

Testimony of

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on

The Congressional Review Act on

OSHA's Methylene Chloride Rule

**before the U.S. House of Representatives
Committee on Education and the Workforce
Subcommittee on Workforce Protections**

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Introduction

Good morning. I am Kurt Herwald, CEO of Stevens Aviation operating aircraft painting facilities in Greenville, South Carolina, and Atlanta, Georgia. I recently served as chairman of the National Air Transportation Association (NATA), the organization representing aviation service companies at locations across the United States. Stevens Aviation and members of NATA are committed to ensuring aviation safety and protecting our workers and the environment. However, I am here today to discuss a rule that goes far beyond reasonableness in attempting to eliminate a best practice in the aircraft repainting or “stripping” industry.

Summary

On January 10, 1997, the Occupational Safety and Health Administration (OSHA) released a final rule that drastically reduces the allowable exposure limits for Methylene Chloride (MC). MC is an effective, time tested and widely used primary component of aircraft paint removing solvents accepted by the Federal Aviation Administration (FAA) and aircraft manufacturers. This rule has a dramatic effect on aviation safety, cost for aircraft stripping, forcing hundreds of small aviation companies out of business and costing thousands of workers their jobs. We urge Congress to act immediately and revoke the OSHA rule.

Background

In 1991, OSHA had determined that a 500 parts per million (ppm) exposure limit over an 8-hour time-weighted average (TWA) was sufficient to protect workers performing aircraft stripping operations. Now OSHA wants companies to reduce worker exposure to MC from the current 500 ppm down to 25 ppm, a 95% reduction. To illustrate the excessiveness of such a reduction, the existing “off the shelf” individual monitoring device is only sensitive down to extremely low concentrations of 50 ppm and sells for about \$400. To measure the 25 ppm rate required by the new OSHA rule, a small business must purchase a measuring device that sells for \$8,700 and a calibration instrument costing another \$400. The primary issue is not the costs of the monitoring device but a clear example of the severity of the OSHA rule.

NATA has not identified any reports of aviation workers that have experienced medical problems linked to occupational exposure to MC using the existing OSHA established exposure limits. Aviation businesses take necessary precautions to protect the safety and health of their workers. These are small businesses with ties to the community that are concerned about the long-term effects of their actions on their employees.

The OSHA rule ignores the fact that aircraft paint stripping with MC is the primary method of paint removal in the aviation industry and that the operational and environmental safeguards developed by these aviation businesses are based on the use of MC. Because of the safety issues involved with aviation and the importance to research effective alternatives, the current exposure rates for MC must be allowed for the aviation industry. According to OSHA, aviation paint stripping companies account for .41% of the use of MC. The Association has difficulty understanding how applying this rule to

such a small percentage of the total companies affected increases worker safety in any measurable quantity.

EPA's Actions on MC

The Environmental Protection Agency (EPA) has been attempting to eliminate the use of MC for a number of years by enacting rules limiting emissions and particulate matter. Advocates within the EPA and OSHA fail to realize that the Federal Aviation Administration and the aircraft manufacturer must certify the use of alternative strippers before they can legally be used. Because of the effectiveness of MC and the slow pace of approving alternatives by the FAA, the aviation industry has continually argued against EPA's initiative for an outright ban of its use.

Under the EPA approach, the restriction on MC is gradually implemented but its use continues to be permitted. In this way, this effective stripper is available for unique applications and spot use such as removing striping from an aircraft or using it on aircraft with thicker paint coverings. To date, only one alternative to MC has been developed meeting FAA requirements which is known as Turco and is an aqueous-based stripper. Nonetheless, Turco still requires MC for spot stripping and for a variety of conditions in which Turco is not effective. As the industry rapidly transitions to its use of Turco, MC will account for only .1% of the total amount used within two years. However, EPA appears to have convinced OSHA to enact an occupational exposure limit that is so extreme it effectively renders MC unusable and invalidates all of the reasonable negotiations and work between the industry and EPA.

Aviation Safety

Congress must know the detrimental effects of banning the use of MC will have on aviation safety. One of the primary reasons for stripping an aircraft is examining the structural integrity. Prudent practice dictates that the paint is removed on average every five years to accomplish these important inspections. Specifically checking for signs of fatigue, cracks, and other indications of wear or aging, as it is referred to in the industry, and this is increasingly important because of the average age of the aircraft fleet, now estimated to be almost 20 years.

