



June 7, 2022

The Honorable Jeff Merkley
Chairman
Subcommittee on Chemical Safety, Waste
Management, Environmental Justice, and
Regulatory Oversight
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

The Honorable Roger Wicker
Ranking Member
Subcommittee on Chemical Safety, Waste
Management, Environmental Justice, and
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Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Chairman Merkley and Ranking Member Wicker:

Thank you for the opportunity to submit this statement for the record of the subcommittee's hearing on S. 4244, the Alan Reinstein Ban Asbestos Now Act. The American Water Works Association (AWWA) and the Association of Metropolitan Water Agencies (AMWA) have significant concerns about S.4244 and the U.S. Environmental Protection Agency's (EPA's) proposed rule to ban the use of chrysotile asbestos diaphragms in the production of chlorine, sodium hypochlorite and caustic soda by the chlor-alkali sector. EPA's own analysis indicates that such action will impact nearly 30 percent of domestic production that serves the water sector. This will adversely impact the continuity of operations at utilities across the nation and as result, the health protections provided to our customers.

AWWA and AMWA represent drinking water systems that collectively serve over 80 percent of the population. Our primary mission is the protection of public health. We support over 50,000 community water systems nationwide in maintaining an essential lifeline service, safe drinking water. Safe drinking water is critical to both public health and the economic vitality of individual communities across the nation. The majority of these community water systems are part of municipal government, while some are independent authorities, not-for-profit organizations, or investor-owned utilities. No matter the type of ownership, there are three common denominators: 1) they provide a critical infrastructure service, 2) their operations are financially supported by the rate payers in the communities they serve and 3) they are required to comply with regulations promulgated under the Safe Drinking Water Act (SDWA).

SDWA regulations specifically require 1) any water system that relies on surface water or ground water under the influence of surface water (GWUDI) to meet disinfection requirements using chlorine, chlorine/chloramines, ozone, or chlorine dioxide, 2) these same systems must also maintain a chlorine disinfectant residual in the distributed drinking water supply, and 3) primary disinfection at groundwater systems at the direction of primacy agencies. All these provisions are designed to protect the public from pathogens. However, our collective capacity to fulfill this obligation to protect public health would be threatened by S. 4244's proposed ban on chrysotile asbestos – which is commonly used in the production of chlorine.

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S. 4244 would prohibit the “manufacture, processing, use, and distribution in commerce” of “commercial asbestos” within one year of passage of the legislation. “Commercial asbestos” is defined to include asbestiform fibers processed from chrysotile asbestos, which is used by the chlor-alkali sector in diaphragms necessary to produce chlorine, sodium hypochlorite and caustic soda. While S. 4244 would allow existing chlor-alkali facilities to import and use chrysotile asbestos to produce diaphragms for one additional year beyond the prohibition date, AWWA and AMWA have significant concerns that this legislation would curtail domestic chlorine production and adversely impact the continuity of operations at water systems across the nation and therefore threaten the public health of your constituents.

Similarly, EPA’s proposal to regulate certain conditions of use under Section 6(a) of the Toxic Substances Control Act (TSCA) would prohibit, after two years, the manufacture, processing, and commercial use of chrysotile asbestos, “including any chrysotile asbestos-containing products or articles” such as diaphragms in the chlor-alkali industry. The effects of this ban would be identical to those of S. 4244 and would introduce new uncertainties into the availability of chlorine for water treatment activities.

Existing market pressures are pushing up the cost for chlorine – costs that water systems must pass on to their ratepayers. We gathered information from our members about the cost of chlorine. Our members have been experiencing significant increases in the cost of chlorine over the last 18 months and future increases are anticipated. According to AWWA’s recent national survey, on average the cost for each ton of chlorine delivered to water systems has increased over 160%. The lowest reported cost in the second quarter of 2022 was \$700/ton up from \$221/ton in the first quarter of 2021. The highest reported cost in the second quarter of 2022 was \$7,000/ton. Higher unit costs often fall disproportionately on smaller communities that use 150-pound containers and therefore do not have bulk volume purchasing power. However, multiple large systems have experienced 300-600% increases in the unit cost of chlorine over the same 18-month period. In many cases these dramatic price increases represent millions of dollars in unbudgeted operating expenses that must be absorbed by the water system.

