



**American
Fuel & Petrochemical
Manufacturers**

1800 M Street, NW
Suite 900 North
Washington, DC
20036

202.457.0480 office
202.457.0486 fax
afpm.org

April 17, 2023

Michal Freedhoff
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001

Attention: EPA-HQ-OPPT-2021-0057

Re: Asbestos Part 1: Chrysotile Asbestos; Regulation of Certain Conditions of Use Under Section 6(a) of the Toxic Substances Control Act (TSCA); Notice of Data Availability and Request for Comment

I. Introduction

The American Fuel & Petrochemical Manufacturers (“AFPM”) respectfully submits these comments on the Environmental Protection Agency’s (“EPA” or “the Agency”) *Federal Register* notice titled “Asbestos Part 1: Chrysotile Asbestos; Regulation of Certain Conditions of Use Under Section 6(a) of the Toxic Substances Control Act (TSCA); Notice of Data Availability and Request for Comment” (“the proposed rule”).¹ Specifically, EPA is requesting comments on how to consider information received with respect to compliance dates, potential staggering of compliance dates, or establishing longer deadlines for the proposed ban. Additionally, the Agency is seeking comments on the practicability of measuring asbestos at 0.005 fibers per cubic centimeter (“f/cc”) and 0.0025 f/cc using existing sampling and analytical methods.

AFPM is the leading trade association representing the makers of the fuels that keep us moving, the petrochemicals that are the essential building blocks for modern life, and the midstream companies that get our feedstocks and products where they need to go. AFPM members are committed to sustainably and efficiently manufacturing the fuels and petrochemicals that growing global populations and economies need to thrive. Asbestos gaskets have been used by petroleum refineries and petrochemical manufacturing facilities in closed systems to seal pipe joints and various parts of pumps and boilers that may be subject to high operating temperatures.

¹ See 88 *Fed. Reg.* 16389, “Asbestos Part 1: Chrysotile Asbestos; Regulation of Certain Conditions of Use Under Section 6(a) of the Toxic Substances Control Act (TSCA) Notice of Data Availability and Request for Comment”, EPA-HQ-OPPT-2021-0057, published March 17, 2023, at <https://www.federalregister.gov/documents/2023/03/17/2023-05325/asbestos-part-1-chrysotile-asbestos-regulation-of-certain-conditions-of-use-under-section-6a-of-the>.

II. AFPM Comments

Asbestos gaskets used in refineries do not pose an unreasonable risk.

Asbestos is a unique material that can withstand the high temperatures and pressures found in refining and petrochemical manufacturing operations. AFPM questions EPA's claim that asbestos gaskets used in closed systems at petroleum refineries and petrochemical facilities pose an unreasonable risk. The gaskets are solid materials that are fully encapsulated, which means no airborne fibers are present. The only foreseeable condition of use that could result in the release of airborne fibers is when gaskets are changed. EPA's proposal to force the change of all asbestos gaskets within the specified dates will actually increase potential exposures to asbestos by requiring handling of these materials that would otherwise remain in closed systems with no employee exposures.

The refining and petrochemical industries are well aware of the hazards of asbestos and do safely manage the risk through a variety of engineering controls. Additionally, personal protective equipment ("PPE") is worn, including respiratory protection, gloves, and face shield, and asbestos-specific maintenance procedures are followed when an asbestos containing gasket is identified. In the refining and petrochemical industries, there are very strict standards requiring PPE anytime a person is near a process unit. Specific to maintenance work, once a gasket containing asbestos is identified, there are elaborate additional protocols and requirements maintenance staff take to protect themselves. EPA's unreasonable assumption that PPE is not worn when removing a gasket or workers are not following OSHA or other agency regulations in one of the most regulated manufacturing sectors is specious, arbitrary, and capricious.

