July 01, 2016

Submitted via email.

Nathan Jutras
USEPA Headquarters
Mail Code: 1803A
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Response to EPA Outreach to Small Entities
EPA Work Plan Chemicals Regulatory Activity
Methylene Chloride (MeCl2) and n-Methylpyrrolidone (NMP) in Paint Removers

Dear Mr. Jutras:

I am writing on behalf of W. M. Barr & Company, Inc. (Barr) to follow-up on materials that were distributed by Environmental Protection Agency (EPA) personnel as well as discussions that occurred in the context of EPA's June 15, 2016 Outreach Meeting with Small Business Entities, including formulators and users of paint removing products which contain Methylene Chloride (MeCl2) and n-Methylpyrrolidone (NMP). Barr has a lengthy history and well-established reputation as a provider of top-quality professional and consumer-use paint removal products that have a 70-year history of safe use in the United States. Barr appreciates the opportunity to provide these comments and the enclosed materials as a supplement to written comments provided to EPA in April of this year, and at the invitation of EPA staff following the June 15, 2016 meeting. These comments also address specific questions posed by EPA in the context of its outreach.

Executive Summary of Comments

We are concerned that the Agency has embarked on a regulatory initiative under Section 6 of the Toxic Substances Control Act (TSCA) concerning paint removal products, the outcome of which has been predetermined. Importantly, the materials prepared by EPA staff and shared in the context of the Agency's outreach efforts with small entities suggest the EPA has decided that proposing a regulation under Section 6(a) of TSCA is warranted. Unfortunately, the information EPA has made available suggests that the Agency has not gathered and taken into account important information concerning the comparative efficacy, health and environmental effects, economic benefits, and ease of use of products that contain MeCl2 and NMP. Consequently, the Agency has not been able to objectively identify and consider the potential adverse and

unintended health and environmental consequences that are reasonably likely to occur in the event continued use of the most effective paint removal products is unduly restricted or completely prohibited for professional and consumer/do-it-yourself (DIY) users under a Section 6(a) regulation. Moreover, EPA's exposure estimates and risk analysis are based on workplace exposure data and similar information that are not pertinent to consumer-use scenarios which are more likely those experienced by Barr's customers. Thus, EPA has over estimated risk to consumers who buy small quantities of paint removers only on an as-needed basis for limited scale, short-duration uses.

In addition, the Agency has not performed the analysis and consultation required under Section 9 of the amended TSCA, and therefore EPA has not met its obligation to take into account the successful efforts of other federal agencies (e.g., OSHA and the CPSC) and the Agency's own Clean Air Act program efforts to address and mitigate exposures to MeCl2 and NMP, only two of the numerous chemical substances that are commonly used in paint removers.

Barr is providing these comments, and the attached supporting materials, to make clear that proper education and outreach to users of paint removal products that contain MeCl2 and NMP, coupled with enhancements to product labeling and directions for use, will be sufficient to ensure that potential risks to consumers who purchase such products in small quantity containers are reduced, as required under the amended TSCA, only to the extent necessary to be deemed reasonable. In addition, Barr would support a prohibition on the consumer use and DIY uses of MeCl2 containing coating removers for bath tub stripping. Such a targeted restriction can be implemented in a timely and effective way and can address the most acute risks with the least amount of market disruption while retaining the critical consumer/home and DIY uses for which no effective substitutes exist.

Barr stands ready to support these comments by meeting with you and your colleagues in Washington, DC for the purpose of demonstrating the unmistakable evidence that the risks of use of MeCl2 and NMP-containing paint removers can be easily managed and are reasonable. We believe you will readily conclude, after a full review of the information and evidence available to EPA, that enhanced labeling and use limitations will: (1) appropriately mitigate the risks the Agency has identified; (2) avoid unnecessarily increasing consumer exposures to less effective alternative paint removal products and methods that present their own health and safety concerns; and (3) promote consumer choice. Finally, in light of the shortcomings of alternative products, EPA must inevitably conclude the alternatives are neither technically nor economically feasible substitutes for consumer-use paint removal products that contain MeCl2 and NMP.

