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Honorable Lyle W. Cayce
Clerk
United States Court of Appeals
Fifth Circuit
Office Of the Clerk
F. Edward Hebert Building
600 S. Maestri Place
New Orleans, LA 70130-3408

Re: FILING OF STANDING DECLARATIONS: *Texas Chemistry Council v. EPA*, 24-60193, consolidated with *American Public Health Association v. EPA*, No. 24-60281, consolidated with *Olin Corporation v. EPA.*, No. 24-60333.

Dear Clerk Cayce:

Asbestos Disease Awareness Organization (ADAO), a petitioner in No. 24-60193, and the 15 petitioners in No. 24-60281 today filed their opening brief in these consolidated petitions for review of the Environmental Protection Agency's Part 1 chrysotile asbestos rule under the Toxic Substances Control Act.

In support of petitioners' standing to challenge the Part 1 rule, we are submitting herewith three declarations on behalf of petitioners ADAO, American Public Health Association and Local F-253, International Association of Fire Fighters. These declarations are signed by Ms. Linda Reinstein, Dr. Georges Benjamin, and Mr. Mike Jackson, senior officials of these petitioners.

In accordance with decisions of this Court, declarations demonstrating standing to challenge agency actions are encouraged and allowed in conjunction with petitioners' opening briefs. *Texas v. Nuclear Reg. Comm'n*, 78 F.4th 827 (5th Cir. 2023).

We request that the Court accept the declarations for filing in the dockets of these consolidated petitions for review.

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We are submitting this letter via ECF and assume that counsel for the parties will be served through the ECF system.

We appreciate the Court's consideration.

Respectfully submitted,

/s/Robert M. Sussman
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cc: All Counsel (served by ECF)

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

No. 24-60193

TEXAS CHEMISTRY COUNCIL; AMERICAN CHEMISTRY COUNCIL; GEORGIA
CHEMISTRY COUNCIL; ASBESTOS DISEASE AWARENESS ORGANIZATION; UNITED
STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO; OHIO
CHEMISTRY TECHNOLOGY COUNCIL,

Petitioners,

versus

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondent,

CONSOLIDATED WITH

No. 24-60281

AMERICAN PUBLIC HEALTH ASSOCIATION; COLLEGIUM RAMAZZINI; LOCAL F-116
(VANDENBERG PROFESSIONAL FIREFIGHTERS), INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS; LOCAL F-253 (FORT MYER PROFESSIONAL FIREFIGHTERS),
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS; THE FEELGOOD FOUNDATION;
HENRY A. ANDERSON, *Medical Doctor*; BRAD BLACK, *Medical Doctor*; BARRY
CASTLEMAN, *DOCTOR OF SCIENCE*; RAJA FLORES, *Medical Doctor*; ARTHUR FRANK,
Medical Doctor, DOCTOR OF PHILOSOPHY; PHIL LANDRIGAN, *Medical Doctor*,
MASTER OF SCIENCE; RICHARD LEMEN, DOCTOR OF PHILOSOPHY, MASTER OF
SCIENCE IN PUBLIC HEALTH; STEVEN MARKOWITZ, *Medical Doctor*, DOCTOR OF
PUBLIC HEALTH; JACQUELINE MOLINE, *Medical Doctor*, MASTER OF SCIENCE;
CELESTE MONFORTON, DOCTOR OF PUBLIC HEALTH, MASTER OF PUBLIC HEALTH;
CHRISTINE OLIVER, *Medical Doctor*, MASTER OF PUBLIC HEALTH, MASTER OF
SCIENCE; ANDREA WOLF, *Medical Doctor*, MASTER OF PUBLIC HEALTH,

Petitioners,

versus

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; MICHAEL REGAN,
Administrator, United States Environmental Protection Agency,

Respondents,

CONSOLIDATED WITH

No. 24-60333

OLIN CORPORATION,

Petitioner,

versus

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; MICHAEL REGAN,
ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

Petitions for Review of an Order of the
Environmental Protection Agency
Agency No. 40 CFR Part 751
Agency No. 80 Fed. Reg. 21970

**DECLARATION OF LINDA REINSTEIN IN SUPPORT OF THE
STANDING OF PETITIONER ASBESTOS DISEASE AWARENESS
ORGANIZATION**

I, Linda Reinstein, hereby declare as follows:

1. I am the President and cofounder of the Asbestos Disease Awareness Organization (“ADAO”) and the widow of the late Alan Reinstein, who died from mesothelioma as a result of exposure to asbestos. ADAO’s mission is to prevent asbestos-caused diseases, including lung cancer, malignant mesothelioma, ovarian cancer, cancer of the larynx in humans, and asbestosis. We work on many fronts to reduce and eliminate asbestos exposure. The tools we employ include public education, collaboration with grassroots communities, and scientific analysis and research. ADAO also advocates for protective laws and regulations at all levels of government, including by participating in meetings with the Environmental Protection Agency (“EPA”), other federal agencies and the White House Office of Management and Budget, commenting on and speaking at stakeholder meetings about EPA’s regulatory actions on asbestos, testifying at legislative hearings, and meeting with members of Congress.

2. In carrying out these tasks, ADAO works with a large network of partners and supporters that includes scientists, medical and public health professionals, industrial workers, firefighters and other emergency responders, industrial hygienists, asbestos abatement experts, families who have lost loved ones to asbestos, and citizens living in proximity to sources of asbestos in fenceline communities and elsewhere. These individuals and groups help ADAO carry out its

prevention mission and benefit in tangible and specific ways from ADAO actions that reduce asbestos exposure.

3. ADAO has long supported legislation and regulation to ban the importation, manufacture and use of asbestos. We joined this case as a petitioner because the risk evaluation and risk management activities of EPA under the Toxic Substances Control Act (TSCA) are critical to addressing and reducing the risks of asbestos exposure. In this case, ADAO is seeking judicial review of EPA's recent regulation entitled *Asbestos Part 1; Chrysotile Asbestos; Regulation of Certain Conditions of Use Under the Toxic Substances*, 40 C.F.R. Part 751 (the Regulation). We believe and will demonstrate in our Brief that, while the Regulation is an important step forward, it provides inadequate protection against asbestos exposure and risk and fails to meet TSCA's requirements.

4. Our goal in this case is to strengthen the Part 1 rule and increase its effectiveness in preventing asbestos exposure and reducing death and serious disease by the asbestos-exposed population. This will not only enable ADAO to perform its public health mission more successfully and efficiently but will concretely benefit its large network of partners and supporters by enhancing their efforts to maximize protection from asbestos' harmful effects and reduce risks to themselves, their families and their communities. If the rule is allowed to stand, we will need to

realign our programs and priorities and redirect resources to address the consequences of the court decision.

ADAO'S MISSION AND PROGRAMS

5. ADAO is an international nonprofit organization based in Southern California.

6. In 2004, I co-founded ADAO along with Doug Larkin after our lives were forever changed when our loved ones were diagnosed with mesothelioma, an asbestos-caused cancer. As we watched our loved ones succumb to a deadly, yet preventable, disease, we began advocating to prevent asbestos exposure in the hope that no one else would have to experience the pain we lived through. During the past 20 years, ADAO has become a network of more than 50,000 people and organizations dedicated to protecting public health from the known dangers of asbestos. ADAO is now the largest United States-based independent organization today dedicated to asbestos prevention and policy efforts to protect public health.

