

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ASBESTOS DISEASE AWARENESS ORGANIZATION; AMERICAN PUBLIC HEALTH ASSOCIATION; CENTER FOR ENVIRONMENTAL HEALTH; ENVIRONMENTAL INFORMATION ASSOCIATION; SAFER CHEMICALS HEALTHY FAMILIES - A PROGRAM OF TOXIC-FREE FUTURE; VERMONT PUBLIC INTEREST RESEARCH GROUP; BARRY CASTLEMAN, ScD; RAJA FLORES, MD; ARTHUR FRANK, MD, PhD; PHILIP LANDRIGAN, MD, MSc; RICHARD LEMEN, PhD, MSPH; and CELESTE MONFORTON, DrPH, MPH.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, and JANE NISHIDA, Acting Administrator, United States Environmental Protection Agency,

Respondents.

Case No. 21-70160

**MOTION OF THE CHLORINE INSTITUTE FOR
LEAVE TO INTERVENE**

Pursuant to the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*, Federal Rule of Appellate Procedure 15(d), and Circuit Rule 15-1, The Chlorine Institute (“the Institute”), a trade association, hereby moves for leave to intervene

in this case in support of Respondents with respect to the determination of the U.S. Environmental Protection Agency (“EPA”) that “importation” and “distribution in commerce” of chrysotile asbestos poses no unreasonable risk.

I. BACKGROUND

A. The Chlorine Institute

The Institute is a 189-member, not-for-profit trade association of chlor-alkali producers worldwide, as well as chlorine packagers, distributors, users, and suppliers. The Institute exists to support chlor-alkali producers in advancing safe, secure, environmentally compatible, and sustainable production, distribution and use of its mission chemicals. The Institute’s members account for approximately 91 percent of the total chlorine production capacity in the United States.

Within the United States, there are 10 large chlorine production facilities that use chrysotile asbestos in the process, which account for 38 percent of installed capacity in the United States. Chrysotile asbestos is the only form of asbestos that is used for chlorine production in the United States.

B. Chlorine’s Uses

Chlorine chemistry is used in many applications, including municipal drinking water disinfection and as a raw material to produce sodium hypochlorite, also known as household bleach. It is a raw material or intermediate for 88 percent of pharmaceuticals produced in the United States.

Chlorine also plays a role in the production of polyvinyl chloride or PVC, sterile packaging, neoprene wet suits, and electronic instruments, among other applications. The Institute's mission chemicals are used throughout the U.S. economy and are key to the protection of public health.

C. The Final Risk Evaluation

The final risk evaluation (EPA docket numbers EPA-HQ-OPPT-2019-0501 and FRL-10017-43) appears in the Federal Register at 86 Fed. Reg. 89 (Jan. 4, 2021). In that action, Respondent EPA made a finding of "no unreasonable risk" with respect to importation and distribution in commerce of chrysotile asbestos. *Id.* at 90.

During the proceedings leading up to the final risk evaluation, the Institute submitted comments and participated in EPA's proceedings in order to ensure that EPA was aware of the interests of the Institute's members.

II. ARGUMENT

In the Petition for Review filed herein on January 26, 2021, Petitioners Asbestos Disease Awareness Organization, *et al.* stated (at 2) that they "hereby petition for review of a final risk evaluation and order by Respondent [EPA], determining the risks of certain conditions of use of chrysotile asbestos fibers but declining to consider the risks of other asbestos fibers, conditions of use, health

effects and pathways of exposure that impact public health.”¹ The quoted statement is ambiguous as to what relief Petitioners may seek herein, that is, whether it will apply to chrysotile asbestos or only to “other asbestos fibers,” and, to the extent that Petitioners may seek relief with respect to chrysotile asbestos, what Petitioners’ reference to “conditions of use, health effects and pathways of exposure that impact public health” means with regard to the remedies they may seek with respect to chrysotile asbestos.

If and to the extent that Petitioners seek remedies herein that may adversely affect the importation and distribution in commerce of chrysotile asbestos, or of the “conditions of use, health effects and pathways of exposure that impact public health” with respect to chrysotile asbestos, it follows that the Institute’s member companies who use chrysotile asbestos for the manufacture of chlorine may be adversely affected by such remedies, depending on the precise remedies Petitioners seek.² Therefore, disposition of the issues raised in this case may have a direct and adverse impact on the Institute’s members.

¹ A determination by EPA that the chemical substance, under one or more of the conditions of use within the scope of the risk evaluation, does not present an unreasonable risk of injury to health or the environment will be issued by order and considered to be a final Agency action. 40 C.F.R. § 702.49(d).

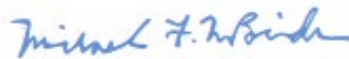
² An applicant for intervention of right must demonstrate that “(1) it has a significant protectable interest relating to the property or transaction that is the subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede the applicant’s ability to protect its interests; (3) the application is timely; and (4) the existing parties may not adequately represent the applicant’s

Accordingly, the Institute has standing, and it should be allowed to intervene herein to protect its interests and those of its members.

III. CONCLUSION

For the foregoing reasons, The Chlorine Institute respectfully requests that it be granted leave to intervene as an Intervenor-Respondent with respect to EPA's determination that importation and distribution in commerce of chrysotile asbestos poses no unreasonable risk.

Respectfully submitted,



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February 25, 2021

interest.” *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002) (quoting *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998)). The Institute satisfies all of these standards for intervention. In particular, it cannot be assumed that EPA adequately represents the Institute's interests. The Institute reserves its rights to participate independently of either Petitioners or Respondents if either the Petitioners or Respondents subsequently take positions on the issues affecting the Institute and its members that cannot now be anticipated.

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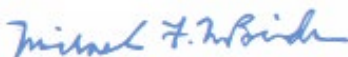
**CORPORATE DISCLOSURE STATEMENT OF THE CHLORINE
INSTITUTE**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, The Chlorine Institute (“the Institute”) states as follows:

The Institute is a 189-member, not-for-profit trade association of chlor-alkali producers worldwide, as well as chlorine packagers, distributors, users, and suppliers. The Institute exists to support the chlor-alkali producers in advancing safe, secure, environmentally compatible, and sustainable production, distribution and use of its mission chemicals. The Institute's members account for approximately 91 percent of the total chlorine production capacity in the United States. The Institute has no parent corporation, and no publicly held company has 10 percent or greater ownership in the Institute.

Dated: February 25, 2021

Respectfully submitted,



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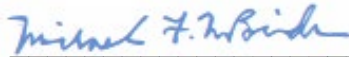
CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify that:

Pursuant to Federal Rules of Appellate Procedure 27(d)(2) and 32(g), the undersigned certifies that the foregoing Motion for Leave to Intervene is double-spaced (except for headings and footnotes) in 14-point, Times New Roman typeface. The Undersigned further certifies that the documents are proportionally spaced and contains 870 words exclusive of the accompanying documents excepted from the word count by Rule 27(a)(2)(B), (d)(2).

Dated: February 25, 2021

Respectfully submitted,



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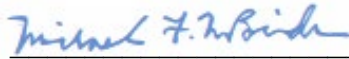
The Chlorine Institute

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Leave to Intervene was served on February 25, 2021, through the Court's CM/ECF system on all registered users.

Dated: February 25, 2021

Respectfully submitted,



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