

Michael S. Regan, Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Comments on EPA's Draft Scope of the Risk Evaluation for
Asbestos Part 2: Supplemental Evaluation Including Legacy Uses and
Associated Disposals of Asbestos

Docket Number: EPA-HQ-OPPT-2021-0254

Dear Administrator Regan:

My name is Michael P. Robb and I am a partner with the law firm Bailey Glasser, LLP in Pittsburgh, Pennsylvania. I am writing today to provide my public comments regarding legacy asbestos use in aging college and university structures across the United States of America.

Specifically, I am requesting the EPA add "*college/university employees and students*" to its list of "*Potentially Exposed or Susceptible Subpopulation*" groups in Section 2.5 of its Scoping Document.

For the past 22 years, I have practiced law exclusively in the field of civil asbestos litigation. I have worked on thousands of asbestos cases during my career, but one case in particular stands out.

In 2014, I was retained to represent the family of a retired Pennsylvania State University professor who had contracted and died from mesothelioma, a fatal cancer with no known cure and only one cause, asbestos exposure. My client's lawsuit against Penn State was the first ever to be brought against a major university alleging that legacy asbestos in its structures had caused someone (an occupational non-user) to contract and die from an asbestos-related disease (mesothelioma). During the discovery process, we conducted a seven years-long investigation in order to determine if the university's classrooms, laboratories, and offices where our client worked contained asbestos.

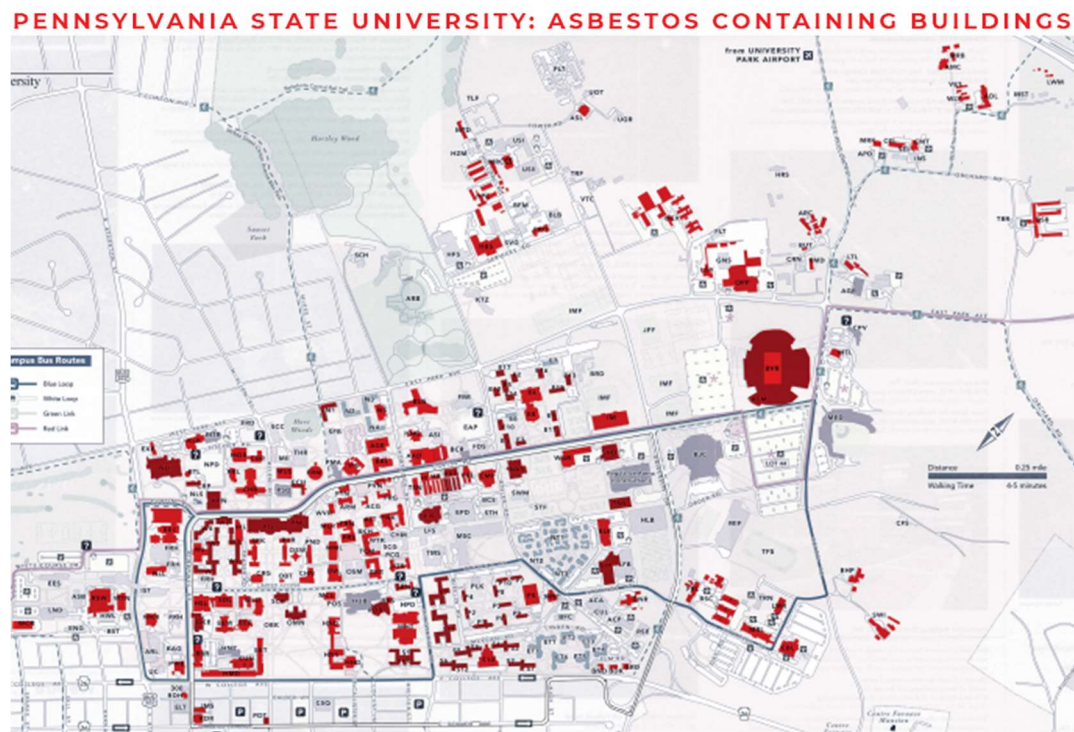
This is what I learned:

