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## It's Still Here - The Continuing Battle over Asbestos in America

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## IT'S STILL HERE! THE CONTINUING BATTLE OVER ASBESTOS IN AMERICA

### I. INTRODUCTION

One hundred years ago, doctors linked asbestos to deadly diseases.<sup>1</sup> Then, more than twenty-five years ago, three United States government worker-safety agencies and the World Health Organization declared that asbestos was a “killer.”<sup>2</sup> Yet contrary to popular belief, the United States has not banned asbestos use.<sup>3</sup> It remains legal to mine, import and sell asbestos in this country.<sup>4</sup> Additionally, current law does not mandate asbestos removal.<sup>5</sup> Removal is only required when asbestos containing material (ACM) cannot be maintained in good condition or when a building is to be renovated or demolished.<sup>6</sup>

On September 7, 2003, Senator Patty Murray (D-Washington) wrote an article, “It’s Time to Ban This Killer,” in the Spartanburg South Carolina Journal.<sup>7</sup> This was her latest step in her three-year campaign to protect Americans from the dangers of asbestos.<sup>8</sup> The

1. See Andrew Schneider & Carol Smith, *Asbestos—It’s The Killer That Won’t Die: Failure to ban fiber in U.S. imperils more lives*, COMMON DREAMS NEWS CENTER, available at: <http://www.commondreams.org/headlines/021100-01.htm> (last visited March 2, 2004) (discussing harmful effects of asbestos exposure).

2. See *id.* (illustrating action taken by health and environmental organizations).

3. See *Mesothelioma/Asbestos Update—The Ban Asbestos in America Act of 2003*, The Ban Asbestos in America Act of 2003, S. 115, May 22, 2003, available at: [http://www.mesothel.com/pages/murray\\_bill.pag.htm](http://www.mesothel.com/pages/murray_bill.pag.htm) (last visited Feb. 14, 2004) (describing history of asbestos regulation). The article also notes that, although new uses of asbestos are banned, existing uses are still permitted. See *id.*

4. See Schneider & Smith, *supra* note 1, at 1 (last visited March 2, 2004) (showing legal activities related to asbestos). The article noted that twelve countries have already banned asbestos and more nations are currently in the process of doing so. See *id.*

5. See Brenda Reneau Wynn, *Straight Talk: Thinking About Asbestos—Before You Must*, STRAIGHT TALK #10, available at <http://www.state.ok.us/~okdol/admin/Straight%20Talk%202003-%2010Jul%203col.pdf> (July 2003) (stating current status of anti-asbestos legislation).

6. See *id.* (explaining when it is necessary to remove asbestos containing materials).

7. See Senator Patty Murray, *Asbestos Column*, NEWS FROM U.S. SENATOR PATTY MURRAY, available at: <http://www.murray.senate.gov/news.cfm?id=210637> (last visited Feb. 10, 2004) (showing magnitude of asbestos problem and Senator Murray’s dedication to issue of asbestos reform).

8. See *id.* (highlighting Senator Murray’s continuing attempts to achieve asbestos reform).

article focused on the presence of Zonolite, a type of asbestos-containing insulation, which was put into the attics of up to 35 million homes and businesses.<sup>9</sup> She warned South Carolinians that they could inhale asbestos fibers while doing routine tasks such as working in their attic or remodeling their home.<sup>10</sup> Senator Murray then pressured the Environmental Protection Agency (EPA) to launch a public awareness campaign about the dangers of ACM.<sup>11</sup> Her message was clear: asbestos is still out there and it is still dangerous.<sup>12</sup>

More than thirty other countries around the world have recognized the harmful effects of asbestos exposure and have banned, or are in the process of banning, ACM.<sup>13</sup> Nevertheless, the United States government permits and American manufacturers still continue to intentionally use asbestos to make a variety of products.<sup>14</sup> For example, in 2001, United States' industries used more than 26 million pounds of asbestos to manufacture products such as automobile brakes and roofing materials.<sup>15</sup> In May 2003, EPA issued a report calling for a ban on the production, manufacture and distribution of asbestos in the United States.<sup>16</sup> In support of EPA's report, Senator Murray introduced a bill in the Senate to ban asbestos use.<sup>17</sup> In her column, Senator Murray noted: "[A]s I've pushed my bill in Congress, one of the biggest hurdles has been the senators' and representatives' assumption that asbestos was banned long ago."<sup>18</sup>

EPA shares Senator Murray's concern that Americans are unaware of the potential risk of exposure to asbestos in their homes or

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9. *See id.* (warning Americans, "[d]on't go in the attic"). Zonolite contains asbestos, which Senator Murray contends, will cause cancer and other diseases. *See id.*

10. *See id.* (demonstrating magnitude of danger to American homeowners).

11. *See id.* (citing Senator Murray's message for proposed public awareness campaign).

12. *See Murray, supra* note 7, at 1 (interpreting Senator Murray's campaign message). Senator Murray also asserted, "[h]ere's the worst part: Even though we've known for decades that asbestos kills, asbestos is still put in consumer products on purpose today." *Id.* at 2.

13. *See id.* (showing that many countries recognize danger of asbestos).

14. *See id.* (giving examples of asbestos use in products which are manufactured for general consumption).

15. *See id.* (illustrating prevalence of asbestos use in manufacturing). Senator Murray also cites that the Occupational and Safety Health Administration (OSHA) estimated that "1.3 million employees in construction and general industry still face significant asbestos exposure on the job." *Id.*

16. *See id.* (detailing EPA proposal to ban asbestos in America).

17. *See Murray, supra* note 7, at 2 (explaining Senator Murray's response to EPA report concerning dangers posed by asbestos).

18. *See id.* (citing continued dangers of asbestos containing materials).

on the job.<sup>19</sup> Many EPA staff members are concerned that “most people, even workers who routinely use products containing asbestos, [do not] know that there is no ban to protect them.”<sup>20</sup> According to Neil Pflum, the asbestos coordinator for EPA’s Region 5, the public knew about EPA’s asbestos ban in the late 1980s, but “they did not get the message that the ban was overturned in 1991.”<sup>21</sup> Mr. Pflum’s conclusion that “[A]lmost everyone thinks [they are] still protected” illustrates the continuing importance of legislation aimed at banning asbestos use in the United States.<sup>22</sup>

This Comment will evaluate the history of asbestos regulation and its effects on current criminal prosecutions for violating the Toxic Substances Control Act (TSCA), the Clean Air Act (CAA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).<sup>23</sup> Section II discusses the properties of asbestos, its health risks and the development of asbestos regulations.<sup>24</sup> Section III discusses recent criminal prosecutions and convictions under current legislation.<sup>25</sup> Section IV concludes that the proposed legislation, while a good first step, does not go far enough to ban asbestos in the United States.<sup>26</sup>

## II. BACKGROUND

### A. What is Asbestos?

Asbestos is a naturally occurring fibrous material that was used in many products incorporated into the daily lives of Americans prior to the 1970s.<sup>27</sup> Because of its fire-resistance, noise insulation and electrical insulation properties, it was used as a component in

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19. See Schneider & Smith, *supra* note 1, at 3 (showing EPA position on Americans’ knowledge of dangers regarding asbestos).

