

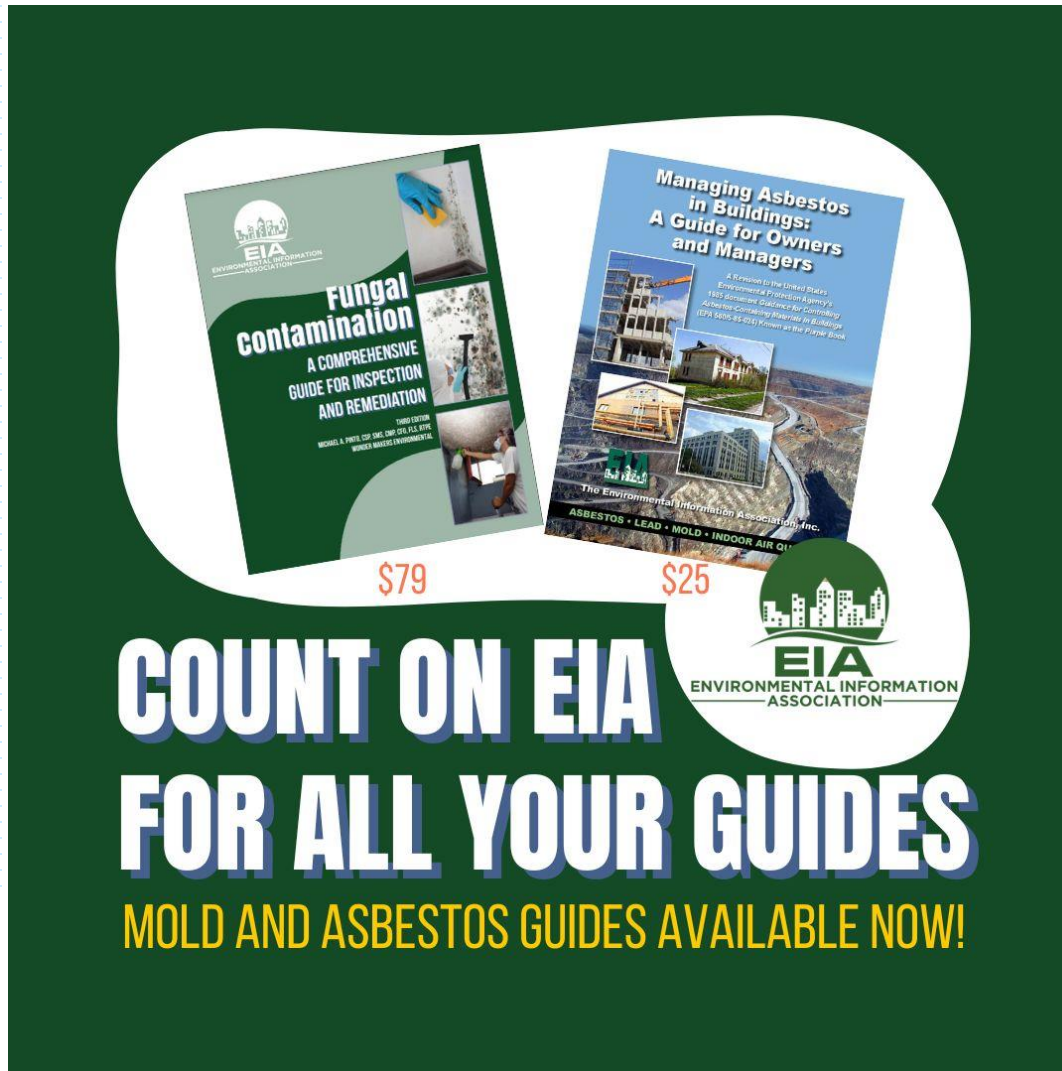
What's going on at EPA?

Federal Regulatory Update on Asbestos and Lead



J. Brent Kynoch
Managing Director – EIA

A bit of promotion for EIA



The advertisement features two book covers. The left cover is for 'Fungal Contamination: A Comprehensive Guide for Inspection and Remediation', Third Edition, by Michael A. Powell, EdD, CMR, OIA, FLL, NRE, published by Morgan Matting Environmental Inc. The right cover is for 'Managing Asbestos in Buildings: A Guide for Owners and Managers', a handbook to the United States Environmental Protection Agency's 1995 Bioremediation Guidelines for Controlling Asbestos-containing Materials in Buildings (EPA 600/5-95-010) from the Plaster Book. Below the covers are the prices \$79 and \$25. The EIA logo is also present.

