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Via Electronic Mail

March 24, 2025

Lee Zeldin, Administrator Environmental Protection Agency Office of the Administrator, 1101A 1200 Pennsylvania Avenue, N.W. Washington, DC 20460

Re: TSCA Section 21 Petition to Initiate a Proceeding for the Amendment of EPA's Final Rule for Trichloroethylene (TCE) Regarding PPG's Section 6(g) Exemption

Dear Administrator Zeldin:

Pursuant to Section 21 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2620 ("Citizens' petitions"), PPG respectfully submits this petition to amend a provision of the Environmental Protection Agency's (EPA) Final Rule regarding *Trichloroethylene (TCE); Regulation Under the Toxic Substances Control Act (TSCA)* ("TCE Rule").^{1,2} Specifically, PPG seeks an amendment to the TCE Rule's exemption for the industrial and commercial use of TCE as a processing aid for specialty polymeric microporous sheet materials manufacturing under 40 C.F.R. § 751.325(b)(6)(iii), that would require PPG to meet an interim existing chemical exposure limit (ECEL) of 5 parts per million (ppm) and an action level of 2.5 ppm.

Given the critical and essential uses of TCE that will be eliminated absent timely implementation of PPG's requested amendment to the TCE Rule, PPG submits that good cause warrants the publication of the requested amendment as a final rule with immediate effect, pursuant to 5 U.S.C. §§ 553(b)(4)(B) and 553(d)(3).

¹ 89 Fed. Reg. 102568 (Dec. 17, 2024).

² The TCE Rule is the subject of ongoing litigation in which PPG filed a petition for judicial review and a motion for stay pending review. *See* United Steel, Paper and Forestry Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Int'l Union, AFL-CIO v. EPA, *et al.*, Case Nos. 25-1055 (Lead), -1079, -1080, -1081, -1083, -1084, -1093, -1098, -1118, -1132, -1133, 1144 (3rd Cir). PPG also filed a request for an administrative stay pending judicial review with EPA's Office of the Administrator on January 21, 2025, which is incorporated by reference herein.

I. Brief Overview of the TCE Rule

The TCE Rule prohibits the manufacture (including import), processing, and distribution in commerce of TCE for all uses. The TCE Rule also provides time-limited exemptions for certain conditions of use, pursuant to TSCA Section 6(g). Entities subject to these exemptions are nonetheless required to meet strict workplace controls to limit exposure to TCE during the exemption period, including compliance with a TCE workplace chemical protection program (WCPP).

The WCPP, in turn, requires entities to reduce worker inhalation exposures below an interim existing chemical exposure limit (ECEL) of 0.2 ppm (1.07 mg/m3) as an 8-hour time-weighted average (TWA). The TCE Rule imposes a deadline for compliance with the WCPP, including the interim ECEL of 0.2 ppm, of September 15, 2025.³ Despite the fact that PPG made abundantly clear in its comments to EPA that it could not meet an ECEL at very low-ppm levels, the TCE Rule subjects PPG to these requirements under 40 C.F.R. § 751.325(b)(6)(iii).

II. PPG's Use of TCE

PPG is a global manufacturer of paints, coatings, and specialty materials headquartered in Pittsburgh, Pennsylvania. One of PPG' specialty materials is the *Teslin* substrate, a unique polymeric microporous sheet material that is a fundamental component of a wide range of products used in everyday life. *Teslin* is manufactured in PPG's plant in Barberton, Ohio, the only facility in the world that produces the *Teslin* substrate. *Teslin's* microporous matrix easily adheres to inks, adhesives, coatings, and laminating films, and provides performance benefits, like cushioning and insulation. *Teslin* is a fundamental component in a wide range of critical products essential for everyday life including but not limited to:

- Secure credentials, ID cards, Driver Licenses and Passports / e-Passports;
- Durable labels and tags having stringent requirements, including blood bag labels and chemical drum labels;
- Energy recovery ventilators;
- Filtration elements and cartridges especially for challenging oil/water and bilge water separations.

Of particular importance, PPG's *Teslin* substrate is a critical material component to the U.S. Department of Homeland Security's Trusted Traveler's credentials (Global Entry, SENTRI, NEXUS, FAST). *Teslin* is used globally in over 1 billion secure credentials – including the

³ On January 28, 2025, EPA published a final rule delaying the effective date of the TCE Rule to March 21, 2025. 90 Fed. Reg. 8254 (Jan. 28, 2025). It is unclear what impact, if any, EPA's delay of the effective date will have on the WCPP compliance deadline of September 15, 2025.

United States Passport/e-Passport. For over 20 years, this unique substrate has been relied upon by more than 100 high-security government programs in over 80 countries.

