

January 17, 2017

The Honourable Catherine McKenna
Minister of Environment and
Climate Change Canada

The Honourable Jane Philpott
Minister of Health

Transmission by email: *ec.ministre-minister.ec@canada.ca;*
 Hon.Jane.Philpott@Canada.ca

Dear Minister McKenna and Minister Philpott:

**Re: Initial response to Notice of Intention to Develop Regulations respecting
Asbestos - *Canada Gazette*, Volume 150, Number 51 - December 17, 2016.**

The news of Canada's commitment for a comprehensive ban on asbestos announced on December 15, 2016 was welcomed by labour, health and environmental and women's advocacy organizations across the country. Indeed, an important element to this announcement was the commitment to ban asbestos and asbestos containing products by 2018.

We, the undersigned organizations and individuals, support the direction the government has taken to address the threats associated with asbestos in Canada. The federal commitment on asbestos has the potential to prevent new cases of asbestos related illnesses. It also aligns Canada with 50 other countries that have asbestos bans already in place. We are taking this opportunity to provide initial comments on the development of regulations to address future activities respecting asbestos including the manufacture, use, sale, offer for sale, import and export of asbestos as published in the *Canada Gazette* (Volume 150, Number 51 - December 17, 2016). In the final part of this submission, we also provide brief comments on the overall government commitment to achieve an asbestos ban in Canada.

Canada-wide we have witnessed a significant loss of lives and severe impacts to families and communities as a result of asbestos-related diseases. According to Statistics Canada, asbestos related diseases continue to rise with new cases of mesothelioma, a rare form of cancer caused by exposure to asbestos in the workplace, increasing from 335 cases in 2000 to 580 cases in 2013 and with another 1900 new cases of asbestos-induced diseases (e.g. lung cancers and asbestosis) expected on an annual basis.

The comprehensive ban on asbestos in Canada must aim to reduce and prevent new incidences of asbestos related diseases. With respect to the notice of intent, we offer the following initial comments for consideration in drafting a regulation to ban asbestos.

- 1) *Life cycle approach* - The ban on asbestos must consider the full life-cycle of the asbestos use from mining to manufacture, use in products and eventually end of life disposal and management. Currently, the scope of the notice for the development of proposed regulations under the Canadian Environmental Protection Act 1999 (CEPA) focuses on prohibition of all future activities with respect to asbestos including the manufacture, use, sale, offer for sale, import and export of asbestos. This approach identifies key phases where asbestos could pose real threats in the life cycle approach.

There are key phases of the life cycle that are absent in the scope of the regulation. The notice of intent to develop regulation does not mention the government's intention to address mining of asbestos in Canada nor does the notice cover the management of asbestos at the end of life of products, locations of and materials containing asbestos.

Banning asbestos mining and strengthening of end of life disposal and management of remediation regimes are necessary if Canada is to achieve a full and effective asbestos ban. Should these key phases of the lifecycle be overlooked, Canadians will face ongoing hazardous exposures to asbestos sources.

- 2) *Close potential loopholes in regulation* - The notice of intent focuses on asbestos and asbestos containing products. It is essential that the scope of these regulations includes a prohibition on export and imports of asbestos and products containing asbestos. Should the regulation allow for the continuation of this practice, Canada will severely undermine its goal to ban asbestos and its reputation in the world.

It is also worth noting at the onset that there is significant concern that an asbestos ban could also lead to a build-up of stockpiles of asbestos and products containing asbestos. Canada needs effective mechanisms embedded in this regulation and within a comprehensive national asbestos strategy to address this matter and avoid situations where exports may be permitted to leave Canada for developing countries that may not have the resources and legal framework to adequately address the impacts associated with asbestos. It is critical that Canada take responsibility for the proper handling, management and safe disposal (i.e., encapsulation and burial) of asbestos and products containing asbestos within its borders.

- 3) *Exemptions must be avoided* – The government issued a survey (under section 71) under CEPA, published in the *Canada Gazette* (Volume 150, Number 51 – December 17, 2016) for the purpose of information gathering on asbestos and asbestos containing products in Canada. This survey will be critical to the development of the regulation as it will provide a current understanding of the amount of asbestos use, the range of products containing asbestos, as well as identification of alternatives to asbestos in Canada. The results of the survey

may also identify applications where safe alternatives to asbestos may not currently exist.

