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Environmental Law for the 21st Century

June 29, 2020

Andrew Wheeler
Administrator
Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Challenge by Industry Groups to Integrity of SACC Review of TSCA Asbestos Risk Evaluation (EPA-HQ-OPPT-2019-0501-0001)

Dear Administrator Wheeler:

I am counsel to the Asbestos Disease Awareness Organization (ADAO), an independent nonprofit dedicated to preventing asbestos exposure through education, advocacy, and community initiative. I am writing to respond to comments on the draft EPA risk evaluation for asbestos under the Toxic Substances Control Act (TSCA) filed by ten asbestos industry lobbying organizations and two asbestos defense firms.

The lobbying organizations are the American Tort Law Association, the U.S. Chamber of Commerce, U.S. Chamber Institute for Legal Reform, American Property Casualty Insurance Association, Aerospace Industries Association, Coalition for Litigation Justice, International Association of Defense Counsel, National Federation of Independent Business Small Business Legal Center, Product Liability Advisory Council, Inc., and Washington Legal Foundation.¹ These organizations have a long track record of working with the defense bar to advocate limitations on claims by asbestos victims and other personal injury plaintiffs.

The two law firms are McDermott Will & Emery and Dentons, who represent defendants in asbestos litigation.

In their comments to EPA, the lobbying organizations and law firms question the impartiality of the EPA Science Advisory Committee on Chemicals (SACC), which is peer reviewing the draft evaluation, and ask EPA to remove two members from the Committee based on their purported ties to ADAO. This eleventh-hour demand to change the composition of the SACC is a reckless attack on ADAO, the two SAAC members and the integrity of the SACC process. EPA should reject it.

It is telling that these large, well-funded industry associations do not address the merits of EPA's risk evaluation or acknowledge the universally recognized risks of death and serious disease from exposure to asbestos. If they had concerns about EPA's interpretations of the science or recommendations to improve the draft evaluation, these comments would be the vehicle to express them. Instead, however, the groups have sought to delay completion of the evaluation by casting

¹<https://www.asbestosdiseaseawareness.org/wp-content/uploads/2020/06/EPA-SACC-Chamber-of-Commerce-ATRA-McDermott-Will-and-Emery-Dentons.pdf>

doubt on the objectivity and qualifications of the SACC. Sadly, this is a familiar ploy of industries engaged in the sale and distribution of products like cigarettes and asbestos that have caused widespread death and disease.

SACC Membership. As the groups acknowledge, EPA's peer review panels seek to achieve an "overall balance of different scientific perspectives on the Committee" and avoid the "appearance of loss of impartiality, lack of independence." The SACC was selected with these goals in mind following an extensive screening process that began several months ago. EPA solicited nominations from the public for the overall SACC and for ad hoc reviewers of individual evaluations. It then gathered extensive information from these candidates on their scientific work, publications, professional activities, and potential conflicts of interest. Based on this extensive screening process, EPA selected a group of distinguished scientists who lacked conflicts of interest and had the credentials and expertise to contribute significantly to the SACC's deliberations. The final SAAC asbestos review panel is diverse and includes experts from academia, state agencies, public health organizations, NGOs and consulting firms. Just as some SAAC members have testified in private litigation for plaintiffs, others have longstanding ties to business interests who have fought asbestos personal injury claims.

Mission of ADAO. We strongly disagree with the industry groups and law firms that any association with ADAO should bar qualified scientists from serving on the SACC. ADAO is the largest independent national nonprofit dedicated to preventing asbestos exposure to eliminate all asbestos-related diseases. ADAO's President, Linda Reinstein, lost her husband to mesothelioma and she is deeply committed to sparing others the avoidable suffering that her family endured. As stated on ADAO's Website:

ADAO's vision is to eliminate asbestos-related diseases, including mesothelioma. To achieve this vision, ADAO works with public health organizations and passionate leaders throughout the world to prevent consumer, environmental, and occupational exposure to asbestos. ADAO is about much more than banning asbestos. We are a round-the-clock organization committed to three initiatives: education, advocacy, and community, as seen in our 2019 Year-In-Review. On the frontline of information exchange, ADAO regularly answers countless questions from individuals, from "Do I have asbestos in my home?" to "What's mesothelioma?" to "How can I help?" Every week, ADAO writes two to three blogs to educate the public about asbestos-caused diseases and correct misconceptions about asbestos.

Focused on prevention, ADAO has organized [15 international educational](#) "Asbestos Awareness and Prevention Conferences", built the "[kNOw Asbestos](#)" educational website, and works nationally and internationally on educational materials and collaborative educational efforts. ADAO does not make legal referrals.

