



HSIA

halogenated
solvents
industry
alliance, inc.

December 7, 2016

Mr. Eric Wade
Chief, Enforcement Section
Bureau of Stationary Sources
New York Department of Environmental Conservation
625 Broadway
Albany, NY 12233

Re: Proposed Changes to 6 NYCRR Part 232

Dear Mr. Wade:

These comments are submitted on behalf of the Halogenated Solvents Industry Alliance, Inc. (HSIA) in response to changes to 6 NYCRR Part 232 (Perchloroethylene Dry Cleaning Facilities) proposed by the Department of Environmental Conservation (DEC). HSIA represents producers and users of chlorinated solvents, including perchloroethylene ("perc").

Our understanding is that the existing Part 232 regulations are the most restrictive dry cleaning emissions standards in the country, and they have been successful in reducing perc emissions to levels that carry no increased risk of adverse health effects. DEC's own compliance and inspection reports for dry cleaners for the years 2013-2015 show that New York dry cleaners met both the OSHA permissible exposure limit (PEL) of 100 parts per million and the ACGIH TLV of 25 parts per million by a wide margin. We further understand that background perc concentrations are generally below the New York State Department of Health guideline of 30 micrograms per cubic meter of air (30 $\mu\text{g}/\text{m}^3$).

Switching to alternatives or newer machines is very expensive, particularly for small businesses such as dry cleaners. Since the adoption of Part 232, approximately half of the dry cleaners in New York have closed, taking numerous jobs with them. The changes proposed would adversely impact the remaining dry cleaners at a time when they are controlling emissions and fully complying with applicable standards. That is the wrong message to send to hundreds of compliant small businesses in the State of New York.

Our comments that follow address (i) preemption under the federal Toxic Substances Control Act (TSCA), (ii) our position supporting a ban on residential co-located perc dry cleaning and opposing a total ban on perc dry cleaning, and (iii) the need for DEC to comply with Regulatory Flexibility requirements.

Priority Designation of Perc under TSCA Preempts State Regulation.

TSCA § 6(b)(2)(A) requires the federal Environmental Protection Agency (EPA), within 180 days of the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to ensure that risk evaluations are being conducted on ten chemical substances drawn from the 2014 update of the TSCA Work Plan for Chemical Assessments, and to publish the list of such chemical substances during the 180-day period. EPA published this list on November 29, 2016, and one of the ten chemicals listed is perc.¹

Under TSCA § 18(b)(1), there is a preemptive pause on state restrictions on use of perc and the other listed "high-priority substances" ending on either the deadline under § 6(b)(4)(G) for completion of the risk evaluation to be conducted under § 6(b)(4)(D) or publication of the risk evaluation, whichever is earlier.² The deadline for completing a risk evaluation is three years after initiation, with one six-month extension allowed. It is expected that dry cleaning will be included within the scope of the perc risk evaluation.

In addition, under TSCA § 18(a), a state ban on perc is precluded (i) after an EPA determination that perc does not present an unreasonable risk of injury to health or the environment, or (ii) after EPA adopts a rule restricting perc under § 6 of TSCA. In either case, the preemption would be limited to the use(s) as to which the EPA determination/action applies.

DEC Should Ban Residential Co-located Perc Dry Cleaning, Not All Perc Dry Cleaning.

HSIA supports DEC's modification of Part 232 for consistency with the National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities adopted by EPA under § 112 of the Clean Air Act (*i.e.*, to include the incorporation of the existing federal ban on the installation of perc dry cleaning machines in residential buildings after December 21,

¹ [https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/evaluating-risk-existing-chemicals-under-tsca#chemical names](https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/evaluating-risk-existing-chemicals-under-tsca#chemical%20names).

² Preemption applies to a rule "adopted pursuant to authority under a law of the State. . . related to air quality. . . to the extent that the action – (I) imposes a restriction on the. . . use of a chemical substance; and (II)(aa) addresses the same hazards and exposures, with respect to the same conditions of use as are included in the scope of the risk evaluation published pursuant to section 6(b)(4)(D), but is inconsistent with the action of the [EPA] Administrator." TSCA § 18(d)(1)(A)(iii).

2005, and the required removal of all perc dry cleaning machines from residential buildings by December 21, 2020).³

Equally, HSIA opposes a future ban on *all* perc dry cleaning machines. EPA's 2006 decision not to impose an industry-wide perc phaseout was based on a detailed and comprehensive assessment of alternative perc technologies. EPA reasonably determined that an industry-wide phaseout was infeasible. EPA's Background Information Document reviewed various alternatives that have been suggested for perc dry cleaning, including synthetic hydrocarbons, cyclic siloxanes, glycol ethers, carbon dioxide, and the water-based process known generally as wet cleaning. These alternative technologies pose significant concerns:

- fire safety hazard and longer cycle times associated with hydrocarbons, cyclic siloxanes, and glycol ethers;
- higher capital costs associated with all alternatives except wet cleaning; and
- increased labor, failure to effectively process certain fabrics, and need for specialized tensioning equipment associated with wet cleaning.