We caution the government to reject proposals for exemptions to banning asbestos use and products containing asbestos. There has been ample time provided from the government announcement to the time the regulations are expected to be completed and enforced, for affected industries to identify alternatives to asbestos. For example, known asbestos-containing products like brake pads can (and are) manufactured without asbestos in Canada. Exemptions create time delays in achieving a full ban on asbestos and may delay companies from identifying alternatives. Furthermore, exemptions may also open opportunities for extended exemption requests by affected industries. Any exemptions will prolong the use of asbestos and continue to pose health threats to workers and users.

- 4) *Achieve zero asbestos* – The regulations must set a limit of zero for asbestos content. Currently, the range of *acceptable or exempt* asbestos content across provinces and territories in Canada varies between 0.1% to 1% asbestos concentrations. It has been known that over time even non-friable asbestos may become friable, which may result in on-going potential sources of asbestos exposure. By targeting asbestos concentration at zero in regulation, the focus remains on completely preventing asbestos exposure.
- 5) *Asbestos contamination should be avoided* – As a naturally occurring substance, asbestos has also been known to be detected in a range of products, including talc products (e.g., baby powder) and soil conditioners that contain asbestos-contaminated vermiculite. Substantial discussion within the framework of this regulation and the broader efforts to advance an asbestos ban in Canada is necessary.
- 6) *Comprehensive public engagement* – Public stakeholders should be engaged throughout the process of regulation development. While there are legal requirements for public engagement outlined under CEPA 1999, we hope the government will be comprehensive and transparent in these discussions that go beyond the basic public comment period prescribed in CEPA. All stakeholders – public health and environmental non-governmental organizations, labour organizations, Indigenous communities, women’s advocacy organizations, communities affected by asbestos (particularly victims and families of victims), medical professionals and academia - should be targeted for participation in consultations and public comment periods.
- 7) *Rigorous enforcement and compliance mechanisms* – The effectiveness of a regulation to ban asbestos will depend on the enforcement and compliance mechanisms available to implement the ban. *Consideration should be given to the best enforcement practices and how to share enforcement between federal, provincial and local levels of government.*

Additional comments on Canada's approach

Canada outlined several critical elements of its approach for an asbestos ban. We support these elements. In addition, we offer the following brief comments in support of Canada's commitment to ban asbestos.

Support a strong government position to list chrysotile asbestos under the Rotterdam Convention

In the December 2016 announcement, your government committed to update Canada's international position on asbestos. Canada's effort to update its international position on asbestos should be undertaken immediately without delay. The Conference of the Parties (COP) under the Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, where listing of chrysotile asbestos are expected to be discussed, is scheduled between April 24 and May 5, 2017 in Geneva, Switzerland. Canada has long opposed the listing of chrysotile asbestos to Annex III of the Rotterdam Convention. At the last COP in 2015 Canada abstained from voting on the listing of chrysotile. *We recommend that Canada's position align with the growing global support to list chrysotile asbestos under Annex III.*

Establish an Expert Review Panel on Asbestos

It is our view that Canada should establish an expert review panel on asbestos to advise the government on how to advance the key elements identified by the government in its announcement from December 15, 2016, and ultimately achieve an asbestos ban in Canada. We are attaching a letter addressed to Prime Minister Justin Trudeau on December 6th, 2016 signed by over 60 organizations and 40 individuals in support of an expert review panel. Establishing an expert review panel can provide a unique opportunity to identify other matters associated with asbestos that warrant the federal government's attention. These include but not limited to the following:

- 1) *Address Just Transition Issues:* The asbestos ban will affect communities, families and workers across Canada. Substantial discussions are required to address these challenges and to develop strategies to assist with the transition away from asbestos.
- 2) *Asbestos registries for buildings and human health are both required:* The government has initiated online access to information on buildings owned or leased by the federal government that contain asbestos. Registries should be expanded to include other buildings/sites including privately owned buildings containing asbestos. Furthermore, we think there is also a critical need to establish a national registry for victims experiencing asbestos related disease. Such registries are valuable for tracking and informing the key stakeholders including the public, public health, labour organizations, and policy makers on asbestos.

- 3) *Waste Disposal Management Regimes*: The authority to address waste is a shared responsibility by all levels of government – federal, provincial and municipal. Generally, the provinces and territories develop and enforce regulations on waste management. Currently, the regulatory regime to manage asbestos containing waste across provinces and territories is not the same. A substantial review of the waste management regimes across Canada is warranted to advance the goal to ban asbestos in Canada. It is particularly important to focus on how demolition materials containing asbestos are addressed. Many private and public buildings contain asbestos in-situ.

