Testimony of Linda Reinstein
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Before the House Committee on Energy and Commerce
Subcommittee on Environment and Climate Change
Ban Asbestos Now: Taking Action to Save Lives and Livelihoods
Legislative Hearing on H.R. 1603—Alan Reinstein Ban Asbestos Now Act of 2019
May 8, 2019

Thank you Chairman Pallone, Ranking Member Walden, Chairman Tonko, Ranking Member Shimkus, and Members of the Committee for giving me the honor and opportunity to testify in support of H.R. 1603, the Alan Reinstein Ban Asbestos Now Act of 2019 (ARBAN).

We are grateful to the Environment and Climate Change Subcommittee of the U.S. House Energy and Commerce Committee for holding this important hearing on long-overdue legislation to ban asbestos.

Today, I not only represent the Asbestos Disease Awareness Organization (ADAO), but also your constituents who suffer from or have been silenced by asbestos. I am neither a lobbyist nor an attorney. I am a mesothelioma widow and co-founder of ADAO. Watching today from homes throughout the nation are many sufferers from asbestos-related diseases and family members of loved ones who died from asbestos exposure. Alarmingly, my research for today's testimony reveals that from 1991 to 2017, more than one million Americans died from preventable asbestos-caused diseases. These deaths represent only a snapshot in time; the total number of deaths during the 100+ years of asbestos use is much larger.

For far too long, asbestos ban policy has been often seen as partisan issue; however, that has changed. Since 2005, ADAO has worked with the Senate to draft and unanimously pass the National Asbestos Awareness Week Resolution. As part of the Resolution, the Senate urges the Surgeon General to issue a warning about the dangers of asbestos.

Launched in 2004, ADAO is now the largest independent non-profit organization in the U.S. dedicated to eliminating asbestos-caused diseases. ADAO is far more than an asbestos victims' organization; our cutting-edge research, ongoing product testing, and educational efforts have enabled us to be a leading stakeholder in prevention policy. Through ADAO, I have dedicated my life to preventing asbestos exposure in order to

eliminate all asbestos-caused diseases. These past fifteen years have taught me that shaping public policy is a glacially slow process. However, today’s hearing marks a landmark step forward for public health, our environment, and Americans, as this is the first hearing to ban asbestos since the Senate Committee on Environment and Public Works (EPW) hearing in 2007.

The proposed legislation we are addressing -- the bicameral Alan Reinstein Ban Asbestos Now Act -- will take the following critical steps:

- Ban the importation, manufacture, processing, and distribution of all forms of asbestos and asbestos-containing mixtures and articles within 12 months, including products in which asbestos is present as an impurity;
- Establish a new *Right-to-Know* program to require current importers, processors and distributors to report and disclose to the public how much asbestos is in U.S. commerce, where and how it is used, and who is exposed;
- Require EPA and the Departments of Labor and Health and Human Services to conduct a comprehensive study of risks presented by the presence of asbestos in the millions of residences, businesses, factories, public buildings and schools, where it was used in building construction decades ago; and
- Impose these requirements on the extremely hazardous Libby Amphibole, richterite, winchite, as well as the other six asbestos fibers: chrysotile, actinolite, amosite, anthophyllite, crocidolite, and tremolite.

There are two irrefutable facts that provide a compelling case for this legislation:

- All forms of asbestos, including chrysotile, are carcinogenic to humans.
- There is no safe level of asbestos exposure or no such thing as the controlled use of asbestos.

Because of these facts, only a comprehensive and rapid elimination of all asbestos from US commerce will fully protect public health.

SHATTERED FAMILIES

Today, I want to share my story, not for sympathy but so you can better understand my work. Tragically, my story is far too common.

My husband, Alan, was diagnosed with pleural mesothelioma in 2003. We had never heard of this asbestos-caused cancer, and quickly learned it was incurable. Alan chose to have an extrapleural pneumonectomy–a surgery which removed a rib and his left lung, stripped off his pericardium and surgically replaced his diaphragm. When

mesothelioma attacked Alan’s remaining lung, he felt like he was breathing through a pinched straw, every breath, every minute, every day. His oxygen levels became critically low and he was tethered to supplemental oxygen to prolong his life. In 2006, Alan took his last breaths with our then 13-year-old daughter and me by his side. My daughter Emily, who sits behind me today and is now 26, has not only buried her father, but watched the carnage of asbestos-related disease continue.

The photo on the table today is of Alan, but it represents far more than just my husband. This picture represents the thousands of ‘Alans’ who have died painful, premature and preventable deaths. H.R. 1603 not only honors their memory, it brings us closer to ending the asbestos man-made disaster.

ABOUT ADAO

In 2004, Doug Larkin and I founded ADAO after both of our loved ones had been diagnosed with mesothelioma, an asbestos-caused disease. As we cared for them, we met other patients and families whose lives were also devastated by asbestos exposure. Each of us had watched the people we cared for succumb to this deadly, yet preventable, disease. From this pain, however, came the courage to organize and begin a journey to advocate for ending asbestos exposure and ensuring that no one else would have to experience the pain we lived through.

ADAO started out as small group and, slowly but surely, grew into a network of around 50,000 individuals as more and more victims, families, scientists, nonprofits, and trade unions joined us in pursuit of our shared goal of eliminating asbestos-related diseases.

ADAO remains dedicated to our core efforts of education, advocacy, and community. Our Science and Prevention Advisory Boards are comprised of world class experts. Their advice ensures that our educational resources and information are scientifically accurate and up to date. As an independent organization, ADAO does not make medical or legal referrals.

