BY ELECTRONIC MAIL AND FEDERAL EXPRESS

September 25, 2018

Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
Mail code: 1101A
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: *Petition under TSCA Section 21 to Require Reporting on Asbestos Manufacture, Importation and Use under TSCA Section 8(a)*

Dear Acting Administrator Wheeler:

This petition under section 21 of the Toxic Substances Control Act (TSCA), 15 U.S.C. §2620, is submitted by the Asbestos Disease Awareness Organization (ADAO), American Public Health Association (APHA), Center for Environmental Health (CEH), Environmental Working Group (EWG), Environmental Health Strategy Center (EHSC), and Safer Chemicals Healthy Families (SCHF). Petitioners are nonprofit public health and environmental organizations committed to addressing the unreasonable risk of injury that asbestos continues to pose to the US population. We support a robust and comprehensive risk evaluation on asbestos under section 6(b) of amended TSCA, followed by rulemaking to ban asbestos under section 6(a) of the law.

As authorized by section 21(a) of TSCA, our petition seeks initiation of a rulemaking under section 8(a) of TSCA, 15 U.S.C. §2607, to amend the TSCA Chemical Data Reporting (CDR) rule, 40 C.F.R. Part 711. The CDR amendments we seek would accomplish three purposes:

(1) add asbestos to the CDR rule, thereby requiring reporting on importation and use of asbestos and asbestos-containing products in the US,

(2) lower the reporting threshold, eliminate exemptions for impurities and articles, and require reporting by processors in order to assure that EPA has the information on asbestos necessary to meet its TSCA responsibilities, and

(3) determine that reports submitted on asbestos are not subject to protection as confidential business information (CBI) because disclosure is necessary to protect against an unreasonable risk of injury to health under section 14(d)(3) of TSCA.

BASIS FOR GRANTING THE PETITION

Asbestos is among the most dangerous chemicals ever produced, with expert bodies agreeing that there is no safe level of exposure. Recent research indicates that nearly 40,000 asbestos-

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related deaths occur in the US each year.[1] In 1989, EPA determined that nearly all uses of asbestos presented an "unreasonable risk of injury" under section 6 of TSCA.[2] The basis for this conclusion is even more compelling today.

In December of 2016, EPA selected asbestos as one of the initial 10 chemicals to undergo risk evaluations under amended TSCA.[3] Then, in June of this year, EPA issued a Problem Formulation document which outlines how EPA plans to conduct that evaluation.[4]

The Problem Formulation attempts to identify the asbestos uses that EPA will address in its risk evaluation but its description of these uses is limited, vague and incomplete and the Agency acknowledges that "the import volume of products containing asbestos is not known." Without adequate information on ongoing importation and use of asbestos and asbestos-containing products, the risk evaluation will fail to provide a meaningful picture of the threat that asbestos poses to public health and citizens will be in the dark about exposure to asbestos in their communities and places of employment.

The CDR rule is EPA's primary tool under TSCA for obtaining basic information on the manufacture, importation and use of chemicals and the nature and extent of exposure to these substances. However, as EPA advised a major asbestos importer and user (Occidental Chemical) on July 28, 2017, asbestos is exempt from CDR reporting because it is a "naturally occurring substance."[5] 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 US, 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.

This petition asks EPA to close the CDR reporting loophole for asbestos by expeditiously amending the CDR rule so asbestos is subject to reporting and to frame these reporting requirements broadly to assure that they capture all imports and domestic uses of asbestos and asbestos-containing products. Petitioners further request that the amended CDR rule require immediate submission of reports on asbestos for the 2016 reporting cycle. This will maximize EPA's ability to use the information reported to conduct the ongoing asbestos risk evaluation and the subsequent risk management rulemaking under TSCA section 6(a). Finally, petitioners request that EPA determine under TSCA section 14(d)(3) that the CDR reports on asbestos will

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[1] S. Furuya, O. Chimed-Ochir, K. Takahashi, A. David, and J. Takala, "Global Asbestos Disaster," International Journal of Environmental Research and Public Health, vol. 15, no. 5, p. 15, 2018.

[2] Asbestos: Manufacture, Importation, Processing, and Distribution in Commerce Prohibitions (54 Federal Register 29460, July 12, 1989) (FRL–3476–2),

[3] 81 Federal Register 91927 (December 19, 2016).