While ADAO has advocated a ban on asbestos, many distinguished scientists and public health organizations have also spoken out in favor of a ban. To imply that support for an asbestos ban is somehow incompatible with a commitment to sound science is preposterous. Nearly 70 countries around the world have banned asbestos and no one could deny that their actions were based on the extensive scientific evidence of asbestos's harmful effects. Since 2006, the World Health

Organization and the International Labor Organization have called for worldwide bans on asbestos use.

ADAO has a Science and Prevention Advisory Boards comprised of world-renowned asbestos experts with decades of experience researching and treating asbestos diseases and hundreds of peer reviewed publications on this subject. These experts are not compensated for their time and their role is strictly to provide objective scientific advice drawing on their considerable knowledge and expertise.

The McDermott Will law firm even raises concern about EPA communicating with ADAO, claiming that EPA has been “co-opted” by meetings and correspondence from ADAO and members of its Scientific Advisory Board. Why ADAO’s efforts to share scientific information with EPA -- as asbestos industry stakeholders do all the time -- might be improper is not explained. In fact, EPA would be violating its responsibilities if it refused to meet with ADAO or any other member of the public with a legitimate interest in the Agency’s decisions.

Dr. Steven Markowitz. The industry groups and law firms single out Dr. Steven Markowitz for removal from the SACC because he serves on ADAO’s science advisory board. Since Dr. Markowitz receives no compensation from ADAO, he does not have a financial conflict of interest. As for the claim that he lacks impartiality, this is contradicted by his many professional accomplishments and widespread recognition as a leading asbestos expert. An occupational medicine physician, internist, and epidemiologist, Dr. Markowitz is Professor and Director of the Barry Commoner Center for Health and the Environment at the City University of New York. He is also Adjunct Professor of Environmental Medicine and Public Health at the Icahn School of Medicine at Mt. Sinai.

The industry organizations do not mention Dr. Markowitz’s credentials in their comments but they are described in detail on EPA’s [website](#). Any fair and honest assessment of Dr. Markowitz’s credentials would confirm that he is an unbiased and impartial scientist of the highest order.

Dr. Henry Anderson. The industry groups and law firms also seek to remove Dr. Henry Anderson from the SACC. Dr. Anderson is not a member of the ADAO science advisory committee and has no affiliation with ADAO. The groups seek to link him to ADAO solely because he signed a November 9, 2016 [letter](#) originated by ADAO that asked EPA Administrator Gina McCarthy to select asbestos as one of the first 10 chemicals to undergo risk evaluations under amended TSCA. Dr. Anderson was one of over 300 groups and health professionals from around the world who signed the letter. Again, it is preposterous to claim that support for conducting a new asbestos risk evaluation – the course that EPA in fact followed – is evidence of scientific bias and precludes participation on the SACC.

Although ignored by the groups and law firms, Dr. Anderson has had a long and impressive career as a public servant, university professor and member of many advisory bodies, including several formed by EPA itself. According to the SACC [website](#), Dr. Anderson holds adjunct professorships at the University of Wisconsin- Madison, School of Medicine and Public Health, Department of Population Health Sciences, and the University of Wisconsin Institute for Environmental Studies, Center for Human Studies. He recently retired from his positions as Wisconsin State Environmental and Occupational Disease Epidemiologist, and Chief Medical Officer in the Wisconsin Division of

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Public Health, Department of Health Services. Dr. Anderson previously served on five National Academies of Science Committees. He is also the former chair of the U.S. EPA Science Advisory Board's Environmental Health Committee (2001-2003) and was also former chair of the Board of Scientific Councilors for the National Institute of Occupational Safety and Health (1982-1988).

Surprisingly, the industry groups question Dr. Anderson's scientific credibility because his testimony in litigation has been based on an "any exposure view of causation of asbestos disease." This is a mainstream interpretation of asbestos science adopted by governmental organizations in the US and worldwide. The World Health Organization (WHO), for example, has found that "there is no evidence for a threshold for the carcinogenic effect of asbestos, including chrysotile, and . . . increased cancer risks have been observed in populations exposed to very low levels."² It is hard to fathom how Dr. Anderson's alignment with the findings of WHO and similar bodies could be a departure from good science.

In sum, we trust that EPA will reject this baseless challenge to the integrity of the SAAC process and allow the SAAC as currently constituted to complete its review of the asbestos risk evaluation.

Please include this letter in the docket for the asbestos risk evaluation.

If you have any questions, please contact me at bobsussman1@comcast.net or 202-716-0118.

Sincerely yours,



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cc: Assistant Administrator Alex Dunn
Dr. Diana Wong
Dr. Stan Barone
Dr. Todd Peterson
Dr. David Fischer
Ms. Yvette Collazo

² https://www.who.int/ipcs/assessment/public_health/chrysotile_asbestos_summary.pdf
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