Background on Barr & Company Products

Barr is an employee-owned enterprise which has been a market leader for 70 years providing specialty cleaning products for both consumer and professional-use customers in the home improvement, household and automotive industries. Barr brands include products for use on wood; masonry; metal; certain plastics; fiber glass; epoxy; urethane and polyurethane; oil, alkyd, and latex paints; automotive finishes; UV coatings; antique finishes, and others. Approximately 30% of our products include paint removers. Greater than 80% of Barr's leading paint remover products contain MeCl2; at least 10% contain NMP. We also provide alternative products which are formulated without MeCl2 and NMP, and which are labeled for uses which are either unsuitable for use of MeCl2 and NMP-containing materials, or which do not require the level of performance that our MeCl2 and NMP-containing products are expected to deliver.

Barr's direct customers are primarily retail distributors. Thus, the largest share of our paint remover products are marketed through home improvement channels for consumer uses, although it is well-established that professionals in the home improvement, industrial, automotive and marine industries purchase products through these channels as well.[1] Barr's paint removal products are sold in small, consumer-use sized containers. The markets into which Barr sells its products will not accept for redistribution paint removers sold in 55-gallon drums. End-user customers purchase Barr paint remover products typically for home use and similar small jobs that generally involve only intermittent and shorter-duration exposures.[2] Thus, it is reasonable to expect that home hobbyist and do-it-yourself (DIY) small-quantity purchasers (such as Barr's customers) do not experience more concentrated and longer-term exposures such as have been associated with specific industrial and commercial uses.

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[1] Barr brand products are carried in Home Depot, Lowe's, Ace, Walmart, Menards, Orchard and other home and hardware retail distribution centers. Individual paint stores and specialty coating stores, as well as other small "mom and pop" stores also might carry Barr brand paint and coating removers.

[2] Commercial, small-business contractors who buy our products generally purchase at Home Depot or Lowe's which sell to many such contractors for one-time only projects and for small jobs and periodic, short duration uses. While we estimate that perhaps 25 - 30% of end users might be commercial contractors who purchase through these channels, the clear majority of the remaining purchasers are consumers/homeowners and DIY users.

Barr & Company Comments

Barr paint remover products fill a specific need for consumer and DIY use products for which comparably-effective substitutes simply do not exist. Thus, requiring large sized (55-gallon) containers will destroy the Barr brand paint remover products while eliminating an important product upon which consumers and DIY users rely. Doing so will not effectively mitigate the longer-duration workplace exposures that are far more likely than consumer uses to present a risk to human health and the environment. More appropriate risk-mitigation strategies should be considered for MeCl2 and NMP consumer use paint remover products, such as enhanced labeling and risk-communication.

1. <u>EPA's own materials demonstrate that technically and economically feasible alternatives to MeCl2-containing paint removers do not exist</u>.

Barr's data and customer feedback indicates that paint removal products containing MeCl2 clearly outperform all of the alternatives EPA has identified, particularly for consumer, do-it-yourself (DIY) and limited duration use applications. Products containing NMP also perform well, but not as well as MeCl2, although generally better than other alternatives identified by EPA. Simply put, consumers demand products that work. And there are no alternatively formulated products that quickly, safely, and efficiently remove coatings and substrates in a manner that meets consumer demands. As a result, it is neither technically nor economically feasible for Barr to shift production to an alternative formulation that does not rely on MeCl2 or NMP.

a. *Technical feasibility of substitutes.* The Agency has compiled in Appendix D to the materials presented in the June 2016 outreach session, selective documents concerning the performance attributes of various paint removing products. The documents support the conclusion that paint removal products containing MeCl2 are the most effective products on the market when the time required to remove the coating and the level of removal doing so are taken into account. The PowerPoint presentation offered by EPA in its June 2016 outreach session with small business entities is consistent with that conclusion. The presentation suggests that paint removing products containing MeCl2 clearly outperform the alternatives, and that no feasible alternatives have been identified for use in furniture refinishing (one of the predominant consumer use/ DIY applications involving MeCl2 containing removers). EPA's presentation solicits additional information concerning this finding.

