

Sussman & Associates
3101 Garfield Street, NW
Washington DC 20008
bobsussman1@comcast.net

February 13, 2026

Lee Zeldin
Administrator
US Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Ave. NW
Washington, DC 20460

Re: Notice of Intent to File Suit to Compel EPA to Perform Its Non-Discretionary Duty under TSCA to Propose a Risk Management Rule for Legacy Asbestos

Dear Administrator Zeldin:

This is a notice of intent to sue under section 20(a)(2) of the Toxic Substances Control Act (TSCA) to compel the Environmental Protection Agency (EPA) to perform its non-discretionary duty to propose a rule under TSCA section 6(a) to protect against the unreasonable risk presented by the use and disposal of “legacy” asbestos.

The notice is being submitted on behalf of the Asbestos Disease Awareness Organization (ADAO), a non-profit organization whose mission is to prevent asbestos-caused diseases, including lung cancer, malignant mesothelioma, ovarian cancer, cancer of the larynx in humans, and asbestosis. ADAO works on many fronts to reduce and eliminate asbestos exposure. The tools it employs include public education, collaboration with grassroots communities, and scientific analysis and research. ADAO also advocates for federal, state and local laws and regulations that protect against asbestos exposure and disease.

Asbestos is no longer mined in the US but has been imported in bulk and as part of asbestos-containing products. EPA banned six of these conditions of use in its March 2024 Part 1 Chrysotile Asbestos risk management rule. 89 Federal Register 21970 (March 28, 2024). However, this rule did not address legacy asbestos.

Asbestos was widely distributed and sold for several decades as part of construction materials such as attic insulation, pipes, boilers, floor tiles, gaskets, shingles, siding and roofing. Although these products are no longer manufactured and distributed in commerce, asbestos-containing building materials remain in use in millions of structures across the US, including schools, factories, public buildings, commercial businesses, apartment buildings and residences. Exposure to legacy asbestos often occurs during repairs, renovations and demolitions of these structures and other exposure pathways. Such exposure is likely a significant contributor to the continuing high toll of death and disease from asbestos in the US.

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After a 2019 court decision, EPA was obligated to supplement its Part 1 risk evaluation by assessing the risks of legacy asbestos. On December 3, 2024, EPA thus issued a final Part 2 risk evaluation addressing legacy asbestos under section 6(b) of TCSA. In that evaluation, EPA determined that legacy asbestos presents an unreasonable risk of injury to health. As a result of this determination, section 6(c) of TSCA required EPA to propose a risk management rule for legacy asbestos within one year of releasing the Part 2 evaluation. This deadline fell on December 3, 2025 but no rule has been proposed. EPA is therefore in default on a non-discretionary duty under TSCA, and section 20(a)(2) authorizes a citizens' suit to set an enforceable deadline for proposing the Part 2 rule for legacy asbestos.

As required by 40 CFR § 702.62(b), the details of the Agency's failure to perform non-discretionary acts and duties are described below:

(1). Specific TSCA Provisions Requiring Non-Discretionary Acts and Duties. TSCA section 6(b)(4)(A) provides that the "Administrator shall conduct risk evaluations . . . to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment . . . under the conditions of use." If a risk evaluation determines that a substance "presents an unreasonable risk of injury to health," section 6(a) directs that the Agency "*shall* by rule" apply restrictions to the substance "to the extent necessary so that the chemical substance . . . no longer presents such risk" (emphasis added). Under section 6(c)(1)(A), to impose such restrictions, EPA "*shall* propose in the Federal Register a rule under subsection (a) for the chemical substance not later than 1 year after the date on which the final risk evaluation regarding the chemical substance is published" (emphasis added).

Section 20(a)(2) of TSCA authorizes citizens to file a civil action "to compel the Administrator to perform any act or duty under this chapter which is not discretionary." Under section 20(b)(1), "[n]o civil action may be commenced . . . to restrain a violation of this chapter or rule or order under this chapter . . . before the expiration of 60 days after the plaintiff has given notice of such violation" to the EPA Administrator.

(2). Actions by EPA Alleged to Constitute the Failure to Perform a Non-discretionary Act and Duty. The Administrator is in violation of his non-discretionary duty under TSCA sections 6(a) and 6(c) to propose a rule addressing the unreasonable risks presented by the use and disposal of legacy asbestos within 1 year of a final risk evaluation determining that these activities present an unreasonable risk.

Exclusion of Legacy Asbestos from the Part 1 Evaluation. TSCA, the principal federal law for managing chemical risks, was comprehensively amended by Congress in 2016. The amendments established a new process for conducting risk evaluations of chemicals of concern to determine whether they present unreasonable risks to human health and the environment. Under section 6(b)(4)(A), these determinations of risk must be "under the conditions of use" of a chemical.

