

Linda Reinstein – Summary

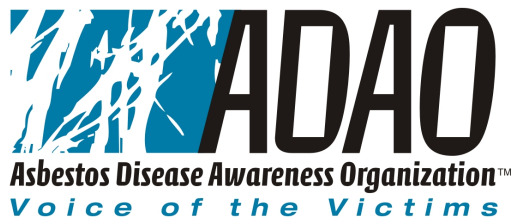
The Toxic Substance Control Act (TSCA) has failed to protect public health and our environment. All forms of asbestos can cause cancer and respiratory diseases, yet it is still legal and lethal in the United States. Asbestos, a known human carcinogen, has caused one of the worst man-made disasters in history. The facts are irrefutable, yet, each day, 30 Americans die from preventable asbestos-caused diseases. The WHO, ILO, EPA, and our Surgeon General all agree that there is no safe level of exposure to asbestos.

Americans trust that their air, soil, and water are safe from toxic contaminants; however, the U.S. government's failure to ban asbestos is the ultimate example of TSCA's limitations. In 1989, the EPA issued a final rule under Section 6 of TSCA, banning most asbestos-containing products. In 1991, however, most of the original ban on the manufacture, importation, processing, or distribution in commerce of asbestos-containing products was overturned. From 1900 to 2012, the U.S. Geological Survey (USGS) reported that we have used more than 31 million tons of asbestos. Those indestructible fibers remain forever in our communities. In the 30 year period beginning in 1965, nearly 1.4 million tons of asbestos was used just in friction products, such as vehicle brakes and clutches. In 2012, the USA consumed 1,060 tons of asbestos.

Americans can't manage this ever-growing risk of asbestos exposure. In 2007, ADAO identified 5 consumer products, including a child's toy, that contained asbestos. Following the 2011 tornado in Joplin, Missouri, it was reported that 2,600 tons of asbestos debris were removed from the community. Last year, tons of toxic debris littered the coastline after Hurricane Sandy. Right here under the Capitol, 10 Architect of the Capitol employees were exposed to and sickened from asbestos while maintaining the tunnels.

Congress should take responsibility for public health by drafting and passing meaningful TSCA reform legislation that truly strengthens protections for our families and environment by preventing the further use of asbestos. Americans have lost confidence in the chemical industries' ability to protect us from toxins. Congress needs to hold these industries accountable. We need to ensure that in the future, the process of approving chemicals is more transparent. The public deserves to have access to vital health and safety information.

The only true measurement of strong TSCA Reform is the legislation's ability to empower the EPA to ban asbestos.



The Committee on Energy and Commerce

Subcommittee on Environment and the Economy

"Regulation of Existing Chemicals and the Role of Pre-Emption under Sections 6 and 18 of the Toxic Substances Control Act"

Linda Reinstein, President/Co-founder and Mesothelioma Widow

Asbestos Disease Awareness Organization (ADAO)

Wednesday, September 18, 2013

I would like to thank Chairman Shimkus, Ranking Member Tonko and the entire Subcommittee on Environment and the Economy for the honor and opportunity to testify at this hearing, "Regulation of Existing Chemicals and the Role of Pre-Emption under Sections 6 and 18 of the Toxic Substances Control Act." I know far too well that toxic chemicals are not just "threats." They are a very real part of the life and death of many people, including my husband.

My name is Linda Reinstein. I am neither a lobbyist nor an attorney. I am a mesothelioma widow and Co-founder of the [Asbestos Disease Awareness Organization](http://www.AsbestosDiseaseAwareness.org) (ADAO). Founded in 2004, ADAO is the largest independent non-profit organization in the U.S. dedicated to preventing exposure to eliminate asbestos-caused diseases.

Since EPA Deputy Administrator John R. Quarles testified about the "Need for Toxic Substances Act"¹ in 1975, science and technology have advanced exponentially. Asbestos, a human carcinogen, has caused one of the worst man-made disasters in history. The facts are irrefutable, yet, each day, 30 Americans die from a preventable asbestos-caused disease.

