



March 16, 2017

VIA ELECTRONIC SUBMISSION

Environmental Protection Agency

Attn: Toni Krasnic, Chemical Control Division, Office of Pollution Prevention and Toxics

Re: EPA-HQ-OPPT-2016-0163, Regulation of Certain Uses under Toxic Substances Control Act: Trichloroethylene

The Institute for Policy Integrity (“Policy Integrity”) at New York University School of Law¹ respectfully submits the following comments to the Environmental Protection Agency (“EPA” or the “Agency”) regarding its proposed restrictions on the manufacture, processing, and distribution of trichloroethylene (“TCE”) for use in aerosol degreasing and in spot cleaning in dry cleaning facilities (the “Rule”).²

Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy. Our comments focus on the Economic Analysis that EPA prepared to satisfy its obligations under Section 6(c)(2) of the recently amended Toxic Substances Control Act, which requires EPA to assess the “the reasonably ascertainable economic consequences” of regulations issued under the Act,³ as well as Executive Order 12,866, which requires executive agencies to estimate the costs and benefits of significant regulatory actions.⁴

EPA’s Economic Analysis demonstrates that the Rule is overwhelmingly cost-benefit justified, generating an estimated \$9.3 to \$25 *million* in annualized benefits, while imposing only \$170 *thousand* in annualized costs (using a 3% discount rate for both costs and benefits).⁵ Furthermore, this monetized benefits estimate encompasses only reductions in

¹ This document does not purport to present New York University School of Law’s views, if any.

² 81 Fed. Reg. 91,592 (Dec. 16, 2016).

³ 15 U.S.C. § 2605(c)(2).

⁴ Exec. Order No. 12,866, 58 Fed. Reg. 51,735 (Oct. 4, 1993).

⁵ 81 Fed. Reg. at 91,594.

cancer risks, and thus does not account for benefits associated with reductions in non-cancer risks that will also accompany the Rule.⁶

It is clear, then, that the Rule will increase social welfare. Nevertheless, aspects of EPA's Economic Analysis could be clarified or expanded upon to provide an even stronger analytical foundation for the Rule. To that end, we recommend the following:

- EPA should clarify its discussion of the relative costs and benefits of a ban on TCE use as compared to a performance standard that limits permissible exposure to TCE.
- EPA should discuss whether and how the Rule could affect the price of substitute products.
- EPA should clarify whether and why it attributes health benefits to the substitution of methylene chloride-based spot-removal products for TCE-based products.

I. EPA should clarify its discussion of the relative costs and benefits of a ban on TCE use as compared to a performance standard that limits permissible exposure to TCE.

In its discussion of alternative regulatory approaches, EPA finds that a performance standard setting a maximum permissible level of workplace exposure would not be less costly than a ban on TCE use, because switching to “readily available” substitutes is cheaper than other techniques that workplaces could use to reduce exposure, such as personal protective equipment or engineering controls.⁷ In other words, the Agency assumes that a performance standard would serve as a *de facto* ban, because all users would choose to comply through the use of substitutes.

Elsewhere in its analysis, however, EPA concedes that “for users, no regulatory option can be more expensive than a ban” and “acknowledges the possibility that there are some TCE dry cleaning spot remover users that have strong preferences for using TCE, and therefore would incur a welfare loss” under a ban, notwithstanding the availability of substitutes.⁸ A performance standard would allow those users alternative means of complying with the Rule (which they would use only if their preference for TCE was strong enough to justify the additional cost of the alternative compliance methods). Accordingly, *if* the projected

⁶ *Id.*

⁷ EPA, Economic Analysis of Proposed TSCA Section 6 Action on Trichloroethylene in Dry Cleaning Spot Removers and Aerosol Degreasers at 2-4 (Nov. 15, 2016), *available at* <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2016-0163-0003> (“Since alternative products that are similar or lower in price and have similar efficacy are readily available, a rule that ensures that compliance is achieved by switching to these alternative products would be a less costly approach for all segments of the regulated community.”).

⁸ *Id.* at 5-11; *see also id.* at 5-15.

benefits of a ban and a performance standard were truly equivalent, EPA would be more likely to maximize the net benefits of the Rule by imposing a performance standard.

But the benefits of a performance standard are almost certainly lower than those of a ban. As EPA points out, a performance standard would not address consumer (as opposed to workplace) exposure.⁹ Additionally, a performance standard would be more difficult to enforce (and thus have a lower compliance rate), because it would apply to a large number of product users as opposed to a small number of suppliers.¹⁰ As a result, “EPA has concluded that a performance standard would [not] sufficiently address risks for all exposed populations.”¹¹

Taken together, EPA’s statements imply that it believes that the increased benefits associated with a ban (broader scope, more effective enforcement, greater compliance) outweigh its potentially increased costs (welfare losses to users who would, under a performance standard, choose alternative compliance methods). EPA should make this finding explicit in its Economic Analysis to avoid any confusion. If possible, the Agency should support its finding by quantifying the additional costs and benefits of a ban as compared to those of a performance standard. If such quantification is not possible, EPA should explain why and discuss its findings qualitatively.

II. EPA should discuss whether and how the Rule could affect the price of substitute products.

According to EPA, “users of TCE aerosol degreasers and TCE dry cleaning spot removers are not expected to incur any costs associated with any requirements that discourage or prohibit the use of TCE,” because “products with similar or lower costs and similar efficacy are readily available.”¹² EPA does not, however, address the possibility that increased demand for substitute products will lead to increased prices for those substitutes. If the Agency believes such price changes will not occur or will be negligible, it should explain why. If it believes significant price changes will occur, it should factor them into its analysis.

III. EPA should clarify whether and why it attributes health benefits to the substitution of methylene chloride-based spot-removal products for TCE-based products.

For its lower benefits estimate, EPA reasonably attributes no benefits to the portion of current TCE-containing products that will be replaced by products containing perchloroethylene (“PCE”) or 1-bromopropane (“1-BP”), because those two chemicals may

⁹ *Id.* at 2-4.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at ES-3.

pose health risks of their own.¹³ Indeed, EPA points out that California has already banned use of these chemicals in spot-removal and aerosol-degreasing products (explicitly in the case of PCE and implicitly for 1-BP).¹⁴

But California has also banned methylene chloride (“DCM”), one of the other anticipated substitutes for TCE in spot-removal products.¹⁵ Furthermore, EPA anticipates that some blenders will avoid reformulating with DCM due to “perceptions about future federal regulations.”¹⁶ Both of these facts suggest that DCM-containing products are hazardous to human health—or, at least, are perceived to be so. Yet, unlike with PCE and 1-BP, EPA does not appear to exclude the portion of TCE-containing products that will be replaced by DCM-containing products from its lower benefits estimate.¹⁷

If EPA has, in fact, excluded DCM substitution-related benefits from its lower benefits estimate, it should explicitly state this in its Economic Analysis. If the Agency has not done so, it should explain its reasoning for treating DCM substitutions differently than PCE or 1-BP substitutions.

Respectfully,

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¹³ *Id.* at 6-8.

¹⁴ *Id.* at 4-10, 4-18.

¹⁵ *Id.* at 4-10.

¹⁶ *Id.*

¹⁷ *See id.* at 4-10, tbl.4-2 (listing DCM in the “Other” category of substitutes that will replace 70% of TCE use in spot-removal products); *id.* at 6-8, tbl.6-4 (explaining that benefits are not attributed to substitutions of TCE with PCE and 1-BP but are attributed to substitutions of TCE with other products).