January 31, 2019

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:

On September 25, 2018, you received a petition under section 21 of the Toxic Substances Control Act (TSCA), 15 U.S.C. §2620, from 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).

As authorized by section 21(a) of TSCA, the petition sought 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, to 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.

EPA denied the petition in a letter dated December 21, 2018 from Dr. Nancy Beck, Principal Deputy Assistant Administrator, to Bob Sussman, counsel to petitioner ADAO.

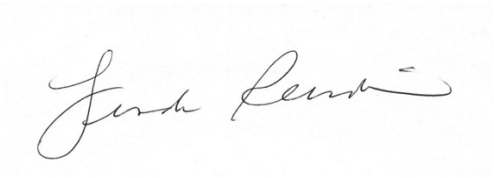
On January 31, 2019, the Attorneys General o14 states and the District of Columbia petitioned EPA under section 21 of TSCA to require reporting on asbestos under the Act. Since the state petition seeks similar asbestos reporting requirements, ADAO is asking EPA to reconsider its denial of the September 25, 2018 petition by public health groups. Attached is a rebuttal to the EPA petition denial which demonstrates that it was based on errors of law and fact, misrepresented the basis for the petition and ignored information in the asbestos docket and EPA's own past statements.

As explained in the rebuttal, ADAO believes that the petition denial fails to recognize the obvious value of expanded reporting under TSCA in conducting a thoughtful and rigorous examination of asbestos' risks to health. Without comprehensive use and exposure information reported by the companies that import, handle and process asbestos and asbestos containing products, the EPA risk evaluation will necessarily fail to provide a complete and objective picture of the continuing health threat that asbestos poses to the public. The public will also be uninformed of the presence in US commerce of this deadly substance and the extent of human exposure.

We request that you review the rebuttal and request for reconsideration in conjunction with your consideration of the state petition.

Please contact Bob Sussman, ADAO counsel, bobsussman1@comncast.net, with any questions.

Respectfully submitted,



Linda Reinstein

President and Cofounder Asbestos Disease Awareness Organization

Cc: Assistant Administrator Alexandra Dunn

Deputy Assistant Administrator Nancy Beck

OPPT Director Jeff Morris

Asbestos Disease Awareness Organization™
Hear Asbestos. Think Prevention.

WHY EPA WRONGLY DENIED THE TSCA SECTION 21 RIGHT-TO-KNOW PETITION FOR EXPANDED CDR REPORTING AND PUBLIC DISCLOSURE OF VITAL INFORMATION ON ASBESTOS USE AND EXPOSURE

On September 25, 2018, five nonprofit public health and environmental organizations concerned about the serious threat of exposure to asbestos petitioned EPA under section 21 of the Toxic Substances Control Act (TSCA) to initiate a rulemaking under section 8(a) of TSCA to amend the TSCA Chemical Data Reporting (CDR) rule as applied to asbestos.

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-related deaths occur in the US each year.

The goal of the "right to know" petition was to assure that sufficient information on the importation and use of raw asbestos and asbestos-containing products is reported to EPA so that it has a sound basis for informed judgments about asbestos exposure and risk in the US. The petition also sought to provide the public with access to full information about the nature and extent of exposure to asbestos and the risks it presents in communities, homes, workplaces and commercial and public buildings.

Thus, the RTK petition requested that EPA amend the CDR rule to:

(1) eliminate the asbestos exemption in the current rule and designate asbestos as a reportable substance, thereby triggering requiring reporting on importation and use of asbestos 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 use and exposure necessary for its TSCA risk evaluation, and

(3) determine that reports submitted on asbestos are not subject to protection as confidential business information (CBI), enabling the public to submit informed comments on the asbestos risk evaluation and assuring full public awareness of asbestos uses and exposure that present an significant risk to health

EPA denied the RTK petition in a draft Federal Register notice signed on December 21, 2018.[1] Petitioners believe that the petition denial is riddled with errors of law and fact, misrepresents the basis for the petition and ignores information in the docket and EPA's own past statements. Of most concern, EPA fails to recognize the obvious value of expanded reporting under TSCA in conducting a thoughtful and rigorous examination of asbestos' risks to health. Without comprehensive use and exposure information reported by the companies that import, handle and

[1] The petition denial has not yet been published in the Federal Register because of the government shutdown.

process asbestos and asbestos containing products, the EPA risk evaluation will necessarily fail to provide a complete and objective picture of the continuing health threat that asbestos poses to the public.

