

IN THE UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

_____)	
TEXAS CHEMISTRY COUNCIL, <i>et al.</i> ,)	
)	
Petitioners,)	
)	
v.)	
)	
ENVIRONMENTAL PROTECTION)	Docket No. 24-60193
AGENCY,)	
)	
Respondent.)	
_____)	

**UNOPPOSED MOTION OF ASBESTOS DISEASE AWARENESS
ORGANIZATION TO INTERVENE**

May 20, 2024

Robert M. Sussman
SUSSMAN & ASSOCIATES
DC BAR NO 226746
3101 Garfield Street, NW
Washington, DC 20008
(202) 716-0118
bobsussman1@comcast.net

*Counsel for Petitioner/Intervenor
Asbestos Disease Awareness Organization*

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made so that the judges of this court may evaluate possible disqualification or recusal.

- (1) Asbestos Disease Awareness Organization (ADAO)
(Petitioner//Movant for Intervention)
- (2) Linda Reinstein (President ADAO)
- (3) Robert M. Sussman, Sussman & Associates (ADAO Counsel)
- (4) United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO/CLC (USW)(Petitioner/Movant for Intervention)
- (5) Occupational Safety & Health Law Project, LLC (Counsel for USW)
- (6) Randy S. Rabinowitz (Counsel for USW)
- (7) Victoria L. Bor (Counsel for USW)
- (8) Nathan Finch (Counsel for USW)
- (9) Motley Rice (Counsel for USW)
- (10) Texas Chemistry Council (TCC) (Petitioner)
- (11) Baker Botts L.L.P. (TCC Counsel)
- (12) Carter, Beau (TCC Counsel)
- (13) Aaron M. Streett (TCC counsel)
- (14) American Chemistry Council (ACC) (Petitioner)

- (15) Georgia Chemistry Council (GCC) (Petitioner)
- (16) Crowell and Moring (Counsel for ACC and GCC)
- (17) David Chung (Counsel for ACC and GCC)
- (18) Warren Lehrenbaum (Counsel for ACC and GCC)
- (19) United States Environmental Protection Agency (Respondent)
- (20) Regan, Michael S., Administrator, United States Environmental Protection Agency (Respondent)
- (21) Garland, Merrick B., Attorney General, United States Department of Justice (Respondents' Counsel)
- (22) Todd Kim, Assistant Attorney General, US Department of Justice (Respondents' Counsel)
- (23) Laura Glickman, US Department of Justice (Respondents' Counsel)
- (24) Prieto, Jeffrey M. (General Counsel for Respondent United States Environmental Protection)

Respectfully Submitted,

s/ Robert M. Sussman
Robert M. Sussman

Counsel for Asbestos Disease Awareness Organization

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Pursuant to Federal Rule of Appellate Procedure (FRAP) 15(d), petitioner Asbestos Disease Awareness Organization (ADAO) files this unopposed motion to intervene in these consolidated cases on the side of respondent Environmental Protection Agency (EPA). ADAO's motion meets the Rule's 30 day deadline for seeking intervention in proceedings to review agency rules.¹

Two of the chemical industry petitioners, the American Chemistry Council (ACC) and the Georgia Chemistry Council (GCC), have consented to ADAO's intervention. A third petitioner, the Texas Chemistry Council (TCC), and respondent EPA have stated that they take no position on the motion.

SUMMARY AND OVERVIEW

The focus of these consolidated petitions for review is EPA's final rule "Asbestos Part 1: Chrysotile Asbestos: Regulation of Certain Conditions of Use Under the Toxic Substances Control Act (TSCA)," 89 Fed. Reg. 21970 (March 28, 2024). The Part 1 rule bans or restricts certain conditions of use of chrysotile asbestos, one of six recognized asbestos fibers.

The Serious Harms to Health Caused by Asbestos

As described in the declaration of ADAO's president Linda Reinstein, asbestos is

¹ ADAO's petition for review was filed in the Court of Appeals for the DC Circuit on April 19, 2024 and then transferred to this Court following a lottery by the Judicial Panel on Multidistrict Litigation. The chemical industry petitions for review that have also been consolidated in this Court were filed on April 18 and 19, 2024, respectively.

among the most hazardous substances known to man. Leading health authorities in the U.S. and around the world have 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. The scientific community has concluded that there is no safe or fully controlled use of asbestos. In the U.S., asbestos still kills over 40,000 Americans each year.

