

Congress of the United States

Washington, DC 20510

June 10, 2022

Hon. Michael S. Regan
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Regan:

We write to express our significant concerns regarding the unintended consequences of the U.S. Environmental Protection Agency's (EPA) ongoing rulemaking to discontinue the use of trichloroethylene (TCE) under Section 6(a) of the Toxic Substances Control Act (TSCA). TCE is the primary solvent used in the manufacture of battery separators. Battery separators are essential, irreplaceable components for all rechargeable batteries in the United States. TCE is a necessary solvent for manufacturing of the majority of separator materials required to produce lead batteries. Further, many separator materials used in lithium ion and other chemistries are manufactured utilizing processes that require TCE.

The U.S. lead battery industry directly employs approximately 24,700 workers and spends \$1.7 billion annually on payroll. Beyond its direct employees, the industry also supports 30,900 supplier jobs and 36,600 jobs from worker spending in adjacent industries. Prohibiting the use of TCE in the manufacture of battery separators through this rulemaking will harm U.S. manufacturing, energy, transportation, and defense sectors. Battery separators are essential in gasoline and electric-powered commercial vehicles, emergency response and military vehicles, marine engines, and nuclear power providers. Without battery separators, the economy would come to a standstill.

Under TSCA Section 6(g)(1), EPA has the authority to exempt specific uses of TCE from EPA's risk management rules when one of the following statutory criteria is met. First, EPA may exempt uses that are "critical or essential" and have no economically feasible safer alternative when accounting for hazard and exposure.¹ Second, EPA may exempt certain uses if requiring compliance with the rule would "significantly disrupt the national economy, national security, or critical infrastructure."² Third, EPA may exempt the use of TCE for the manufacture of battery separators if the use, as compared to the lack of reasonably available alternatives, "provides a substantial benefit to health, the environment, or public safety."³

While EPA may exempt battery separator manufacturing if a business meets one of the three exemptions, the use of TCE in battery separator manufacturing qualifies for exemption under

¹ 15 U.S.C. § 2605(g)(1)(A).

² 15 U.S.C. § 2605(g)(1)(B).

³ 15 U.S.C. § 2605(g)(1)(C).

each of the three exemption criteria referenced above. First, the manufacture of battery separators is both a “critical” and “essential” use, and the only proven alternative presents both an extreme explosive hazard and is a known neurotoxin. Every heavy-duty and mass-market passenger vehicle—including electric vehicles—relies on one or more lead acid batteries. Lead acid batteries also provide critical back-up emergency power to nearly all data centers and telecommunications centers. Both lead acid and lithium-ion batteries require battery separators for operation. Of the battery separator market, eighty percent is supplied by utilizing TCE.

Second, the U.S. economy is reliant on lead-acid and lithium-ion batteries manufactured using TCE, so prohibiting its use in the manufacture of battery separators would “significantly disrupt the national economy, national security, or critical infrastructure.” As noted above, our national defense, transportation, and communication sectors, among many others, are dependent on battery separators manufactured with TCE. If the use of TCE in the U.S. is prohibited by this rulemaking, we will be forced to depend on foreign suppliers for batteries, thus damaging the U.S. economy and risking national security.

Third, the use of TCE for the manufacture of battery separators, as compared to the lack of reasonably available alternatives, “provides a substantial benefit to health, the environment, or public safety.” While hexane is an available alternative, it is not practical. It simply does not make sense to replace one solvent (TCE) with another that does not provide any additional benefit to health, the environment, or public safety, and may increase the risk of harm.

While EPA’s concerns are understandable, EPA’s risk evaluation for the use of TCE fails to capture the safety procedures, engineering controls, and PPE use that keeps workers safe. Accordingly, accounting for all available information related to the use of TCE in the manufacture of battery separators, its importance to the economy and defense, the lack of viable alternatives, and the extensive workplace safety controls, we request an exemption under TSCA Section 6(g)(1) for the continued and limited use of TCE in the manufacture of battery separators for a period of not less than twenty-five years.

The continued use of TCE in the manufacture of battery separators aligns with President Biden’s February 24, 2021, Executive Order to strengthen critical supply chains by revitalizing domestic manufacturing and research and development. Further, the continued use of TCE to manufacture batteries is required to comply with President Biden’s March 31, 2022, invocation of Section 303 of the Defense Production Act to increase domestic battery production for electric vehicles and storage to promote the national defense and our national transition to a clean energy economy.

A collapse of the U.S. lead acid and lithium-ion battery industry would jeopardize U.S. national security interests, eliminate thousands of jobs, cause billions of dollars in revenue losses for the U.S. economy, and increase U.S. dependence on foreign supply of batteries. Therefore, we request EPA grant a TSCA Section 6(g) exemption for TCE use in the manufacture of battery separators for a period of not less than 25 years.

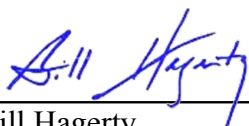
Sincerely,



Diana Harshbarger
Member of Congress



Marsha Blackburn
United States Senator



Bill Hagerty
United States Senator