Michael Kennedy, Esq.
Senior Policy Advisor
200 Massachusetts Avenue, NW
Washington, DC 20001
Telephone 202.683.8406
Email kennedym@api.org
www.api.org

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Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Attention: Docket ID Number EPA-HQ-OPPT-2020-0720
Submitted to the Federal eRulemaking Portal (www.regulations.gov)

Re: Environmental Protection Agency's "Perchloroethylene (PCE); Regulation Under the Toxic Substances Control Act (TSCA)" Proposed Rule

The American Petroleum Institute (API) is pleased to submit these comments on the Environmental Protection Agency's (EPA) proposed rule for perchloroethylene (PCE) risk management under Toxic Substances Control Act (TSCA) section 6(a). [88 *Federal Register* 39653 – 39723, June 16, 2023] API represents all segments of America's oil and natural gas industry. Our more than 600 members produce, process, and distribute most of the nation's energy. The industry supports more than ten million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. API's members are involved in all major points of the chemical supply chain—from natural gas and crude oil production, to refinery production of fuels and other products, to service companies using chemicals.

Petroleum refineries use PCE as a chloriding agent to regenerate catalysts. Isomerization and catalytic reforming—which use PCE—are essential to make fuels that are compliant with environmental regulations. Isomerization reduces the amount of benzene in fuels, and catalytic reforming generates hydrogen that is used to remove sulfur compounds. PCE activates the catalyst and regenerates the spent catalyst by providing chloride. Some API members may have other uses of PCE such as in laboratories. We also take an interest in important policy aspects of the proposal.

Summary

One overarching theme of the comments below is that EPA's risk management approach needs to incorporate options and flexibility. An EPA-defined prescriptive approach is unlikely to be the most effective and efficient way to address unreasonable risk. The Agency should shift to a more performance-based approach, incorporating more flexibility in the workplace chemical protection plan (WCPP) model to achieve the desired level of risk reduction.

API is concerned that EPA's approach in its first few risk management proposals is evolving toward a framework that would apply multiple levels of highly prescriptive requirements on a chemical-by-chemical basis. If EPA is going to establish conservative Existing Chemical Exposure Limits (ECELs), there needs to be flexibility for individual facilities on how to meet these requirements. This is necessary to achieve the desired risk reduction in the context of safety and industrial hygiene at facilities that handle many chemicals. If EPA promulgates arduous requirements for how to achieve the ECEL, for each chemical it regulates under TSCA section 6, the result will be an overly complex system that will be unnecessarily burdensome and less effective for risk reduction.

As discussed below, EPA did not use appropriate exposure scenarios in the risk evaluation for PCE. It is essential that the Agency consider actual (not worst-case hypothetical) exposure scenarios in the risk management rule. Since the working EPA risk management framework is to apply generic but still detailed requirements—rather than tailoring the requirements to actual conditions of use—the Agency must incorporate more options and flexibility into those requirements. The remainder of these comments discuss the following main points:

1. PCE is used safely in the petroleum industry.

2. The risk management approach needs to incorporate more options and flexibility.

3. Proposed monitoring requirements are unnecessarily burdensome.

4. Applicability needs to be clarified and aligned with OSHA.

5. Requirements for laboratories warrant more flexibility.

6. There should be a de minimis level for risk management rules.

7. Notification requirements should incorporate a de minimis level and additional time and flexibility is needed to implement them.

8. EPA should allow continued use of PCE for energized electrical cleaning in the petroleum industry.

9. Prohibition should not be proposed if lesser restrictions can address unreasonable risk.

10. EPA needs to improve its risk evaluation and risk management methods and assumptions to be consistent with the best available science.

11. EPA should establish a clear process for stakeholders to identify uses that merit exemption under TSCA section 6(g).

Comments

1. PCE is used safely in the petroleum industry.

At petroleum refineries, PCE is used in continuous, closed processes, subject to multiple engineering controls to prevent exposures. PCE is directly injected from a tote or storage tank into the closed processing unit. It is consumed in the closed processes in which it is used.

PCE is replenished on a periodic basis and is transported to the facility by suppliers in totes or tank trucks. The PCE is transferred from the truck or tote into a storage tank that is connected to the processing unit for direct injection in a closed system. Hoses to transfer PCE from a tank truck or tote to the storage tank are sealed, creating a closed system for the transfer. The totes and tank trucks are returned to the supplier and are maintained by the supplier.