[4] 83 Federal Register 26998 (June 11, 2018).

[5] A copy of this letter from Jeffrey Morris, Director of OPPT, to Rebecca Rentz, Esq. of Occidental Petroleum is attached to this petition.

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not be withheld as CBI because their disclosure is necessary to protect against an unreasonable risk of injury. This will ensure that the public is fully informed about the presence of asbestos in their communities and the dangers of unsafe asbestos exposure.

EPA's failure to require TSCA reporting on asbestos to inform its ongoing risk evaluation is a marked departure from previous EPA initiatives to address the risks of asbestos. To support its comprehensive rulemaking to ban most uses of asbestos in the 1989, EPA used its TSCA section 8(a) reporting authority in 1982 to collect information on industrial and commercial uses of asbestos.[6] Congress then enacted, and President Reagan signed, the Asbestos Information Act of 1988 imposing a one-time requirement for current and former manufacturers and processors to report asbestos-containing products to EPA.[7] EPA collected extensive information under the law, which it released to the public on February 13, 1990.[8] By not utilizing these mandatory information collection tools, EPA has been severely handicapped in its ability to identify and assess all pathways of asbestos exposure that may be endangering public health. As a result, its risk evaluation will be weak, incomplete and unprotective.

By granting this petition, EPA will obtain, and be able to release to the public, the same level of information on asbestos use on which it based previous regulatory efforts to protect against asbestos risks and will have an informed basis for its ongoing asbestos risk evaluation.

DESCRIPTION OF PETITIONERS

Founded in 2004, Asbestos Disease Awareness Organization (ADAO), an independent 504(c)(3) non-profit organization, has spent over a decade working to prevent asbestos-caused diseases. ADAO works nationally and internationally with the leading scientists, medical doctors, industrial hygiene specialists, legislators and community advocates to protect public health and our environment. As a leader in education, ADAO hosts an annual international academic conference, now in its 14th year, to promote scientific advances in the treatment and cure of asbestos disease and advocate for the elimination of all asbestos exposures throughout the world.

The American Public Health Association (APHA) champions the health of all people and all communities, strengthens the profession of public health, shares the latest research and information, promotes best practices, and advocates for public health policies grounded in research. APHA represents over 20,000 individual members and is the only organization that combines a nearly 150-year perspective and a broad-based member community with an interest in improving the public's health. APHA has long advocated for policies to protect the public from exposure to harmful chemicals and other hazardous substances, including asbestos.

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[6] 47 Federal Register 33207 (July 30, 1982) (40 CFR 763.60).

[7] Pub. L. 100-577. To implement the law, EPA published a notice on April 18, 1989 (54 FR 15622) establishing a process and schedule for reporting information required by the Act. In a subsequent notice, the Agency informed submitters that it would not accept CBI claims. 54 Federal Register 38736 (Sept, 20. 1989).

[8] 55 Federal Register 5144.

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The Center for Environmental Health (CEH) is an American non-profit organization organization working to protect children and families from harmful chemicals in air, food, water and in everyday products. Its vision and mission are a world where everyone lives, works, learns and plays in a healthy environment; we protect people from toxic chemicals by working with communities, businesses, and the government to demand and support business practices that are safe for human health and the environment. CEH is headquartered in Oakland, California in the United States, with an East Coast office in New York City.

For 16 years, the Environmental Health Strategy Center (EHSC) has worked to ensure that all families are healthy and thriving in a fair and healthy economy. We work for safe food and water, toxic-free products, and good green jobs. We run effective issue campaigns and advocate science-based solutions that advance a bold vision with pragmatism. A coalition builder, the Center develops grassroots leaders and champions for environmental public health and sustainable economic development. We work in Maine and nationally.

The Environmental Working Group (EWG) is a non-profit, non-partisan organization that works to empower people to live healthier lives in a healthier environment. EWG does this by creating and sharing research reports and consumer guides that help people educate themselves about the products they use. EWG also engages with policy-makers at the state and federal levels to advocate for the strengthening and enforcement of laws related to environmental health. EWG has been deeply involved in efforts to reform TSCA over the last decade and has been actively involved in implementation of the Frank Lautenberg Chemical Safety for the Twenty First Century, including the rules and actions related to asbestos.

