Ministre de l'Environnement et
du Changement climatique

Minister of Environment
and Climate Change

Ottawa, Canada K1A 0H3

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Dear Fe de Leon and Meg Sears:

I am writing in response to your Environmental Petition No. 470 to the Commissioner of the Environment and Sustainable Development, concerning the effectiveness of regulation of asbestos and asbestos cement pipes in Canada. Your petition was received in Environment and Climate Change Canada on October 25, 2022.

Environment and Climate Change Canada's mandate is to preserve and enhance the quality of the natural environment, including water, air, soil, flora and fauna; conserve Canada's renewable resources; conserve and protect Canada's water resources; forecast daily weather conditions and warnings, and provide detailed meteorological information to all of Canada; enforce rules relating to boundary waters; and co-ordinate environmental policies and programs for the federal government.

Enclosed you will find a detailed response to the questions in your petition that fall under my mandate. I understand that the Honourable Jean-Yves Duclos, Minister of Health, the Honourable Omar Alghabra, Minister of Transport, the Honourable François-Philippe Champagne, Minister of Innovation, Science and Industry, the Honourable Dominic LeBlanc, Minister of Intergovernmental Affairs, Infrastructure and Communities, and the Honourable Dr. Helena Jaczek, Minister of Public Services and Procurement, will be responding separately to the questions that fall under their mandates.

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I appreciate this opportunity to respond to your petition, and I trust that you will find this information helpful.

Sincerely,

The Honourable Steven Guilbeault, P.C., M.P. (il/lui/he/him)

c.c.: The Honourable Jean-Yves Duclos, P.C., M.P.
The Honourable Omar Alghabra, P.C., M.P.
The Honourable François-Philippe Champagne, P.C., M.P.
The Honourable Dominic LeBlanc, P.C., K.C., M.P.
The Honourable Dr. Helena Jaczek, P.C., M.P.
Jerry V. DeMarco, Commissioner of the Environment and Sustainable Development, Office of the Auditor General of Canada

Response to Environmental Petition 470 concerning the effectiveness of regulation of asbestos and asbestos cement pipes in Canada

Question 1: Have the departments conducted a review of current management tools under the Prohibition of Asbestos and Products Containing Asbestos regulation to evaluate how effectively harm from asbestos is being prevented in Canada? Please provide the details of this review.

Response: As part of the implementation strategy for the *Prohibition of Asbestos and Products Containing Asbestos Regulations*, Environment and Climate Change Canada and Health Canada developed performance measurement outcomes to assess the effectiveness of the Regulations. The immediate outcomes focus on awareness and understanding of these regulations, intermediate outcomes focus on compliance, and the expected final outcome is that the import, sale, and use of asbestos and products containing asbestos no longer occurs in Canada, with a limited number of exclusions.

Environment and Climate Change Canada and Health Canada conduct an internal annual review of the performance of the Regulations using quantitative indicators for each outcome. Imports of asbestos products are also monitored and analyzed annually using data from the Canada Border Services Agency. Additional detail cannot be provided at this time as the Regulations have only been in force since December 28, 2018, and due to the impact of the COVID-19 pandemic not enough data has been collected yet to establish trends and complete a full assessment.

Since the publication of the Regulations in 2018, Environment and Climate Change Canada has promoted compliance by providing guidance and information to stakeholders via factsheets and reminder letters, as well as promoting these regulations in regional newspapers.

In a collaborative effort between Environment and Climate Change Canada and Statistics Canada, a nationwide survey was conducted in fall 2022 to gauge stakeholder awareness of the Regulations. Results are expected in 2023–2024.

A review of the Regulations is planned for 2024–2025, in accordance with the Government of Canada's Cabinet Directive on Regulation (*www.canada.ca/en/government/system/laws/developing-improving-federal-regulations/requirements-developing-managing-reviewing-regulations/guidelines-tools/cabinet-directive-regulation.html#toc7*). This review will assess whether the Regulations continue to be appropriate and effective and achieve their intended policy objectives. The targeted completion date for this review is March 31, 2025.

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Question 2: The regulation contains a number of exemptions for asbestos use. The exemption for service equipment in nuclear facilities is being phased out in 2022 and the exemption for chlor-alkali facilities in 2029.[10] What progress has been made to work towards these phase out dates? What support is being provided to industries transitioning to non-asbestos or non-toxic technology? What types of replacement technologies are being instituted, and what risks are associated with them?