20. See *id.* (highlighting EPA concern regarding lack of statutory protection from ACM).

21. *Id.* (quoting EPA asbestos coordinator for Region 5 in Dallas).

22. See *id.* (discussing American perspectives regarding legality of asbestos use).

23. See *supra* notes 21-22 and accompanying text for a discussion of common misconceptions regarding legality of asbestos use.

24. See *infra* notes 41-54 and accompanying text for an outline of regulations containing asbestos-regulating provisions.

25. See *infra* notes 94-111, 116-28 and accompanying text for evaluation of current convictions for asbestos-related crimes.

26. See Schneider & Smith, *supra* note 1, at 1 (detailing faults of asbestos regulation plans).

27. See UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *Asbestos*, available at: <http://www.epa.gov/ttnatw01/hlthef/asbestos.html> (last visited Feb. 10, 2004) (describing asbestos use in 1970s).

building materials, paper products and plastics.<sup>28</sup> Asbestos is also found in products such as pipe insulation, acoustical sound-proofing, house insulation, fireproofing, house siding, floor coverings, roofing materials and heating and cooling systems.<sup>29</sup>

Asbestos is comprised of microscopic bundles of fibers, which, if airborne and inhaled, may cause significant health problems.<sup>30</sup> Asbestos tends to break down into a microscopic fibrous dust.<sup>31</sup> This dust remains suspended in the air for long periods of time.<sup>32</sup> As a result, it is inhaled and can easily penetrate body tissues.<sup>33</sup> Furthermore, because asbestos fibers are durable, they can remain in the body for many years and subsequently cause deadly asbestos-related diseases including asbestosis, mesothelioma and lung cancer.<sup>34</sup>

Because asbestos is a known carcinogen there is no known "safe level" of exposure.<sup>35</sup> Scientists have been unable to determine when exposure may result in asbestos-related illnesses; as a result, they are unable to make the assertion that some inhalation of the fibers is non-threatening.<sup>36</sup> The CAA regulates asbestos as a hazardous air pollutant and CERCLA defines it as a hazardous substance.<sup>37</sup> Additionally, EPA classifies asbestos as a "category A carcinogen," which is the highest cancer hazard classification for any substance.<sup>38</sup> This means that as asbestos exposure increases, people face a greater risk of developing an asbestos-related form of cancer.<sup>39</sup> To impose greater regulation on this hazardous material, most states require inspections for asbestos prior to building renovation and demolition and have implemented their own state-wide air pollution regulations to deal with asbestos.<sup>40</sup>

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28. *See id.* (listing common uses of asbestos during 1970s).

29. *See id.* (highlighting other common uses of asbestos).

30. *See* Wynn, *supra* note 5, at 1 (explaining why asbestos is hazardous).

31. *See* ENVIRONMENTAL HEALTH AND SAFETY, *Asbestos Health Effects*, available at: <http://www.dehs.umn.edu/ihsd/asbestos/healtheffect.html> (last visited Feb. 10, 2004) (discussing decomposition of asbestos fibers).

32. *See id.* (showing danger of loose fibers).

33. *See id.* (explaining how ACM causes illness).

34. *See id.* (listing illnesses that may occur from asbestos exposure).

35. *See* Ban Asbestos in America Act, S. 2641, 108th Congress, § 2 (2003), available at: <http://theorator.com/bills108/hr2277.html> (last visited Feb. 14, 2004) (citing facts put forth in new legislation).

36. *See id.* (showing there is no "safe level" of asbestos exposure).

37. *See id.* (discussing existing regulations).

38. *See* H.R. 277, 108th Congress (2003) (citing congressional findings).

39. *See* Wynn, *supra* note 5, at 1 (explaining connection between exposure and developing asbestos-related diseases).

40. *See id.* (showing that States have developed extra protection from asbestos).

## B. Risks of Exposure to Asbestos Containing Material

Asbestos fibers are naturally occurring and extremely aerodynamic, meaning that virtually everyone is exposed to asbestos at some point in their life.<sup>41</sup> Significant health concerns arise when asbestos is inhaled in high concentrations over an extended period of time.<sup>42</sup> After long periods of inhalation, the fibers tend to accumulate in the lungs, which may result in a variety of health problems.<sup>43</sup>

Once asbestos accumulates in the lungs, several diseases such as asbestosis, mesothelioma and lung cancer may occur.<sup>44</sup> Asbestosis is the scarring of lung tissue; it impairs the elasticity of the lungs and interferes with the lungs' ability to exchange gases.<sup>45</sup> The disease restricts breathing, leading to decreased lung capacity and increased resistance to oxygen in the airways.<sup>46</sup>

In addition to asbestosis, asbestos exposure can cause mesothelioma.<sup>47</sup> Mesothelioma is a type of cancer that is specifically attributable to asbestos exposure.<sup>48</sup> By the time it is diagnosed, mesothelioma is almost always fatal.<sup>49</sup> Another form of cancer that has been linked to asbestos exposure is lung cancer.<sup>50</sup> Asbestos exposure causes a malignant tumor to grow on the bronchi covering of the lungs; subsequently, the tumor invades and obstructs air

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41. See ENVIRONMENTAL HEALTH AND SAFETY, *supra* note 31, at 1 (stating fact that most people have been exposed to asbestos). Most health information on asbestos exposure comes from studies of workers who have been exposed to asbestos in the course of their occupation. *Id.*

42. See *id.* (explaining concern is warranted only after prolonged exposure).

43. See *id.* (citing dangers of exposure). Measures to minimize expose and accumulation of fibers will reduce the risk of adverse health effects. See *id.* Asbestos is only dangerous if it becomes airborne. See *id.* Generally, if the ACM is intact and undisturbed, it does not pose a health risk. See *id.* ACM is not an immediate hazard as long as it can be maintained in good condition. See *id.* When there is no danger that the ACM will become airborne, it is generally recommended that it be left alone if periodic surveillance to monitor the material's condition is conducted. See *id.* When ACM is damaged, disturbed or deteriorate over time, it may become hazardous. See *id.*