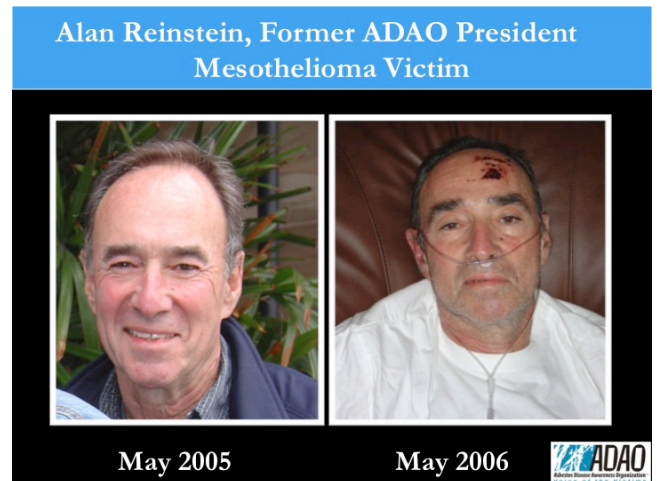
¹ <http://www2.epa.gov/aboutepa/quarles-testifies-need-toxic-substances-act>

Honoring our ADAO tradition, I'd like to dedicate my testimony today to two asbestos victims, Janelle and Michael. Tragically, three months ago, Janelle lost her life to mesothelioma at the age of 37, leaving behind her husband and 11-year-old son. Michael, a 29-year-old mesothelioma patient, continues to fight for his life and faces limited treatment options. Neither Janelle nor Michael ever worked with asbestos. The asbestos victim's profile has changed; once a blue-collar worker in his mid-sixties, now there is a new, younger patient profile emerging with no known occupational exposure – people like Janelle and Michael. It is no longer only at-risk workers being diagnosed; it's also their families: children who hugged their parents and spouses who washed their clothes.



MES-O-THE-LI-O-MA – CAN'T PRONOUNCE IT – CAN'T CURE IT

My husband, Alan, was diagnosed with pleural mesothelioma in 2003. We had never heard of the asbestos-caused cancer, mesothelioma, and shortly learned it was incurable. Alan chose to have an extrapleural pneumonectomy, a radical surgery which removed a rib and his left lung, stripped off his pericardium and surgically replaced his diaphragm – all in hopes of more time with us. In 2005, the cancer came back on his remaining lung. Alan felt like he was breathing through a pinched straw, every breath, every minute, every day. When his oxygen levels became critically low, he was tethered to supplemental oxygen. He fought a hard battle with chemotherapy for nearly a year. In 2006, Alan took his last breaths with our then 13-year-old daughter and me by his side. Alan paid the ultimate price for his job – his life.



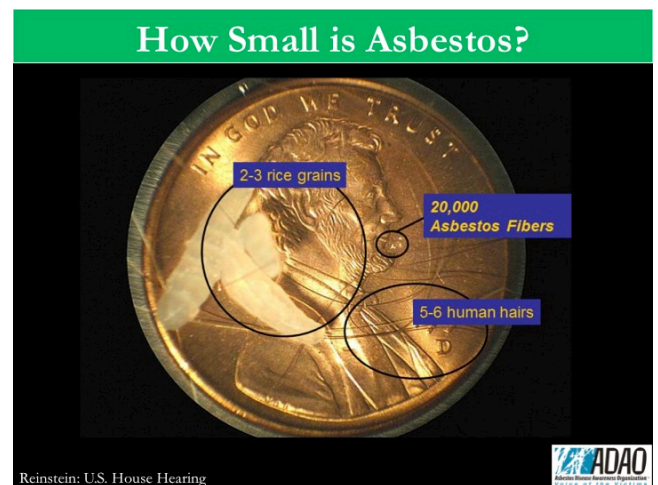
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Our daughter was only ten years old when we began our arduous family battle to fight mesothelioma and work with Congress to ban asbestos.