The tanks and totes are clearly labelled in accordance with the Occupational Safety and Health Administration (OSHA) hazard communication standard. Transfers of PCE from tank trucks to storage tanks and changeout of totes are performed pursuant to comprehensive written procedures under strict PPE guidelines that include hardhats, gloves, goggles and/or face shields, and when appropriate, respirators.

In the risk evaluation for PCE, EPA generalized the use of PCE and made unrealistic assumptions about the frequency and duration of use of PCE as a catalyst regenerator in petroleum refineries. The exposure scenario used in EPA's risk assessment made erroneous assumptions about the frequency, duration, and other conditions of changeout. This tainted the output of the exposure models and led to an erroneous finding of unreasonable risk for the condition of use. EPA made its determinations of unreasonable risk based on scenarios that ignored regulatory compliance and comprehensive industrial hygiene programs at petroleum refineries, which are highly regulated by multiple authorities including but not limited to EPA, OSHA, the Department of Transportation, and the Department of Homeland Security.

API has urged EPA to correct its approach to TSCA section 6 evaluations, which is misleading and contrary to established science, the statute, and EPA's codified risk evaluation procedures—all of which contemplate a valid exposure assessment rather than incorrect blanket assumptions. It is not sound science for EPA to generalize its concerns about hypothetical subpopulations of workers to all conditions of use.

API appreciates that the proposed risk management rule states that EPA understands that "most workplaces using PCE in isomerization and catalytic reforming (the two uses of PCE in catalyst regeneration in petrochemical manufacturing) already have stringent controls in place that reduce workplace exposures" and that "PCE exposure frequency and duration at

petroleum refineries may be less than what was assumed in the risk evaluation."[1] However, acknowledging this in a subsequent risk management rule does not change that EPA used an inaccurate exposure scenario for this condition of use in the risk evaluation, which led EPA to a proposed rule to attempt to regulate the use in great detail—when there should have been no finding of unreasonable risk for the use in the first place. Now that EPA has persisted with the flawed approach for risk evaluation, it is even more important that the Agency consider actual (not worst-case hypothetical) exposure scenarios in the risk management rule and incorporate more options and flexibility into the approach.

2. <u>The risk management approach needs to incorporate more options and flexibility.</u>

EPA has taken on the task of establishing ECELs and is proposing extremely conservative ones.[2] Establishing an ECEL enables a performance-based framework. Each facility should be allowed to achieve the standard in the manner most appropriate for its operations. This is particularly appropriate for conditions of use that already involve stringent and protective controls. The "prescriptive controls" described as the primary regulatory alternative should be allowed as an option in addition to the proposed option. Furthermore, EPA should reconsider whether the detailed requirements—for regulated areas, exposure monitoring, methods of compliance, respiratory and dermal protection, and training—are warranted when an enforceable ECEL is established.

EPA requests comment on combinations of specific engineering controls, administrative controls, and PPE that would reduce inhalation exposures to at or below the ECEL of 0.14 ppm as an 8-hour TWA or prevent direct dermal contact with PCE for all workplaces where such controls would be required."[3] It will be difficult for the Agency to effectively prescribe a specific suite of specific engineering controls, administrative controls, and/or PPE—this is not the approach EPA should take.

EPA should refrain from promulgating prescriptive requirements that would not have benefits. For instance, EPA requests comments on whether there should be a requirement to replace cartridges or canisters after a certain number of hours. This is not necessary, as companies follow manufacturer guidelines for cartridge use and address this under OSHA compliance and IH practices. As another example, EPA solicits comments on requiring warning signs to demarcate regulated areas. API does not see the need for requirements that prescribe specified signs. Regulated entities should have the flexibility to demarcate regulated areas in the best way for a given situation, as part of a comprehensive IH program. As a final example, as proposed, exposure sample analysis would need to be done with Good Laboratory Practice Standards (GLPs) in accordance with 40 CFR part 792. Workplace monitoring work is often conducted according to Industrial Hygiene Laboratory Accreditation Program (IHLAP) standards (not TSCA GLPs). Requiring GLPs would be

[1] 88 FR 39695.

[2] In this proposal, EPA is proposing an ECEL based on an endpoint—liver cancer—when there is little or no support for associating PCE with liver cancer. There are many other problems with the ECEL, including some that were highlighted in EPA's own TSCA Science Advisory Committee on Chemicals (SACC) review.

[3] 88 FR 39685.

extremely burdensome with no benefit, and likely would strain current and future laboratory capacity.