44. See *id.* (discussing diseases that result from asbestos exposure).

45. See *id.* (discussing symptoms of asbestosis).

46. See ENVIRONMENTAL HEALTH AND SAFETY, *supra* note 31, at 1 (describing how asbestosis affects airways). Asbestosis is a progressive disease with a latency period of 15 to 30 years. See *id.*

47. See *id.* (detailing other asbestos-related diseases).

48. See *id.* (describing characteristics of mesothelioma).

49. See *id.* (showing potency of disease). Mesothelioma has a longer latency period than other asbestos-related diseases; it can remain latent for 30 to 40 years. See *id.*

50. See ASBESTOS NETWORK, *Asbestos Lung Cancer Among Workers*, available at [http://www.asbestosnetwork.com/health/he\\_lung.htm](http://www.asbestosnetwork.com/health/he_lung.htm) (last visited Feb. 15, 2005) (detailing cancers caused by asbestos).

passages.<sup>51</sup> Regardless of the type of illness caused by ACM inhalation, asbestos exposure often results in the patient's death.<sup>52</sup>

The situation becomes more complicated because symptoms of these diseases generally do not appear until ten to thirty years after a person is initially exposed to ACM.<sup>53</sup> Consequently, illnesses related to asbestos exposure may have already occurred long before the effects of asbestos are detectable.<sup>54</sup> As such, "[p]eople who are exposed to asbestos today will continue to suffer and eventually die from it decades into the future."<sup>55</sup>

### C. Development of Asbestos Regulations in the Toxic Substances Control Act

EPA currently regulates asbestos under the TSCA, CAA, CERCLA and the Clean Water Act.<sup>56</sup> In 1976, Congress passed the Toxic Substances Control Act (TSCA), which affects how industrial actors and others handle hazardous substances.<sup>57</sup> The purpose of the TSCA was to authorize EPA to regulate existing chemicals when they pose an unreasonable risk to health or the environment.<sup>58</sup> It gives EPA authority to "create a regulatory framework to collect data on chemicals in order to evaluate, assess, mitigate and control risks that may be posed by their manufacture, processing and use."<sup>59</sup> The TSCA also regulates the distribution and use of hazard-

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51. *See id.* (detailing characteristics of lung cancer). According to health officials, it will take 20 to 30 years between exposure to asbestos and the development of lung cancer. *See id.* It is also important to note that the combination of smoking and exposure to asbestos creates an "extreme susceptibility" to lung cancer. *See id.*

52. *See* Andrew Schneider, *Panel urges U.S. to ban asbestos imports*, ST. LOUIS DISPATCH, available at: [http://www.nycosh.org/link\\_files/St\\_Louis\\_Dispatch\\_Panel\\_urges\\_US\\_to\\_ban\\_asbestos.html](http://www.nycosh.org/link_files/St_Louis_Dispatch_Panel_urges_US_to_ban_asbestos.html) (last visited March 2, 2004) (showing severity of asbestos-related diseases).

53. *See* U.S. ENVIRONMENTAL PROTECTION AGENCY, *Toxic Substances Control Act*, available at: <http://www.epa.gov/agriculture/lasca.html> (last visited Feb. 14, 2004) (relating health dangers with respect to asbestos exposure).

54. *See id.* (showing injuries related to long gestation period of ACM).

55. *See* Murray, *supra* note 7, at 2 (urging Americans to "save a new generation from this killer").

56. *See* COLORADO DEPARTMENT OF PUBLIC HEALTH, *Compliance Bulletin Solid Waste: Asbestos Waste Disposal*, available at: <http://www.cdphe.state.co.us/hm/asbestos.pdf> (last visited Jan. 10, 2005) (citing statutes under which asbestos is regulated).

57. *See* *Mesothelioma/Asbestos Update—The Ban Asbestos in America Act of 2003*, *supra* note 3, at 1 (outlining history of anti-asbestos legislation).

58. *See* U.S. ENVIRONMENTAL PROTECTION AGENCY, *supra* note 52, at 2 (stating objective of TSCA).

59. *Id.* (explaining how EPA regulates hazardous substances under TSCA).

ous substances.<sup>60</sup> Finally, the TSCA provides numerous methods that EPA may use to prevent chemicals from posing unreasonable health risks.<sup>61</sup>

In 1986, Congress added asbestos to its list of regulated substances.<sup>62</sup> In 1989, EPA finalized regulations to ban the manufacturing, importing, processing and selling of almost all products containing asbestos.<sup>63</sup> Under EPA's plan, these regulations would have phased out asbestos in consumer products by 1997.<sup>64</sup> EPA determined that this plan would permit industries using asbestos to find safer alternatives before the ban became effective.<sup>65</sup>

In 1991, the Court of Appeals for the Fifth Circuit invalidated EPA's final regulation banning asbestos in *Corrosion Proof Fittings v. The Environmental Protection Agency*<sup>66</sup> and the first Bush Administration chose not to appeal this decision to the Supreme Court.<sup>67</sup> In this case, the Fifth Circuit held that EPA's "phase-out ban" constituted impermissible rule-making prohibited under section 6(a) of the TSCA.<sup>68</sup> Specifically, the Fifth Circuit found that under section 6(a) a reviewing court could find a final rule unlawful if the rule was not supported by substantial evidence in the rulemaking record as a whole.<sup>69</sup> The substantive evidence standard required that EPA's decision be based upon the facts given throughout the entire

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60. *See id.* (showing additional regulations imposed under TSCA).

61. *See id.* (highlighting EPA authority to regulate under TSCA). Section 5 of the TSCA establishes an inventory of chemical substances regulated under the legislation. *See id.*

62. *See Understanding the Toxic Substances Control Act*, at <http://www.lehigh.edu/~kaf3/envt.html> (last visited Feb. 14, 2004) (giving history of asbestos within TSCA). The 1986 Asbestos Hazard Emergency Response Act was what led schools to remove asbestos containing materials. *See id.* Many public and private entities removed asbestos products from their buildings at this time. *See id.*

63. *See Schneider & Smith, supra* note 1, at 2 (discussing chronology of EPA regulations dealing with asbestos).

64. *See Ban Asbestos in America Act*, S. 2641, 108th Cong., § 2(4) (2003) (reproduced in 15 U.S.C. § 2641 et seq.) (discussing proposed phase-out of asbestos in America).

