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6 BAN ASBESTOS NOW: TAKING ACTION

7 TO SAVE LIVES AND LIVELIHOODS

8 WEDNESDAY, MAY 8, 2019

9 House of Representatives

10 Subcommittee on Environment and Climate Change

11 Committee on Energy and Commerce

12 Washington, D.C.

13

14

15

16 The subcommittee met, pursuant to call, at 10:03 a.m.,  
17 in Room 2322 Rayburn House Office Building, Hon. Paul Tonko  
18 [chairman of the subcommittee] presiding.

19 Members present: Representatives Tonko, Peters,  
20 McEachin, Blunt Rochester, Soto, Matsui, McNerney, Ruiz,  
21 Dingell, Pallone (ex officio), Shimkus, Rodgers, McKinley,  
22 Johnson, Long, Mullin, Carter, Duncan, and Walden (ex  
23 officio).

24 Staff present: Jacqueline Cohen, Chief Environment

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1 Counsel; Adam Fischer, Policy Analyst; Waverly Gordon, Deputy  
2 Chief Counsel; Rick Kessler, Senior Advisor and Staff  
3 Director, Energy and Environment; Brendan Larkin, Policy  
4 Coordinator; Mel Peffers, Environment Fellow; Teresa  
5 Williams, Energy Fellow; Mike Bloomquist, Minority Staff  
6 Director; Jerry Couri, Minority Deputy Chief Counsel,  
7 Environment & Climate Change; Margaret Tucker Fogarty,  
8 Minority Staff Assistant; Theresa Gambo, Minority Human  
9 Resources/Office Administrator; Peter Kielty, Minority  
10 General Counsel; Ryan Long, Minority Deputy Staff Director;  
11 Mary Martin, Minority Chief Counsel, Energy & Environment &  
12 Climate Change; Brandon Mooney, Minority Deputy Chief  
13 Counsel, Energy; and Brannon Rains, Minority Staff Assistant.

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1           Mr. Tonko. The subcommittee on Environment and Climate  
2 Change will now come to order. I recognize myself for five  
3 minutes for the purposes of an opening statement.

4           Today's legislative hearing will examine H.R. 1603, the  
5 Alan Reinstein Ban Asbestos Now Act of 2019.

6           And I would like to start by recognizing Linda  
7 Reinstein, Alan's widow, and their daughter Emily, who are  
8 with us today. Thank you for joining us. And heartfelt  
9 thanks for being able to carry forward in a really  
10 constructive way to respond to a really difficult time for  
11 you.

12           I have worked with Linda for a number of years on  
13 chemical safety efforts. She is a tireless champion for  
14 countless Americans suffering from asbestos-related diseases  
15 and fighting for a TSCA program that actually works to  
16 protect people from toxic risks.

17           Linda is a powerful voice for the millions of Americans  
18 who get up every morning and go to work, and raise their  
19 families; who have done everything right, but who are now  
20 facing the painful consequences of some ill-fated toxic  
21 exposure they may not even understand, and from a federal  
22 government that has, for far too long, failed to take these  
23 risks seriously enough.

24           As a result, today asbestos can be found in countless

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1 consumer products, despite our knowing for decades that it is  
2 indeed harmful to human health. The dangers of asbestos are  
3 not new to anyone. We know the carcinogenic effects of  
4 exposure and that asbestos-related diseases kill tens of  
5 thousands of Americans each year.

6 I am so proud to be holding this hearing today, and I  
7 hope we are able to move forward on behalf of all the people  
8 -- the victims and their families -- that Linda is here to  
9 help represent. I look forward to hearing from her on  
10 today's second panel, along with our other witnesses.

11 The Alan Reinstein Ban Asbestos New Act was introduced  
12 by Congresswoman Bonamici, Congresswoman Slotkin, and  
13 Congress -- and Chairman Pallone earlier this year. The  
14 subcommittee thanks them for their urgent and timely work.

15 This legislation would prohibit the manufacture, the  
16 processing, and distribution of asbestos and asbestos-  
17 containing mixtures and articles one year after its  
18 enactment. It allows for a limited exemption for national  
19 security purposes and requires a report to Congress on legacy  
20 uses, for example, asbestos already in buildings.

21 In March, this subcommittee heard from workers  
22 representing firefighters, teachers, autoworkers and others  
23 who have seen the consequences of long-term health impacts of  
24 workplace exposures. More than 60 countries have moved

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1 forward with asbestos bans to date. For the sake of our  
2 consumers and our loved ones, the United States must do the  
3 same. In fact, we have tried to do so in the past.

4 Thirty years ago, EPA attempted such a ban, which was  
5 overturned by the courts in 1991. It was the most glaring  
6 example of the inadequacy of our nation's Toxic Substances  
7 Control Act, and one of the reasons Congress advanced the  
8 Lautenberg Act to reform TSCA. My Republican counterpart Mr.  
9 Shimkus was the leader on that effort and, to his credit,  
10 worked to find compromise and give EPA the authorities  
11 necessary to protect Americans from toxic threats.

12 Based on the available public health and scientific  
13 data, and the heartbreaking experience of Linda's family and  
14 hundreds of thousands of others like her, that means stopping  
15 asbestos use once and for all.

16 This morning, I suspect we will hear that EPA already  
17 has a process under way. Asbestos was selected as one of the  
18 first ten chemicals for consideration under the Lautenberg  
19 Act, and the Agency recently issued an SNUR requiring  
20 notification if previous uses are reintroduced into commerce.

21 Unfortunately, that is not good enough. I am sure other  
22 members will discuss concerns with the asbestos risk  
23 evaluation. But between that and the Agency's treatment of  
24 methylene chloride, I have little confidence that EPA will

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1 move forward on a reasonable timeline with the only  
2 acceptable outcome a complete asbestos ban. We are  
3 approaching three years since the enactment of the Lautenberg  
4 Act, and it is likely a ban, if proposed at all, will take  
5 many years to finalize.

6 Congress came together to give EPA additional  
7 authorities precisely, authorities precisely so that  
8 substances such as asbestos, that are nearly universally  
9 agreed to present an unreasonable risk, could be properly  
10 regulated. The bill's supporters are right to think that if  
11 this is the direction that EPA claims to be heading, we can  
12 ensure a ban moves forward with confidence on a certain  
13 timeline.

14 I hope that members on both sides of the aisle will  
15 consider how we might be able to come together, build upon  
16 the bipartisan success of the Lautenberg Act, and help  
17 protect Americans from preventable asbestos-related diseases.

18 Thank you again and to Assistant Administrator Dunn and  
19 our other witnesses for being here this morning. I look  
20 forward to the discussion.

21 And I will now recognize my, and share my remaining time  
22 with Representative McNerney of California.

23 Mr. McNerney. I thank the chair for giving me a minute  
24 here. What I would like to do is recognize a member of the

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1 audience here.

2 Lina Caboteja, would you please stand. Lina is a  
3 Tuesday's Child and she will be shadowing me today. And I  
4 just want to make sure she has a great experience here on the  
5 Hill. Thanks for coming, Lina.

6 [Applause.]

7 Mr. Tonko. The gentleman yields back. I yield back.  
8 And the chair now recognizes Mr. Shimkus, our leading  
9 Republican for the Subcommittee on Environment and Climate  
10 Change for five minutes for his opening statement.  
11 Representative.

12 Mr. Shimkus. Thank you, Mr. Chairman. And, Mr.  
13 McNerney, you are such a nice guy, so.

14 The issue of asbestos use in America and its impact on  
15 lung cancer, elder illnesses, death is one of the more  
16 challenging and gut-wrenching I have found in my time in  
17 Congress. I have the privilege to represent part of Madison  
18 County, Illinois. And that is my home county. So I know a  
19 thing or two about asbestos and the disease it causes.

20 In 2014, 1,500 asbestos lawsuits were filed in Madison  
21 County, or more than a quarter of all asbestos cases filed  
22 nationally. When I have gone door to door to visit my  
23 constituents I see them in their oxygen machines laboring to  
24 live. And I am aware of the struggle, and it is real.

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1           Preventing asbestos-related diseases is one of the main  
2 reasons I and others came together to enact reform to the  
3 Toxic Substances Control Act. This law directed EPA, using  
4 high-quality science, to identify high risk chemicals and  
5 prioritize them, review those chemicals and the risk,  
6 otherwise known as a moment where hazard and exposure  
7 intersect, and regulate the ones that present an unreasonable  
8 risk to health or the environment.

9           I felt good that we had enacted a process that was  
10 objective, and risk and science based, that was drafted to be  
11 agnostic as to who was implementing it, and the EPA would  
12 have little trouble using very broad authority to carry out  
13 the requirements.

14           We didn't single out any chemical by name in that bill,  
15 included -- including the use of the word "asbestos," but we  
16 were all conscious of ensuring that EPA could act on it. And  
17 I and others expect that EPA is doing just that, for the  
18 first time ever preventing lapsed asbestos uses from coming  
19 back into the market, and reassessing current uses concerning  
20 their unreasonable risk, and preparing to take any necessary  
21 action to reduce and remove those risks.

22           I know, Mr. Chairman, that moving the TSCA bill was a  
23 tough process, which you were involved with but the -- and  
24 had concerns with the preemptive provisions. But this is

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1 precisely what the majority of both Democrats and Republicans  
2 on this committee supported on the House floor.

3 I guess I am trying to say that I am a bit frustrated as  
4 to why we are having a legislative hearing on banning  
5 asbestos before we have had an oversight hearing to  
6 demonstrate that the EPA is failing on the technical aspects  
7 of the law in its review, missing deadlines, or some other  
8 such failing. I know my friend and full committee chairman,  
9 Chairman Frank Pallone, has on more than one occasion  
10 proclaimed he does not have faith in the professionals at EPA  
11 to carry out high-quality review and act the way he would  
12 prefer on asbestos.

13 I would respond in two ways.

14 First, under TSCA, EPA has a legal duty to support any  
15 decision on existing uses of asbestos, with substantial  
16 evidence based on objective scientific review. So, EPA  
17 cannot go into a chemical review with a predetermined outcome  
18 if it wants to avoid litigation.

19 Let me say that again, because EPA cannot go into a  
20 chemical review with a predetermined outcome if it wants to  
21 avoid litigation.

22 Second, let's be honest here, if there were a Democrat  
23 in the White House right now, my Democrat colleagues would be  
24 very critical of me trying to overturn one of the first

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1 existing chemical reviews less than three years after its  
2 enactment. That is why I have sympathy for at least letting  
3 EPA do its work before legislatively rejecting it. I  
4 understand the proponents want certainty on this issue. I am  
5 also sympathetic to those concerns.

6 Because of the nature of this place, and unlike EPA, we  
7 are much less likely to have the time to consider or  
8 otherwise be able to know all the impact a ban would have  
9 directly or indirectly on all Americans, particularly without  
10 the benefit of an oversight hearing.

11 Multiple Super Bowl champ, champion coach Bill Belichick  
12 preaches to his players "trust the process" when preparing  
13 for challenges for a season. This formula has been  
14 successful for him. And I do believe it would be successful  
15 in TSCA.

16 There may be more, a need to move a bill to address the  
17 manufacturing, import, processing, and commercial  
18 distribution of asbestos, but before learning more, though, I  
19 am not convinced that that time is now.

20 I join the chairman in welcoming our witnesses today. I  
21 want to thank them for their sacrifice they made to be here  
22 with us. And I look forward to learning more from you all.

23 And with that, Mr. Chairman, I yield back my time.

24 Mr. Tonko. The gentleman yields back.

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1           The chair now recognizes Mr. Pallone, Chairman of the  
2 Full Committee, for five minutes for his opening statement.  
3 Chairman.

4           The Chairman. Thank you, Chairman Tonko.

5           It has been 40 years since the Environmental Protection  
6 Agency began its work to ban asbestos under the Toxic  
7 Substances Control Act, or TSCA. It has been 30 years since  
8 EPA finalized that ban. And it has been 28 years since that  
9 ban was struck down in court.

10           Twenty-eight years of frustration, of sickness and loss.

11           We have known the dangers of asbestos for decades and,  
12 frankly, enough is enough.

13           I wish today's hearing wasn't necessary, that this bill  
14 wasn't necessary, but asbestos is still being imported into  
15 the United States, and it is still being used in this  
16 country, and it is still killing about 40,000 Americans every  
17 year.

18           Today this committee is beginning to take action by  
19 discussing H.R. 1603, the Alan Reinstein Ban Asbestos Now  
20 Act, which Representatives Bonamici, Slotkin, and I  
21 introduced in March. Our bill would ban the manufacture,  
22 import, processing, and distribution of asbestos. It would  
23 also require the EPA to assess and report on the risks posed  
24 by "legacy asbestos" that is found in buildings.

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1           In addition to Representatives Bonamici and Slotkin, I  
2           want to thank some of those who have worked tirelessly to get  
3           us to this point.

4           Linda Reinstein, whose husband Alan is the bill's  
5           namesake, will testify this morning. Linda, thank you for  
6           everything you have done and everything that I know you will  
7           continue to do to get asbestos out of commerce, out of our  
8           products, out of our workplaces, out of our homes.

9           I would also like to thank national and local labor  
10          unions who have been fighting for decades to protect workers  
11          from asbestos diseases.

12          AFL-CIO is also here today. In March, we heard from the  
13          International Association of Firefighters, the United  
14          Autoworkers, and the American Federation of Teachers who all  
15          testified before this committee about the risks that workers  
16          continue to face from asbestos. Those stories and those  
17          people at risk are why we are here today.

18          I also want to acknowledge Susan Moran, who is in the  
19          audience today. Susan's late husband, Andy, pronounced  
20          "egregious," was an integral part of this committee's work to  
21          reform TSCA.

22          And, finally, I would like to thank the subcommittee  
23          ranking member, Mr. Shimkus, who worked closely with me and  
24          Chairman Tonko and other committee members to reform TSCA

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1 back in 2016. It was not an easy task.

2 The Frank R. Lautenberg Chemical Safety Act for the 21st  
3 Century, and that is TSCA, empowered EPA to ban asbestos. In  
4 fact, this committee's report on the Lautenberg Act, written  
5 under Republican leadership, states, and I am now quoting,  
6 "To many members of the committee, an important measure of  
7 TSCA reform proposals has been whether the proposal would  
8 enable EPA to take broader regulatory action to protect  
9 against unreasonable risks from asbestos. The committee  
10 expects this legislation to enable that regulatory action."

