



CAL DOOLEY  
PRESIDENT AND CEO

September 22, 2015

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Administrator McCarthy:

The American Chemistry Council (ACC) has learned that EPA is relying on a draft risk assessment initiated under its TSCA Work Plan Chemicals program as the basis upon which to ban the manufacture of medium- and long-chain chlorinated paraffins (MCCPs and LCCPs) under its TSCA section 5 authority in the new chemicals program or through a significant new use rule (SNUR). ACC is very concerned about the policy implications of this unprecedented action, which is especially troubling due to EPA's complete lack of transparency in taking such action.

As we understand it, EPA's 2009 enforcement actions against two manufacturers of MCCPs and LCCPs alleged that the two companies were manufacturing "new" chlorinated paraffins that were not on the TSCA Inventory, despite the fact that several chlorinated paraffins are listed on the TSCA Inventory and contain broad descriptions that arguably include MCCPs and LCCPs. These substances have been in commerce for decades and are important – in some cases critical – components in a wide variety of applications impacting an equally wide variety of industries and uses, e.g., adhesives and sealants, aerospace, coatings, metals, lubricants, including uses of critical importance to the U.S. government. More than 50 million pounds of MCCPs and LCCPs were reported for the 2012 CDR as being manufactured or imported. Therefore, a ban of these substances would have a very real likelihood of causing a significant disruption of the U.S. economy.

While ACC understands that in 2012 both companies entered into enforceable consent agreements with the Agency that required the companies to submit PMNs for their MCCPs and LCCPs, the Agency also allowed these companies to continue manufacturing and distributing the substances in commerce while it reviewed the PMNs in its new chemicals program. This fact is significant in that it places these substances in a rather unusual status vis-à-vis TSCA, i.e., TSCA does not envision a scenario in which chemicals simultaneously are in active commerce, but are also considered new chemicals.



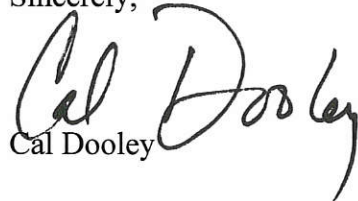
In 2012, EPA identified MCCPs and LCCPs as TSCA Work Plan Chemical priorities for risk assessment – a clear signal from EPA that it recognized MCCPs and LCCPs as existing chemicals active in commerce. In August 2012, EPA published peer review plans for MCCPs and LCCPs, slating peer review to begin more than two years ago in the 3Q 2013. However, EPA has never publicly released the assessments or sent them through robust public peer review, as outlined in that peer review plan. In fact, the MCCPs and LCCPs are still listed on EPA’s existing chemicals Work Plan Chemicals webpage as “ongoing assessments.”<sup>1</sup> Nonetheless, ACC understands that EPA is relying on these non-peer reviewed draft assessments as its basis to ban the manufacture of these MCCPs and LCCPs as of May 2016.

Downstream users of these substances have only recently become aware of EPA’s highly unusual approach to these MCCPs and LCCPs, including, notably, EPA’s stated intention to ban these substances as of May 2016. The downstream users have been unfairly disadvantaged by the non-transparent manner in which these substances have been evaluated. Numerous businesses and industries will be unfairly impacted by EPA’s failure to release the draft assessments for public comment and public peer review, as it stated publicly at the beginning of the process. EPA’s failure to abide by its commitment to follow a public and transparent process is completely at odds with President Obama’s Memorandum on Transparency and Open Government and inconsistent with the spirit, if not the letter, of the Administrative Procedure Act.

In addition, section 2(c) of TSCA requires EPA to carry out its authority in a “reasonable and prudent” manner, which considers the “environmental, economic, and social impact of any action” taken. ACC believes that EPA has implemented its authority under TSCA in a manner which is neither reasonable nor prudent, and in a manner that does not adequately consider the potential disruption of commerce and resulting adverse impact on the U.S. economy.

We strongly urge you to reconsider the Agency’s intended actions on MCCPs and LCCPs, especially given the likely significant and widespread adverse impacts on the recovering economy. A more appropriate approach would be for EPA to make a TSCA Inventory correction for these substances, and then complete its risk assessments under the TSCA Work Plan Chemicals program.

Sincerely,

  
Cal Dooley

cc: Jim Jones (OCSPP)

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<sup>1</sup> <http://www.epa.gov/oppt/existingchemicals/pubs/riskassess.html>