TO: Robert Courtnage, National Program Chemicals Division, Office of Pollution Prevention and Toxics

FROM: Richard Mednick, Region 10 Office of Regional Counsel
Julie Wroble, Region 10 Toxicologist, Member of EPA's Asbestos Technical Review Workgroup
John Pavitt, Region 10 Office of Compliance and Enforcement
Persons listed on Attachment A

RE: Comments on the Proposed Rule, Asbestos, Significant New Use Rule (RIN 2070-AK45), FRL 9978-76, EPA-HQ-OPPT-2018-00159, May 31, 2018

DATE: August 10, 2018

1. OPPT defines asbestos to include six fiber types identified by AHERA/TSCA in 1986.
   - The AHERA/TSCA definition was established more than 30 years ago when EPA lacked knowledge about the existence of additional types of asbestos fibers.
   - EPA is now aware there are more than six types of asbestos fibers, including several Libby amphiboles which EPA has known about since the 1990s.
   - A Federal District Court Judge in the EPA case against W.R. Grace ruled in 2002 that the Libby Amphiboles were asbestos and hazardous substances under CERCLA.
   - Given the current state of knowledge, relying on the decades old AHERA/TSCA definition will potentially limit the notifications that EPA receives for significant new uses of asbestos.
   - All currently known fiber types should be included in the definition of asbestos so that EPA will be assured of receiving notifications and associated information about significant new uses for any asbestos.

2. OPPT identifies 14 older and currently terminated specific uses of asbestos as the only significant new uses which would be subject to the notification requirements of TSCA.
   - Since these 14 uses were voluntarily terminated by industry based on market forces, there is little likelihood of these uses being reinstituted by anyone, and so this very narrow focus by OPPT on only already obsolete practices makes the proposed rule meaningless in application.
   - This narrow focus ignores products, such as vermiculite garden soil additives, where asbestos is a contaminant. Asbestos is a mineral that may be present in the earth alongside vermiculite or other ores, and when the vermiculite or other ores are mined for use, asbestos may be present in the manufactured product. This potential use of products which contain asbestos should be part of the TSCA notification requirements since there is a potential for exposure to asbestos through use of such products.
   - OPPT neglects to provide notification requirements for newly invented uses of asbestos, and if such uses are not prohibited by Federal law, they are not possible to rule out.

- There are currently more than 1,300 listed chemical substances listed at 40 C.F.R. Part 721, Subpart E, that are subject to significant new use notification requirements. Most of these substances are subject to the notification requirements for a very broad range of general uses. For example, a multitude of chemical substances are subject to the notification requirements if they are used for any "industrial, commercial, and consumer activities." See, i.e., 40 C.F.R. §§ 721.2925 and 721.2950. Numerous substances are also subject to the notification requirements when there is "any manner or method" of manufacturing, importing, or processing associated with "any use" of the substances without establishing a workplace protection or hazard communication program as prescribed by 40 C.F.R. § 721.63 or 721.72. In some instances, chemical substances are subject to the notification requirements for any method of disposal of the substances other than by incineration, landfill, or deep well injection. See, i.e., 40 C.F.R. §§ 721.3320 and 721.3440. In the broadest application and protections offered by the regulations, several substances are subject to the notification requirements for "any use" at all. See, i.e., 40 C.F.R. §§ 721.3160 and 721.3220.
- Given the extreme dangers associated with exposure to asbestos, as well articulated by OPPT in the Proposed Rule, it does not adequately serve the public interest to limit the category of significant new uses for asbestos to the 14 prior and likely now obsolete uses. Consistent with the broad use categories established by EPA for more than 1,300 other chemical substances,[1] and to best prevent exposure to a lethal chemical substance such as asbestos, OPPT should expand the category for required notification to "any use" of asbestos.

3. OPPT proposes that exports of asbestos-containing articles not be subject to the TSCA notification requirements.
   - OPPT goes on at some length about the exposure dangers of asbestos-containing articles when justifying the inclusion of such articles as part of the notification requirements for manufacturing, processing or distribution within the United States. The same dangers of exposure to asbestos-containing articles that may be faced by human beings within the United States could be experienced by human beings outside of the United States. A recognition by Congress in enacting TSCA is that human beings, not limited by national borders, are exposed to many chemical substances. 15 U.S.C. § 2601(a)(1).
   - As EPA has done for PCBs, OPPT should include a requirement for asbestos that obligates an exporter to provide notification when an asbestos-containing article is exported out of the United States.