11 And that was from the committee's report on our  
12 expectations.

13 But, unfortunately, it is now clear that, despite the  
14 best efforts of our committee, the Trump EPA is not using the  
15 tools we gave it to regulate dangerous chemicals. Asbestos  
16 is the poster child for the problems we are seeing in the  
17 implementation of the Lautenberg Act. EPA's actions under  
18 the Lautenberg Act have been so legally suspect that I  
19 believe we need to pass this bill regardless of whether EPA  
20 were to announce that it is moving forward with a full ban of  
21 asbestos. We don't have time for more legal maneuvering and  
22 a drawn-out court battle while tens of thousands of people  
23 are dying.

24 So, it is deeply disappointing that 40 years after EPA

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1 began work to ban asbestos under TSCA, and three years after  
2 we passed the Lautenberg Act to reform that statute, we need  
3 to pass another law to ban this deadly substance. But, I  
4 think it is clear that Congress must act, and we are  
5 certainly going to act.

6 So, with that, unless anybody else wants my minute, I  
7 will yield back. And thank you, Mr. Chairman.

8 Mr. Tonko. You are welcome.

9 The gentleman yields back. The chair now recognizes Mr.  
10 Walden, who is the Republican leader of the full committee,  
11 for five minutes for his opening statement. Representative.

12 Mr. Walden. Good morning, Mr. Chairman, and thank you.

13 As we examine the bill today from Mrs. Bonamici and  
14 others, I must say I am actually of several minds. And let  
15 me explain.

16 At a 50,000 foot level I join my colleagues in wanting  
17 an end to mesothelioma, cancer, and other pulmonary diseases  
18 precipitated by asbestos. I think we all want that.

19 To the families suffering and those with these diseases  
20 right now, and those who have lost loved ones to them I am  
21 deeply sympathetic to you and, obviously, to the advocates of  
22 this bill. I recognize the tragedies you have faced, and I  
23 understand you want a solution once and for all.

24 I also appreciate the way my colleague Mr. Shimkus has

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1 said about the process he authored a few years ago to  
2 modernize the law, to address questions of safety about  
3 chemicals, and that these have to be fact-based decisions..  
4 And as we speak -- and that Mrs. Dunn will talk about on the  
5 first panel today.

6 If Congress is going to consistently, though, preempt  
7 the sort of science-based EPA reviews of statutory mandates,  
8 one has to ask the question then what is the point of all  
9 these new and expanded authorities under TSCA? Even well-  
10 meaning legislation can, frankly, be a bit of a blunt  
11 instrument for problem solving where, if not careful,  
12 Congress can create risk tradeoffs that spawn unintended  
13 public health risks, institute unimplementable enforcement  
14 requirements, or require complex and hard-to-meet compliance  
15 obligations.

16 So, as I went through and looked at this legislation a  
17 number of questions came to mind.

18 This legislation requires any mixture or article that is  
19 distributed in commerce to not have asbestos present as an  
20 impurity. So, my question is does this apply to incidental  
21 fibers? Do American businesses have to test and certify  
22 every product sold in this country to guarantee it does not  
23 contain any asbestos, regardless of whether it was  
24 intentionally added? Do people in rural areas no longer get

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1 to use gravel for roads? Should talcum powder fall under  
2 this or would it be exempted as an FDA-regulated product?

3 These are just some of the questions that come to mind.

4 The legislation also requires very specific and complex  
5 reporting to the EPA by those who either manufactured,  
6 imported, processed, or moved in commerce asbestos, or  
7 mixtures, or articles containing asbestos, including an  
8 incidental amount in the three years prior to and one year  
9 after the bill's enactment. So, prior to and one year after.

10 So, how does a person report an incidental amount when  
11 they weren't expected to track it?

12 What is the utility of all this reporting to EPA on top  
13 of information from the EPA's chemical data reporting,  
14 especially if the substance is already banned?

15 Why is personally identifying information disclosed to  
16 the public? We are doing a lot on privacy in this committee,  
17 so the question why is personally identifying information  
18 disclosed to the public from each report, when EPA is only  
19 required to produce an aggregate report that isn't specific  
20 to each person reporting?

21 Finally, the legislation provides a shorter transition  
22 period and moots existing TSCA provisions preventing the  
23 exemption for use of a chemical that provides greater health  
24 protection than its alternative, which I think is a pretty

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1 important point.

2 I am especially concerned about the immediate loss of 36  
3 percent, and that is over one-third, of our nation's chlorine  
4 production, and what that means for hospital disinfection,  
5 drinking water treatment, pharmaceutical production and the  
6 like; the resources required to push businesses to import  
7 materials rather than make them here; and do healthcare costs  
8 and drinking water rates spike as availability of these  
9 services lessen, or do gaseous chlorine shipments come to our  
10 major ports.

11 So, to protect the economic health of working men and  
12 women, are alternatives technologically and economically  
13 feasible? I think that is a question we need to look at.  
14 And, if so, are they drop-in ready and safer?

15 So, Mr. Chairman, while I support the intent, certainly,  
16 of my colleague from Oregon, Ms. Bonamici, and others, I do  
17 think there are these questions among the whole list that if  
18 we are going to legislate in this space we need to get  
19 answers to if we are going to be responsible.

20 So, I look forward to hearing from each of our witnesses  
21 today. I know their testimony will better clarify some of  
22 these form, and I appreciate that. I would also say at the  
23 outset we have two subcommittees meeting simultaneously, and  
24 since I am on both I will be coming and going. But I do have

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1 your written testimony.

2 And, again, we all want to make the world safer. And  
3 for those who are suffering or who have lost someone, you are  
4 in our hearts, and we want to do the right thing here.

5 So, with that, Mr. Chairman, I yield back.

6 Mr. Tonko. The gentleman yields back.

7 The chair would like to remind members that pursuant to  
8 committee rules all members' written opening statements shall  
9 be made part of the record.

10 I will now introduce our witness for today's first  
11 panel, Alexandra Dunn, the Assistant Administrator of the  
12 United States Environmental Protection Agency, Office of  
13 Chemical Safety and Pollution Prevention.

14 Before we begin, I would like to explain the lighting  
15 system. In front of you are a series of lights. The light  
16 will initially be green at the start of your opening  
17 statement. That light will turn yellow when you have one  
18 minute left. And please begin to wrap up your testimony at  
19 that point. The light will turn red when your time expires.

20 So, we thank you for that help, Administrator. At this  
21 time the chair will recognize Assistant Administrator Dunn  
22 for five minutes to provide her opening statement.

23 Oh, there are no lights on your table. Okay. So,  
24 forgive me, all of that, all that -- Okay. Thank you.

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1 Miracles of all kinds.

2 So, Administrator, five minutes please.

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1 STATEMENT OF ALEXANDRA DUNN, ASSISTANT ADMINISTRATOR, U.S.  
2 ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF CHEMICAL SAFETY  
3 AND POLLUTION PREVENTION

4

5 Ms. Dunn. Well, good morning, Chairman Tonko. And  
6 notwithstanding the absence of the lights, I can see the  
7 clock up there.

8 Mr. Tonko. Okay.

9 Ms. Dunn. Chairman Pallone, Ranking Member Shimkus, and  
10 Ranking Member Walden, members of the committee, as you  
11 heard, I am Alexandra Dunn, Assistant Administrator of EPA's  
12 Office of Chemical Safety and Pollution Prevention, and it is  
13 a great privilege and honor to appear before you today to  
14 discuss asbestos.

15 I am pleased to share with you the significant efforts  
16 the EPA is undertaking to address public health risks from  
17 exposure to asbestos. This administration is the first in 30  
18 years to use the Toxic Substances Control Act, amended by the  
19 Frank R. Lautenberg Chemical Safety for the 21st Century Act,  
20 to place additional restrictions on products that contain  
21 asbestos.

22 It is helpful to look at EPA's asbestos regulation in  
23 three phases. As you noted, EPA's actions around asbestos  
24 took a major step forward when in 1989 we finalized the TSCA

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1 Asbestos Ban and Phase out, banning the manufacture,  
2 importation, processing, and distribution in commerce of most  
3 uses of asbestos. In 1989 -- excuse me, in 1991, this  
4 regulation was largely overturned by the Fifth Circuit,  
5 leaving only five asbestos products and all new uses of  
6 asbestos banned. The 1989 partial ban remains in place, and  
7 our new actions build upon it.

8 Second, on April 17, 2019, EPA closed a loophole left by  
9 the 1991 court decision. We signed a regulation that will  
10 present historic uses of asbestos from returning to the U.S.  
11 through domestic manufacture or import without EPA review.  
12 Our action affects 18 categories of historic asbestos-  
13 containing products, such as asbestos vinyl floor tiles and  
14 insulation, and has a "catch all" restricting any other uses  
15 of asbestos not currently ongoing.

16 This is an aggressive and critical step to protect the  
17 public from the health risks associated with asbestos,  
18 including the increased risk of cancer.

19 Third, we complete the circle of protecting the public  
20 from asbestos risks as we undertake a risk evaluation for the  
21 limited ongoing industrial uses of asbestos. A TSCA risk  
22 evaluation, as described by Mr. Shimkus, determines whether a  
23 chemical substance presents an unreasonable risk, under the  
24 conditions of use, to health or the environment, including an

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1 unreasonable risk to relevantly potentially exposed or  
2 susceptible subpopulations such as workers.

3 If EPA determines that the manufacture, processing,  
4 distribution, use, or disposal of a chemical substance  
5 presents an unreasonable risk, we must take risk management  
6 actions under TSCA Section 6. Our process is open and  
7 transparent. The asbestos draft risk evaluation will be peer  
8 reviewed and available for public comment under the  
9 timetables in TSCA.

10 We received two petitions asking EPA to require  
11 additional asbestos reporting. After consideration, EPA  
12 denied both petitions. Through preparing the asbestos  
13 scoping document and drafting the risk evaluation, we are  
14 confident that we have a sufficient understanding of the  
15 conditions of use of asbestos.

16 We understand that many stakeholders want EPA to ban all  
17 remaining asbestos products now. Under TSCA, EPA cannot move  
18 directly to risk management actions such as a ban without  
19 first completing the risk evaluation and making an  
20 unreasonable risk determination. This is the path we are  
21 following consistent with our legal authority.

22 EPA has also received comments asking us to address  
23 risks from legacy asbestos, asbestos-containing materials  
24 manufactured or imported in the past that may still be

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1 present in buildings and homes. We are not ignoring the  
2 legacy problem. Asbestos-containing materials that are not  
3 damaged or disturbed are not likely to pose a health risk.  
4 When asbestos is to be disturbed, federal, state, and local  
5 laws, regulations, and programs are in place for the safe  
6 removal and disposal of these materials.

7 The outlined actions show that we are committed to  
8 protecting all Americans from unreasonable risk associated  
9 with asbestos and to working with stakeholders and our  
10 federal, state, and local partners. Again, for the first  
11 time in decades, EPA has made addressing asbestos a priority.

12 On March 7, 2019, Representative Bonamici and others  
13 introduced H.R. 1603, the Alan Reinstein Ban Asbestos Now Act  
14 of 2019. EPA does not have a formal position on the bill but  
15 can provide technical assistance on this issue upon request.

16 In conclusion, thank you, Chairman Tonko, Chairman  
17 Pallone, Ranking Member Shimkus, and Ranking Member Walden,  
18 and members of the committee for the opportunity to testify  
19 before you today. EPA looks forward to continuing our work  
20 with you to protect the public's health and well-being. And  
21 I look forward to any questions.

22 [The prepared statement of Ms. Dunn follows:]

23

24 \*\*\*\*\* INSERT 1\*\*\*\*\*

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1 Mr. Tonko. Thank you very much. Now that the  
2 administrator has concluded her opening statement we will  
3 move to member questions. Each member will have five minutes  
4 to ask questions of our witness. I will start by recognizing  
5 myself for five minutes.

6 Administrator Dunn, thank you again for appearing before  
7 the subcommittee. It is my sincere hope that you are able to  
8 lead the Office of Chemical Safety and Pollution Prevention  
9 effectively. In my opinion, the office went off track in the  
10 early years of this, the Trump administration.

11 Congress passed the Lautenberg Act to have certainty  
12 that EPA would have the authority to ban indisputably harmful  
13 substances like asbestos. Three years later and I certainly  
14 am not as confident that will be the ultimate outcome.

15 Administrator, do you have any thoughts on how over 60  
16 other nations, and even the U.S. at one time when it had  
17 banned asbestos, have managed to continue to be productive  
18 despite having banned asbestos?

19 Ms. Dunn. We are always engaged in international  
20 conversations with other countries. We believe that we are  
21 implementing TSCA, the new law that we have, using all of its  
22 authorities and powers that we have to look at asbestos, and  
23 feel very confident that we have the tools that we need.

24 Mr. Tonko. And do you have concerns that the United

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1 States could not manage that transition?

2 Ms. Dunn. I am confident that we are able to manage the  
3 transition to the new Lautenberg law. We have met all the  
4 deadlines under the new law to date.

5 Mr. Tonko. Well, with a ban in general could we, could  
6 we manage that transition?

7 Ms. Dunn. Managing a ban, if under TSCA we reach a  
8 conclusion that there is an unreasonable risk presented under  
9 the conditions of use, and that a ban is the only way that  
10 those risks could be mitigated, EPA would have the capability  
11 to manage that process.

12 Mr. Tonko. And, obviously, work has been done going  
13 back to the 1970s on the U.S. ban. There are career staff at  
14 EPA that have been working on asbestos for literally decades.

15 What role do you believe EPA career staff should play in  
16 determining the agency's path forward on asbestos?

17 Ms. Dunn. I am absolutely privileged every day to work  
18 with our career staff. They have prepared me today for  
19 speaking with all of you. They have incredible expertise  
20 about asbestos, how it is used in the United States. They  
21 did all the ground work around our risk evaluation. And they  
22 are absolutely dedicated to, to the task at hand. Very  
23 committed to the public service.

24 Mr. Tonko. In late August, the New York Times reported

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1 a story entitled "EPA Staff Objected to Agency's New Rules on  
2 Asbestos Use Internal Emails Show," which outlined career  
3 staff's concerns with this new proposal. I appreciate that  
4 story was published before you confirmation, but just this  
5 morning The Times published "EPA Leaders Disregarded Agency's  
6 Experts in Issuing Asbestos Rule Memos Show."

7 Do you have any thoughts on these stories or understand  
8 why it may cause some members to question EPA's political  
9 leadership's commitment to implementing a ban?

10 Ms. Dunn. I don't want to comment on internal  
11 conversations amongst our staff. We encourage full  
12 disclosure and conversation amongst our teams. We explore a  
13 variety of options at all times. And I, my door remains open  
14 to any member of our staff who feels they are not being heard  
15 in regard to their professional opinions.