Fungal Contamination
A COMPREHENSIVE
GUIDE FOR INSPECTION
AND REMEDIATION
THIRD EDITION
MICHAEL A. POWELL, EdD, CMR, OIA, FLL, NRE
MORGAN MATTING ENVIRONMENTAL INC.

**Managing Asbestos
in Buildings:
A Guide for Owners
and Managers**
A Handbook to the United States
Environmental Protection Agency's
1995 Bioremediation Guidelines for Controlling
Asbestos-containing Materials in Buildings
(EPA 600/5-95-010) From the Plaster Book
The Environmental Information Association, Inc.
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EIA Net News

October 21, 2022 - SPECIAL EDITION - Chlorine Industry Investigation

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THE US NEVER BANNED ASBESTOS. THESE WORKERS ARE PAYING THE PRICE.

NPR/ProPublica

by Kathleen McGrory and Neil Bedi

National - To this day, the U.S. allows hundreds of tons of asbestos to flow in each year from Brazil, primarily for the benefit of two major chemical companies, OxyChem and Olin Corp. The companies say asbestos is integral to chlorine production at several aging plants and have made a compelling argument to keep it legal: Unlike in the horrific tales of the past, their current protocols for handling asbestos are so stringent that workers face little threat of exposure.

But at OxyChem's plant in Niagara Falls, New York, the reality was far different, more than a dozen former workers told ProPublica. There, they said, asbestos dust hung in



Asbestos ban efforts...

- ▶ There have been numerous efforts to ban asbestos in the US
- ▶ We have banned a number of categories ACMs via the Clean Air Act (CAA)
- ▶ “Ban & Phase-out” of '89...remanded in '91
- ▶ Multiple efforts since then, all failed for many reasons

Asbestos has not been banned??

▶ These are still allowed

- Asbestos cement:
corrugated sheet, flat
sheet, pipes, shingles
- Clothing
- Roofing felt
 - Most often flashing
and cements
- Vinyl floor tile
- Millboard

- ▶ Automatic
transmission
components
- ▶ Clutch facings
- ▶ Friction materials
- ▶ Disk brake pads
- ▶ Drum brake linings
- ▶ Brake blocks
- ▶ Gaskets
- ▶ Non-roofing coatings
- ▶ Roof coatings



Countries that have banned asbestos

| Country | Year Enacted |
|----------------|--------------|
| Algeria | 2009 |
| Argentina | 2003 |
| Australia | 2003 |
| Austria | 2005 (EU) |
| Bahrain | 1996 |
| Belgium | 2005 (EU) |
| Brazil | 2017 |
| Brunei | |
| Bulgaria | 2005 (EU) |
| Canada | 2018 |
| Chile | 2001 |
| Colombia | 2019 |
| Croatia | 2005 (EU) |
| Cyprus | 2005 (EU) |
| Czech Republic | 2005 (EU) |
| Denmark | 2005 (EU) |
| Djibouti | 1999 |
| Egypt | 2005 |
| Estonia | 2005 (EU) |
| Finland | 2005 (EU) |
| France | 2005 (EU) |
| Gabon | 2002 – 2004 |
| Germany | 2005 (EU) |
| Gibraltar | 2005 (EU) |
| Greece | 2005 (EU) |
| Honduras | 2004 |
| Hungary | 2005 (EU) |
| Iceland | 1983 |
| Iraq | 2016 |
| Ireland | 2005 (EU) |
| Israel | 2011 |
| Italy | 2005 (EU) |
| Japan | 2012 |
| Jordan | 2006 |