Safer Chemicals, Healthy Families (SCHF) fights for strong chemical policy, works with retailers to phase out hazardous chemicals and transform the marketplace, and educates the public about ways to protect our families from toxic chemicals. SCHF leads a coalition of 450 organizations and businesses united by our common concern about toxic chemicals in our homes, places of work, and products we use every day.

DANGERS OF ASBESTOS EXPOSURE

The International Agency for Research on Cancer (IARC),[9] the National Toxicology Program (NTP),[10] the Occupational Safety and Health Administration (OSHA),[11] the National Institute for

[9] "IARC Monographs—Arsenic, Metals, Fibres, and Dusts, Volume 100 C. A Reviews of Human Carcinogens," in "IARC Monographs on the Evaluation of Carcinogenic Risks to Humans. International Agency for Research on Cancer, World Health Organization.," International Agency for Research on Cancer2012, Available: http://monographs.iarc.fr/ENG/Monographs/vol100C/mono100C.pdf.
[10] National Toxicology Program (NTP). Asbestos. Report on Carcinogens, Fourteenth Edition. US DHHS, 2016.
[11] Occupational Safety and Health Administration (OSHA). Occupational exposure to asbestos. Final rule. 29 CFR Parts 1910, et al. Federal Register, August 10, 1994.

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Occupational Safety and Health (NIOSH),[12] the World Health Organization (WHO)[13] and a number of other regulatory and public health bodies recognized asbestos as a human carcinogen decades ago. In its most recent monograph on asbestos published in 2012, 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.[14] There is considerable evidence in the scientific literature of causal associations with gastro-intestinal cancers and kidney cancer. Non-malignant diseases are also caused by asbestos. These include asbestosis and asbestos-related pleural thickening.[15] 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.

Despite the voluntary elimination of many asbestos products, the death toll from asbestos exposure remains alarmingly high and is increasing. At the 14th Annual Asbestos Disease Awareness Conference in Washington D.C. this year, Dr. Jukka Takala DSc, MSc, BSC, President of the International Commission of Occupational Health (ICOH), reported a shocking increase in previous estimates of asbestos-related deaths, underscoring the escalating and critical need for action by EPA. According to Dr. Takala's recently published research, asbestos-related diseases cause 39,275 deaths in the United States annually - more than double the previous estimates of 15,000 per year.[16]

A 2013 study by NIOSH of firefighters in three cities added evidence to the link between asbestos and malignant mesothelioma, finding that "[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."[17]

There is overwhelming consensus in the scientific community that there is no safe level of exposure to asbestos. Thus, as noted by the World Health Organization:

> 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.[18]

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[12] National Institute for Occupational Safety and Health (NIOSH). Asbestos fibers and other elongate mineral particles: state of the science and roadmap for research. Current Intelligence Bulletin 62. US DHHS, 2011.
[13] WHO. International Agency for Research on Cancer (IARC) Monograph. Asbestos (chrysotile, amosite, crocidolite, tremolite, actinolite, and anthophyllite). Vol 100C, 2012.
[14] "Elimination of asbestos-related diseases," World Health Organization Geneva2014, Available: http://www.who.int/ipcs/assessment/public_health/Elimination_asbestosrelated_diseases_EN.pdf?ua=1.
[15] Dr. L. Christine Oliver, The Threat to Health Posed By Asbestos in the 21st Century In the United States, March 29, 2018, EPA-HQ-OPPT-2016-0736-0124
[16] See note 1.
[17] Daniels RD, Kubale TL, Yiin JH, *et al* Mortality and cancer incidence in a pooled cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950–2009) *Occup Environ Med* 2014;**71**:388-397.
[18] "Chrysotile Asbestos," ed: World Health Organization, 2015.

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Because of the absence of any safe level of exposure to asbestos, a ban on all asbestos use is the only effective way to protect the public. Many nations around the world have taken this step, including all of the members of the European Union. However, the U.S. is a laggard among industrialized nations in lacking virtually any legal prohibition on the mining, importation, use and disposal of asbestos.