16 Mr. Tonko. But moving forward to you plan on seeking  
17 input from career staff from across program offices on  
18 asbestos and other risk evaluations?

19 Ms. Dunn. Absolutely.

20 Mr. Tonko. And I know you previously led EPA Region 1.  
21 Do you believe the career staff at regional offices can  
22 provide valuable insights?

23 Ms. Dunn. Having been the regional administrator in New  
24 England for all of 2018, I have a great appreciation for the

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1 ability of our EPA regions, many of whom you all interact  
2 with when you are home. That is the EPA that you see, not  
3 necessarily the Beltway EPA.

4 What I really enjoyed about the regional office is that  
5 we are very close to communities. I went to many public  
6 meetings. I sat with communities. Probably got a flavor for  
7 what you all go through when you go home, when you listen to  
8 communities with concerns, whether it was with regard to  
9 Superfund sites or other chemical exposures.

10 So, so being on the ground, to answer your question,  
11 yes, our regions can be very helpful to us with that direct  
12 communication from the field essentially.

13 Mr. Tonko. And are you familiar with criticisms by  
14 Region 10 staff of both the proposed SNUR and the scope of  
15 the risk evaluation from May and August 2018 respectively?

16 Ms. Dunn. I am not familiar with the Region 10 staff.

17 Mr. Tonko. Well, based on some of these communications,  
18 it seems clear that numerous EPA career staff believe the  
19 Agency is not fully pursuing efforts to reduce asbestos  
20 exposure. And I hope these expert voices have an appropriate  
21 role in the process as it moves forward.

22 And with that, I thank you for your response to our  
23 questions.

24 The chair now recognizes Mr. Shimkus, our leading

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1 Republican on the subcommittee, for five minutes to ask  
2 questions.

3 Mr. Shimkus. Thank you, Mr. Chairman.

4 I get the sense from listening to the majority that they  
5 are concerned that comprehensive action on asbestos isn't  
6 happening and they want it to occur immediately. I detected  
7 from your opening statement that there is an effort within  
8 EPA's TSCA work to get at many of these things.

9 So, can you help me piece together how the Agency is  
10 addressing asbestos? Can you please walk me through the  
11 thinking and implications of EPA actions on your Significant  
12 New Use Rule on asbestos and the ongoing risk evaluation of  
13 asbestos?

14 Ms. Dunn. Yes. It would be my, my pleasure to do that.

15 The Significant New Use Rule, which we just signed a few  
16 weeks ago, is a very important action for us to take. It  
17 makes clear that any historic, not-ongoing use of asbestos  
18 cannot occur and resume in the U.S. without notification to  
19 EPA. Notification to EPA provides us all the tools in TSCA  
20 to look at the proposed use.

21 If anyone thought that getting into the business of  
22 asbestos was a good idea, they would have to come forward to  
23 the EPA, we would have to look at the type of activity that  
24 they wanted to undertake, we would have to assess any

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1 potential risks, and we would have to put requirements on  
2 that activity to mitigate all risks.

3 The requirement could also turn out to be a no, that  
4 they may not commence that activity.

5 So, the action we took with the SNUR is very important.

6 It puts EPA in a very important place with regard to these  
7 historic uses.

8 Mr. Shimkus. Thank you. Are you on track to timely  
9 complete your evaluation and make a determination on asbestos  
10 by the end of this year?

11 Ms. Dunn. We are on track. We are completing the risk  
12 evaluations of asbestos and the other nine chemicals. Just  
13 this morning an announcement went out that our Science Review  
14 Committee, which is brand new under TSCA, will be meeting in  
15 June to begin looking at the first of the first ten  
16 chemicals. And we will be moving our way through them  
17 throughout the summer. We are very much anticipating meeting  
18 our end-of-year deadline.

19 Mr. Shimkus. That is that purple 29 one?

20 Ms. Dunn. Pigment violet 29.

21 Mr. Shimkus. Purple was my high school color, so.

22 Some of you have heard today -- some of what you have  
23 heard today and the dinging the Agency for not addressing  
24 legacy uses of asbestos. What do you say in response to

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1 those criticisms?

2 Ms. Dunn. EPA's authority under TSCA has to do with the  
3 manufacture, distributing, importation, and use, and disposal  
4 of asbestos. So, we are focusing on our legal authority.

5 When it comes to legacy uses, EPA relies on the fact  
6 that there are many, many other programs, including under  
7 OSHA, under our Clean Air Act, the NESHAP. There are  
8 requirements for anyone who is disturb asbestos when it is  
9 intact we want to make sure that that is done safely and  
10 properly. So, there are many controls at the state and  
11 federal level around legacy asbestos.

12 Mr. Shimkus. In 2016, EPA designated asbestos as one of  
13 the first ten chemical substances subject to risk evaluation.

14 Is the Agency on track to complete this risk evaluation by  
15 the end of 2019?

16 Ms. Dunn. We do remain on track, yes.

17 Mr. Shimkus. Can we expect a determination regarding  
18 unreasonable risk for all the conditions of use the agency  
19 identified in its scoping document from June 2017?

20 Ms. Dunn. I cannot prejudge today what we will find  
21 through our risk evaluation. The risk evaluation will go to  
22 peer review, also to public comment.

23 We are looking at the limited, ongoing uses of asbestos.  
24 Right now they are industrial. They largely have to do with

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1 the fabrication of diaphragms for chlorine and sodium  
2 hydroxide production, as well as some other very, very narrow  
3 industrial uses.

4 Mr. Shimkus. Since H.R. 1603 is silent on it, what  
5 legal effect does H.R. 1603, if enacted, have on ongoing risk  
6 evaluation and any resultant risk management requirements?

7 Mr. Shimkus. The fact that the bill is silent on that  
8 is of some concern. It does not tell us to stop our work.  
9 And so we would hope to reach some clarity around that should  
10 the bill advance.

11 Mr. Shimkus. Thank you. My time has expired.

12 Let me just say those are questions I wanted to get on  
13 the record. I tell people I hate asbestos, okay. And but in  
14 delving down into chemicals and dealing with the risk issue,  
15 I like the fact that chlorine is a major use in keeping water  
16 safe for use. I like the soda hydroxide for cleaning  
17 hospitals. So, we have some issues here. But I appreciate  
18 your being here.

19 I'm sorry to go over time. I yield back.

20 Mr. Tonko. The gentleman yields back.

21 The chair now recognizes the gentleman from California,  
22 Representative Peters, for five minutes.

23 Mr. Peters. Thank you, Ms. Dunn, for being with us  
24 today.

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1           Can you explain to me what has been the status -- well,  
2           let me ask first, what has been the status since between 1991  
3           and up to the time of your issuance of the SNUR, Significant  
4           Use Rule, on asbestos? How has that differed from what you  
5           are doing now?

6           Ms. Dunn. There was not a significant movement to bring  
7           historic uses back to the United States. However, we took  
8           action on the SNUR to ensure that that could not occur.

9           Mr. Peters. Okay. And so, have you been approached by  
10          people who want to continue to use asbestos or use it in ways  
11          that would require the development of the Significant New Use  
12          Rule? Is that what?

13          Ms. Dunn. We have not been approached right now by, by  
14          entities that intend to commence the asbestos uses?

15          Mr. Peters. Okay. So what, what would be examples of  
16          asbestos-containing goods that you would expect would be  
17          eligible for the case by case approval?

18          Ms. Dunn. Some of the historic uses that we address in  
19          the SNUR are 18 categories. They include building  
20          insulation, asbestos vinyl floor tile, roofing tile. Those  
21          are some of the examples of products that historically  
22          contained asbestos that are not currently being imported or  
23          brought into the United States. And we would want to ensure  
24          that before that ever occurred EPA would have a chance to

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1 review that.

2 Mr. Peters. And it is my understanding that in each of  
3 those uses substitutes have developed for asbestos that have  
4 been effective. Is that your understanding as well?

5 Ms. Dunn. I am not aware of the full range of  
6 substitutes, but I know that roofing is occurring today  
7 without imported asbestos roofing tile.

8 Ms. Dunn. Right. How would your evaluation of the  
9 Significant New Use Rule application be affected by the  
10 availability of substitutes in the economy?

11 Ms. Dunn. Well, certainly through our chemicals program  
12 we are always looking for new chemicals. We have an entire  
13 new chemicals program where innovators bring forward new  
14 chemistries. They ask us to review them. That's another one  
15 of our authorities under TSCA. We review new chemicals. We  
16 determine if any restrictions need to be placed on them.

17 We don't say that every new chemical is, air quote,  
18 greener than an existing chemical, but in many cases the new  
19 chemistries coming forward are shorter-lived in the  
20 environment, more focused in how they act in the environment,  
21 and can in some cases be greener.

22 Mr. Peters. Let me be a little bit more focused. So,  
23 let's take building insulation, which has been the big use  
24 over time and from which a lot of the friable asbestoses

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1       come. That is not the standard anymore. People are using  
2       different materials for building fire retardants and for  
3       insulation. Those are available in the economy.

4               And someone comes to you, they want to do a new product  
5       for that use with asbestos in it, you have to evaluate the  
6       risk; right?

7               Ms. Dunn. Uh-huh.

8               Mr. Peters. And so, is part of the evaluation of the  
9       risk for the new product the fact that it is really not  
10      needed because it has been, the need for it has been met by  
11      other substitute product?

12              Ms. Dunn. We look at a full range of factors under the  
13      law as to whether or not that product can come to market.  
14      Most of our review is around the safety of the product. We  
15      do look to see if there are other products in the marketplace  
16      that can give us a sense of risk. But EPA is not in the role  
17      of making decisions about the marketplace.

18              Mr. Peters. Okay. Can you describe for me what the  
19      analysis is generally behind the Significant New Use SNUR  
20      application?

21              Ms. Dunn. Right. So, as an application comes in, we  
22      have a team of risk assessors, risk evaluators.

23              Mr. Peters. Health risk assessors, health risk  
24      evaluators?

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1 Ms. Dunn. Health risk assessors, yes. Exposure  
2 experts. They look at all the conditions of use. They not  
3 only look at what that applicant says they want to do with  
4 that chemical, but they also have to under TSCA look at other  
5 reasonably foreseeable uses.

6 Mr. Peters. Right.

7 Ms. Dunn. So, we have to look out and determine if  
8 there are any other uses that maybe the applicant has no  
9 intent of using the chemistry in that fashion, but we look at  
10 the other ways it could be used. We assess any of those  
11 risks as well.

12 And we come back and we determine if there are  
13 requirements that need to be put in place to mitigate risk.

14 Mr. Peters. And how do you determine what an acceptable  
15 level of health risk is?

16 Ms. Dunn. Well, it depends on the chemical, but we look  
17 at the hierarchy of controls. So, we look at how are largely  
18 the workers coming into contact with the chemistry. So, we  
19 look at ventilation. We look at how --

20 Mr. Peters. I am sorry, I have about 3 seconds left.

21 Let me just tell you my concern. We can pick it up  
22 later.

23 Ms. Dunn. Okay.

24 Mr. Peters. Which is that you could decide that

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1 something -- you are willing to take a certain amount of risk  
2 if it is a product that is necessary to meet some need in the  
3 economy. What I would like to hear is that, given that there  
4 are other ways to meet that need in the economy, you would  
5 take a hard line on asbestos and evaluating what risk is  
6 acceptable.

7 And I yield back.

8 Mr. Tonko. The gentleman yields back.

9 The chair now recognizes the representative from West  
10 Virginia, Representative McKinley, for five minutes.  
11 Representative.

12 Mr. McKinley. Thank you, Mr. Chairman.

13 In the construction industry we have found ways of  
14 dealing with asbestos over the years. We have banned the  
15 product quite effectively, finding alternative use,  
16 alternative materials, even though polyurethane has been  
17 often criticized because it has other environmental issues in  
18 using polyurethane. So we in the construction industry we  
19 have found ways for dealing with it.

20 But after this, the 1989 ban and then the 1991 return,  
21 from what I understand there are only five products that  
22 apparently were ultimately completely banned.

23 Ms. Dunn. Uh-huh.

24 Mr. McKinley. And that allowed us, people to continue

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1 using some form of asbestos.

2 So, I'm curious, since the construction industry came up  
3 with alternatives --

4 Ms. Dunn. Uh-huh.

5 Mr. McKinley. -- that were viable, effective, why  
6 hasn't, why hasn't the industry been able to replace asbestos  
7 to be using all other products? Why do we, why in God's name  
8 do we still use this thing?

9 Ms. Dunn. Well, we largely do not use it. So, the  
10 action that we took a few weeks ago is to ensure that any of  
11 those historic uses that were left out after the court  
12 decision invalidated our total ban, what we did was we took  
13 the 18 categories of uses that were still available should  
14 someone decide to enter the U.S. marketplace with them. No  
15 one has been. They are dormant uses. But what we have done  
16 now is close the door to ensure that someone could not decide  
17 to bring back one of those uses for whatever reason they  
18 chose, without coming through EPA.

19 Mr. McKinley. Can you explain a little bit about the  
20 chlorine. I need to understand that because we banned all  
21 the piping with it. How is that involved with chlorine?

22 Ms. Dunn. So, each --

23 Mr. McKinley. Chlorine filters, I think you said  
24 something with filters.

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1 Ms. Dunn. Uh-huh. EPA is required under TSCA to look  
2 at the ongoing conditions of use of asbestos. So, you were  
3 asking where is asbestos still used in the United States?  
4 Not largely in building and construction, as you mentioned.

5 Mr. McKinley. Know that.

6 Ms. Dunn. But I will tell you where it is used, it is  
7 used in all through import. All the asbestos that comes into  
8 the United States today is imported from other countries.  
9 And the imported raw, bulk asbestos is used to make  
10 diaphragms for chlorine and sodium hydroxide production. It  
11 is also used in sheet gaskets in chemical production such as  
12 titanium dioxide production. It is used in brake blocks in  
13 oil drilling equipment.

14 Mr. McKinley. So, okay.

15 Ms. Dunn. Yeah.

16 Mr. McKinley. I can read that as well.

17 But why do we allow that? Why are we importing, why are  
18 we allowing imports to come in that are hazardous?

19 Ms. Dunn. So, this is the risk evaluation process that  
20 EPA is undertaking now. We are looking at all those uses,  
21 and a few more that I just listed. We are looking at whether  
22 these uses pose unreasonable risk.