Response: The Regulations provided exclusions until December 31, 2022, for the import, sale or use of a product containing processed asbestos fibres to service military equipment or equipment of a nuclear facility. These products were often manufactured or purchased at the same time as the equipment, such as submarines and nuclear power plants, and are designed to meet highly technical operating conditions. The exclusions were provided to give time to review inventory to determine which products continue to be necessary and which could be replaced by asbestos-free alternatives. As of January 1, 2023, the import, sale and use of these products containing processed asbestos fibres for servicing military equipment or equipment of a nuclear facility is only allowed under a permit and only for those products for which an asbestos-free alternative is not technically or economically feasible.

For the 2021 reporting year, only one federal department reported using products containing asbestos to service military equipment, and no facilities reported using products containing asbestos fibres to service equipment of a nuclear facility. Data is not yet available for the 2022 reporting year as the annual reporting for 2022 is not due until March 31, 2023.

The Regulations also provide a time-limited exclusion until December 31, 2029, for the import and use of processed asbestos fibres in the chlor-alkali industry. Asbestos is used in this industry as part of the diaphragm cell technology, which acts as a filter in the manufacturing of chlorine and caustic soda. This exclusion was provided to allow the only chlor-alkali facility in Canada that uses asbestos diaphragms sufficient time to develop and test new technology and safely implement necessary adjustments. Since the 2019 reporting year, this chlor-alkali facility has reported continued progress in converting to non-asbestos alternative technologies, consistent with a phase-out date of 2029.

Industries transitioning to non-asbestos technology as these exclusions are phased out are independently determining replacement technologies that fit the needs of their operations. To date, none have requested government support. While facilities are not required to report on their replacement strategies, any

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substance used as part of replacement technologies would be subject to applicable regulations or notification requirements under the *Canadian Environmental Protection Act, 1999* (CEPA) and its regulations.

Question 3: Does the Government of Canada plan to phase out the remaining exclusions (such as for disposal of consumer products with trace amounts, museum displays and laboratory research settings)? How does the government monitor and report the ongoing use of asbestos as exemption? Have reviews been conducted on how to phase out the use of asbestos for exclusions?

Response: There is no current plan to phase out the remaining exclusions to the *Prohibition of Asbestos and Products Containing Asbestos Regulations*.

Environment and Climate Change Canada and Health Canada monitor activities under the exclusions through annual reporting. Museums that display processed asbestos fibres are required to submit annual reports. Laboratories that import or use processed asbestos fibres, products containing processed asbestos fibres or consumer products containing asbestos in greater than trace amounts are also required to submit annual reports. For laboratories, this includes samples imported and/or used for proficiency testing. These reports are reviewed by Environment and Climate Change Canada and Health Canada annually as part of an internal assessment of the performance of these regulations.

As the low level of exposure to asbestos resulting from these exclusions is not expected to result in health risks, they are not currently being considered for phase out, and no reviews have been conducted.

Question 6: What steps remain to track and address remaining raw asbestos stockpiles, asbestos mining waste, and products containing asbestos (e.g. brake pads, construction materials) in Canada?

Response: Asbestos has not been mined in Canada since 2011. The Regulations do not apply to raw asbestos, and Environment and Climate Change Canada and Health Canada do not track any remaining raw asbestos stockpiles that may exist. However, the Regulations prohibit the import, sale and use of asbestos and the manufacture, import, sale and use of products containing asbestos in Canada, with a limited number of exclusions, so the raw asbestos stockpiles cannot be used to produce consumer products containing asbestos in greater than trace amounts.

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The Regulations also do not apply to mining residues (waste), except for the following activities, which are prohibited:

- the sale of asbestos mining residues for use in construction and landscaping activities, unless authorized by the province in which the construction or landscaping occurs; and
- the use of asbestos mining residues to manufacture a product that contains asbestos.

Provincial and territorial occupational health and safety legislation manage risks of exposure to asbestos mining residues. While the potential risk of exposure to the public remains, the redevelopment and rehabilitation of former mine sites would be expected to reduce exposure to asbestos mining residues. Environment and Climate Change Canada and Health Canada do not track asbestos mining residues.

Environment and Climate Change Canada has been undertaking market research and testing to determine the amounts of asbestos in certain products available for retail purchase across Canada. In 2019, no asbestos was detected in 53 samples from new automotive brake pads/brake shoes, and in 2021, no asbestos was detected in 100 samples from talc-based facial cosmetic products. The Department is currently in the process of purchasing additional products for testing, and results will be available in 2023–2024.