ASSESSMENT AND REGULATION OF ASBESTOS UNDER TSCA

In the late 1980s, 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 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.[19] However, despite the comprehensive risk analysis supporting the rule, the Fifth Circuit Court of Appeals overturned the ban in 1991 for reasons unrelated to the dangers of asbestos.[20] The court decision later became the poster child for the inability of TSCA to support meaningful action on widespread and unsafe chemicals. As a result, Congress enacted the 2016 Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA), strengthening the law's provisions for chemical risk evaluation and regulation.

In December 2016, shortly after the passage of the LCSA, EPA selected ten chemicals for initial risk evaluations. Asbestos was among these 10 substances.[21] Designation of asbestos as an early priority under the amended law was essential because (1) its lethal danger to public health is well-known and abundantly documented, (2) use, mining and importation of asbestos is legal under U.S. law with limited exceptions, and (3) the present and future risk from exposure to asbestos presents grave public health concerns.

LACK OF SUFFICIENT INFORMATION ON IMPORTATION AND USE OF ASBESTOS TO SUPPORT AN INFORMED TSCA RISK EVALUATION

EPA's June 2017 scoping document[22] and June 2018 problem formulation[23] define the products and exposure pathways that EPA intends to address in its asbestos risk evaluation. These

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[19] See note 2.

[20] *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201 (5th Cir. 1991).

[21] See note 3.

[22] EPA, Scope of the Risk Evaluation for Asbestos, June 2017 https://www.regulations.gov/document?D=EPA-HQ-OPPT-2016-0736-0086

[23] EPA. Problem Formulation of the Risk Evaluation for Asbestos, May 2018, https://www.regulations.gov/document?D=EPA-HQ-OPPT-2016-0736-0131

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documents limit the evaluation to uses of asbestos products currently in commerce.[24] According to the problem formulation,[25] the Agency has identified the following such products:

Table 2-3. Categories of Conditions of Use Included in the Scope of the Risk Evaluation

Activity	Product Category	Example
Known, Intended, or Reasonably Foreseen Use	Asbestos Diaphragms	Chlor-alkali Industry
	Sheet Gaskets	Chemical Manufacturing
	Oilfield Brake Blocks	Oil Industry
	Aftermarket Automotive Brakes/Linings	Passenger Vehicles
	Other Vehicle Friction Products	Non-passenger Vehicles
	Asbestos Cement Products	Cement pipe
	Other Gaskets and Packing	Equipment Seals
	Woven Products	Imported Textiles

However, with limited exceptions, the problem formulation provides virtually no information about the quantities of asbestos contained in these products, the volumes in which they are produced or imported, the sites where they are used and the number of exposed individuals.

For example, the problem formulation indicates that EPA identified one company that imports asbestos-containing brake blocks for oil field use, but fails to quantify the amount of these imports or how and where they are used and acknowledges that "[i] is unclear how widespread the continued use of asbestos brake blocks is for use in oilfield equipment."[26]

Similarly, the problem formulation identifies a chemical manufacturer, Chemours, which uses imported sheet gaskets containing 80 percent asbestos but does not address how many other manufacturers use these gaskets, the aggregate amount of asbestos they contain, and the conditions of use that may result in release of and exposure to asbestos fibers.[27]

The problem formulation also cites USGS experts who, based on import records, believe that "asbestos-containing products that continue to be imported include . . . asbestos brake linings (automotive brakes/linings, other vehicle friction products), knitted fabrics (woven products), asbestos rubber sheets (i.e., sheet gaskets) and asbestos cement products." However, no information is provided on who is importing these products, what quantities are imported, where

[24] Thus, EPA will not address the risks of ongoing use and disposal of legacy products as well as the future reintroduction of these products into commerce. It has also excluded releases of asbestos into the environment. Petitioners strongly oppose these exclusions, which have the effect of placing important pathways of exposure and risk beyond the purview of the evaluation.
[25] Problem Formulation, at 22.
[26] Problem Formulation, at 25.
[27] Id.

they are distributed and how they are used. As EPA acknowledges, "[i]t is important to note that the import volume of products containing asbestos is not known." [28]

EPA recognizes that consumer exposure could occur from "changing asbestos-containing brakes or brake linings or cutting or using asbestos-containing woven products, and handling of asbestos waste that may result from these activities." However, it then acknowledges 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."[29]