65. *See id.* (explaining why ban was to be implemented in three stages over nine years).

66. 947 F.2d 1201 (5th Cir. 1991) (recognizing first case to evaluate validity of asbestos regulation).

67. *See Mesothelioma/Asbestos Update—The Ban Asbestos in America Act of 2003, supra* note 3, at 1 (citing history of TSCA).

68. *See Corrosion*, 947 F.2d at 1230 (citing relevant section of TSCA).

69. *See id.* (giving standard of review for § 6(a) claims under TSCA). Substantial evidence requires "something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Id.*



record.<sup>70</sup> It also required an agency to consider all facts that detract from the weight of the agency's decision.<sup>71</sup>

In deciding whether the evidence offered by EPA was substantial, the Fifth Circuit considered whether both the quantities of asbestos entering into the environment and human exposure to it were "substantial" or merely "significant."<sup>72</sup> The court enumerated that EPA properly exercised its discretion to exercise independent judgment without strictly relying on risks, costs or benefits.<sup>73</sup> The court, however, held that EPA improperly failed to offer an explanation as to why it banned asbestos and did not offer a rational connection between the facts and the agency's subsequent choice.<sup>74</sup>

The Fifth Circuit noted that courts traditionally presume that EPA rules are valid and the burden of proof is on the challenger to prove that the agency action is invalid.<sup>75</sup> Because the TSCA requires that EPA use the least burdensome means to regulate toxic substances, the agency has a heavier burden when it seeks to ban, partially or wholly, a substance, as opposed to when the agency attempts to regulate that substance.<sup>76</sup> Consequently, the court concluded that the TSCA required EPA to

. . . [C]onsider, along with the effects of the toxic substances on human health and the environment, the benefits of such substances . . . for various uses and the availability of substitutes for such uses, as well as the reasonable economic consequences of the rule, after consideration for the effect on national economy, small business, technological innovation, the environment, and public health.<sup>77</sup>

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70. See *id.* (evaluating substantive evidence standard).

71. See *Mesothelioma/Asbestos Update—The Ban Asbestos in America Act of 2003*, *supra* note 3, at 1 (defining term "substantial evidence" under TSCA). The agency's decision should be "what a reasonable mind might accept as adequate" under the circumstances. *Id.*

72. See *id.* (explaining test court used to evaluate asbestos ban).

73. See *Corrosion*, 947 F.2d at 1210 (evaluating limits of EPA discretion).

74. See *id.* at 1214 (explaining procedure followed when agency exercises discretion).

75. See *id.* (citing general presumption of validity for rules promulgated by EPA). The court noted that under TSCA, the burden of proof remained with EPA to show that asbestos presented an unreasonable risk. *Id.*

76. See *id.* (explaining burden of proof imposed on EPA). The court said that the language of the TSCA required EPA to assess what would be an acceptable level of risk and choose the least burdensome method of reaching that level of risk. See *id.* at 1215 (explaining EPA's duty).

77. See *id.* (noting various uses for toxic substances); see also 15 U.S.C. § 2605(c)(1)(C-D)(2000) (explaining applicable standard). The Fifth Circuit as-

In *Corrosion*, the Fifth Circuit held that while EPA exercised care in drafting the asbestos ban, it failed to consider less burdensome alternatives.<sup>78</sup> As a result of EPA's failure to consider these alternatives, the court held that the statute mandated that the ban fail judicial scrutiny.<sup>79</sup> The Fifth Circuit decided that the regulation did not meet the requirements of the TSCA and asserted that "EPA cannot deviate from [the requirements in order] to reach the desired result."<sup>80</sup> Subsequently, the Fifth Circuit vacated EPA's proposed ban of asbestos and remanded the case to EPA for further proceedings.<sup>81</sup>

As a result of this decision, new uses of asbestos were banned, but the existing uses were not prohibited.<sup>82</sup> The Fifth Circuit agreed with EPA's scientific and medical opinions on asbestos' health hazards.<sup>83</sup> The judges, however, faulted the agency for technical errors in their mandatory cost-benefit analysis.<sup>84</sup>

To illustrate the serious impact of this case on human health, EPA staff members and scientists sent letters to their administrator in response to this decision.<sup>85</sup> These memoranda informed the administrator that "asbestos was killing people and that the court ruling was not going to make that fact disappear."<sup>86</sup> On February 6, 1992, the General Counsel for EPA wrote a request to the Justice Department urging them to appeal the overturning of the ban to

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serted that EPA could not bypass a less-burdensome alternative under the TSCA because the legislation mandates the use of the least-burdensome method of regulation. See *Corrosion*, 947 F.2d at 1217 (stressing importance of using promulgated method).

78. See *Corrosion*, 947 F.2d at 1229 (holding that EPA did not consider less burdensome alternatives suggested by Congress).

79. See *id.* (explaining failure to consider alternatives deprived asbestos ban of "reasonable basis" rule needed to survive judicial examination). The Fifth Circuit also stated that EPA denied the petitioners the right to cross-examine EPA witnesses regarding their methodology and data that was used to support the benefits of an asbestos ban. See *id.* at 1229-30 (noting EPA's faults). Accordingly, the court decided that this was also a violation of the TSCA. See *id.* at 1230.

80. *Id.* (citing Fifth Circuit's conclusion).

81. See *id.* at 1226-27 (explaining holding of case).

82. See Schneider & Smith, *supra* note 1, at 1 (discussing impact of decision).

83. See *Corrosion*, 947 F.2d at 1226-27 (explaining majority conclusion).

84. See Schneider & Smith, *supra* note 1, at 3 (citing facts of Fifth Circuit's reversal of EPA ban of asbestos). A cost-benefit analysis is required under the terms of the TSCA. See *id.* (noting necessity of cost-benefit analysis).