Question 7: The regulation outlines requirements to develop and maintain Asbestos Management Plans but does not provide for public review or reporting.[12] The risk posed to human health by asbestos exposure should require substantial public transparency with these plans. How is public transparency being fostered in the management of asbestos?

Response: The activities for which an asbestos management plan is required are not undertaken by the general public. Therefore, the plans focus on providing transparency to employees and workers, who are at most risk of exposure.

Through the requirement to prepare and implement asbestos management plans, the Regulations provide transparency to employees and workers regarding their risk of exposure; methods for safely handling, storing and disposing of asbestos and products containing asbestos; and applicable occupational health and safety requirements.

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The Regulations require that asbestos management plans be prepared and implemented for the following activities:

- use of a product containing processed asbestos fibres to service military equipment, until January 1, 2023, and their continued import or use under a permit granted after that time;
- use of a product containing processed asbestos fibres to service equipment of a nuclear facility, until January 1, 2023, and their continued import or use under a permit granted after that time;
- display of processed asbestos fibres in a museum;
- use of processed asbestos fibres in a laboratory in scientific research or as an analytical standard;
- use of processed asbestos fibres in diaphragms to be used in a chlor-alkali facility, until January 1, 2030; and
- import or use of processed asbestos fibres, products containing processed asbestos fibres, or consumer products containing asbestos in greater than trace amounts under a permit to protect the environment or human health if there was no technically or economically feasible asbestos-free alternative available.

Asbestos management plans are specific to the facilities at which the asbestos or products containing asbestos are used, or the museums at which the asbestos is displayed. They can be incorporated into existing management plans and may address unique considerations for each facility while maintaining the requirements as set out in Schedule 1 to the *Prohibition of Asbestos and Products Containing Asbestos Regulations*. Asbestos management plans may therefore be in a design or format that is most useful for employees or workers at the facility but not easily shared for public review.

Currently, one federal department, one military equipment service facility, four nuclear facilities, three museums, 51 laboratories and one chlor-alkali facility are required to implement an asbestos management plan. While public review or reporting of asbestos management plans is not required under the Regulations, these plans must be kept in Canada for a minimum of five years for inspection by Environment and Climate Change Canada enforcement officers.

Question 8: What is being done to create a harmonized national asbestos strategy?

Response: The government-wide strategy on asbestos announced on December 15, 2016, was led by Innovation, Science and Economic Development Canada, and is considered a harmonized national strategy (*www.canada.ca/en/*

innovation-science-economic-development/news/2016/12/government-canada-asbestos.html). This strategy includes the following elements:

- creating new regulations to prohibit the manufacture, use, import and export of asbestos under CEPA;
- raising awareness of the health impacts of asbestos to help reduce the incidence of lung cancer and other asbestos-related diseases;
- establishing new federal workplace health and safety rules that will drastically limit the risk of people coming into contact with asbestos on the job;
- expanding the online list of asbestos-containing buildings owned or leased by the Government of Canada;
- working in collaboration with provincial and territorial partners to change the national, provincial and territorial building codes to prohibit the use of asbestos in new construction and renovation projects across Canada; and
- updating Canada's international position regarding the listing of asbestos under the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

For more information on the harmonized national asbestos strategy, please contact Innovation, Science and Economic Development Canada (*www.ic.gc.ca/eic/site/icgc.nsf/eng/h_07026.html*).

Question 9: In CELA-CAUT Environmental Petition No. 387, the following question was asked: Has the government applied the precautionary principle in developing regulatory and non-regulatory measures on asbestos? Please provide a detailed response on how the two departments applied the precautionary principle in this strategy to address asbestos. If the precautionary principle was not applied, provide an explanation of why not.

Response: Recognizing that asbestos can cause life-threatening diseases such as asbestosis, mesothelioma, and lung cancer, Environment and Climate Change Canada and Health Canada developed the Regulations as part of the government-wide strategy announced in 2016 to protect Canadians from exposure to asbestos. The precautionary principle was a key driving factor in the design of these regulations to prevent new asbestos and products containing asbestos from entering the Canadian marketplace to protect the health of Canadians.

The Regulations prohibit the import, sale and use of asbestos, as well as the manufacture, import, sale and use of asbestos-containing products, with a limited number of exclusions. In implementing the precautionary principle (defined in

CEPA as “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”), exclusions to the Regulations were only considered in exceptional circumstances, taking into account socio-economic factors, the demonstrated absence of suitable alternatives, and health risks.