Today, I somberly represent Alan, Janelle, Michael and hundreds of thousands of other victims whose voices have been silenced by asbestos. I use the word “victim” because it is the only word that appropriately describes an individual exposed to asbestos; a patient, living or deceased, who was diagnosed with an asbestos-related disease; or a family member of those exposed or diagnosed. For each life lost, a shattered family is left behind.

FROM MAGIC MINERAL TO DEADLY DUST

Asbestos was once considered a “magic mineral” due to its light weight, tensile strength, heat resistance, and low cost. All six types of asbestos – chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite – are carcinogenic. Asbestos fibers can be nearly 700 times smaller than a human hair and are odorless, tasteless, and indestructible. All forms of asbestos can cause mesothelioma and lung, gastrointestinal, laryngeal, and ovarian cancers, as well as non-malignant lung and respiratory diseases.



The World Health Organization², International Labor Organization³, U.S. Environmental Protection Agency⁴ (EPA) and Surgeon General⁵ all agree that there is no safe level of exposure to asbestos. Asbestos-related diseases are often misdiagnosed and under-reported. Exacerbated by a latency period of 10–50 years, late stage diagnosis

² http://www.who.int/occupational_health/publications/asbestosrelateddiseases.pdf

³ http://www.ilo.org/safework/WCMS_144446/lang--en/index.htm

⁴ <http://www2.epa.gov/asbestos/learn-about-asbestos#effects>

⁵ <http://www.surgeongeneral.gov/news/2013/04/pr20130401.html>

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often limits patients' treatment options. Most patients die within 6 to 12 months after diagnosis. Each death is preventable.

DEADLY MISCONCEPTIONS

Most Americans trust that their air, soil and water are safe from toxic contaminants; however, the Toxic Substances Control Act (TSCA)⁶ has failed to protect public health and our environment. In fact, the U.S. government's failure to ban asbestos is the ultimate example of TSCA's limitations. Only five minor asbestos-containing products were banned as part of the original 1976 TSCA (i.e., corrugated paper, rollboard, commercial paper,

specialty paper, and flooring felt.) The short version of our nation's failure to ban all asbestos in commerce goes like this:

In 1979, EPA announced it would be exploring how TSCA Section 6 could be used to protect the public from exposure to asbestos. For seven years, the agency assembled and evaluated the scientific evidence. In 1986, EPA proposed for public comment a prohibition on the commercial manufacture, import, processing, and distribution in commerce of asbestos. The Agency noted that the "human health effects caused by exposure to asbestos are well-documented...[Moreover] 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." For this reason, EPA indicated that permitting the continued use and import of asbestos posed an unreasonable risk of injury to human health.



⁶ <http://www.epa.gov/oppt/newchems/pubs/chem-pmn/appendix.pdf>

The public's participation in EPA's rulemaking process (1986-1988) yielded more than 45,000 pages of comments and testimony. EPA noted that there was wide agreement that all types of asbestos fibers are associated with pulmonary fibrosis (asbestosis), lung cancer, and mesothelioma. Ultimately, the George H.W. Bush Administration concluded that a regulation banning asbestos was the appropriate step to protect public health. (54 *Federal Register* 29460, July 12, 1989).⁷

When EPA's final rule was issued, however, the Asbestos Information Association, the Asbestos Institute, Corrosion Proof Fittings, and other powerful interests filed a lawsuit to block the asbestos ban. The Canadian Government and the Province of Quebec tried to latch onto the lawsuit because they are major exporters of asbestos. The petitioners raised all sorts of procedural complaints about how EPA conducted the rulemaking process (e.g., designating a hearing officer rather than an administrative law judge to oversee the public hearing). The U.S. Court of Appeals for the Fifth Circuit labeled this legal strategy the "protest everything approach." (947 F.2d 1201 (1991))⁸. Two key arguments made by the petitioners; however, did influence the Court: (1) the EPA did not provide the public with its methodology for estimating the benefits of an asbestos ban; and (2) the EPA did not "give adequate weight to statutory language requiring it to promulgate the least burdensome, reasonable regulation required to protect the environment adequately."