Below, petitioners rebut EPA's principal grounds for denying the RTK petition, demonstrating why the petition denial was contrary to EPA's public health mission under TSCA, unjustified legally and arbitrary and capricious.

IS ASBESTOS IN FACT EXEMPT FROM CDR REPORTING?

EPA Claims:

> *"EPA emphasizes that manufacturers and importers of asbestos are already required to report asbestos under the CDR rule if they meet the production volume threshold of 2,500 pounds and do not qualify for an exemption (including the naturally occurring substances exemption) . . . Petitioners mistakenly seem to believe that no domestically manufactured or imported asbestos is currently required to be reported under the CDR rule as a result of the exemption for naturally occurring substances. EPA's letter to Occidental, however, found that the exemption for naturally occurring substances applied under the specific circumstances described in the letter. EPA did not find that the exemption applied for all "manufacturers or importers of asbestos or asbestos-containing products" as claimed by petitioners."* (Petition Denial, at 17)

Petitioners' Rebuttal:

EPA's tortured efforts to avoid acknowledging the broad asbestos loophole in the CDR regulations are misleading and disingenuous.

As the Agency's July 28, 2017 letter to Occidental Chemical explains, asbestos is exempt from reporting as a naturally occurring chemical substance (NCOS) because "prior to the point of import, the asbestos ha[s] only been processed by mechanical and gravitational means." This is true for *all* raw asbestos exported from its country of origin—it is not unique to the asbestos imported by Occidental. Moreover, the EPA letter is explicit that [p]ost-import activities are irrelevant to whether the imports themselves are entitled to the NOCS exemption."

In short, no imported raw asbestos is subject to CDR, regardless of how it is used or processed after entering the US.

EPA claims that, "[i]n identifying the conditions of use for asbestos, . . . EPA included use information reported under the CDR rule." (Petition Denial, at 8) However, the only reports on asbestos that were filed under the rule were by two companies, Axiall and Olin, who were also importing raw asbestos for chlor-alkali production and believed (mistakenly as it turned out) they were required to report. EPA did not receive reports from other importers of raw asbestos and such importers would not have been obligated to report because of the NOCS exemption. EPA

claims that there are no other asbestos importers but the reality is that it simply does not know since asbestos imports are exempt from reporting.[2]

EPA also suggests that the asbestos loophole may not apply to importers of asbestos-containing products but, as the Agency recognizes, it received no CDR reports from these importers. In fact, CDR reporting of imported products would *not* be required because of both the NOCS exemption and the separate CDR exemption for imported "articles."

For this reason, petitioners asked EPA to amend the CDR rule so it required reporting reports on imported asbestos-containing articles. EPA denied this request, asserting that "amending the CDR rule would [not] be helpful in collecting additional import information on articles" and that it "has sufficient information on imported articles containing asbestos to conduct the risk evaluation." (Petition Denial at 19) As shown below, these assertions are without foundation.

DOES EPA NEED EXPANDED CDR DATA FOR THE ASBESTOS RISK EVALUATION?

EPA Claims:

> *"EPA does not believe that the requested amendments would result in the reporting of any information that is not already known to EPA. As noted in more detail in Unit IV, EPA conducted extensive research and outreach to develop its understanding of import information on asbestos-containing products in support of the ongoing asbestos risk evaluation. After more than a year of research and stakeholder outreach, EPA believes that the Agency is aware of all ongoing uses of asbestos and already has the information that EPA would receive if EPA were to amend the CDR requirements"* (Petition Denial, at 13)

Petitioners' Rebuttal:

EPA has greatly overstated its knowledge of asbestos use and exposure in the United States. In fact, there are critical gaps in EPA's understanding and expanded CDR information is essential for a credible asbestos risk evaluation.

