

Congress of the United States
Washington, DC 20515

June 1, 2022

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20004

Dear Administrator Regan:

Chlorine production is an integral component to the United States economy and essential for protecting the health of every American. From drinking water to lifesaving healthcare products to consumer goods, chlorine helps keep Americans safe. The U.S. Environmental Protection Agency (EPA or Agency) must refrain from taking steps well beyond anything the Agency has previously proposed, including banning or making scarce or unaffordable a sufficient domestic chlorine supply.

EPA recently proposed a rule to regulate one of six asbestos fibers (chrysotile) under section 6(a) of the Toxic Substances Control Act (TSCA).¹ While well-intentioned, this proposal has significant flaws and the potential to lead to serious adverse consequences. For example, as you previously noted in a letter to chlorine producers last year, “if drinking water systems cannot obtain a sufficient and reliable supply of gaseous chlorine, sodium hypochlorite, and calcium hypochlorite, they will be unable to continue to provide safe drinking water to their communities.”²

EPA’s proposed rule, however, acknowledges that it would significantly constrain a sufficient and reliable supply of chlorine, as the three main domestic producers of chlorine would be unable to meet the demand for that product. This would place serious technical and economic pressures on drinking water systems’ ability to produce an affordable, safe, and reliable supply of drinking water – a point recently reinforced at an Energy and Commerce Committee hearing.³

¹ Asbestos Part 1: Chrysotile Asbestos; Regulation of Certain Conditions of Use Under Section 6(a) of the Toxic Substances Control Act (TSCA), 87 Fed. Reg. 21706 (Apr. 12, 2022) (proposal to revise 40 C.F.R. Part 751), available at <https://www.govinfo.gov/content/pkg/FR-2022-04-12/pdf/2022-07601.pdf>.

² Letter from Michael S. Regan, Administrator, U.S. Environmental Protection Agency, to Chemical Sector Partners (June 30, 2021), available at <https://www.waterisac.org/system/files/articles/Letter%20to%20Chemical%20Sector%20from%20EPA%20Administrator.pdf>.

³ See *Trusting the Tap: Upgrading America’s Drinking Water Infrastructure*, Hearing Before the Subcomm. on Environment and Climate Change of the H. Comm. on Energy and Commerce, 117th Cong. (Mar. 29, 2022)

While we recognize some chlor-alkali facilities have worked to transition away from chrysotile asbestos diaphragms to membrane-based or asbestos-free diaphragm technology, there are still nine domestic facilities that use asbestos diaphragms, making up about one-third of U.S. chlor-alkali production capacity. EPA's proposal would require these facilities to stop using asbestos diaphragms within two years, forcing them to shut down or switch to alternative production methods. That two-year requirement is significantly less time than the suggested 10-year transition period included in prior bipartisan legislation.⁴ We have significant concerns that this proposed timeline is infeasible and will result in a number of adverse consequences should EPA finalize the regulation in its proposed form.

Further, it appears that the proposal fails to adhere to EPA's own acknowledgement that retrofitting existing chlor-alkali facilities using asbestos "will require significant infrastructure changes" and "such expansion could also take time,"⁵ though there are no simple replacement options available for chlor-alkali facilities using asbestos. In order to transition away from asbestos-based technology, facilities would be required to undergo a complete renovation or construct a new facility, which are costly and time-intensive endeavors. EPA's proposal also claims that converting every chlor-alkali facilities using asbestos to membrane cells would "require an incremental investment of approximately \$1.8 billion across all nine plants." We are concerned by statements by industry stakeholders indicating the proposal severely underestimates the actual cost to retrofit a chlor-alkali facility using asbestos diaphragms.

Likewise, EPA's proposed alternative is not viable. The proposed five-year runway to phasing out operations presents many of the same issues as the two-year proposal, and then layers additional burdensome, new requirements on chlorine producers that would be interested in obtaining just three more years of operation. In this instance, EPA's statutory mission under section 6 of TSCA is to mitigate unreasonable asbestos health risks in a way that does not significantly impair the United States economy or the health of its citizens. The proposal, as written, fails to meet these statutory obligations.

Considering these items, and because importing chlorine itself is not a viable option, we believe EPA's proposal is neither well-considered nor justifiable. Frankly, if finalized, the proposal could result in enormous and unreasonable risks to more Americans' health than is mitigated by the rule itself due to the inability for public water utilities to access chlorine. EPA's attempt to

(statement of Kareem Adeem, Dir. of Water and Sewer Utilities, City of Newark, N.J.) ("[C]hlorine is crucial to our treatment process to provide safe drinking water.").

⁴ See *Alan Reinstein Ban Asbestos Now Act of 2019*, H.R. 1603, 116th Cong. § 2 (2020), available at <https://docs.house.gov/billsthisweek/20200928/BILLS-116hr1603-SUS.pdf> (allowing an owner, operator, or agent thereof of a chlor-alkali facility that is in operation on the date of enactment of the Act to: import processed asbestos fibers solely for the purpose of manufacturing diaphragms for use in the chlor-alkali process for 5 years; and use, hold, or process asbestos fibers solely for the purpose of manufacturing diaphragms for use in the chlor-alkali process for 10 years).