The judges returned the regulation to EPA for reconsideration, and the Administration did not appeal the Court's decision. That 30-year chronology of events leads public health advocates to ask: "If EPA can't ban a known

⁷ <http://www2.epa.gov/asbestos/asbestos-ban-and-phase-out-federal-register-notice>

⁸

http://scholar.google.com/scholar_case?case=6165892895625819539&q=Corrosion+Proof+Fittings+v.+EPA&hl=en&as_sdt=2,5&as_v is=1

carcinogen---at which no level of exposure is safe---how can EPA regulate any toxic substance?” (“The Failed EPA Asbestos Ban,” Environmental Working Group, March 2004.)⁹

Without a comprehensive ban on asbestos, companies continue to contaminate our communities with these deadly fibers. Without a comprehensive ban, asbestos continues to accumulate in our communities. The U.S. Geological Survey (USGS) reported that in 2012, 1,060 tons of asbestos was imported into the United States. We can’t even manage that new *additional* risk because we don’t know where the asbestos is being introduced and used.

ASBESTOS: STILL LEGAL AND LETHAL IN THE UNITED STATES

The collateral damage of asbestos consumption is staggering. USGS reported that from 1900 to 2012, we have used more than 31 million tons and imports continue. Furthermore, about 50 percent occurred between 1960 and the end of 2003.¹⁰ From 1965 – 2000, nearly 1.4 million metric tons of asbestos was used in friction products such as brakes and clutches, and insulation.¹¹ Today, ships docked in U.S. ports still unload asbestos in the states of Louisiana, Texas, California, New Jersey, and more.

The United States remains dependent on imports to meet so-called manufacturing needs. USGS reported that in 2012, “the chloralkali industry accounted for an estimated 57% of U.S. consumption; roofing products, about 41%; and unknown applications, 2%.”¹² For the past two years, we have seen an increase in asbestos consumption in the chloralkali industry, even though viable and affordable asbestos substitutes exist.

⁹ <http://www.ewg.org/research/asbestos-think-again/asbestos-still-not-banned>

¹⁰ <http://pubs.er.usgs.gov/publication/cir1298>

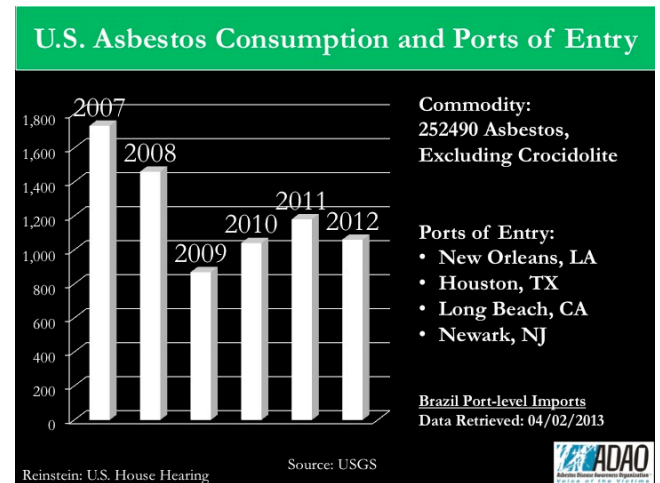
¹¹ ¹¹ <http://pubs.er.usgs.gov/publication/cir1298>

¹² <http://minerals.usgs.gov/minerals/pubs/commodity/asbestos/mcs-2013-asbes.pdf>

In 2012, the US imported 1060 tons of chrysotile asbestos from Brazil who is the world's third largest asbestos producer.

In response to this continued public health crisis, 18 months ago, I began my inquiry about the toxic asbestos import trade by asking three questions via a Freedom of Information Act (FOIA) request:

- Who are the U.S. companies and/or government agencies importing asbestos?
- What asbestos-containing products are being manufactured in the U.S.?
- Where are the asbestos-containing products being used in or exported from the U.S.?



I've filed FOIA requests and exchanged emails with government

officials. The hurdles and obstacles have been frustrating and maddening, especially for a small non-profit in a home office without staff.