ADAO's Work on Asbestos Disease Prevention

An international nonprofit organization founded in 2004 and based in Southern California, ADAO is comprised of asbestos victims and their families, scientific and medical experts and professionals. As described in the Reinstein declaration, ADAO is dedicated to preventing asbestos-caused diseases through national and international education, science, advocacy with public officials, and community initiatives. The U.S. is the only industrialized Western nation that has not yet fully banned asbestos. For many years, ADAO has called upon Congress and EPA to enact such a ban. During the past two decades, ADAO has become a network of more than 50,000 people, occupational safety and health advocates, and organizations dedicated to protecting public health from the known dangers of asbestos. ADAO is now the largest US-based independent organization committed to preventing asbestos exposure in order to eliminate suffering, disease, and death.

ADAO's Science Advisory Board, whose chairs and members are distinguished world-class experts in asbestos disease, reviews educational and advocacy materials for technical accuracy and provides medical and scientific advice on public policy development and advocacy on asbestos. ADAO's Prevention Advisory Board, consisting of knowledgeable experts on asbestos exposure prevention and mitigation, helps ADAO address inquiries from concerned citizens and professionals and inform policy-makers on the best strategies for avoiding or minimizing asbestos exposure.

The Progression of Asbestos Regulation under TSCA

In 1989, EPA issued a TSCA rule banning most asbestos uses but this Court reversed the ban in 1991 because of various legal hurdles in the original law. *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201 (5th Cir. 1991). EPA's unsuccessful attempt to ban asbestos was a strong impetus for amending TSCA and bi-partisan TSCA reform legislation was enacted in 2016 providing the Agency with expanded authority to regulate dangerous chemicals. As it began to implement the new law in late 2016, EPA selected asbestos as one of the first 10 chemicals for risk evaluation and management under the strengthened requirements of section 6. After an eight year process, EPA's Part 1 rule addressing current uses of chrysotile asbestos was finalized earlier this year but the Agency is at an early stage of its Part 2 risk evaluation for legacy asbestos products to which large segments of the public remain exposed.

ADAO Advocacy under TSCA

As an advocate, repository of scientific and technical expertise and litigant, ADAO has been heavily engaged in all aspects of EPA's work on asbestos since passage of the TSCA amendments in 2016. With the support of leading experts, ADAO filed detailed comments on EPA's Part 1 scoping document, draft risk evaluation, final evaluation, proposed asbestos reporting rule and proposed Part 1 risk management rule. As the Reinstein declaration explains, at every step of EPA's lengthy process, ADAO has consistently emphasized the need for the Agency to rely on the best available science on asbestos health risks and advocated for the strongest possible restrictions on asbestos use and exposure.

ADAO has also been a party to litigation seeking to compel EPA to fully implement the new law for asbestos. In 2017, ADAO joined with other groups to obtain a decision by the Ninth Circuit Court of Appeals requiring EPA to address exposure to legacy asbestos products in its TSCA risk evaluation. *Safer Chemicals, Healthy Families v USEPA*, 943 F.3d 397 (9th Cir. 2019). In 2018, ADAO petitioned EPA to require mandatory reporting by industry on asbestos importation, use and exposure and then successfully challenged EPA's petition denial in the Northern District of California. *Asbestos Disease Awareness Org. v. Wheeler*, 508 F. Supp. 3d 707 (N.D. Cal. 2020). EPA has now promulgated a TSCA asbestos reporting rule in response to the court decision. 87 Fed. Reg. 27060 (May 6, 2022). Subsequently, ADAO challenged the Part 1 risk evaluation in the Ninth Circuit and reached a settlement with the Agency calling for

additional risk analysis. *Asbestos Disease Awareness Org, et al v. USEPA, et al*, No. 21-70160 (9th Cir. 2021). ADAO also filed suit to compel EPA to agree to a schedule for its Part 2 asbestos evaluation; the parties entered into a consent decree in the Northern District of California requiring completion of the evaluation by December 1, 2024. *ADAO v. Regan* (N.D. Cal. No. 4:21-cv-03716-PJH 2021)