The problem formulation also determines that certain asbestos uses that EPA identified in its 2017 scoping document are not ongoing and will be excluded from the risk evaluation. But the basis for these exclusions is at best anecdotal. For example, EPA states that it "had originally identified an asbestos-containing adhesive for use as a mirror adhesive but later determined after contacting the supplier that it is no longer sold."[30] The comment of a single supplier does not mean that there are no other suppliers manufacturing or selling the adhesive. In the absence of reliable, industry-wide information, EPA may thus be erroneously excluding ongoing uses it previously identified or – even worse – failing to identify some ongoing asbestos uses altogether.[31]

In March 2018, United States Public Interest Research Group (U.S. PIRG), a group well-known as an advocate for the public interest, released a report on new studies showing asbestos contamination in Claire's makeup products sold nationally.[32] U.S. PIRG decided to investigate independently after media reports in 2017 claimed that some of children's make-up contain asbestos. Using STAT Analysis Corporation, an independent laboratory that is accredited for asbestos testing, PIRG tested over a dozen makeup products from a variety of stores. They found three products containing asbestos (tremolite), all of which are sold by Claire's.

The discovery of asbestos in Claire's makeup products – and previous detection of asbestos in certain crayons[33] -- raises the possibility that thousands of asbestos-containing products may be imported in the U.S. for sale to consumers. However, no information about these products is provided in the problem formulation – presumably because EPA lacks reliable data on their importation and use.

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[28] Id at 22.

[29] Id at 39.

[30] Id at 19.

[31] For example, a search of import data-bases for shipments arriving in the Seattle and Tacoma ports over the last few years identified imports of asbestos-containing wallboard and floor tiles. The problem formulation does not identify these products as in use in the US although it asserts, without explanation or backup, that some asbestos products listed in import data-bases "are likely misreported." Id. at 26.

[32] D. Gowda and K. Cook-Schultz, "Asbestos Found in Claire's Kids Makeup," U.S. PIRG2018, Available: https://uspirg.org/news/usf/asbestos-found-claire%E2%80%99s-kids-makeup,

[33] KMBC News, *Playskool brand crayons sold at Dollar Tree, Amazon found to contain traces of asbestos,* August 7, 2018, *https://www.kmbc.com/article/playskool-brand-crayons-sold-at-dollar-tree-amazon-found-to-contain-traces-of-asbestos/22667282*

In sum, there are serious questions about whether EPA has identified the full universe of current asbestos-containing products – and whether it has sufficient information about those products it is aware of to inform the public of the extent of asbestos exposure and conduct a meaningful evaluation of potential risks.

GOALS AND SCOPE OF CDR REPORTING

EPA has broad authority under TSCA section 8(a)(1) to require manufacturers and processors of chemical substances to submit such reports as the "Administrator may reasonably require." Promulgated in 2011, the CDR rule implements these reporting provisions The rule was intended to support EPA's risk assessment and reduction efforts by providing basic information about the manufacturing, use and exposure profiles of chemicals in commerce. As the Agency explained in 2011, the new reporting requirements --

> will enhance the capabilities of the Agency to ensure risk management actions are taken on chemical substances which may pose the greatest concern. More in-depth reporting of the processing and use data, more careful consideration of the need for confidentiality claims, and adjustments to the specific data elements are important aspects of this action. By enhancing the data supplied to the Agency, EPA expects to more effectively and expeditiously identify and address potential risks posed by chemical substances and provide improved access and information to the public.

76 Federal Register 50818, 30819 (Aug. 16, 2011). Under the rule, reporting is required for all chemicals manufactured or imported at a site in amounts of 25,000 pounds or more in a given reporting year. For chemicals already regulated under certain TSCA provisions, the reporting threshold is set at 2,500 pounds per reporting year. Reports must be filed using what the Agency calls a "Form U." Manufacturers and importers subject to the CDR must submit these forms to the Agency every four years. The latest reporting cycle was completed in the fall of 2016; the application of reporting requirements was based on activities conducted in calendar years 2012-2015, and 2015 was the principal reporting year. The next reporting cycle will end in the fall of 2020.