I have been unable to get answers to any of my questions due to U.S. Code Title 13, Chapter 9, Section 301(g), which protects the confidentiality of export data collected by the U.S. Census Bureau. This roadblock led me to different questions: Why *is* the United States “dependent on imports to meet manufacturing needs,” as USGS states?

To my dismay, the officials at USGS and the Census Bureau insist that information about asbestos imports cannot be disclosed. Importing and using a deadly chemical that has been banned in 54 countries across the globe, is granted a secret status? I support business, innovation, and transparency – but Americans are shutout from information needed to protect their health and our environment.

According to the Center for Public Integrity, the American Chemistry Council released a statement saying, “Diaphragms made of asbestos are a critical separation medium in the chlorine manufacturing process. Chlorine is essential for manufacturing life-saving medicines, producing solar cells, and providing safe drinking water.” The statement asserted that chlorine producers “work to manage the risks and potential adverse effects to human health and the environment” and “workers potentially exposed to asbestos are protected by wearing appropriate personal protective equipment and following strict work processes.”¹³

Despite the irreversible, harmful health effects of asbestos exposure, the American Chemistry Council statement continues: “Employees in the chlor-alkali industry are given annual medical examinations to determine whether an employee has incurred any adverse effects due to any possible exposure.” As an asbestos widow, that statement is alarming and distorted. If a medical examination results in an asbestos-disease diagnosis, it’s too *late* to save that patient because the health effects are irreversible. There is no cure for asbestosis or mesothelioma.

We have ignored the World Health Organization’s Resolution stating: “The most efficient way to eliminate asbestos-related diseases is to stop using all types of asbestos.”¹⁴

ASBESTOS CAN TAKE YOUR BREATH AWAY, FOREVER

The facts are clear: the tons of asbestos that have been mined in and imported to the U.S. have created a public health crisis. Asbestos remains in our homes, schools, and buildings, and even on consumer shelves. Workers and consumers cannot adequately identify the toxic fibers nor manage the risks of consumer, environmental and occupational asbestos exposure in products or places.

¹³ <http://www.publicintegrity.org/health/public-health/asbestos>

Members of the Committee, do you know where these nearly invisible, deadly fibers are in your home, child's school, on consumer shelves? Do you know where they are in your district, or here in the Capitol? Americans want to know where asbestos puts their communities at risk.

CONSUMER, ENVIRONMENTAL AND OCCUPATIONAL EXPOSURE CONTINUES

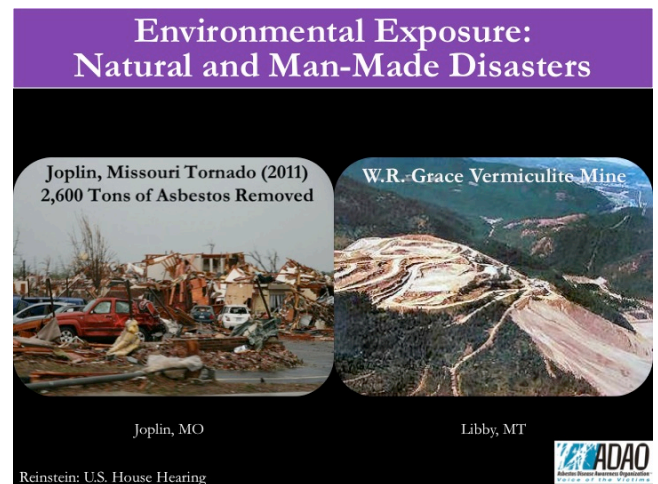
CONSUMER EXPOSURE:

- From 1965 – 2000, nearly 1.4 million metric tons of asbestos was used in friction products such as brakes and clutches, and insulation.
- In 2007, ADAO identified 5 consumer products, including a child's toy, that were contaminated with asbestos.



ENVIRONMENTAL EXPOSURE:

- Natural and man-made environmental disasters have plagued us. It was reported that 2,600 tons of asbestos was collected after the 2011 Joplin, Missouri tornado and tons of toxic debris littered the coastline after last year's Hurricane Sandy.