Documents produced by Penn State University confirmed the university first identified asbestos in a few structures in 1975. Widescale testing conducted in 1979, however, found asbestos in more than 100 university structures. Asbestos contamination across campus was so significant, in fact, that Penn State sued an asbestos manufacturer in 1986 in attempt to force the manufacturer to fund a multimillion-dollar asbestos removal project across campus. The university sought \$8.5

million dollars which was to be used to remove all of the asbestos from its structures. In the end, Penn State was awarded only \$400,000.00 dollars. Realizing it was going to recoup just a fraction of the money it sought in its lawsuit, the university switched its policy from trying to remove as much asbestos as possible to simply monitoring it via a so-called “in-place” management approach. In short, an “in place” approach means that the only time asbestos is removed from a college or university structure is when the school decides to renovate that structure. For example, if a planned renovation within a structure has asbestos in a certain area or room, the university will remove the asbestos during the renovation project – but any asbestos located within the structure but in areas not being renovated will remain in place. Almost every college and university in the United States employs an “in place” management approach to asbestos contamination within its structures.

The “in-place” management of asbestos does not work for two reasons.

First, it allows asbestos in structures to remain. An example of this failure is a 2006 map of Penn State University’s asbestos-contaminated structures. As depicted below, asbestos exists in hundreds of structures (highlighted in red). Almost every structure shown below remains contaminated with asbestos to this day.



The second reason “in-place” asbestos management does not work is because asbestos inside of structures wears out over time, causing asbestos fibers to shed and be released into the indoor environment.

Pennsylvania State University is not the only higher education institution with this problem. A quick online review of colleges and universities reveals most American higher education

institutions have aging structures contaminated with asbestos. This is because they utilize the “in-place” asbestos management program similar or identical to Penn State’s system.

The following list below is but a small sampling of higher education institutions that filed similar lawsuits for asbestos contamination as Penn State did in 1986. If the Penn State award (\$400,000.00) is indicative, it should be assumed each school below also received only a fraction of the amount it was seeking to cover the cost of their asbestos abatement and asbestos remains inside their aging structures to this day because they also utilize the “in-place” management of asbestos:

ASBESTOS PROPERTY DAMAGE CLAIMS

<u>COLLEGE/UNIVERSITY</u>	<u>AMOUNT CLAIMED (not paid)</u>
Board of Regents of Higher Education (Boston, MA)	\$46,701,982.00.
Colorado State University (Fort Collins, Colorado):	\$ 1,657,627.90.
Texas: various University Buildings:	\$64,757,464.00.
Los Angeles Community College:	\$ 8,680,251.21.
Penn State University:	\$ 8,559,000.00.
Boston University:	\$ 7,800,000.00.
Vanderbilt University:	\$43,644,000.00.
University of Southern California:	\$ 2,500,000.00.
Amherst College:	\$ 5,878,932.00.
Brown University:	\$43,049,360.00.
Columbia University:	\$11,050,000.00.
Denison University:	\$ 2,000,000.00.
New Hampshire University System.	\$ 3,574,582.50.

Because the majority of college and university structures were built several decades ago, asbestos-containing building materials used during construction have aged by several decades. The more time that passes, the more asbestos materials wear down and shed asbestos fibers. It is a recipe for disaster.

The EPA is well aware that this is a significant exposure risk as evidenced in the Scoping Document at Section 2.3.7 General Population Exposures (pg. 45/149). “... **a primary source of exposure to asbestos fibers for the general population is “...from the wearing down or disturbance of manufactured products.”**”

If the EPA believes its own statement (“...*that a primary source of exposure to asbestos fibers for the general population is from the wearing down or disturbance of manufactured products.*”) then, according to the Scoping Document (Section 2.5 Potentially Exposed or Susceptible Subpopulation), the EPA must determine whether asbestos presents an unreasonable risk to “**a potentially exposed or susceptible subpopulation,**” which is a group of individuals within the general population identified by the Administrator who, due to either greater susceptibility or **greater exposure**, may be at greater risk than the general population...”

Today there are approximately 332 million individuals living in the United States and 3,982 colleges and universities in this country. According to the National Center for Educational Statistics, there are approximately 19.4 million active college and university students and more than 1.5 million active professors. This means one group (students and professors) equates to

15.8% of the population attend or work in colleges or universities with aging structures which could be contaminated with asbestos.

If the EPA is going to address legacy asbestos in structures, it must, without question, consider the widespread contamination in aging structures on college and university campuses. To properly do this, the first step is for the EPA to modify its Scoping Document to add “*college/university employees and students*” as a Potentially Exposed or Susceptible Subpopulation in Scoping Document Section 2.5.

Thank you for your consideration. I am,

Very truly yours,

Michael P. Robb

Michael P. Robb, Esquire
Bailey Glasser, LLP