The aviation industry received a wake up call with the accident of an Aloha Airlines aircraft that was severely damaged during flight when the "skin" covering of the aircraft was shredded apart during flight. The cause of that accident was metal fatigue. In fact, the White House Commission on Aviation Safety and Security headed by Vice President Al Gore placed the issue of aging aircraft as one of its top priorities for aviation safety. Less frequent stripping threatens safety because it decreases the opportunity to discover problems of fatigue. This accident brought to the forefront the need for safety inspections of aircraft.

I have personally witnessed aircraft that appeared airworthy and in good condition prior to the paint being removed. However, following stripping it was obvious that illegal repairs had been made to the aircraft that were not indicated in the aircraft's maintenance

records. In other cases structural damage was identified based on inspections of the airframe that could only be identified after removal of the paint.

If Congress fails to act and the OSHA rule is fully implemented, aircraft owners will face several difficult financial and ethical decisions resulting from the higher costs for paint removal. Aircraft will be painted less often, aircraft owners will use unregulated paint shops that illegally avoid EPA and OSHA rules and that may not perform FAA required inspections, aircraft owners will go to foreign countries with no EPA or OSHA rules, or the paint will not be stripped when the aircraft is repainted, changing the weight of the aircraft and altering its flight characteristics by possibly exceeding the manufacturer's limits for safe flight and provides no opportunity for inspections.

Effects on Aviation Businesses

The small businesses conducting aviation services face incredible burdens for regulatory compliance, and intense competition results in average returns on investment of 2.5%. Clearly any increase in cost of our services is difficult to absorb and presents managers with a difficult choice; absorb the increased costs and risk their company's future, or pass on the cost increases and lose customers. One of the unique traits of aircraft is their mobility.

Rising prices due to compliance with OSHA and EPA rules threaten to drive aircraft owners to have their aircraft stripped and painted in foreign countries where companies face less stringent or non-existent regulations. This is no idle threat. At least one U. S. company has announced plans to develop a facility in Mexico. In addition, others are evaluating moving their U. S.-based repainting facilities elsewhere. Over 15,000 jobs will also be lost.

Although the aviation industry accounts for less than half of one percent of the total MC used, alternatives are being evaluated, and their use is growing. Several products and methods have been developed as alternatives to MC paint stripping. High velocity media blasting, ammonia and aqueous strippers, and sanding are just a few. Media blasting is a technique that can easily damage the aircraft and is not approved for use by most aircraft manufacturers or the FAA. Sanding an aircraft is not an acceptable paint stripping method for an entire aircraft because it weakens rivets and fatigues the aluminum skin that is easily damaged by abrasive materials. Using alternative stripping chemicals also has its drawbacks.

These alternative chemicals typically cost twice as much per gallon and take longer. For example, MC can strip an average business aircraft in fewer than eight hours, while the alternative may require up to five days. This results in an increase of 3 to 5 times the total man-hours necessary to strip an aircraft. In addition to the expense and time it takes for the chemicals to loosen and remove the paint, cold, dry weather conditions affect the ability for the chemicals to work. These alternatives are best effective at temperatures of 100 degrees and 80% humidity or higher -- something not easily achieved in many locations without incredibly expensive utility costs. The unintended consequence of the

OSHA rule is a 20 to 50 percent increase in the cost to have an aircraft stripped and repainted in the United States.

These processes, in addition to the added man-hours, increased production time, and safety considerations, necessitate redesigning of the stripping facility. There are significant questions raised by the OSHA rule over the availability of adequate technology to meet the extremely low exposure threshold. The majority of paint stripping operations use the latest environmental technology to protect their workers from exposure to MC. Even with this state of the art equipment, exposure levels are kept just under the 500 ppm exposure limits in effect today. This drastic reduction is economically and technologically unachievable by businesses that have already invested in technology to meet today's standards and those anticipated meeting the EPA's standards.

No amount of protective clothing could be used that would meet the 25 ppm occupational standard for MC exposure. It is extremely costly for the air to be circulated and filtered in a hangar used to house the aircraft while the paint is being removed, at volumes to achieve compliance with the OSHA rule, while scrubbing the air to meet the EPA's standards. Yet there are reports from the industry that the rule requires this extreme action. In my facility alone, it would cost \$5 million to implement such a system. NATA members are extremely concerned by the confusion surrounding the implementation of the rule by OSHA. Aviation businesses are receiving mixed messages from Federal and state regulators over the compliance requirements.