OUTLINE OF TESTIMONY

In the body of my testimony, I will:

- Review the overwhelming evidence of the enormous and continuing toll asbestos has taken on the health and lives of Americans.

- Document the significant ongoing importation and use of asbestos and asbestos-containing products in the US 30 years after EPA tried to ban asbestos and despite the bans adopted by 60 other countries.
- Demonstrate the failure of the Trump Environmental Protection Agency (EPA) to use the tools in the 2016 amendments to the Toxic Substances Control Act (TSCA) to effectively address the asbestos threat and the need for Congress to enact the comprehensive ban that EPA either cannot or will not put in place on its own.
- Underscore the strengths of the bicameral Alan Reinstein Ban Asbestos Now Act in providing long-overdue protection of public health and finally putting an end to the importation and use of this extremely hazardous substance

ASBESTOS IMPACT ON PUBLIC HEALTH

For over a century, asbestos has been known to cause widespread disease and death, yet imports and use continue in the US.

In a monograph on asbestos published in 2012, the International Agency for Research on Cancer (IARC) found the following cancers in humans to be causally related to asbestos exposure: lung cancer, malignant mesothelioma, ovarian cancer, and cancer of the larynx[1]. There is considerable evidence in the scientific literature of causal associations with gastrointestinal cancers and kidney cancer. Non-malignant diseases are also caused by asbestos. These include asbestosis and asbestos-related pleural thickening. All fiber types in commercial use have been linked causally with each of these diseases and are regulated accordingly by OSHA and other government agencies.

The human cost of this exposure has been horrific and the death toll shocking. From 1991 to 2017, more than one million Americans died from preventable asbestos-caused diseases. These deaths represent only a snapshot in time; the total number of deaths during the 100+ years of asbestos use is much larger.

The economic cost of inaction has been and remains immense. “The economic burden of lung cancer and mesothelioma associated with occupational and para-occupational asbestos exposure is substantial.” According to the World Health Organization (WHO) “Asbestos Economic Assessment of Bans and Declining Production and Consumption” report, “The substantial costs associated with the continued use of asbestos potentially outweigh any other economic benefit. The annual global health care costs associated

[1] https://www.who.int/ipcs/assessment/public_health/Elimination_asbestos-related_diseases_EN.pdf

with the health effects of asbestos are estimated to be US$ 2.4–3.9 billion, excluding the additional costs of pain, suffering and welfare losses.[2]

There is overwhelming consensus in the scientific community that there is no safe level of exposure to asbestos. As noted by WHO:

> Bearing in mind that there is no evidence for a threshold for the carcinogenic effect of asbestos, including chrysotile, and that increased cancer risks have been observed in populations exposed to very low levels, the most efficient way to eliminate asbestos-related diseases is to stop using all types of asbestos.[3]

IARC[4], the Occupational Safety and Health Administration (OSHA)[5], the Department of Health and Human Services,[6] the National Institute for Occupational Safety and Health (NIOSH)[7], the World Health Organization (WHO)[8] and a number of other regulatory and public health bodies recognized asbestos as a human carcinogen decades ago.

Despite the elimination of many asbestos products due to corporate liability, the death toll from asbestos exposure remains alarmingly high. At the 14th Annual Asbestos Disease Awareness Conference in Washington D.C. in 2018, Dr. Jukka Takala DSc, MSc, BSC, President of the International Commission of Occupational Health (ICOH) and colleagues, reported a shocking increase in previous estimates of asbestos-related deaths, underscoring the escalating and critical need for action by EPA. According to the recently published study entitled "*Global Asbestos Disaster"*, asbestos-related diseases cause 39,275 deaths in the United States annually—more than double the previous estimates of 15,000 per year.[9]

Asbestos fibers can become respirable when asbestos-containing materials and products are disturbed or become friable. The primary route of asbestos entry into the body is inhalation; however, fibers can also be ingested.[10] OSHA has three standards to protect workers from the hazards of asbestos in the workplace: General Industry, Shipyards, and Construction. However, OSHA has recognized that these standards do

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[2] http://www.euro.who.int/__data/assets/pdf_file/0009/341757/Asbestos_EN_WEB_reduced.pdf?ua=1
[3] https://www.who.int/ipcs/assessment/public_health/chrysotile_asbestos_summary.pdf
[4] http://monographs.iarc.fr/ENG/Monographs/vol100C/mono100C.pdf.
[5] https://www.osha.gov/laws-regs/federalregister/1994-08-10
[6] https://ntp.niehs.nih.gov/ntp/roc/content/profiles/asbestos.pdf
[7] https://www.cdc.gov/niosh/docs/2011-159/pdfs/2011-159.pdf
[8] https://monographs.iarc.fr/wp-content/uploads/2018/06/mono100C-11.pdf
[9] http://monographs.iarc.fr/ENG/Monographs/vol100C/mono100C.pdf.
[10] https://www.atsdr.cdc.gov/csem/csem.asp?csem=29&po=6

not eliminate significant risks to workers. Despite arguments by industry, the OSHA standards cannot take the place of a ban.[11]

A 2013 study by NIOSH of firefighters in three cities added further evidence of the causal link between asbestos and malignant mesothelioma. The researchers wrote: [t]he population of firefighters in the study had a rate of mesothelioma two times greater than the rate in the U.S. population as a whole" and that "it was likely that the[se] findings were associated with exposure to asbestos, a known cause of mesothelioma."[12]

According to the National Institute of Health, work-related asbestos exposure is responsible for the vast majority of asbestos-caused deaths. No substance in history has posed a greater threat to the health of workers. The danger extends beyond manufacturing plants—firefighters and school teachers are among the workers at highest risk for asbestos exposure and related diseases. Asbestos fibers can be carried home on the workers' clothing, skin, and hair, thus exposing their family members to non-occupational asbestos exposure.