   Barr's own testing corroborates the Agency's conclusions. To assist EPA, Barr has provided an enclosure (Exhibit A) which summarizes testing performed by Barr

using its formulations and competitors' products as well as certain components and individual ingredients comprising alternative paint removing formulations. The testing was performed on a variety of coatings on specific substrates. As the enclosure demonstrates, chemical solvent alternatives such as toluene, acetone, methanol and benzyl alcohol do not completely remove alkyd or epoxy paints in fewer than four hours and in some cases not at all. In contrast, the enclosure reflects that methylene chloride-based paint removal products removed both kinds of coatings from substrates within five minutes on all painted surfaces tested, and within 15 minutes on cured coatings.

The findings of our product and performance comparison studies are echoed in the Company's experience in the marketplace with alternative formulations that do not contain MeCl2. Barr has, on multiple occasions, launched new products with alternative formulations only to find that consumer acceptance has been dismal. The Company has received feedback in those instances from its ultimate customers that the products do not remove all varieties of coatings and do not work as quickly. In sum, our experience suggests that users are routinely disappointed by the performance of alternatively formulated products.

b. *EPA's Proposal is not Economically Feasible.* Marketing ineffective alternatives that are disappointing to our customers undermines Barr's credibility and ultimately the Barr brand. This adversely affects the economic viability of alternate formulations. EPA's materials overstate the economic feasibility of the alternatives. The cost of alternatives can greatly fluctuate with supply conditions. For example, Methanol, Acetone, and Toluene-based paint removers costs approximately the same as MeCl2-based removers, are less effective, and will not remove chemically-resistant coatings. In contrast, benzyl alcohol-based products can be as much as 450% more expensive than MeCl2-containing products. Prices to consumer for such removers could be as much as be $90/gal. versus $22/gal. for MeCl2-containing removers. Furthermore, such products are less effective, and in some cases completely ineffective, against chemically-resistant paints when compared to MeCl2-containing removers.

EPA has not performed the kind of economic analysis required under the amended TSCA in which the costs of a potential regulatory intervention should be vetted. The amended statute requires more than a mere attempt to calculate the comparative costs of raw materials, formulating activities, packaging, and distribution of current products versus potential alternatives. EPA also must assess and critically consider the costs of purchasing *and using* paint and coating removal products. While it may be possible in certain instances to make and sell a product that does not contain

MeCl2, that is not where the analysis needs to end. EPA must consider and objectively explore the cost implications to consumers of purchasing and using less effective alternatives. If consumers must use *more* of a *less effective product* to derive the same benefit of using MeCl2-containing paint strippers, they may experience greater cost in the long run. This may permit the makers of less effective alternatives to sell more product (a proposition to which they are unlikely to object) but it does not mean there has been a net economic, environmental, nor societal benefit -- much less a savings to consumers.

In the absence of technically and economically feasible alternatives to MeCl2-containing paint removers, EPA lacks a sufficient basis to proceed with a Section 6(a) rule that would explicitly prohibit uses of MeCl2-containing paint removal products.

2. <u>EPA has not adequately considered the environmental consequences as well as the risks to human health of the various regulatory alternatives</u>.

Paint removers that contain MeCl2 provide important environmental and public health advantages that alternative products do not. While EPA does not acknowledge these advantages in its materials supporting the June SER presentation, the Toxic Substances Control Act, as amended, requires EPA to take these advantages into consideration before the Agency may move forward with a Section 6 rulemaking.

Specifically, recent amendments to TSCA require EPA, when contemplating regulatory action under Section 6, to take into consideration the likely effect of the rule on the national economy, small business, technological innovation, *the environment, and public health*. As discussed above, Barr's principal customers are consumers and DIY users who purchase paint removers in small quantity containers in home improvement and hardware stores. The quantities and small sizes of the containers purchased, even by small business contractors who buy from retail home improvement stores, are indicative that such purchasers buy paint removers on an as-needed basis for small jobs in and around homes. Thus, it follows that their exposures to such products are episodic and short-lived.

By contrast, as EPA acknowledges in its own materials submitted to SERs, alternatively formulated paint removal products require substantial additional time to remove paint. This additional time for product application creates longer periods of time for use and consequently greater opportunities for user exposure and environmental releases of these alternatively formulated products than are currently experienced using MeCl2-containing removers. Nevertheless, the risks that can result from such extended exposure periods and environmental releases of alternative chemical-based removers were

not taken into account in the Agency's June 2016 PowerPoint presentation and the additional information shared by EPA in the context of its outreach sessions. Further, the flammable nature of several alternative products raises additional concerns for physical hazards, and significant near-term risks, in contrast to health effects that arise only from chronic exposures (rather than DIY, sort term uses).

