



**Testimony of Celeste Monforton, DrPH, MPH
on behalf of the American Public Health Association on the
Alan Reinstein Ban Asbestos Now Act of 2019 (H.R. 1603)
before the Subcommittee on Environment and Climate Change
House Committee on Energy and Commerce
U.S. House of Representatives**

May 8, 2019

I would like to thank Chairman Tonko, Ranking Member Shimkus, and members of the subcommittee for the opportunity to testify before you today on this important public health issue.

I am Dr. Celeste Monforton, a lecturer in the Department of Health and Human Performance at Texas State University and a professorial lecturer in the Department of Environmental and Occupational Health at the Milken Institute School of Public Health at George Washington University. I have a doctorate of public health, and have worked in this field for nearly three decades, including at the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA). I am a fellow in the Collegium Ramazzini.

I am testifying today on behalf of the American Public Health Association (APHA), a diverse community of public health professionals that champions the health of all people and all communities. We speak out for public health issues and policies backed by science. We are the only organization that combines a nearly 150-year perspective, a broad-based membership and the ability to influence policy to improve the public's health. I currently serve on the association's Action Board.

APHA's mission is to improve the health of the public and achieve equity in health status. Our vision is to create the healthiest nation in one generation. Accomplishing these goals requires focus and action on numerous social determinants of health. These determinants include exposure to toxic substances in schools, homes, workplaces, and the natural environment.

Consistent with our public health commitment, a decade ago, APHA called for a complete ban on the manufacture, sale, export, and import of asbestos and asbestos-containing products.¹ We have remained steadfast in this position and it is the reason why APHA strongly supports H.R. 1603, the Alan Reinstein Ban Asbestos Now Act of 2019. We note that the Montana Public

Health Association and the Georgia Public Health Association have also prepared letters of support for H.R. 1603.

Asbestos Causes Cancer

Evidence of the causal association between asbestos exposure and cancer was documented in the 1960's by British, Italian, South African, and American physicians.² There is no debate in the public health community that asbestos is a carcinogen and there is overwhelming consensus that there is no safe level of exposure to asbestos.^{3,4,5,6}

The Occupational Safety and Health Administration's very first regulatory action to address any toxic substance was an emergency standard on asbestos adopted in 1971. OSHA has revised its asbestos standard several times, noting in the agency's words "the undisputed grave consequences from exposure to asbestos fibers."⁷

In 1986, OSHA took steps to further reduce the risk of cancer for workers who are exposed to asbestos. The agency punctuated its decision to adopt a more protective standard with this statement:

"OSHA is aware of no instance in which exposure to a toxic substance has more clearly demonstrated detrimental health effects on humans than has asbestos exposure."⁸

The agency conceded, however, that given the statutory constraints of the Occupational Safety and Health Act with respect to economic and technological feasibility, an estimated 7 workers per 1,000 would develop cancer even at the new, lower exposure limit.⁹ In other words, OSHA acknowledged that its standard would not prevent asbestos-exposed workers from developing cancer.

Today the scientific community has much more evidence of the cancer risk associated with asbestos exposure. Asbestos causes mesothelioma. Asbestos causes cancer of the lung, larynx, and ovary. Exposure to asbestos is also strongly associated with cancer of the pharynx, stomach, and colorectum.³

Because of its potency, the World Health Organization states:

Bearing in mind that there is no evidence for a threshold for the carcinogenic effect of asbestos, including chrysotile, and that increased cancer risks have been observed in populations exposed to very low levels, the most efficient way to eliminate asbestos-related diseases is to stop using all types of asbestos.⁵

The comprehensive ban required under H.R. 1603 is on a very strong scientific foundation. Asbestos poses a grave risk to public health. There is absolutely no justification for any person or company to manufacture, import, process, or distribute in commerce asbestos or any mixture or article containing asbestos. We are pleased that H.R. 1603 contains no exemptions or exceptions

and would eliminate all importation, processing and use within 12 months. Protection of public health requires nothing less.

Current Administration on Asbestos

APHA applauded passage in 2016 of the Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA). When signing the bill into law, President Barack Obama emphasized its importance by noting EPA's previous failure to ban asbestos and reinforcing that the LCSA would ensure that it finally would do so. We were encouraged when the Obama Administration chose asbestos as one of the first 10 chemicals subject to initial risk evaluations under the new law.

