



EPA Proposes Rule to Ban Chrysotile Asbestos Using TSCA Risk Management Rule

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EPA has again taken action to ban certain asbestos-containing products in the United States under the Toxic Substances Control Act (TSCA) section 6(a) by a proposed rule published in the Federal Register April 12, 2022.

The proposed rule would prohibit the manufacture (defined under TSCA to include import), processing, distribution in commerce and commercial use of chrysotile asbestos (CAS Number: 132207-32-0) for chrysotile asbestos diaphragms for use in the chlor-alkali industry, chrysotile asbestos-containing sheet gaskets used in chemical production, chrysotile asbestos-containing brake blocks used in the oil industry, aftermarket automotive chrysotile asbestos-containing brakes/linings, other chrysotile asbestos-containing vehicle friction products, and other chrysotile asbestos-containing gaskets.

This is not the first time EPA has promulgated a ban on asbestos products under TSCA section 6(a). Put all too briefly and skipping plenty of highlights: In 1989, the EPA issued a final rule prohibiting the manufacture, importation, processing, and distribution in commerce of most asbestos-containing products after nearly 10 years of rulemaking proceedings to reduce the risk of human health posed by exposure to asbestos using TSCA. Ultimately, EPA found asbestos constituted an unreasonable risk to health and the environment and promulgated a staged ban of most commercial uses of asbestos. This was contested by industry (including foreign entities) under TSCA section 19(a) and appealed directly to the U.S. 5th Circuit Court of Appeals. The 5th Circuit ultimately invalidated the rule and remanded it to EPA, based on findings that EPA did not present sufficient evidence to justify the comprehensive ban. The court held the proposed rule was not the least burdensome regulation to achieve its goal of minimum reasonable risk.

TSCA section 6(a) requires EPA to take action to reduce the risk a chemical substance presents if it determines through a risk evaluation process that such chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors. The risk analysis includes a consideration of an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of

use. Such a risk evaluation, pursuant to TSCA section 6(b)(4)(A), was issued in December 2020 for chrysotile asbestos whereby EPA determined chrysotile asbestos presents unreasonable risk of injury to health under certain conditions of use evaluated, thus leading to the currently proposed rule.

Admittedly, this may not be as significant as it seems on its face. EPA identifies one industry?chlor-alkali producers?consisting of around 10 plants nationwide, as the only known industry in the United States to fabricate products from raw chrysotile asbestos, and even this use is relatively low as use of asbestos diaphragm cells to produce chlorine and sodium hydroxide has been declining over time with the increased use of non-asbestos membrane cells. As to the other products proposed to be banned by the rule, EPA reports that most products that historically contained chrysotile asbestos have been discontinued with non-asbestos alternatives readily available, so few entities have been identified that would be impacted by this rule. EPA is specifically requesting comments to gain more information on the potential impact.

The deadline for comments to the proposed rule is June 13, 2022. The proposed disposal and recordkeeping requirements would take effect 180 days after the effective date of the final rule; the proposed prohibitions relating to oilfield brake blocks, aftermarket automotive brakes and linings, other vehicle friction products, and other gaskets for commercial use are also proposed to take effect 180 days after the effective date of the final rule; and the prohibitions relating to asbestos diaphragms and sheet gaskets for commercial use are proposed to take effect two years after the effective date of the final rule.

Asbestos Part 1: Chrysotile Asbestos; Regulation of Certain Conditions of Use Under Section 6(a) of TSCA, Proposed Rule, 87 Fed. Reg. 21706 (April 12, 2022).
Corrosion Proof Fittings, et al. v. EPA, 947 F. 2d 1201 (5th Cir. 1991).

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