⁵ 87 Fed. Reg. at 21726.

ban asbestos under TSCA in 1989 faced similar hurdles⁶ and was ultimately struck down by the courts.⁷

As EPA itself admits, should the Agency move forward with this proposal and two-year transition period, there will be massive supply chain disruptions across numerous industries, as well as a direct threat to Americans' public health, including jeopardizing domestic drinking water treatment and other necessary public health items. EPA also acknowledges in its proposal that “[s]hort-term supply shortages of chlorine, caustic soda, and derivative chemicals are likely to lead to price increases experienced by both industrial and commercial users, some of which may be passed along to final consumers of products made with these inputs.”⁸

Should this proposal become final, the ensuing chlorine shortages and price increases will cause public water systems to face a number of regulatory compliance issues. For example, the Safe Drinking Water Act (SDWA) stipulates that public water systems must use disinfectants in drinking water treatment.⁹ While the statute's definition of disinfectant allows for the use of disinfectants that are not chlorine, existing public water systems designed around the use of this treatment option would likely be unable to switch to an alternative disinfectant safely and economically in the event of a chlorine shortage.

Further, SDWA requires that there be a “reasonably available” supply of chemicals necessary to effectively treat drinking water.¹⁰ Should chlorine prices continue to increase, however, public water utilities' ability to treat water for contaminants would be severely limited. In order for public water systems to abide by the statutory requirement to treat water using disinfectants, utilities would be required to purchase chlorine at cost-prohibitive prices that will be passed onto ratepayers. As we have learned from the COVID-19 pandemic, water affordability is a serious issue for low-income and overburdened communities. We therefore have serious concerns that EPA's proposed rule – if finalized – will result in increasingly higher water bills for our nation's most vulnerable communities. For example, in the last year alone, chlorine prices in some

⁶ *Corrosion Proof Fittings, et al. v. EPA*, 947 F.2d 1201, 1224 n.25 (5th Cir. 1991) (“One of the study's authors, Mr. Anderson, submitted written testimony that the ‘replacement/substitution of a sbestos-based with non-asbestos brake linings will produce grave risks’ and that ‘the expected increase of skid-related highway accidents and resultant traffic deaths would certainly be expected to overshadow any potential health-related benefits of fiber substitution.’”).

⁷ *Id.*; see also “Technical Amendment in Response to Court Decision on Asbestos; Manufacture, Importation, Processing and Distribution Prohibition,” 59 Fed. Reg. 33208 (June 28, 1994) (revising 40 C.F.R. § 763), available at <https://www.govinfo.gov/content/pkg/FR-1994-06-28/html/94-15676.htm> (“[O]n October 18, 1991, the United States Court of Appeals for the Fifth Circuit vacated and remanded most of the ABPO Rule.”).

⁸ 87 Fed. Reg. at 21726.

⁹ 42 U.S.C. § 300g-1(b)(8).

¹⁰ *Id.* § 300g-4(a)(1)(A).

regions of the country reached up to \$2,444 per ton.¹¹ As such, this proposal would exacerbate already high prices for chlorine in the U.S. market, contributing to inflation for ratepayers and reducing the real return on federal water investments, including projects supported by the recently enacted Infrastructure Investment and Jobs Act.

At a time of historically high inflation and significant supply chain concerns, it is extremely shortsighted to impose these additional regulatory burdens upon domestic supply chains and public health protection preparedness and response capacity.

We therefore urge EPA to withdraw its proposal and issue a supplemental rulemaking establishing a reasonable phasedown schedule. In doing so, we encourage EPA to carefully consider and respond to stakeholder comments, particularly from the regulated community, relevant federal agencies, and other stakeholders to inform a new proposal. This revised timeline must provide enough time for chlorine manufacturers to ensure that a sufficient and affordable supply of chlorine is available to protect public health.

Thank you for your attention to this matter and we look forward to your prompt response.

Sincerely,



David B. McKinley, P.E.
Ranking Member
Subcommittee on
Environment & Climate
Change



Shelley Moore Capito
Ranking Member
Committee on the
Environment & Public
Works



Cathy McMorris Rogers
Ranking Member
Committee on Energy &
Commerce



Roger F. Wicker
Ranking Member
Subcommittee on Chemical Safety, Waste
Management, Environmental Justice, and
Regulatory Oversight



Cynthia M. Lummis
Ranking Member
Subcommittee on Fisheries, Water, and
Wildlife

¹¹ Letter from Clayton Edwards, Director, Water and Sewer Development, City of Tulsa to Sen. Shelley Moore Capito (Apr. 26, 2022), available at <https://www.epw.senate.gov/public/cache/files/c/d/cdb17f15-0505-43f1-8f2b-6f3b9bba02bf/F13435B1B5105AA097B101DDEA50104B.memo-impacts-of-chlorine-costs-april-2022.pdf>.