ADAO's Concerns About the Part 1 Rule's Gaps in Health Protection

Building on these years of legal and scientific advocacy, ADAO is now petitioning for review of the Part I rule in this Court because it believes that the rule does not provide the full measure of protection against the harmful effects of asbestos required by TSCA. For example, as discussed in the Reinstein declaration, the rule fails to ban all known and reasonably foreseeable uses of chrysotile asbestos, does not address the other five asbestos fibers, provides up to 12 years for chlor-alkali producers to eliminate asbestos from their operations, and does not meaningfully regulate disposal of asbestos waste from continuing asbestos use. During briefing in this case, ADAO intends to demonstrate these and other shortcomings in the rule and seek a decision by the Court directing EPA to strengthen the rule's protections.

ADAO's Support for Protections Afforded by the Part 1 Rule

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 and necessary to comply with TSCA. As explained in the Reinstein declaration, ADAO

seeks intervention in the industry challenges in order to demonstrate that their attacks on the Part 1 rule are not supported by the scientific evidence in the record and are contrary to TSCA. As the Reinstein declaration explains, in defending the challenged provisions of the rule, ADAO will articulate a unique public health and prevention perspective that EPA lacks and bring to bear the expertise of physicians and scientists with globally recognized expertise in asbestos disease and prevention.

ARGUMENT

While FRAP 15(d) articulates no standard for granting intervention, this Court applies a test “akin to that of a district court’s considering a motion under Federal Rule of Civil Procedure 24.” *Richardson v. Flores*, 979 F.3d 1102, 1105 (5th Cir. 2020). FRCP 24(a)(1) allows intervention as of right where the movant satisfies the following elements:

- (1) the applicant has an interest relating to the transaction that is the subject of the action;
- (2) the disposition of the action may, as a practical matter, impair or impede the applicant’s ability to protect that interest; and
- (3) the existing parties to the suit inadequately represent the applicant’s interest.

See La Union del Pueblo Entero v. Abbott, 29 F.4th 299, 305 (5th Cir. 2022); *Texas v. United States*, 805 F.3d 653, 657 (5th Cir. 2015); *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 463 (5th Cir. 1984).

While it is the movant’s burden to establish its right to intervene, “Rule 24 is to be liberally construed.” *Brumfield v. Dodd*, 749 F.3d 339, 341 (5th Cir.2014). “Federal courts should allow intervention ‘where no one would be hurt and the greater justice could be attained.’” *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994) (quoting *McDonald v. E.J. Lavino Co.*, 430 F.2d 1065, 1074 (5th Cir. 1970)). See *Miller v. Fed’n of S. Coops.*, No. 21-11271, 2022 U.S. App.LEXIS 7563, at *4 (5th Cir. Mar. 22, 2022) (noting this Court’s “broad policy favoring intervention” and the intervenor’s “minimal burden” (internal quotes and citation omitted)).

A Rule 24(a) inquiry “is a flexible one, which focuses on the particular facts and circumstances surrounding each application . . . measured by a practical rather than technical yardstick.” *Entergy Gulf States La., L.L.C. v. EPA*, 817 F.3d 198, 203 (5th Cir. 2016) (quotation omitted). In ruling on a motion to intervene, the Court takes the movant’s factual allegations as true. *La Union*, 29 F.4th at 305 (referencing *Mendenhall v. M/V Toyota Maru No. 11*, 551 F.2d 55, 56 n.2 (5th Cir. 1977)). Doubts should be “resolved in favor of the proposed intervenor.” *Entergy*, 817 F.3d at 203 (internal quotation marks and citation omitted).

As shown below, ADAO meets Rule 24(a)’s criteria for intervention.