However, the steps taken by EPA to address asbestos under the LCSA are of grave concern to us. The agency's decisions to-date call into question EPA's willingness and ability to protect public health. In the Scoping Document (2017) and Problem Formulation Document (2018) for the asbestos risk evaluation, EPA chose approaches that will result in an incomplete and inadequate assessment of the threat asbestos poses to public health. These include:

- (1) a decision to exclude from its risk evaluation cancers of the larynx, pharynx, ovary, stomach and colorectum, and asbestosis, which are all causally associated with asbestos exposure;
- (2) a determination that asbestos-containing materials in buildings (i.e., schools, commercial facilities, infrastructure and schools) are not required to be assessed. EPA refers to these materials as "legacy asbestos" as if harm to them is a matter of the past. This is contrary to what we know about how firefighters, school children, educators, DIYers, workers and others are currently exposed to asbestos fibers and the risk of serious health effects because of these exposures.
- (3) a determination that the risk evaluation will not address exposures in the ambient environment, specifically air, soil or water. For example, EPA does not intend to address exposure to asbestos from air releases during building renovation or demolition, or from the disposal of asbestos waste from ongoing manufacturing operations. The agency incorrectly asserts that these exposures are adequately addressed by other statutes (e.g, AHERA, Clean Air Act, Clean Water Act). It is well known that programs under these statutes are not providing full protection against asbestos exposures; and
- (4) a failure to consider contamination of talc-based consumer products with asbestos, a problem well-documented in children's crayons, toys, and cosmetics.

Significant New Use Rule on Asbestos

APHA is troubled by EPA's adoption of a Significant New Use Rule (SNUR) on asbestos. The SNUR is not a ban, and merely requires notification to the agency before several obsolete

asbestos products are reintroduced into U.S. commerce.¹⁰ The SNUR makes no finding that these products are unsafe and it does not commit EPA to ban them if these products are returned to the marketplace. EPA is leaving the door open to the importation and use of old products that we know -- and EPA determined in 1989 -- put people at risk of asbestos-related disease. It would be far better for EPA to include these products in their risk evaluation and then ban them. Instead, the agency excluded them from its risk evaluation to make them subject to the SNUR.

In short, we have simply lost confidence in EPA's ability or desire to take comprehensive and effective action on asbestos. Rather than wait any longer, Congress should step in and get the job done. H.R. 1603 would impose the broad and expeditious ban that APHA believes is essential. It would cover asbestos-contaminated products, including the Libby amphibole, as well as raw asbestos and all asbestos containing products. H.R. 1603 should become law as soon as possible.

Chemical Reporting Rule Must Include Asbestos

A key component of a health risk assessment is having the best available data in order to make sound public health decisions. The cancer risk associated with asbestos exposure makes a precautionary risk assessment especially vital. Yet EPA's Chemical Data Reporting (CDR) rule exempts asbestos from the reporting requirements that apply to thousands of chemicals.

In September 2018, APHA joined with other groups to petition EPA to require asbestos reporting under TSCA. EPA denied the petition and we are now suing EPA in federal court. In January 2019, the Attorneys General of 14 states and the District of Columbia also sent a petition to EPA on the same matter. They emphasize that EPA's interpretation of the CDR

“...deprive the agency of crucial information regarding asbestos exposure pathways necessary for the agency to fulfill its statutory mandate...”¹¹

Section 2 of H.R. 1603 will help to fill this significant data gap because it will require the reporting by importers and users of asbestos and asbestos-containing products.

When reporting is implemented, the public will have information available to answer questions such as:

- What products contain asbestos and how much?
- How many people are exposed to specific asbestos-containing products?
- Who is importing asbestos-containing products?
- Where are asbestos-containing products being shipped?

Moreover, EPA and other public health agencies need this data in order to make informed risk evaluation and risk management decisions.

The asbestos reporting requirement in H.R. 1603 is a critically important part of the legislation. APHA supports it without qualification.

Report to Congress on the Asbestos

In addition to the asbestos-containing products still being imported, families and communities have inherited asbestos in their homes, schools, commercial buildings and workplaces. It is, in part, because of this “legacy asbestos” that incidence rates of cancer in U.S. firefighters that are twice as high as the general public.¹² EPA has refused to address asbestos in the built environment in its risk evaluation and we hope that the courts will reverse this unsound interpretation of the law.

However the court rules, we need a robust quantitative assessment of the presence of asbestos in residential, commercial, public, and school buildings. We cannot protect the public, especially children, from exposure to asbestos, if we don’t have accurate data on where it is located, what condition it is in, how many people are exposed and how it is handled and disposed.

We commend the bill’s sponsors for requiring the EPA, the Departments of Health and Human Services and the Department of Labor to assemble and analyze data to answer these and related questions. The report required under Section 3 of H.R. 1603 will provide the information necessary to develop protective risk management plans. We request that the Committee stipulate in its report language that the assessment be considered a public health investigation and conducted as such.