TCE, in turn, is indispensable to the manufacture of *Teslin*, as it facilitates the removal of process oil used during the production process to create the microporous film. TCE has a unique combination of chemical properties that, together, facilitate the controlled removal of process oil required to achieve a microporous film while allowing PPG to efficiently recover and reuse TCE.

TCE possesses the following properties critical to PPG's use, recovery, and reuse:

- Non-flammable;
- Rapidly extracts process (mineral) oil from sheet;
- Amenable to separation via distillation allowing reuse of TCE and oil;
- Low solubility in water and higher density than water that enables water / solvent separation for recovery;
- Vapor pressure that allows for evaporation but can be condensed from steam atmosphere.

PPG scientists and engineers with detailed knowledge of PPG's *Teslin* manufacturing process are responsible for continuously evaluating potential alternative solvents and processes for technical and economic feasibility and the level of risk posed by the chemicals/substances in relation to TCE. PPG's extensive and ongoing research and development analyses have repeatedly found that there is no alternative solvent currently available that is technically and economically feasible or safer than TCE in PPG's use.

III. PPG's Exemption Request and Comments to EPA

Prior to EPA's publication of the TCE Rule, PPG requested an exemption under TSCA Section 6(g) for PPG's use of TCE in the *Teslin* manufacturing process.⁴ In its exemption request⁵ and subsequent comments⁶ on EPA's Proposed Rule,⁷ PPG explained that TCE is necessary to the manufacture of *Teslin*, which is used in critical and essential applications that

⁴ TSCA Section 6(g) allows EPA to grant an exemption from a requirement under a risk management rulemaking for a specific condition of use of a chemical substance if the Agency finds that (1) the specific condition of use is a critical or essential use for which no technically and economically feasible safer alternative is available, taking into consideration hazard and exposure; (2) compliance with the requirement, as applied with respect to the specific condition of use, would significantly disrupt the national economy, national security, or critical infrastructure; or (3) the specific condition of use of the chemical substance or mixture, as compared to reasonably available alternatives, provides a substantial benefit to health, the environment, or public safety.

⁵ *See* June 29, 2022, letter from Juliane Hefel of PPG to Eileen Murphy of EPA (Document ID EPA-HQ-OPPT-2020-0642-0098).

⁶ *See* December 15, 2023, letter from Juliane Hefel of PPG to Gabriela Rossner of EPA (Document ID EPA-HQ-OPPT-2020-0642-0315).

⁷ See Trichloroethylene (TCE); Regulation Under the Toxic Substances Control Act (TSCA), 88 Fed. Reg. 74712 (Oct. 31, 2023).

are also vital to the national economy, national security, and critical infrastructure. PPG also explained that there are no technically and economically feasible safer alternatives to TCE in the manufacture of *Teslin*.

PPG's exemption request and comments further described the existing controls at its Barberton, Ohio, facility that reduce occupational exposure to TCE in its *Teslin* manufacturing process to a level that is supportive of worker safety. Through a combination of TCE-specific hazard communication training, personal protective equipment (PPE) matrix, respiratory protection program, Job Safety Analyses (JSA) with controls and assessed risks, TCE alarm response procedures, and TCE monitoring, PPG has demonstrated that TCE exposures are consistently below PPG's internal permissible exposure limit (IPEL) of 5 ppm.

Notably, the PPG IPEL of 5 ppm is 5% of the federal Occupational Safety and Health Administration (OSHA) PEL (100 ppm), 20% of the California OSHA PEL (25 ppm), and 50% of the American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Value (TLV) (10 ppm).

PPG did not have an opportunity to comment on EPA's interim ECEL of 0.2 ppm because it was not included in the Proposed Rule. However, its comments equally apply here, as PPG made clear that an ECEL that is orders of magnitude below its own IPEL of 5 ppm could not reasonably be achieved and would require PPG to shut down its *Teslin* operations.⁸

IV. The TCE Rule's Section 6(g) Exemption for *Teslin*

In the final TCE rule. EPA granted a 15-year Section 6(g) exemption for *Teslin* on the basis that PPG's use of TCE in the *Teslin* manufacturing process is a critical and essential use for which no technically and economically feasible safer alternative is available in accordance with TSCA Section 6(g)(1)(A).⁹ However, as explained above, the TCE Rule also imposes an unachievable interim ECEL of 0.2 ppm on PPG during the exemption period, as well as an action level of 0.1 ppm.¹⁰

As noted in PPG's comments, no administrative or engineering controls exist that would allow PPG to meet the interim ECEL. The only way to achieve this exceedingly low exposure

