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January 26, 2024

The Honorable Thomas R. Carper, Chairman
The Honorable Shelley Moore Capito, Ranking Member
Senate Committee on Environment and Public Works

Subject: Letter for the Record re: the EPW Oversight Hearing on Toxic Substances Control Act Amendments Implementation

Dear Chairman Carper and Ranking Member Capito,

I am writing on behalf of the Asbestos Disease Awareness Organization (ADAO) to follow-up on the Senate Committee on Environment and Public Works (EPW) January 24, 2024 oversight hearing on implementation of the Toxic Substances Control Act (TSCA) Amendments. We commend the Committee's commitment to ensuring the effective implementation of TSCA and appreciate the opportunity to share our perspective on the Environmental Protection Agency's (EPA) actions to prevent exposure to asbestos, a lethal substance that continues to kill 40,000 Americans each year. We are hereby asking the SEPW Committee to enter this letter into the record.

EPA Asbestos Part 1 (Chrysotile Asbestos) Final Rule: Although the EPA has taken many landmark steps forward on asbestos, important work remains to be done, and we are uncertain whether the path the EPA is on will achieve the full protection we need against unsafe exposure to this dangerous substance. EPA's final Part 1 rule for Chrysotile Asbestos is now under review by the Office of Management and Budget. It is important for the EPA to finalize its prohibition on the six chrysotile conditions of use targeted in the proposed rule. Equally important is assuring that asbestos importation and use for these COUs is eliminated as soon as possible. Lengthy phase-out schedules that result in several years of additional asbestos exposure will result in unnecessary and avoidable death and disease. It is deeply concerning to ADAO that some industry advocates are pushing for 15 additional years to eliminate the importation and use of asbestos at chlor-alkali plants. Any compliance deadline of this duration would be unacceptable. Also troubling are industry requests to EPA OMB for delays in phasing out other asbestos conditions of use subject to Part 1. For example, chemical manufacturer Chemours has sought five years to eliminate importation and use of asbestos gaskets in titanium dioxide production.

Even apart from this concern, as Senator Merkley emphasized at the January 24 hearing, the Part 1 rule is incomplete and unprotective because it only addresses one fiber, fails to restrict the other five asbestos fibers, and leaves the door open to unregulated and unsafe conditions of use of all

six fibers. We are concerned that such a rule will fall far short of the complete ban many of us expected when the EPA prioritized asbestos for early action under the Lautenberg Act. It is critical for EPA to inform the public that the final Part I rule is not a comprehensive asbestos ban and does not address exposure pathways for all fibers and conditions of use.

EPA Part 2 of the Risk Evaluation for Asbestos: In response to court decisions setting aside the Trump EPA's narrow interpretation of TSCA, EPA's Part 2 risk evaluation is belatedly examining the risks of legacy asbestos uses and associated disposals. The Part 2 evaluation will present a set of scientific challenges different from and more complex than those raised by the Part 1 evaluation. Legacy asbestos includes all six asbestos fibers as opposed to a single fiber, chrysotile, which was the focus of Part 1. Whereas Part 1 only addressed six chrysotile conditions of use, legacy asbestos reflects the many asbestos uses that were widespread in the US economy during most of the twentieth century. Because of the prevalence of legacy asbestos in schools, homes, apartment buildings, offices, factories, and other structures, the exposed worker and consumer populations are considerably larger and more diverse than in Part 1, and pathways of exposure and release are more numerous, varied, and complex.

Yet, we are concerned that EPA is not approaching the Part 2 evaluation with the seriousness and scientific rigor it deserves. For example, the EPA recently completed a letter review for a white paper on cancer potency factors for the six asbestos fibers to be addressed in the Part 2 evaluation. Not only were the reviewers deeply divided in their scientific feedback to the EPA, but several expressed deep frustration with the constraints of the letter review process, which did not allow direct communications among the reviewers and published their comments anonymously. There are also concerns about the EPA process for selecting peer reviewers, notably the inclusion of an industry consultant, which may compromise the objectivity and integrity of the evaluation.

During the January 24 oversight hearing, Senator Merkley expressed concern about the inadequacy of the Part 2 white paper letter review and voiced deep skepticism that a process that walls off the reviewers from each other and discourages dialogue and collaboration will result in the transparent, in-depth scientific feedback the agency needs for credible risk evaluations. The Senator called on EPA to implement a more robust and interactive peer review process. We agree with Senator Merkley's concerns and believe EPA must rethink its peer review approach for the Part 2 evaluation.

Remarkably, the EPA apparently does not plan *any* peer review of the full Part 2 evaluation, which is expected to be released for public comment during the first quarter of this year. In a letter to Assistant Administrator Freedhoff, we are calling on the EPA to rectify this deficiency and convene a full SACC panel review process for Part 2. .

EPA Asbestos; Reporting and Recordkeeping Requirements: The "EPA Asbestos; Reporting and Recordkeeping Requirements Under the Toxic Substances Control Act (TSCA)" are essential for ensuring transparency and accountability in asbestos risk management and assuring that EPA's priorities are informed by the best available information on asbestos use and exposure. . The reporting deadline is in March of this year, and a high priority for ADAO is maximizing the completeness of the reports and the availability of data to the public. .

ADAO supports the Senate EPW Committee's oversight efforts and believes that addressing these concerns is essential for effectively implementing the TSCA Amendments. Strengthening the EPA's regulatory framework for toxic substances through a comprehensive approach to asbestos risk management and a robust and impartial peer

review process for the Part 2 evaluation will significantly contribute to protecting public health and the environment.

We look forward to improvements in the TSCA program building on the January 24 hearing and are eager to support the Committee's efforts to implement the TSCA amendments to protect public health. Please do not hesitate to contact us if we can provide further information or assistance.

Thank you for your attention to these critical issues.

Sincerely,



Linda Reinstein, President and Cofounder Asbestos Disease Awareness Organization

CC: Senator Jeff Merkley, Chair, Chemical Safety, Waste Management, Environmental Justice, and Regulatory Oversight

Senator Markwayne Mullin, Ranking Member, Chemical Safety, Waste Management, Environmental Justice, and Regulatory Oversight

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