Inspector General Report on the Asbestos Hazard Emergency Response Act

A recent investigation by the EPA’s Office of the Inspector General (OIG) reinforces the need for the report described in Section 3.¹³ The OIG reported that EPA was failing its responsibility to enforce the Asbestos Hazard Emergency Response Act (AHERA).

EPA is responsible for monitoring compliance with AHERA in 29 states and the District of Columbia. The OIG reported that between FY 2012 through 2016 some EPA regional offices conducted zero or very few inspections to monitor compliance with AHERA. During this five year time period, not a single inspection occurred in Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. In Iowa, Kansas, Missouri and Nebraska, only six inspections were conducted in that five-year period. The OIG reported that in five of EPA’s 10 regions the agency only conducts AHERA inspections when they receive a tip or complaint.

“Without compliance inspections,” the OIG wrote, “EPA cannot know whether schools pose an actual risk of asbestos exposure to students and personnel.”¹³

President Ronald Reagan signed AHERA into law in 1986. At the time, Congress estimated that 15 million students and 1.4 million school employees were at risk of exposure to asbestos in schools. AHERA required all public and private non-profit schools (Kindergarten through 12th grade) to conduct an initial inspection to identify any asbestos containing materials (ACM). Schools with ACM are required to inspect their buildings every three years to evaluate the condition of the ACM. The institutions (or applicable local education agencies) are required to

develop written asbestos management plans and perform asbestos response actions in order to prevent or reduce asbestos hazards.

AHERA was a well-crafted and forward-thinking law. Its authors recognized that non-friable ACM in buildings will degrade with age and normal wear-and-tear. ACM that was not friable one year, could become friable in the future, creating the situation in which asbestos fibers are released into the school environment and into the community.

With the passage of AHERA in 1986 and the updated OSHA standard that same year, asbestos exposure to the public and workers was receiving much needed attention. Workers received comprehensive training on how to identify and remediate ACM. Tens of thousands of these skilled, trained laborers had union jobs in the asbestos abatement industry. A serious public health problem was being addressed and better controlled.

By the late 1990's, however, focus on asbestos waned. Some in the asbestos abatement industry shifted to non-union contractors who were performing smaller remediation projects. This shift in the workforce had consequences. Previously, union workers in the building trades often knew someone who suffered from an asbestos-related disease, like their grandfather, an uncle, or journeyman. There was an appreciation for the serious risk associated with asbestos exposure. Without these personal experiences, it was more difficult for workers to grasp the magnitude of potential harm. This workforce transition also contributed to inadequate safety training and workers reluctant to speak up if contractors were cutting corners. At the same time, EPA and OSHA were conducting few asbestos-related inspections, and school districts seemed to view asbestos as a problem of the past that already had been addressed. In fact, it is a chronic serious public health problem.

AHERA is intended to mitigate and eliminate asbestos exposure in schools, but as noted by the recent OIG report, enforcement of the law is poor because

“EPA regions have either completely disinvested from or significantly reduced resources to the AHERA program.”¹³

Safeguards are more uneven and less protective for building structures that contain asbestos but are not schools. A thorough examination of this large and continuing source of exposure to asbestos in the built environment is long overdue. APHA strongly endorses Section 3 of H.R.1603 for mandating it.

Each year, an estimated 39,000 people in the U.S. die from asbestos-related cancer and lung disease.¹⁴ The five-year relative survival rate for pleural mesothelioma is less than 10 percent.¹⁵ The only known cause of this cancer is exposure to asbestos, and a diagnosis of this disease is a death sentence for nearly all patients with it. Cancer takes an emotional and physical toll on the individual and their family. Cancer also has a significant financial impact, with more than \$80 billion alone in direct medical care each year.¹⁶ Preventing cancer makes economic sense.

Today we are stuck with the legacy of more than 31 million metric tons of asbestos that was used in housing and buildings. It is imperative that the U.S. address this risk to public health.

Asbestos is a potent carcinogen. There is no safe level of exposure to it. More than 60 countries have banned asbestos because they recognize its grave risk to public health. It is long past time for the U.S. to prohibit any person or company to manufacture, import, process, or distribute in commerce asbestos or any mixture or article containing asbestos.

In conclusion, APHA supports strong and comprehensive legislation to remove asbestos expeditiously from commerce in the U.S., assure the public is informed about sources of exposure to asbestos, and address the serious and poorly managed threat from legacy asbestos. H.R. 1603 accomplishes these goals and we wholeheartedly support it.