23 And if we find that they pose unreasonable risk, we have  
24 two years to take action.

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1           Mr. McKinley. Well, only thing in a reasonable risk, if  
2 we don't allow American manufacturers to do it, why would we  
3 let a foreign manufacturer do it?

4           Ms. Dunn. Well, these are American companies importing  
5 these, this raw asbestos for these limited industrial uses.

6           Mr. McKinley. Well, you have opened up a can of worms  
7 here with that.

8           So, then we just say that maybe falling back again with  
9 what Shimkus was raising on his questioning, and I've got  
10 just a minute left on it. Can you follow up more on the  
11 importance of following the procedures outlined under TSCA  
12 when considering future actions? I'd like to understand more  
13 of that aspect of it.

14           Ms. Dunn. Well, what I hear from you, Representative,  
15 is a great concern about these remaining uses of asbestos.  
16 And so, the process that we are following is that by the end  
17 of this year we will complete a risk evaluation of any risk  
18 that we identify under these uses in the chlorine  
19 manufacturing and the other industrial uses.

20           We then, if we find unreasonable risk, and we have to  
21 make that finding under TSCA, if we find any unreasonable  
22 risk, and it wouldn't be across the whole category, we have  
23 to look at each use, then we have two years to take a risk  
24 management activity. That could require labeling,

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1 restrictions, a whole variety of ways to get rid of that  
2 risk.

3 The most significant way to get rid of a risk is a ban.  
4 But that's only one of our tools.

5 Mr. McKinley. Okay. I guess I have run out of time.

6 I am just, would you explain to me, as I understand  
7 this, I am walking out of this now, you said American  
8 manufacturers can't make the asbestos product, a brake block,  
9 a brake assembly, but if they go overseas and import it they  
10 can?

11 Ms. Dunn. They are bringing the asbestos in.

12 Mr. McKinley. That is incredible. Thank you.

13 I yield back.

14 Mr. Tonko. The gentleman yields back.

15 We now go to the voice of Delaware, Representative Blunt  
16 Rochester.

17 Ms. Blunt Rochester. Thank you, Mr. Chairman. And  
18 thank you, Ms. Dunn, for your testimony.

19 Based on the scientific evidence available at the time,  
20 EPA determined in 1989 that a ban on asbestos was necessary  
21 to protect human health. That decision was based on 10 years  
22 of work and an exhaustive record.

23 In the 30 years since the ban was published, research  
24 has shown more dangerous forms of asbestos and more deadly

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1 impacts. We now know that asbestos not only causes  
2 mesothelioma and lung cancer, but also cancer of the larynx,  
3 pharynx, stomach, and colorectum, and ovary. Unfortunately,  
4 EPA excluded those cancers from the problem formulation  
5 document for asbestos.

6 Ms. Dunn, can you explain why EPA excluded those cancers  
7 from the problem formulation document?

8 Ms. Dunn. Well, we are looking at the industrial uses  
9 that I was just explaining, those five or six limited  
10 industrial uses. And we will look at any health risks  
11 associated with those uses. So, if there are health risks  
12 along the lines that you identify we will be looking at all  
13 the relevant literature.

14 Ms. Blunt Rochester. I actually have a document to  
15 submit for the record. And it is a memorandum prepared by  
16 career staff in EPA's Region 10 office raising concerns about  
17 the EPA's problem formulation for asbestos. And I would like  
18 to submit this for the record.

19 Mr. Shimkus. Mr. Chairman, I reluctantly object to its  
20 submission. As the Assistant Administrator spoke earlier,  
21 she can't comment on internal documents. So, for us having a  
22 open hearing here without her ability to comment or put the  
23 whole memo on context, I wish we wouldn't ask for that to be  
24 submitted.

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1           Mr. Tonko. Mr. Shimkus, I believe the representative  
2           wants simply to relate what she has before her and ask for a  
3           response from the witness. And I believe if she puts it in  
4           that context, that she shares the statement, all we are  
5           looking for is a reaction to that statement.

6           Ms. Blunt Rochester. And, Mr. Chairman, could I just  
7           briefly read a quote and then respond to the quote?

8           Mr. Shimkus. Well, I can't stop you from reading a  
9           quote. My concern is a submission for the record and this  
10          not being the Oversight and Investigation Committee.

11          But I want to also say, Chairman, if I may, and if your  
12          time -- Can I? I am open to have a debate on these memos in  
13          a bipartisan process somewhere outside of this hearing.

14          Mr. Tonko. Well, then I would say, fine, let the  
15          representative go forward with the quote.

16          Ms. Blunt Rochester. Okay. So, this is the quote.  
17          "There are other significant lethal and nonlethal harms from  
18          asbestos exposures, including asbestosis and other  
19          respiratory ailments, ovarian cancer, colorectal cancer, and  
20          cancers of the stomach, esophagus, larynx, and pharynx.  
21          These additional harms should be included if there is to be a  
22          comprehensive evaluation of the risks from exposure to  
23          asbestos."

24          And so, the question was do you dispute that, that

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1 claim?

2 Ms. Dunn. Well, Representative, I am not familiar with  
3 that. And I would prefer not to comment on internal  
4 deliberative conversations of our staff.

5 Ms. Blunt Rochester. What I did, what I thought I did  
6 hear you say earlier is, because my next question was would  
7 you consider these cancers in the risk evaluation? And I  
8 think I heard you say?

9 Ms. Dunn. If our evaluation of the conditions of use  
10 reveal that those types of cancers are a possible outgrowth  
11 of the ongoing conditions of use, then we would not rule them  
12 out.

13 Ms. Blunt Rochester. So, Assistant Administrator Dunn,  
14 we always talk on this committee about risk as a product of  
15 hazard and exposure. And do you agree with that as part of  
16 the formulation?

17 Ms. Dunn. That is absolutely how we approach risk at  
18 the U.S. EPA.

19 Ms. Blunt Rochester. So, I have one minute.

20 To me it seems obvious that excluding those hazards and  
21 those exposures undermines the validity of your risk  
22 evaluation and amounts to considering non-risk factors, which  
23 is prohibited under TSCA. That is why I share the chairman's  
24 concerns that your actions under TSCA on asbestos will not

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1 survive a court challenge. That is one of the concern and  
2 why I don't think we can really wait to ban this substance.  
3 And I support this bill and hope my Republican colleagues  
4 will also join in supporting and doing so.

5 Thank you. I yield back.

6 Mr. Tonko. The representative yields back.

7 The chair now recognizes the gentleman from Ohio,  
8 Representative Johnson, for five minutes. Representative.

9 Mr. Johnson. Thank you, Mr. Chairman.

10 We are discussing a very important issue today. There  
11 is no question about that. I share the concerns about  
12 asbestos. I don't think there is any question about the  
13 health implications of asbestos.

14 However, Assistant Administrator Dunn, I am trying to  
15 piece together how the implementation of the required private  
16 sector reporting would work based on this legislation H.R.  
17 1603. It appears to be silent on how to determine if  
18 asbestos is contained in a material or product, in particular  
19 those containing asbestos as an impurity.

20 So, how would the EPA define impurity for the purposes  
21 of implementing this legislation? Could it be one strand of  
22 fiber?

23 Ms. Dunn. Thank you for your question. Currently TSCA  
24 Title 2 defines an asbestos-containing material as a material

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1 containing more than 1 percent asbestos by weight. That is  
2 what we use today.

3 Our review of the bill does not reveal that it includes  
4 a factor like that.

5 Mr. Johnson. Okay. Does it seem reasonable to you that  
6 standardized, cost-effective test methods may be necessary to  
7 implement the ban?

8 Ms. Dunn. Absolutely. There are a number of different  
9 test methods. There is no sort of consensus method at this  
10 point. So it would require some time to agree in the  
11 scientific community as to what method would be the best of  
12 the many that exist.

13 Mr. Johnson. Yeah, that is some of the devil in the  
14 details, because when we have no agreed-upon standardized  
15 test then we wind up shooting with a shotgun instead of with  
16 a laser to try and solve a problem.

17 Is there a test in particular that could easily be  
18 deployed?

19 Ms. Dunn. In talking to our technical experts, there  
20 are a variety of tests. They would want to do more research  
21 to respond to your question in terms of how easily some might  
22 be deployed over others.

23 Mr. Johnson. Could you get back to us on that?

24 Ms. Dunn. Be happy to do that.

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1           Mr. Johnson. Okay. And you might have to give the same  
2 answer for these other questions as well.

3           Is there enough expertise and laboratory capacity to  
4 operate these tests for compliance purposes?

5           Ms. Dunn. We have not done an assessment of laboratory  
6 capacity at this point?

7           Mr. Johnson. Okay. Can you get back to me when you do?

8           Ms. Dunn. We can.

9           Mr. Johnson. Okay. Do you read H.R. 1603 to assume  
10 those persons subject to its ban provision would need to test  
11 products and materials to comply?

12           Ms. Dunn. Our review of the bill does appear to require  
13 testing, yes.

14           Mr. Johnson. Okay. So, other than tobacco products,  
15 pesticides, guns and bullets, nuclear materials regulated by  
16 the Atomic Energy Act, and items regulated by the Federal  
17 Food, Drug, and Cosmetic Act, would every other item  
18 manufactured, imported, processed, or distributed in commerce  
19 be subject to these requirements?

20           Ms. Dunn. I think the require -- at least our initial  
21 assessment is that the bill is focused on asbestos, but it  
22 could certainly set testing precedent.

23           Mr. Johnson. But, well, I know it is focused on  
24 asbestos but, but you don't know until you test. So, my

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1 question is other than, other than tobacco products,  
2 pesticides, guns and bullets, nuclear materials, and those  
3 food items or those items regulated by the Federal Food,  
4 Drug, and Cosmetic Act, it seems to me that every other item  
5 manufactured, imported, processed, or distributed in commerce  
6 would be subject to these testing requirements under the  
7 bill. Is that correct?

8 Ms. Dunn. We have not done a complete assessment of  
9 that but we would be happy to get back to you.

10 Mr. Johnson. Would you please?

11 Ms. Dunn. Yes.

12 Mr. Johnson. Thinking about the utility of all this  
13 reporting or on a substance that is being banned, do you see  
14 a clear benefit to the Agency for using this information that  
15 is required to be collected by H.R. 1603?

16 Ms. Dunn. We believe through our work under TSCA that  
17 we have a very good understanding of the limited, ongoing  
18 uses of asbestos in the United States. So, we do not believe  
19 that the information requested by this bill would be  
20 particularly helpful to the Agency. It would be a  
21 significant undertaking to gather it.

22 Mr. Johnson. Okay. Kind of a corollary then, since the  
23 risk evaluation of asbestos will be over by the end of 2019,  
24 and the bill bans asbestos, how might the Agency use all this

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1 information that it is going to be collecting?

2 Ms. Dunn. It is unclear exactly how we would be able to  
3 use the information, given the timelines of our work under  
4 meeting the TSCA deadlines.

5 Mr. Johnson. Okay. All right. Mr. Chairman, I am  
6 going to yield back the balance of my time, a whole 20  
7 seconds.

8 Mr. Tonko. Well, I think we are a little off with the  
9 clock. So, it is fine, you didn't lose any seconds.

10 So, the gentleman yields back. And the chair now  
11 recognizes the gentleman from Florida, Representative Soto,  
12 for five minutes.

13 Mr. Soto. Thank you, Chairman.

14 And I think we understand the history of this,  
15 generations of workers who lost their lives due to a chemical  
16 that since the Twenties here in the United States there was  
17 awareness of its toxicity. We see mesothelioma commercials  
18 are ubiquitous across T.V. People get a sense this is  
19 dangerous and it no longer should be in society.

20 So, I think one of the biggest surprises to me, being  
21 new on the committee, is how this took so long to even get to  
22 this point. A lot of my colleagues like to extol the  
23 importance of common sense. It would be a great time to  
24 apply it here.

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1           The public expects us to get it right, particularly on  
2 public health. They assume we are going to stop things that  
3 are going to kill us from being in commerce anymore, and that  
4 is one of our biggest, you know, duties here.

5           The Lautenberg Act was a great work, great bipartisan  
6 work that set up a great framework. That was then, and this  
7 is now. We aren't bound even by this great framework that  
8 could help with a lot of other chemicals, as you know. We  
9 can, as our prerogative, set up general progress -- process,  
10 and then still on this law get more aggressive with certain  
11 chemicals, in this case asbestos. Being a political branch,  
12 we are not bound by agency action or inaction.

13           I guess my first question is, is asbestos still being  
14 manufactured in the United States?

15           Ms. Dunn. No. All the asbestos in the United States is  
16 currently imported.

17           Mr. Soto. Okay. So, but it is still being purchased  
18 and in commerce at this point?

19           Ms. Dunn. It is brought into the United States for the  
20 limited industrial uses that I previously alluded to.

21           Mr. Soto. Do you know how many new cases of asbestos  
22 exposure have happened post the Lautenberg Act?

23           Ms. Dunn. I do not have that figure available but I  
24 would be happy to get back to you on that?

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1 Mr. Soto. Do you have an estimate? Is it in the  
2 hundreds? Is it in the thousands of people?

3 Ms. Dunn. I don't have an estimate of that.

4 Mr. Soto. So we don't know how many people are dying  
5 still because of inaction; is that correct?

6 Ms. Dunn. We do know that some asbestos-related  
7 diseases are many years in revealing themselves. So, the  
8 Lautenberg Act was passed in 2016, and we have been  
9 aggressively working on asbestos since then.

10 Mr. Soto. But there could be new exposures happening  
11 post that, that we will find out about 10, 20 years from now;  
12 right? Is that fair to say?

13 Ms. Dunn. Under the risk evaluation that we are  
14 conducting of the limited industrial uses that remain, we are  
15 looking at exposures, particularly to workers.

16 Mr. Soto. Does EPA oppose having a ban of asbestos?

17 Ms. Dunn. We have no position on the bill.

18 Mr. Soto. Okay. So, what's holding us back? What are  
19 the benefits of continuing to have asbestos in commerce  
20 currently in the United States?

21 Ms. Dunn. Well, what we have determined -- and, again,  
22 we are doing a risk evaluation of this process -- is that for  
23 about the five or six industrial uses that they import  
24 asbestos to the United States for chlor-alkali production,

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1 sodium hydroxide production, several others, sheet gasket  
2 production, that this asbestos is still the product of  
3 choice. That is not EPA's role to tell the companies what,  
4 what product to use.

5 Mr. Soto. So it's not the role of EPA to tell companies  
6 what product to use that we know has a substantial risk of  
7 cancer? Is that what you're saying there?