7. Asbestos is among the most hazardous substances known to man. The

International Agency for Research on Cancer (“IARC”),¹ the National Toxicology Program (“NTP”),² the Occupational Safety and Health Administration (“OSHA”),³ the National Institute for Occupational Safety and Health (“NIOSH”), the World Health Organization (“WHO”),⁴ EPA, and many other regulatory and public health bodies recognized asbestos as a human carcinogen decades ago. In 1976, NIOSH stated that “only a ban can assure protection against carcinogenic effects of asbestos.”⁵

8. IARC has determined that asbestos exposure is causally related to lung cancer, malignant mesothelioma, ovarian cancer, and cancer of the larynx in humans. Non-malignant diseases such as asbestosis and asbestos-related pleural thickening are also caused by asbestos. All asbestos fiber types have been linked causally with each of these diseases. In addition, the scientific community has concluded that there is not an absolutely safe or fully controlled use of asbestos. According to WHO, more than 250,000 people die each year from asbestos-related

¹ <https://asbest-study.iarc.who.int/about/about-asbestos/>

² <https://ntp.niehs.nih.gov/sites/default/files/ntp/roc/content/profiles/asbestos.pdf>

³ <https://www.osha.gov/asbestos/hazards>

⁴ <https://www.who.int/news-room/fact-sheets/detail/asbestos-elimination-of-asbestos-related-diseases>

⁵ <https://www.cdc.gov/niosh/docs/77-169/default.html>

lung cancer, mesothelioma and asbestosis resulting from occupational exposures. In the U.S., asbestos kills over 40,000 Americans each year.⁶

9. As a leader in awareness and prevention, ADAO has built an extensive educational resource library of reports, conference presentation videos, docket submissions, congressional testimonies, and factsheets that are widely shared in the United States and around the world. Our supporters rely on this library to help reduce risks to themselves and their communities.

10. ADAO also works with regulatory agencies to update prevention materials, factsheets and websites with updated information. In 2013, ADAO met with OSHA to discuss asbestos hazards and worker safety, and the need for additional resources to educate and to protect the public from asbestos-related diseases. In 2014, OSHA updated its Asbestos Fact Sheet.⁷

11. Each year, ADAO speaks at numerous international conferences and events, such as the American Public Health Association's ("APHA") Annual Meeting and Exposition and the International Mesothelioma Interest Group ("iMig")

⁶ <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policydatabase/2020/01/10/eliminating-exposure-to-asbestos>

⁷ <https://www.osha.gov/sites/default/files/publications/OSHA3507.pdf>; see also ADAO Blog, *OSHA Listens and Takes Action* (January 13, 2014), <https://www.asbestosdiseaseawareness.org/newsroom/blogs/osha-listens-and-takes-action-new-asbestos-fact-sheet/>

Conference. These speaking engagements enable ADAO to collaborate with public health organizations and educate the public about preventing asbestos exposure. ADAO also hosts an annual International Asbestos Awareness and Prevention Conference, where world-renowned experts and asbestos victims present the latest advancements in disease prevention, global advocacy, and treatment for asbestos-caused diseases. In addition, ADAO issues policy and technical analyses, such as our “2023 Comprehensive Asbestos Report: The Analysis of Imports, Use, Impact on Human Health, and Current Regulations and Policy.”

12. ADAO has participated and spoken at numerous conferences of the World Congress on Safety and Health, the International Labor Organization (“ILO”), International Social Security Association (“ISSA”), and others.

13. Education is a top priority for ADAO, and I speak at universities throughout the United States. ADAO has developed a cutting edge Art, Advocacy, and Academia programs to raise awareness and promote elimination of the nearly invisible fibers.

14. ADAO collaborates with various national and international organizations to promote public health and advocate for an end to asbestos use and exposure. Since 2005, the Senate has unanimously passed the National Asbestos Awareness Resolution, designating the first week of April as “National Asbestos Awareness Week.” ADAO also organizes an annual Global Asbestos Awareness

Week, in which it coordinates a robust educational campaign to identify asbestos and prevent exposure with experts, trade unions, and public health organizations.

15. In 2016, upon the passage of the Frank R. Lautenberg Chemical Safety Act, ADAO created the *Ban Asbestos in the US Now, Without Loopholes or Exemptions* petition on Change.org which has been signed by with nearly 150,000 individuals.

16. For the last 20 years, we have been instrumental in pushing for and shaping multiple bills introduced in the House and Senate to ban asbestos, including the Alan Reinstein Ban Asbestos Now Act, which pending currently in Congress.

17. As part of these efforts, since 2004, ADAO has hosted 19 staff educational briefings for the House of Representatives and the Senate. Participants in these briefings have included experts on science and prevention and partner organizations like the International Association of Fire Fighters, the American Federation of Teachers, the Environmental Information Association, Less Cancer, and the American Cancer Society Cancer Action Network.

18. We assure that all our work is informed by the best possible scientific understanding of the health impacts of asbestos. This scientific basis for our educational outreach is essential to informing our members about how to reduce or eliminate exposures to asbestos. To that end, we have formed the ADAO Science Advisory Board, whose chairs and members are distinguished world-class experts

in asbestos disease prevention and treatment. The Board reviews ADAO educational materials for medical and scientific accuracy and provides us with current medical and scientific information to inform public policy development and advocacy. We have also formed the ADAO Prevention Advisory Board, consisting of knowledgeable experts on asbestos prevention and abatement, to review ADAO educational materials about asbestos exposure and mitigation and help us respond to field inquiries and inform policy-makers about these issues. We are not involved in personal injury litigation and do not make referrals to attorneys handling these cases.

19. ADAO's work is supported by the financial contributions of hundreds of its supporters, patients, families, events, American Federations of Teachers, and others.

COMMITMENT OF ADAO PARTNERS AND SUPPORTERS TO EFFECTIVE AND HEALTH-PROTECTIVE EPA REGULATION

20. ADAO recently published *Shared Stories: How Asbestos Changed Our Lives Forever*, a compendium of over 200 personal stories from ADAO supporters and partners concerning the devastating impacts on them and their loved ones of asbestos exposure and asbestos-related diseases. The book is available online at [SYS-FINAL-Optimized.pdf \(asbestosdiseaseawareness.org\)](#).

21. Many ADAO supporters or their family members have been diagnosed with asbestos-related diseases, including asbestosis, lung cancer and mesothelioma. Their exposures have occurred in various ways and have unspeakably devastating

consequences for the victim's health and their loved ones' well-being. ADAO supporters' stories of their painful personal experiences of living with, and dying from, asbestos related diseases document how terminal and life-threatening illnesses have been caused by exposure to asbestos from:

- a. Home renovations. *Id.* at 18, 76.
- b. Working as a motor mechanic. *Id.* at 19.
- c. Working at a factory that manufactures asbestos for power plants. *Id.* at 24.
- d. Serving in the Navy as a boiler room technician. *Id.* at 28.
- e. Secondary exposure of children whose parents were exposed asbestos occupationally and unknowingly carried the contamination with them into the family home. *Id.* at 33.
- f. Teaching in elementary schools. *Id.* at 34.
- g. Working as a farmer. *Id.* at 36.
- h. Being employed as an industrial baker. *Id.* at 45.
- i. Working as an emergency room physician. *Id.* at 47.
- j. Employment as a builder or contractor. *Id.* at 51, 58.
- k. Working in a pipe production factory. *Id.* at 61.
- l. Employment at a power station. *Id.* at 66.
- m. Working as pipefitter. *Id.* at 70.