ATTACHMENTS

- (1) American Public Health Association (APHA) letter dated March 19, 2019 in support of H.R. 1603.
- (2) American Public Health Association Policy Statement: Elimination of Asbestos.
- (3) Georgia Public Health Association letter of support for H.R. 1603.
- (4) Montana Public Health Association letter support for H.R. 1603.
- (5) Collegium Ramazzini. (2015). The Global Health Dimensions of Asbestos and Asbestos-related Diseases.
- (6) APHA. Comments to EPA dated August 10, 2018 in response to 83 Fed. Reg. 26922 on agency's proposed Significant New Use Rule for asbestos.
- (7) APHA. Comments to EPA dated March 13, 2017 in response to 81 Fed. Reg. 91929 on agency's "Scoping Document" on asbestos.

ENDNOTES

¹ APHA (2009). Policy Statement 20096: "Elimination of Asbestos." <https://bit.ly/2GUqU7W>

² Collegium Ramazzini. Call for an international ban on asbestos: statement update, 2004. [http://www.collegiumramazzini.org/download/11_EleventhCRStatement\(2004\).pdf](http://www.collegiumramazzini.org/download/11_EleventhCRStatement(2004).pdf)

³ IARC (2012) IARC Monographs—Arsenic, Metals, Fibres, and Dusts, Volume 100 C. A Reviews of Human Carcinogens. IARC Monographs on the Evaluation of Carcinogenic Risks to Humans. International Agency for Research on Cancer, World Health Organization. <http://monographs.iarc.fr/ENG/Monographs/vol100C/mono100C.pdf>

⁴ World Health Organization (2014). Chrysotile Asbestos. http://www.who.int/ipcs/assessment/public_health/chrysotile_asbestos_summary.pdf

⁵ National Institute for Occupational Safety and Health. (2017) Current Intelligence Bulletin 68: Chemical Carcinogen Policy. Cincinnati, OH: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, DHHS (NIOSH) Publication No. 2017-100.

⁶ Collegium Ramazzini. (2015). The Global Health Dimensions of Asbestos and Asbestos-related Diseases. [http://www.collegiumramazzini.org/download/18_EighteenthCRStatement\(2015\).pdf](http://www.collegiumramazzini.org/download/18_EighteenthCRStatement(2015).pdf)

⁷ Occupational Safety and Health Administration. Standard for exposure to asbestos dust. 37 Fed. Reg. 11318 (June 7, 1972), 11318.

⁸ Occupational Safety and Health Administration. Occupational exposure to asbestos, tremolite, anthophyllite, and actinolite; final rule. 51 *Fed. Reg.* 22612 (June 20, 1986) 22615.

⁹ Occupational Safety and Health Administration. Occupational exposure to asbestos, tremolite, anthophyllite, and actinolite; final rule. 51 *Fed. Reg.* 22612 (June 20, 1986) 22647.

¹⁰ As noted in the May 8, 2019 testimony submitted for this hearing by the Asbestos Disease Awareness Organization, “EPA easily could have included these obsolete products in its ongoing TSCA asbestos risk evaluation, leading to a conclusion that they present an unreasonable risk of injury, as EPA in fact concluded in its 1989 rule. Based on this determination, the Agency would then have been obligated to restrict these products under TSCA section 6(a) to the extent necessary to eliminate their risks, which would likely have required it to permanently and unconditionally ban them from U.S. commerce.”

¹¹ Petition of the Commonwealths of Massachusetts and Pennsylvania, the States of California, Connecticut, Hawaii, Maine, Maryland, Minnesota, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington, and the District of Columbia under Section 21(a) of TSCA for EPA to issue an asbestos reporting rule to require reporting under TSCA Section 8(a) of information on asbestos manufacturing, importing, processing, distribution in commerce, use and disposal, dated January 31, 2019.

<https://bit.ly/2J0Foa1> Accessed May 5, 2019.

¹² Daniels RD, Kubale TL, et al. Mortality and cancer incidence in a pooled cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950-2009). *Occup Environ Med.* 2014 Jun;71(6):388-97.

¹³ U.S. EPA, Office of the Inspector General. EPA needs to re-evaluate its compliance monitoring priorities for minimizing asbestos risks in schools. Report No. 18-P-0270, September 17, 2018.

¹⁴ Furuya S, Chimed-Ochir O, Takahashi K, et al. Global asbestos disaster. *Int J Environ Res Public Health.* 2018 May 16;15(5).

¹⁵ American Cancer Society. Survival Rates for Mesothelioma (based on data from the National Cancer Institute’s Surveillance, Epidemiology, and End Results Program for cases diagnosed between 2008 and 2014 (most recent data available.)) <https://bit.ly/2VCLmmn> Accessed May 3, 2019.

¹⁶ American Cancer Society. Economic Impact of Cancer (based on data from the Agency for Healthcare Research and Quality), last revised January 8, 2018.

<https://www.cancer.org/cancer/cancer-basics/economic-impact-of-cancer.html> Accessed May 4, 2019.