HISTORICAL AND CURRENT ASBESTOS MINING, IMPORTATION AND USE IN THE US. AND THE SCALE OF HUMAN EXPOSURE

For over 100 years, the exposure of Americans to asbestos has been massive in scale. According to the U.S. Geological Survey (USGS):

- From 1900 to today, the U.S. has consumed more than 31 million metric tons of asbestos;
- From 1991 to 2002, the U.S. has mined 111,420 metric tons of asbestos until the last domestic mine closed in 2002;
- From 1991 to 2018 the EPA has allowed 280,325 metric tons of asbestos to be imported.

We believed in the late 1980s that EPA was on a path to impose comprehensive restrictions on asbestos. In 1989, the Agency issued a rule under section 6(a) of TSCA prohibiting the manufacture, importation, processing or distribution in commerce of asbestos in almost all products based on a determination that asbestos presented an "unreasonable risk of injury" under TSCA section 6.[13] However, despite the comprehensive risk analysis supporting the rule, the Fifth Circuit Court of Appeals

[11] https://www.osha.gov/Publications/OSHA3507.pdf
[12] https://www.cdc.gov/niosh/updates/upd-10-17-13.html
[13] https://www.epa.gov/asbestos/asbestos-ban-and-phase-out-federal-register-notices

overturned the ban in 1991, following an industry challenge, for reasons unrelated to the dangers of asbestos.[14]

As a result, while over 60 countries, including Canada, have banned asbestos, the U.S. has yet to prohibit asbestos importation and most forms of its use.[15] The consequence has been that asbestos importation and use have continued virtually without restriction in the U.S. for the last 30 years. In fact, asbestos imports have recently surged– primarily from Russia and Brazil. These imports consist of raw asbestos that is used by the chlorine manufacturing industry and several asbestos-containing products. [16]

Continued Raw Chrysotile Asbestos Importation and Chlor-Alkali Industry in the U.S.

According to the USGS, “The chlor-alkali industry, which uses asbestos to manufacture semipermeable diaphragms that prevent chlorine generated at the anode of an electrolytic cell from reacting with sodium hydroxide generated at the cathode, accounted for 100% of asbestos mineral consumption in 2018, based on bill of lading information obtained from a commercial trade database.”

Globally, the three main technologies for producing chlorine are: the non-asbestos membrane cell process which is the most widely used method used in Europe (66%); the mercury cell process which is being phased out worldwide because of the health risk associated with mercury (approx. 17%); and the asbestos diaphragm cell process (used for nearly 14% of installed capacity).[17] An estimated 45% of the chlor-alkali capacity in the U.S. is based on asbestos diaphragm technology. According to EPA and other sources, there are three domestic companies (Olin Corporation, Occidental Chemical and Axiall/Westlake Corporation) that own a total of 15 chlor-alkali plants that continue to fabricate and use asbestos (chrysotile)-containing semipermeable diaphragms onsite.[18]

Based on ADAO’s research, at least 50% of the chlorine produced in the U.S. is used to make polyvinyl chloride (PVC). Less than 1% of chlorine production is used for drinking water decontamination.

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[14] https://law.justia.com/cases/federal/appellate-courts/F2/947/1201/153685/
[15] http://www.ibasecretariat.org/alpha_ban_list.php
[16] https://prd-wret.s3-us-west-2.amazonaws.com/assets/palladium/production/s3fs-public/atoms/files/mcs-2019-asbes.pdf
[17] http://www.eurochlor.org/the-chlorine-universe/how-is-chlorine-produced/the-diaphragm-cell-process.aspx
[18] https://www.epa.gov/sites/production/files/2018-06/documents/asbestos_problem_formulation_05-31-18.pdf

Asbestos imports by the chlor-alkali industry have surged in the last few years. In a recently issued report, the USGS found that in 2018, their imports totaled 750 metric tons of raw chrysotile asbestos, which was twice the amount originally estimated by USGS.[19] The ports of entry for raw chrysotile asbestos are: Houston, Texas; New Orleans, Louisiana; Norfolk, Virginia; Port Everglades, Florida; Savannah, Georgia; and Newark, New Jersey.

The handling of asbestos by this industry creates risks of dangerous exposure at several stages: during the unloading of ships, the transport of asbestos from ports of entry to manufacturing sites, the transfer of asbestos from trains or trucks to user facilities, the production and maintenance operations at chlor-alkali plants, removal and replacement of used diaphragms, and the on- and off-site disposal of asbestos waste.

According to research conducted for ADAO, over 20 landfills receive asbestos waste from diaphragm chlor-alkali plants. Although most of the asbestos waste collected for landfills begins as wet filter cake, asbestos dries quickly, and many landfills are located in very windy places, like Wichita, Kansas—increasing the risk of friability and exposure.