- 4) *Promoting best practices for asbestos removal necessary*: Substantial remediation and clean-up of asbestos in buildings will continue to be with us for many generations. Best practices in asbestos removal should be mandatory for developers, building trades, and building owners to ensure the safety in workplaces and for home owners and their occupants. This effort would include reviewing existing approvals and permitting processes for development proposals as well as updating manuals and other information materials to apply best practices in asbestos remediation.

- 5) *Improve reporting on asbestos releases and transfer under the National Pollutant Release Inventory*: Reporting on asbestos (non-friable) under the National Pollutants Release Inventories (NPRI) has been required since the program was established in 1994 and mandated in CEPA 1999. Reporting to NPRI is required for facilities that meet specific thresholds (e.g. employee threshold or pollutant volume threshold). Facilities reporting under NPRI on asbestos (friable form) between 2009 to 2015 for disposal on- and off-site have not changed significantly from year to year with totals reported never falling below 23,000 tonnes (refer to Figure 1). Improved reporting under NPRI is necessary to establish better tracking of asbestos releases and transfer from facilities across Canada. Changes have been made to reporting thresholds for other toxic pollutants (e.g., mercury, lead, dioxins and furans) under NPRI to provide a better reflection of releases and transfer of these pollutants to the environment.

Figure 1: Reporting on Asbestos (non-friable) Disposal on and off site between 2009-2015 under the National Pollutant Release Inventory

Year (number of facilities reporting to NPRI)	On-site (tonnes)	Off-site (tonnes)	Total (tonnes)
2015 (50)	22,020	1,287	23,307
2014 (52)	33,430	707	34,137
2013 (56)	32,584	800	33,384
2012 (54)	23,661	4,457	28,117
2011 (58)	22,820	5,110	27,931
2010 (67)	31,547	6,295	37,842
2009 (67)	18,251	5,466	23,717

Source: National Pollutant Release Inventory, <http://ec.gc.ca/inrp-npri/donnees-data/index.cfm?lang=En>

- 6) *Issues facing vulnerable communities:* The challenges associated with asbestos facing vulnerable communities, including people of low income, Indigenous communities and fence line remote communities, have yet to be fully addressed in the government's commitment to ban asbestos. People of low income and Indigenous groups may be at higher risk from asbestos exposure should they live in poorly maintained and older housing buildings. Substantial resources may be needed to remediate these accommodations, so better understanding accountability and resource needs will be key areas of investigation. Similarly, communities that border mines, buildings or landfills where there is known or suspected asbestos may also face issues that need to be better understood. The government should identify potential challenges facing these vulnerable communities.
- 7) *The need for a national mesothelioma health care strategy:* Around 500 Canadians annually now fall victim to mesothelioma, the marker cancer for asbestos exposure. Efforts to improve early detection and innovative treatment are not sufficiently resourced or coordinated in Canada. A mesothelioma diagnosis is usually a death sentence. A focal area of discussion in the asbestos related disease (ARD) detection efforts should include comprehensive and mandatory training for physicians both in medical school and in practice to recognize and diagnose patients. Federal government leadership is needed to work with the provinces on a national mesothelioma health care strategy.

We hope the above initial comments are helpful. We are available to discuss the above and look forward to engaging with your departments to achieve a ban on asbestos in Canada for the protection of all Canadians.

Yours truly,

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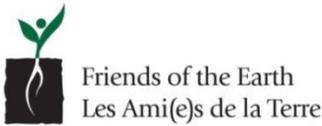
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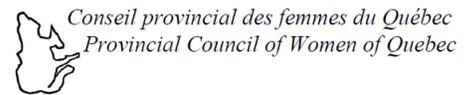
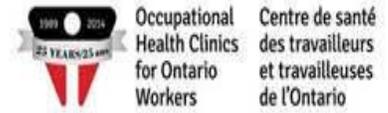
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Attachment
Letter to Prime Minister Justin Trudeau, December 6, 2016





Canadians for A Safe Learning Environment





December 6, 2016

The Right Honourable Justin Trudeau, P.C., M.P.

Prime Minister of Canada

Langevin Block

Ottawa, Ontario

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Transmission: Original by email

Dear Prime Minister Trudeau:

Re: In support of a comprehensive ban on asbestos in Canada - Proposal to establish an Expert Panel to review Asbestos Management Regime in Canada

We, the undersigned organizations and individuals, submit the following letter urging you to establish an expert panel to assess the adequacy of asbestos management and address any challenges to phasing out asbestos in Canada.