85. See *id.* (describing EPA staff reaction to *Corrosion* decision).

86. *Id.* (highlighting EPA response to reversal by Fifth Circuit).

the Supreme Court.<sup>87</sup> The Justice Department then replied that the administration did not want to further pursue the case.<sup>88</sup>

#### D. Development of Asbestos Containing Material Provisions in the Clean Air Act

Additionally, ACM provisions under the Clean Air Act (CAA) mandate that asbestos containing material (ACM) must be removed in accordance with enumerated procedures and work practices.<sup>89</sup> Specifically, one must provide written notice to EPA before he or she begins removing asbestos.<sup>90</sup> Asbestos that is removed must be taken to a pre-approved hazardous waste facility.<sup>91</sup>

Procedures for removing ACM require that the asbestos fibers be wetted because of the potential health risks associated with ACM inhalation.<sup>92</sup> While still wet, the ACM must be sealed in leak-proof containers to prevent the release of asbestos dust into the air.<sup>93</sup> In recent years, EPA and other government agencies have strictly enforced the regulations dealing with ACM violations.<sup>94</sup>

#### E. Recent Prosecutions under the CAA

In 2000, improper dumping and removal of asbestos led to the first convictions under the CAA in Washington, D.C.<sup>95</sup> In this case, a landlord, Ripudaman Gulati, pled guilty in the United States District Court for the District of Columbia to violating the CAA by improperly removing and dumping asbestos from an apartment

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87. *See id.* (explaining formal steps taken by EPA legal staff to overturn final decision).

88. *See id.* (describing Department of Justice response to EPA concerns). Schneider and Smith also explain that the term administration was a “fairly obvious” reference to the Bush Administration. *Id.*

89. *See* UNITED STATES DEPARTMENT OF JUSTICE, *Two Men Indicted In Conspiracy To Use Homeless Men For Illegal Asbestos Removal in Virginia*, Press Release, available at: <http://www.usdoj.gov/opa/pr/2001/August/387enrd.htm> (last visited Jan. 25, 2004) (discussing CAA removal requirements).

90. *See id.* (explaining pre-removal requirements under CAA).

91. *See id.* (describing how asbestos must be removed according to CAA).

92. *See id.* (explaining purpose of CAA removal requirements).

93. *See id.* at 2 (explaining necessity of leak-tight containers during asbestos removal).

94. *See* UNITED STATES DEPARTMENT OF JUSTICE, *supra* note 88, at 1 (showing increase in prosecutions under EPA Criminal Investigation Division).

95. *See* UNITED STATES DEPARTMENT OF JUSTICE, *Improper Removal and Dumping of Asbestos Leads to First Clean Air Act Convictions in the District of Columbia*, Press Release, available at: <http://www.usdoj.gov/enrd/asbestos.htm> (last visited Jan. 25, 2004) (discussing convictions of two men under CAA for asbestos-related activities).

complex in Southeast Washington.<sup>96</sup> Gulati and an associate pled guilty after investigators discovered 110 bags of asbestos that they dumped near a local college.<sup>97</sup> By improperly removing and disposing of the asbestos, the defendants violated regulations that governed the asbestos removal and subsequently created a potential environmental hazard.<sup>98</sup> When announcing the guilty pleas, the United States Attorney stated that “these convictions make clear our intent to hold persons accountable who place our environmental safety at risk. People who are handling hazardous waste such as asbestos have a special responsibility to the community by insisting on compliance with the environmental laws.”<sup>99</sup>

Additionally, in *United States v. Sparta*<sup>100</sup>, a New Jersey company and its owners were indicted on charges that they conspired to violate the CAA and defraud the United States.<sup>101</sup> The October 2, 2001 indictment charged that the company and its agents illegally removed asbestos from buildings being demolished under a United States Army Corps of Engineers contract.<sup>102</sup> The indictment also charged that Bubalo, the owner of Sparta, and his employees did not properly label the asbestos disposal containers during the demolition.<sup>103</sup> Bubalo was further charged with directing his employees to remove damaged asbestos and ACM without keeping the asbestos wet until it was discarded properly.<sup>104</sup>

In 2002, EPA’s Criminal Investigation Division investigated Scott Dockter, who was later prosecuted by the U.S. Attorney’s Office in Sacramento, California for violating the CAA.<sup>105</sup> Dockter was charged with failing to provide a ten-day written notice to EPA indicating his intent to demolish and renovate a facility that con-

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96. *See id.* (explaining circumstances of case). In addition to the landlord, one of his tenants who had aided in the asbestos removal was also convicted. *See id.*

97. *See id.* at 2 (explaining illegal dumping activities).

98. *See id.* (showing existence of potential environmental hazard from dumping asbestos).

99. *See id.* (citing facts of case against Gulati).

100. *See Spartan et al. — Sparta Asbestos Removal Company, Employees Charged with Illegally Removing Asbestos at Bayonne Terminal*, available at: [http://www.usdoj.gov/usao/nj/publicaffairs/NJ\\_Press/files/sp1002\\_r.htm](http://www.usdoj.gov/usao/nj/publicaffairs/NJ_Press/files/sp1002_r.htm) (last visited Jan. 25, 2004) (reciting factual history).

101. *See id.* (explaining reasons for indictment under CAA).

102. *See id.* (citing charges in indictment).

103. *See id.* at 2 (laying out charges in indictment).

104. *See id.* (showing violation of CAA).

105. *See UNITED STATES ENVIRONMENTAL PROTECTION AGENCY HEADQUARTERS, Californian Sentenced for Illegal Asbestos Removal*, Press Release, available at: <http://yosemite.epa.gov/opa/admpress.nsf/0/c7617920198019f385256b370061fefd.OpenDocument.html> (last visited Jan. 25, 2004) (showing criminal prosecution for CAA violations).

tained asbestos and for failing to use controls to keep asbestos fibers from becoming airborne.<sup>106</sup> These acts violated the CAA because allowing asbestos to become airborne through improper removal can lead to fiber inhalation which may result in various health problems.<sup>107</sup> Dockter was sentenced to five months in prison, seven months home detention and ordered to pay \$9,270 in fines and restitution for unlawfully removing asbestos during the demolition and renovation of the Delta Sugar Plant.<sup>108</sup>

Significantly, these cases were all conducted by EPA Criminal Investigation Division and aided by representatives of state and federal law enforcement agencies.<sup>109</sup> This new wave of asbestos convictions under the CAA demonstrates the continuing problems of asbestos removal and exposure.<sup>110</sup> The convictions also highlight the increased dedication of state and federal agencies to punish those engaged in illegal asbestos-related activities.<sup>111</sup> EPA's heightened attention to this matter increases the possibility that Americans will become aware of the continuing threat posed by asbestos exposure.<sup>112</sup>

#### F. Superfund Legislation and Asbestos

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), commonly known as "Superfund" legislation, is also instrumental in regulating ACM as a hazardous substance.<sup>113</sup> Under CERCLA, section 9603(a) requires the reporting of all non-permitted releases of hazardous substances from regulated facilities.<sup>114</sup> Additionally, section 9603(c) requires past and present owners to report existing and abandoned hazardous waste

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106. *See id.* (detailing violations of CAA).