While asbestos-containing gaskets were common more than 20 years ago, the refining and petrochemical industries have been replacing gaskets containing asbestos as they come across them during routine maintenance and turnarounds; however, it is impossible to test whether a gasket contains asbestos without opening the piping, flange, or equipment to conduct the test. It would significantly increase both occupational and process safety risks to require employees to preemptively open equipment looking for asbestos gaskets. It is significantly safer for the employees and the community to replace them as they come across them. Those gaskets have not reached the end of their useful life and do not pose risks to health or the environment from the fully closed and contained environment in which they are used.

EPA's proposed deadline for compliance will disrupt a significant portion of the fuel supply chain for an extended period.

The proposed 2-year compliance deadline will likely require unit shutdowns that could disrupt critical supply chains for gasoline, diesel, and other fuels, as well as manufactured finished goods. Just to take an inventory of which flanges or equipment use asbestos gaskets at a refinery or petrochemical facility would require many different processing units to be shut down because asbestos gaskets are designed to last for decades. Many refineries and petrochemical facilities began using them before SAP and other modern record-keeping systems were available. This could result in unplanned industry-wide shutdowns, with each refinery and petrochemical facility

competing for the same limited number of contractors qualified to conduct such operations within a short period. For safety reasons, during processing unit turnarounds, refineries and petrochemical facilities do not open every flange; rather, visual inspections, ultrasound, and other tests are conducted to target parts of the unit for closer scrutiny. To force inspection of all flanges through a misguided regulation would be an enormous undertaking, significantly extending turnaround times, and creating significantly more safety concerns – i.e., each time a flange is disconnected, the overall safety of the system is compromised, and each disconnected section must be rigorously tested before coming back online.

For safety and regulatory reasons, scheduling a planned turnaround takes at least one to two years of advanced planning due to the complexities of refining and petrochemical manufacturing processes. It requires dedicated teams and hundreds of contractors.² The length of time for completion of a turnaround varies depending on the number and complexities of the tasks involved but tends to average from three to five weeks.³ Adding more flange disconnections, inspections, and safety testing for each processing unit that could contain asbestos gaskets would dramatically extend that time. The total cost of a scheduled refinery turnaround is usually in the tens of millions of dollars; furthermore, the opportunity costs of production loss while a single unit is shut down is estimated to be \$1.2 to \$3 million per day.⁴ Adding all this unnecessary work could increase these costs substantially because of the added time and competition for qualified contractors.

EPA is not authorized to regulate workplace safety; that is the job of the Occupational Health and Safety Administration.

AFPM has serious concerns about EPA attempting to regulate the workplace, especially when the Occupational Health and Safety Administration (“OSHA”) has clear Congressional authority to regulate workplace safety. OSHA already regulates process safety and does not need EPA to help “fill the gaps.” OSHA’s work with the National Institute for Occupational Safety & Health (“NIOSH”) and American Conference of Governmental Industrial Hygienists (“ACGIH”) have established standards, procedures, and guidelines for industrial safety that are among the best in the world. EPA has missed most of its deadlines for risk evaluations and risk management proposals, mainly because of its focus on the workplace. This type of mission-creep will continue to slow implementation of the new TSCA requirements.

If Congress had intended for EPA to regulate the workplace, rather than coordinating with OSHA, it would have made that authority very clear in the statutory language. TSCA limits EPA’s role to areas not covered by other federal agencies. Neither the original TSCA statute nor the Frank R. Lautenberg Chemical Safety for the 21st Century Act (aka “Lautenberg Chemical

² *Refinery Outages: Description and Potential Impact on Petroleum Product Prices*, Energy Information Administration, Office of Oil and Gas, U.S. Department of Energy, March 2007. See <https://www.eia.gov/petroleum/articles/refoutagesindex.php>.

³ *Cost estimating for turnarounds*, Gordon Lawrence, Asset Performance Networks, Reprinted from Petroleum Technology Quarterly, Q1 2012. See https://www.costengineering.eu/images/papers/Cost_Estimating_For_Turnarounds.pdf.

⁴ *Shutdown & Turnaround of Refineries*, Opus Kinetic, September 4, 2017. See <https://www.opuskinetic.com/2017/09/shutdown-turnaround-of-refineries/>.

Safety Act” or “LCSA”) provide EPA with the authority over workplace safety that is provided to OSHA.