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[1] There is one chemical substance, alkali metal nitrites, that is subject to the notification requirements for only a single narrow use. 40 C.F.R. § 721.4740. But this one exception to the otherwise broad use categories established by EPA for all other chemical substances makes some sense in the lone use of metal nitrites are as an ingredient in metalworking fluids containing amines. Id.

4. OPPT indicates that uses of asbestos that are no longer occurring could be evaluated if they were to start up again.
   - Given the significant number of asbestos sites that EPA has to clean up due to improper disposal or abandonment, opening the door to new uses of asbestos is not an economically-wise or health-protective idea.
   - Many developed countries have banned import or use of asbestos, including the United Kingdom, Japan, South Korea, France, Italy, Spain, Australia, Germany, the Netherlands, Finland, and many others. Brazil, who as recently as 2017 supplied most of the chrysotile for use in the US chlor-alkali industry also voted for a ban in November of 2017.
   - Rather than allow for (even with restrictions) any new uses for asbestos, EPA should seek to ban all new uses of asbestos because the extreme harm from this chemical substance outweighs any benefit – and because there are adequate alternatives to asbestos.

Attachment A

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Wendy O'Brien, DVM, PhD, DABT, Toxicologist, Region 8 Office of Ecosystems Protection and Remediation

TO: Christina, Motilall, Risk Assessment Division, Office of Pollution Prevention and Toxics

FROM: Richard Mednick, Associate Regional Counsel, Region 10, Office of Regional Counsel
Julie Wroble, Toxicologist, Member of EPA's Asbestos Technical Review Workgroup, Region 10, Office of Environmental Review and Assessment
John Pavitt, Air Compliance Inspector, Region 10, Office of Compliance and Enforcement
Persons listed on Attachment A

RE: Comments on the Problem Formulation of the Risk Evaluation for Asbestos, EPA Document # EPA-740-R1-7018, May 2018, Office of Chemical Safety and Pollution Prevention

DATE: August 10, 2018

1. OCSPP chooses to currently define asbestos as including only the six fiber types identified by AHERA/TSCA in 1986.
   - The AHERA/TSCA definition was established more than 30 years ago when EPA lacked knowledge about additional types of asbestos fibers.
   - EPA is now aware there are more than six types of asbestos fibers, including additional Libby amphiboles which EPA has known about since the 1990s.
   - A Federal District Court Judge in the EPA case against W.R. Grace ruled in 2002 that the Libby Amphiboles were asbestos and hazardous substances under CERCLA.
   - Given the current state of knowledge, relying on the decades old AHERA/TSCA definition of asbestos will not allow for a comprehensive evaluation of the exposure risks.
   - All known harmful asbestos fiber types should be included in the definition of asbestos so there may be a complete and thorough evaluation of the risk of exposure to asbestos.

2. OCSPP proposes to exclude all "legacy" uses and disposals of asbestos, and focus only on current and prospective manufacturing, processing, and distribution in commerce.
   - OCSPP is obligated by Section 6(b)(4)(A) of TSCA, 15 U.S.C. § 2605(b)(4)(A), to evaluate the risk of asbestos under all "conditions of use."
   - "Conditions of use" is defined in Section 3(4) of TSCA, 15 U.S.C. § 2602(4), as "circumstances under which a chemical substance is manufactured, processed, distributed in commerce, *used, or disposed of*." (emphasis added).
   - Congress did not exempt ongoing, or what OCSPP refers to as "legacy," uses and associated disposals of a chemical substance such as asbestos from the TSCA-required risk evaluation process.
   - OCSPP would strip the statutory definition of "conditions of use" of part of its meaning by analyzing only newer asbestos which is currently and prospectively

manufactured, processed, or distributed in commerce, while ignoring older asbestos which is currently and prospectively "used" or "disposed of."
- Exposure to older asbestos is just as dangerous as exposure to newer asbestos.
- Amphiboles from Libby and other asbestos remain in buildings and other products where ongoing uses and eventual disposals create risks for residents and workers, including firefighters.
- Regional examples of exposure concerns are set forth on Attachment B.