I. ADAO Has a Cognizable Interest in the Subject Matter of the Industry Petitions for Review

For intervention purposes, “[a]n interest is sufficient if it is of the type that the law deems worthy of protection, even if the intervenor does not have an enforceable legal

entitlement or would not have standing to pursue her own claim.” *Texas*, 805 F.3d at 657. This factor “may be judged by a more lenient standard if the case involves a public interest question or is brought by a public interest group.” *Brumfield v. Dodd*, 749 F.3d at 344. For example, a District Court in this Circuit has granted intervention where environmental organizations “established a sufficient protectable interest in the protection of sea turtles in furtherance of their personal aesthetic enjoyment, as well as their recreational and research interests.” *Louisiana v. DOC*, No. 21-1523, 2021 U.S. Dist. LEXIS 241960, at *11 (E.D. La. 2021).

Courts typically find a putative intervenor’s interest sufficient “where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party’s benefit.” *Crossroads Grassroots Policy Strategies v. Fed. Election Comm’n*, 788 F.3d 312, 317 (D.C. Cir. 2015). For example, this Court has held that “public spirited” civic organizations that successfully petitioned for adoption of a municipal law may intervene to vindicate their “particular interest” in protecting that law. *City of Houston v. Am. Traffic Solutions, Inc.*, 668 F.3d 291, 294 (5th Cir. 2012).

These principles apply here. As described in the Reinstein declaration, ADAO has devoted years of advocacy to supporting a strong and comprehensive Part 1 rule. While the rule may fall short of providing the full protection against asbestos exposure that ADAO has sought, the steps it takes to reduce asbestos exposure will achieve substantial reductions in risk and were supported by ADAO throughout the EPA Part 1 rulemaking.

In particular, the rule bans all six chrysotile asbestos conditions of use it addresses and imposes health-based limits on exposure during the phaseout of these uses. The industry petitioners may challenge these protections on the basis that they are not warranted by the scientific evidence for chrysotile asbestos; eliminate asbestos use whereas more limited restrictions short of a ban would provide adequate protection; or place unnecessarily stringent limits on asbestos exposure during the transition to non-asbestos processes. These are all positions that ADAO has vigorously opposed. If accepted by the Court, they would allow harmful exposure to asbestos to continue, increasing risks of death and serious disease to the exposed populations that ADAO has consistently sought to protect. Plainly, ADAO's interest in defending the Part 1 rule from industry challenge is sufficient to warrant intervention.

II. Disposition of the Consolidated Petitions in Industry's Favor May Impair ADAO's Ability to Protect Its Interests

In meeting the second prong of the intervention criteria, movants "need only show that if they cannot intervene, there is a possibility that their interest could be impaired or impeded." *La Union*, 29 F.4th at 307 (citing *Brumfield*, 749 F.3d at 344-45). As a sister Circuit has observed, where a proposed intervenor has a significant protectable interest, courts have had "little difficulty concluding that the disposition of the case may, as a practical matter, affect it." *California ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006).

Here, there is no doubt that, if the Court were to vacate all or portions of the Part 1

rule in response to industry's challenges, the result would be weaker protections against asbestos exposure. This would impair ADAO's interest in maximizing prevention of harmful asbestos exposure and undermine years of effort to advocate for and defend regulations under TSCA that ban all importation and use of asbestos.

III. EPA Inadequately Represents ADAO's Interests

The Supreme Court has emphasized that the burden of establishing inadequacy of representation is "minimal." *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972). This Circuit, too, has characterized this burden as "minimal," and noted that "a potential intervenor need only show that "representation by existing parties *may* be inadequate." *Ross v. Marshall*, 426 F.3d 745, 761 (5th Cir. 2005) (emphasis in original). Even where a government body may have the same ultimate goals as a public interest organization, representation may be inadequate where the intervenor's perspective differs from that of the government agency and it will not effectively protect the intervenor's interest. *Hopwood v. Texas*, 21 F.3d 603, 605 (5th Cir. 1994) (quoting *Environmental Defense Fund, Inc. v. Higginson*, 631 F.2d 738, 740 (D.C. Cir. 1979)).

The D.C. Circuit has long recognized that "governmental representation" of the interests of private parties is often inadequate. *See Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) (intervention motion fell "squarely within the relatively large class of cases . . . recognizing the inadequacy of government representation of the interests of private parties"); *Fund for Animals Inc. v. Norton*, 322 F.3d 728, 836

(D.C. Cir. 2003) (Government would not give the necessary “primacy” to interests of impacted private party). Thus, in *Texas*, this Court sided with the proposed intervenors because they “specif[ied] the particular ways in which their interests diverge[d]” from the party whose ultimate objective they shared and “identif[ied] the particular way in which these divergent interests have impacted the litigation.” 805 F.3d at 662-663.

