

**TESTIMONY OF
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**BEFORE THE
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENVIRONMENT AND CLIMATE CHANGE
UNITED STATES HOUSE OF REPRESENTATIVES**

May 8, 2019

Good morning Chairman Tonko, Ranking Member Shimkus and members of the Committee. I am Alexandra Dunn, Assistant Administrator for the Office of Chemical Safety and Pollution Prevention, at the U.S. Environmental Protection Agency (EPA). Thank you for the opportunity to appear before you today to discuss asbestos.

I am pleased to share with the Committee the significant efforts the EPA is undertaking to address public health risks from exposure to asbestos. This Administration is the first in 30 years to use the Toxic Substances Control Act (TSCA) to place additional restrictions on products that contain asbestos. Building on the partial ban on asbestos left in place after the EPA promulgated the TSCA Asbestos Ban and Phaseout Rule in 1989, we signed a final rule on April 17, 2019, that strengthens the EPA's asbestos regulations. Our action ensures that discontinued asbestos products are prohibited from being reintroduced into commerce without the Agency conducting a robust review and putting in place any necessary restrictions, including potentially prohibiting use entirely. Additionally, in implementing the Frank R. Lautenberg Chemical Safety for the 21st

Century Act, which amended TSCA, the EPA designated asbestos as one of the first 10 chemicals subject to risk evaluation. We plan to have that evaluation completed in accordance with the statutory timeline provided in TSCA and are aiming to have a draft risk evaluation available for public comment and peer review by the fall of this year. After peer review and public comment, the EPA will finalize the risk evaluation. If the Agency determines there is unreasonable risk to health or the environment from any conditions of use of asbestos we are evaluating, we will act to the extent necessary, to ensure the use of asbestos no longer presents an unreasonable risk, consistent with our authority under TSCA. These actions would be proposed within one year and finalized within two years.

It is helpful to look at the EPA's asbestos regulation in three phases. First, the EPA's asbestos actions took a significant step forward when in 1989 we finalized the TSCA Asbestos Ban and Phaseout Rule, banning the manufacture, importation, processing and distribution in commerce of most uses of asbestos. In 1991, this regulation was largely overturned by the U.S. Fifth Circuit Court of Appeals. As a result, only five asbestos products and all new uses of asbestos remained banned. Under the partial ban, new uses of asbestos means those for which manufacture, import or processing was initiated for the first time after 1989. This partial ban remains in place and our recent actions build upon it.

Second, on April 17, 2019, the EPA closed a dangerous loophole that was left by the 1991 court decision. We signed a regulation that will prevent all other discontinued uses of asbestos from returning to commerce. This action under TSCA is called a Significant New Use Rule (SNUR)

and its effect is to keep dangerous historic uses of asbestos that are no longer ongoing from returning to the U.S. through domestic manufacture or import without EPA review. Without this action, any dormant asbestos uses could begin in the U.S. at any time – without EPA notice or regulation. Our action affects 18 categories of historic asbestos containing products, such as asbestos vinyl floor tiles, insulation and other building materials, and contains an important “catch all” that restricts “any other uses of asbestos” that are neither ongoing nor already prohibited under TSCA. The April 17, 2019, action is an aggressive and critical step in the EPA’s efforts to protect the public from the health risks associated with asbestos, including the increased risk of cancer. Our action ensures that the EPA will be notified of and will be able to regulate, including the ability to prohibit, any of these uses, thus enabling the Agency to protect the public from asbestos risks.

Third, we round out our full circle of protecting the public from asbestos risks as we complete the risk evaluation for the limited conditions of use of asbestos. The EPA identified several conditions of use of asbestos to include in the risk evaluation including imported raw bulk chrysotile asbestos for the fabrication of diaphragms for use in chlorine and sodium hydroxide production; and several imported chrysotile asbestos-containing materials, including sheet gaskets for use in chemical production (*e.g.*, titanium dioxide production), brake blocks used in oil drilling equipment, aftermarket automotive brakes/linings and other vehicle friction products, and other gaskets. These are the only remaining conditions of use of asbestos in commerce that have been identified and the EPA is evaluating each of them.

Under TSCA, the purpose of risk evaluation is to determine whether a chemical substance presents an unreasonable risk, under the conditions of use, to health or the environment, including an unreasonable risk to a relevant potentially exposed or susceptible subpopulation – which could include workers. If the EPA determines that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance presents an unreasonable risk, we must take risk management actions as specified in section 6 of TSCA. This process will be open and transparent. The draft risk evaluation will be peer reviewed and made available for public comment. And the EPA will continue to follow the timetable established by Congress in TSCA.

We received two petitions asking the EPA to require additional asbestos reporting that petitioners believe will further inform the EPA’s risk evaluation for asbestos. After careful consideration, the EPA denied both petitions and, through the process of preparing the asbestos scoping document and drafting the asbestos risk evaluation, we are confident that we have a sufficient understanding of the conditions of use of asbestos.

We understand that many stakeholders want the EPA to ban all remaining asbestos products now. Under TSCA, the EPA cannot move directly to risk management actions such as a ban – which is indeed an option in certain cases – or to any other restrictions without first completing the risk evaluation and making an unreasonable risk determination. This is the path we are following consistent with our legal authority.

The EPA also received considerable comment during recent public comment periods regarding the need to address the risks from what is known as legacy asbestos, that is, the asbestos-containing materials manufactured or imported in the past that may still be present in buildings and homes. We recognize that legacy asbestos, if not properly maintained and left intact, can present a health risk. While the risk evaluation under TSCA is focused on uses of asbestos for which the manufacture (including import), processing and distribution in commerce is prospective or ongoing, we are not ignoring the legacy problem. Asbestos-containing materials that are not damaged or disturbed are not likely to pose a health risk. When asbestos is to be disturbed, there are laws, regulations and programs in place for the safe removal and disposal of asbestos-containing building materials. For example, the Asbestos Hazard Emergency Response Act, which is Title II of TSCA, requires schools to inspect for asbestos, prepare management plans, and take action to prevent or reduce hazards. Under the Clean Air Act, the Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations specify work practices for asbestos during demolition and renovation of certain structures, installations, and buildings to prevent the release of asbestos fibers. The Occupational Safety and Health Administration (OSHA) requirements help prevent or reduce workers' asbestos exposure in the workplace. Most states have laws regarding asbestos. Many states also have regulations regarding asbestos. In addition, the EPA provides guidance and advice on our website for professionals and the public with questions about asbestos in building materials.

The actions I have briefly outlined above constitute an effort to complete a circle of protection from asbestos risks. The partial ban from 1989, the final rule to restrict discontinued uses of asbestos from returning to commerce, and the risk evaluation of the few remaining uses, address

all historic and current uses under our TSCA authorities. We are committed to protecting all Americans from unreasonable risks associated with asbestos and to working with all our stakeholders and our partners at the federal, state and local level. For the first time in decades, the EPA has made addressing asbestos a priority.

On March 7, 2019, Representative Bonamici and others introduced H.R.1603, the Alan Reinstein Ban Asbestos Now Act of 2019. The EPA does not have a formal position on the bill. The EPA stands ready to provide technical assistance on this important issue upon request.

In conclusion, I would like to thank you, Chairman Tonko, Ranking Member Shimkus and members of the Committee for the opportunity to testify before you today. The EPA looks forward to continuing our work with this Committee to protect the public's health and well-being. I will be happy to answer any questions you may have.