Alternatives to the asbestos diaphragm process account for the bulk of chlor-alkali production worldwide and offer distinct advantages. According to a 2014 European Union (EU) report,[20] non-asbestos diaphragms have the economic benefits of “reduced operating costs due to lower cell voltage; reduced cell renewal costs due to longer lifetimes of the diaphragms and steel cathodes (fewer shutdowns lead to less corrosion); and, reduced waste handling and disposal costs due to asbestos-free materials.” At the time of its 1989 ban, EPA provided an exemption for chlor-alkali plants but said it expected these plants would convert to non-asbestos technologies within five years. During the past 30 years, several facilities in the U.S. and globally have converted to non-asbestos methods.

Importation of Asbestos-Containing Products

Chlor-alkali production is not the only source of asbestos exposure in the US. USGS reports an “unknown” quantity of asbestos was imported in asbestos-containing products, including asbestos-containing brake materials, rubber sheets for gaskets, tile, wallpaper, and potentially in asbestos-cement pipe and contaminated knitted fabrics.[21]

[19] https://prd-wret.s3-us-west-2.amazonaws.com/assets/palladium/production/s3fs-public/atoms/files/mcs-2019-asbes.pdf
[20] http://eippcb.jrc.ec.europa.eu/reference/BREF/CAK_BREF_102014.pdf
[21] https://prd-wret.s3-us-west-2.amazonaws.com/assets/palladium/production/s3fs-public/atoms/files/mcs-2019-asbes.pdf

Independent research, including by ADAO, has found that asbestos-containing consumer products–including children's toys–are still in commerce today. These products are putting both workers and consumers at risk. We lack meaningful information about the amounts of asbestos these products contain, how they're used, and the nature and extent of ongoing exposures for which they are responsible.

Since 1996, USGS has confirmed that "Numerous materials substitute for asbestos." Because
of these substitutes, current asbestos-containing products being imported into the US can be
eliminated.[22]

It is very alarming that in 2018, the US imported 51 tons of asbestos yarn and thread. It is urgent that Customs records be used to find out where in the country these products are used, how they are used, whether the imported products carried required OSHA warning labeling of asbestos hazards, and what occupational and environmental hazards arise from the product manufacture and end product use.

Asbestos Contamination of Consumer Products

Asbestos contamination has been detected in numerous consumer products:

- In 2000, the *Seattle Post Intelligencer* confirmed that asbestos had been found in crayons.[23]
- In 2007, the ADAO's product testing confirmed asbestos in five consumer products, including a child's toy.[24]
- In 2015, the Environmental Working Group's (EWG) product testing confirmed four brands of crayons contained asbestos, all of them manufactured in China: Amscan Crayons, Disney Mickey Mouse Clubhouse 10 Jumbo Crayons, Nickelodeon Teenage Mutant Ninja Turtle Crayons, and Saban's Power Rangers Super Megaforce 10 Jumbo Crayons.[25]
- In 2018, U.S. Public Interest Research Group tested six kinds of crayons from various brands. Green Playskool crayons tremolite asbestos fibers.[26]

[22] https://s3-us-west-2.amazonaws.com/prd-wret/assets/palladium/production/mineral-pubs/asbestos/asbesmcs96.pdf
[23] https://www.cpsc.gov/PageFiles/108033/crayons.pdf
[24]https://www.asbestosdiseaseawareness.org/archives/364
[25]https://www.ewg.org/enviroblog/2015/07/asbestos-your-children-s-toys
[26] https://uspirg.org/sites/pirg/files/reports/Copy%20of%20USP_Toxics-report_Fall2018_PRINTv1b.pdf

Another tragic example of this hidden danger is asbestos-contaminated talc products. The long-popular Johnson & Johnson baby powder[27] has been found to cause ovarian cancer, a known consequence of asbestos exposure. Talc imports into the U.S. are substantial, averaging 656,259,377 pounds per year. While these talc products are not always contaminated with asbestos, the threat of contamination is significant. Asbestos has been found not only in crayons[28] but in make-up products marketed to children and tweens at Claire's[29] and Justice retailers. In fact, in March of 2019, FDA testing confirmed previous reports of asbestos contamination in Claire's makeup.[30]

While FDA has taken action on products within its jurisdiction, the same is not true of EPA. Although EPA is aware of talc products contaminated with asbestos, the agency decided to exclude this exposure from the scope of its risk evaluation. EPA has yet to investigate, identify, and take action against asbestos-containing consumer products such as toys, which are subject to EPA authority.

Asbestos Waste

Asbestos waste—much of which is generated by the chlor-alkali industry—continues to be generated and managed in the U.S. in significant quantities. According to reports submitted for the Toxic Release Inventory (TRI) in 2017, total asbestos releases for 2017 were 20,556,023 pounds, the bulk of which (92.8%) were on-site land releases.[31] Because of limitations in the scope of TRI reporting, the quantity of asbestos waste released to the environment is probably much larger. The movement of asbestos waste in commerce and poor waste management at landfills or manufacturing sites are a significant danger to workers and the public. This risk would be substantially reduced if waste-generating manufacturing operations using asbestos were eliminated.

CURRENT ADMINISTRATION'S TSCA IMPLEMENTATION FAILURES

During the TSCA reform process in 2016, there was bipartisan agreement that asbestos was the poster child for TSCA's failure to protect public health, and that any new law needed to ensure that EPA could finally do its job and ban asbestos. Many in Congress and the public hoped EPA would make use of its new authorities under the 2016

[27] https://www.reuters.com/investigates/special-report/johnsonandjohnson-cancer/
[28] https://uspirg.org/reports/usp/safer-school-supplies-shopping-guide
[29] https://www.cnn.com/2017/12/29/health/claires-asbestos-child-makeup/index.html
[30] https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-and-susan-mayne-phd-director-center-food-safety-and
[31] https://www.epa.gov/trinationalanalysis

Lautenberg Chemical Safety Act (LCSA)[32] to quickly reinstate the 1989 asbestos ban. This hope has now been squelched as it has become apparent that EPA will not, or cannot, take responsible and effective steps to address the asbestos threat.