As required under TSCA section 6(c)(2), EPA considered a primary regulatory alternative, which in this case involves multiple variations from the proposed action. The primary regulatory alternative EPA describes is "prescriptive controls," which the Agency explains "differs from the proposed regulatory action because it does not require the use of elimination, substitution, engineering controls, and administrative controls or work practices, in accordance with the hierarchy of controls," to the extent feasible as a means of controlling exposures.[4] The approach would appear to require dermal and respiratory PPE and training, in conjunction with the monitoring requirements. However, EPA's explanation of the primary regulatory alternative is confusing. The preamble at 39683 states, "The primary alternative regulatory action also considers prescriptive workplace controls where existing engineering controls, administrative controls, and PPE may already address the unreasonable risk for some conditions of use that would be subject to a WCPP under the proposed regulatory action." It is not clear why the approach is to mandate prescriptive controls if existing controls already address the unreasonable risk for a condition of use. Is it not clear what if any other provisions of the WCPP would apply along with the "prescriptive controls." EPA has not provided the regulatory language that would implement the primary regulatory alternative and without it there is not enough information to assess and comment meaningfully on the alternative.

The Agency should establish a process by which a facility can submit an alternative plan to EPA for approval. The proposed rule includes a requirement that owners and operators document their exposure control strategy and implementation in an exposure control plan or through adding EPA-required information to any existing documentation of the facility's safety and health program developed as part of meeting OSHA requirements or other safety and health standards. If the exposure control plan varies from any of the specifics of the rule, a facility should have a path for seeking EPA's approval of the specific approach. This is appropriate for facilities that already have comprehensive systems and practices to achieve regulatory compliance, best practices in industrial hygiene, and mitigation of any unreasonable risk from PCE.

EPA should not dictate industrial hygiene practices on a chemical-by-chemical basis via rolling TSCA risk management rules. API recommends that EPA study other performance-based models that authorities have used to accomplish goals that involve complex and varied facility operations. An example is the Chemical Facility Anti-Terrorism Standards (CFATS) Risk-Based Performance Standards (RBPS).[5]

The primary alternative regulatory action also includes longer compliance timeframes for prohibitions and implementation of WCPP and prescriptive controls. API supports the longer timeframes, which will give facilities more options and flexibility for implementation.

[4] 88 FR 39684.

[5] https://www.cisa.gov/resources-tools/programs/chemical-facility-anti-terrorism-standards-cfats

3. <u>Proposed monitoring requirements are unnecessarily burdensome.</u>

The monitoring requirements proposed for the WCPP are unnecessarily prescriptive and burdensome. They are not a fit for petroleum refineries where PCE remains in a closed system except for during replenishment, which is intermittent. (See #1 above.) The concept of "sampling," i.e., taking periodic representative samples for recurring exposure events, is thwarted if exposure monitoring were to be required for every delivery. Such monitoring could divert resources and attention from monitoring other chemicals that are used in regular recurring activities.

EPA provides no justification for the specified frequencies for any of the proposed monitoring requirements. For non-detects or if equipment malfunctions, EPA is proposing to require resampling within 15 days.[6] There is no valid reason to require resampling for a non-detect.[7] There is also no rationale offered by EPA for the 15-day time frame. The requirement to perform initial monitoring of potentially exposed persons regularly working in areas where perchloroethylene is present should not apply to those working around closed systems because there is little to no potential for exposure. Startups should not be subject to additional monitoring because there are no expected releases during a startup. Exposure monitoring should only occur for the tasks that are performed to transfer PCE from storage containers to processing units.

The periodic monitoring requirements are too prescriptive and while they may appear to be reasonable for a single chemical, the aggregate of multiple WCPPs will be a significant burden. EPA should offer flexibility for monitoring, particularly for conditions of use that are intermittent.

4. <u>Applicability needs to be clarified and aligned with OSHA.</u>

The proposed rule assigns requirements to the "owner or operator." However, under OSHA requirements, worker safety is primarily the responsibility of the *employer*. Employers and owners/operators are not always the same entity. For cases where they are different, API is concerned that EPA is placing too much of the burden on the owner/operator. EPA's proposed rule has the potential to shift responsibility and burden from the employer to owner/operator and create problematic inconsistencies with the OSHA framework.

Some activities, such as providing PPE, are more appropriately the responsibility of the employer. Sometimes, owners/operators are involved in and understand the employer's business, in which case they may require that the employer adhere to basic employee

[6] 88 FR 39652.

