



July 13, 2022

Dr. Michal Ilana Freedhoff
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
1200 Pennsylvania Avenue NW
Washington, DC 20460
Submitted Via: [regulations.gov](https://www.regulations.gov)

Re: Asbestos Part 1: Chrysotile Asbestos; Regulation of Certain Conditions of Use Under Section 6(a) of the Toxic Substances Control Act (TSCA) [[EPA-HQ-OPPT-2021-0057](#)]

Dear Assistant Administrator Freedhoff,

The Association of State Drinking Water Administrators (ASDWA) and its members would like to thank the Environmental Protection Agency (EPA) for the opportunity to comment on this proposal. ASDWA is the professional association that serves the leaders (and their staff) of the 57 state and territorial drinking water programs. Formed in 1984 to address a growing need for state administrators to have national representation, ASDWA has become a respected voice for states with Congress, EPA, other Federal agencies, and professional organizations in the water sector.

ASDWA commends EPA for acknowledging the significant impact this rulemaking will have on the drinking water sector. As the Agency is aware, many community water systems (CWS) utilize chlorine to comply with the Safe Drinking Water Act (SDWA) regulations and to protect public health. Access to adequate quantities of chlorine to meet regulatory requirements through a reliable supply chain is vital for CWS operations and for public health protection. Additionally, ASDWA commends the Agency for its recognition of the difficult chemical supply chain issues from the COVID-19 pandemic. The duration of pandemic-related chemical supply chain issues is yet to be determined, and EPA's action should not exacerbate the supply chain issues for a chemical that is fundamental for public health protection.

Although the Agency has acknowledged the chemical supply chain issues from the pandemic, ASDWA recommends that EPA conduct a chemical supply chain analysis to ensure the required membrane conversion will not negatively impact CWS's ability to obtain adequate amounts of chlorine in the future. The Agency is aware of the substantial price increases that CWS have recently experienced due to chlorine supply shortages. However, EPA notes in this proposal that the Agency has "insufficient information to fully assess the impact of this proposed rule on the cost or availability of water treatment chemicals" and requests public comments to fill this data gap. ASDWA recommends that EPA delay the publication of a final rule until the necessary data is collected.

Additionally, ASDWA recommends that, in the final rule, EPA use the proposed alternative of five years following the effective date of the rule for the prohibition of the manufacturing (including import),

processing, distribution in commerce, and commercial use of asbestos, as opposed to the proposed two years. In the *Federal Register* notice, EPA notes that the Agency held meetings with the processors and industrial users of chrysotile asbestos and that these companies stated that the transition to asbestos-free technology could take many years, although the companies noted that research on asbestos alternatives has been ongoing. The American Chemistry Council (ACC) has [stated](#) that it takes 4-5 years to commission a membrane plant safely. Furthermore, the ACC highlights that there is currently no surplus of chlorine on the market and removing one-third of the chlorine produced in the United States, as is estimated in this proposed rule, will have an immediate effect on the sectors which rely on chlorine. From ASDWA's perspective, the two-year timeline is inadequate for the membrane conversions and will result in problematic chemical supply chain issues for CWS. Therefore, to protect public health, ASDWA recommends that EPA select the five-year alternative option in the final rule.

Within the proposal, EPA highlights that the Agency could grant a time-limited exemption for certain uses under TSCA section 6(g). An exemption can be used if "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; that compliance with the proposed requirement, as applied with respect to the specific condition of use, would significantly disrupt the national economy, national security, or critical infrastructure; or that the specific condition of use of the chemical substance, as compared to reasonably available alternatives, provides a substantial benefit to health, the environment, or public safety." ASDWA concurs with the Agency's conclusion that chlor-alkali chemicals are important to the national economy and to the operation of critical infrastructure, such as water and wastewater systems. Therefore, ASDWA recommends that EPA fully consider the option for this exemption if, after collecting further data, the Agency determines that a five-year timeline may be insufficient to prevent chemical supply chain disruptions.

EPA notes that the processors and industrial users of chrysotile asbestos the Agency spoke to "did not provide EPA with delineated cost estimates or a detailed timeline for the conversion process." ASDWA recommends that the Agency obtain this critical information before deciding on whether to allow a five-year implementation timeline or a time-limited exemption.

ASDWA would like to highlight a specific component of EPA's reasoning within the cost-benefit analysis. In the *Federal Register* notice, the Agency states its expectation that these companies will respond to the proposed rule by converting their asbestos diaphragm cells to membrane cells, which do not use asbestos, and highlights that these membrane cells already account for nearly half of U.S. capacity. EPA states that these membranes "produce a higher grade of caustic soda that has historically commanded a higher price than the product from diaphragm cells." This qualitative statement, without any supporting data, appears to be an attempt to soften the blow of the costs to make this change with the promise of greater revenues and profits for the companies. There is no guarantee of an increased market for continued higher prices for a higher grade of caustic soda. The increased supply could potentially reduce the price of the higher grade of caustic soda. Predictions of future supply and demand and pricing are challenging, and EPA needs to provide additional supporting data if this line of reasoning is going to remain in the final rule.

ASDWA thanks EPA for the opportunity to comment on this proposal. If you have any questions regarding these comments, please contact me (aroberson@asdwa.org) or Stephanie Schlea (sschlea@asdwa.org).

Sincerely Yours,



J. Alan Roberson, P.E.
ASDWA Executive Director

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