- n. Employment as a construction worker. *Id.* at 72.
- o. Secondary exposure as a child from father's work clothes. *Id.* at 78.
- p. Working as a registered nurse. *Id.* 79.
- q. Secondary exposure to clothes of husband who worked at a refinery.
Id. at 82.
- r. Serving in the military. *Id.* at 85, 86.
- s. Working as a shipbuilder. *Id.* at 89.
- t. Secondary exposure from husband's clothes after installing building
panels. *Id.* at 95.
- u. Employment as a mechanic. *Id.* at 100.
- v. Working for Empire/Caterpillar on diesel generators. *Id.* at 104.
- w. Employment as a plumber. *Id.* at 105.
- x. Working in a steel foundry. *Id.* at 109.
- y. Employment as a pipefitter. *Id.* at 110.
- z. Working as a shipping clerk. *Id.* at 113.

These are but a few examples of the many ordinary and hardworking individuals who were exposed to asbestos with devastating consequences for their health and the well-being of their families. The Regulation falls short of protecting similarly-situated individuals from exposures to asbestos in the future, adding to the concerns

of ADAO supporters about the lack of protection of their personal health and that of family members and their communities.

22. For example, ADAO and supporters and partners in its network fear that the Regulation's failure to regulate all asbestos fibers and uses will increase the risk of asbestos exposure to them and people in their families and communities. The Regulation does not deal with the five other known asbestos fibers: crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite or actinolite. It also is limited to six current chrysotile conditions of use and does not apply to other current chrysotile uses for which there is documentation, such as knitted fabrics (woven products), asbestos cement products, compressed asbestos fiber jointing paper, millboard and felt, and building materials.

23. In addition, the Regulation does not prohibit discontinued asbestos uses that may not exist today but could resume in the future. As a result, many current or future asbestos uses of chrysotile and the other five asbestos fibers are likely to be additional sources of asbestos in homes, commercial buildings, and factories that create an increased risk to our supporters and partners who live or work in such structures. Thus, the Regulation is insufficient to protect many people in ADAO's network who may be exposed to asbestos through existing or future uses that are not subject to the Regulation.

24. This is also the case with other aspects of the Regulation that fail to protect against asbestos exposure by members of ADAO's network. For example, communities in our network could be exposed to environmental releases from asbestos-using or waste disposal facilities that the Regulation fails to control; auto mechanics, bystanders in repair shops or consumers performing DIY vehicle servicing could be exposed to asbestos during repair or removal of asbestos vehicle parts, a pathway of exposure that is exempt from the Regulation; workers and nearby communities could be at risk from chlor-alkali plants to which the Regulation gives 12 years to phase out asbestos diaphragms; and fire fighters, other emergency responders and exposed members of the general population could be harmed by asbestos accidents and spills during importation and transportation of asbestos and asbestos-containing products, activities which the Regulation erroneously concludes do not present an unreasonable risk.

ADAO'S INVOLVEMENT IN TSCA IMPLEMENTATION

25. ADAO worked actively with Congress during the legislative process to amend TSCA because we wanted to assure that addressing and eliminating asbestos exposure was a priority under the new law. EPA had sought to use TSCA to ban most of the ongoing uses of asbestos in 1989 but, despite years of analysis and rulemaking, a court reversed this ban in 1991 because the Agency had failed to clear various legal hurdles in the original law. *Corrosion Proof Fittings v. EPA*, 947 F.2d

1201 (5th Cir. 1991). Since its enactment in June of 2016, our goal under TSCA as amended has been to reverse the years of inaction on asbestos that followed the 1991 court decision. Thus. We have sought to motivate EPA to take strong and timely action to eliminate all remaining importation and use of asbestos and asbestos-containing products and to assure safe use and disposal of legacy asbestos in the U.S. At the same time, we have pursued a two-track strategy of working with Congress to enact comprehensive asbestos ban legislation that would assure full elimination of asbestos exposure in the event EPA's actions do not accomplish that goal.

26. To that end, we successfully advocated including asbestos in the initial 10 chemicals subject to risk evaluations under the law; EPA selected asbestos for this purpose in December of 2016. Since that time, our focus has been on assuring that EPA's asbestos risk evaluation is comprehensive and fully identifies and defines the risks to public health posed by asbestos at each stage in its life-cycle and that the Agency then proceeds with risk management rulemaking to eliminate asbestos exposure under section 6(a) of TSCA. With that goal in mind, over the last eight years, we have had numerous meetings with EPA staff, submitted considerable information and filed comments at several points in the risk evaluation and rulemaking process.

**ADAO'S ACTIVE INVOLVEMENT IN THIS
RULEMAKING PROCEEDING**

27. As explained below, ADAO has been intimately involved in the proceedings leading up to this challenge to the Regulation. Our goal has been maximizing prevention of asbestos exposure and reduction of death and disease by people in ADAO's network, their families and their communities. ADAO has devoted substantial resources to actively participating in EPA's risk evaluation, rulemaking and related activities, in collaboration with its partners and supporters.

28. Throughout the implementation of the Frank R. Lautenberg Chemical Safety Act, ADAO has challenged EPA to be more proactive and ambitious in its approach to asbestos. Areas where ADAO urged more comprehensive and health protective action have involved (1) the scope and completeness of EPA Part 1 risk evaluation and its interpretation of the science; (2) the need for EPA to use its reporting authority under TSCA section 8(a) to obtain reliable and complete information on asbestos uses and pathways of exposure and release; (3) EPA's obligation under TSCA to expand its asbestos risk evaluation to address continuing exposure to legacy asbestos products as well as ongoing conditions of use; and (4) the scope of and schedule for completing EPA's Part 2 risk evaluation of exposure to legacy asbestos. We have made progress on some of these issues but EPA has not stepped up on others.

A. Scoping Document and Risk Evaluation.

29. ADAO initially focused on EPA's Scoping Document for asbestos, which was critically important because it defined the asbestos uses and disposal activities to be addressed in the risk evaluation. To inform the Scoping Document, ADAO made a statement at EPA's public meeting of February 14, 2017 and followed up with comments on March 15, 2017. We again filed comments on September 19, 2017 after EPA released risk evaluation scoping documents on 7 of the 10 chemicals on June 22, 2017.

30. The EPA framework rule for TSCA risk evaluations provided that EPA risk evaluations under TSCA would not examine continuing uses of discontinued products (so-called "legacy uses"), the ongoing disposal of these products ("associated disposal") or previous disposal activities that are contributing to ongoing exposure ("legacy disposal"). Consistent with the rule, EPA's asbestos scoping document excluded all ongoing uses of discontinued asbestos-containing products as well as ongoing and past disposal activities involving these products. These omissions dramatically limited the value of the EPA risk evaluation in providing the public, regulators, medical experts and the research community with a complete and informative picture of the continuing threats that asbestos poses to human health in the U.S.

