

MEDIA MENTION

Erik Baptist Discusses Questions Raised by Judge in Asbestos-Related TSCA Case

Inside EPA

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Erik C. Baptist, partner in Wiley Rein's Environment & Product Regulation Practice, was quoted by *Inside EPA* in a September 18 article about questions raised by a federal district judge in litigation involving the Toxic Substances Control Act (TSCA).

In *Asbestos Disease Awareness Organization (ADAO) et. al v. Wheeler*, the plaintiffs are challenging the U.S. Environmental Protection Agency's (EPA) denial of their 2018 petition that sought additional asbestos reporting under Section 21 of TSCA, *Inside EPA* reported. The plaintiffs are pursuing their claims under TSCA and the Administrative Procedures Act (APA).

A Justice Department attorney representing the EPA urged the court at a September 5 hearing to dismiss the APA claim – and then filed a post-hearing clarification on September 11 that explained the appropriate standard of review for a petition seeking to amend an existing rule, according to the article. The judge asked the parties this week to clarify whether the 2018 petition sought a new rule or an amendment to an existing rule, and how that question related to the EPA's motion to dismiss.

"Because the government's post-hearing '...clarification' essentially concedes that the court should apply [APA]'s arbitrary and capricious standard of review, I would not be surprised if the court were to deny the government's motion to dismiss plaintiffs' APA claim," Mr. Baptist told *Inside EPA*.

Related Professionals

Erik C. Baptist
Partner
202.719.7540
ebaptist@wiley.law

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