In assessing perc alternatives, EPA concluded that:

“For many cleaners, the current trend is for wet cleaning to be a partial replacement rather than a complete replacement for [a perc] machine. . . . Based on the limited floor space of most dry cleaning plants and the relatively large footprint of other types of dry cleaning machines, an alternative solvent machine would need to be a direct replacement for a perc machine in most cases. An alternative solvent machine could clean a fraction of the total throughput together with a perc machine in plants that (1) have a volume in about the top 10 percentile, (2) are well capitalized, and (3) have floor space available.”

Moreover, “[w]et cleaning requires substantial retraining and poses the risk of ruined garments and resulting lost revenues and business.” Further, “wet cleaning is not a stand-alone process that can clean all garments.” Indeed, at best, wet cleaning could effectively clean 70% of the total mix of garments, but only with the purchase of additional specialized equipment.

EPA's conclusions regarding wet cleaning and cleaning with synthetic hydrocarbons are consistent with a technology evaluation that EPA previously conducted: “Each of the fabricare processes may have health and environmental implications associated with their

³ 40 CFR Part 63, Subpart M (the “NESHAP”), 71 Fed. Reg. 42723 (July 27, 2006).

use. . . . Clearly identified are . . . flammability hazards from some of the [hydrocarbon] solvents, and possible considerations for the environmental release of detergents from machine wet cleaning.” In addition, hydrocarbon solvents contribute to photochemical smog levels. Finally, “[t]he new Class IIIA [hydrocarbon] solvents . . . must still be considered fire safety hazards.”

Reports by the California Air Resources Board (CARB) and the South Coast Air Quality Management District (SCAQMD) also describe several tradeoffs necessary for switching to alternative processes. These reports analyzed the dry cleaning industry in each jurisdiction, available non-perc technologies, and the various environmental, technical, and economic trade-offs associated with each of these technologies. Consistent with EPA’s evaluation, the CARB and SCAQMD reports indicate that additional use of synthetic hydrocarbons and glycol ethers would increase fire safety concerns and smog formation. Those reports further indicate that additional use of cyclic siloxanes would increase fire safety concerns and create possible health concerns. Both indicate that liquid carbon dioxide technology is too expensive for most cleaners, and that wet cleaning may be too limited in its efficacy to be considered a viable alternative to perc. Also, although wet cleaning technologies have been available for at least 10 years, both reports indicate that only a very small number of cleaners are dedicated to the process.

Finally, switching to non-perc technologies would result in significant additional costs. Liquid carbon dioxide (CO₂) machines are two to three times more expensive than fourth generation perc equipment and, consequently, are beyond the reach of most area source dry cleaners. Also, dry cleaners wishing to use combustible solvents (hydrocarbon, cyclic siloxane, or glycol ether) must purchase larger capacity machines to maintain their existing throughput to compensate for the longer drying times of these solvents. This requirement adds to the already higher price of the equipment for these combustible solvents.

Further, use of combustible solvents requires installation of fire suppression (sprinkler) systems. Very few dry cleaners already have the sprinkler systems required for Class IIIA solvents (like hydrocarbon) under the International Fire Code (IFC), as applicable in New York. These systems cost at least \$25,000. For dry cleaners with low annual revenues and short leases, installation of these sprinkler systems is not affordable. Moreover, we understand that New York’s restrictive fire codes do not allow storage of combustible solvents at facilities.

Finally, there is considerable question whether the wet cleaning process can completely replace dry cleaning. EPA has noted that the current trend is for wet cleaning to be a partial replacement rather than a complete replacement for perc machines, due to the

limited floor space at most cleaners, the need for substantial retraining, and the risk of ruined garments and resulting lost revenues and business.

DEC Must Meet Regulatory Flexibility Requirements

New York State Administrative Procedure Act § 202-b requires DEC, in developing a rule, to consider utilizing approaches that will accomplish the objectives of applicable statutes while minimizing any adverse economic impact of the rule on small businesses and local governments. Consistent with the objectives of applicable statutes, DEC is to consider such approaches as:

- (a) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small businesses and local governments;
- (b) the use of performance rather than design standards; and
- (c) an exemption from coverage by the rule, or by any part thereof, for small businesses and local governments so long as the public health, safety or general welfare is not endangered.

There is no indication so far that DEC has sought to meet the requirements of § 202-b.

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HSIA appreciates the opportunity to comment as DEC considers proposed changes to Part 232.

Respectfully submitted,

Faye Graul
Faye Graul
Executive Director