EPA's petition denial does not detail its "extensive research and outreach" on asbestos use in the US. However, its asbestos problem formulation reveals that the Agency's understanding of asbestos use is in fact limited and incomplete. As our petition showed, the problem formulation identified a number of asbestos products that EPA believed were in use but, with limited exceptions, provided

[2] For example, in its 2015 annual report for asbestos, the U.S. Geological Service (USGS) estimated that the chlor-alkali industry accounted for an estimated 88% of U.S. consumption in 2014. https://minerals.usgs.gov/minerals/pubs/commodity/asbestos/mcs-2015-asbes.pdf According to USGS, the "remainder was used in coatings and compounds, plastics, roofing products, and unknown applications." EPA apparently believes these imports were discontinued in later years but If asbestos imports were reportable under the CDR rule, there would be no need for speculation on this point.

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. 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."[3]

While EPA's petition response emphasizes its reliance on USGS's knowledge of asbestos imports, USGS itself has acknowledged that "insufficient data were available to reliably identify" all asbestos uses and that, in 2016, an "unknown quantity of asbestos was imported within manufactured products, possibly including brake linings and pads, building materials, gaskets, millboard, and yarn and thread, among others."[4] These statements hardly provide reassurance that USGS (let alone EPA) is aware of all asbestos products being used in the US and the quantities of asbestos they contain.[5] An enforceable requirement to report all imports of asbestos containing products under the CDR rule would go far to clarify the exact nature of asbestos use in the US.[6]

Even if EPA had identified all asbestos-containing products entering the US, it would need considerably more information to conduct a credible risk evaluation under TSCA. As the petition denial recognizes, assessing risk under TSCA requires a careful evaluation of chemical exposure: section 6(b)(4)(F)(iv) 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 jas no safe level of exposure and can cause lethal effects to workers or consumers following a brief exposure at low

[3] EPA. Problem Formulation of the Risk Evaluation for Asbestos, May 2018, at 22, 31.

[4] https://minerals.usgs.gov/minerals/pubs/commodity/asbestos/mcs-2017-asbes.pdf

[5] For example, as noted in our petition, 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. Similarly, comments on the EPA asbestos scoping document submitted by Safer Chemicals, Healthy Families, Environmental Health Strategy Center and Healthy Building Network on March 15, 2017 documented asbestos use in window caulking, recycled asphalt shingle scrap, adhesive mastic, gaskets for motorcycles and pads for ATVs and scooters. See EPA-HQ-OPPT-2016-0736.

[6] Remarkably, EPA argues that, because asbestos uses are in flux and some importers are existing the market. "all or a significant part of the information they would report for activities undertaken during the 2016 CDR submission period (i.e. 2012-2015) would likely consist of conditions of use that are no longer ongoing, and, thus, uninformative for the risk evaluation." (Petition denial, at 15). This claim illogically assumes that most products that were imported in 2015 have now been phased out; there is no evidence to support this claim. Moreover, TSCA requires EPA's risk evaluation to address all recent uses that are either occurring today or may resume in the future because they would comprise "conditions of use" under the law. It would put public health at risk to ignore the risks of recently imported asbestos products that may have momentarily exited the market but could well result in current or future exposures that have serious health effects.

doses. Thus, EPA's 1989 TSCA rule banning most uses of asbestos was supported by a voluminous use-by-use exposure and risk analysis.[7]

It would be impossible for EPA to characterize exposure at the necessary level of detail without an in-depth understanding of individual uses of asbestos. The problem formulation provides no detail on individual asbestos uses but CDR reporting would be a valuable source of this information. The rule requires manufacturers and importers to report the following:[8]

- Each site where the reported chemical is manufactured or imported
- The volume of the chemical produced or imported at the site
- The quantities of the chemical used on site and distributed off-site
- The physical form of the chemical
- The maximum concentration of the chemical at the time it is sent off-site
- The number of exposed workers at each site

Reports must also include considerable information about downstream industrial uses of the reported chemical, including:

- The type of process or use
- The sector and industrial function category of the use
- The amount of the chemical distributed for the use
- The number of processing and use sites
- The number of exposed workers for each use

The rule also requires similar information about products distributed for consumer and commercial uses, including:

- The type of use
- The quantities devoted to each use
- Whether the product is intended for use by children
- The maximum concentration of the chemical in the product
- The number of exposed commercial workers