| Country | Year Enacted |
|-----------------|--------------|
| Korea (South) | 2009 |
| Kuwait | 1995 |
| Latvia | 2005 (EU) |
| Liechtenstein | 2005 (EU) |
| Lithuania | 2005 (EU) |
| Luxembourg | 2005 (EU) |
| Macedonia | 2014 |
| Malta | 2005 (EU) |
| Mauritius | 2004 |
| Moldova | 2016 |
| Monaco | 2005 (EU) |
| Mozambique | 2010 |
| New Zealand | 2016 |
| Norway | 1984 |
| Oman | 2008 |
| Poland | 2005 (EU) |
| Portugal | 2005 (EU) |
| Qatar | 2010 |
| Romania | 2005 (EU) |
| Saudi Arabia | 1998 |
| Serbia | 2011 |
| Seychelles | 2009 |
| Slovenia | 2005 (EU) |
| Slovakia | 2005 (EU) |
| South Africa | 2008 |
| Spain | 2005 (EU) |
| Sweden | 2005 (EU) |
| Switzerland | 1990 |
| Taiwan | 2010 |
| The Netherlands | 2005 (EU) |
| Turkey | 2010 |
| New Caledonia | 2007 |
| United Kingdom | 1992 |
| Uruguay | |

2016 was a BIG year!

- ▶ Frank R. Lautenberg Chemical Safety for the 21st Century Act
- ▶ Signed into law by President Obama on June 22, 2016
- ▶ First revision to the TSCA law originally enacted in 1976



Differences in Old and New TSCA

▶ Old

- Risks must be weighed against its benefits and cost of restriction or ban.
- EPA must choose “least burdensome means” of regulating to protect against risk.

▶ 2016 version

- Must review using a “health-based standard” and not the cost of restriction or ban.
- EPA must protect “potentially exposed or susceptible populations.”

EPA names top 10

November 29, 2016

- 1,4-Dioxane – *not banned yet, except in NY and CA*
- 1-Bromopropane – *not banned yet*
- **Asbestos**
- Carbon Tetrachloride – *Proposed risk management*
- Cyclic Aliphatic Bromide Cluster – *unreasonable risk*
- Methylene Chloride – **BANNED**
- N-methylpyrrolidone – *unreasonable risk*
- Pigment Violet 29 – *EPA has declared this safe*
- Tetrachloroethylene, also known as perchloroethylene – *ban has been proposed*
- Trichloroethylene – *ban has been proposed*

What has happened so far?

A lot and then not a lot!!

EPA begins its process of review and quickly determines that it will NOT look at legacy uses of asbestos

“In the case of asbestos, legacy uses and associated legacy disposals will be excluded from the scope of the risk evaluation. These include asbestos-containing materials that remain in older buildings or are part of older products but for which manufacture, processing and distribution in commerce are not currently intended, known or reasonably foreseen .”

Because EPA has dropped the ball

- ▶ Others have been at work
- ▶ **Safer Chemicals Healthy Families** sued EPA to address legacy uses.
- ▶ 9th Circuit Court of Appeals (Western US) ruled that EPA needed to evaluate exposure from existing (legacy) asbestos
- ▶ November 2019



Draft Risk Evaluation

- ▶ Released in March 2020 – “Part 1 – Chrysotile Asbestos”
- ▶ Published in Federal Register on April 3, 2020
- ▶ EPA found that asbestos DOES present an unreasonable risk to workers, non-occupational users, consumers and bystanders.

Problems with EPA's draft risk evaluation

- ▶ EPA did not address ruling from Ninth Circuit Court
- ▶ Considers only exposure to Chrysotile asbestos
- ▶ Considers only mortality rates (deaths) from exposure, not incidences of cancer
- ▶ EPA noted the lawsuit in the draft risk evaluation, but gave no timeline for preparing "Part 2" of the risk evaluation.

SNUR – – – what is that?

- ▶ Significant New Use Rule
- ▶ EPA states they want to make sure that uses of asbestos that are still legal but no longer occurring in the US are banned.
- ▶ But EPA allow a “review” of those materials.
- ▶ Self-reporting
- ▶ Must notify EPA if you are bringing in a “new use” of asbestos.
- ▶ Issued June 2018, finalized April 2019. In effect June 2019.



NESHAP vs. TSCA

- ▶ The bans that have occurred on friable materials through the Clean Air Act (NESHAP)...these will remain
- ▶ Surfacing ACM:
 - 1973 NESHAP, banned for fireproofing or insulating
 - 1978 NESHAP, banned for "decorative" purposes
- ▶ Thermal System Insulation:
 - 1975 NESHAP, banned installation of wet-applied and pre-formed (molded) asbestos pipe insulation.
 - 1975 NESHAP, banned installation of pre-formed (molded) asbestos block insulation on boilers and hot water tanks.