Although Barr would support a rule prohibiting consumer and DIY use of MeCl2-containing products for stripping bath tubs, a rule significantly limiting consumer uses of MeCl2-containing paint removal products more generally could produce unintended consequences that would reasonably result in the *increased* use of less effective products, including those which are more flammable than MeCl2-containing formulations. As the use of less effective products increases, so will the time required for consumer and DIY users in particular to remove paint, thereby increasing, rather than decreasing, the overall amount of time such users experience exposures -- as well as the amount of time during which environmental releases of volatile paint remover products will occur. As noted, the risks of fires and explosions must be expected to increase as well.

EPA has a duty under Section 6 of the amended TSCA statute to attempt to quantify and compare the environmental benefits *and* the public health consequences of the regulatory approaches it is considering. Merely alleging, categorically (as the Agency does in its PowerPoint presentation), that the hazards presented by the substitutes (both process changes and chemical substitutes) "generally" present "less concern" than MeCl2 is not the level of analysis Congress expected EPA to bring to bear when making such important regulatory determinations.

Finally, Barr also notes that MeCl2 generally has more favorable profile with respect to ozone depletion potential when compared to the chemical components in alternative formulations.[3] It is not clear how or whether EPA has taken this into account, although the Agency must certainly agree that a product's effect on air quality also can have an effect on human health -- in addition to the environment. The materials produced by EPA to date do not reflect that the Agency has considered this important analysis. Nevertheless, when making such a comparative assessment alternative products as well as regulatory alternatives under the amended Section 6 of TSCA, EPA must consider and address the comparative *environmental* impacts of both its regulatory options and of the products on the market (as well as their potential substitutes). Overlooking this feature will ultimately do a disservice to Agency's primary mission and to its credibility.

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[3] *See* 40 CFR 51.100, noting MeCl2 among substances which have negligible photochemical reactivity.

3. The exposure data upon which EPA has relied for its MeCl2 risk assessment overstates the risks to consumers and DIY-users of paint removers, are out of date, and do not meet the amended standards of TSCA.

EPA is well aware that that its risk assessment exposure level for MeCl2-containing paint removing products relies on data generated prior to significant changes to the Occupational Safety and Health Administration (OSHA)' permissible exposure limit and EPA's National Emissions Standard for Hazardous Air Pollutant (NESHAP) for methylene chloride.[4] Relying on exposure data pertinent to periods that precede the effective dates of the revised OSHA and EPA NESHAP standards is misleading at best and in no case can it be characterized as sound science.

More contemporary exposure and use data may be publically available and can be called-in by EPA using its authority under the amended TSCA.[5] Doing so would enable EPA to meet its statutory obligation under Sections 6 and 26 of TSCA to take into consideration all information that is "reasonably available" to the Agency and to ensure that EPA is relying on the "best available science" for its regulatory decision making. The failure to gather and review all available data on exposures to MeCl2-containing paint removers, and to better distinguish between consumer home user exposures and commercial/industrial use exposures will undercut the reputation of EPA regulatory activity under the amended TSCA, and its ability to say it has relied on a "weight of the scientific evidence" approach for any ensuing proposed rule that would limit uses of MeCl2-based paint removers.

As a consequence, Barr recommends that EPA reconsider the scientific bases underlying the risk assessment for MeCl2, re-assess the risk of exposure to consumer and DIY users under realistic exposure scenarios that are likely to be occurring since the implementation of EPA's and OSHA's current regulatory programs for MeCl2. Following such an exercise, the Agency will have a better basis to reasonably determine whether a proposal to further limit uses of McCl2-containing paint removal products is warranted under TSCA.

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[4] *See* also March 15, 2013 comments of HSIA which Barr incorporates by reference.

[5] For example, annualized data compiled by the American Association of Poison Control Centers in its annual reports shows a significant reduction in the years since 2000 in which stripping agents containing MeCl2 were implicated in reports and calls to poison control centers in the US. Thus, in more recent years, such incidents are now approximately only 1/3 of what they were in 2000.