EPA’s proposed threshold values are too low and will present significant challenges for monitoring and compliance.

EPA has introduced its own system of threshold limits for workplace safety, even though threshold limit values for asbestos have been established by OSHA, NIOSH, and ACGIH.⁵ The Mine Safety and Health Administration (“MSHA”) also has a threshold value that is in agreement with OSHA, NIOSH, and ACGIH.⁶ Not only is EPA moving beyond its Congressional authority, but the value it has established contradicts three government agencies charged with workplace safety. EPA’s proposed value is not founded on the best available science nor was it subject to public comment. Furthermore, EPA established its value outside of the normal standards-setting protocols. The Agency has set its threshold limit value several orders of magnitude below the limits established by the appropriate government agencies, OSHA, NIOSH, and MSHA, and the standards-setting body for threshold safety limits, ACGIH.

EPA is seeking comment on the practicability of measuring asbestos at its proposed values of 0.005 f/cc and 0.0025 f/cc using existing sampling and analytical methods. AFPM has significant concerns about these values being near, at, or below detection limits for standard sampling methods and equipment. In its *Manual for Analytical Methods* (“NMAM”), NIOSH establishes a limit of quantification for asbestos using Phase Contrast Light Microscopy (“PCM”), a standard monitoring method, at 0.04 f/cc.⁷ OSHA Method ID-160 and NIOSH Method 7400, both of which lay out methods for PCM and have the same limit of quantification, are required to be used by regulation, according to 29 CFR §1910.1001, Appendix A.⁸ EPA’s proposed value of 0.005 f/cc is an order of magnitude below the limit of quantification. Setting threshold values at or below the limit of quantification will not yield information that has any practical utility because the data will likely fail validation tests. The practicability of measuring 0.0025 f/cc will obviously present even more significant challenges.

III. Conclusion

EPA does not have the experience or expertise to regulate workplace safety. That function is better left to OSHA with consultation from NIOSH and ACGIH. EPA’s time frame for compliance with its proposed asbestos ban is unrealistic and will result in a disruption of fuel and a multitude of manufacturing supply chains throughout the country. The Agency should not try to establish additional government threshold limit values for the workplace when such values are already in place. There are already two such values established by OSHA and ACGIH, not to mention the value set by MSHA, which regulates asbestos mining. EPA’s proposed threshold

⁵ See 29 CFR §1910.1001(c) for OSHA values at <https://www.law.cornell.edu/cfr/text/29/1910.1001>). See <https://www.acgih.org/asbestos-all-forms/> for the ACGIH threshold limit value (“TLV”). See <https://www.cdc.gov/niosh/npg/nengapdxc.html> for NIOSH values.

⁶ See 30 CFR § 56.5001(b) at <https://www.law.cornell.edu/cfr/text/30/56.5001>.

⁷ *NIOSH Manual of Analytical Methods (NMAM)*, Fourth Edition, ASBESTOS and OTHER FIBERS by PCM: METHOD 7400, Issue 3, June 14, 2019. See <https://www.cdc.gov/niosh/docs/2003-154/pdfs/7400.pdf>

⁸ See 29 CFR §1910.1001 Appendix A, <https://www.law.cornell.edu/cfr/text/29/1910.1001>.

limit value, which is well below the limits of quantification for asbestos, is scientifically unfounded, unworkable, and will not stand up to validation.

AFPM strongly urges EPA to allow refineries that employ asbestos gaskets in closed systems to keep using those gaskets until the end of the gaskets' useful lives or, at a minimum, until the next scheduled unit shutdown. There is no sound reason to force a fuel or petrochemical manufacturer to perform a shutdown operation that is not necessary. Now, more than ever, the United States needs all its fuel and base chemical assets in full deployment.

Sincerely,

A handwritten signature in black ink, appearing to read "James R. Cooper". The signature is fluid and cursive, with the first name "James" and last name "Cooper" clearly distinguishable.

James Cooper
Senior Petrochemical Advisor
American Fuel & Petrochemical Manufacturers