⁸ PPG commented on the Proposed Rule's ECEL of 0.0011 ppm and alternative ECEL of 0.0040 ppm. PPG submitted extensive analyses demonstrating that (1) the studies on which these proposed ECEL's were based suffer from critical deficiencies and weaknesses that were overlooked by EPA, (2) EPA failed to adequately consider other studies representing the best available science (as required pursuant to 15 U.S.C. § 2625(h)), and (3) EPA did not engage in an objective, systematic or reproducible weight of the evidence analysis (as required under 15 U.S.C. §2625(i)). Importantly, PPG also explained that the proposed ECELs of 0.0011 ppm and 0.0040 ppm would require respirator use full-time, which would render the manufacture of *Teslin* impossible due to hindered vision, communication, hearing, and movement, and posing risks to worker safety. PPG commented that, in the absence of full-time respirator use, there were no engineering or administrative controls that could help meet low-ppm exposure levels. ⁹ 89 Fed. Reg. at 102587, 102610.

¹⁰ The action level is a level that triggers certain compliance activities, such as periodic monitoring. *See* 40 C.F.R. § 751.315(b)(iii)-(vi).

level would be to require all *Teslin* workers to use respirators full-time, which is also unfeasible.¹¹

The TCE Rule appears to have ignored PPG's comments that no engineering or administrative controls are currently available to meet the interim ECEL. EPA stated in the TCE Rule:

EPA *expects* that the various industries subject to the interim ECEL can meet the interim ECEL with exposure controls that are feasible for owners and operators to implement for potentially exposed persons over a full shift, *using engineering controls* and in some instances, respiratory PPE. While certain supplied air respirators could be used to reduce exposures below the proposed exposure limit, these respirators are burdensome and EPA is not confident that they can be effectively and consistently implemented on an ongoing basis in a way that fully addresses the unreasonable risk...The interim ECEL allows for more robust use of the hierarchy of controls.¹²

Confusingly, EPA in the TCE Rule recognizes that full-time respirator use would not be possible,¹³ yet simultaneously *requires* respirators where administrative and engineering controls are not sufficiently protective.¹⁴

Of particular relevance to this petition for rulemaking, in granting an exemption "the Administrator shall include conditions [...] to the extent that the Administrator determines the conditions are necessary to protect health and the environment **while achieving the purposes of the exemption.**"¹⁵ EPA, therefore, is required to engage in a balancing exercise to ensure that any conditions imposed do not in effect frustrate the submitter's ability to actually implement the exemption, continue manufacturing *Teslin* substrate at the Barberton, Ohio, facility, the only facility in the world where it is manufactured.

Yet, nowhere in the TCE rulemaking record did EPA indicate that it engaged in a Section 6(g) balancing exercise in which it demonstrated that imposing an interim ECEL of 0.2 ppm on PPG during the exemption period, as well as an action level of 0.1 ppm could be met by PPG.

¹¹ See the declarations of Scott Rinehart and Jennifer Kapp, attached as Appendix A (both of which were exhibits to PPG's Motion for A Stay Pending Review in the U.S. Court of Appeals for the 3rd Circuit, which is incorporated by reference herein).

¹² 89 Fed. Reg. at 102580-81 (emphasis added).

¹³ *Id.* at 102580 (EPA "acknowledges [high levels of PPE use] can represent an occupational hazard on its own" and cited hazards such as "communication problems, vision problems, worker fatigue, and reduced work efficiency among such challenges," ultimately "pos[ing] a risk to the wearer's safety or health").

¹⁴ *Id.* at 102603-04 ("If efforts of...engineering controls and administrative controls are not sufficient to reduce exposures to or below the interim ECEL for all potentially exposed persons in the workplace, EPA requires that the owner or operator...supplement these controls with respiratory protection and PPE as needed to achieve the interim ECEL"); *see also id.* at 102605 (prescribing various respirators for exposure levels above 0.2 ppm).

¹⁵ 14 U.S.C. § 2605(g)(4) (emphasis added).

For example, EPA never pointed to record evidence showing there currently exist administrative and engineering controls that PPG at its Barberton facility could feasibly use to satisfy the 0.2 ppm standard without heavy reliance on respirators, whether by the compliance date or otherwise. Despite conceding that commenters, including PPG, indicated "they [were] not aware of any additional feasible engineering or administrative controls" to help meet low-ppm exposure levels without full-time use of PPE, EPA just assumed such compliance was possible.¹⁶

Ultimately, the TCE Rule does not indicate how an interim ECEL of 0.2 ppm would be protective of human health while allowing PPG to achieve the purposes of its exemption, as required by TSCA Section 6(g)(4).¹⁷

V. Petitioner's Proposed Amendment

As explained above and in PPG's comments to EPA, PPG will be forced to cease all *Teslin* operations under the TCE Rule, as it would be completely infeasible to rely on full-time use of respirators to satisfy the 0.2 ppm interim ECEL and 0.1 ppm action level. Thus, the TCE Rule does not allow PPG to achieve the uses that EPA has already recognized are critical and essential under the Section 6(g) exemption, effectively nullifying the exemption in its entirety.