In internal emails provided to ADAO, seventeen career EPA experts have expressed deep concern about EPA's weak and limited efforts to reduce asbestos exposure and risk. These individuals recommended stronger actions—including a complete ban—that EPA management has rejected.

Over twenty thousand public comments were submitted to the EPA docket in support of regulatory action to ban asbestos. Absent from the docket are chemical industry letters in support of a ban without exemptions.

Asbestos Risk Evaluation Exclusions

In December 2016, shortly after the passage of the LCSA, EPA selected ten chemicals for initial risk evaluations. Asbestos was among these substances, thereby recognizing its lethal danger to public health. ADAO and many other observers expected that the new law would thus enable EPA to reinstate the comprehensive ban on asbestos use it had imposed in 1989.

However, any expectation that EPA would take meaningful action was dashed by its 2017 scoping document[33] and June 2018 problem formulation[34] for the asbestos risk evaluation. Through a combination of legally indefensible exclusions, loopholes, and deviations from accepted scientific methods, the Agency is on a path to produce an asbestos risk evaluation that ignores important exposure pathways and at-risk populations and reaches grossly misleading and inadequate conclusions about asbestos' ongoing and future dangers to public health.

For example, the risk evaluation excludes ongoing and future use and disposal of "legacy" asbestos products in residences, schools, commercial building and infrastructure—a pervasive source of exposure and risk for millions of workers and consumers throughout the US—on the basis of a groundless assertion that this use and exposure do not comprise "conditions of use" subject to TSCA. This exclusion covers Libby Amphibole, whose presence in the environment because of historical mining activities and in attic insulation installed in millions of homes, poses a serious threat to

[32] https://www.congress.gov/114/plaws/publ182/PLAW-114publ182.pdfhttps://www.epa.gov/assessing-and-managing-chemicals-under-tsca/frank-r-lautenberg-chemical-safety-21st-century-act
[33] https://www.epa.gov/sites/production/files/2017-06/documents/asbestos_scope_06-22-17.pdf
[34]https://www.epa.gov/sites/production/files/2018-06/documents/asbestos_problem_formulation_05-31-18.pdf

health. In recently disclosed emails, EPA career staff from across the Agency expressed deep concern about EPA’s refusal to address legacy asbestos:[35]

> “Congress did not exempt ongoing, or what [the TSCA office] refers to as "legacy," uses and associated disposals of a chemical substance such as asbestos from the TSCA- required risk evaluation process. [The toxics office] would strip the statutory definition of "conditions of use" of part of its meaning by analyzing only newer asbestos which is currently and prospectively manufactured, processed, or distributed in commerce, while ignoring older asbestos which is currently and prospectively "used" or "disposed of." **Exposure to older asbestos is just as dangerous as exposure to newer asbestos.”** (Emphasis added)

The risk evaluation also excludes harmful forms of asbestos, including Libby amphibole that have been well documented by EPA.[36] In their email, EPA career staff emphasize that ”amphiboles from Libby and other asbestos remain in buildings and other products where ongoing uses and eventual disposals create risks for residents and workers, including firefighters.”[37] The career staff urge that “all known harmful asbestos fiber types should be included in the definition of asbestos so there may be a complete and thorough evaluation of the risk of exposure to asbestos.”[38]

The risk evaluation will likewise fail to consider the risks of asbestos from releases to the environment, notably to our air and soil. These are important pathways for occupational and general population exposure: asbestos fibers are released into ambient air during the maintenance, renovation and demolition of asbestos-containing buildings and large and ever-increasing amounts of asbestos debris enter waste streams from construction and manufacturing. EPA claims that because these pathways are already effectively managed by other laws, they need not be evaluated under TSCA. But as the email from career EPA employees shows in painstaking detail, these other laws are neither comprehensive nor fully protective and cannot be assumed to prevent harmful exposure to asbestos. For example, “gaps in [EPA emission standards for asbestos] along with failures to comply with the regulations means there are potential exposures to asbestos from ambient air within the [Clean Air Act] pathways which should be evaluated by EPA as part of the TSCA requirements.” [39]

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[35] Email from Richard Mednick, Region 10 Office of Regional Counsel, and 16 other EPA employees to Christina Motiliall, Risk Assesment Division, Office of Pollution Prevention and Toxics, Commenting on Problem Formulation for the Risk Evaluation of Asbestos, August 10, 2018 (“EPA Problem Formulation Email”)

[36] https://www.epa.gov/asbestos/protect-your-family-asbestos-contaminated-vermiculite-insulation

[37] EPA Problem Formulation Email.

[38] Id.

[39] EPA Problem Formulation Email

In addition, the only asbestos health effects EPA will consider in its evaluation are lung cancer and mesothelioma. Yet the email from career staff emphasizes that "[t[here are other significant lethal and non-lethal harms from asbestos exposures, including asbestosis and other respiratory ailments, ovarian cancer, colorectal cancer, and cancers of the stomach, esophagus, larynx and pharynx.[40] These additional harms should be included if there is to be a comprehensive evaluation of the risks from exposure to asbestos."

