and

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<sup>1</sup> California Health and Safety Code § 25253(a)(1).

potential exposure pathways, and adverse waste and end-of-life effects, that are under consideration as a basis for the product-chemical combination being listed as a Priority Product. If a product is regulated by another entity with respect to the same potential adverse impacts and potential exposure pathways, and potential adverse waste and end-of-life effects, the Department may list such a product-chemical combination as a Priority Product *only* if it determines that the listing would meaningfully enhance protection of public health and/or the environment with respect to the potential adverse impacts, exposure pathways, and/or adverse waste and end-of-life effects that are the basis for the listing.”<sup>2</sup>

HSIA welcomes the opportunity to submit these comments in order to demonstrate that occupational and consumer exposures from use of DCM in paint stripping are already more than adequately regulated under the federal Occupational Safety and Health Act, as administered by the California Department of Industrial Relations Division of Occupational Safety and Health (Cal/OSHA), the federal Hazardous Substances Control Act, the Clean Air Act, and other relevant statutory authority. Most notably, the federal Environmental Protection Agency (EPA) in 1985 initiated a priority review of risks of human cancer from exposures to DCM, using its authority under § 4(f) of the Toxic Substances Control Act (TSCA).<sup>3</sup> This comprehensive regulatory framework provides adequate protections with respect to the same potential adverse impacts and potential exposure pathways targeted by the DTSC Priority Product designation.

TSCA § 9 requires EPA to consult and coordinate with other federal agencies “for the purpose of achieving the maximum enforcement of this Act while imposing the least burdens of duplicative requirements on those subject to the Act and for other purposes.” Worker and consumer health and safety fall under the jurisdictions, respectively, of the federal Occupational Safety and Health Administration (OSHA) and the federal Consumer Product Safety Commission (CPSC). Taking steps that may lead to the removal of products from the marketplace because workers or consumers failed to comply with these existing requirements is not, we submit, the purpose of the Safer Consumer Products regulation.

As part of its TSCA § 4(f) review, EPA issued an advance notice of proposed rulemaking (ANPR) in which it announced that it would be conducting, in consultation with other federal agencies, a comprehensive and integrated regulatory investigation of DCM.<sup>4</sup> Thereafter, EPA reported on how “the integrated regulatory investigation led to significant exposure reductions in the major chlorinated solvent use applications, and established a precedent for future cooperative regulatory endeavors.”<sup>5</sup> The notice indicated that an

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<sup>2</sup> 22 Cal. Code Regulations § 69503.2(b)(2), emphasis added.

<sup>3</sup> 50 Fed. Reg. 20126 (May 14, 1985).

<sup>4</sup> 50 Fed. Reg. 42037 (October 17, 1985).

<sup>5</sup> 56 Fed. Reg. 24811 (May 31, 1991).

Interagency Work Group, chaired by EPA's Office of Toxic Substances, had been formed "to determine whether DCM presents a significant risk to human health or the environment, and to determine if regulatory actions are needed to limit exposures to DCM." The notice then described risk management actions completed by each agency, as well as a discussion of ongoing risk control activities.

OSHA has regulated occupational exposure to DCM for many years. Following the § 4(f) review, OSHA adopted a standard under § 6(b)(5) of the Occupational Safety and Health Act lowering the workplace exposure limit for DCM from 500 parts per million (ppm) to 25 ppm as an 8-hour time-weighted average (TWA). In addition, it established a short-term (15-minute) exposure limit (STEL) of 125 ppm and an action level for concentrations of airborne DCM of 12.5 ppm (8-hour TWA).<sup>6</sup> Cal/OSHA has adopted and enforces this standard.<sup>7</sup>

In sum, where DCM is used in paint stripping, exposures must be kept below 12.5 ppm to avoid triggering the action level. There is no basis for DTSC to assume that DCM is being used in California in what would be a flagrant violation of the OSHA standard.<sup>8</sup> Cal/OSHA should be given an opportunity to consider whether a lower workplace standard would be appropriate. Otherwise, if DTSC were to go forward with this Priority Product designation, there would be potential for conflicting and overlapping regulation.