Here, over many years, ADAO and EPA have disagreed fundamentally on several aspects on the Agency’s approach to asbestos under TSCA. As described in the Reinstein declaration, these differences 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; (3) EPA’s obligation under TSCA to expand its asbestos risk evaluation to address continuing exposure to legacy asbestos products; and (4) the scope of and schedule for completing EPA’s Part 2 risk evaluation of exposure to legacy asbestos.

As described above, to resolve these issues, ADAO has been a plaintiff or petitioner in four separate lawsuits (not including this one) over EPA’s application of TSCA requirements to asbestos. Two of these cases resulted in favorable decisions imposing new obligations on EPA; the remaining two cases resulted in settlements under which EPA committed to taking additional actions on asbestos to meet its TSCA responsibilities.

These differences in approach have continued during the Part 1 risk management rulemaking, with ADAO submitting extensive comment raising concerns about a host of issues. Examples include: (1) the exclusion from EPA's proposed ban of all known or reasonably foreseen chrysotile conditions of use and five of the six recognized asbestos fibers; (2) the length of the phase-out period for asbestos use in the chlor-alkali industry; (3) the application of the rule to disposal of asbestos wastes and other environmental releases; and (4) whether hundreds of thousands of asbestos gaskets in chemical plants, refineries and other facilities should be permitted to remain in use indefinitely.

If allowed to intervene, ADAO will also seek to uphold aspects of the rule that are being challenged by the industry petitioners. But its defense of these provisions will be informed by the perspective that all exposure to asbestos should be prevented and that, even if the Court rejects the industry challenges, EPA must do more to provide full protections against the risks of asbestos. Thus, there are serious doubts whether, in the absence of intervention, EPA can adequately represent ADAO's interests in a more comprehensive and protective rule.

CONCLUSION

ADAO has met the criteria for intervention under FRAP 15(d) and this Court's decisions and its motion to intervene should be granted.

Dated: May 20, 2024

Respectfully submitted,

/s/ Robert M. Sussman
Robert M. Sussman
SUSSMAN & ASSOCIATES
DC BAR NO 226746
3101 Garfield Street, NW
Washington, DC 20008
(202) 716-0118
bobsussman1@comcast.net

Counsel for Asbestos Disease Awareness Organization

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the requirements of Federal Rule of Appellate Procedure 27(d) because it has been prepared in 14-point Times New Roman, a proportionally spaced font. I further certify that this motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2) because it contains 2951 words, according to the count of Microsoft Word.

/s/ Robert M. Sussman

Robert M. Sussman

Counsel for Movant ADAO

CERTIFICATE OF SERVICE

I hereby certify that, on May 20, 2024, I electronically filed the foregoing motion with the Clerk of Court by using the appellate CM/ECF system. All participants who are registered CM/ECF users will be served by the Court's CM/ECF system.

/s/ Robert M. Sussman

Robert M. Sussman

Counsel for ADAO

**IN THE UNITED STATES COURT OF APPEALS
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**DECLARATION OF LINDA REINSTEIN IN SUPPORT OF MOTION OF
ASBESTOS DISEASE AWARENESS ORGANIZATION TO INTERVENE**

I, Linda Reinstein, hereby declare as follows:

1. I am the President and CEO of the Asbestos Disease Awareness Organization (ADAO). ADAO has filed a petition for review of the final rule of the Environmental Protection Agency (EPA) entitled "Asbestos Part 1: Chrysotile Asbestos: Regulation of Certain Conditions of Use Under the Toxic Substances Control Act (TSCA)," 89 Fed. Reg. 21970 (March 28, 2024). The Part 1 rule bans or restricts certain conditions of use of chrysotile asbestos, one of six recognized asbestos fibers.

