Is the EPA Allowing for the Approval of New Asbestos-Containing Products?

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On 1 June 2018, the Environmental Protection Agency Office of Pollution Prevention and Toxics [HYPERLINK "https://www.epa.gov/newsreleases/epa-takes-three-important-steps-ensure-chemical-safety-under-lautenberg-act-proposes" \t "_blank"] a proposed "Significant New Use Rule" (SNUR) for asbestos — a mineral once widely used in the construction of buildings thanks to its flame-retardant properties, but now uncontroversially considered a [HYPERLINK "https://www.cancer.org/cancer/cancer-causes/asbestos.html" \t "_blank"].

SNURs are a mechanism within the [HYPERLINK "https://www.epa.gov/laws-regulations/summary-toxic-substances-control-act" \t "_blank"] that mandate specific EPA approval when a chemical is used in a significantly new way or in a significantly new mixture that "might create concerns.":

For asbestos, [the] EPA is proposing a SNUR for certain uses of asbestos (including asbestos-containing goods) that would require manufacturers and importers to receive EPA approval before starting or resuming manufacturing, and importing or processing of asbestos. This review process would provide EPA with the opportunity to evaluate the intended use of asbestos and, when necessary, take action to prohibit or limit the use.

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~~leadership~~. To hear Former EPA Administrator Scott Pruitt [HYPERLINK "https://www.epa.gov/newsreleases/epa-takes-three-important-steps-ensure-chemical-safety-under-lautenberg-act-proposes" \t "_blank"] the proposed rule, he is taking an "unprecedented" stand against the dangers of asbestos and protecting the public against potential harm by requiring manufacturers and importers "to receive EPA approval before starting or resuming manufacturing, and importing or processing of asbestos":

These actions provide the American people with transparency and an opportunity to comment on how EPA plans to evaluate [ten chemicals being reconsidered under the TSCA, one of which is asbestos] undergoing risk evaluation, select studies, and use the best available science to ensure chemicals in the marketplace are safe. At the same time, we are moving forward to take important, unprecedented action on asbestos.

The problem, according to critics, is twofold. The first, more generally, is that the EPA could have used the currently unfolding overhaul of the TSCA — which began at the end of the Obama administration and has continued along a very [HYPERLINK "https://www.scientificamerican.com/article/trump-rsquo-s-epa-may-be-weakening-chemical-safety-law/" \t "_blank"] path under Trump — to ban any new uses of asbestos, something that [HYPERLINK "http://archive.is/3F4CC" \t "_blank"] the case at the end of the last administration. Instead, they are Ex. 5 Deliberative Process (DP)

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The second problem, more specifically, concerns the way in which the EPA has proposed to evaluate that risk. In May 2018, the EPA [HYPERLINK "https://www.epa.gov/sites/production/files/2018-06/documents/asbestos_problem_formulation_05-

31-18.pdf" \t "_blank"] a document known as the "Problem Formulation of the Risk Evaluation for Asbestos," which establishes the scientific approach the EPA will take in evaluating these new uses. Significantly, their approach will not include information from existing, or "legacy" uses of asbestos, despite the significant body of work around health risks stemming from those uses:

In the case of asbestos, legacy uses, associated disposals, and legacy disposals will be excluded from the problem formulation and risk evaluation [...]. These include asbestos containing materials that remain in older buildings or are part of older products but for which manufacture, processing and distribution in commerce are not currently intended, known or reasonably foreseen.

EPA is excluding these activities because EPA generally interprets the mandates under section TSCA § 6(a)-(b) to conduct risk evaluations and any corresponding risk management to focus on uses for which manufacture, processing or distribution is intended, known to be occurring, or reasonably foreseen, rather than reaching back to evaluate the risks associated with legacy uses, associated disposal, and legacy disposal, and interprets the definition of conditions of use in that context.

This, E&E News [HYPERLINK "https://www.eenews.net/greenwire/stories/1060083229" \t "_blank"], may serve to severely limit the types of exposures the EPA will include while formulating the potential risk of new uses for asbestos:

Public health advocates believe EPA is inappropriately limiting its health reviews of chemicals to avoid considering the impacts of those already in the environment. But the agency hasn't been swayed by their pushback. [...]

That means the agency won't consider the dangers posed by, for example, asbestos-containing tiles, adhesives and piping in millions of homes and commercial buildings nationwide.

[HYPERLINK "https://www.nytimes.com/2018/06/07/us/politics/epa-toxic-chemicals.html" \t "_blank"] to the *New York Times*, the new rules will serve to narrow the ways in which asbestos is defined, as well:

Other changes identified in the E.P.A. documents narrow the definitions of certain chemicals, including asbestos. Some asbestos-like fibers will not be included in the risk assessments, one agency staff member said, nor will the 8.8 million pounds a year of asbestos deposited in hazardous landfills or the 13.1 million pounds discarded in routine dump sites.

Three former EPA officials, including the former supervisor of the toxic chemical program, [HYPERLINK "https://www.nytimes.com/2018/06/07/us/politics/epa-toxic-chemicals.html" \t "_blank"] the *New York Times* that such stipulations would necessarily create flawed analyses of the threat posed by any chemical currently being re-evaluated by the EPA:

Three former agency officials, including a former supervisor of the toxic chemical program, said that the E.P.A.'s approach would result in a flawed analysis of the threat presented by chemicals.

"It is ridiculous," said Wendy Cleland-Hamnett, who retired last year after nearly four decades at the E.P.A., where she ran the toxic chemical unit during her last year. "You can't determine if there is an unreasonable risk without doing a comprehensive risk evaluation." [...]

The most likely outcome of the changes will be that the agency finds lower levels of risks associated with many chemicals, and as a result, imposes fewer new restrictions or prohibitions, several current and former agency officials said.

Senator Tom Udall, a Democrat from New Mexico, [HYPERLINK "https://www.nytimes.com/2018/06/07/us/politics/epa-toxic-chemicals.html" \t "_blank"] that Pruitt is undermining what was a bipartisan push to reform the TSCA that began under President Obama. "Congress worked hard in bipartisan fashion to reform our nation's broken chemical safety laws, but Pruitt's E.P.A. is failing to put the new law to use as intended," he said in a statement.

President Trump has spoken on the topic of asbestos prior to taking office. In his 1997 book *The Art of the Comeback*, he [HYPERLINK "https://www.huffingtonpost.com/entry/donald-trump-called-asbestos-poisoning-a-mob-led-conspiracy-now-his-epa-wont-evaluate-asbestos-already-in-homes_us_5b1a9cace4b0bbb7a0dc25f2" \t "_blank"] that the chemical is actually safe once

applied, and suggested that the link to health problems was manufactured by the mob-connected companies that perform asbestos removal from buildings:

I believe that the movement against asbestos was led by the mob, because it was often mob-related companies that would do the asbestos removal. Great pressure was put on politicians, and as usual, the politicians relented.

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