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See 1999 EPA fact sheet for further details

Again . . . Industry needs to step in

- ▶ ADAO files a lawsuit in May of 2021 requiring EPA to set a deadline for “Part 2” of the Risk Evaluation for Asbestos.
- ▶ Settlement in October 2021 that requires EPA to complete the “Part 2” Risk Evaluation by December 1, 2024

Wow!! Part 2 finally gets released!

- ▶ Released in December 2021
- ▶ Public comment period was open until 3/1/2022
- ▶ EIA submitted comments

EPA United States Environmental Protection Agency
Public Comment Draft – Do Not Cite or Quote
EPA Document# EPA-740-D-21-00
December 2021
Office of Chemical Safety and Pollution Prevention

Draft Scope of the Risk Evaluation for
Asbestos
Part 2: Supplemental Evaluation Including Legacy Uses and
Associated Disposals of Asbestos

December 2021

Let's talk about Part 2

- ▶ Theoretically it addresses legacy asbestos, Libby amphiboles and talc
- ▶ In truth, the Part 2 only addresses “legacy” asbestos that is not currently banned
- ▶ Leaves out fireproofing, TSI, surfacing materials and other asbestos that is already the subject of a ban
- ▶ It seems that EPA has decided that materials that are currently regulated – FRIABLE MATERIALS – don't need to be addressed in Part 2

Wait . . . A SURPRISE!!!

- ▶ On April 12, EPA issues draft rule for “regulating certain conditions of use” for Chrysotile.
- ▶ i.e. – –THIS IS A BAN!!!

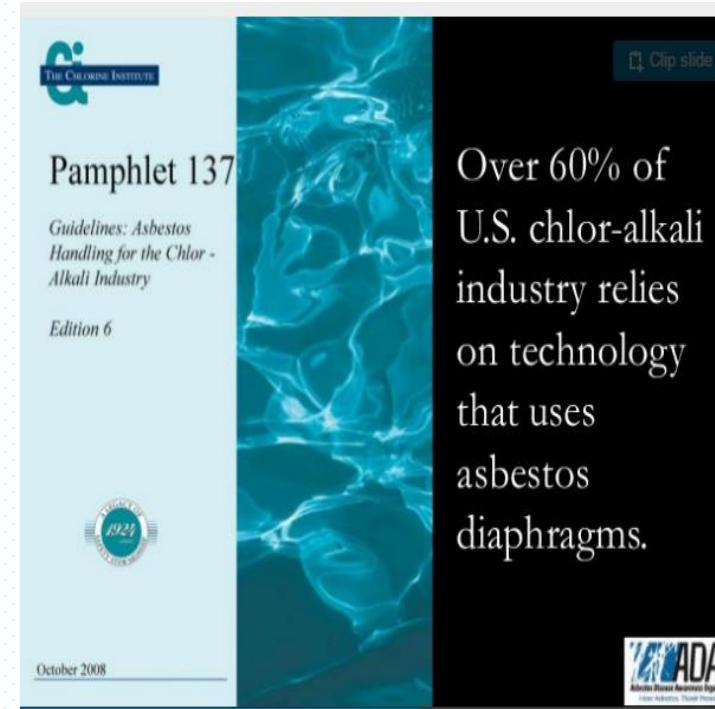
Chrysotile Asbestos Ban

- ▶ EPA to “prohibit manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos” for the following uses:
 - Asbestos diaphragms for the chlor-alkali industry
 - Sheet gaskets and other gaskets used in chemical production
 - Brake blocks (oil industry)
 - Automotive brakes and friction products
- ▶ Would take effect 180 days after effective date of final rule – except for chlor-alkali and chemical industries – 2 years.

Comment period ended June 13,
2022

Chlor-Alkali Industry

- ▶ The “ban enemy” in this process
- ▶ Account for 90% of asbestos imports into US since 2015
- ▶ Use raw asbestos as part of the process to make chlorine gas...and other hi/lo pH
- ▶ 16 plants in the US using the asbestos diaphragm technology
- ▶ Imports have gone UP since 2016!!