31. Concerned about the exclusion of legacy products from EPA's asbestos risk evaluation, ADAO and other groups petitioned for review of the EPA risk

evaluation framework rule in the Ninth Circuit Court of Appeals. In its November 14, 2019 decision in *Safer Chemicals, Healthy Families v USEPA*, 943 F.3d 397 (9th Cir. 2019), the Court held that EPA was required by the plain language of TSCA to address ongoing exposure and disposal of legacy products in its risk evaluations for asbestos and other substances. After the decision, EPA recognized that it was obligated to include legacy exposure in its risk evaluation but it took additional litigation by ADAO to compel EPA to establish a process and schedule for its legacy asbestos risk evaluation.

A. Part 1 Risk Evaluation

32. EPA published its draft Part 1 risk evaluation for ongoing importation and use of chrysotile asbestos on April 3, 2020. ADAO submitted detailed 61-page comments on May 27, 2020 sharply critical of many aspects of the draft, including the absence of detailed and complete use and exposure information. Several members of ADAO's Science and Prevention Advisory Boards also submitted critical comments. EPA's independent Science Advisory Committee on Chemicals (SACC) held a public meeting on June 8-11, 2020 to peer review the draft evaluation. ADAO and several Board members made oral presentations to the SACC. The subsequent report of the SACC adopted many of ADAO's concerns and made numerous recommendations for improving the evaluation, only a few of which were ultimately accepted by EPA.

B. Final Part 1 Risk Evaluation and Related Litigation

33. On January 4, 2021, EPA published its final Part 1 risk evaluation. 86 Fed. Reg. 89. The final evaluation did not incorporate several of the recommendations of ADAO and the SACC. Accordingly, ADAO and its partners filed a petition for review of the evaluation in the Court of Appeals for the Ninth Circuit on January 26, 2001. *Asbestos Disease Awareness Org, et al v. USEPA, et al.*, (No. 21-70160 9th Cir.). On October 12, 2021, counsel for ADAO and EPA signed a settlement agreement under which the Agency committed to fill several of the gaps in the Part 1 evaluation in its draft Part 2 evaluation, which the Agency had agreed to conduct to address legacy asbestos risks as required by the earlier Ninth Circuit decision. Because EPA had not made a firm, legally binding commitment to a schedule for completing the Part 2 evaluation, ADAO also filed suit against the Agency in the District Court for the Northern District of California under TSCA section 20 to compel it to perform its obligations. *ADAO v. Regan* (No. 4:21-cv-03716-PJH). On October 13, 2021, the District Court entered a Consent Decree requiring EPA to finalize the Part 2 evaluation by December 1, 2024.

C. Part 1 Risk Management Rulemaking

34. EPA proposed its Part 1 risk management rule for chrysotile asbestos on April 12, 2022. 87 Fed. Reg. 21706. ADAO submitted extensive comments on both the proposal and a supplemental EPA notice calling for additional public input.

In these submissions, we both supported elements of the proposal that reduced asbestos exposure and opposed any backsliding and called for the final rule to be stronger and more protective. Building on our many years of legal and scientific advocacy, ADAO is petitioning for review of the Part I rule because it believes that the rule does not provide the full measure of protection against the harmful effects of asbestos required by TSCA. At the same time, ADAO is concerned that the chemical industry petitioners will seek to weaken safeguards in the Part 1 rule that are beneficial to public health.

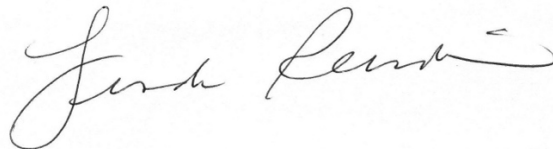
IMPACTS OF PART I'S GAPS AND LIMITATIONS ON ADAO'S PROGRAMS AND RESOURCES

35. As noted above, ADAO's network includes asbestos victims, workers, medical professionals, labor unions, fire fighters, individuals living in fenceline communities, and others dedicated to preventing asbestos caused diseases through national and international education. The gaps and inadequate protections in the Regulation negatively impact ADAO's supporters and partners and increase their own risk of asbestos exposure and that of their families and communities.

36. If the flaws of the Regulation are not remedied by this Court or if the Court strikes down portions of the rule challenged by industry, ADAO and its network will need to redouble their efforts to advocate increased protection against asbestos exposure through legislation, future rulemaking by EPA or action by states. They will also need to realign their education and outreach efforts to highlight and

publicize pathways of asbestos exposure and risk that have not been effectively regulated by EPA and emphasize the need for voluntary prevention efforts to reduce risks. ADAO is a small organization with limited funds and the pressure to beef up advocacy, education and outreach to communities and health professionals will strain ADAO's resources. It will also hamper ADAO's ability to devote sufficient attention to other critical areas of concern, such as EPA's Part 2 risk evaluation on legacy asbestos and follow-up efforts by EPA and other bodies to reduce health risks from legacy asbestos exposure.

Executed this 26th day of September 2024 in Los Angeles, California

A handwritten signature in black ink, appearing to read "Linda Reinstein", is centered on the page. The signature is fluid and cursive.

LINDA REINSTEIN
President of ADAO

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

No. 24-60193

TEXAS CHEMISTRY COUNCIL; AMERICAN CHEMISTRY COUNCIL; GEORGIA
CHEMISTRY COUNCIL; ASBESTOS DISEASE AWARENESS ORGANIZATION; UNITED
STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO; OHIO
CHEMISTRY TECHNOLOGY COUNCIL,

PETITIONERS,

VERSUS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

RESPONDENT,

CONSOLIDATED WITH

No. 24-60281

AMERICAN PUBLIC HEALTH ASSOCIATION; COLLEGIUM RAMAZZINI; LOCAL F-116
(VANDENBERG PROFESSIONAL FIREFIGHTERS), INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS; LOCAL F-253 (FORT MYER PROFESSIONAL FIREFIGHTERS),
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS; THE FEELGOOD FOUNDATION;
HENRY A. ANDERSON, *MEDICAL DOCTOR*; BRAD BLACK, *MEDICAL DOCTOR*; BARRY
CASTLEMAN, *DOCTOR OF SCIENCE*; RAJA FLORES, *MEDICAL DOCTOR*; ARTHUR
FRANK, *MEDICAL DOCTOR, DOCTOR OF PHILOSOPHY*; PHIL LANDRIGAN, *MEDICAL
DOCTOR, MASTER OF SCIENCE*; RICHARD LEMEN, *DOCTOR OF PHILOSOPHY, MASTER
OF SCIENCE IN PUBLIC HEALTH*; STEVEN MARKOWITZ, *MEDICAL DOCTOR, DOCTOR
OF PUBLIC HEALTH*; JACQUELINE MOLINE, *MEDICAL DOCTOR, MASTER OF SCIENCE*;
CELESTE MONFORTON, *DOCTOR OF PUBLIC HEALTH, MASTER OF PUBLIC HEALTH*;
CHRISTINE OLIVER, *MEDICAL DOCTOR, MASTER OF PUBLIC HEALTH, MASTER OF
SCIENCE*; ANDREA WOLF, *MEDICAL DOCTOR, MASTER OF PUBLIC HEALTH,*

PETITIONERS,

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; MICHAEL REGAN,
ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

RESPONDENTS,

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RESPONDENT.