Finally, the problem formulation excludes the risks presented by releases of asbestos during fires, terrorist actions such as the 9/11 World Trade Center attack, and extreme weather events. EPA refuses to designate firefighters as a "potentially exposed or susceptible subpopulation" requiring special protection under TSCA. Yet, as noted above, a 2013 study by NIOSH found that firefighters were diagnosed with mesothelioma at twice the rate as the U.S. population due to asbestos exposure.

ADAO and other groups have commented on these deficiencies in the risk evaluation but we have no confidence that EPA will reconsider the path it is on.

Asbestos Significant New Use Rule (SNUR)

EPA has touted its recent Significant New Use Rule (SNUR)[41] for certain discontinued asbestos-containing products as a meaningful action to reduce asbestos risks. However, the SNUR is a limited step which falls far short of meaningfully protecting public health.

The SNUR is NOT a ban on asbestos and in fact leaves the door open to imports and use of the listed obsolete products. It only requires companies to notify EPA if they plan to reintroduce one of these products and imposes no direct restrictions on them.[42] A ban on all asbestos imports and uses would go far beyond the SNUR and provide assurance that asbestos exposure will be permanently eliminated.

As the email from career EPA experts emphasizes:[43]

> "opening the door to new uses of asbestos is not an economically-wise or health-protective idea. . . . and "[r]ather than allow for (even with restrictions) any new uses for asbestos, **EPA should seek to ban all new uses of asbestos because the extreme harm from this chemical substance outweighs any**

[40] Id.
[41] https://www.regulations.gov/document?D=EPA-HQ-OPPT-2018-0159-5897
[42] https://www.epa.gov/asbestos/list-uses-covered-under-april-2019-final-rule-restrictions-discontinued-uses-asbestos
[43] Email from Richard Mednick, Region 10 Office of Regional Counsel, and 16 other EPA employees to Robert Courtnage, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Commenting on Proposed Asbestos Significant New Use Rule, August 10, 2018 ("EPA SNUR Email")

> **benefit - and because there are adequate alternatives to asbestos." (**Emphasis added**).**

In addition to EPA career staff's opposition to the SNUR, there are nearly 20,000 public comments in opposition to the SNUR that have been submitted into the EPA docket.[44]

Under the SNUR, EPA can decide to take no action after a company has provided notice of its plans to reintroduce one of the listed products. If EPA takes no action, the manufacture and sale of the discontinued product could resume without restriction. There is no guarantee EPA will in fact restrict any of these products if they return to the marketplace. EPA has reviewed many other chemicals under the provisions of TSCA on which the SNUR is based and concluded that they are "unlikely to present an unreasonable risk of injury" even though EPA scientists have identified the potential for serious risks to human health. This may happen for asbestos.

EPA easily could have included these 19 obsolete products, such as Arc Chutes, in its ongoing TSCA asbestos risk evaluation, leading to a determination that they present an unreasonable risk of injury, as EPA in fact concluded in its 1989 rule. Based on this determination, the Agency would then have been obligated to restrict these products under TSCA section 6(a) to the extent necessary to eliminate their risks, which would likely have required it to permanently and unconditionally ban them from U.S. commerce. Indeed, the final SNUR further weakens the scope of section 6 evaluation and regulation by adding two additional products, asbestos cement and woven fabric, which EPA and USGS previously identified as being imported into the U.S. and were initially within the scope of the asbestos risk evaluation.

EPA apparently believes that it lacks authority under TSCA to evaluate and restrict products not currently in U.S. commerce, even though many are being manufactured in other countries and could be foreseeably imported into the US in the future. This unnecessary and unjustified limitation on EPA's regulatory powers effectively removes from section 6 demonstrably unsafe products that should be declared to present an unreasonable risk and permanently banned from U.S. commerce and leaves them only subject to the weak and uncertain protections of a SNUR.

The Asbestos Information Void Under EPA Reporting Rules

The EPA problem formulation identified a number of asbestos products that EPA believed were in use but, with limited exceptions, the Agency provided virtually no information about the quantities of asbestos contained in these products, the volumes in

[44] https://www.regulations.gov/docket?D=EPA-HQ-OPPT-2018-0159

which they are produced or imported, the sites where they are used and the number of exposed individuals. The problem formulation acknowledged these limitations, saying that “[i]t is important to note that the import volume of products containing asbestos is not known” and that “[c]onsumer exposures will be difficult to evaluate since the quantities of these products that still might be imported into the United States is not known.”[45]

TSCA requires a careful evaluation of chemical exposure in assessing risks: section 6(b)(4)(F) of the law directs EPA to consider “the likely duration, intensity, frequency, and number of exposures under the conditions of use of the chemical substance.” This understanding of potential exposure is essential in determining the nature and magnitude of the risk to an exposed population—and is particularly critical for asbestos, which can cause lethal effects to workers or consumers following a brief exposure at low doses.

Yet EPA not only acknowledged its lack of basic information on asbestos exposure in the problem formulation, but actually exempted asbestos from its Chemical Data Reporting (CDR) rule because it is a “naturally occurring substance.”[46] This loophole in the rule has resulted in a troubling and wholly avoidable lack of reliable information about who is importing asbestos and in what quantities, where and how asbestos is being used in the US, and who is being exposed and how that exposure is occurring. As a consequence, the public is not adequately informed about the risks that asbestos presents to health in the U.S., and EPA itself lacks the basic information required for a complete and informed risk evaluation that assures that unsafe asbestos uses are removed from commerce.