2. ADAO is also moving for intervention in the petitions to review the Part 1 rule filed by certain chemical industry organizations. This declaration is submitted in support of ADAO's motion to intervene. The declaration provides background for the Court on ADAO's history, goals, interests and advocacy on asbestos issues under TSCA, including the Part 1 rule.

ADAO'S MISSION AND PROGRAMS

3. ADAO, an international nonprofit organization based in Southern California, is comprised of asbestos victims, workers, and professionals dedicated to preventing asbestos-caused diseases through national and international education, advocacy, and community initiatives. 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.

4. 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 a number of other regulatory and public health bodies recognized asbestos as a human carcinogen decades ago. In 1976, NIOSH stated, "*only a ban can assure protection against carcinogenic effects of asbestos.*"⁵

5. IARC has determined that asbestos exposure is causally related to lung cancer,

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>

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 107,000 people die each year from asbestos-related lung cancer, mesothelioma and asbestosis resulting from occupational exposures. In the U.S., asbestos kills over 40,000 Americans each year.⁶

6. ADAO's vision is to eliminate asbestos-related diseases, including mesothelioma, other cancers and non-cancer lung impairments.. To achieve this vision, ADAO works with public health organizations and leaders throughout the world to prevent consumer, environmental, and occupational exposure to asbestos. The U.S. is the only industrialized Western nation that has not yet banned asbestos and, for many years, we have called upon Congress and EPA to enact such a ban. While ADAO is working to ban asbestos, our programs are far broader in scope. We are a round-the-clock organization committed to three initiatives: education, advocacy, and community. 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.

7. As a leader in awareness and prevention, ADAO has built an extensive educational resource library of graphics, infographics, videos, and factsheets that are widely shared in the United States and around the world. Each year, ADAO speaks at numerous international conferences and events, such as the American Public Health Association's (APHA)

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

Annual Meeting and Exposition and the International Mesothelioma Interest Group (iMig) 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,⁷ 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.*"⁸

8. ADAO collaborates with various national and international organizations to promote public health and advocate for an end to asbestos use and exposure. Each April, ADAO organizes an annual Global Asbestos Awareness Week,⁹ which was launched following the successful passage of Senate Asbestos Awareness Resolution, designating the first week of April as "National Asbestos Awareness Week"¹⁰ in the U.S. Additionally, since 2004, ADAO has hosted 18 staff briefings for the House of Representatives and the Senate.¹¹ We have been instrumental in pushing for and shaping multiple bills introduced in the House and Senate to ban asbestos, including in the current session of Congress.

9. We assure that all our work is informed by the best possible scientific understanding of the health impacts of asbestos. To that end, we have formed the ADAO Science

⁷ <https://www.adaoconferences.org/>

⁸ <https://www.asbestosdiseaseawareness.org/newsroom/blogs/breaking-the-silence-unveiling-the-comprehensive-asbestos-report-and-paving-the-way-for-arban-act-of-2023/>

⁹ <https://www.asbestosdiseaseawareness.org/newsroom/blogs/landing-page-for-2024gaaw-global-asbestos-awareness-week-asbestos-one-word-one-week-one-world-april-1-7-2024/>

¹⁰ <https://www.asbestosdiseaseawareness.org/newsroom/blogs/press-release-adao-applauds-senators-tester-and-daines-for-introducing-the-19th-resolution-designating-april-1-7-national-asbestos-awareness-week/>

¹¹ <https://www.asbestosdiseaseawareness.org/newsroom/blogs/18th-asbestos-disease-awareness-organization-congressional-staff-briefing-resources-july-2023/>

Advisory Board,¹² whose chairs and members are distinguished world-class experts in asbestos disease. 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 issues 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.

ADAO'S INVOLVEMENT IN TSCA LEGISLATIVE REFORM AND IMPLEMENTATION

10. 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 and 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.

¹² <https://www.asbestosdiseaseawareness.org/about-adao/leadership/>

11. To that end, we 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 process.

12. . During the implementation of the Frank R. Lautenberg Chemical Safety, ADAO and EPA have disagreed fundamentally on several aspects on the Agency's approach to asbestos under TSCA. These differences have spanned several years. They 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.

Scoping Document for Asbestos Risk Evaluation

13. We 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

the 10 chemicals on June 22, 2017.