Petitions for Review of an Order of the
Environmental Protection Agency
Agency No. 40 CFR Part 751
Agency No. 80 Fed. Reg. 21970

DECLARATION OF MIKE JACKSON IN SUPPORT OF THE STANDING
OF PETITIONER INTERNATIONAL ASSOCIATION OF FIRE
FIGHTERS (IAFF) LOCAL F-253

I, Mike Jackson, hereby declare as follows:

1. I am the President of the Federal Fire Fighters Joint Council of the International Association of Fire Fighters (IAFF) and of IAFF Local F-253 (Fort Myer Professional Fire Fighters), which is a petitioner for review in this action.

2. I make this declaration on the basis of my understanding of the risks of asbestos and the requirements of EPA's asbestos regulation and my knowledge of the work of the fire fighters in my local and overall concern about the risks of asbestos in the firefighting community.

Overview

3. Like many fire fighters, our local is concerned about the high risks of deadly cancer and mesothelioma from exposure to asbestos when we respond to fires in buildings and other structures and to transportation spills and other emergencies. We joined this case as a petitioner because enhancing protection from asbestos exposure is vital to the health of our members.

4. We believe that a key regulation of the U.S. Environmental Protection Agency (EPA) entitled *Asbestos Part 1; Chrysotile Asbestos; Regulation of Certain Conditions of Use Under the Toxic Substances* (TSCA), 40 C.F.R. Part 751 (the Regulation) must be strengthened to reduce health risks to fire fighters.

5. I am concerned that the Regulation's failure to impose protective safety requirements for the transportation of asbestos increases health risks to fire fighters

who respond to spills, derailments, fires and other emergencies within the Fort Myer Fire Department's areas of responsibility. These areas include major commercial rail and truck corridors in the Washington DC metropolitan area that pass through Northern Virginia very near the Garrison.

6. I am also concerned that EPA's Regulation only bans a small number of asbestos-containing products that are in use now or will be introduced in the future. These gaps in the rule increase risks to fire fighters because of the wide range of asbestos-containing materials (many unknown) that may be present in the buildings or conveyances where we fight fires and mitigate other emergency Incidents.

Personal Background and History of Our Local and its Area of Responsibility

7. I have been a member of the International IAFF since 2009 and became a fire fighter in 1994. The IAFF is the driving force behind significant health and safety advancements in the fire and emergency services in the 21st century, representing more than 350,000 full-time professional fire fighters and paramedics across North America. For 105 years, the IAFF has been committed to improving the health and safety of fire fighters. Sadly, cancer continues to be the leading cause of line-of-duty deaths among fire fighters and asbestos is a likely cause of cancers among fire fighters.

8. I have been a member of Local F-253 since 2011 and became its President in 2013. IAFF Local F-253 represents Fort Myer Federal Fire Fighters. We have 33 members. The Joint Council, of which I'm also President, has 37 locals in 18 states and 2,141 active and retired members.

9. Fort Myer traces its origin back to around 1864 during the Civil War as a signal company. It is also the site of the first flight on an army post. Fort Myer is situated next to Arlington National Cemetery and Henderson Hall, a United States Marine Corps command base now called Joint Base Myer-Henderson Hall.

9. Fort McNair is also part of the Joint Base located in Southwest Washington DC and home to National Defense University and Grant Hall, which is where Mary Surratt was tried in the Assassination of President Lincoln. Today the Base is home to the crimson platoon and the 3rd infantry division and the Tomb Guards.

10. The Fort Myer fire department has been around since 1918, and we service Joint Base Myer-Henderson Hall, Fort McNair, Arlington National Cemetery and the Pentagon. We also provide mutual aid assistance to the City of Alexandria, Arlington and Fairfax Counties, Washington DC and the Metropolitan Washington Airports Authority. In emergencies, we may be asked to help with fires or other emergency incidents at locations within other jurisdictions.

11. In my capacity as President of Local F-253 and the Joint Council, I serve as the administrative head of the two organizations. In this role, I am tasked with several administrative activities. Chief among them is to observe, recognize and advocate for changes where fire fighters are avoidably exposed to unnecessary occupational situations or conditions impacting their health and safety. Because the Joint Council speaks on behalf of all federal fire fighters, my perspective is much broader than the concerns of my Local.

12. Relevant here, asbestos is a known hazardous material responsible for causing harmful health conditions and disease. I am a strong proponent on behalf of my membership to enhancing the laws and regulation leading to the elimination of all avoidable exposures to asbestos fibers and this begins with my advocacy to strengthen the applicable laws and regulations addressing asbestos.

13. Our local's territory includes the major north-south freight rail route and highway (I-95) conveying trucks and passenger vehicles along the East Coast from New England to Florida. These corridors pass through downtown DC, cross the Potomac River and then head south throughout the Washington Metro Region near Fort Myer and other areas within the Local's sphere of responsibility. This would include all of the primary and secondary roadways, all rail lines and airports within the Washington Metro Region. Our fire fighters have been, and will likely continue to be, called upon to respond to natural and man-made disasters, fires,

explosions, and spills caused by truck and train accidents on these north-south arteries. Fort Myer fire fighters respond to over twenty-two hundred 911 citizen calls for emergency services annually.

Risks of Asbestos to Fire Fighters

14. Based on my experience as a fire fighter and what I have recently learned about scientific studies on asbestos, I understand that it is among the most hazardous substances known to man. The International Agency for Research on Cancer (IARC), the National Toxicology Program (NTP), the Occupational Safety and Health Administration (OSHA), the National Institute for Occupational Safety and Health (NIOSH), the World Health Organization (WHO), EPA, and a number of other regulatory and public health bodies recognized asbestos as a human carcinogen decades ago. IARC has determined that asbestos exposure is causally related to lung cancer, malignant mesothelioma, and cancer of the larynx in humans. Non-malignant diseases such as asbestosis and asbestos-related pleural thickening are also caused by asbestos. All asbestos fiber types have been linked causally with each of these diseases. In addition, the scientific community has concluded that there is no safe or fully controlled use of asbestos.

15. Asbestos is a significant risk factor for fire fighters because it is pervasive in residential, government, and commercial buildings, equipment and our transportation and distribution system and is frequently released during fires and

other hazardous events to which fire fighters respond. These releases expose fire fighters to asbestos in their line of duty. Though anyone is at risk of exposure after a natural disaster or an accidental fire, our first responders face the greatest risk. A 2013 NIOSH Study of fire fighters found that “the population of fire fighters in the study had a rate of mesothelioma two times greater than the rate in the U.S. population as a whole.” A 2022 IARC study, Occupational Exposure as a Fire fighter, found that “occupational exposure as a fire fighter is carcinogenic to humans (Group 1).”

16. Fire fighters may be exposed to asbestos as a result of combustion of building materials, chemicals in fire fighting foams, flame retardants, diesel exhaust, and other hazards. In its study, NIOSH writes, cyclic aromatic hydrocarbons, particulate matter), building materials (e.g., asbestos), chemicals in firefighting foams (e.g., per and polyfluorinated substances), flame retardants, diesel exhaust, as well as other hazards (e.g., night shift work and ultraviolet or other radiation).” The study, published in Occupational and Environmental Medicine, examined cancer incidence among nearly 30,000 fire fighters in Chicago, San Francisco, and Philadelphia employed between 1950 and 2009.