¹⁴ http://whqlibdoc.who.int/hq/2006/WHO_SDE_OEH_06.03_eng.pdf
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- W.R. Grace Vermiculite Mine, a man-made disaster in Libby, MT, has been costly in dollars and lives. The federal government has spent more than \$450 million to remediate the toxic areas in Libby, MT and provide medical care to the residents.

OCCUPATIONAL EXPOSURE:

Although we have laws and regulations, workers are still being exposed on the job and the asbestos fibers they have on their clothes and shoes, and in their cars are taken home. This take-home toxin threatens their families with deadly hugs and chores. Occupational exposures can occur during auto repair work, maintenance, construction, abatement, and hazardous debris removal.



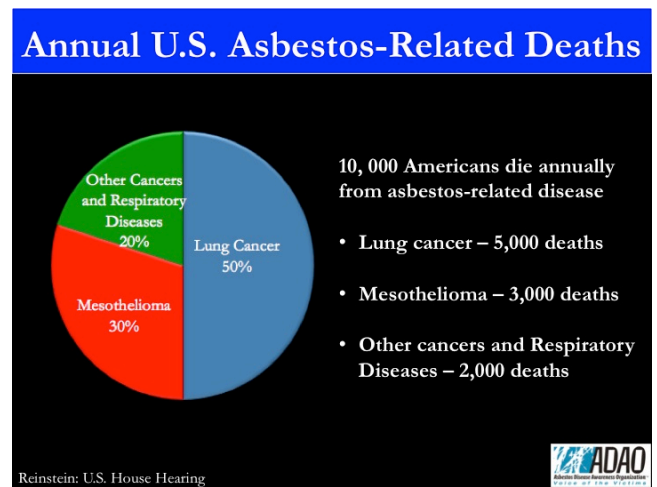
- The medical journal *The Lancet* reported that 9/11 first responders are now suffering from a variety of diseases and are 19% more likely to have cancer than other first responders. Asbestos was the primary insulation compound used when the World Trade Center was built, beginning in 1968. Due to the long latency period of asbestos-caused diseases, it will be decades before we can accurately calculate collateral damage from 9/11.¹⁵
- Right here under the Capitol, ten federal employees were exposed and sickened by their work maintaining the tunnels. Asbestos dust was so thick that a worker was able to write his name on the pipe. One of their wives now has pleural thickening, an asbestos-related health condition, from washing her husband's contaminated clothes.

¹⁵ <http://www.thelancet.com/themed-911>

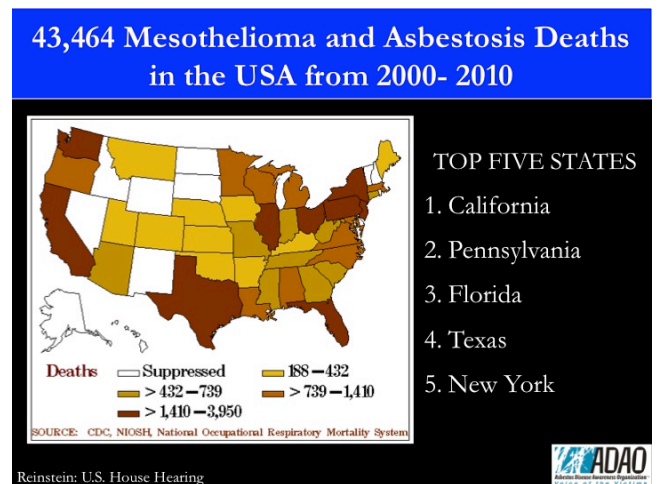
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AMERICANS REMAIN AT RISK TODAY

Each year, an estimated 10,000 Americans die from asbestos-related disease. Many physicians and public health experts indicate that this estimate is likely low due to underreporting and a focus limited to occupational surveillance. Annually, about 3,000 Americans die from mesothelioma, 5,000 from asbestos-related lung cancer, and 2,000 from other asbestos-related cancers or respiratory diseases.



