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E.P.A. Staff Objected to Agency's New Rules on Asbestos Use, Internal Emails Show

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WASHINGTON — Top officials at the Environmental Protection Agency pushed through a measure to review applications for using asbestos in consumer products, and did so over the objections of E.P.A.'s in-house scientists and lawyers, internal agency emails show.

The clash over the proposal exposes the tensions within the E.P.A. over the Trump administration's efforts to roll back environmental rules and rewrite other regulations that industries have long fought.

Asbestos, a naturally occurring mineral and known carcinogen, was once common in insulation and fireproofing materials, but today most developed countries ban it. The United States still allows limited use in products including gaskets, roofing materials and sealants.

The proposed new rule would create a new process for regulating uses of asbestos, something the E.P.A. is obliged to do under a 2016 amendment to a toxic substances law.

The E.P.A. says it is toughening oversight. However, the way its new rule is written has spawned a spirited debate over whether it will actually make it easier for asbestos to come back into more widespread use. Consumer groups say the agency should be looking for ways to prohibit asbestos entirely.

“The new approach raises significant concerns about the potential health impacts,” wrote Sharon Cooperstein, an E.P.A. policy analyst, in one of the emails. She, along with a veteran E.P.A. scientist and a longtime agency attorney, said the proposal as designed left open the possibility that businesses could start using asbestos in some cases without getting the government's assessment, putting the public at risk.

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The asbestos plan, which was introduced with little fanfare in June, stems from the E.P.A.'s responsibility to regulate chemicals under the Toxic Substances Control Act and fulfill an Obama-era amendment that requires the agency to regularly re-evaluate the harmfulness of toxic materials. Asbestos is the most prominent of the current batch of substances the E.P.A. is deciding how best to regulate in the future.

Andrew R. Wheeler, E.P.A.'s acting administrator, said the E.P.A.'s plan would make it more difficult to use asbestos in products. The E.P.A., he wrote on Twitter, "is proposing a new rule that would allow for the restriction of asbestos manufacturing and processing of new uses of asbestos."

The Trump administration has made government deregulation — of environmental rules, banking guidelines and myriad other regulatory areas — a centerpiece of its policy agenda, and the E.P.A. has been at the forefront of the effort. In recent weeks the agency detailed one of its most significant efforts, a major weakening of federal auto-emissions regulations.

The United States tried to ban asbestos use in the 1970s, but that effort was overturned by the federal courts in 1991. However the ruling did retain a ban on new uses of asbestos. Because of that (and the potential legal liability), use of asbestos declined in the United States.

Attorney General Maura Healey of Massachusetts is leading an effort among Democratic state attorneys to fight the asbestos plan, calling it a threat to human health. Exposure to asbestos has been linked to lung cancer, mesothelioma and other ailments.

"In recent years, tens of thousands have died from mesothelioma and other diseases caused by exposure to asbestos and other dangerous chemicals," she said. "If the Trump administration's erosion of federal chemical safety rules continues, it will endanger our communities and the health of all Americans."

The United States no longer mines or manufactures asbestos. Until recently, Brazil had been the source of about 95 percent of all asbestos used in America, according to the E.P.A., but last year that country banned its manufacture and sale. Since then, Russia has stepped in as a supplier.

One Russian producer recently signaled enthusiasm for the American market. Last month, the Russian firm Uralasbest posted on Facebook an image of its asbestos packaging that featured President Trump's face along with the words: "Approved by Donald Trump, 45th president of the United States." The company is one of the world's largest producers and sellers of asbestos.

Uralasbest did not respond to a request for comment.

The new E.P.A. proposal is called a "significant new-use rule" that sets out the guidelines for what types of asbestos uses the federal government considers risky enough to evaluate and perhaps restrict or ban.

The internal E.P.A. emails indicate that, this year, top E.P.A. officials sought a last-minute change in the language of the rule.

“Upper management asked us to take a different approach,” wrote Robert T. Courtnage, an associate chief in E.P.A.’s Office of Pollution Prevention and Toxics, in an April 25 email sent to 13 members of an agency group working on the then-forthcoming proposal. Specifically: Rather than call for all new uses of asbestos to come before the E.P.A. for a risk review, the rule would include just 15 specific uses that would trigger a federal assessment.

The list of 15 included a number of specific and relatively common uses for asbestos, including as separators in fuel cells and batteries and as a component in vinyl-asbestos floor tile and high-grade electrical paper.

Mr. Courtnage in his email did not identify who had sought the change. He and other E.P.A. officials who wrote the emails did not respond to requests for comment.

Critics of the rule argue that limiting the review to 15 uses means other potential uses would avoid examination.

“This is presuming there’s nothing under the sun you could ever do with asbestos other than these 15 things,” said Betsy Southerland, former director of the E.P.A.’s office of science and technology, in an interview. Ms. Southerland resigned from E.P.A. last year over the Trump administration’s leadership of the agency and is working on opposing the asbestos rule and others for the Environmental Protection Network, a group of agency alumni.

Narrowing the list to 15 potential uses took E.P.A. scientists and lawyers by surprise, the emails indicate. Three staff members argued in the emails that the agency could not anticipate all future uses of asbestos, and therefore risked letting some uses take place without being weighed for safety risks.

Under the E.P.A.’s approach, if the agency “failed to correctly anticipate some other new use, then it seems to me that the manufacture of such a product would not be subject to” the new-use rule, wrote Susan Fairchild, an environmental scientist who has worked at the agency since 1991.

“Asbestos is an extremely dangerous substance with no safe exposure amount,” Mark Seltzer, an attorney who has been with E.P.A. more than a decade, noted in another email

A spokesman for the E.P.A., James Hewitt, said the emails indicated staff and other members of the working group on asbestos “did not fully understand the proposal being developed.”

In a telephone interview this week, Nancy B. Beck, the E.P.A.’s deputy assistant administrator in the agency’s chemical safety office, said the rules would to restrict and perhaps even ban some uses of asbestos where no means of doing so currently exist. “Obviously someone out there thinks we are increasing exposure to asbestos when we are doing the opposite,” she said.

The E.P.A. has set a Friday deadline for the public to comment on the asbestos rule, which it intends to finalize this year.

Before joining the E.P.A. Ms. Beck served as an executive at the American Chemistry Council, the chemical industry's main trade association. (An E.P.A. spokeswoman also noted that Ms. Beck also previously worked for the Washington State Department of Health and served in the Office of Management and Budget under two former presidents, George W. Bush and Barack Obama.)

The American Chemistry Council has not weighed in directly on the proposed asbestos rule.

Ms. Beck said that, since there is no ban on asbestos, no regulatory process currently exists to stop a company that chooses to put it in something like flooring or roofing materials. But under the rule, some of those ways of employing asbestos — which had over the decades become less common — would now be considered a significant new use. That will force companies to notify the E.P.A. and face an evaluate the risks.

“If you want to put asbestos in flooring materials you have to come to us first and we have to do a thorough risk evaluation and approve it,” she said. “Or we simply prohibit it.”

Asked why the rule specified 15 uses instead of applying to all prospective uses, Ms. Beck said the agency was confident it had included all foreseeable uses of asbestos. “We think we have identified all of the potential possible uses that are out there and could come back into manufacturing,” Ms. Beck said. “The universe is covered.”

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