107. *See id.* (showing specific violation of CAA).

108. *See id.* (citing facts of case).

109. *See id.*; *see also* Spartan, *supra* note 99, at 1 (showing investigations were conducted by EPA Criminal Investigation Division and prosecuted by U.S. Attorneys in Newark and Sacramento).

110. *See* Andrew Schneider, *Asbestos remains a problem in the U.S.*, ST. LOUIS DISPATCH, available at: <http://www.ledger-enquirer.com/mld/ledgerenquirer/news/politics/7839557.html> (last visited Feb. 14, 2004) (detailing recent growth of asbestos reform movement).

111. *See id.* (showing growing concern regarding continued asbestos use).

112. *See id.* (highlighting that there is continued danger associated with continued asbestos use).

113. *See* Paramount Communications, Inc. v. Horsehead Indus., 231 A.D.2d 40, 42 (N.Y. App. Div. 1997) (citing commonly known acronym for Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.).

114. *See* 42 U.S.C. § 9603(a) (2000) (stating reporting requirements imposed by Superfund legislation).

disposal facilities that do not have approval or interim status.<sup>115</sup> Sections 9607 and 9611 establish funding for cleanup of existing facilities, impose liability for hazardous waste spills and set financial responsibility requirements for operators of hazardous waste treatment, storage and disposal facilities.<sup>116</sup>

### G. EPA Prosecutions under Superfund

In *United States v. Andre Parker*,<sup>117</sup> the court convicted Mr. Parker and Parker Environmental Management Group, Inc. of twenty-two felonies related to falsifying laboratory analysis from asbestos abatement projects under existing Superfund legislation.<sup>118</sup> Additional charges were filed for illegal asbestos removal and dumping.<sup>119</sup>

Parker owned and operated Parker Environmental Management Group, a laboratory licensed to perform analysis on samples taken from asbestos abatement projects.<sup>120</sup> Prior to 1998, Parker and his employees falsified thousands of laboratory results from jobs performed throughout New York State.<sup>121</sup> In 2001, Parker directed his employees to perform illegal asbestos abatement; as a result, his employees illegally disposed of hundreds of bags of asbestos at numerous locations throughout Plattsburgh, New York.<sup>122</sup> Consequently, Parker faces a maximum possible jail sentence of up to forty years and/or fines up to \$2 million.<sup>123</sup> Furthermore, Parker Environmental Management Group faces a maximum fine of up to \$5.5 million.<sup>124</sup>

EPA's Criminal Investigation Division investigated the charges and the United States Attorney's Office in Syracuse, New York sub-

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115. *See id.* § 9603(c) (detailing reporting requirements under CERCLA).

116. *See id.* §§ 9607, 9611 (detailing funding requirements for ACM disposal and storage).

117. *See United States v. Andre Parker*, No. 01-CR-2483 (N.D.N.Y. 2003) (detailing facts of case).

118. *See Mesothelioma News: New York Company, Proprietor Convicted of Asbestos Crimes*, THE MESOTHELIOMA CENTER, available at <http://www.mesotheliomacenter.org/news/2003-10-16.php> (last visited Jan. 25, 2004) (explaining Parker's violations of asbestos regulation).

119. *See id.* (discussing facts of case).

120. *See id.* (explaining Parker's role in violations).

121. *See id.* (showing CAA violations and fraud).

122. *See id.* (showing violation of removal and disposal requirements).

123. *See Mesothelioma News: New York Company, Proprietor Convicted of Asbestos Crimes*, *supra* note 117, at 1 (detailing possible penalty to Parker individually).

124. *See id.* (showing company's potential liability).

sequently prosecuted Parker and his company.<sup>125</sup> This case and others like it show EPA's increased sensitivity to the issue of asbestos regulation.<sup>126</sup> Following the prosecutions under various statutes and the on-going threat of asbestos exposure, EPA launched a public awareness campaign on asbestos-tainted home insulation to warn homeowners of the potential risk they face in their private lives.<sup>127</sup>

### III. RESPONSE TO EPA CRACKDOWN ON ASBESTOS CONTAINING MATERIALS VIOLATIONS

In 2003, Senator Patty Murray reintroduced the "Ban Asbestos in America Act" (the Act) in an attempt to completely ban the use of asbestos in all products manufactured in the United States.<sup>128</sup> The Act would allow EPA to ban the use of asbestos within two years of the legislation's enactment and would also require that EPA conduct a public education campaign to alert the public to the continuing danger posed by asbestos.<sup>129</sup> In addition, the Act mandates that EPA identify those products that contain ACM and remove them from the market.<sup>130</sup> Furthermore, it requires EPA to invest in research and treatment for patients who are suffering from asbestos-related diseases.<sup>131</sup>

In response to Senator Murray's efforts, the Senate Judiciary Committee adopted an amendment banning asbestos as part of an asbestos litigation reform proposal.<sup>132</sup> The amendment is similar to Murray's "Ban Asbestos in America Act" because it requires EPA to finalize rules banning asbestos within two years of the amendment's passage, and additionally requires companies unable to find substi-

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125. See *New York Company, Owner Convicted of Asbestos Crimes*, BUSINESS & LEGAL REPORTS, available at: <http://enviro2.blr.com/display.cfm/id/42112> (last visited Jan. 25, 2004) (giving facts of case).

126. See *id.* (explaining investigation conducted by EPA Criminal Investigation Division).

127. See Senator Patty Murray, *Murray Responds To EPA's Public Awareness Campaign on Asbestos-Tainted Insulation*, NEWS FROM U.S. SENATOR PATTY MURRAY, available at: <http://murray.senate.gov/news.cfm?id=204142> (last visited Feb. 10, 2004) (showing increased awareness to problem of asbestos exposure).

128. Senator Patty Murray, *Asbestos Ban Included in Litigation Reform Bill*, NEWS FROM U.S. SENATOR PATTY MURRAY, available at: <http://murray.senate.gov/news.cfm?id=205429> (last visited Feb. 10, 2004) (showing Senator Murray's dedication to banning asbestos use).