TSCA section 6(b)(2)(A) required EPA to select 10 chemicals to undergo risk evaluations and to initiate these evaluations within 180 days of the enactment of the amended law. These 10

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chemicals, announced by EPA in December 2016, included asbestos, a substance mined from mineral deposits that causes cancer and other serious diseases which have killed hundreds of thousands of Americans. 81 Fed. Reg. 91927 (December 19, 2016).

When it began its asbestos risk evaluation, EPA initially maintained that the risks of legacy asbestos to workers, consumers, school children and teachers were beyond its authority under TSCA. Accordingly, it excluded legacy asbestos use and disposal from its asbestos risk evaluation. As explained in its May 2018 [problem formulation](#) for asbestos, EPA did not plan to address “pre-existing materials currently in place within buildings (e.g., insulation materials, flooring, etc.) and also within pre-existing non-building equipment” because “[t]hese materials were installed in the past, and there is no evidence to suggest that manufacturing, processing, or distribution for such activities is intended, known, or reasonably foreseen.”

This position was embodied in the “framework” rule EPA promulgated in July 2017 to establish the approach it would follow in conducting risk evaluations. The preamble to the rule stated that EPA did not consider “legacy activities”—consisting of “legacy uses,” “associated disposals,” and “legacy disposals”—to be TSCA conditions of use. 82 Fed. Reg. 33726, 33729–30 (July 20, 2017).

Ninth Circuit Rejection of EPA Interpretation. The framework rule was challenged judicially by ADAO and other petitioners. In its November 14, 2019 decision reviewing the rule, the Ninth Circuit held “that EPA’s exclusion of legacy uses and associated disposals contradicts TSCA’s plain language.” *Safer Chemicals, Healthy Families v USEPA*, 943 F.3d 397, 421 (9th Cir. 2019). As it explained:

“EPA’s contention that TSCA can reasonably be read to refer to the future use of a product, and disposals associated with such use, *only* when the product will also be manufactured in the future for that use—and not when the product is no longer manufactured for the relevant use—is without merit. TSCA’s “conditions of use” definition plainly addresses conditions of use of chemical substances that will be used or disposed of in the future, regardless of whether the substances are still manufactured for the particular use.”

Id at 424. The Court was well aware that its conclusion applied to asbestos, noting that “[f]or example, although asbestos is now infrequently used in making new insulation, it remains in place in previously installed insulation” (id. at 421) and “future disposal of asbestos insulation unambiguously falls within TSCA’s definition of ‘conditions of use’” (id. at 424).

Public Health Impact of Legacy Asbestos. There is a compelling public health need to address the use and disposal of legacy asbestos under section 6 of TSCA. According to the published study entitled “Global Asbestos Disaster,” asbestos-related diseases cause nearly 40,000 deaths in the United States annually. Legacy asbestos is a major contributor to this death toll.

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A wide range of asbestos-containing products—including attic and wall insulation, pipes and boilers, floor tiles, gaskets, roofing, shingles and siding and brake pads and linings—were distributed in commerce for several decades during the 20th century. Although sales started declining in the 1980s, these products were heavily used over several decades in constructing homes, schools, apartments, public buildings, offices, stores, and factories, remaining in place in millions of structures across the country. Much of this asbestos is in friable form and can be released into the air when disturbed during routine building maintenance and upkeep. Exposure can also occur when building materials are broken or torn apart during renovation, repair and demolition projects and the collection and removal of construction debris.

We know that the incidence of asbestos-related disease is elevated in populations with exposure to legacy asbestos. A study by NIOSH researchers examined cancer incidence and mortality among firefighters in San Francisco, Chicago, and Philadelphia and found that “the population of firefighters in the study had a rate of mesothelioma two times greater than the rate in the U.S. population as a whole.”¹ Studies have also found that school teachers, particularly in elementary and middle schools, are at higher risk of mesothelioma than the general population, due to the widespread presence of asbestos in schools built in the 1960s and 1970s and their poor record of asbestos abatement.² While OSHA standards apply to worker exposure to legacy asbestos, OSHA has recognized that these standards do not eliminate significant risks to workers.

Another source of widespread exposure is asbestos-containing debris that enters waste streams during building renovation and demolition. Asbestos waste continues to be generated and managed in the U.S. in significant quantities. According to reports submitted for the Toxic Release Inventory (TRI) in 2017, total asbestos releases for 2017 were 20,556,023 pounds, the bulk of which (92.8%) were on-site land releases.³ Because of limitations in the scope of TRI reporting, the quantity of asbestos waste generated is probably much larger. The movement of asbestos waste in commerce and poor waste management at landfills and construction sites are a significant danger to workers and the public.

