

Risk Evaluation/Toxic Substances Control Act: American Public Health Association Notice of Intent to Sue EPA Addressing Legacy Asbestos



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The American Public Health Association and several other organizations and individuals (collectively “APHA”) sent a January 26th document to the United States Environmental Protection Agency (“EPA”) titled:

Notice of Intent to File Suit to Compel EPA to Perform Non-Discretionary Act under Section 6(b) of TSCA (“NOI”)

The NOI states APHA’s intent to sue under Section 20(a)(2) of the Toxic Substances Control Act (“TSCA”) to compel EPA to perform what it describes as:

... its non-discretionary duty to address the use and disposal of “legacy” asbestos in its risk evaluation for asbestos under TSCA section 6(b).

EPA is stated to have issued a final risk evaluation (“FRE”) for asbestos on December 30, 2020. See 86 Fed. Reg. 89. The FRE is stated to have been described by EPA as a “Part 1” evaluation.

The FRE is stated to have excluded the health impacts of legacy asbestos uses and associated disposal. Legacy asbestos uses are stated to include previously installed construction materials such as:

- Attic insulation
- Pipes
- Boilers
- Floor tiles
- Gaskets
- Shingles
- Siding
- Roofing

The NOI further notes that such asbestos-containing materials:

... remain in use in millions of structures across the U.S., including schools, factories, public buildings, commercial businesses, apartment buildings and residences.

APHA argues that EPA originally claimed legacy asbestos risks were beyond its authority under TSCA. However, it states that the U.S. Court of Appeals for the Ninth Circuit rejected this conclusion and held that the use and disposal of chemicals no longer distributed in commerce are “conditions of use” as

defined in Section 3(4) of TSCA. As a result, APHA states that legacy asbestos should have been included in the TSCA risk evaluation.

EPA is stated to have indicated it planned to conduct a future Part 2 evaluation of legacy asbestos. However, APHA claims that the federal agency has provided no specifics about how it would be conducted or set a completion schedule. As a result, it is alleged that EPA has violated a non-discretionary duty under Section 20(a)(2) of TSCA.

A copy of the NOI can be downloaded [here](#).