129. See *id.* (outlining characteristics of Ban Asbestos in America bill).

130. See *id.* (showing additional requirements imposed by legislation).

131. See *id.* (outlining requirement for research center specifically for study of mesothelioma).

132. See *id.* (showing Senate Judiciary Committee's response to Ban Asbestos in America bill).

tutes for asbestos to seek an exemption.<sup>133</sup> To obtain an exemption the companies must demonstrate that asbestos use will not harm the public health or the environment.<sup>134</sup> Further, the Judiciary Committee's ban required that ACM products currently on the market be disposed of within three years according to state and federal disposal requirements.<sup>135</sup>

The Judiciary Committee, however, did eliminate some of the requirements imposed by the Act.<sup>136</sup> For example, the Committee eliminated provisions for (1) the study of current science on asbestos, (2) improvements in the protection of workers and consumers, (3) the public education campaign and (4) increased funding for mesothelioma research.<sup>137</sup> The amendment's new language also exempts the Department of Defense and the National Aeronautics and Space Administration from the ban.<sup>138</sup>

#### IV. PROSPECTS FOR RATIFICATION OF THE BAN ASBESTOS IN AMERICA ACT

##### A. Support for the Ban

Even with these changes, Senator Murray acknowledged that the proposed asbestos legislation will face an uphill battle because of the influence and strength of the asbestos industry in the political arena.<sup>139</sup> She also acknowledged that supporters of the bill must contend with the common perception that asbestos is already outlawed.<sup>140</sup>

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133. See Senator Patty Murray, *supra* note 127, at 1 (explaining that exemptions are allowed for companies that meet requirements).

134. See *id.* (enumerating bill's requirements for exemption). The Judiciary Committee also added language that would allow the Department of Defense and NASA to be exempt without meeting these requirements. See *id.* at 2.

135. See *id.* (explaining time requirements for asbestos removal from consumer products).

136. See *id.* (detailing changes made to Senator Murray's original Ban Asbestos in America Bill).

137. See *id.* (citing plans to develop national research center for study of mesothelioma).

138. See Senator Patty Murray, *supra* note 127, at 1 (showing exemptions to ban for specified government agencies).

139. See Charles Pope, *Facing tough fight, Murray offers bill to ban asbestos*, available at [http://seattlepi.nwsource.com/national/75104\\_asbestos19.shtml](http://seattlepi.nwsource.com/national/75104_asbestos19.shtml) (last visited March 2, 2004) (describing chances for adoption of Ban Asbestos in America).

140. See *id.* (highlighting common perception that asbestos problem was eliminated). Senator Murray said, "I was shocked to learn that asbestos is still being used in products on purpose." *Id.* Senator Mark Dayton (D-Minn.), the co-sponsor of the bill, added, "I, too, did not realize it had not been banned. It seems so obvious and common sense. Once again corporate greed has triumphed over the greater good in this country." *Id.*



The introduction of the Ban Asbestos in America Act has created significant backlash within the industrial community.<sup>141</sup> The industrial community, a large proponent of asbestos use, argues that there are no good substitutes for asbestos.<sup>142</sup> Senator Murray, however, points out that Germany banned asbestos use years ago and uses other materials in the brakes of its automobiles.<sup>143</sup> According to Senator Murray, “[n]o one would say that German cars are any less safe than American cars because their brakes don’t use asbestos.”<sup>144</sup>

Consequently, EPA has followed Senator Murray’s lead and taken initiatives to ban the importation, production and distribution of ACM.<sup>145</sup> In May of 2003, a panel funded by EPA recommended that EPA completely ban products that contain asbestos.<sup>146</sup> This panel, formed by EPA’s inspector general in early 2002, was assigned to investigate EPA’s failure to take action in dealing with asbestos contamination of miners and their families in Libby, Montana over the past twenty years.<sup>147</sup> The inspector general said that the panel, which was comprised of representatives from the asbestos industry, government and environmental, labor, academic and medical experts, should be assembled to review how the government handles the issue of asbestos fibers in Libby and other mining areas.<sup>148</sup> EPA gave a \$200,000 contract to a leading environmental agency, Global Environment and Technology (Global), to gather information from these sources and present their recommendations.<sup>149</sup>

EPA consultants from Global questioned fifty-three authorities from various private, industry and government organizations and, based on their responses, met to formulate their recommenda-

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141. See Schneider & Smith, *supra* note 1, at 2 (highlighting asbestos industry response).

142. See *id.* (explaining resistance to asbestos ban).

143. See Murray, *supra* note 7, at 2 (listing other countries that ban asbestos).

144. *Id.* (quoting Senator Murray and discussing other country’s use of alternatives to asbestos).

145. See Schneider, *supra* note 51, at 1 (discussing EPA initiative to completely ban asbestos in United States).

146. See *id.* (showing EPA dedication to forming panel).

147. See *id.* (highlighting reasons for panel formation). In Libby, Montana, hundreds of people died and thousands became ill with asbestos-related diseases caused by the inhalation of fibers that had contaminated a mine operated by W.R. Grace & Co. *Id.* As early as 1982, EPA had documented the dangers of the tainted ACM and proved it created a significant health risk to miners and residents of Libby, yet nothing was done with the information. See *id.*

148. See *id.* (describing composition of panel).

149. See *id.* (naming consultants chosen by EPA to discuss dangers of asbestos exposure).

tions.<sup>150</sup> In addition to the ban, the panel recommended, (1) education of asbestos risks, (2) improved handling, sampling and testing methods, (3) the reduction of unintended asbestos in products and (4) the development of a national mesothelioma registry.<sup>151</sup> The panel also stressed that government agencies, including EPA, the Occupational Safety and Health Administration (OSHA), the Consumer Product Safety Commission and state actors, should “focus on more stringent, predictable and consistent” enforcement of existing laws and regulations.<sup>152</sup> Barry Castleman, a panel member and nationally recognized authority on asbestos issues, asserted that, “[t]he political pressures from some industries to fight an asbestos ban has been enormous, but this report is the clearest signal possible that Sen. Murray’s legislation must be passed and implemented as soon as possible.”<sup>153</sup>

## B. Opposition to the Asbestos Ban

Nevertheless, the current Bush Administration does not support the new legislative efforts to ban asbestos.<sup>154</sup> President George W. Bush has repeatedly expressed concern that some of America’s largest corporations have been the targets of lawsuits by those who have allegedly been exposed to asbestos in the workplace.<sup>155</sup> In response to these concerns, the Bush Administration is pressuring Congress to adopt legislation that would bar those afflicted with asbestos-related diseases from suing for damages.<sup>156</sup> This indicates

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150. See Schneider, *supra* note 51, at 2 (explaining procedure used after recommendations were completed).

151. See *id.* (enumerating panel recommendations).

152. *Id.* (quoting panel recommendations with respect to enforcement of existing regulations).