This information would greatly enhance understanding of the volumes of raw asbestos and asbestos-containing products entering the US and their precise conditions of use, distribution and exposure. For example, the problem formulation recognizes that worker and consumer exposure could occur from "changing asbestos-containing brakes or brake linings."[9] At least 900,000 US mechanics who

[7] ICF Incorporated, Asbestos Exposure Assessment, Prepared for USEPA Office of Pesticides and Toxic Substances, March 21, 1988.
[8] 40 CFR §711.15
[9] Problem Formulation. At 39.

regularly do car and truck repairs could be exposed to asbestos in imported brake linings and pads and in asbestos engine and exhaust gaskets. These exposures could be at concentrations of airborne asbestos dust hundreds of times higher than the current OSHA permissible exposure limit.[10] To assess these risks, EPA needs to know the amount of asbestos in brakes or brake linings entering the US, the concentrations of asbestos in these products, how many job sites are using them, and the number of workers exposed. CDR reporting would go far to provide this information.

As noted in our petition, previous efforts to regulate asbestos were accompanied by reporting requirements to obtain very similar information. 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.[11] 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.[12]

EPA promulgated the CDR rule because "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 50818, 50823 (Aug. 16, 2011). The Agency also noted that other data-collection mechanisms "were not sufficient to provide the needed exposure-related information" and that EPA "needed both hazard and exposure screening-level information" and otherwise "would find it "necessary in many cases to make assumptions about exposure" that could not be substantiated. [13]

EPA has touted its reliance on CDR reporting in developing risk evaluations for the other 9 chemicals it is addressing under TSCA. Thus, its claim that CDR reporting "would not lead to the reporting of new information that would contribute to EPA's ongoing asbestos risk evaluation" rings hollow and is contradicted both by its actions on other chemicals and the express goals of the CDR rule.

DID EPA HAVE ENOUGH TIME TO AMEND THE CDR RULE BEFORE COMPLETING THE RISK EVALUATION?

EPA Claims:

[10] Dr. Barry Castleman, Continuing Public Asbestos Exposure in the US, March 29, 2018, at 6, submitted to EPA asbestos docket at EPA-HQ-OPPT-2016-0736-0122.

[11] 47 Federal Register 33207 (July 30, 1982) (40 CFR 763.60).

[12] 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.

[13] 76 Fed. Reg. 50833.

> *"[E]ven if EPA believed that the requested amendments would collect information on any new ongoing uses, EPA would not be able to finalize such amendments in time to inform the ongoing risk evaluation or, if needed, any subsequent risk management decision(s) . . . While EPA understands that petitioners desire prompt collection of the requested information under the CDR rule to inform the ongoing risk evaluation, this request does not factor in the necessary timeframes for any rulemaking processes that would be required to propose and then finalize such amendments . . . EPA typically needs at least 18 months to finalize a rulemaking."* (Petition denial, at 13-14).

Petitioners' Rebuttal:

Expeditious action by EPA would have enabled it to amend the CDR rule and obtain reports before completing the asbestos risk evaluation. Even after the evaluation is complete, CDR reporting would still be valuable in TSCA section 6(a) rulemaking to restrict asbestos use and in informing the public about asbestos exposures.

EPA overstates the amount of time it needs to complete a rulemaking under TSCA. The two TSCA "framework" rules, for risk evaluations and prioritization, were complex and challenging but were completed in roughly a year following enactment of the new law.[14] Other rules have been completed in less time.[15] The CDR amendments requested in our petition are narrow and straightforward and could be promulgated quickly and efficiently.

Under TSCA section 6(b)(4)(G), EPA is not required to complete the asbestos risk evaluation until July 1, 2020. It received our petition in late September of 2018. Had it expedited action on the petition and initiated a fast track rulemaking, reporting requirements could have been in place by the spring of 2019 and EPA could have received reports a few months later, leaving ample time to include the reported information in its risk evaluation.

In conducting risk evaluations, TSCA section 26(k) requires EPA to consider information on hazard and exposure that is "reasonable available." EPA's risk evaluation framework rule defines reasonably available information as "information that EPA possesses or can reasonably generate, obtain, and synthesize for use in risk evaluations" and highlights the use of TSCA information collection authorities to obtain such information. 82 Fed. Reg. 33726, 33732 (July 20, 2017).