Over the past few months you have received numerous letters from Canadians calling on the Canadian government to implement a comprehensive asbestos ban. We have seen the devastating and growing trend of people dying from asbestos related diseases such as mesothelioma and various cancers. The loss of human life resulting from asbestos exposure will not stop unless strong regulatory steps are taken to prevent exposure to asbestos.

The letters from the public have called for a comprehensive ban on asbestos. To make progress towards a ban on asbestos, the government can take key regulatory steps immediately. The Canadian Environmental Law Association (CELA) submitted a letter to you dated April 7th, 2016 in which we noted that regulatory measures under the *Canadian Environmental Protection Act* (CEPA) can be taken to prohibit the use of asbestos in products. In addition, amendments should be made to Canada's National Pollutant Release Inventory to require all facilities to report on their asbestos releases and transfers. The government should also enact Bill 292, which was introduced as a Private Members bill to amend the Canada Labour Code. The Bill proposes to establish

an occupational disease and accident registry for Canada, including workers exposed to asbestos. These immediate measures would halt asbestos use in products and enhance knowledge about the amount of asbestos being released or transferred by facilities across Canada.

A roadmap of the remaining elements to achieve a ban on asbestos is also needed, particularly since the provincial governments have authority over aspects such as protection of workers from asbestos, and management of waste containing asbestos.

We are also recommending the government establish an expert panel to assess the adequacy of asbestos management and address any challenges to phasing out asbestos in Canada.

Rationale for Expert Panel on Asbestos

We acknowledge that establishing an expert panel specific to asbestos does not follow the normal practice of regulating toxic substances in Canada. In fact, current regulatory tools to achieve a prohibition on toxic chemicals exist in the *Canadian Environmental Protection Act* (CEPA) and the *Canada's Consumer Products Safety Act*. Consequently, we would not normally call for the establishment of an expert panel to phase out a toxic substance. However, we believe that for asbestos, an expert panel is warranted because of the complexity of issues which must be taken into consideration to achieve a comprehensive ban. These include:

- a) *Health evidence on asbestos exposure is on the rise* – Asbestos related diseases result from the long latency period between exposure and the onset of disease, and can occur after as much as 40 years after exposure. In the past, mining and processing of asbestos, the manufacturing of products and building with asbestos, were the main source of asbestos exposure. Today, coming in contact with asbestos from asbestos containing materials (ACM) is the main source of exposure to asbestos.
- b) Asbestos related diseases in Canada are increasing. According to Statistics Canada, the number of new cases of mesothelioma, a rare form of cancer caused by

exposure to asbestos in the workplace, increased from 335 cases in 2000 to 580 cases in 2013. Some other asbestos-induced diseases include lung cancers and asbestosis (with estimates of at least 1900 new cases annually).

- c) *Evidence of harm to workers and public health* - According to CAREX Canada, a national carcinogen surveillance program, approximately 152,000 Canadians are exposed to asbestos in the workplace. Workers involved in renovations (carpenters and cabinetmakers) represent the largest group of workers exposed followed by workers in construction sector.¹ Workers in all sectors are exposed to asbestos through the breakdown of fibres due to aging or compromised ACM in the buildings they work on – particularly but not exclusively hospitals, schools, libraries, military and government buildings. Family members and members of the public may also be exposed to asbestos through bystander exposure.
- d) *Inadequate regulatory measures to control asbestos* – CEPA’s Asbestos Mines and Mills Release Regulations (SOR/90-341) and the *Canada Consumer Products Safety Act’s* Asbestos Products Regulations (SOR/2007-260) are two regulations that aim to manage asbestos releases in industrial settings and specific consumer products in Canada. In addition, provinces and territories in Canada have regulations setting asbestos exposure limits for workers and environmental protection (waste management). However, the current regulatory regime in Canada has not undergone comprehensive review to determine the level of efficacy or identify potential gaps in the approach to manage exposure and address the phase out of asbestos.
- e) *On-going manufacture, import and use of asbestos in products* - Despite the growing evidence of harm associated with asbestos exposure, and despite the growing number of countries who have recognized this danger², Canada continues to manufacture and import products that contain asbestos. In 2014, Canada imported a number of goods containing asbestos including friction materials, tubes and pipes, corrugated sheets and panels, paper, millboard, and clothing. Statistics Canada estimated that approximately \$2.6 million of brake pads containing asbestos entered Canada in 2011.