8 Mr. Soto. We are following our legal process. And so  
9 if we reach the end of our risk evaluation process and find  
10 unreasonable risk from the use of asbestos in these  
11 industries, we then have the legal power to take a number of  
12 important steps, which could include what you are looking  
13 for, which is saying that it could not be used any longer.

14 Mr. Soto. And how long do you think it is going to take  
15 to finish this process?

16 Ms. Dunn. We have two years after the end of this year  
17 to complete that process.

18 Mr. Soto. And do you expect you will take the full two  
19 years?

20 Mr. Soto. I don't want to speculate on how long it will  
21 take us to act. We will act expeditiously.

22 Mr. Soto. Okay. I yield back.

23 Mr. Tonko. The gentleman yields back.

24 The chair now recognizes the gentleman from Missouri,

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1 Representative Long, for five minutes. Representative.

2 Mr. Long. Thank you, Mr. Chairman. And thank you, Ms.  
3 Dunn, for being here. I think that we can all agree that  
4 asbestos is one of the few things that has a lower approval  
5 rating than members of Congress. So we, we all are in  
6 agreement that whatever we can do to help in this situation  
7 we need to get done.

8 This bill before us today would require entities to  
9 report to the Environmental Protection Agency regarding use,  
10 quantity, and exposure of asbestos within the last three  
11 years prior to its passage. The bill would also require the  
12 Environmental Protection Agency to make this information  
13 public within a certain time frame.

14 The question for you: would the EPA be able to meet the  
15 information collection requirements under the Paperwork  
16 Reduction Act for deadlines required from H.R. 1603 for  
17 producing reporting instructions and forms?

18 Ms. Dunn. Thank you for your question. The EPA and all  
19 federal agencies are always extremely cognizant of the  
20 burdens of information collection by the federal government  
21 on the American public and on anyone who has to respond to  
22 our requests. Our preliminary assessment is that the amount  
23 of data collection contemplated by this bill would be quite  
24 significant and quite impactful.

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1           Mr. Long. Based on how you read this legislation, do  
2 you have an estimate of how much it would cost the EPA to  
3 implement the information collection requirements?

4           Ms. Dunn. We have not done an estimate.

5           Mr. Long. You have no estimate at all?

6           Ms. Dunn. No.

7           Mr. Long. Okay. What would the impact be to EPA's  
8 current TSCA budget to implementation? I guess you don't  
9 know that either if you don't know what the cost is going to  
10 be?

11           Ms. Dunn. What I can tell you is that our TSCA staff  
12 are working dedicatedly to meet the deadlines under TSCA.  
13 This law, which as you know was significantly overhauled in  
14 2016, put us on a very aggressive clock to look at a number  
15 of chemicals, the first ten. We already identified 20 more  
16 that we are looking at, another 20.

17           What I can say is that requirements like this would  
18 certainly put an additional strain on our current staff.

19           Mr. Long. Okay. The public disclosure provisions are  
20 an amendment to TSCA Section 6, which further govern -- which  
21 are further governed by confidential business information  
22 provisions in Section 14, as well as the Federal Trade  
23 Secrets Act. This might tie into what you were saying a  
24 minute ago, but do you see any conflict at all between the

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1 information this bill requires to be released and existing  
2 federal law protecting the disclosure of certain types of  
3 confidential information?

4 Ms. Dunn. One of the obligations that we have in the  
5 chemical program is to be very respectful of confidential  
6 business information. I would like to note that the  
7 confidential information provisions were the provisions of  
8 TSCA completely struck by Congress and completely replaced.

9 So, we look at those new provisions very, very  
10 carefully. We have not done a full analysis of any potential  
11 conflicts between this bill and our existing confidential  
12 business information requirements. But we would be happy to  
13 get back to your office on that.

14 Mr. Long. When my friend Mr. McKinley was questioning  
15 you about these four or five existing commercial purposes  
16 that asbestos are imported into the United States for their  
17 usage, did I understand you all are doing a study on that or  
18 not or?

19 Ms. Dunn. Yes. Yes. We, we are required under TSCA as  
20 naming, since we named asbestos one of the first ten  
21 chemicals, we are doing a full risk evaluation of all of  
22 those uses. And at the end of that process we have to make a  
23 determination of unreasonable risk or no risk essentially.

24 And so, if we reach an unreasonable risk determination,

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1 we then have two years to regulate it, meaning we could  
2 require a variety of different controls to take that risk  
3 away. There are lots of ways to remove risk. You could  
4 produce the chemical in a completely sealed box where none of  
5 it gets out.

6 But, another option that is open to EPA under the law is  
7 a ban. That is another way to remove the risk.

8 Mr. Long. Okay.

9 Ms. Dunn. But we can't prejudge where we are going to  
10 go with that.

11 Mr. Long. And what is your time frame as far as  
12 completing this study?

13 Ms. Dunn. We are on track to complete the risk  
14 evaluation by the end of 2019. And then under TSCA we have  
15 two years to complete the regulatory action.

16 Mr. Long. By the end of this year?

17 Ms. Dunn. By the end of 2019.

18 Mr. Long. December 31, 2019, your study will --

19 Ms. Dunn. 2021 we would complete the risk evalu -- we  
20 would complete the risk management component of the remaining  
21 limited uses of asbestos.

22 Mr. Long. Okay, thank you.

23 Mr. Chairman, I yield back.

24 Mr. Tonko. The gentleman yields back.

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1           The chair now recognizes the chairman of the full  
2 committee, Mr. Pallone, for five minutes. Mr. Chairman.

3           The Chairman. Thank you. Thank you, Chairman Tonko.

4           Every day it seems new evidence comes to light that EPA  
5 is failing to protect the American people from asbestos and  
6 toxic chemicals in general. On asbestos, everything we have  
7 seen out of the Agency, from the scoping document to the  
8 recent Significant New Use Rule, to the denial of the  
9 petition by multiple state AGs, shows the desire to discount  
10 risk and entertain the possibility of new ones or new uses.

11           So, I don't think EPA is moving towards a ban. But  
12 Administrator Wheeler did commit when he was here last month to  
13 promulgate a ban.

14           So, my question to you, Ms. Dunn, are you aware of  
15 Administrator Wheeler's commitment to me last month to ban  
16 ongoing uses of asbestos under TSCA?

17           Ms. Dunn. I can't comment on the administrator's  
18 representation to you.

19           The Chairman. Well, he said he was going to ban it. Is  
20 there a timeline for finalizing the ban or do you know  
21 anything about what he is going to do in terms of finalizing  
22 a ban?

23           Ms. Dunn. I can't comment on that. What I can comment  
24 on is that we continue to do our work under TSCA to complete

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1 our asbestos risk evaluation on time this year.

2 The Chairman. Well, let me go back to this risk  
3 evaluation. One of my biggest concerns with your risk, your  
4 asbestos risk evaluation is the Agency's position that you  
5 have the discretion to exclude significant exposures. So,  
6 let me ask, the scoping document for the asbestos risk  
7 evaluation excluded exposure, and I quote, "to legacy  
8 asbestos from EPA's risk evaluation." Is that correct?

9 Ms. Dunn. Yes.

10 The Chairman. Okay. Have you changed course or will  
11 the risk evaluation, which is due to be published next month,  
12 exclude the risk from legacy asbestos?

13 Ms. Dunn. We are not ignoring the legacy asbestos  
14 problem, Representative. However, we do believe that there  
15 are extensive federal, local, and state requirements that  
16 address legacy asbestos if it is to be disturbed and removed,  
17 demolished essentially.

18 The Chairman. You have also excluded exposure from  
19 disposal of legacy asbestos, despite the fact that disposal  
20 is explicitly included in the statute. Is that correct, that  
21 you have excluded exposure from disposal?

22 Ms. Dunn. We are looking at the ongoing uses of  
23 asbestos in commerce today, and that is in the manufacturing  
24 process.

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1           The Chairman. But I mean, do you, don't you, won't you  
2           acknowledge that disposal is explicitly included in the  
3           statute?

4           Ms. Dunn. Absolutely TSCA defines use as processing,  
5           manufacture, import, disposal, et cetera, yes.

6           The Chairman. Well, then how do you exclude exposure  
7           from disposal?

8           Ms. Dunn. In formulating that scoping document there  
9           was a determination made which certainly through the peer  
10          review process and through the transparent process we will  
11          follow this summer could certainly be questioned whether that  
12          was a reasonable assumption by our scientific experts that  
13          that could come up.

14          The Chairman. I mean, I, the exclusion of the legacy  
15          asbestos and the legacy disposal is, I think, a major reason  
16          why I think Section 3 of my bill is so important. But I am  
17          also concerned that you have excluded relevant cancers,  
18          relevant forms of asbestos, significant exposure pathways.  
19          And I think you are failing to meet the letter and spirit of  
20          the law by failing to evaluate firefighters as a relevant  
21          disproportionately exposed subpopulation.

22          Have you reversed course any of those things that I just  
23          mentioned?

24          Ms. Dunn. We have not had discussions around those

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1 items. I would be happy to follow up with your office to  
2 talk more about them.

3 The Chairman. I appreciate that. In my view these are  
4 fatal flaws in your risk evaluation that are going to doom  
5 any future regulatory action. And as one of the original  
6 drafters of the Lautenberg Act, I can tell you that we did  
7 not intend for EPA to conduct risk evaluations that ignore  
8 major drivers of risk, like the risks posed by legacy  
9 asbestos. And I don't think your actions implementing TSCA  
10 comport with the law. I don't think you are moving towards a  
11 ban, even though Mr. Wheeler said so.

12 And so I urge my colleagues to join us in supporting the  
13 bill. And that is why we need to have this bill that bans  
14 asbestos once and, once and for all.

15 Can I just ask a question, while there is not much time?

16 Pigment violet 29, as part of your risk evaluation for  
17 pigment violet 29 you identified several studies that have  
18 been submitted to the European Chemicals Agency that would be  
19 relevant to your evaluation. Is that correct?

20 Ms. Dunn. That is correct.

21 The Chairman. And you tried to identify U.S. entities  
22 that have those studies in order to inform your risk  
23 evaluation; is that correct?

24 Ms. Dunn. Right.

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1           The Chairman. You then reached out to the EU entities  
2           in possession of those studies so you could use them in your  
3           risk evaluation; correct?

4           Ms. Dunn. Right.

5           The Chairman. And then you received those studies from  
6           the EU entities and used them in your risk evaluation. That  
7           is correct as well?

8           Ms. Dunn. That is correct.

9           The Chairman. All right. I think I have run out of  
10          time, Mr. Chairman, on that. But I will ask you to get back  
11          to us on what you offered before on the asbestos.

12          Ms. Dunn. Be happy to.

13          The Chairman. Thank you.

14          Mr. Tonko. The gentleman yields back.

15          The chair now recognizes the gentleman from the State of  
16          South Carolina, Mr. Duncan, for five minutes, please.

17          Mr. Duncan. Thank you, Mr. Chairman. And thank the  
18          witness for being here.

19          Administrator Dunn, I am struggling with how some of the  
20          provisions of this bill will be used. H.R. 1603 requires a  
21          legacy use consensus -- or census of asbestos within 18  
22          months of enactment.

23          I'm from South Carolina. I lived South Carolina, North  
24          Carolina, Virginia. We have textile communities all over our

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1 states. And those textile communities back in the day the  
2 local textile mill built houses for its employees. Many of  
3 those houses were built prior to 1950. Many of those houses  
4 have asbestos siding still. A lot of those houses have been  
5 renovated by the owners and that asbestos siding has been  
6 covered up by more modern siding. Right? So, keep that in  
7 mind.

8 How challenging would it be for the EPA to coordinate  
9 with the Departments of Labor and Health and Human Services  
10 to produce a report that accurately estimates the presence of  
11 asbestos in every residential, commercial, industrial,  
12 public, and school building and the extent of exposure and  
13 risk not later than 18 months after enactment?

14 Folks, there is no way in Washington that you can  
15 determine every house just in the South. That is not  
16 counting all the northern communities that are like textile  
17 communities in the South where there might be asbestos in the  
18 siding. No way. And definitely not in 18 months.

19 And so the number of buildings nationwide, the amount of  
20 asbestos remaining in the U.S., how hard is that going to be  
21 for you?

22 Ms. Dunn. We identified this provision of the bill as  
23 being a significant challenge to do well. We pride ourselves  
24 at EPA, when asked to undertake assessments, of being

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1 comprehensive, thorough, and accurate. And under 18 months  
2 we are questioning whether we could come close to completion.

3 Mr. Duncan. Are you going to send every homeowner,  
4 every landlord a questionnaire and say, Does the house that  
5 you own have asbestos siding?

6 Ms. Dunn. We had not even begun to think about how we  
7 would implement it. But I think even getting responses --

8 Mr. Duncan. That is a heck of a lot of properties.

9 Ms. Dunn. It is. We do not have the ability to enter  
10 private property.

11 Mr. Duncan. We have probably already identified most of  
12 the public buildings and school buildings and that sort of  
13 thing that may or may not have asbestos. But in those school  
14 districts we are going to have to spend a lot of resource  
15 looking at the insulation on their, in their boiler room, on  
16 their pipes, to look at their siding, their roofing  
17 insulation materials. How do you plan to leverage resources  
18 without any additional funding?

19 Ms. Dunn. That, that would be a significant challenge.  
20 And as I stated earlier, when asbestos is intact and not  
21 disturbed it does not generally pose a risk.

22 Mr. Duncan. All right. Do you have the resources and  
23 employees to complete this report without disrupting ongoing  
24 activities at the Agency?

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1 Ms. Dunn. It would impact.

2 Mr. Duncan. I mean, are you going to have to pull  
3 people from other projects to conduct a survey and provide a  
4 report in 18 months?

5 Ms. Dunn. I am not sure our colleagues in other offices  
6 with other statutory obligations would look kindly on us  
7 borrowing their people, but I think we would have a very  
8 difficult job getting this work done with our existing  
9 resources.

10 Mr. Duncan. All right. So, H.R. 1603 requires the  
11 President rather than the Administrator to determine whether  
12 an exemption is granted. It also prevents the use of waiver  
13 by EPA to protect national defense. Since the exemption only  
14 applies to national security and limits the President's  
15 ability to use asbestos in the interests of the nation in  
16 mind, does this limitation on the President infringe upon the  
17 President's Article II, Section 2 powers under the  
18 Constitution in your opinion?

19 Ms. Dunn. We have not fully assessed the implications  
20 of this provision but we did identify it as of concern  
21 because Section 22 of TSCA already has a definition of  
22 national defense that appears to be in conflict with what is  
23 in the bill.