PPG can, however, continue to meet an ECEL of 5 ppm, with an action level of 2.5 ppm. To allow PPG to achieve the purposes of the exemption, PPG requests an amendment to a single provision, 40 C.F.R. §§ 751.325(b)(6)(iii), as follows (all changes underlined):

(iii) The owner or operator of the location where such use occurs, and manufacturers (including importers) and processors of TCE for such use, must comply with the Workplace Chemical Protection Program provisions in § 751.315, except that the interim ECEL as applied to such use is 5 parts per million, with an interim ECEL action level of 2.5 parts per million.

VI. Good Cause Exception

PPG requests that EPA promulgate the proposed amendment as a final rule making with immediate effect, pursuant to 5 U.S.C. §§ 553(b)(4)(B) and 553(d)(3).

Section 553(b)(4)(B) provides that the Administrative Procedure Act's (APA) general notice and comment requirements do not apply where "the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

¹⁶ *Id.* at 102580.

¹⁷ 14 U.S.C. § 2605(g)(4) ("[T]he Administrator shall include conditions ... to the extent that the Administrator determines the conditions are necessary to protect health and the environment while achieving the purposes of the exemption.")

Here, these conditions are met because such procedures would subvert the underlying statutory scheme and cause harm to the public.¹⁸

As explained above, the TCE Rule will require PPG to cease operations of its *Teslin* manufacturing process, rendering it unable to fulfill the purpose of the TSCA Section 6(g) exemption. Extensive layoffs also would be expected. This outcome is in direct contradiction with the plain language of TSCA, which permits EPA to impose conditions *only* to the extent necessary to protect health and the environment *while still achieving the purposes of the exemption.*¹⁹ A TSCA Section 6(g) exemption is meaningless if the conditions imposed upon it effectively prevent the uses covered by the exemption.

In addition, EPA's grant of the Section 6(g) exemption confirms that the *Teslin* process is critical and essential, providing significant public benefits. The inability to fulfill the purposes of the Section 6(g) exemption would result in significant public health and national security implications due to PPG's inability to provide critical components for:

- The U.S. Department of Homeland Security's Trusted Traveler's credentials (Global Entry, SENTRI, NEXUS, FAST);
- Millions of other secure credentials, ID cards, Driver Licenses and Passports / e-Passports;
- Durable labels and tags having stringent requirements, including blood bag labels and chemical drum labels;
- Energy recovery ventilators;
- Filtration elements and cartridges especially for challenging oil/water and bilge water separations.

The final rule with the proposed amendment should also be given immediate effect, without a 30-day delay in the effective date. 5 U.S.C. § 553(d) allows a final rule to take effect on the day of publication in several situations, including instances involving "a substantive rule which grants or recognizes an exemption or relieves a restriction" and "as otherwise provided by the agency for good cause found and published with the rule." For the reasons explained above, EPA has good cause to give the final rule immediate effect. Moreover, PPG's proposed amendment would allow PPG to carry out activities under its TSCA Section 6(g) exemption. Whereas the TCE Rule's interim ECEL unlawfully negates the Section 6(g) exemption, PPG's proposed amendment would effectively "grant" or "recognize" the exemption. Therefore, the proposed amendment should be given immediate effect upon publication, pursuant to 5 U.S.C. § 553(d).

¹⁸ See, e.g., Nader v. Sawhill, 514 F.2d 1064, 1068 (Temp. Emerg. Ct. App. 1975) (holding that elements of good cause exception were met for substantive price increase on crude oil when notice and comment procedures would have affected sales during difficult period of supply).

¹⁹ 14 U.S.C. § 2605(g)(4).

VII. Conclusion

For the foregoing reasons, PPG respectfully requests that EPA issue an amendment to the TCE Rule replacing the interim ECEL of 0.2 ppm with an interim ECEL of 5 ppm, and replacing the current action level of 0.1 ppm with an action level of 2.5 ppm. PPG further submits that good cause warrants the publication of the requested amendment as a final rule with immediate effect.

Sincerely,

Steven F. Faeth Vice President Environmental Affairs & Assistant General Counsel EHS and Sustainability

cc: Chad McIntosh, Acting Deputy Administrator Travis Voyles, Assistant Deputy Administrator Nancy Beck, Principal Deputy Assistant Administrator

Attachment: Appendix A