[7] EPA should allow for the use of statistical analysis to account for potential errors in sample results. See OSHA Technical Manual, Chapter 1, https://www.osha.gov/otm/section-2-health-hazards/chapter-1 (last viewed on August 14, 2023).

protection measures. In other situations, the owner/operator may not be involved in the details of the employer's business and may not even have the knowledge to appreciate the details involved in the employer's business.

An example is when an operator hires a contractor to perform specialty work. It is the contractor, i.e., the employer, who possesses the training and knowledge to protect their employees. Requiring the owner/operator to implement the WCPP on behalf of the contractor is misplaced. The primary duty to protect employees from adverse workplace exposures rests with the employer—they have the knowledge and are in a position to ensure employee protection. This duty cannot be transferred to the owner/operator with an expectation that the owner/operator understands how to run the contractor's business and supervise their employees.

Workplaces can and do ensure that people wear PPE but the owner/operator may not be the appropriate party to run medical programs such as those for respiratory protection. In cases where a contractor is performing the work and may be exposed, management of the PPE requirements should fall to the contractor's employer and not the owner/operator. For access to medical records in 1910.1020 and medical surveillance and monitoring records in 1910.1052, the proposed WCPP definitions have the potential to incorrectly apply an employer/employee relationship between an owner/operator and a party that is not an employee of the owner/operator.

API is further concerned that issues of co-employment are created when owners/operators are required to dictate how a contractor runs their business, for example, by being responsible for implementing the WCPP for the employer. Contractors are hired because they possess skills and knowledge that are outside the owner/operators abilities or capabilities. The employer, not the owner/operator, is clearly in the best position to direct work in a manner that ensures employees are protected.

5. Requirements for laboratories warrant more flexibility.

The laboratory requirements in this proposed rule are better than in the proposed risk management rule for methylene chloride, which proposed the full WCPP for laboratory use. The approach in this PCE proposed rule—requirements for fume hoods, dermal PPE, and training on the use of PPE—generally is reasonable and effective for mitigating risks. However, the regulatory approach should provide more flexibility, particularly when considering that many different solvents may be used in a lab. Laboratories are an example of a situation that does not fit the chemical-by-chemical approach that is developing as EPA rolls out its risk management proposals.

EPA could consider a general approach for mitigating exposure to solvents in the laboratory and it should be consistent with or simply refer to the OSHA laboratory standard at 29 CFR 1910.1450. EPA could require the application of the hierarchy of controls following an appropriate risk assessment for the material and process to mitigate risk, in line with Appendix A of the OHSA lab standard and the general approach of chemical hygiene plans. An approach for solvent use in labs would involve conducting a risk assessment considering

the hazards of materials used and the process in which the materials are used, applying the hierarchy of controls with the most effective controls used first, training, substitution with lower hazard solvents and use reduction where possible, and selecting and using appropriate engineering controls. Engineering controls should be considered prior to considering PPE.

The use of fume hoods would be feasible for most uses of PCE, but there are some laboratory uses for which fume hoods are not feasible. In these cases, worker exposure can be prevented by alternative engineering controls (e.g., closed system, solvent purification system, fume extractors). EPA should allow flexibility with engineering controls, consistent with the OSHA lab standard, for PCE and other solvents.

6. <u>There should be a de minimis level for risk management rules.</u>

EPA is proposing that products containing PCE at concentrations less than 0.1% by weight are not subject to the prohibitions. API supports including a de minimis level in prohibitions **and other requirements**, including notification requirements (see below). A de minimis level of 0.1% would be consistent with the OSHA Hazard Communication Standard (HCS), which has a 0.1% de minimis level for disclosure of carcinogens. The de minimis level should be applicable at all points, including for raw materials, mixtures, and articles.

It is critically important that EPA not promulgate requirements that would disrupt the existing hazard communication framework. This is necessary to provide clarity for the whole value chain and to be aligned with existing requirements and test methodologies. A zero ("mere presence") standard is not practical to implement and would place some parties in the value chain in the position of having to indicate "less than" or other vague language in the absence of clear confirmation that the level is zero. It would necessitate that companies survey suppliers about the potential mere presence of PCE, which would be a resource-intensive and unnecessary exercise. Not including a reasonable de minimis level in this rulemaking would conflict with existing hazard communication practices, is not necessary to protect against unreasonable risk, and would result in burden and disruption for company hazard communication programs, including safety data sheet (SDS) authoring.

7. <u>Notification requirements should incorporate a de minimis level and additional time and flexibility is needed to implement them.</u>

Notification requirements should align with SDS requirements and clearly incorporate a de minimis level. The OSHA HCS does not require listing on the SDS hazardous chemicals present below 0.1% for carcinogens and below 1.0% for other hazardous chemicals. Notification requirements for PCE should not apply for mixtures that contain PCE below 0.1%. This is discussed further directly above.