Because of this inaction, American consumers have been left in the dark about asbestos and its whereabouts, which makes it impossible to identify or mitigate the risk of exposure. The absence of this life-saving information is what motivated ADAO to petition the EPA in the fall of 2018 to require reporting by importers and users of asbestos and asbestos-containing products under TSCA. EPA denied this petition in December.[47] ADAO and other groups are currently challenging the petition denial in federal district court. Earlier this year, attorneys general for 14 states and the District of Columbia joined ADAO in petitioning for asbestos reporting. However, on April 30, 2019, EPA denied the state petition as well.[48]

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[45]https://www.epa.gov/sites/production/files/2018-06/documents/asbestos_problem_formulation_05-31-18.pdf

[46]https://www.asbestosdiseaseawareness.org/wp-content/uploads/2018/09/ADAO-Asbestos-CDR-petition-all.pdf

[47]https://www.federalregister.gov/documents/2019/02/12/2019-01533/asbestos-tsca-section-21-petition-reasons-for-agency-response

[48]https://oag.ca.gov/news/press-releases/attorney-general-becerra-files-petition-calling-epa-issue-new-rule-eliminating

Weak AHERA Enforcement: A Threat to Teachers and Students

As a mother and mesothelioma widow, I am deeply concerned with the report of the EPA Office of Inspector General (OIG) that confirms, “Asbestos exposure risk is higher in children because they are more active, breathe at higher rates and through the mouth, and spend more time closer to the floor where asbestos fibers can accumulate.”[49]

Schools represent an important source of exposure to legacy asbestos. The release of asbestos into school buildings as a result of poorly performed repairs, remodeling, and renovation of these buildings is a serious and ongoing threat to teachers, workers and children themselves. EPA is not only failing to address this threat in its risk evaluation but is abdicating its responsibility to enforce the Asbestos Hazard Emergency Response Act[50] (AHERA), which Congress passed in 1984 for the very purpose of preventing unsafe exposure to asbestos in schools.

AHERA is part of TSCA and is within the jurisdiction of the Office of Chemical Safety and Pollution Prevent (OCSPP). While the states have frontline obligations to implement AHERA, EPA performs a critical oversight role by inspecting schools and evaluating school district compliance. Thus, it is disturbing that the recent OIG report found that, even though the EPA was responsible for conducting AHERA compliance inspections for the majority of states, its inspections were far fewer than by the states. The report also cited evidence that many districts had poor management programs and were putting teachers and students at risk. OIG emphasized that the “[a]sbestos exposure risk is higher in children because they are more active, breathe at higher rates and through the mouth, and spend more time closer to the floor where asbestos fibers can accumulate.”[51] The email from career EPA asbestos experts emphasizes that “EPA no longer funds administration of the Asbestos Hazard Emergency Response Act (AHERA) requirements for asbestos in schools, so this exposure pathway should be evaluated [under TSCA].”[52]

HOW THE ARBAN LEGISLATION WOULD PROTECT THE HEALTH OF AMERICANS

[49]https://www.epa.gov/office-inspector-general/report-epa-needs-re-evaluate-its-compliance-monitoring-priorities
[50] https://www.epa.gov/asbestos/asbestos-laws-and-regulations#ahera
[51]https://www.epa.gov/sites/production/files/2018-09/documents/_epaoig_20180917-18-p-0270_glance.pdf
[52] “EPA Problem Formulation Email

In the face of EPA inaction, strong legislation expeditiously banning asbestos once and for all is essential. The Alan Reinstein Ban Asbestos Now Act of 2019 would achieve this goal.

ARBAN is endorsed by AFL-CIO, American Public Health Association (APHA); Center for Environmental Health; Collegium Ramazzini; Environmental Health Strategy Center; Environmental Information Association (EIA); Environmental Working Group (EWG); Global Ban Asbestos Network (GBAN); International Association of Heat and Frost Insulators and Allied Workers (HFIAW); International Association of Fire Fighters (IAFF); Less Cancer; Natural Resources Defense Council (NRDC); Safer Chemicals, Healthy Families (SCHF); Toxic-Free Future; United States Public Interest Research Groups (U.S. PIRG); and internationally, Associação Brasileira dos Expostos ao Amianto (ABREA).

There are nearly 150,000 signatures on a petition[53] in support of EPA banning asbestos without loopholes or exemptions. Here are several key compelling reasons why this important legislation should be expeditiously enacted:

- ***All mining, importation, use, and distribution in commerce of asbestos and products containing asbestos will be prohibited without exemptions or exclusions.***

  Although Congress gave EPA stronger authority under the 2016 TSCA amendments, its actions on asbestos have been weak and disappointing. The Agency has repeatedly missed opportunities to conduct health-protective risk evaluation, instead opting for the toothless SNUR provisions of TSCA over effective regulation under section 6. The evidence is now clear: Congress needs to act expeditiously so that all asbestos and asbestos-containing products are banned from commerce. EPA has demonstrated that it will not ban asbestos on its own.

- ***A complete and immediate asbestos ban will not harm the economy, cause job losses or disadvantage U.S. companies.***

  Three companies in the chlor-alkali industry account for nearly 100% of U.S. raw asbestos imports. However, an asbestos-free membrane process is in use at many other chlor-alkali plants in the U.S., Japan, and Europe, which can be cost-effectively adopted by the few producers who have retained the outdated asbestos diaphragm process.