3. OCSPP proposes to consider only lung cancer and mesothelioma as the harms to people from exposure to asbestos.
   - There are other significant lethal and non-lethal harms from asbestos exposures, including asbestosis and other respiratory ailments, ovarian cancer, colorectal cancer, and cancers of the stomach, esophagus, larynx and pharynx.
   - These additional harms should be included if there is to be a comprehensive evaluation of the risks from exposure to asbestos.

4. Exposure pathways under the CAA, SDWA, CWA and RCRA are to be excluded by OCSPP from the risk evaluation for asbestos, because these pathways are already effectively managed by these laws.
   - **CAA**. Asbestos is designated as a hazardous air pollutant, but this status does not prevent emissions of asbestos from stationary sources and does not apply to emissions from non-stationary sources. These exposure pathways should be evaluated by OCSPP.
   - **CAA**. NESHAPS does not apply to single family homes, residential buildings with four or fewer units, or structures which contain less than a regulated quantity of asbestos. As a result, there are many asbestos demolition projects which are left unaddressed by EPA under the CAA. EPA often experiences non-compliance with NESHAPs regulations. These gaps in NESHAPS along with failures to comply with the regulations means there are potential exposures to asbestos from ambient air within the CAA pathways which should be evaluated by EPA as part of the TSCA requirements. Examples of asbestos demolition projects that have been left unaddressed by NESHAPS include the following:
     - Homeowners who have experienced a flood or fire damage call to ask if EPA can check on the home repair contractor they've hired because they are concerned the contractor may have contaminated their home with asbestos from their work. EPA cannot assess the situation because the asbestos NESHAP does not apply to single family homes, or to any residential building with four or fewer dwelling units.
     - Residents call EPA because they see a neighbor remodeling their home and throwing asbestos-containing building materials such as cement shingles onto the lawn, and are worried they are being exposed to asbestos. Because the asbestos NESHAP does not apply to residential buildings with four or fewer

dwelling units, EPA lacks authority to investigate and stop the careless handling of asbestos.

- Projects which involve less than a regulated quantity of Regulated Asbestos Containing Material (RACM) are not subject to the NESHAP. These quantities are 160 square feet, or 260 linear feet when measured on pipes, or 35 cubic feet. With smaller projects, building owners and the contractors they hire are not required to follow the safe work practices that apply to regulated projects: to use trained workers to handle asbestos carefully when removing it from buildings or structures, to take steps to prevent dust such as spraying water on the asbestos when it's removed, to label the waste containers or to use a manifest when bringing the waste to a landfill.
- Landfill managers contact EPA, asking about contractors bringing in asbestos waste which has not been declared, but instead is only discovered when the load is dumped with other trash and the contents exposed. In these situations, landfill operators are worried for the exposure to their employees and to the general public who use the landfill. Unfortunately, if the asbestos-contaminated waste came from an unregulated project (which has less than a regulated quantity of waste, or which came from a residential building with four or fewer units) then it falls outside of EPA's program and we cannot step in to force the owner and operator to take precautions.
- Hundreds of fires take place daily in the USA. While the asbestos NESHAP does apply to planned demolitions of any building by fire (i.e., fire-training exercises), it does not apply to unplanned events when buildings are totally destroyed by fire. (Under the NESHAP, when a building has been merely damaged, the subsequent repairs or demolition require abatement to prevent the release of asbestos fibers.) Because fires occur in places where people live, work or pass through, this type of exposure should be evaluated.

- **SDWA/CWA**. These laws and their associated regulations establish acceptable levels of asbestos in drinking and ambient water, but do not prevent exposures to asbestos in instances when there are exceedances of these levels. These exposure pathways should be evaluated by OCSPP.
- **RCRA**. Although asbestos is a RCRA solid waste when discarded, RCRA does not regulate asbestos as a hazardous waste, and so exposures which may occur during the generation, transport, and disposal of asbestos or asbestos-containing materials are not adequately addressed under RCRA. These exposure pathways should be part of the TSCA-required risk evaluation for asbestos.