The timeframe for implementing notification to downstream recipients is too short and could circumvent established processes for updating SDSs. As proposed, notification to downstream recipients would be required during specified timeframes, to be provided prior to or concurrent with any shipment of PCE or PCE containing products. EPA is proposing a 150-day period for manufacturers and a 210-day period for processors and distributors to

implement the proposed SDS changes (following the publication of the final rule). One year is a more appropriate timeframe. At a minimum, EPA should allow companies to provide a supplementary letter (in lieu of an updated SDS) for at least a one-year transition period.

The proposed rule provides specific text to be inserted in section 1(c) and section 15 of the SDS. It is not appropriate or within TSCA's authority for EPA to prescribe SDS content in this manner. The SDS is required under a separate regulation and authority, the OSHA HCS at 29 CFR 1910.1200, which is intended to comprehensively address how to communicate information about hazards and appropriate protective measures, including preparation and distribution of SDSs to employees and downstream employers.[8] The OSHA regulations state what information the SDS shall include,[9] and section 15 is not mandatory. API recommends that the final rule state that the notification may be provided on the SDS or by other means. We think that most companies will choose to include the information on the SDS, but it is important to preserve the current framework in which SDS content is determined by the OSHA HCS. There is the potential for an unworkable situation if EPA or other agencies attempt to promulgate their own requirements specifying what needs to be on an SDS.

8. <u>EPA should allow continued use of PCE for energized electrical cleaning in the petroleum industry.</u>

Energized electrical cleaners (EECs) are within the condition of use "industrial and commercial use as a solvent for aerosol spray degreaser/cleaner," which EPA is proposing to prohibit. Petroleum refineries safely use EECs on a regular basis. Refineries perform a complete shutdown once every year or other year for major maintenance and cleaning. The rest of the time, they must clean and maintain energized equipment. EECs also are used on oil drilling rigs and in hydraulic fracking operations because much of the equipment is electric. The EECs are used predominantly outside and in small quantities.

TSCA section 6(c)(2)(C) requires that, in deciding whether to prohibit or restrict in a manner that substantially prevents a specific condition of use and in setting an appropriate transition period for such action, EPA consider, to the extent practicable, whether technically and economically feasible alternatives that benefit health or the environment will be reasonably available as a substitute when the proposed prohibition or restriction takes effect. EPA has not met this requirement for EECs as used in the petroleum industry. The only available alternatives to current PCE-containing EECs are flammable and could create additional hazards. They are also more expensive. EPA has not assessed the comparative fire and other safety risks of PCE-containing EECs versus available substitutes. It does not appear that EPA has conducted any economic impact analysis for EECs or other aerosol spray cleaners and degreasers.

[8] 29 C.F.R. §1910.1200(a)(2).

[9] Appendix D to §1910.1200—Safety Data Sheets (Mandatory).

9. <u>Prohibition should not be proposed if lesser restrictions can address unreasonable risk.</u>

The primary regulatory alternative differs from the proposed action by providing for a WCPP for some conditions of use that would be prohibited under the proposed regulatory action. API is concerned that EPA policy is leaning towards choosing prohibition (or more generally the most stringent option) as the default regulatory approach for TSCA section 6 risk management rules. This would be a misguided policy and contrary to the statute. TSCA section 6(a) states that if EPA determines in the risk evaluation that a chemical substance or mixture presents an unreasonable risk of injury to health or the environment, EPA shall apply one or more requirements to the substance or mixture to "the extent necessary so that the chemical substance or mixture no longer presents such risk." If a WCPP could mitigate unreasonable risk without requiring outright prohibition, then proposed bans for specific uses go beyond the extent necessary. EPA should offer the option of the WCPP, and if it cannot be met, the chemical cannot be used.

EPA states, "Prohibition is the preferred option for occupational conditions of use where greater uncertainty exists relative to a sector's ability to comply" with WCPP provisions. API strongly objects to this policy. It is not appropriate for EPA to revert to a ban to account for uncertainty in whether a WCPP can be met. Rather, prohibition needs to be justified as the measure necessary to address the risk. If EPA can set an enforceable ECEL then it should not turn to prohibition in the face of vague doubts about whether that ECEL can be enforced.