Under the rule, a Form U must be filed for each manufacture or import site and include import/manufacture volume for each of the last four years, the number of workers exposed and basic information about site operations. It must also include information about industrial, commercial and consumer uses of the substance at other sites and the potential for exposure associated with these downstream activities.

In expanding the scope of reporting to capture these data elements, EPA emphasized that this "exposure information is an essential part of developing risk evaluations and, based on its experience in using this information, the Agency believes that collecting this exposure information is critical to its mission of characterizing exposure, identifying potential risks, and noting uncertainties for [reportable] chemical substances." 76 Federal Register 50823.

EXCLUSION OF ASBESTOS FROM CDR REPORTING

In May of 2017, ADAO and other groups notified EPA that Occidental Chemical Corporation, one of 3 US companies who use "asbestos diaphragm cells" in the chlor-alkali process for manufacturing chlorine and other products such as caustic soda, had failed to report its asbestos imports (totaling several hundred tons) for the 2016 CDR update.[34] Instead of seeking the company's compliance with the CDR, EPA advised Occidental in a letter dated July 28, 2017 that asbestos imports were not subject to reporting because, under 40 C.F.R, §711.6(a)(3), reporting is not required for "naturally occurring chemical substances."[35]

EPA's interpretation of the CDR rule means that no manufacturers or importers of asbestos or asbestos-containing products were required to report on their activities. Accordingly, the rule has played no role in informing EPA about asbestos uses that could be addressed in the Agency's TSCA risk evaluation. 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 U.S., and who is being exposed and how that exposure is occurring.[36]

CLOSING THE CDR LOOPHOLE: HOW THE RULE SHOULD BE AMENDED

This petition asks that EPA eliminate the asbestos loophole in the CDR rule so that asbestos is subject to CDR reporting. We request that EPA amend 40 C.F.R. §711.6(a)(3) so that the exemption for naturally occurring chemical substances is inapplicable to asbestos. This can be accomplished by rewording the first sentence of this exemption so it covers "[a]ny naturally occurring chemical substance, as described in 40 CFR 710.4(b), *except for asbestos*."[37]

Because EPA's asbestos risk evaluation is ongoing, the rule revision adding asbestos to the CDR rule should trigger immediate reporting on asbestos for the 2012-2016 reporting cycle. For this

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[34] As EPA noted in the problem formulation, the other two chlor-alkali producers using asbestos diaphragm cells, Axiall Corp. and Olin Corp., did report their asbestos imports under the CDR rule. Problem formulation at 21. According to the problem formulation, these were the only companies reporting on asbestos under the rule. While USGS has estimated how much raw asbestos is being imported for use in chlor-alkali production using customs records, full CDR reporting would assure more reliable import volume data and enable a precise breakdown of imports by producer. It would also clarify whether raw asbestos is also being imported into the U.S, for other purposes.

[35] This letter is attached.

[36] While this petition is focused on asbestos, the petitioners are generally troubled by the exemption of naturally occurring chemical substances from CDR reporting. This exemption could apply to lead, cadmium, mercury and arsenic, all of which are known to be highly toxic, and are candidates for risk evaluation and regulation under TSCA. CDR reporting on these substances would provide valuable information that could inform EPA's efforts under TSCA and help the public understand sources of exposure and risk. We recommend that EPA delete the exemption from the CDR rule in its next revision of CDR provisions.

[37] Although we are asking EPA amend the CDR rule, a number of the petitioners previously argued that, as a chemical regulated under section 6, asbestos was subject to reporting notwithstanding its possible classification as a naturally occurring substance. We are not waiving this position and reserve the right to challenge EPA's interpretation of CDR requirements as applied to asbestos.

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purpose, 40 C.F.R. § 711.20 should be amended to include the following sentence: "For asbestos, the 2016 CDR submission period is from January 1, 2019 to April 31, 2019."[38] This will make it possible for EPA to review and analyze the reports submitted while the risk evaluation is underway and to revise the draft evaluation on the basis of new information reported on asbestos importation and use. To assure that it has time to consider the CDR reports, EPA should extend the completion date for the asbestos risk evaluation by six months under section 6(b)(4)(G)(ii).