Olin sends a letter to EPA supporting ban on Chrysotile asbestos



190 CARONDELET PLAZA, SUITE 1530
ST. LOUIS, MO 63105-3443

April 4, 2023

Dear Administrator Regan:

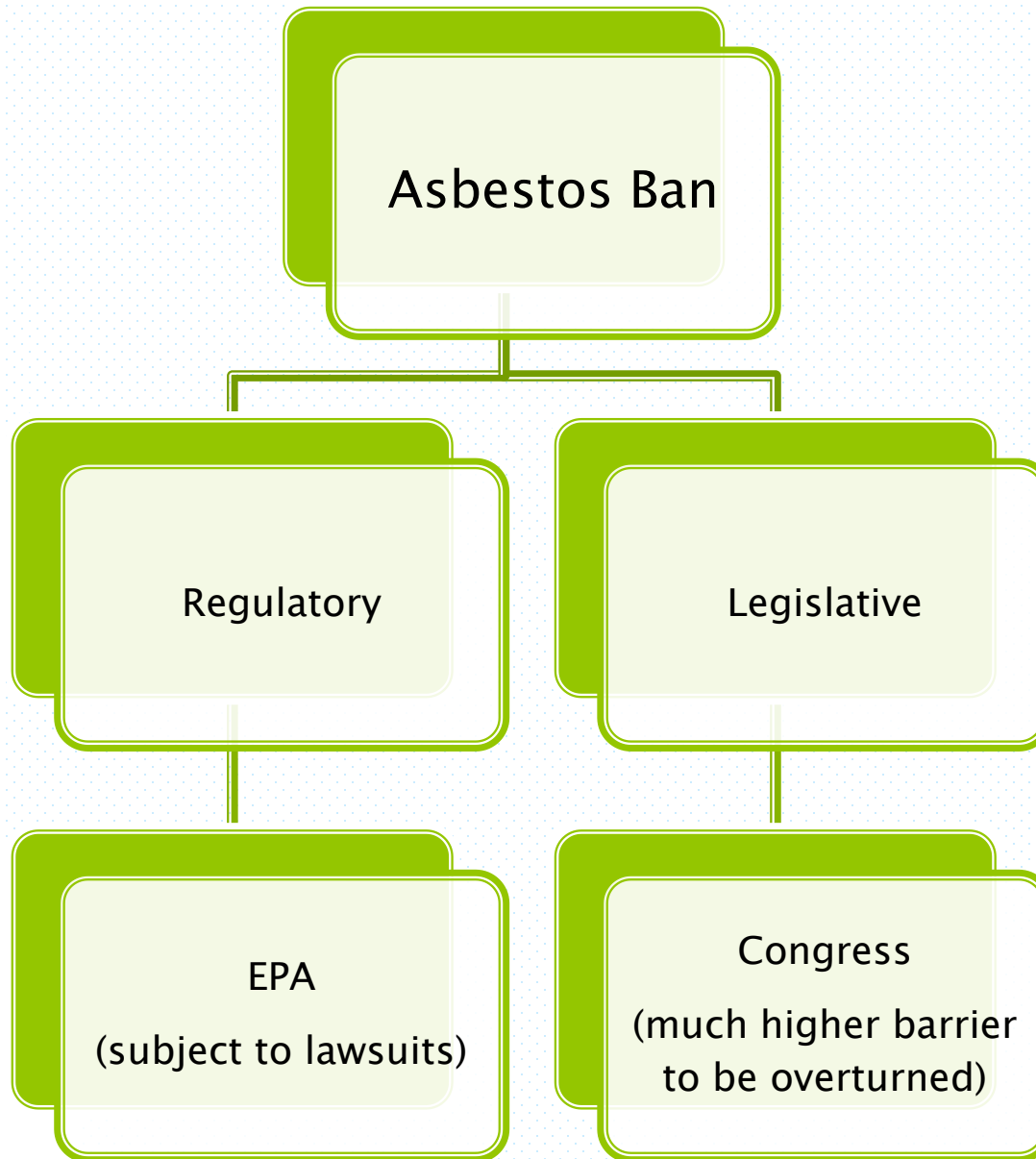
As the largest global and US producer of chloralkali, and as the owner of the largest global and US asbestos-based diaphragm chloralkali capacity, Olin Corporation would support an EPA action to ban the installation of any new or replacement asbestos-based diaphragms in two years, in combination with an additional five years to operate any existing asbestos-based diaphragm production cells.

