

COMMERCIAL USE OF METHYLENE CHLORIDE IN JEOPARDY

Commercial users of methylene chloride may have dodged one bullet with USEPA's recent ban on the consumer use of solvent for paint and coating removal, but more may be on their way.

USEPA issued an Advanced Notice of Proposed Rulemaking (ANPR) on March 27, 2019 titled "Methylene Chloride; Commercial Paint and Coating Removal Training, Certification and Limited Access Program." The agency is seeking public input on requirements which "could address any unreasonable risks that EPA could potentially find to be presented by methylene chloride" used for commercial paint and coating removal. EPA concluded in the consumer ban, published in the Federal Register on the same day, that methylene chloride posed an unreasonable risk of injury to health due to acute human lethality. USEPA states in the ANPR (84 FR 11467) that it has not yet made a determination of unreasonable risk for commercial use of methylene chloride to remove paint and coatings. The agency will issue that determination as part of the final rule stemming from the ANPR.

It could be a hard sell for the agency to argue that methylene chloride does not present an unreasonable risk in the commercial sector. Over 100,000 public comments were submitted on the proposed rule as a result of 12 mass-mailing campaigns. Virtually all of these comments urged EPA to prohibit the use of methylene chloride for paint and coating removal. The proposed rule described a training and certification program similar to the lead-based paint abatement program in order to reduce proposed unreasonable risks from methylene chloride in paint and coating removal. EPA asked for comments on this type of program as a possible regulatory option. In a comment the Environmental Defense Fund expressed strong opposition to the idea due to higher costs of a training and certification program than the proposed option of an outright ban on commercial use of methylene chloride for paint and coating removal. It is imperative for industrial and commercial users of methylene chloride in paint and coating removal products to submit comments on the ANPR. Go to <http://www.regulations.gov>, enter docket identification (ID) number EPA-HQ-OPPT-2018-0844 in the search bar, and click on the submit comments button. The deadline for comments is May 28, 2019.

Specifically USEPA wants feedback on a program that could allow access to paint and coating removal products containing methylene chloride only to commercial users who are certified as properly trained to handle the solvent, and whether such a program would eliminate any unreasonable risk. If EPA determines that a chemical presents an unreasonable risk of injury to health or the environment under the conditions of use, Section 6(a) of the Toxic Substances Control Act [15 U.S.C. 2605(a)] forces EPA to issue one or more regulatory requirements so that the chemical no longer presents such a risk. EPA envisages a program possibly similar to that for restricted use pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act. Similarly, EPA's Lead Abatement Program regulations establish training and certification requirements for individuals and firms that provide lead-based paint inspection, risk assessment, design, and abatement services in homes, day care facilities and pre-schools built before 1978. The European Union program Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) restricts the sale and professional use of methylene chloride for paint and coating removal. REACH also specifies training that covers, at a minimum: a) awareness, evaluation and management of

risks to health; b) information on existing substitutes or processes, and conditions of use so as to be less hazardous to worker health and safety; c) adequate ventilation; and, d) use of appropriate personal protective equipment. To purchase methylene chloride, EU professionals must first pay a fee to a third-party training provider and take a four-hour course on safe use practices. After the training, an individual must pass a test to demonstrate competency, and receive certification.

Just what we need, right: another environmental regulatory program in the workplace? However, the alternative- viz., a regulatory ban on commercial use of methylene chloride for paint removal- is dire. It's important to remember that EPA under the Trump administration has very little wiggle room on TSCA chemical risk determinations due to stringent procedures and deadlines enshrined in the Frank R. Lautenberg Chemical Safety for the 21st Century Act and regulations promulgated under the Obama administration. The situation creates a rather high-stakes outcome with the future of methylene chloride's use for paint and coating removal hanging in the balance. EPA needs industry's help on this one.