When it initiated its asbestos risk evaluation in December 2016, EPA should have recognized that asbestos was exempt from CDR reporting and therefore it needed to amend the CDR rule to obtain detailed information on the importation and use of asbestos and asbestos-containing products. That EPA has dragged its feet in using its information collection authorities should not now excuse the Agency from belatedly taking the steps necessary to conduct an informed risk evaluation.

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[14] See Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act, 82 Federal Register 33726 (July 20, 2017).

[15] An example is the compliance date extension for the TSCA formaldehyde emission standards for composite wood products, 82 Federal Register 44533 (September 25, 2017), which were finalized 5 months after proposal.

In any case, our petition was not solely predicated on the need for CDR information to bolster the asbestos risk evaluation. We also highlighted the value of reporting for risk management under TSCA.[16] EPA will be required to initiate rulemaking to restrict asbestos exposure under TSCA section 6(a) if the evaluation concludes that asbestos presents an unreasonable risk of injury. Section 6(c)(1) of TSCA requires this rulemaking to be completed in 2-4 years after a final risk evaluation, providing more than sufficient time to amend the CDR rule and obtain additional reports to help devise the most effective restrictions to eliminate risks of asbestos exposure.

Another goal of the petition was public awareness. As the petition stated: "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."[17] EPA has acknowledged that an important purpose of CDR reporting is to "increase the availability of information for the public."[18] Granting the petition would advance this purpose, whether or not the asbestos risk evaluation has been completed.

WOULD ELIMINATING THE CDR EXEMPTION FOR IMPURITIES PROVIDE USEFUL INFORMATION ABOUT ASBESTOS CONTAMINATION OF CONSUMER PRODUCTS?

EPA Claims:

> *"With regard to the impurity exemption, the petitioners requested that these exemptions be made 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" (emphasis added). However, these findings were made only after independent laboratory testingof final consumer products, and petitioners make no attempt to explain why they believe these findings are the result of the manufacture of asbestos as a byproduct or impurity such that it would be reportable under the CDR rule if the Agency required such reporting. Indeed, the CDR rule does not require submitters to perform chemical analyses of products containing the chemicals they manufacture. Instead, the information required when reporting on a chemical is limited to information that is "known to or reasonably ascertainable" by the manufacturer. . . . Thus, it is unlikely that EPA would receive new information that would change its understanding of the conditions of use for asbestos that can be addressed under TSCA." (*Petition denial, at 22)

Petitioners' Rebuttal:

Unintended contamination of consumer products with asbestos is a serious, well-documented concern that EPA is ignoring. Eliminating the CDR exemption for impurities,

[16] Petition, at 2.
[17] Id., at 12.
[18] 76 Fed. Reg. at 50833

coupled with the other CDR amendments requested in the petition, would enable EPA to identify and address asbestos-contaminated products that it is now sweeping under the rug.

EPA acknowledges that asbestos has been detected in makeup and crayons. It does not dispute that asbestos contamination of any product intended for widespread consumer use is a serious health concern.

Recently, the gravity of this concern was underscored by reporting from Reuters and other publications documenting the repeated presence of asbestos in talc products used by consumers.[19] The focus of these reports has been on Johnson & Johnson baby powders commonly used on infants. However, talc is also used in toys, art supplies and other products to which children and families are exposed. Since talc is known to be mined from rock formations that contain asbestos, these products could likewise have asbestos contamination. Talc imports into the US are substantial, averaging 656,259,377 pounds per year.[20]

Submissions to the EPA asbestos docket described several reported cases of contamination of talc products used by consumers.[21] Thus, this exposure scenario should be a significant focus of EPA's risk evaluation. However, it is barely mentioned in the asbestos problem formulation, nor has EPA explained whether and how it plans to investigate asbestos contamination of products regulated under TSCA and assess their risks.