The rule revisions should also modify the application of reporting requirements to asbestos so that EPA obtains the comprehensive information on asbestos importation and use it needs for its ongoing risk evaluation. We request the following modifications:

1. As a substance regulated under TSCA section 6, asbestos would be subject to a reporting threshold of 2,500 pounds (1,134 kg) in any year in the reporting period under 40 C.F.R. § 711.8(b). This threshold is too high in view of the absence of any safe level of exposure to asbestos and the need for comprehensive use and exposure information for the ongoing risk evaluation. We request that the reporting threshold for asbestos be lowered to 10 pounds for any year in the reporting period.

2. 40 C.F.R. § 711.10(b) exempts from reporting persons who import a reportable substance as part of an article. Since a large number of the asbestos-containing products historically in use are articles, this exemption would prevent EPA from obtaining a considerable amount of useful information about asbestos use and exposure in the U.S. EPA should revise the article exemption in § 711.10 so it is inapplicable to asbestos. Reporting should be required for all imported articles in which asbestos is present at detectable levels.

3. 40 C.F.R. § 711.10(c) exempts from CDR reporting activities described in 40 C.F.R. §720.30(g) and (h). Among these activities are manufacture or import of a substance as an impurity ((h)(1)) or as a byproduct which is not used for commercial purposes ((h)(2)).These exemptions should be inapplicable to asbestos since the low levels of asbestos that have been found in makeup and crayons may be unintended contaminants that comprise byproducts and impurities. EPA needs information about asbestos-contaminated consumer products to conduct a complete and protective risk evaluation.

4. Currently, processors are not subject to CDR requirements. However, we request that EPA require CDR reporting by processors of asbestos-containing products. In many cases, importers will be unable to provide the detailed information about use and exposure necessary for full understanding of the risks posed by these products. Therefore, the additional information available to processors will be essential. EPA should thus add a paragraph to 40 C.F.R. § 711.8 designating processors of asbestos and asbestos-containing articles as persons required to submit CDR reports.

[38] This reporting schedule assumes that EPA promulgates revisions to the CDR rule by December 31, 2018. While this is an ambitious schedule, it should be workable given the surgical nature of the rule changes.

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TRANSPARENCY AND PUBLIC DISCLOSURE OF REPORTED INFORMATION

The information to be reported under the requested amendments to the CDR rule will be invaluable not only to EPA risk and exposure assessors but to workers and members of the general public. Knowledge of which entities are importing and using asbestos, where and how these activities occur and the quantities of asbestos involved is critical to identifying exposed populations and pathways of exposure and taking steps to reduce risks. In amending the CDR rule, EPA should therefore commit to making all reports submitted on asbestos publicly available notwithstanding any claims that these reports contain CBI.

TSCA section 14 provides two bases for overriding CBI claims in the interest of transparency and public disclosure. First, section 14(d)(3) provides that CBI protections will not apply if the Agency "determines that disclosure is necessary to protect health or the environment against an unreasonable risk of injury." Given the significant risk of harm that asbestos presents at any level of exposure, knowledge of how, where and in what quantities asbestos and asbestos-containing products are being imported and used is clearly necessary to protect against unreasonable risks and EPA would have an ample basis to make a determination to that effect. Second, section 14(d)(7) authorizes disclosure of CBI where EPA "determines that disclosure is relevant in a proceeding under this Act." The ongoing asbestos risk evaluation is such a "proceeding" and information on asbestos importation and use is clearly "relevant" because it has a direct bearing on EPA's determinations of exposure and risk and the ability of the public to comment on these elements of the risk evaluation.

EPA's CDR revisions should invoke both of these provisions and include a mechanism for promptly disclosing all reports on asbestos and asbestos-containing products.

CONCLUSION

For the above reasons, EPA should grant this petition and promptly initiate rulemaking under section 8(a) of TSCA to add asbestos to the CDR rule. As modified, the CDR rule should immediately trigger reporting on asbestos for the 2012-2016 reporting cycle, lower the reporting threshold to 10 pounds, and broaden the scope of reporting to include imported articles, asbestos-contaminated products and processors. EPA's CDR revisions should include a mechanism for promptly disclosing all reports on asbestos to the public.

We stand ready to work with you and your staff as you review the petition and determine whether to take the steps that the petition requests.

