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Asbestos Disease Awareness Organization
Voice of the Victims

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Submitted Electronically and via U.S. Mail

August 10, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington DC, 20460

RE: DOCKET ID: **EPA-HQ-OPPT-2018-0159-0001**

ASBESTOS DISEASE AWARENESS ORGANIZATION's DOCKET SUBMISSION IN RESPONSE TO EPA'S PROPOSED **SIGNIFICANT NEW USE RULE (SNUR)** FOR ASBESTOS AS DEFINED UNDER THE ASBESTOS HAZARD EMERGENCY RESPONSE ACT.

Dear Acting Administrator Wheeler:

The Asbestos Disease Awareness Organization (ADAO) hereby submits the following facts and materials in response to the United States Environmental Protection Agency's (EPA) proposed significant new use rule (SNUR) for asbestos as defined under the Asbestos Hazard Emergency Response Act (AHERA).

Founded in 2004, 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.

Asbestos is a known carcinogen. Literature has made it abundantly clear that there is no safe or controlled use of asbestos. 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 asbestos-related deaths, underscoring the escalating and critical need for an asbestos ban. 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.

EPA is proposing a Significant New Use Rule (SNUR) for certain uses of asbestos (and asbestos-containing products) that would require manufacturers and importers to notify the EPA of the intended new use and wait for EPA to complete its review before starting or resuming manufacturing, importing or processing of asbestos. The EPA would then need to evaluate the risk of the intended use of asbestos, and determine whether the new use poses an unreasonable risk, warranting action to prohibit or limit the use.

Asbestos Disease Awareness Organization is a registered 501(c) (3) nonprofit organization
"United for Asbestos Disease Awareness, Education, Advocacy, and Community Support"
1525 Aviation Boulevard, Suite 318 · Redondo Beach · California · 90278 · (310) 251-7477
www.AsbestosDiseaseAwareness.org

This proposed SNUR is in fact the opposite of a ban on asbestos. A SNUR simply requires notice to EPA before new uses are introduced. The SNUR itself does not make any determination that the new use presents an unreasonable risk. Upon receiving a notice, EPA may ban or restrict the use but is not required to do so. Thus, the SNUR leaves the door open to explicitly allow discontinued uses to re-enter the marketplace, despite the overwhelming evidence that they are unsafe and dangerous to public health.

The proposed rule itself states that "EPA believes significant new uses of asbestos identified in Table 2 could increase the volume of manufacturing (including importing) and processing of asbestos, as well as the duration and magnitude of human and environmental exposure to the substance, reverse and the declining trend of national import volumes of the substance, and reintroduce exposure scenarios that have become obsolete over the past several decades" (FR 26928, IV Significant New Use Determination). EPA further recognizes "[t]here is a strong causal association between asbestos exposure and lung cancer and mesothelioma" and "other cancers, as well as non-cancer effects, such as respiratory and immune effects, have been associated with asbestos exposure." FR 26925. According to the Agency, "the greatest exposure to asbestos occurs when the substance is in a friable state" and "testing has shown that non-friable asbestos can become friable during use . . . .Similarly, non-friable asbestos-containing building materials can release fibers if disturbed during building repair or demolition."

Yet the EPA's response is not to ban all uses of asbestos, but to create an avenue for companies to present new uses of asbestos for EPA approval. Why EPA would want to provide a path to approval for any use of asbestos is impossible to fathom. By EPA's own admission, new uses will increase imports, which will then increase exposures, which will lead to an increase in asbestos-related diseases in the U.S. population.

The asbestos uses identified in the proposed SNUR were banned in EPA's comprehensive 1989 asbestos rule under TSCA. The rule was supported by a comprehensive exposure and risk assessment for each banned use. The Fifth Circuit Court of Appeals overturned the ban of most of the affected products in 1991 for reasons unrelated to the dangers of asbestos. The court decision became a poster child for the law's failings and led Congress to strengthen TSCA's provisions for existing chemical management.in the 2016 Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA).

In December 2016, EPA designated asbestos as one of the first 10 chemicals to undergo risk evaluations under the new law. Along with many others, ADAO hoped that the evaluation would pave the way for reinstating the comprehensive ban adopted in 1989. However, EPA has done everything possible to remove use and exposure pathways from the scope of the evaluation, making it much less effective in curbing the dangers of asbestos than the 1989 rule. Not only does the evaluation fail to address the significant risks of ongoing use and disposal of discontinued asbestos products that are pervasive in the built environment but it does not address the additional risks that would occur if these products were reintroduced into commerce. In fact, the evaluation does not even address the significant risks of resuming mining of asbestos in the US, which is now permitted under US law. These omissions mean that EPA will not be able to use the evaluation to support a meaningful asbestos ban under section 6(a) of TSCA.

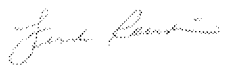
The solution is not a weak SNUR that does not ban any use of asbestos but to expand the ongoing risk evaluation to include all uses, past and present, and then to conclude that these uses present an unreasonable risk of injury, which would enable them to be banned permanently. EPA may claim that it lacks legal authority to evaluate the risks of discontinued products and uses but they fall within the TSCA definition of "conditions of use" because their resumption is "reasonably foreseen" in the absence of a ban. It would be surprising indeed if, in strengthening TSCA in 2016, Congress made it impossible to reinstate the broad 1989 asbestos ban but that's exactly where EPA is now headed with its weak risk evaluation and proposed SNUR.

If EPA's conducts a comprehensive risk evaluating including all past and present asbestos uses and then follows up with a broad ban under section 6(a), the only possible benefit of a SNUR would be as a stop-gap mechanism to restrict new asbestos uses during the extended period while the evaluation and follow-up rulemaking are underway. ADAO would not oppose such a SNUR although it should be broadened to include all new uses of asbestos and include the resumption of asbestos mining as well. We also recommend that EPA require export notification under TSCA section 12(b) for all asbestos-containing articles as well as raw asbestos.

ADAO has sent via priority mail (tracking number: 9405 5036 9930 0276 5619 90) nearly 14,000 signatures urging the EPA to ban asbestos without exemptions or loopholes.

In conclusion, asbestos, previously regarded as a magic mineral but now only known as a powerful carcinogen, isn't a substance as valuable as human life. It is not priceless. With safer substitutes for asbestos available, there is no argument to allow for new uses of asbestos. A SNUR is not a ban. A BAN is a ban. Companies will look at a SNUR as a hurdle; with enough fake science submitted about "safe" uses of asbestos, companies will be able to rekindle asbestos-containing product manufacturing, endangering the lives of the public once again.

Thank you,



Linda Reinstein, President/CEO, Asbestos Disease Awareness Organization (ADAO)

References

Furuya S, Chimed-Ochir O, Takahashi K, David A, Takala J. Global Asbestos Disaster. *International Journal of Environmental Research and Public Health*. 2018; 15(5):1000.

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