17. Always leading with conviction to protect their members, the IAFF has boldly led the way for an asbestos ban. IAFF General President Edward Kelly stated, “Rigorous studies have indicated that fire fighters are twice as likely as the general

population to develop illnesses associated with asbestos exposure, primarily due to their frequent encounter with airborne asbestos fibers, often encountered at fire and emergency scenes.”

Lack of Protections in EPA’s Regulation for Fire Fighter Exposure to Asbestos During Transportation Incidents

18. I am concerned that the Regulation’s determination that importation and distribution of asbestos and asbestos-containing products and wastes do not present an unreasonable risk represents a missed opportunity to reduce and mitigate spills and releases during transportation incidents and leaves our fire fighters unnecessarily vulnerable. Once imported into the United States, asbestos products are unloaded at ports of entry, transferred to trains or trucks, transported to user facilities via train and truck, and unloaded for use. Asbestos waste can also be shipped to and from waste sites by truck or rail. During any of these activities, accidents or improper handling could rupture shipping containers and spill asbestos. Because of Fort Myer’s proximity to major arteries in the Washington Metro Region that transport goods imported at Northeast ports, we could be called upon to respond to these incidents and our fire fighters could be exposed to asbestos. Asbestos parts are also installed in some older vehicles and fires in these vehicles could expose fire fighters on the scene to asbestos. There is a possibility of the presence of asbestos within the porcelain insulators used on the Washington Metro rail lines. Fire fighters respond to fires with these insulators on a fairly regular basis. They could benefit

greatly if, as a result of this case, EPA tightened safeguards to better protect emergency responders impacted by accidents and fires that cause asbestos spills and releases.

19. The EPA's risk evaluation finds that Chrysotile asbestos and asbestos-containing products are currently being imported, processed, and distributed in the United States. The EPA further recognizes that the import and distribution in commerce of asbestos causes "exposures to the general population . . . due to releases to air, water, or land." However, while recognizing that asbestos is present in distribution in commerce, the Regulation fails to impose any safeguards to reduce the risks of accidents involving asbestos distribution. Nor does the Regulation impose any safeguards to reduce exposure from asbestos releases during such incidents and protect first responders. These failures put our members at risk of harmful asbestos exposure if they are required to respond to a transportation accident involving asbestos.

20. Fire fighters like our members are frequently among the first responders to such accidents. There have been numerous, well documented examples of fire fighters responding to major accidents that expose fire fighters and other first responders and bystanders to asbestos. For example, the collapse of the twin towers on September 11, 2001 released hundreds of tons of pulverized asbestos and other hazardous materials into the air. An estimated 410,000 to 525,000 people were

exposed to the toxic asbestos dust, including fire fighter and other first responders. In addition, in August 2023, a fire in Lahaina, Hawaii damaged buildings that may have contained asbestos products. The fire released asbestos into the atmosphere, and first responders and other people exposed to it may be at risk of developing mesothelioma. In November 2023 in Tustin, California, a devastating fire in a World War II military hanger resulted in asbestos releases that continued for weeks. And a large industrial fire in Richmond, Indiana occurring in April 2023 resulted in large amounts of asbestos debris.

EPA Failure to Ban Asbestos Fibers and Uses that Could Endanger our Members

21. In addition, I fear that the Regulation's failure to regulate all asbestos fibers and uses will increase the risk of asbestos exposure to our members when performing their firefighting duties. The Regulation does not deal with the five other known asbestos fibers: crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite or actinolite. It also is limited to six current chrysotile conditions of use and does not apply to other current chrysotile uses for which there is documentation, such as knitted fabrics (woven products), asbestos cement products, compressed asbestos fiber jointing paper, millboard and felt, and building materials. Moreover, the Regulation does not prohibit asbestos uses that may not exist today but could be initiated in the future. The five asbestos fibers and many current or future asbestos that are not restricted in the Regulation may well be

additional sources of asbestos in homes, commercial buildings, and factories that create an increased risk to our members who fight fires in such buildings.

22. I am personally aware of multiple structures on Fort Myer with asbestos fibers present within building materials. Additionally, my fire fighter colleagues and I have responded to several incidents involving vehicles brake fires on commercial trucks, trailers and rail cars.

23. In my experience as a fire fighter, I have known and been aware of numerous colleagues who have become ill from asbestos related exposures, including mesothelioma, cancers, and asbestosis. I fear for the health of all fire fighters, including my members and other federal fire fighters who are exposed to asbestos in the line of duty, especially because of incidents involving the transportation of asbestos within our local's response zones. I also fear that the Regulation's failure to ban in all forms and uses of asbestos puts our members at greater risk of exposure to asbestos.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed this 18th day of September 2024

A handwritten signature in black ink, appearing to read 'MJ', with a long horizontal flourish extending to the right.

Michael Jackson

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

No. 24-60193

TEXAS CHEMISTRY COUNCIL; AMERICAN CHEMISTRY COUNCIL; GEORGIA
CHEMISTRY COUNCIL; ASBESTOS DISEASE AWARENESS ORGANIZATION; UNITED
STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO; OHIO
CHEMISTRY TECHNOLOGY COUNCIL,

PETITIONERS,

VERSUS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

RESPONDENT,

CONSOLIDATED WITH

No. 24-60281

AMERICAN PUBLIC HEALTH ASSOCIATION; COLLEGIUM RAMAZZINI; LOCAL F-116
(VANDENBERG PROFESSIONAL FIREFIGHTERS), INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS; LOCAL F-253 (FORT MYER PROFESSIONAL FIREFIGHTERS),
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS; THE FEELGOOD FOUNDATION;
HENRY A. ANDERSON, *MEDICAL DOCTOR*; BRAD BLACK, *MEDICAL DOCTOR*; BARRY
CASTLEMAN, *DOCTOR OF SCIENCE*; RAJA FLORES, *MEDICAL DOCTOR*; ARTHUR
FRANK, *MEDICAL DOCTOR, DOCTOR OF PHILOSOPHY*; PHIL LANDRIGAN, *MEDICAL
DOCTOR, MASTER OF SCIENCE*; RICHARD LEMEN, *DOCTOR OF PHILOSOPHY, MASTER
OF SCIENCE IN PUBLIC HEALTH*; STEVEN MARKOWITZ, *MEDICAL DOCTOR, DOCTOR
OF PUBLIC HEALTH*; JACQUELINE MOLINE, *MEDICAL DOCTOR, MASTER OF SCIENCE*;
CELESTE MONFORTON, *DOCTOR OF PUBLIC HEALTH, MASTER OF PUBLIC HEALTH*;
CHRISTINE OLIVER, *MEDICAL DOCTOR, MASTER OF PUBLIC HEALTH, MASTER OF
SCIENCE*; ANDREA WOLF, *MEDICAL DOCTOR, MASTER OF PUBLIC HEALTH*,

PETITIONERS,

VERSUS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; MICHAEL REGAN,
ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

RESPONDENTS,

CONSOLIDATED WITH

No. 24-60333

OLIN CORPORATION,

PETITIONER,

VERSUS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; MICHAEL REGAN,
ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

RESPONDENT.