¹ CAREX Canada. http://www.carexcanada.ca/en/asbestos/occupational_estimate/

² See: http://www.ibasecretariat.org/chron_ban_list.php

f) *Limitations for Surveillance and Monitoring: Enhancing Right to Know* - Over the years, many groups and individuals, including workers, have expressed support for increased transparency and access to information on asbestos. These include the creation of a federal building registry that would provide information about presence and use of asbestos in federal government buildings, a victims' registry to account for people exposed to asbestos, and improvements to reporting releases and transfer of asbestos under Canada's National Pollutant Release Inventory. However, advancement in these areas has been limited. Improved data collection on asbestos is, thus, essential to inform the policy and legislative reform to manage asbestos in Canada and to provide important information to people afflicted with asbestos related diseases.

The experience of Australia in establishing an Asbestos Management Review Process provides a good model for Canada for undertaking a review of the regulatory regime for asbestos management. Australia was experiencing a growing number of deaths associated to asbestos related diseases such as mesothelioma. In response, Australia initiated a review of the efficacy of the asbestos management regime in October 2010 with an aim '...to make recommendations for the development of a national strategic plan to improve asbestos awareness and management'.³ Australia's review process resulted in the establishment of the Asbestos Safety and Eradication Agency Act 2013 (the ASEA Act) and the creation of a National Strategic Plan for Asbestos Management and Awareness. These measures established the necessary framework for reducing asbestos exposure in the environment and to human health in Australia.

History with Expert Panels on Asbestos in Canada

The establishment of a review panel to assess the efficacy of control measures for asbestos will advance the effort to protect workers and the public from asbestos exposure and facilitate discussions on environmental management.

There have been two expert panels on asbestos established in Canada.

³ Australian Government. 2012. Asbestos Management Review - June 2012.

The Royal Society of Canada established an expert panel on Asbestos Risk based on a request by Health Canada in 1996. The Royal Society Expert Panel was tasked with reviewing a report from France titled: *Effets sur la santé des principaux types d'exposition à l'amiante* ("Effects on Health of the Main Types of Exposure to Asbestos"), prepared by the Institut National de la Santé et de la Recherche Médicale (INSERM) in June 1996. The Expert Panel review focused on a single question: Is the characterization of risks associated with exposure to asbestos in the above-mentioned report scientifically sound (i.e., supported adequately by available data)? The Expert Panel report "A Review of the INSERM Report on the Health Effects of Exposure to Asbestos" was released in November 1996.⁴

In 2007, Health Canada established the Chrysotile Asbestos Expert Panel. The Chrysotile Asbestos Expert Panel completed its report, titled "Chrysotile Asbestos Consensus Statement and Summary" in 2008 following meetings held in Montreal, Quebec between November 13-14, 2007.⁵

Neither of these Expert Panels focused on the efficacy of the regulatory controls in place, nor did the reports result in any significant regulatory changes to asbestos management in Canada. The findings by both expert panels on asbestos, however, confirmed the harm to human health associated with asbestos exposure, particularly in occupational settings.

Consequently, we submit that an expert review panel to evaluate the efficacy of the current management of asbestos and to provide recommendations on how to achieve a comprehensive ban is necessary.

⁴ Royal Society of Canada. Expert Panel on Asbestos Risk. 1996. A Review of the INSERM Report on the Health Effects of Exposure to Asbestos. Accessed at http://www.rsc.ca/sites/default/files/pdf/publication_asbestos_en.pdf

⁵ Chrysotile Asbestos Expert Panel. 2008. Chrysotile Asbestos Consensus Statement and Summary, prepared for Health Canada. Accessed at <http://www.preventcancer.ca/wp-content/uploads/2009/04/asbestosreport-en.pdf>.

Terms of Reference for the Proposed Panel

We submit the following issues should be considered in the terms of reference for an expert panel:

- i) Scope/Mandate and timeframe
- ii) Key principles to guide the review process
- iii) Composition of Panel members
- iv) Incorporation of public engagement
- v) Report and Recommendation

We would be pleased to provide additional comments and recommendations on these items in the coming weeks in support of initiating a review process in Canada.

We hope your government will give serious consideration to our proposal. We look forward to your feedback.

If you wish to discuss any aspect of this proposal, please do not hesitate to contact us.

Yours truly,



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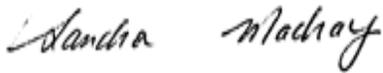


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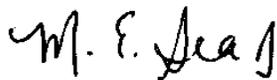
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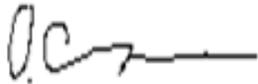
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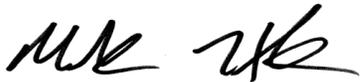
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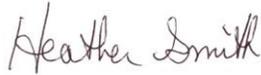
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