24 Mr. Duncan. All right. I appreciate your being here.

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1           Let me just make a point. As this bill moves forward  
2 there will probably be amendments proposed that will give  
3 more timeline if we are going to do a census. I think there  
4 is an agreement that asbestos in certain forms and areas are  
5 toxic and are detrimental to the health of folks in the  
6 nation. But there has got to be some common sense injected  
7 into legislation, and I hope to do that in full committee in  
8 mark-up.

9           I thank you for being here today.

10          Ms. Shimkus. Would the gentleman yield for his last --

11          Mr. Duncan. Yeah, yeah.

12          Ms. Shimkus. I just want to check for the record, if we  
13 could check the record for the Wheeler hearing and make sure.

14          I think he said he would like to. Well, I would check the  
15 record to make sure that that is what the Administrator said.

16          I yield back.

17          Mr. Duncan. I reclaim my time and I yield back, Mr.

18 Chairman.

19          Mr. Tonko. The gentleman yields back.

20          The chair now recognizes the gentleman from the State of  
21 California, Representative McNerney, for five minutes.

22          Mr. McNerney. I want to thank the Chairman, and I thank  
23 Ms. Dunn for testifying this morning.

24          But I want to focus on an important part of the

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1 legislation under consideration, namely the definition of  
2 asbestos. This bill makes clear that the ban on asbestos  
3 should include several forms that were excluded from the  
4 EPA's proposed ban back in 1989 because we didn't know back  
5 then that they had, some of these other forms had the same  
6 properties and same risks. This includes several of the  
7 Libby amphiboles that have been connected to the terrible  
8 burden of disease in Libby, Montana.

9 I have a document here, a memorandum from career staff  
10 in EPA's Region 10 office that was sent to your office  
11 regarding the proposed asbestos Significant New Rule Use, or  
12 SNUR, raising concerns about the definition of asbestos in  
13 that document. Now, I will go over some parts of the  
14 document with you.

15 The career staff in Region 10 raised a concern about the  
16 proposed SNUR because it focused only on the six forms of  
17 asbestos covered in the original 1989 ban. Does the final  
18 SNUR focus only on those six forms?

19 Ms. Dunn. The -- we are, we did not redefine asbestos  
20 for the purposes of the final action we took in April. We  
21 are using the definition of asbestos in Title 2 of the  
22 statute, which does not include the two fibers that you are  
23 referring to, richterite and winchite.

24 Mr. McNerney. So we are restricting this to only the

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1 six forms? That is a yes or no answer.

2 Ms. Dunn. We are using the current statutory  
3 definition.

4 Mr. McNerney. This Region 10 memo cites W.R. Grace  
5 Superfund case from 2002 concerning the Libby contaminants  
6 where the Federal District Court rules that the Libby  
7 amphiboles are in fact asbestos. Are you aware of that case?

8 Ms. Dunn. I am not familiar with that case.

9 Mr. McNerney. Okay. I would recommend that you  
10 familiarize yourself.

11 The Region 10 memo also states, and I am quoting, "the  
12 EPA is now aware that there are more than six types of  
13 asbestos fiber, including several Libby amphiboles which the  
14 EPA has known about since the 1990s."

15 Do you agree with that statement that the EPA was aware  
16 that there are other forms?

17 Ms. Dunn. I do not have a position on that statement.  
18 We are using the definition of asbestos in the act.

19 Mr. McNerney. All right. This memo is focused on the  
20 asbestos SNUR but the same concerns hold true for overall  
21 risk evaluation and possible risk management. Is your risk  
22 evaluation for asbestos going to include exposures to all  
23 forms of asbestos?

24 Ms. Dunn. Our risk evaluation is looking at the limited

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1 ongoing industrial uses of asbestos today. There are  
2 approximately five or six.

3 Mr. McNerney. Additional types?

4 Ms. Dunn. Uses that are still ongoing.

5 Mr. McNerney. Uses?

6 Ms. Dunn. Uh-huh.

7 Mr. McNerney. So you will consider just the six types  
8 in these five or six uses?

9 Ms. Dunn. Right. We are, we are, exactly, yes.

10 And the types of asbestos fibers that are used in these  
11 ongoing industrial manufacturing settings are within the  
12 current definition of asbestos in the statute.

13 Mr. McNerney. So it seems to me like you are missing  
14 out on quite a bit of risk with regard to additional  
15 asbestos types that are damaging the American public; is that  
16 right?

17 Ms. Dunn. Well, we feel very confident that looking at  
18 the ongoing conditions of use of asbestos in these industrial  
19 applications will allow us to do a very protective risk  
20 evaluation.

21 Mr. McNerney. Well, I think it is important to define  
22 and ban all forms of asbestos, not just the six we knew about  
23 30 years ago. It is clear that an accurate definition of  
24 asbestos in this bill is one of the most important reasons

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1 that this bill will be more protective than other actions  
2 coming out of the EPA.

3 Mr. Chairman, I thank you for holding the hearing and I  
4 yield back.

5 Mr. Tonko. The gentleman yields back.

6 The chair now recognizes the gentleman from the State of  
7 Georgia, Representative Carter, for five minutes, please.

8 Mr. Carter. Thank you. Thank you, Mr. Chairman. And  
9 thank you, Ms. Dunn, for being here. I appreciate it very  
10 much. This is a very important subject for all of us.

11 Let me ask just a couple of broad simple questions to  
12 begin with. Since the Toxic Substances Control Act was  
13 passed in 2016, what kind of extra authority has it given  
14 EPA? I mean, you have some explicit authorities as a result  
15 of that. Can you explain those to me very quickly?

16 Ms. Dunn. Yes. It is a very powerful law. It acts,  
17 puts us on a very aggressive time frame to look at chemicals.

18 Some of the things we are most proud of, we have just  
19 completed an inventory of chemicals in the United States. It  
20 was estimated that there were over 83,000 chemicals in  
21 commerce in the U.S. We have checked with the manufacturers  
22 and importers and we just announced and finalized that the  
23 list is actually half. It is 40, about 40,000 chemicals in  
24 commerce in the United States. So, we cut the list in half.

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1       That cuts our workload in half.

2               But we have to bit by bit work our way through that  
3 list. We are starting with the chemicals on the 2014 TSCA  
4 work plan. We are starting with the first ten chemicals that  
5 we have been talking about today include asbestos. We have  
6 already named 20 high priority chemicals that we are going to  
7 start looking at next year, as well as 20 lower priority  
8 chemicals.

9               Mr. Carter. Right. Right. And certainly this is  
10 important for a number of reasons. Particularly in my  
11 district I assume that a lot of these go through ports and  
12 seaports. And being the home of two major seaports in  
13 coastal Georgia, this is extremely important for us. Our  
14 constituents are very concerned about this and about the work  
15 you have been doing.

16               Now, it is my understanding that you are currently  
17 reviewing the use of asbestos.

18               Ms. Dunn. We are.

19               Mr. Carter. And that you are going to be releasing your  
20 draft findings soon. Do you know when that will be?

21               Ms. Dunn. We anticipate it will be I will say before  
22 the end of the late summer. We have a scientific review  
23 panel that has to review it. And most of those individuals  
24 are academics. The best time to get academics is when they

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1 are not teaching classes. So, we want to make sure that that  
2 information is available for them to meet and review in June,  
3 July, and August of this summer.

4 Mr. Carter. Okay. Well, I think it is clear from the  
5 hearing today that none of us, you know, want to see anybody  
6 harmed. We want protection for everyone.

7 I will be quite honest with you, it is my understanding  
8 the majority of asbestos is no longer being in production, is  
9 no longer in use. But is any? I didn't realize there were  
10 any --

11 Ms. Dunn. There is only --

12 Mr. Carter. -- forms of asbestos out there.

13 Ms. Dunn. There is only five ongoing limited industrial  
14 uses of asbestos in the United States today. It is in  
15 manufacturing. All of the asbestos that is used is imported.

16 So there is no ongoing asbestos mining in the United States  
17 anymore. And that is something that would be covered by our  
18 activity that we took a few weeks --

19 Mr. Carter. Whoa, whoa, whoa. Hold on. I don't mean  
20 to interrupt you but you raise my concern here. If it is  
21 coming from out of the country then we are not having any  
22 regulation over it before it gets here? Do we, are we  
23 checking it when it gets here?

24 Ms. Dunn. Well, any, any import of a chemical does have

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1 to be checked at the border.

2 Mr. Carter. But specifically asbestos? That is what I  
3 am concerned with here.

4 Ms. Dunn. As asbestos is coming in, what we are doing  
5 right now is a comprehensive risk evaluation of that type of  
6 asbestos and the uses that it is still being used in in the  
7 United States, which is in the manufacture of brake blocks  
8 for oil drilling, automotive brakes, vehicle friction  
9 products, some gaskets, and a couple of chemical productions.

10 Mr. Carter. Okay. Specific to those that you just  
11 mentioned --

12 Ms. Dunn. Yes.

13 Mr. Carter. -- what is EPA doing to guard against any  
14 problems there may be with those specific ones that you just  
15 listed?

16 Ms. Dunn. Well, any, any imports of chemicals have to  
17 be handled with border, Customs and Border Protection now.

18 Mr. Carter. So you are grouping them into all  
19 chemicals, not just focusing on these that you just listed?

20 Ms. Dunn. All. All. We, we manage the import of all  
21 chemicals.

22 Mr. Carter. You see where I am coming from it would  
23 just appear to me that you would be more concerned, because  
24 we know the dangers of asbestos, it would seem to me that you

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1 would be more concerned with those than you would be for just  
2 generalizing them and putting them into a broad group.

3 Ms. Dunn. No, I understand where you are coming from.  
4 My, again, the manufacturers, those companies that are using  
5 asbestos in these limited applications certainly are trying  
6 to produce a high quality product. They also have a business  
7 interest in ensuring that all the ingredients that they use  
8 are safe in how they are using them.

9 Mr. Carter. Okay. I am still a little concerned about  
10 that. So, please, let's take that as being noted. I  
11 appreciate it.

12 Thank you very much again for being here and I yield  
13 back.

14 Mr. Tonko. The gentleman yields back.

15 The chair now recognizes the gentlelady from the State  
16 of California, Representative Matsui, for five minutes.  
17 Representative.

18 Ms. Matsui. Thank you, Mr. Chairman.

19 You know, since this hearing was noticed my colleagues  
20 and I have heard from an array of industries that rely upon  
21 the chlor-alkali industry to produce chlorine and caustic  
22 soda. These industries are concerned about a possible  
23 disruption in the chlor-alkali industry, so I want to ask s  
24 few questions about how and why some members of that industry

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1 use asbestos.

2 Roughly one-third of the chlorine chlor-alkali industry  
3 uses asbestos diaphragms in their production process. Is  
4 that right?

5 Ms. Dunn. That, I don't have the figures in front of me  
6 but that sounds ballpark.

7 Ms. Matsui. Does that seem right? Okay.

8 What information have you sought from those members of  
9 this industry? And what information have they given you  
10 about their plans to replace their asbestos diaphragms with  
11 other diaphragms?

12 Ms. Dunn. We have collected extensive information from  
13 the manufacturers. I would like to be able to get back to  
14 you, Representative, on what information they may have  
15 provided to us around alternatives or plans to replace. I  
16 don't have that information.

17 Ms. Matsui. Okay. Now, several years ago a large  
18 section of the chlor-alkali industry changed their -- changed  
19 over their plants to phase out dangerous mercury in their  
20 processes. Did that transition disrupt the chlorine or  
21 caustic soda markets?

22 Ms. Dunn. I would have to check with our experts and  
23 get back to you on that, Representative.

24 Ms. Matsui. Okay. Isn't it true that non-asbestos

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1 diaphragms used other chlor-alkali plants are more energy  
2 efficient and have longer service lives than asbestos?

3 Ms. Dunn. Once again, with regard to some of the  
4 technical questions I would be more than happy to consult  
5 with our career experts and provide that information back to  
6 you very quickly.

7 Ms. Matsui. Okay. Because my understanding is is that  
8 it is more efficient, so that those who use asbestos could  
9 realize energy and climate benefits in addition to the  
10 benefits of getting rid of the toxic asbestos.

11 So I would like, really like that information. I think  
12 it is very important.

13 Ms. Dunn. Absolutely.

14 Ms. Matsui. Now, your agency has extensive authority  
15 under the TSCA to get data from manufacturers. What  
16 information has your agency requested from the chlor-alkali  
17 industry about the exposures faced by its workers and by the  
18 workers who handle disposal of the diaphragms?

19 Ms. Dunn. Well, in terms of preparing for our risk  
20 evaluation we have requested extensive information from the  
21 manufacturers who are using asbestos in the chlor-alkali  
22 production. We have a number of studies regarding exposures  
23 provided to us. And I can find out. We try to have a very  
24 transparent process and make all of our information

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1 available.

2 Ms. Matsui. Okay. What information have you requested  
3 about health monitoring and incidents of cancer among workers  
4 in the chlor-alkali industry?

5 Ms. Dunn. So, again, in doing our comprehensive risk  
6 evaluation we look for all types of information with regard  
7 to exposures, illness, et cetera.

8 Ms. Matsui. And you have that information?

9 Ms. Dunn. If we have the information I will go back and  
10 talk to our staff and see if we can make that available.

11 Ms. Matsui. Okay. What can you tell us about the fate  
12 of asbestos diaphragms used in industry? How are they  
13 disposed? Have they contributed to contamination of land or  
14 water?

15 Ms. Dunn. I, again that is a -- I apologize, that is a  
16 technical question, but I would like to be able to get back  
17 to you on that. I, I do not have that information with me at  
18 this moment.

19 Ms. Matsui. Well, I think it is very important that we  
20 understand the risk to workers in the industry and also the  
21 alternatives that might be available to members of the  
22 industry.

23 Ms. Dunn. And the information that you are asking about  
24 is all included in our risk evaluation of chlor-alkali

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1 production. So, all of those forms of releases, disposal,  
2 manufacturing will all be addressed in the document.

3 Ms. Matsui. In the document.

4 Ms. Dunn. That we are completing and will be available  
5 for public review and peer review late this summer.

6 Ms. Matsui. So, does that also include the information  
7 I asked you previously that you can get back to me on? Or is  
8 that additional information you need to get for me?

9 Ms. Dunn. Well, I certainly wouldn't make you wait for  
10 that, so I will make sure that we get back to you more  
11 promptly.

