

The Impending Battle Over EPA's Asbestos Ban

By **Natasha A. Corb** | **Mikaela Barbour**

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The United States Court of Appeals for the Fifth Circuit is set to adjudicate complaints regarding the Environmental Protection Agency's (EPA) asbestos ban, a significant regulation that holds the potential to influence the agency's expanded authority under the country's primary toxic legislation. The consolidation of lawsuits from various stakeholders underscores the contentious nature of this issue, with industry players, advocates, and labor unions all vying for their respective interests.

Central to this legal saga is the multifaceted health risk posed by asbestos, a naturally occurring mineral with historically widespread usage in various industrial applications. Its association with multiple cancers, serious lung illnesses, and other adverse health effects underscores the urgency of regulatory action and judicial scrutiny.

The Judicial Panel on Multidistrict Litigation recently consolidated lawsuits emanating from industry entities, long entrenched in opposition to research on the health risks posed by asbestos. Simultaneously, challenges have been mounted by advocates and labor unions, advocating for more stringent protections against asbestos exposure. The consolidation order, mandating the proceedings to take place with the Louisiana-based 5th Circuit, assumes particular significance given the court's composition, as this is the same court that overturned EPA's initial attempt to ban asbestos in 1991, setting the stage for potentially contentious legal deliberations.

EPA's announcement in March, signaling its intent to enforce phase-out timelines for the last remaining uses of chrysotile asbestos, marks a watershed moment in the agency's regulatory landscape. This move represents the first instance of EPA finalizing a risk management rule under the 2016 amendments to the Toxic Substances Control Act (TSCA), thereby inviting judicial interpretation on foundational questions about the law's ambit and efficacy.

The legal landscape is further complicated by the disparate venues chosen by litigants. While the American Chemistry Council and its state chapters have opted for the 5th, 6th, and 11th circuits, expressing reservations regarding EPA's exposure limits and the adequacy of scientific underpinnings, health advocates and labor unions have filed petitions in the US Court of Appeals for the District of Columbia Circuit. This strategic divergence reflects underlying ideological and jurisprudential differences, with the DC Circuit being perceived as more conducive to progressive viewpoints.

Notably, the Asbestos Disease Awareness Organization and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) have articulated distinct concerns in their respective petitions. The former advocate for a strengthening of the EPA rule, underlining the proactive nature of their legal endeavor, while the latter raises apprehensions regarding the absence of interim occupational exposure standards during the anticipated phase-out timeline.

As legal battles loom large, businesses confronted with litigation must navigate a complex regulatory landscape characterized by evolving environmental standards and competing stakeholder interests. EPA's asbestos ban heralds a critical juncture in environmental jurisprudence, with far-reaching implications for regulatory enforcement, public health and industrial practices. As litigants gear up for protracted legal battles, the contours of environmental regulation and corporate accountability hang in the balance.