153. *Id.* at 4 (quoting Barry Castleman, nationally recognized authority on asbestos issues and a former science advisor to European Commission on matters involving asbestos ban). Castleman also asserted that, “[t]he ban will be good for American businesses and their workers. No longer will American manufacturers have to compete with asbestos products from China and other countries where workers are not protected from the killer fibers.” *Id.*

154. See Schneider, *supra* note 109, at 1 (explaining current President’s resistance to asbestos regulation).

155. See *id.* (citing President Bush’s resistance to anti-asbestos legislation).

156. See *id.* at 2 (explaining Bush Administration’s plan to bar individual’s recovery for asbestos-related diseases). The Bush Administration is proposing legislation that would create a government-operated trust fund from which people suffering from asbestos diseases would apply for relief instead of suing the company directly. See *id.* In 2000, the President introduced this legislation as the “Asbestos Fairness Act,” but could not generate enough congressional support to introduce it in Congress. See *id.* Opponents of the bill have called it a corporate bailout. See *id.*

that the Bush Administration would side with the asbestos industry, opposing an attempt to ban ACM from American markets.<sup>157</sup>

The Bush Administration is not the first to resist efforts to ban asbestos use in America.<sup>158</sup> Since Ronald Reagan was elected to the presidency, efforts to limit asbestos exposure have been resisted.<sup>159</sup> In addition to legislators blocking the efforts of OSHA and EPA to pass such legislation, the Canadian government has pressured legislators.<sup>160</sup> The Canadian government has fought all efforts to ban or control American asbestos use because of its status as the world's second-largest exporter of asbestos.<sup>161</sup> As a result, many legislators have attempted to preserve diplomatic ties to the Canadian government at the expense of the American public.<sup>162</sup> To many members of Congress, these diplomatic ties take precedence over the health and safety of the American public.<sup>163</sup>

Additionally, the asbestos lobby continues to be very influential and powerful.<sup>164</sup> Within the last decade, five leading asbestos-product companies have contributed over \$2.2 million to federal campaigns.<sup>165</sup> In response to EPA's work to control asbestos exposure in the late 1970s, asbestos industry lobbyists made sizeable campaign contributions to influential members of Congress.<sup>166</sup> In return for these financial contributions, some members of Congress continue to turn a blind eye on the harmful effects of asbestos.<sup>167</sup>

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157. See *id.* (speculating on Bush Administration's response to asbestos ban).

158. See *id.* at 2 (describing opposition to legislation banning asbestos ban).

159. See Schneider, *supra* note 109, at 2 (showing Reagan Administration's resistance to new legislation which banned asbestos).

160. See Schneider & Smith, *supra* note 1, at 2 (noting position of Canadian government regarding asbestos).

161. See *id.* (showing that Canadian government's reasons for opposing anti-asbestos legislation reflect economic concerns). Canada has also sued EPA and European allies and financed scientific studies to prove that asbestos really is not dangerous. See *id.*

162. See *id.* (showing legislators' reluctance to antagonize diplomatic relations with Canada).

163. See *id.* at 4 (discussing legislators' priorities).

164. See *id.* (explaining power and influence of asbestos lobbying organizations).

165. See Schneider & Smith, *supra* note 1, at 4 (showing strength of asbestos lobby). The W.R. Grace Company led the companies by donating \$764,618.

166. See *id.* (expressing opinion that action was taken to "thwart or water down the agency's effort to ban the money-making fiber").

167. See *id.* (describing power of asbestos lobby over members of Congress).

## V. CONCLUSION

Today, many Americans incorrectly believe that asbestos is banned in the United States.<sup>168</sup> Currently, there is still a high risk of exposure both during removal of existing ACM and through the use of new commercial products.<sup>169</sup> “Unfortunately, America is far behind the rest of the world on this public safety issue.”<sup>170</sup>

The new amendments in the Ban Asbestos in America Act will provide assurance to manufacturers, builders, workers and consumers that, after a specific date, asbestos will not be added to new consumer products manufactured in the United States.<sup>171</sup> Although the bill does not offer a comprehensive plan to completely eliminate the presence of asbestos in America, it is an important first step to protect the American public.<sup>172</sup>

According to Senator Murray, “[u]ltimately, the best way to protect people from asbestos is to ban it.”<sup>173</sup> The Ban Asbestos in America Act, however, will not fully accomplish this goal.<sup>174</sup> Congressional amendments to the bill will allow many companies to get exemptions, thereby taking the teeth out of the original legislation.<sup>175</sup> The Act is illusory because it strives to calm fears regarding asbestos but continues to grant exceptions for those who can show that they cannot find adequate substitutes for asbestos.<sup>176</sup>

Millions of workers are still being exposed to asbestos today.<sup>177</sup> OSHA and other health associations have reported that an estimated 1.3 million American employees in various industries face significant asbestos exposure at work.<sup>178</sup> The question then becomes: Why would anyone oppose this opportunity to safeguard

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168. See H.R. 2277, 108th Cong. § 2(9) (2003) (citing congressional findings).

169. See *id.* at § 2(10) (citing congressional findings).

170. Murray, *supra* note 7, at 2 (showing contempt for current regulation of asbestos).

171. See H.R. 2277, 108th Cong. § 2(11) (reiterating need for new legislation banning asbestos containing materials).

172. See *id.* (detailing aims of bill).

173. See Senator Patty Murray, *Murray Takes Asbestos Ban to Judiciary Committee Hearing on Asbestos Litigation Reform*, NEWS FROM U.S. SENATOR PATTY MURRAY, at <http://murray.senate.gov/news.cfm?id=204649> (last visited Jan. 10, 2005) (testifying on purpose of Ban Asbestos in America Act).

174. See H.R. 2277, 108th Cong. § 225(b) (listing exceptions to ban).

175. See Senator Patty Murray, *supra* note 127, at 2 (describing exemption process).

176. See *id.* (allowing companies that meet certain requirements to continue using asbestos).

177. See *id.* (highlighting continued danger posed by asbestos use).

178. See *id.* at 1 (citing statistics presented by OSHA and Health Administration).

Americans? “The answer is political. No one is willing to go up against the asbestos companies.”<sup>179</sup> In the absence of legislation protecting the public, Americans will continue to be exposed to asbestos and asbestos will continue to kill.<sup>180</sup>

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179. Schneider & Smith, *supra* note 1, at 4 (highlighting reluctance of legislators to antagonize asbestos industry).

180. *See id.* (asserting continued exposure to asbestos will generate more asbestos-related deaths).