[53] http://bit.ly/EPABanAsbestosPetition

Other asbestos-containing products entering the U.S., like sheet gaskets for use in chemical production (*e.g.*, titanium dioxide production), brake blocks used in oil drilling equipment, aftermarket automotive brakes/linings and other vehicle friction products, and other gaskets all have cost-effective asbestos-free alternatives—many of which are produced in the U.S. these products can be eliminated without additional costs or disruption to U.S. users.

- ***A complete ban is the only effective way to prevent more death and disease from asbestos*.**

  Experts agree that there is no safe level of exposure to asbestos. OSHA standards do not provide full protection to exposed workers and OSHA recognizes that its workplace limits do not eliminate the risk of cancer.[54] EPA decided that a sweeping ban on nearly all asbestos use was needed 30 years ago to eliminate unreasonable risks but a court blocked the EPA ban at the behest of industry. It is time for Congress to finally finish the job and ban this deadly substance

- ***The ban will prohibit asbestos-containing products in commerce.***

  Asbestos has been found in talc-based products, such as Johnson & Johnson Baby Powder, which are widely sold to consumers. Asbestos has also been detected in crayons, children's toys and makeup. There is no justification for allowing these products to be sold to American consumers.

- ***The ban applies to all types of asbestos, including the non-asbestiform varieties of winchite and richterite, which are referred to as “Libby Amphibole.”***

  During its investigations at the Libby mine, EPA obtained over 80,000 vermiculite concentrate shipping invoices from W.R. Grace for the period that the company owned the mine (1964–1990). An analysis of EPA’s summary of these invoices indicated that a total of approximately 6,109,000 tons of vermiculite concentrate were shipped to 245 sites across the country.[55]

  W.R. Grace processed an estimated 200,000 tons of vermiculite from the Libby mine each year until the mine finally ceased operations in 1990. Mining and processing of vermiculite containing this form of asbestos in Libby, Montana

[54] https://www.osha.gov/Publications/OSHA3507.pdf
[55] https://www.atsdr.cdc.gov/asbestos/sites/national_map/Summary_Report_102908.pdf

caused widespread death and disease, resulting in EPA declaring a public health emergency in this small town in 2008. For decades, vermiculite mined in Libby was used throughout the U.S. to produce Zonolite attic insulation, which is estimated to be in as many as 35 million U.S. homes, buildings, and offices.[56] ARBAN will assure that Libby amphibole is never again mined and processed in the U.S. and Zonolite insulation is never installed again in U.S. homes.[57]

- ***The bill will require industry to disclose all imports of raw asbestos and asbestos-containing products and identify how they are used.***

  EPA chemical reporting rules now exempt asbestos and the Agency has denied two petitions to use its TSCA authority to require asbestos reporting. The bill would fill this gap by mandating "Right to Know" reports that provide essential information to EPA and the public about how, where and in what amounts asbestos and asbestos-containing products are being imported and used, and who is being exposed. This information is critical to protect the public until the ban takes effect and to make sure that the ban can be effectively enforced. EPA would be required to make the reports available to the public and summarize all the data so the public has a full picture of asbestos exposure and risk.

- ***The bill will take a big step forward in understanding and reducing the risks of "legacy" asbestos installed in millions of homes, schools and businesses across the U.S.***

  EPA has refused to evaluate legacy asbestos in its risk evaluation. However, a wide range of asbestos-containing products—including attic and wall insulation, pipes and boilers, floor tiles, gaskets, roofing, shingles and siding and brake pads and linings—were distributed in commerce during the middle of the 20th century. Although sales started declining in the 1980s, these products were heavily used over several decades in constructing homes, schools, apartments, public buildings, offices, stores, and factories, remaining in place in millions of structures across the country. Much of this asbestos is in friable form and can be released into the air when disturbed. Other products can release asbestos if broken or torn apart during construction or repair activities or collection and removal of construction debris.

[56] https://www.usgs.gov/news/usgs-scientists-develop-new-tool-determine-if-vermiculite-insulation-contains-asbestos
[57] https://www.atsdr.cdc.gov/asbestos/sites/national_map/Summary_Report_102908.pdf

No study of legacy asbestos exposure has been conducted in the last 35 years despite the ongoing contribution of this exposure to asbestos-related disease and death. There is a compelling need to update our understanding of the prevalence of legacy asbestos and the magnitude of exposure and risk it poses to the American public. Based on this understanding, we then need to examine the adequacy of current management practices and how we can strengthen our laws, programs, and policies to better protect the millions of people at risk from the dangers of legacy asbestos.

Under the bill, the federal government will conduct a comprehensive study of the presence of asbestos in buildings, the number of people exposed and levels of exposure and the resulting threats to public health. The study will recommend ways to strengthen current laws, policies and requirements to increase public health protection. Whether or not EPA ultimately addresses legacy asbestos in its risk evaluation, the study will be invaluable in supporting additional public health protections.

We appreciate the Committee’s leadership in holding this hearing and welcome the support that many House members have voiced for this vital legislation. On behalf of ADAO and the thousands of American families that have lost loved ones to this lethal carcinogen, the workers, their families, and the public who are continually exposed, and the hundreds of thousands who have lost their lives due to this lethal carcinogen, we urge that H.R. 1603 be passed without delay to end the asbestos man-made disaster.

Thank you for your commitment to public health and to protecting Americans.

Sincerely,
Linda Reinstein
President and Cofounder
Asbestos Disease Awareness Organization