12 Ms. Matsui. Okay. I expect to get it as promptly as  
13 possible.

14 Ms. Dunn. Absolutely.

15 Ms. Matsui. Thank you. And I yield back.

16 Mr. Tonko. The gentlelady yields back.

17 The chair now recognizes the Republican leader of the  
18 full committee, Representative Walden, for five minutes.

19 Mr. Walden. Thank you, Mr. Chairman.

20 And I don't know, you may have to get back to me on this  
21 one for the record. I am told 36 percent of domestic  
22 chlorine production is manufactured using a totally enclosed  
23 process that does use an asbestos filter. Assuming H.R. 1603  
24 becomes law and the ability to continue this process ceases,

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1 the Safe Drinking Water Act has provisions -- and we  
2 reauthorized that in a bipartisan way in the last Congress --  
3 that requires access to chlorine, chemicals for public water  
4 systems that disinfect their water with chlorine.

5 Do you read the language in H.R. 1603 to create a  
6 potential conflict between its provisions and that section of  
7 the Safe Drinking Water Act? I know that is pretty  
8 technical, but.

9 Mr. Dunn. It is an important topic. And what I would  
10 like to do is bring this back to our Office of Water --

11 Mr. Walden. Yes.

12 Mr. Dunn. -- and ask for their perspective on it and  
13 get back to you.

14 Mr. Walden. Yeah, I would like that. That would be --  
15 and I understand. Because we are obviously very concerned as  
16 we go down this path what are the unintended consequences.

17 Mr. Dunn. Absolutely.

18 Mr. Walden. And, you know, we don't want to get into a  
19 situation where water utilities may not be able to get what  
20 they need to be compliant with safe drinking water.

21 EPA recently denied petitions for collecting additional  
22 information under TSCA asbestos. Why?

23 Mr. Dunn. We received two petitions. We looked at both  
24 of them very carefully. We have published in the Federal

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1 Register detailed reasons why we denied. But, in short, due  
2 to our comprehensive assessment of the limited ongoing uses  
3 of asbestos today in the industrial sector we did not believe  
4 that the petitions would, the actions they were asking us to  
5 take and the information they were asking us to collect would  
6 enhance our knowledge.

7 Mr. Walden. Okay. So that is why you would consider  
8 the information petitioned --

9 Mr. Dunn. Would not --

10 Mr. Walden. -- would not be helpful?

11 Mr. Dunn. Would not add information to EPA that we did  
12 not already have.

13 Mr. Walden. Okay. All right. In carrying out its work  
14 under TSCA, Section 6, has EPA missed any of what some of us  
15 would argue are pretty aggressive timelines Congress placed  
16 on the Agency, either as it relates to asbestos or any of the  
17 other chemicals you are evaluating? Are you on target in  
18 time?

19 Mr. Dunn. We, we are proud to say that we have met  
20 every chemical-related deadline under TSCA?

21 Mr. Walden. Including asbestos?

22 Mr. Dunn. We are on track to meet asbestos on time.

23 Mr. Walden. All right. All right. Because those were  
24 pretty aggressive. I mean, sometimes when we legislate we

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1 put down timelines. And some agencies are better at meeting  
2 those than others, and sometimes our timing is off. But you  
3 are on target?

4 Ms. Dunn. We are on target. We are working very, very  
5 hard.

6 Mr. Walden. All right. All right.

7 Ms. Dunn. Our team is doing a great job.

8 Mr. Walden. All right. Those are the questions I have  
9 for now. I will look forward to hearing back from you, Ms.  
10 Dunn. And thanks for your leadership over there.

11 Ms. Dunn. Thank you.

12 Mr. Walden. And, Mr. Chair, I yield back.

13 Mr. Tonko. The chair yields back. The gentleman yields  
14 back.

15 The chair now recognizes the representative from  
16 California, Representative Ruiz, for five minutes, please.

17 Mr. Ruiz. Thank you, Chairman. Thank you, Assistant  
18 Administrator Dunn, for being here.

19 I support the efforts to decrease the use of asbestos.  
20 In fact, eliminating the risk of asbestos causing lung  
21 cancer, mesothelioma, asbestosis, and other scarring of the  
22 lung tissue that can greatly and terribly affect a person's  
23 quality of life is something that we should all strive to do,  
24 given that it is so horrible to experience shortness of

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1 breath.

2 It is devastating for families when somebody gets  
3 diagnosed with lung cancers only simply because they were  
4 just doing their job. And those responsible to ensure that  
5 they had a safe job to work in failed to adequately prohibit  
6 and prevent those risks from happening in the first place.

7 It is still astonishing that in 2019 we are still  
8 manufacturing and just recently imported tons of asbestos  
9 from Russia, China, and Brazil, and still processing new  
10 asbestos materials in this country given all the science and  
11 all the public health dilemmas that our public health experts  
12 have already identified and are warning us about.

13 Many of us have been following the court cases  
14 concerning exposure to asbestos as a contaminant in talc  
15 powder, talc powder. You use that to get beach sand off your  
16 legs. Use that in children, in babies. But I doubt many  
17 realized that it is still legal to have asbestos as a  
18 contaminant in consumer products.

19 This bill would change that. And under this bill, the  
20 manufacture and processing of asbestos even as a contaminant  
21 would be banned. So, to me this is an incredibly important  
22 part of this bill. Whether it is makeup sold to kids and  
23 teenagers, talc powder sold for babies, potting soil or other  
24 products, our products should be asbestos free, period.

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1 And I want to make sure that we get this part right.

2 So, Assistant Administrator Dunn, I have a couple of  
3 technical questions for you.

4 The bill uses the term "impurity" because the term  
5 appears in your TSCA regulations already. How do you  
6 understand the term "impurity"?

7 Ms. Dunn. So, thank you so much. This is an important  
8 issue and I understand the concern with trace elements of  
9 asbestos in consumer products. We --

10 Mr. Ruiz. So, the term "impurity," how do you define  
11 "impurity"?

12 Ms. Dunn. We currently define "impurity" as material  
13 containing more than 1 percent asbestos by weight.

14 Mr. Ruiz. Okay. And so, I heard from some of the  
15 stakeholders that the word "contaminant" might be more clear.

16 In your view, is the term "contaminant" different from  
17 "impurity"?

18 Ms. Dunn. We have not conducted an assessment of  
19 whether different words would be more effective.

20 Mr. Ruiz. Can you, can you take that back and respond  
21 to my question in writing?

22 Ms. Dunn. We could certainly take a look at that for  
23 you.

24 Mr. Ruiz. All right. Because I think that would be,

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1 that would be important. And because I think that the  
2 question I want to ask is would we be missing anything by not  
3 including the word "contaminant"?

4 Ms. Dunn. I understand your question. And we will make  
5 sure that we get back to you. As noted, EPA provides  
6 technical assistance to Congress as Congress --

7 Mr. Ruiz. Does EPA have a technical definition of  
8 "contaminant"?

9 Ms. Dunn. We may have a definition under other  
10 programs. It is certainly an important term in the Superfund  
11 program. I am not aware of it having --

12 Mr. Ruiz. Okay.

13 Ms. Dunn. -- a meaning in this law.

14 Mr. Ruiz. So, I want to make sure that, that this bill  
15 is clear that we are, what we are intending, which is to ban  
16 asbestos in products, whether it be on purpose or by  
17 accident, as an impurity, a contaminant, ingredient,  
18 anything. Just completely not in the products.

19 In your view, is the bill clear on that point?

20 Ms. Dunn. We continue to be available to provide  
21 technical assistance. We do think that some clarity around,  
22 for example, the definition would be, would be needed, the 1  
23 percent. How much are we talking about? There are trace  
24 elements, as you mentioned, of asbestos in a variety of

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1 products.

2 Mr. Ruiz. Okay, thank you. That is all my questions.

3 Yield back.

4 Mr. Tonko. Thank you. The gentleman yields back.

5 And now the chair recognizes the gentleman from

6 Virginia, the very patient Representative McEachin.

7 Mr. McEachin. The penalty for being tardy, Mr.

8 Chairman. Thank you.

9 Assistant Administrator Dunn, I am going to ask you some  
10 questions about the Significant New Use Rule. Hopefully they  
11 will be brief and straightforward, but let's see if we can't  
12 work together on that.

13 When EPA issues a Significant New Use Rule identifying a  
14 new use as significant, is that use banned?

15 Ms. Dunn. The terminology can be a bit confusing. A  
16 Significant New Use means that the use would be new and EPA  
17 would have to review it. So, the effect is is that it is not  
18 ongoing today. And if someone were to want to commence those  
19 activities they would have to come to use under the  
20 Significant New Use Rule and propose, essentially, a  
21 significant new use of asbestos. An example could be to use  
22 it in roofing tiles, and EPA would conduct a risk evaluation  
23 of whether that could be done safely.

24 Mr. McEachin. So, as I hear your answer then, even when

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1 you, even when you issue the rule you leave the door open for  
2 some sort of use? Is that correct?

3 Ms. Dunn. The door is, the door is open. We are not  
4 aware of anyone who is planning on taking advantage of  
5 bringing back the dormant uses of asbestos.

6 Mr. McEachin. Okay. At the present time?

7 Ms. Dunn. At the present time we are not aware. And  
8 EPA would have to review any such proposal.

9 Mr. McEachin. Okay. Do you foresee the possibility  
10 that you would approve a pre-manufacture notice for an  
11 asbestos use listed in a Significant New Use Rule?

12 Ms. Dunn. While I can't predispose how we might come  
13 out, I think it would be highly unlikely that we would find  
14 some of those legacy uses to be able to be recommenced in a  
15 safe manner in the United States. There is a reason that  
16 they have been dormant and that no one is pursuing them.

17 Mr. McEachin. And I appreciate your candor. But it  
18 still sounds like to me that there is that possibility, no  
19 matter how, no matter how remote.

20 Ms. Dunn. Under our legal authority we have to do the  
21 risk evaluation before we can ban.

22 Mr. McEachin. You know, I don't think we should allow  
23 the possibility of new uses. We should be getting asbestos  
24 out of our products and out of our commerce and not offering

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1 a pathway back to market uses that we have abandoned decades  
2 ago. Was the Significant Use Rule required by statute or did  
3 you do it voluntarily -- or did the Agency do it voluntarily?

4 Ms. Dunn. The Agency undertook it to close the loophole  
5 left from the lawsuit that in 1991 where EPA in 1989 tried to  
6 ban all of these uses and was unsuccessful through  
7 litigation. And so, we have now closed that loophole. We  
8 are the first administration to take action in 30 years under  
9 TSCA on asbestos.

10 Mr. McEachin. Did you have contacts, or did the Agency  
11 have contacts with the chemical industry before the rule was  
12 issued?

13 Ms. Dunn. I, I did not have contacts. I can't speak to  
14 everyone in the agency, but I certainly did not.

15 Mr. McEachin. Will you provide the committee with your  
16 office's correspondence with the American Chemistry Council  
17 and chemical manufacturers regarding the asbestos Significant  
18 Use New -- excuse me, Significant New Use Rule?

19 Ms. Dunn. I understand that we regularly provide  
20 documents to Congress, and I will ask our Office of  
21 Congressional Affairs to follow up to provide you what you  
22 are seeking.

23 Mr. McEachin. Thank you very much. I yield back, Mr.  
24 Chairman.

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1 Mr. Tonko. The gentleman yields back.

2 That concludes our first panel. And we again thank our  
3 Assistant Administrator Dunn. Thank you for joining us  
4 today.

5 At this time I ask that staff prepare the witness table  
6 so that we may begin our second panel shortly.

7 Ms. Dunn. Thank you.

8 Mr. Tonko. Thank you, Administrator.

9 Okay, we will now hear testimony from private sector  
10 stakeholders on this legislation. And we have four witnesses  
11 on our second panel. And I will introduce those individuals.

12 We have Ms. Linda Reinstein, Co-founder of Asbestos  
13 Disease Awareness Organization.

14 We have Rebecca, Ms. Rebecca Reindel, Senior Safety and  
15 Health Specialist, on behalf of the AFL-CIO.

16 We have Mr. Walls, first name Michael, Mr. Michael  
17 Walls, Vice President of Regulatory and technical Affairs,  
18 American Chemistry Council; and Dr. Celeste Monforton,  
19 Lecturer, Texas State University, on behalf of the American  
20 Public Health Association.

21 We want to thank our witnesses for joining us today. We  
22 look forward to your testimony. And at this time the chair  
23 recognizes Ms. Reinstein for her opening statement. Thank  
24 you so much, and you have five minutes, with no lights.

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1 STATEMENTS OF LINDA REINSTEIN, CO-FOUNDER, ASBESTOS DISEASE  
2 AWARENESS ORGANIZATION; REBECCA REINDEL, SENIOR SAFETY AND  
3 HEALTH SPECIALIST, ON BEHALF OF THE AFL-CIO; MICHAEL P.  
4 WALLS, VICE PRESIDENT OF REGULATORY AND TECHNICAL AFFAIRS,  
5 AMERICAN CHEMISTRY COUNSEL; AND CELESTE MONFORTON, LECTURER,  
6 TEXAS STATE UNIVERSITY, ON BEHALF OF THE AMERICAN PUBLIC  
7 HEALTH ASSOCIATION

8  
9 STATEMENT OF LINDA REINSTEIN

10 Ms. Reinstein. Thank you, Chairman Tonko, Ranking  
11 Member Shimkus, members of the committee for giving me the  
12 honor and the opportunity to testify in support of H.R. 1603,  
13 Alan Reinstein Ban Asbestos Now Act, ARBAN. My written  
14 testimony has been submitted for the record.

15 I am neither a lobbyist or an attorney. I am a  
16 mesothelioma widow and the co-founder of the Asbestos Disease  
17 Awareness Organization, ADAO, an independent non-profit  
18 dedicated to preventing exposure to asbestos to eliminate  
19 deadly diseases that it causes. For the fifth time I am  
20 testifying on behalf of ADAO, but also your constituents who  
21 suffer from or have been silenced by asbestos-caused  
22 diseases.

23 Today's ban assessing legislation hearing is a landmark  
24 step forward for public health. And I am honored to have

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1 H.R. 1603 named after my husband, but it is really for the  
2 hundreds of thousands of Alans who paid a price for this  
3 manmade disaster with their lives.

4 My daughter Emily is sitting to my left. She was just  
5 10 when her father Alan was diagnosed with mesothelioma. He  
6 opted for a radical procedure to remove a rib, resect his  
7 left lung, strip off his pericardium, and surgically replace  
8 his diaphragm in hopes for more time with us. He fought a  
9 hard 3-year battle. And, like we know, mesothelioma patients  
10 rarely win, he died three years later with Emily and myself  
11 by his side.