There is also a long history of CPSC involvement with DCM, beginning in the mid-1970s. Following the TSCA § 4(f) referral, CPSC adopted cautionary labeling for household products containing DCM, including paint strippers, that would meet or exceed the requirements of the federal Hazardous Substances Control Act:

"Front Panel

"CAUTION: Vapor Harmful, Read Other Cautions  
and HEALTH HAZARD INFORMATION on Back Panel

"[Or equivalent language]

"Back Panel

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<sup>6</sup> 29 CFR § 1910.1052; 62 Fed. Reg. 1494 (January 10, 1997).

<sup>7</sup> 8 Cal. Code Regulations § 5202.

<sup>8</sup> More recent guidance from OSHA and the National Institute for Occupational Safety & Health, also relevant to consumers as it relates to refinishing of bathtubs, also warns directly about the acute hazard. *Methylene Chloride Hazards for Bathtub Refinishers*, OSHA-NIOSH Hazard Alert (January 2013); [https://www.osha.gov/dts/hazardalerts/methylene\\_chloride\\_hazard\\_alert.html](https://www.osha.gov/dts/hazardalerts/methylene_chloride_hazard_alert.html).

“Contains methylene chloride, which has been shown to cause cancer in certain laboratory animals. Risk to your health depends on level and duration of exposure.

“[Or equivalent language]

“[The back panel labeling given above would be placed separately from use precaution information such as the following.]

“Use this product outdoors, if possible. If you must use it indoors, open all windows and doors or use other means to ensure fresh air movement during application and drying. If properly used, a respirator may offer additional protection. Obtain professional advice before using. A dust mask does not provide protection against vapors. Do not use in basement or other unventilated area.”<sup>9</sup>

EPA itself, in the years following the § 4(f) review, adopted a number of national emission standards that limit emissions of DCM, which is a Hazardous Air Pollutant (HAP) listed in Clean Air Act (CAA) § 112. These include, notably, National Emission Standards for Organic Hazardous Air Pollutants for Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources, a standard which covers the very risk upon which the Priority Pollutant designation is focused.<sup>10</sup> Under CAA § 112, these standards must ensure an “ample margin of safety to protect public health.” Thus, if the risk of concern to DTSC were significant, EPA would have to adopt more protective standards under the Clean Air Act. It is unclear how DTSC’s designation realistically could achieve greater public health protection for paint stripping sources of DCM than EPA already is required to achieve under current law.

As noted above, where “a product is regulated by another entity with respect to the same potential adverse impacts and potential exposure pathways, and potential adverse waste and end-of-life effects, the Department may list such a product-chemical combination as a Priority Product *only* if it determines that the listing would meaningfully enhance protection of public health and/or the environment with respect to the potential adverse impacts, exposure pathways, and/or adverse waste and end-of-life effects that are the basis for the listing.”<sup>11</sup> Indeed, far from “determin[ing] that the listing would meaningfully enhance protection of public health and/or the environment with respect to the potential adverse impacts, exposure pathways, and/or adverse waste and end-of-life effects that are the basis for the listing,” DTSC has neglected even to identify in its priority product profile any of the regulatory restrictions or requirements described above except for the workplace exposure

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<sup>9</sup> 52 Fed. Reg. 34698 (September 14, 1987).

<sup>10</sup> 40 CFR Part 63, Subpart III.

<sup>11</sup> 22 Cal. Code Regulations § 69503.2(b)(2), emphasis added.

limits enforced by Cal/OSHA. As the preliminary listing appears to follow directly from DTSC's fundamental failure to follow its own regulations, we submit that the Priority Pollutant designation of paint strippers containing methylene chloride must be reconsidered.

### III. Conclusion

Further development of a Priority Pollutant designation of paint strippers containing methylene chloride seems ill-advised, in light of the substantial regulation of DCM emissions from household products, including paint strippers, already in place as a result of the earlier TSCA § 4(f) rulemaking, the OSHA and CPSC requirements adopted as a result, and NESHAP emissions limits adopted for almost all significant sources of DCM (including paint stripping) under the CAA statutory directive that those regulations ensure an "ample margin of safety to protect public health."

Respectfully submitted,

*Faye Graul/WCN*

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Executive Director