4. EPA should consider regulatory alternatives, including enhanced labeling, consumer education and training requirements for product users that will permit product manufacturers and formulators to manage potential risks to reasonable levels.

Notwithstanding the numerous shortcomings in the Agency's current analysis for MeCL2, Barr *would support* a Section 6(a) rule that imposes a minimum labeling standard that does not involve a complete prohibition of MeCl2-containing products, *as an alternative* to a Section 6 rule that would either prohibit consumer and small business professional use of MeCl2-containing pant removal products, or a rule that would effectively do so indirectly by requiring that MeCl2-containing products be distributed only in 55-gallon drums.

Specifically, Barr supports voluntary and mandatory labeling standards that would: (1) require the use of MeCl2-containing products only in well-ventilated spaces; (2) prohibit the use of products containing MeCl2 in confined spaces such as bathrooms; and (3) prohibit consumer and DIY uses of products containing MeCl2 for stripping bathtubs. Such a rulemaking would be consistent with the Consumer Product Safety Commission (CPSC or Commission) efforts with respect to labelling required under the Federal Hazardous Substances Act and would provide a practical and rational approach to enhancing user awareness and risk avoidance techniques while meeting the amended Section 6(a) standard that EPA select and implement by regulation risk mitigation measures *only* to the extent necessary so that the targeted chemical substance or mixture no longer presents such risk.

In coordination with our industry trade association, the Halogenated Solvents Industry Alliance (HSIA), and consistent with the trade association's consultations with the CPSC, Barr has already initiated enhancements to our Company's MeCl2-containing product labels to comport with a template for label language. CPSC staff recently determined that the enhanced labels meet the standards of the Federal Hazardous Substances Act. A copy of the CPSC correspondence and an example of Barr's product labels that conform with the HSIA exchanges with CPSC are enclosed. *See* Exhibit B. Please note that a specific warning against using the product for bathtub stripping is prominently displayed. Barr expects to have products reflecting the enhanced and updated labeling on store shelves before the end of 2016.

Conclusion

On the basis of the written information shared by EPA personnel in the context of its outreach to small business entities, it is apparent that the Agency lacks the necessary scientific and policy basis to propose a Section 6(a) rule that would completely prohibit the consumer/DIY uses of MeCl2-containing paint removers. First and foremost, the Agency's documents do not suggest that an effective, safe alternative exists that is economically or technically feasible for stakeholders that manufacture, formulate, or use McCl2 derived paint removal products. Moreover, the Agency has not carefully compared and realistically contrasted alternative products and a meaningful variety of regulatory alternatives, including considering the costs and benefits of less proscriptive approaches to mitigating risks. To that end, there is no record that EPA has engaged in the kinds of analysis and consultations required under Section 9 of the amended TSCA.

More concerning is the fact that EPA has not updated the basic exposure data upon which it appears ready to rely for a major rulemaking. This Agency's failure to do so could lead to deficiencies in the scientific analysis and policy bases needed to undertake a regulatory action under the amended Section 6 and Section 26 of TSCA, as amended.

As an alternative to the Agency's apparently-preferred regulatory alternative, Barr recommends and supports the use of enhanced labeling and user education techniques that would better communicate risks associated with the use of MeCl2-containing products in poorly-ventilated areas and prohibit the use by consumers and professionals in confined spaces and in residential bathrooms, including to strip bathtubs. This regulatory approach aligns with existing, voluntary industry efforts to improve consumer education and will mitigate the risks identified by the Agency to the extent necessary under the law and without unnecessary adverse economic impacts, including to small enterprises such as Barr's employees-owned business.

Barr would be pleased to meet with you and members of your staff to provide a more robust explanation of the differences users experience when working with MeCl2-containing products versus the alternatives. We believe following such a meeting you will inevitably conclude that the alternative products are neither technically nor economically feasible substitutes for paint removing products that contain MeCl2. We also believe that further discussions with the formulator and end-user community will demonstrate that increased use and exposure to alternative products will unnecessarily create greater risks to human health and the environment.

We will contact your staff to arrange such a meeting soon.

Sincerely,

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Exemption 6 -- Personal Privacy

cc: Maria Doa, Director, CCD/OPPT
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Joel Wolf, US EPA

Enclosures: Exhibits A and B