10. <u>EPA needs to improve its risk evaluation and risk management methods and assumptions to be consistent with the best available science.</u>

TSCA section 26(h) requires EPA to use scientific information, methods, and so forth in a manner consistent with the best available science.

Approach for assessing ambient air and water exposures to fenceline communities. For its TSCA section 6 evaluations, EPA is using the TSCA Screening Level Approach for Assessing Ambient Air and Water Exposures to Fenceline Communities Version 1.0. API incorporates by reference its recent comments on this approach.10 API supports EPA in improving its methodologies to include sound, well-defined methods for identifying potential health risks associated with fenceline exposures. API is interested in working with the Agency to provide information to assist EPA scientists in deciding how to evaluate fenceline exposures, and we appreciate EPA's careful consideration of the comments we have submitted on the topic.

[10] Gradient, *Comments on the Draft Toxic Substances Control Act (TSCA) Screening Level Approach for Assessing Ambient Air and Water Exposures to Fenceline Communities Version 1.0*, prepared for American Petroleum Institute, February 22, 2022, EPA-HQ-OPPT-2021-0415-0040.

ECELs. EPA has received numerous substantive comments on the deficiencies in its establishment of ECELs, and for the PCE ECEL in particular. We urge the Agency to give more consideration to all scientific input in the section 6 process going forward, rather than defaulting to compounding conservative assumptions.

11. <u>EPA should establish a clear process for stakeholders to identify uses that merit exemption under TSCA section 6(g).</u>

For all risk management rules, there should be a clear process for stakeholders to identify uses that merit exemption under TSCA section 6(g).[11] EPA should specify what information it needs, when in the TSCA section 6 process it should be submitted, and how to submit. The Agency should be transparent about its process, criteria, and timeline for evaluating each candidate for exemption. The process should be available at the earliest point appropriate for bringing candidate 6(g) exemptions to EPA for consideration.

EPA may need to consider the need for exemption for PCE if the final rule in any way impedes the production of gasoline. PCE is used as a catalyst regenerator in at petroleum refineries. Isomerate and reformate made in processes that use PCE as a catalyst regenerate go into gasoline blends that make up approximately 45% of the gasoline pool in the United States.[12] The catalyst is critical to process safety because it allows the processes to run at lower reaction temperatures, which is an engineering control to lower the overall risk of the process and reduce carbon dioxide emissions from the process.

PCE is the safest catalyst activator and regenerator for spent catalysts during normal operating conditions. The alternatives, such as trichloroethylene, chlorine gas, methylene chloride, and carbon tetrachloride, are less efficient and/or more hazardous. Most of the other chloriding agents are restricted by EPA or other agencies or are undergoing risk management due to findings of unreasonable risk. For example, chlorine is regulated under Department of Homeland Security and U.S. Coast Guard security regulations and switching to that substance would increase the overall security risk of the facility.

PCE is essential as a catalyst regenerator in key processes that reduce benzene and sulfur content in gasoline to meet EPA's own fuel standards. Also, as discussed above under #8, PCE EECs are essential to maintain refineries. There are no safer alternatives available to replace PCE.

[11] These are exemptions for critical or essential uses for which no technically and economically feasible safer alternative is available; uses where compliance with the requirement would significantly disrupt the national economy, national security, or critical infrastructure; or when the specific condition of use, as compared to reasonably available alternatives, provides a substantial benefit to health, the environment, or public safety.

[12] From Honeywell UOP technical presentation to EPA on isomerization and reforming processes, and the use of PCE as a catalyst regenerator.

Conclusion

EPA urgently needs to consult more with workplace health and safety experts to align its approach to chemical risk management with current best practices for workplace safety. EPA has not met the requirements of TSCA section 9, which requires the 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 health and safety falls under OSHA jurisdiction, and PCE is already regulated under OSHA. The Agency is attempting to reinvent the wheel with workplace requirements devised by EPA, which has the potential to degrade workplace safety rather than enhance it. EPA gives lip service to the idea of consistency with applicable OSHA requirements and industry best practices, including the National Institute for Occupational Safety and Health (NIOSH) hierarchy of controls. However, the proposed rule is not aligned with current industrial hygiene best practices. The rule reflects a single-chemical approach rather than the work of evaluating hazards and implementing mitigations for the whole workplace, which is how industrial hygiene is practiced. EPA needs to provide more options and flexibility for facilities to design and implement a holistic and tailored approach.

We appreciate the EPA's consideration of the points above in crafting the final rule. API and its members would be happy to answer any questions the Agency has about these comments.

Sincerely,

Michael Kennedy, Esq.