The rapid escalation in the cost of this critical treatment chemical represents a significant opportunity cost to ratepayers. Water systems are already being forced to reallocate limited, available funds away from operational and maintenance needs. Deferred investments in drinking water treatment facility and distribution system repair are direct and real-world consequences of rapid escalation in the cost of chlorine. The proposed legislation and regulation fail to recognize these impacts on water system operations and the public they serve. While S. 4244 provides the President the opportunity to grant, on a case-by-case basis, a temporary exemption to the asbestos ban when necessary to protect national security, no similar waiver is included for the purpose of maintaining chlorine production to protect public health. We believe the latter is as critical for the defense of the country as the availability of chlorine is a necessity to ensure safe drinking water that provides for a sound and vital economy. In any event, the continued availability of chlorine to the nation’s water systems is too important to defer to a discretionary waiver process. If enacted in its current form, S. 4244 would magnify existing economic burdens

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by restricting chlorine production, thus compounding affordability and continuity of operations challenges currently impacting the nation's water systems.

S. 4244 and EPA's proposed regulation would leave water systems with little recourse but to file with EPA for relief under SDWA §1441. This provision is designed to ensure that certain chemicals or substances, including chlorine and caustic soda, that are necessary "for the purpose of treating water in any public water system or in any public treatment works" are "reasonably available." It is not clear that the Administration could meet this obligation under SDWA §1441 in an environment of reduced chlorine production due to the asbestos ban. Clearly, the implications for public health could be profound.

We are also concerned that EPA's economic analysis for the proposed rule made no substantive effort to examine the impact on "reasonable availability" and downstream consequences on water system operations. EPA suggested that "potential supply disruptions could be addressed in the shorter term through increased importing . . . and over time with increased production at existing non-asbestos diaphragm or membrane-based chlor-alkali plants." EPA provides no supply chain capacity analysis to support that finding. In addition, we do not believe that shifting the supply chain towards greater foreign dependency, even if short-term, is in our strategic national interest.

Recent incidents, including Winter Storm Uri and Hurricane Laura, directly impacted chlor-alkali production and availability. However, in responding to those incidents EPA lacked the data necessary to properly examine "reasonable availability" under §1441. We recommend that Congress task EPA with conducting a full supply chain analysis to develop an understanding of how production incidents may impact the availability of chemicals and substances essential to proper water treatment. In addition, we believe §1441 could be more anticipatory of emergency conditions. The current process requires a lengthy notice and comment period that is not responsive to emergency conditions such as those observed in the past year. Congress should explore granting priority allocation to use cases associated with public health, including but not limited to water treatment.

Over the past 18 months water systems across the nation have reported multiple instances of inadequate available disinfectant supply, with respect to both chlorine and sodium hypochlorite. There have been multiple instances where water systems have been within a few days of running out of these disinfectants, when typically, weeks of supply are maintained onsite. This creates significant stress on water systems' ability to assure adequate treatment. Should a system not have adequate disinfectant, SDWA regulations appropriately require public notification, and state primacy agencies would typically require a boil water notification. The lack of adequate disinfection disrupts the entire community for no reason other than chemical supply disruption. Our members have worked diligently to avoid such outcomes. The proposed legislation and regulation unnecessarily place communities at greater risk of experiencing such a disruption and the associated economic consequences.

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It should also be noted that under TSCA section 6(g) EPA was directed by Congress to consider how a proposed action may “significantly disrupt the national economy, national security or critical infrastructure.” In the current rulemaking EPA did not exercise this discretion and no exemption was granted. We believe the agency made a grave mistake given the existing supply chain and economic impacts being experienced in the water sector. At minimum Congress should direct EPA to conduct a full-scale market capacity assessment under §1441 given the strategic national economic and security role of water utilities as essential lifeline critical infrastructure systems under PPD-21 and the Homeland Security Act of 2002. The proposed transition period of 3 years is unreasonable considering similar European regulation provided 5-8 years for the same transition. The proposed legislation and regulation create a federal government-imposed threat to the continuity of community water system operations and an unreasonable cost burden on the nation’s water rate payers. Congress and EPA must consider these financial burdens in weighing whether to pursue these prospective actions.

We recognize that the intent of S. 4244 and EPA’s proposed regulation is to mitigate exposure to asbestos. However, it must be recognized that chrysotile asbestos diaphragms used in the production of chlorine provide a critical disinfectant relied upon by community water systems nationwide to ensure that water is safe to drink. Ensuring the continuity of safe drinking water is a critical public health issue. AWWA and AMWA urge you to, at minimum, modify S. 4244 to ensure that it does not inadvertently create a chlorine supply shortage that could threaten the safety of our nation’s drinking water supply. We would be eager to collaborate with you on this important issue.

Sincerely,

American Water Works Association
Association of Metropolitan Water Agencies