If the EPA were to adopt this plan, at the end of this seven-year period, no asbestos-based diaphragm cells would remain in any chloralkali industry facilities. During this additional five-year window to operate, we would use an in-situ process to maintain the diaphragms which does not involve workers removing asbestos diaphragms from the closed process for repairs or constructing new asbestos diaphragms. Additionally, no asbestos imports into the U.S. are required past today.

Sincerely,

Scott Sutton
Chairman, President, CEO





Another possibility – Alan Reinstein Ban Asbestos Now Act of 2023(ARBAN)

- ▶ Bi-cameral introduction – March 30, 2023
- ▶ Would ban all forms of asbestos – including Libby amphiboles
- ▶ Bill is opposed by several organizations
- ▶ Republicans want to move forward.
Democrats want a language change.

Alan Reinstein Ban Asbestos Now Act of 2023 (ARBAN)

- ▶ Probably our best bet for a ban, because EPA is waiting!
- ▶ Need broad support for bill to pass
- ▶ Would ban all 6 forms of asbestos, not just Chrysotile.

Why the opposition?

- ▶ The American Association for Justice, or AAJ.
- ▶ They want a change in the language relating to talc litigation.
- ▶ Other groups want a change if AAJ gets a change.
- ▶ Republicans want to move forward.
Democrats want a language change.

But, never fear, there is action underway!

ProPublica Story – October 20

Labor

The U.S. Never Banned Asbestos. These Workers Are Paying the Price.

by Kathleen McGrory and Neil Bedi, photography by Rich-Joseph Facun, graphics by Haisam Hussein

Oct. 20, 5 a.m. EDT



Howie & Soupy

9/6/00



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Response was IMMEDIATE!!

- ▶ Because of the Pro Publica investigation, 3 more House members have agreed to co-sponsor ARBAN.
- ▶ The truth comes out – – – the Chlorine industry has used scare tactics and they are not true!!!
- ▶ No effect on drinking water systems – only 5–6% of chlorine production for water treatment.

Quick Summary

- ▶ **June 2016** – Revisions to TSCA are signed into law
- ▶ **December 2016** – Asbestos is named as one of first 10 “chemicals” that EPA will review for possible regulatory action.
- ▶ **June 2018** – EPA issues a SNUR for asbestos.
- ▶ **March 2020** – EPA publishes Draft Risk Evaluation for Asbestos
- ▶ **November 2019** – U. S. Court of Appeals for the Ninth Circuit Court issues a ruling REQUIRING EPA to address legacy uses of asbestos
- ▶ **December 2020** – EPA publishes “Final Risk Evaluation for Asbestos – Part 1: Chrysotile Asbestos. Notes that they will prepare a “Part 2” evaluation sometime in the future
- ▶ **May 2021** – ADAO files a lawsuit against EPA requiring them to set a deadline for Part 2
- ▶ **December 2021** – EPA issues a Draft Risk Evaluation of Asbestos – Part 2
- ▶ **April 2022** – EPA issues proposed rule – Chrysotile ban
- ▶ **May 2022** – ARBAN of 2022 introduced – bicameral
- ▶ **October 2022** – ProPublica report
- ▶ **March 2023** – ARBAN of 2023 introduced – bicameral
- ▶ **April 2023** – Olin sends letter supporting asbestos ban to EPA



Let's talk about lead!

- ▶ EPA proposed rules on lead dust hazards introduced on August 1, 2023
- ▶ EPA proposed to lower the dust-lead hazard standards from 10 micrograms (μg) per square foot (ft^2) for floors and 100 $\mu\text{g}/\text{ft}^2$ for window sills to any reportable level greater than zero!

What's the problem?

- ▶ We all want to protect children (and others) from lead exposure.
- ▶ Current clearance criteria is 10 $\mu\text{g}/\text{ft}^2$ for floors.
- ▶ EPA is proposing a hazard level of any level greater than zero.
- ▶ Liability concerns
- ▶ Lab capacity

Change in Analytical Method

- ▶ Change from Flame Atomic Absorption Spectrometry (FAAS) to Inductively Coupled Plasma – Atomic Emission Spectrometry (ICP-AES)
- ▶ Probably a 200% to 400% cost increase for analysis.
- ▶ Really not possible for a lab to report “zero.”
- ▶ EIA submitted comments.

That's it...for now!

Questions?



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