Successful Litigation to Require EPA to Address Legacy Asbestos

14. EPA's July 20, 2017 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.

15. 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 pressure by ADAO to compel EPA to establish a process and schedule for its legacy asbestos risk evaluation.

Part 1 Risk Evaluation

16. 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 SAAC. 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.

Petition to Require Asbestos Reporting under TSCA and Successful Litigation

17. On September 25, 2018, ADAO and other groups petitioned EPA under section 21 of TSCA to initiate a rulemaking to amend the TSCA Chemical Data Reporting (CDR) rule to require reporting on asbestos. The rule sought by the petition would have required reporting of use and exposure information essential for two purposes: (1) supporting EPA's evaluation of the risks of asbestos and subsequent risk management regulation under TSCA and (2) informing the public of the dangers of exposure to asbestos in homes, workplaces and the environment. EPA denied the petition on December 21, 2018 and the petitioners filed suit against EPA in the Northern District of California to compel it to grant the petition and commence the requested rulemaking.

18. In late 2020, Judge Edward Chen of the Northern District of California granted summary judgement to the plaintiffs and ordered EPA to require reporting under section 8(a) to address the deficiencies in its asbestos-knowledge base. *Asbestos Disease Awareness Org. v.*

Wheeler, 508 F. Supp. 3d 707 (N.D. Cal. 2020). EPA's obligations under the decision were spelled out in a June 2021 settlement agreement with ADAO that set a schedule for rulemaking under TSCA section 8(a) and defined the scope of the proposed rule. On May 6, 2022, EPA published a proposed reporting rule fulfilling its responsibilities under Judge Chen's decision and the settlement agreement. 87 Fed. Reg. 27060. According to the proposal preamble, it "has been nearly 40 years since the 1982 rule was implemented, and EPA needs an updated data collection to better understand the universe of asbestos types in commerce and the specific entities presently manufacturing (including importing) and processing asbestos, including asbestos-containing products." 87 Fed. Reg. at 27063. The final reporting rule was promulgated on July 25, 2023 (88 Fed. Reg. 47782) and the deadline for reporting will be later this month.

Final Part 1 Risk Evaluation and Related Litigation

19. 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.

20. 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.

Part 1 Risk Management Rulemaking

21. 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 comments. 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.

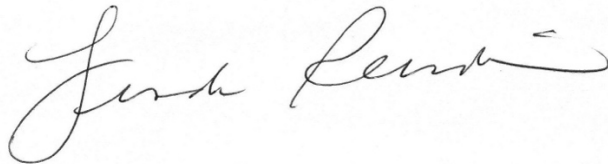
22. For example, we supported EPA's proposed ban on the six chrysotile conditions of use addressed in the proposal, argued that feasible and cost-effective non-asbestos technologies were available for chlor-alkali production and urged EPA not to lengthen the expeditious phase-out deadlines it proposed for chlor-alkali production and other conditions of use. At the same time, ADAO criticized the proposal's failure to ban all known and reasonably foreseeable uses of chrysotile asbestos and to address the other five asbestos fiber types. It also recommended additional restrictions on asbestos disposal for the regulated conditions of use, greater protections for communities during importation and distribution of raw asbestos and asbestos-containing products, and more aggressive requirements to phase out the use of asbestos sheet gaskets. We were disappointed that, in its March 28, 2024 final Part 1 rule, EPA rejected these recommendations and made weakening changes in its proposal, such as abandoning its proposed two-year phase out deadline for chlor-alkali producers and instead providing up to 12 years for this industry to eliminate asbestos from its operations.

23. 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. ADAO seeks intervention in the industry petitions in order to demonstrate that their challenges to the Part 1 rule are not supported by the scientific evidence in the record and are contrary to TSCA. In defending the challenged provisions of the rule, ADAO will articulate a unique public health and prevention perspective that EPA lacks and bring to bear the expertise of physicians and scientists with globally recognized expertise in asbestos disease and prevention.

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

Executed this 20th day of May 2024

A handwritten signature in cursive script, appearing to read "Linda Reinstein", is centered on the page. The signature is written in black ink on a light-colored background.

Linda Reinstein