Where asbestos is an unintended component of domestically produced or imported talc products, it is an "impurity" as defined in TSCA (i.e. "a chemical substance which is unintentionally present with another chemical substance").[22] Thus, eliminating the CDR impurity exemption along with the article exemption would mean that importers of asbestos-contaminated products would be required to file reports. Similarly, if CDR reporting were required for asbestos processors as petitioners also requested, domestic companies who process talc during the manufacture of consumer products would likewise be required to report.

Astonishingly, EPA dismisses the value of such reporting by claiming that companies will never test their products for the presence of asbestos. (Petition denial, at 22) This is pure speculation that assumes that companies will stick their heads in the sand rather than exercise basic diligence about the safety of their products. Moreover, even if testing is not performed, the presence of asbestos would satisfy EPA's definition of "reasonably ascertainable" information (i.e. "information that a reasonable person similarly situated might be expected to possess, control, or know"[23]) given the

[19] https://www.nytimes.com/2018/12/14/business/baby-powder-asbestos-johnson-johnson.html
[20] Comments on the EPA asbestos scoping document, note 5, Technical Appendix prepared by Healthy Building Network in collaboration with Safer Chemicals Healthy Families and Environmental Health Strategy Center, at 7.
[21] Id., at 10-11; report of Dr. Barry Castleman, Continuing Public Asbestos Exposure in the US, note 9, at 7-8.
[22] 40 CFR § 720.3(m)
[23] Id., § 720.3(p).

widespread and well-known contamination of talc with asbestos, and would be reportable on this basis.

In short, EPA needs to know about the presence of asbestos impurities in consumer products and has offered no plausible reason why it should not amend its CDR rule to require this information to be reported.

DID EPA CORRECTLY REFUSE TO LIFT CBI CLAIMS FOR CDR REPORTS ON ASBESTOS DURING ITS RISK EVALUATION?

EPA Claims:

> *"Petitioners' request is not appropriate for a TSCA section 21 petition. Under TSCA section 21 (15 U.S.C. 2620(a)), any person can petition EPA to initiate a rulemaking proceeding for the issuance, amendment, or repeal of a rule under TSCA sections 4, 6, or 8, or an order under TSCA sections 4 or 5(e) or (f). Under this express statutory language, therefore, a TSCA section 21 petition is not a vehicle to petition EPA to initiate an action under TSCA section 14 . . . EPA believes that disclosure of CBI would have no practical relevance to the risk evaluation or risk determination as the CBI claims are limited and EPA retains the ability to characterize the information without revealing the actual protected data."*
> (Petition denial, at 25-26)

Petitioners' Rebuttal:

Instead of recognizing the importance of informing the public about asbestos exposure and risk, EPA is hiding behind legalisms and avoiding the obvious public interest in a transparent risk evaluation and risk management rulemaking.

EPA rules under section 8 routinely address the application of TSCA CBI requirements to reports submitted to the Agency. The CDR rule is a case in point: 40 C.F.R. §711.30 outlines in detail what information can be claimed CBI and how CBI claims must be asserted and supported. It is this CDR provision that petitioners seek to modify so that information reported on asbestos is no longer subject to CBI protection. Plainly, therefore, petitioners are seeking "amendment of a rule under TSCA section . . . 8" and thus are requesting action by the Agency that falls within the express scope of section 21.

EPA's remarkable claim that public access to CBI would have "no practical relevance" to the asbestos risk evaluation assumes that the public does not need to know the details of how asbestos is used and handled in order to file informed comments with the Agency. Yet given that low concentrations of asbestos are harmful and even lethal, it will be impossible to critique EPA's assessment of the risks of particular processes and products without understanding the detailed exposure information on which EPA is relying. Section 14(d)(7) of TSCA expressly envisions the benefit of public access to CBI in these cases by authorizing CBI disclosure "where relevant to a proceeding under this Act." EPA has offered no basis to conclude that the asbestos risk evaluation

is not a "proceeding under this Act" or that CBI it uses in the assessment is not "relevant" to that proceeding. Thus, EPA should have granted petitioners' request to disclose CBI related to the asbestos risk evaluation to the public, subject to any necessary safeguards under this provision of TSCA.

In sum, EPA grounds for denying the RTK petition were unjustified legally and arbitrary and capricious and will compromise EPA's mission of protecting public health from the threat of asbestos exposure. The petition should have been granted.