Please contact ADAO counsel, Bob Sussman, with any questions about this petition. He can be reached at:

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

Rebecca J. Rentz, Esquire
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Dear Ms. Rentz:

This is in response to your request for clarification whether EPA's Chemical Data Reporting (CDR) rule required Occidental Chemical Corporation ("Occidental") to report imports of asbestos that occurred during the reporting period for the 2016 CDR. For the reasons described below, based on the information available to EPA, EPA believes that these imports were not required to be reported under CDR.

Asbestos is a chemical substance that is the subject of a rule promulgated under TSCA section 6.[1] Section 6 regulatory status can affect, in some respects, how CDR requirements apply to a chemical substance. For example, the reporting threshold for a section 6-regulated chemical substance is 2,500 lbs. rather than 25,000 lbs.[2] The pertinent question here, however, is whether the naturally occurring chemical substance (NOCS) exemption applied to the asbestos that Occidental imported. If the NOCS exemption applies, then the reporting threshold is irrelevant. This is reflected in the *2016 Instructions for TSCA Chemical Data Reporting ("2016 Instructions")*, page 2-2.[3]

The availability of the NOCS exemption is not affected by asbestos' regulatory status. This is clear from 40 CFR 711.6, which lists the types of CDR reporting exemptions that *are* eliminated once a chemical becomes subject to regulation under TSCA section 6. The NOCS exemption is omitted from that list. This is also reflected in the *2016 Instructions* (affirmatively noting, on page 2-12, that the NOCS exemption is not among the exemptions that are eliminated when a chemical substance has a special regulatory status).

The NOCS exemption is based on the definition of a "naturally occurring chemical substance" at 40 CFR 710.4(b). To qualify, a chemical substance must be unprocessed, processed only as described in 40 CFR 710.4(b)(1)(ii), or extracted from air. The CDR regulations make clear that these limitations are

[1] 40 CFR Part 763.
[2] 40 CFR 711.8(b).
[3] The *2016 Instructions* are publicly available at https://www.epa.gov/sites/production/files/2016-05/documents/instructions_for_reporting_2016_tsca_cdr_13may2016.pdf

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intended to distinguish between a chemical substance that was manufactured "as described in 40 CFR 710.4(b)" and a chemical substance that was manufactured by other means.[4]

The pertinent manufacturing here is the import of the asbestos (TSCA itself defines import as manufacturing).[5] Occidental has represented that, prior to the point of import, the asbestos had only been processed by mechanical and gravitational means, which are within the scope of 40 CFR 710.4(b)(1)(ii).[6] Assuming this is correct, the asbestos was manufactured as described in 40 CFR 710.4(b). Under these circumstances, the NOCS exemption applied and the import was exempt from CDR reporting. This would be a scenario as described in the *2016 Instructions* at 2-12 ("a naturally occurring chemical substance remains naturally occurring when it is imported").

EPA understands that Occidental produced certain articles known as "asbestos diaphragms" using the imported asbestos. Post-import activities are irrelevant to whether the imports themselves were entitled to the NOCS exemption. The NOCS exemption for the imports is not contingent on Occidental thereafter limiting its processing of the imported chemicals to the activities described in 40 CFR 710.4(b). The CDR regulations make clear that the relevant issue for determining whether the asbestos import qualified for the exemption is whether the substance was within the scope of the NOCS exemption *when imported*.[7] Post-import activities associated with the imported asbestos would need to be separately evaluated for reportability under CDR.

Sincerely,

Jeffery T. Morris, Ph.D.
Director
Office of Pollution Prevention and Toxics

cc:
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[4] 40 CFR 711.6.
[5] TSCA § 3(9)
[6] *Presentation to EPA: Naturally Occurring Chemical Substances Exemption CDR* at, July 11, 2017, p. 6.
[7] At 40 CFR 711.6, the CDR regulation draws a distinction based on how the chemical substance was manufactured (including imported): either "as described in 40 CFR 710.4(b)" or "by means other than those described in 40 CFR 710.4(b))." Similarly, the *2016 Instructions* clarify that the pertinent processing is that which describes "the means by which [minerals and certain agricultural products] are produced or isolated." The asbestos at issue here was manufactured when it was imported. The means by which the asbestos was manufactured are described by the processing leading up to the point of import.