In addition, exports of asbestos and asbestos-containing products are prohibited, with a limited number of exceptions, under the *Export of Substances on the Export Control List Regulations* and Schedule 3 to CEPA. Those changes took effect on the coming into force of these regulations on December 30, 2018.

Question 15: Are systems or strategies in place to collect or dispose of AC pipes? If so, please provide details on these processes. If not, why not?

Response: Provincial and territorial governments are responsible for authorizing and monitoring of waste management operations, including the management of waste containing asbestos. Municipal governments are responsible for collection, redirection, and disposal of solid waste within their jurisdiction.

Question 16: Waste containing asbestos may be exported with limited obligations for importing countries to give prior informed consent and could end up in jurisdictions without adequate legislation to protect workers and the public from asbestos exposure. Water pipes that might contain lead have been raised as an issue in the United States, as some are being sent to other jurisdictions for processing. Are AC pipes being transported from Canada to other jurisdictions for disposal? If so, are there screening or tracking processes in place for the movement of AC pipes? If not, why not?

Response: The *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations* require anyone proposing to export a hazardous waste or hazardous recyclable material to submit a notification, which serves as an application for a permit from the Minister of the Environment. No shipment can proceed without a valid permit.

Wastes or recyclable materials containing asbestos that meet the criteria for inclusion in Class 9 under Part 2 of the *Transportation of Dangerous Goods Regulations*, and that are to be disposed of or recycled are, by definition, hazardous under the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations*. Class 9 only covers asbestos when not fixed in a natural or artificial binder material or included in a manufactured product. In addition, wastes or recyclable materials containing asbestos are

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considered hazardous waste or hazardous recyclable material if the country of destination or transit considers them hazardous, or the importing country prohibits their import.

Furthermore, asbestos, as listed under Annex I to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, can be considered as one of the hazardous wastes referred to in Article 1(1)(a) of the Basel Convention, if it possesses any of the characteristics contained in Annex III to that convention. As such, under the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations*, asbestos can be considered hazardous if it is to be exported to a country that is a party to the Basel Convention. If the waste or recyclable material containing asbestos is considered hazardous under the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations*, a valid permit is then necessary for the shipment to be exported. The country of import needs to provide its consent prior to the Minister of the Environment issuing a permit. In providing its consent, the country confirms that the receiving site is authorized to treat such wastes or recyclable materials. This allows Environment and Climate Change Canada to determine that the risks associated with their disposal or recycling will be managed.

There is no code in the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations* that specifically identifies asbestos-cement pipes as a waste or recyclable material. Therefore, Environment and Climate Change Canada cannot confirm whether any asbestos-cement pipes were transported from Canada to other jurisdictions for disposal.

Asbestos-cement pipes transported from Canada to other jurisdictions for disposal are also subject to controls under the *Export of Substances on the Export Control List Regulations*. Under these regulations, the export of asbestos and products containing asbestos is prohibited, with certain limited exceptions. Exports for disposal may proceed, however information must be submitted to the Minister of the Environment prior to the export, and a permit is required. The information gathered through this process is used to notify importing parties of the export. Since these requirements came into force on December 30, 2018, there has been no export of asbestos-cement pipes from Canada to other jurisdictions for disposal. Exports of hazardous waste or hazardous recyclable material regulated by the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations* do not require a permit under the *Export of Substances on the Export Control List Regulations*, but they are subject to prior notification.

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Question 17: Asbestos is included in Part 3 of Schedule 11 of the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations* as a "Constituent of Potentially Hazardous Waste."[40] Schedule 3 requires the code for these constituents must be included in a notification for export permit but export permits and prior informed consent from receiving jurisdictions are not required for constituents, only for "hazardous waste." How has this been implemented?

Response: Schedule 3 to the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations* specifies that the applicable codes in column 1 of Part 3 of Schedule 11 (or C0, when no code applies) are required in a notification for a permit. Part 3 of Schedule 11 includes a code, C25, for asbestos (dust and fibres). This code corresponds to entry Y36 in the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. This means that anyone proposing an international shipment of hazardous waste or hazardous recyclable material having asbestos as a constituent would need to include the codes C25 and Y36 for asbestos (dust and fibres) when submitting a notification. The code Y36 would be included on the notification sent to the importing country when consent is sought. If that notification were to lead to a permit, then the code would be displayed under the waste description of the waste having asbestos as a constituent.