EPA Violations of Its Duties under TSCA. Under the Ninth Circuit decision, EPA had a non-discretionary obligation to determine whether use and disposal of legacy asbestos present an unreasonable risk of injury to human health and the environment. The deadline for discharging this obligation was prescribed in TSCA section 6(b)(4)(G), which directs that EPA “*shall* complete a risk evaluation . . . not later than 3 years after the date on which [it] initiates the risk evaluation” (emphasis added). The law allows a six month extension to complete the evaluation.

¹ R. D. Daniels *et al.*, "Mortality and cancer incidence in a pooled cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950-2009)," *Occupational and Environmental Medicine*, vol. 71, no. 6, pp. 388-397, Jun 2014.

² <https://www.inquirer.com/education/a/mesothelioma-philadelphia-school-district-lea-dirusso-cancer-20191121.html>

³ https://www.epa.gov/sites/production/files/2020-02/documents/2017_toxics_release_inventory_national_analysis_complete_report.pdf#:~:text=%20%20%20Title%20%20%202017%20Toxics,Created%20Date%20%20%202/26/2019%205:31:05%20PM

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Thus, EPA was required to publish a final risk evaluation addressing legacy asbestos use and disposal by June 19, 2020.

EPA issued a final risk evaluation for Asbestos Part 1 (Chrysotile Asbestos) on January 4, 2021 (86 Fed. Reg. 89) but it did not address legacy asbestos use and disposal. Instead, the Agency announced that, in response to the Ninth Circuit decision, it would conduct a Part 2 evaluation addressing legacy asbestos. Because EPA failed to set a schedule for completing the Part 2 evaluation, on January 26, 2021, ADAO and several other parties submitted a 60 day notice to EPA of their intent to file suit under section 20(a)(2) of TSCA to enforce EPA's obligation to issue a risk evaluation addressing legacy asbestos. ADAO and its co-parties followed up by filing suit against EPA on May 18, 2021 in federal district court. *Asbestos Disease Awareness Organization v Michael S. Regan*, No. 4:21-CV-03716 (N.D. Cal.). The suit was resolved by a Consent Decree, entered by the court on October 13, 2021, ordering EPA to issue its final Part 2 evaluation by December 1, 2024.

EPA announced the availability for public comment of the draft Part 2 risk evaluation on April 16, 2023. 89 Fed. Reg. 26878. The final risk evaluation was published on December 3, 2024. 89 Fed. Reg. 95777. The notice announcing its availability stated that EPA "has used the best available science to prepare this final risk evaluation and based on the weight of scientific evidence, determined that asbestos poses unreasonable risk to human health." In light of this determination, EPA recognized that it "must initiate risk management action as required pursuant to 15 U.S.C. 2605(a) to address the unreasonable risk." 89 Fed. Reg. 95778.

EPA elaborated "the unreasonable risk to human health presented by asbestos is due to: (1) Cancer and non-cancer effects in workers, including ONUs and firefighters, from inhalation exposures; (2) Cancer and non-cancer effects in handlers and bystanders from inhalation exposures associated with handling of garments taken home from occupational exposure; (3) Cancer and non-cancer effects in consumers and bystanders from inhalation exposures; and (4) Cancer and non-cancer effects in the general population from inhalation exposures." Id.

TSCA section 6 (c)(1)(A) directs that, if EPA "determines that a chemical substance presents an unreasonable risk of injury to health in accordance with" section 6(b)(4)(a)", it "shall propose" a rule regulating the substance under TSCA section 6(a) "not later than 1 year after the date on which the final risk evaluation . . . was published." For legacy asbestos, this one year deadline fell on December 3, 2025, one year after publication of the final Part 2 evaluation. However, EPA missed this deadline and has not yet proposed a section 6(a) risk management rule for legacy asbestos. Therefore, the Agency is in violation of a non-discretionary duty enforceable in a citizens' suit under TSCA section 20(a)(2).

(3). Citizen and Counsel Giving Notice

The citizen giving notice is:

Linda Reinstein

Sussman & Associates
3101 Garfield Street, NW
Washington DC 20008
bobsussman1@comcast.net

President, Asbestos Disease Awareness Organization
1525 Aviation Boulevard, Suite 318
Redondo Beach, California 90278
(310) 251-7477

ADAO is represented by the following legal counsel:

Robert M. Sussman
Sussman & Associates
3101 Garfield Street, NW
Washington, DC 20008
(202) 716-0118
bobsussman1@comcast.net

Respectfully submitted,

Robert M. Sussman
Sussman & Associates
Attorneys for Asbestos Disease Awareness Organization

cc: Douglas Troutman
Nancy Beck