Petitions for Review of an Order of the
Environmental Protection Agency
Agency No. 40 CFR Part 751
Agency No. 80 Fed. Reg. 21970

**DECLARATION OF GEORGES BENJAMIN IN SUPPORT OF THE
STANDING OF PETITIONER AMERICAN PUBLIC HEALTH
ASSOCIATION**

I, Georges C. Benjamin, hereby declare as follows:

1. I am the Executive Director of the American Public Health Association (APHA). I work in APHA's principal place of business in Washington, DC. I have been the Executive Director of APHA since December 2002. In my role as Executive Director, I am responsible for developing, implementing and managing the organization's programs and activities in furtherance of APHA's goals. My work requires that I be familiar with APHA's purposes and activities, as well as the public health interests and concerns of APHA's members.

2. We joined this case as a petitioner because enhancing protection from asbestos exposure is vital to our public health mission and the interests of our members. We believe that the recent asbestos regulation of the United States Environmental Protection Agency (EPA), entitled *Asbestos Part 1; Chrysotile Asbestos; Regulation of Certain Conditions of Use Under the Toxic Substances*, 40 C.F.R. Part 751 (the Regulation), is not adequate to protect public health and must be strengthened.

3. Among other things, the Regulation does not ban all asbestos fibers and uses, leaving the door open to harmful pathways of exposure. It also does not provide protections during the repair and servicing of vehicles containing asbestos brakes and other parts, eliminate risks from asbestos environmental releases, require the most expeditious practicable deadline for eliminating asbestos use in the chlor-alkali

industry, and address spills and releases during the importation and distribution of asbestos and asbestos-containing products.

4. These gaps in protection will adversely affect APHA and its members in multiple ways. First, APHA has strongly advocated a comprehensive ban on all asbestos fibers and devoted considerable time and resources to educating its members and the public about the risks of asbestos and the need to prevent exposure. These efforts will need to be realigned and reinforced given the inadequacy of the EPA Regulation. Second, APHA members include physicians, nurses, industrial hygienists, environmental engineers, worker health and safety trainers, community health workers, environmental justice advocates, health scientists and government officials. Their job responsibilities may include preventing asbestos exposure, reducing risks, advising and educating the public and treating sufferers from asbestos disease. They will be handicapped in performing these tasks by the shortcomings of the Regulation. Finally, because they may be exposed to asbestos during their jobs, APHA members may be at risk because of the inadequate protection provided by the Regulation.

APHA's MISSION AND PROGRAMS

5. I am a graduate of the Illinois Institute of Technology and the University of Illinois College of Medicine. I am licensed to practice medicine in Maryland and the District of Columbia. I am board-certified in internal medicine and

a Master of the American College of Physicians, a fellow of the National Academy of Public Administration, a fellow emeritus of the American College of Emergency Physicians, an elected member of the National Academy of Medicine (formally the Institute of Medicine) of the National Academies of Sciences, Engineering and Medicine, a honorary fellow of the Faculty of Public Health and an honorary fellow of the Royal Society of Public Health.

6. I served as the Secretary of the Maryland Department of Health and Mental Hygiene. I became Secretary of Health in Maryland in April 1999, following four years as its Deputy Secretary for Public Health Services. I served as Secretary of the Department until December of 2002.

7. APHA champions the health of all people and all communities. We are the only organization that combines a nearly 150-year perspective, a broad-based member community and the ability to influence policy to improve the public's health. APHA also works to strengthen the public health profession. We speak out for public health issues and policies backed by science.

8. APHA was founded in 1872 at a time when scientific advances were helping to reveal the causes of communicable diseases. These discoveries laid the foundation for the public health profession and for the infrastructure to support our work. From its inception, APHA was dedicated to improving the health of all U.S. residents. Our founders recognized that two of the Association's most important

functions were advocacy for adoption by the government of the most current scientific advances relevant to public health, and public education on how to improve community health. Along with these efforts, we have also campaigned for developing well-organized and effective health departments and agencies at both the federal and local levels

9. In the years since our founding, APHA has continued to search for and support those policies and practices that are most likely to improve the health of the public. We have played a prominent advocacy role on many issues, including assuring the availability of clean air and water, reducing exposure to toxic substances, creating a safe and nutritious food supply, monitoring the environment and workplace for adverse effects on human health, facilitating the development of safe work environments and expanding access to quality, affordable health care and preventive health services.

10. APHA has more than 23,000 individual members in all 50 states, the District of Columbia and Puerto Rico. APHA members are drawn from numerous segments of the public health community, including physicians, nurses, epidemiologists, educators, first responders, industrial hygienists and public health professionals in the public and private sectors who work at health and environmental agencies, universities, non-profit organizations and unions.

11. While APHA is the national voice on public health, its influence is enhanced by the complementary efforts of its Affiliates. APHA's 51 state and regional public health associations champion the same goals as APHA: to promote, protect and advocate for the public's health.

12. Sections are the primary professional units of the Association and conduct activities that promote the mission and fulfill the goals of APHA. Sections create a variety of opportunities for member involvement, making the APHA experience richer for those members who interact with and participate in their Sections. APHA has 33 Sections that represent major public health disciplines and their associated public health programs. These Sections allow members with shared interests to come together to develop scientific program content and policy papers in their areas of interest or fields of practice, and they provide for professional and social networking, career development and mentoring.

13. Sections that focus on management of dangerous substances in the workplace, consumer products and the environment include the Environment, Occupational Health and Safety, Medical Care and Maternal and Child Health Sections, among others. Asbestos issues would fall within the scope of all these Sections.

14. APHA has a robust education and publication program. The American Public Health Association Press publishes and sells over 25 public health books and

texts. The American Journal of Public Health is the preeminent peer reviewed journal for public health workers and academics, publishing 12 issues per year. Special emphasis is given to research and practitioners' experiences as well as a historical context to new and old public health problems and challenges. APHA's award-winning newspaper, The Nation's Health, publishes 10 times per year with public health news and updates. In addition, it informs members about the goings-on within the Association's Sections, Affiliates and other constituent groups. Finally, Inside Public Health is APHA's monthly member-only update. Each issue keeps members informed about new developments, opportunities and resources.

15. The APHA Annual Meeting and Expo is the largest annual gathering of public health professionals in the U.S. Thousands of APHA members, researchers, experts, educators, and community health workers attend each year to participate in and learn from the thousands of new abstracts and scientific presentations offered. The APHA Annual Meeting annual event is widely regarded as the most influential meeting in the public health field. The meeting concludes with the Association's elected Executive Board and Governing Council deliberating and adopting policy statements on some of the most pressing public health issues.

16. In addition to the Annual Meeting and Expo, we bring the public health community together with our Policy Action Institute, which features elected leaders and policy experts in the public and private sector inspiring us with ways to put

policy into action to improve community health. APHA also hosts other informative and productive events throughout the year.

