United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

August 26, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

I am sure you share my strong interest in maximizing the success of the new Toxic Substances Control Act (TSCA) and are working to identify positive early actions that demonstrate the Agency's commitment to bold and effective implementation.

The first important decision EPA must make under the law is to select the initial 10 chemicals that will be evaluated and then regulated if they are shown to present unreasonable risks. This decision must be made by mid-December of this year. The chemicals selected will drive EPA's agenda for the next several years. To build confidence in the agency's ability to deliver meaningful results for our children and families, EPA must consider all forms of asbestos in this initial list of chemicals it acts on.

In 1989, EPA issued a comprehensive rule under TSCA banning and phasing out the major uses of asbestos. Despite the extensive record compiled by the agency, the Fifth Circuit Court of Appeals overturned the rule. The court's decision paralyzed EPA's existing chemicals program for the next two decades. Asbestos became a poster child for the inadequacy of the law and a major impetus for TSCA reform. As President Obama said when he signed the TSCA reform bill into law, "the system was so complex, it was so burdensome that our country hasn't even been able to uphold a ban on asbestos...."

During the development of TSCA reform legislation, numerous members of Congress cited asbestos as an example of why the law must be revamped and emphasized that the new TSCA legislation would remove the roadblocks that stymied EPA's first attempt to regulate asbestos. Congress was also clear in the recently-passed legislation that regulating asbestos should be one of EPA's top priorities -- the bill directs EPA to give priority to chemicals like asbestos that are known human carcinogens and have high acute and chronic toxicity.

Now that the impediments in the original TSCA law are gone, completing the job started by EPA in 1989 would send a strong signal that the new law can be effective in addressing the most dangerous chemicals in commerce.

The evidence regarding the dangers of asbestos is overwhelming. As EPA found in its 1989 rulemaking, "[it] is well-recognized that asbestos is a human carcinogen and is one of the most hazardous substances to which humans are exposed in both occupational and non-occupational

settings." OSHA has similarly said it 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." OSHA has also emphasized that "[t]here is no "safe" level of asbestos exposure for any type of asbestos fiber [and] [a]sbestos exposures as short in duration as a few days have caused mesothelioma in humans."

Asbestos continues to exact a high toll in disease and death on Americans. According to the Asbestos Disease Awareness Organization (ADAO), the estimated annual number of asbestos-related disease deaths is nearly 15,000 in the U.S., including nearly 11,000 deaths from lung cancer.

Though asbestos production has ceased in the U.S and its use has generally declined, significant imports for a range of applications persist and exposures continue to occur with alarming regularity. According to a detailed study by the Environmental Working Group, from 2006 to 2014, 23 ports on the Gulf of Mexico, West Coast and Eastern Seaboard received more than 8.2 million pounds of raw asbestos, as well as hundreds of shipments of hazardous asbestos waste and products made with asbestos.

Similarly, in its annual report on U.S. mineral importation and use, the United States Geological Service states that in 2015:

> "Asbestos consumption in the United States was estimated to be 400 tons, based on asbestos imports through July 2014. The chloralkali industry accounted for an estimated 88% of U.S. consumption. The remainder was used in coatings and compounds, plastics, roofing products, and unknown applications."

The World Health Organization (2006) has called for an end to the use of all types of asbestos as the most effective way to eliminate asbestos-related diseases. From the European Union to the Persian Gulf, from industrial states like Japan to Africa's developing economies, 56 nations have followed this recommendation and banned asbestos (with limited exceptions), according to the International Ban Asbestos Secretariat.

The combination of well-documented, widespread and serious health effects and ongoing use and exposure provides a strong basis for EPA to act quickly on asbestos. With the new tools provided by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the U.S. now has the ability to be a global leader and join the many other nations that have acted to address the harms posed by asbestos. EPA should seize this opportunity by including asbestos in the first 10 chemicals that it acts on under the new law.

I look forward to learning more about your plans for asbestos.

Sincerely,

Barbara Boxer

Barbara Boxer
Ranking Member