Excessive Costs

The 104th Congress had the vision to place needed controls on the runaway rulemaking that affects millions of small businesses across the country by enacting the Small Business Regulatory Enforcement Fairness Act of 1996. We urge Congress to use this law, forcing OSHA to more accurately evaluate its rule. The Association questions the validity of the estimated cost of compliance associated with the rule. OSHA estimates that three hundred aviation paint stripping companies are affected by this rule at a total industry annual cost of \$8,148,754. The average cost per company equates to \$27,163. This is ridiculously low.

The increased amount of cost using alternative strippers for one large corporate aircraft could exceed \$27,000 alone! As previously mentioned, these strippers must have high temperatures to be effective. Heating, circulating and cleaning the air, in addition to the higher product costs and longer stripping times, exponentially raises costs. Aviation paint stripping companies have collectively invested millions of dollars to comply with the existing MC exposure levels, and retrofitting to meet the rule is extremely difficult and costly.

Paperwork Burden

OSHA underestimated the added monitoring and paperwork/recordkeeping requirements, medical records and its impact on small businesses. The need to control employee exposure after an MC concentration of 12.5 ppm is reached hardly allows employers the flexibility needed to operate their business. In addition, the requirement for maintaining

employee exposure and monitoring records to thirty (30) years after an employee leaves is an unreasonable burden. The unreasonable paperwork and tracking burdens associated with the rule are also of concern to aviation businesses.

Call for Congressional Action

On behalf of the hundreds of aviation businesses providing aircraft painting, NATA strongly supports House Resolution 67 that overturns the OSHA rule on occupational exposure to MC. We thank the leadership of this Subcommittee for conducting this examination of the OSHA rule that jeopardizes the future of small aviation businesses and threatens the safety of aircraft operators. We urge you to overturn the OSHA rule that underestimated the impact on aviation businesses and used flawed data to radically limit the use of MC by the aviation industry.

NATA recommends that Congress act immediately to void the OSHA rule on MC. After that action is taken, OSHA should be directed to work with the aviation industry to evaluate the need for changing the MC exposure limits in the aviation industry. Using the results of that study, appropriate action, if proven, could be taken.

The Truth in Testimony

KURT HERWALD

CEO and President, Stevens Aviation, Inc.

Kurt Herwald has served as Chief Executive Officer of Stevens Aviation, one of the Nation's largest and oldest aviation services companies, since it was acquired by affiliates of the NTC Group, Inc. of Greenwich, Connecticut in 1989. Under his leadership, Stevens has undertaken programs to realign the company, expand the depth of technical services offered at its six Aircraft Service Organizations, and aggressively seek business alliances and acquisitions to accelerate Stevens' growth.

Herwald joined the NTC Group in 1986 as Vice President and later became Chief Financial Officer of the private investment firm which specializes in long-term equity investments in operating companies. NTC currently oversees investments in three companies: The Bibb Company, T.B. Wood's Sons Company, and Stevens Aviation. As the number two executive at NTC, Herwald was integral in directing the operations of NTC and its subsidiaries, as well as the Bibb Company's and West Point Pepperell's joint acquisition of J.P. Stevens & Company. Prior to joining NTC, Herwald was an officer of Citicorp, N.A.

A 1984 M.B.A. graduate of The Wharton School, Herwald is a licensed pilot and an active member of several trade groups, including the National Air Transportation Association where he serves on the Board of Directors.

The following is a listing of the amount and source of any Federal grant, contract, subgrant, or subcontract received by Stevens Aviation, Inc. during the fiscal years 1995, 1996 and 1997.

Contracts

Stevens Aviation has certain contracts with the Defense Fuel Supply Center (DFSC) under which it provides fueling to military aircraft.

The contracts during the stated period related to the following Stevens aviation locations:

<u>Location</u>	<u>Contract Amount</u>
Greenville-Spartanburg, South Carolina Airport	\$337,000
Jefferson County, Colorado Airport	\$ 85,000
Metropolitan Nashville, Tennessee Airport	\$500,000

Subcontracts

Stevens Aviation is a subcontractor under a contract with The AGES Group for the C-12/U-21 Life Cycle Contractor Support Program. AGES' contract is with the US Army Aviation Troop Command, the US Navy and the US Air Force.

Under the subcontract, Stevens Aviation is to provide at its Greenville, SC, certified repair station (the depot level) aircraft maintenance and engineering services.

This is a one-year contract, with four additional one-year periods that may be exercised by the government. The base part of the contract is approximately \$2 million per year.