5. EPA no longer funds administration of the Asbestos Hazard Emergency Response Act (AHERA) requirements for asbestos in schools, so this exposure pathway should be evaluated by OCSPP.

Attachment A

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Attachment B

Region 10 examples of "legacy" uses and associated disposals of asbestos which create risks of exposure include the following (note that the last four examples are provided by the Region 10 NESHAPS compliance inspector and regional point of contact for asbestos issues):

- Northridge Estates. EPA/Superfund spent $45,000,000 to perform response actions on land used by a developer that was contaminated with asbestos due to improper demolition of former military buildings. The Superfund/public incurred an extraordinary amount of costs to prevent further risks of exposure to asbestos which had not been previously prevented by Federal or State laws, and would not be addressed by the currently devised OCSPP risk evaluation because the contaminated site was filled with "legacy" asbestos.
- Swift Creek. EPA/Superfund has incurred over $1,000,000 to prevent exposure to asbestos in sediments dredged from a creek and used as a berm to prevent flooding. The asbestos came from a nearby mountain which has been sloughing over the course of time. The asbestos in the creek and berms would be a "legacy" disposal under the OSCPP approach which creates a risk of exposure to asbestos that is not prevented by and Federal or State laws.
- Residents contact EPA to ask if they are at risk because abandoned buildings in their community - known to contain asbestos - are deteriorating and literally falling over. The abandoned buildings are often an attractive nuisance, with vandals breaking in, setting fires or otherwise deliberately damaging the buildings or salvaging copper pipe and wire and disturbing asbestos in the process. Residents want to know if property owners can be forced to remove asbestos from the buildings. In these situations, the asbestos NESHAP does not apply; it only applies to demolitions and renovations, and not to the mere presence of asbestos no matter how damaged or dangerous the building may be, or to what degree asbestos containing materials are being released from the damage. EPA's Removal Program often gets involved in such instances, but may not always spend the resources to abate the buildings. Instead, these dilapidated structures are often boarded up to discourage trespassers, but this is a temporary solution to a widespread problem.
- Regulated industry contacts EPA when they have been surprised to find out that their buildings and other facilities were constructed with asbestos, when they had been assuming asbestos had been banned a long time before. If asbestos was banned then these surprises would not continue to take place. For example, a Region 10 inspector has spoken with a refinery manager who hired an asbestos clean-up contractor to remove asbestos from the newest production area of the refinery. He said that at the time of construction, their contract specifications indicated "no asbestos" shall be used in the construction materials. Unfortunately for the refinery, some contractors in the process used asbestos-containing materials anyway. The asbestos materials were not discovered until many years later during the refinery construction project. If the asbestos-containing materials were not available for purchase, the contractors would not have been able to use them in the project. In another example, the Region 10 inspector inspected an oil pipeline

which had similarly had a "no asbestos" contract specification for pipeline insulation materials on the Alaska North Slope. Only later, during pipeline maintenance activities when the old insulation was removed, did the pipeline owner discover the entire pipeline was coated with an asbestos-containing mastic material. The removal of the asbestos-containing mastic introduced maintenance delays and costs, and in this case worker exposure to asbestos because none of the project supervisors or workers were aware of the asbestos.

- Property owners have contacted EPA late in the process, after a building has been demolished or renovated, asking how they can now clean up the contaminated debris and comply with the NESHAP regulations. Again, they are surprised to find that asbestos was in their building or structure, and are playing catch up after their workers or the public were potentially exposed to asbestos. OCSPP need to include "legacy" uses and associated disposals of asbestos to comply with the TSCA statutory obligations for risk evaluation.
- A homeowner in Idaho contacted EPA to inquire about people doing construction on the house next door, and the homeowner was concerned that they may be tearing down material that contains asbestos. The local building department stated this is not their problem and to contact the EPA. The house was built in the early 1930's and they were tearing down stucco siding on the outside and plaster and lathe on the inside. EPA cannot assist the homeowner in evaluating or addressing this problem because NESHAPS does not apply to single family residences.