In addition to controls under the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations*, all forms of asbestos are listed on the Export Control List in Schedule 3 to CEPA and are therefore subject to the *Export of Substances on the Export Control List Regulations*. The latter prohibits the export of asbestos and products containing asbestos, with certain exceptions. Exports for disposal may proceed, but only if the exporter notifies the Minister of the Environment beforehand and obtains an export permit. Exports of hazardous waste or hazardous recyclable material regulated by the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations* do not require a permit under the *Export of Substances on the Export Control List Regulations*, but they are subject to prior notification.

Question 18:
Asbestos is not included as "hazardous waste" under the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations*, meaning waste containing asbestos may be exported with limited obligations for importing countries to give prior informed consent and could end up in jurisdictions without adequate legislation to protect workers and the public from asbestos exposure. Asbestos is dangerous in even small quantities. Have steps been taken to designate asbestos as "hazardous waste?" If not, why not?

Response: Wastes or recyclable materials containing asbestos that meets the criteria for inclusion in Class 9 under Part 2 of the *Transportation of Dangerous Goods Regulations*, and that are to be disposed of or recycled are, by definition, hazardous under the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations*. Class 9 only covers asbestos when not fixed in a natural or artificial binder material or included in a manufactured product. In addition, wastes or recyclable materials containing asbestos are considered hazardous waste or hazardous recyclable material if the country of destination or transit considers them hazardous, or the importing country prohibits their import.

Furthermore, asbestos, as listed under Annex I to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, can be considered as one of the hazardous wastes referred to in Article 1(1)(a) of the Basel Convention, if it possesses any of the characteristics contained in Annex III to that convention. As such, under the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations*, asbestos can be considered hazardous if it is to be exported to a country that is a party to the Basel Convention.

While some targeted changes were made to the definitions of hazardous waste and hazardous recyclable material in the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations*, these regulations maintain the approach for asbestos from the previous definitions of hazardous waste and hazardous recyclable material under the former *Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations.* As noted above, asbestos is captured under the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations* if it meets the criteria for inclusion in Class 9 under Part 2 of the *Transportation of Dangerous Goods Regulations*, or if it can be considered as one of the hazardous wastes referred to in Article 1(1)(a) of the Basel Convention and is to be exported to a country that is a party to this convention.

In addition, wastes or recyclable materials containing asbestos are considered hazardous waste or hazardous recyclable material if the country of destination or transit considers them hazardous, or the importing country prohibits their import. However, under the current version of the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations*, there are no conditions related to the minimum concentration of asbestos contained in, or being a constituent of, waste or material for purposes of defining such waste or material as hazardous waste or hazardous recyclable material.

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Environment and Climate Change Canada has initiated a review of the definitions of hazardous waste under the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations* with the goal of updating the definitions. This review will examine constituents and substances of concern contained in a waste or recyclable material and the threshold concentrations above which the waste or material would be considered hazardous, including asbestos. A discussion document was published in April 2022 seeking comments on this review from stakeholders (*www.canada.ca/en/environment-climate-change/services/managing-reducing-waste/consultations/definitions-regulations-cross-border-movement.html*).

All forms of asbestos are listed on the Export Control List in Schedule 3 to CEPA and are therefore subject to the *Export of Substances on the Export Control List Regulations*. These regulations prohibit the export of asbestos and products containing asbestos with certain exceptions. Exports for disposal may proceed; however, the exporter must notify the Minister of the Environment prior to exporting asbestos or products containing asbestos and obtain an export permit. Exports of hazardous waste or hazardous recyclable material regulated by the *Cross-border Movement of Hazardous Waste and Hazardous Recyclable Material Regulations* do not require a permit under the *Export of Substances on the Export Control List Regulations*, but they are subject to prior notification.

Furthermore, the *Export of Substances on the Export Control List Regulations* include certain measures aimed at protecting workers and the public from substance exposure. For instance, the exporter must have liability insurance and each export must include labels affixed to any container in which a substance is exported, in addition to a safety data sheet. The information on the label and safety data sheet must include the identity of the substance exported, a description of the hazards to the environment or human health, the precautionary measures to be followed when handling, using or being exposed to the substance, and the first aid measures to be administered in case of exposure. This information must be in both official languages and, as far as practicable, at least one of the official languages of the country of destination.