17. APHA, in coordination with its members and state and regional Affiliates, works with key decisionmakers to shape public policy to address today's ongoing public health concerns. We adopt policy statements and communicate our views to Congress and federal and state agencies through comments on bills or regulatory proposals, testimony at hearings and public meetings and collaboration with other stakeholders who share our views. In appropriate cases, we engage in litigation.

18. Asbestos has long been a priority for APHA because of its extreme risks to public health and the large toll of death and serious disease for which it is responsible. We have taken numerous steps to advocate and support policies to prevent exposure and reduce asbestos-related disease and death, including the following:

- In 2009, APHA adopted a policy statement entitled "Eliminating Exposure to Asbestos" which, among other things, called on Congress to pass legislation banning the manufacture, sale, export, or import of asbestos-containing products, including products with asbestos-contamination via other ingredient minerals (e.g., talc, vermiculite, taconite) and to ensure that all public and commercial buildings have their asbestos-containing materials identified and

managed to observe strict safeguards when repairs and renovations are made.

See policy statement “Eliminating Exposure to Asbestos.”

- In June 2015, APHA sent a letter Senator Richard Durbin and Representative Suzan DelBene expressing APHA’s support for the “Reducing Exposure to Asbestos Database Act of 2015” (S.700).
- In March 2017, APHA’s Occupational Health and Safety Section submitted detailed comments to U.S. EPA to inform the scope of the agency's risk evaluation on asbestos (81 Federal Register 91929)
- In October 2017, APHA wrote to Senator Jeff Merkley in support of the Alan Reinstein Ban Asbestos Now Act (S.2072).
- In August 2018, APHA's Occupational Health and Safety Section and the Environment Section submitted comments to EPA on its significant new use rule for asbestos. APHA strongly opposed any and all new use of asbestos and any resumption of uses that have been discontinued.
- In May 2019, APHA testified before the Subcommittee on Environment and Climate Change of the Energy and Commerce Committee of the U.S. House of Representatives in support of the Alan Reinstein Ban Asbestos Now Act (H.R. 1603).
- In November 2019, APHA updated its policy statement "Eliminating Exposure to Asbestos" to reiterate its call for Congress to pass legislation to

ban the import, manufacture, processing, and distribution of asbestos and asbestos-containing products; for EPA in consultation with other agencies to investigate and make an estimate of the prevalence of asbestos in residential, commercial, industrial, and public buildings; and for EPA use its authority under the Toxic Substances Control Act (TSCA) to require any person or entity that imports, manufactures, processes, or distributes asbestos or asbestos-containing materials to make a public disclosure of the amount, its port of entry, route of distribution, use, and potential for exposure. *See* Policy Statement “Eliminating Exposure to Asbestos.”

- In June 2020, APHA submitted comments to EPA's Science Advisory Committee on Chemicals (SAAC) on the Agency's Draft Risk Evaluation (DRE) of asbestos under TSCA and made an oral statement at the SAAC meeting on June 8 -11, 2020.
- Celeste Monforton spoke on behalf of APHA at the August 2020 Congressional staff briefing (organized by ADAO).
- In August 2021, APHA sent a letter to Senator Merkley providing information (at staff's request) about elongate mineral particles.

- In May 2022, APHA sent a letter to Senator Merkley and Representative Bonamici supporting asbestos ban legislation.
- In July 2022, APHA submitted comments to EPA on its proposed Part 1 risk management rule for chrysotile asbestos.
- In March 2023, APHA sent another letter in support of legislation to Senator Merkley and Rep. Bonamici.
- In June 2024, APHA submitted comments to EPA on its draft Part 2 risk evaluation on legacy uses and disposal

19. On September 25, 2018, APHA joined with other organizations to petition EPA to establish mandatory reporting rules under TSCA to assure that it had complete and accurate information to inform its Part 1 risk evaluation and rulemaking. Following EPA's denial of the petition, we were one of several groups who filed suit against the Agency challenging its decision. On December 22, 2020, the district court ruled in our favor and ordered EPA to propose TSCA reporting rules on asbestos. *Asbestos Disease Awareness Org. v. Wheeler*, 508 F. Supp. 3d 707 (N.D. Cal. 2020). In its decision, the court specifically upheld APHA's standing to sue.

20. APHA also was a petitioner in a Ninth Circuit case filed on January 26, 2021 seeking review of EPA's "Risk Evaluation for Asbestos Part 1: Chrysotile

Asbestos.” *Asbestos Disease Awareness Org, et al v. USEPA, et al.*, (No. 21-70160 9th Cir.). This case was resolved by a settlement agreement committing EPA to address several of our concerns about the Part I evaluation in its Part 2 evaluation of legacy asbestos.

21. Because EPA had not made a firm, legally binding commitment to a schedule for completing the Part 2 evaluation, APHA was also one of several plaintiffs in a suit against the Agency in the District Court for the Northern District of California under TSCA section 20 to set a deadline to complete the evaluation. *ADAO v. Regan* (No. 4:21-cv-03716-PJH). On October 13, 2021, the District Court entered a Consent Decree requiring EPA to finalize the Part 2 evaluation by December 1, 2024.

22. APHA’s decision to join the current case challenging EPA’s Part 1 Regulation was an outgrowth of our previous efforts to hold EPA accountable for its limited and incomplete actions on asbestos. As we have consistently maintained, the Regulation does not comport with our long-standing support for a comprehensive asbestos ban. In addition, the Regulation fails to protect the interests of APHA members whose day-to-day public health responsibilities involve prevention and mitigation of asbestos exposure, educating the public about the risks of asbestos and preventing and treating lung cancer, mesothelioma and other asbestos diseases.

23. The Regulation only addresses chrysotile and does not regulate the five other known asbestos fibers: crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite or actinolite. It also is limited to six current chrysotile conditions of use and does not apply to other current chrysotile uses for which there is documentation in the record, such as knitted fabrics (woven products), asbestos cement products, compressed asbestos fiber jointing paper, millboard and felt, and building materials.

24. In addition, the Regulation does not prohibit discontinued asbestos uses that may not exist today but could be initiated in the future. The five asbestos fibers and many current or future asbestos uses that are not restricted in the Regulation are likely to be additional sources of asbestos exposure in homes, commercial buildings, and factories. This is also the case for the other gaps in protection that we are highlighting in our challenge to Regulation, such as its 12-year phase-out schedule for asbestos use in chlor-alkali plants, its failure to address environmental releases from asbestos use and disposal, the lack of protection for workers and consumers repairing or servicing asbestos parts in vehicles, and the lack of safeguards against spills, fires and other accidents that may release asbestos during importation and distribution in commerce.

25. These unregulated exposure pathways pose a threat of death and disease to at risk individuals and communities whose health and well-being are the primary

focus of physicians, nurses, health scientists, epidemiologists, and other APHA members. In addition, APHA members who live or work in proximity to asbestos (such as community health workers, occupational health and safety trainers, industrial hygienists) may themselves be directly exposed to asbestos as a result of the Regulation's gaps in protection. Such exposure could also occur through contact with clothing contaminated with asbestos or personal contact with someone who has been exposed. The Regulation does not protect physicians, nurses, or other medical personnel who come into contact with the clothes or other items of individuals who have been exposed to asbestos.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed this 25th day of September 2024

A handwritten signature in black ink, reading "Georges C. Benjamin". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Georges C. Benjamin, MD