The Centers for Disease Control and Prevention's NIOSH statistics from 2000 to 2012 reveal that 43,464 Americans died from mesothelioma and asbestosis – just two of the asbestos-caused diseases. The top five states with the highest mortality were California, Pennsylvania, Florida, Texas, and New York.



The Occupational Safety and Health Administration states that in the United States, “Asbestos is well recognized as a health hazard and is highly regulated. An estimated 1.3 million employees in the construction and general industry face significant asbestos exposure on the job.” In May 2010, the United States President's Cancer Panel (PCP) released the landmark 200-page report entitled, [*“Reducing Environmental Cancer Risk: What We Can Do Now”*](#)¹⁶. The panel reported, “Construction workers were found to be 11 times more likely to develop mesothelioma, due to asbestos exposures at the site.”

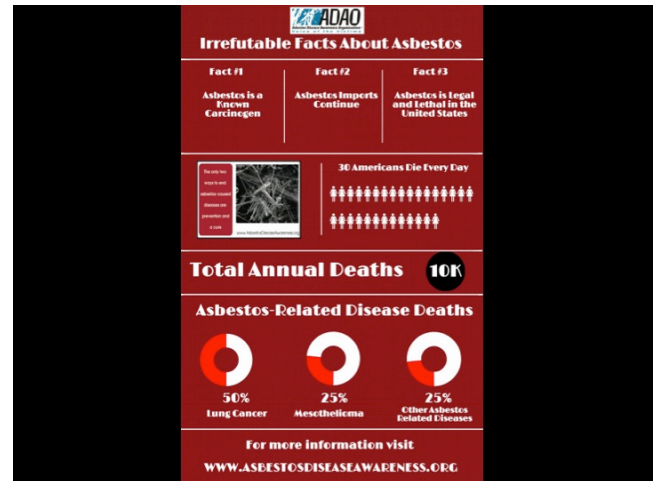
¹⁶ http://deainfo.nci.nih.gov/advisory/pcp/annualReports/pcp08-09rpt/PCP_Report_08-09_508.pdf

HISTORY IS A GREAT TEACHER TO THOSE WHO LISTEN

We cannot alter history or bring back the dead, but we can learn from the past to save lives. Every day, 30 Americans will die from preventable asbestos-caused diseases, yet asbestos continues to be legal and lethal in the United States. We know so much and have done so little to mitigate this disaster. Human, environmental, and civil rights have all been compromised because of asbestos, and patients like Janelle, Michael, and Alan pay the price. I know too well that the only two ways to end asbestos-caused diseases are prevention and a cure. For each life lost, a shattered family is left behind.

IRREFUTABLE ASBESTOS FACTS

1. Asbestos is a known human carcinogen and there is no safe level of exposure.
2. 54 countries have banned asbestos, but the United States has not.
3. Asbestos imports and exposure continue. In 2012, the United States imported over 1,060 tons of asbestos.
4. An estimated 10,000 Americans die each year from preventable asbestos-caused diseases.
5. Americans cannot determine or manage consumer, environmental, and occupational asbestos risk.



It is because of my husband, Alan, Janelle, Michael, and thousands of asbestos cancer warriors that I fight every day to protect and help families impacted by asbestos disease. They deserve responsibility, accountability, and transparency. Meaningful TSCA reform addressing these three issues will save lives.

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- Congress should take responsibility for public health by drafting and passing meaningful TSCA reform legislation that truly strengthens protections for our families and the environment by preventing the further use of asbestos.
- Americans have lost confidence in the chemical industries' ability to protect us from toxins. Congress needs to hold them accountable.
- We need to ensure that in the future, the process of approving chemicals is more transparent. The public deserves to have access to vital health and safety information.

The only true measurement of strong TSCA Reform is the legislation's ability to empower the EPA to ban asbestos. One life lost to a preventable asbestos-caused disease is tragic; hundreds of thousands of lives lost is unconscionable.

I have attached to this testimony a petition signed by over 2,700 people urging Congress to ban asbestos.