12 This picture on the table represents my husband and the  
13 hundreds of thousands of Americans who died painful,  
14 premature, and preventable deaths.

15 Emily and I are not alone. Each day more than 100  
16 Americans die from mesothelioma, lung, ovarian, laryngeal  
17 cancers, asbestosis, and other pleural disease, yet imports  
18 continue. Alarmingly, my new research, which you will all  
19 have on the back table, has revealed that since the EPA tried  
20 to ban asbestos and it was overturned in 1991, one million  
21 Americans -- one million Americans -- have died from these  
22 preventable diseases.

23 This snapshot is only a small piece of time, because you  
24 can imagine over the past 100 years how many Americans have

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1 died from these preventable diseases.

2 Think for just one moment not about our family, about  
3 the millions of families that have love lost -- loved and  
4 lost loved ones due to the chemical while our government has  
5 done nothing. Thirty years after EPA, actually 30 years  
6 after EPA tried to ban asbestos the facts remain irrefutable.

7 All forms of asbestos, including chrysotile, are a known  
8 human carcinogen. There is no safe or controlled use of  
9 asbestos.

10 Knowing the unreasonable risk, we have allowed over  
11 300,000 metric tons to be imported and used in the past 28  
12 years. Now, companies recognizing the risk decades ago have  
13 actually transitioned to safer and economical substitutes.  
14 However, the chlor-alkali industry has refused. Today, Olin  
15 Corporation, Occidental Chemical Corporation, Axial/Westlake  
16 Corporation are still importing, using, and lobbying,  
17 lobbying for an exemption. To be clear, they use chrysotile  
18 asbestos diaphragms to produce chlorine and caustic soda, but  
19 there are three methods. This is just one.

20 Our research reveals only 1 percent of their chlorine  
21 production is for drinking water, the rest is for industrial  
22 chlorine uses. Last year this industry imported 750 metric  
23 tons of raw asbestos from Russia and Brazil. Seven hundred  
24 and fifty metric tons. Now, there are numeriyas asbestos

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1 exposure pathways from mining, transporting between port to  
2 plant, within the plant, and disposal. That is a massive  
3 amount of opportunity. It is beyond a glovebox.

4 EPA risk evaluations are excluding the effects of  
5 asbestos that we find, the legacy in our homes, schools, and  
6 workplaces. And let me tell you, an impurity 1 percent by  
7 weight is not protective. If you have a 100 pound bag of  
8 play sand, could you really have a pound of asbestos and have  
9 it be legal? As a widow, I say no.

10 They are also excluding various cancers, which you heard  
11 the committee describe: ovarian, laryngeal, asbestosis, other  
12 diseases. During the past decade since I have been coming to  
13 Washington -- actually it is 15 years -- asbestos has been  
14 the poster child for meaningful TSCA reform. And I agree  
15 with Ranking Member Shimkus: I hate asbestos. And the EPA  
16 has failed to do their job. We can't wait and hope that EPA  
17 with their risk evaluation will lead to a ban while the  
18 Agency is failing. And Congress must expeditiously move this  
19 bill forward.

20 And I look forward to answering your questions. And  
21 thank you for your leadership.

22 [The prepared statement of Ms. Reinstein follows:]

23

24 \*\*\*\*\* INSERT 2\*\*\*\*\*

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1           Mr. Tonko. Thank you, Ms. Reinstein, for your very  
2 compelling testimony.

3           Ms. Reindel, you are recognized for five minutes,  
4 please.

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1 STATEMENT OF REBECCA REINDEL

2

3 Ms. Reindel. Chairman Tonko, Ranking Member Shimkus and  
4 members of the committee, I appreciate the opportunity to  
5 testify today on behalf of the AFL-CIO on this legislation to  
6 ban asbestos. My full written testimony has been submitted  
7 to the committee for the record.

8 The AFL-CIO is a federation of 55 national and  
9 international unions. And we represent more than 12.5  
10 million union members who work side by side millions of non-  
11 unionized workers. Over the last four decades, the AFL-CIO  
12 and our affiliated unions have acted to protect workers from  
13 the hazards of asbestos exposure through the development and  
14 implementation of asbestos regulations and legislation. We  
15 strongly support this federal legislation to ban asbestos,  
16 H.R. 1603. WE applaud the efforts of Representative Bonamici  
17 and this committee to champion and guide this legislation in  
18 the House, and the effort of Senator Merkley to initiate  
19 similar legislation in the Senate.

20 Asbestos is the poster child of the historical failure  
21 under the original Toxic Substances Control Act to protect  
22 people from a chemical known to have serious health effects  
23 at very low levels of exposure, and known to be extremely  
24 difficult to control over its long lifespan. In the

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1 development of the 2016 bipartisan Frank Lautenberg Act no  
2 one doubted its aim to fix the law to ban asbestos  
3 indefinitely, definitively.

4 But we are here today because EPA has not used that new  
5 authority and responsibility, and we are here to further  
6 amend that law to finally protect working people and to save  
7 lives. One of the worst things about asbestos is that most  
8 people think it is no longer a problem in the U.S., when in  
9 fact it is the most significant and devastating occupational  
10 health disaster that has lasted over a century in this  
11 country. Hundreds of thousands have died.

12 One of the worst -- Sorry. The number of asbestos-  
13 related deaths that continue today are worst than experts in  
14 the 1980s projected them to be now, tens of thousands each  
15 year. The number of mesothelioma cases in 2017 is actually  
16 the highest number of the data that is pulled since 1999.

17 Especially troubling, we are seeing workers under the  
18 age of 55 with significant levels of asbestos disease and are  
19 dying. And those are workers who have entered the job market  
20 after the 1980s and after asbestos regulations were adopted.

21 An insulator in Chicago started in the trade in 1993 and  
22 was screened in 2016. He recently died at the age of 45 with  
23 elevated levels of asbestos fibers in his lungs.

24 The legacy of asbestos, unfortunately, is very much with

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1 us, and we are passing it on to the next generation. As  
2 other industrialized countries are realizing the magnitude of  
3 these continuing exposures and disease from legacy asbestos,  
4 the asbestos installed 40 to 70 years ago, they are not only  
5 banning asbestos from commerce, they are also conducting  
6 national assessments to understand where it is, how much of  
7 it there is, and they are developing strategic plans to  
8 safely remove it and dispose of it. But in the U.S. we don't  
9 really know that information.

10 And if we don't know, we can't control exposures to it.

11 Workers don't know if they are repairing or installing  
12 something located next to asbestos material. They don't know  
13 if they are replacing flooring containing asbestos. The last  
14 time the U.S. has profiled the scope of the asbestos problem  
15 was in the 1980s despite its widespread existence throughout  
16 facilities all over the country, in refineries, in  
17 powerhouses, in schools, in hospitals, in steel factories,  
18 and in other structures. That material, installed decades  
19 ago, is now falling apart and being disturbed.

20 As asbestos ages and weathers different conditions such  
21 as moisture, vibration, it deteriorates and it becomes  
22 friable over time, which puts those working near it at much  
23 higher risk. The worst occupational exposures tend to be in  
24 construction, abatement, renovation, routine maintenance

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1 work, and custodial activities. But because there is no safe  
2 level of exposure to asbestos, any worker performing  
3 activities near asbestos is at risk.

4 In its 1994 asbestos standard, OSHA recognized and fully  
5 acknowledged that under the standard workers exposed  
6 continued to be at significant risk of asbestos disease.  
7 Instead of banning all uses of asbestos and conducting a full  
8 assessment to understand the real magnitude and the real  
9 impact of the problem, EPA recently created a mechanism for  
10 the Agency to actually approve new uses of asbestos. They  
11 have misled the public by telling us that they are  
12 strengthening regulation of asbestos.

13 The legislation here today is so important. It bans  
14 future uses of asbestos without loopholes, and it begins the  
15 very difficult and critical work of controlling the problem  
16 in front of us, the deadly consequences of legacy uses. OSHA  
17 cannot do this. EPA has not done this. We urge the  
18 committee and Congress to move forward without delay and  
19 enact this legislating bill.

20 Thank you. I am happy to answer any questions.

21 [The prepared statement of Ms. Reindel follows:]

22

23 \*\*\*\*\* INSERT 3\*\*\*\*\*

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1           Mr. Tonko. Ms. Reindel, thank you.

2           We now move to Mr. Michael Walls. You are recognized,

3           sir, for five minutes.

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1 STATEMENT OF MICHAEL P. WALLS

2

3 Mr. Walls. Chairman Tonko, Ranking Member Shimkus, and  
4 members of the subcommittee, good morning. I am Mike Walls,  
5 the Vice President for Regulatory and Technical Affairs at  
6 the American Chemistry Council. I was the chemical  
7 industry's principal technical representative in the  
8 discussions that resulted in the 2016 amendments to the Toxic  
9 Substances Control Act. And I am here today to reinforce our  
10 industry's commitment to full and effective implementation of  
11 those amendments.

12 Now, the 2016 amendments were a significant bipartisan  
13 achievement. In those amendments Congress established a  
14 process to reinforce public confidence in EPA's management  
15 and assessment of new and existing chemicals. The amendments  
16 requires the -- require the Agency to have sufficient  
17 information to make an affirmative regulatory decision on  
18 chemicals in an open and transparent way. And a key element  
19 of those amendments was a requirement that EPA systematically  
20 evaluate the risks of high priority substances and regulate  
21 their uses when necessary, subject to strict deadlines for  
22 action.

23 Now, you have already heard that in December 2016, EPA  
24 identified asbestos as one of the first ten substances

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1       undergoing evaluation. You know that the assessment is  
2       supposed to come forward for public comment later this year,  
3       that EPA expects to meet its deadline in December of this  
4       year. Under the terms of the 2016 amendments, EPA must take  
5       into account both the hazards and the risks of exposure under  
6       specific conditions of use.

7               EPA cannot consider costs and benefits in the evaluation  
8       of those risks. But once it identifies unreasonable risk,  
9       EPA must then regulate to ensure that any unreasonable risks  
10      are managed appropriately.

11             Now, our industry is committed to effective and  
12      efficient implementation of the 2016 amendments. In part,  
13      that commitment is reflected in the fact that ACC member  
14      companies provided information to EPA specific to the use of  
15      asbestos in chlorine production. This included information  
16      on the transportation, use, and disposal information in that  
17      condition of use, including exposure information. Our  
18      companies' use of asbestos in the production of chlorine is  
19      highly regulated and controlled to prevent exposures to human  
20      in the environment -- humans in the environment.

21             This includes a specific National Emissions Standard for  
22      Hazardous Air Pollutants, or NESHAP, under the Clean Air Act.

23             You have already heard today that one-third of total U.S.  
24      production of chlorine and sodium hydroxide relies on closed-

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1 system chrysotile asbestos diaphragms cells. Those cells  
2 separate chlorine from its co-product sodium hydroxide while  
3 remaining, while ensuring that those substances are contained  
4 in the cell.

5 Human exposures are prevented by the rigorous use of  
6 personal protective equipment, as well as appropriate  
7 engineering controls, routine maintenance, and rigorous  
8 training. Federal regulations also govern the disposal of  
9 spent asbestos diaphragms.

10 Now, chlorine is essential to ensuring access to safe  
11 drinking water for millions of American families. It also  
12 enables life-saving healthcare and pharmaceutical products,  
13 energy resources like solar panels and wind turbines, and  
14 much more. A blanket ban that includes the chlor-alkali  
15 industry's use of asbestos would have, in our view, a  
16 significant impact on the supply of chlorine. That in turn  
17 will jeopardize public health and increase prices for a wide  
18 range of vital consumer and industrial goods.

19 I want to be absolutely clear that ACC believes that  
20 EPA's ongoing risk evaluation of asbestos properly covers the  
21 use of asbestos in chlorine production. In our view, that  
22 use is and will continue to be appropriately controlled to  
23 ensure that it does not pose an unreasonable risk.

24 Now, in 1989, EPA recognized that a ban on the use of

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1 asbestos in chlorine production was not appropriate. ACC  
2 opposes H.R. 1603 because it would set an unfortunate  
3 precedent for legislating risk management actions on  
4 substances subject to TSCA. We believe that EPA must be  
5 given the chance to complete its ongoing assessment. We  
6 believe that the system Congress approved in 2016 must be  
7 given a chance to work.

8 Imposition of a blanket ban on asbestos use without the  
9 benefit of EPA's risk evaluation, and without the benefit of  
10 information on appropriate risk management measures  
11 undermines the process that was the basis for Congress's  
12 bipartisan agreement in 2016.

13 Thank you very much for the opportunity to provide this  
14 testimony. I look forward to your questions.

15 [The prepared statement of Mr. Walls follows:]

16

17 \*\*\*\*\* INSERT 4\*\*\*\*\*

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1           Mr. Tonko. Thank you, Mr. Walls.

2           And, finally, we will hear from Dr. Monforton. You are  
3 recognized for five minutes, please.

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1 STATEMENT OF CELESTE MONFORTON

2

3 Ms. Monforton. Thank you, Chairman Tonko, Ranking  
4 Member Shimkus, and members of the subcommittee. I am Dr.  
5 Celeste Monforton. I am a lecturer at Texas State  
6 University. I have a doctorate and a master's in public  
7 health, and I have worked in this field for nearly three  
8 decades, including at OSHA, and MSHA, and the Department of  
9 Labor. I am testifying today on behalf of the American  
10 Public Health Association. And I currently serve on the  
11 association's Action Board.

12 I ask my written statement and attachments be included  
13 in the record.

14 APHA's mission is to improve the health of the public  
15 and to achieve equity in health status. Accomplishing these  
16 goals requires focus and attention on numerous social  
17 determinants of health, including exposure to toxic  
18 substances in the outdoors, in schools, in homes, and in  
19 workplaces.

20 A decade ago APHA called for a complete ban on asbestos.

21 We have remained steadfast in this position, and it is the  
22 reason that APHA strongly supports H.R. 1603. There is no  
23 debate in the public health community that asbestos is a  
24 carcinogen and there is no safe level of exposure.

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1           The comprehensive ban required under 1603 is on very  
2 strong scientific foundation. APHA applauded passage of the  
3 Lautenberg Chemical Safety Act and the decision by the Obama  
4 administration to chose asbestos as one of the first ten  
5 chemicals subject to risk evaluation. EPA's recent  
6 decisions, however, call into question the current  
7 Administration's willingness and ability to address the  
8 threat that asbestos poses to the public health.

9           In its Scoping Document and Problem Formulation EPA has  
10 essentially put a stake in the ground about what they will  
11 consider in their risk evaluation. These decisions include:

12           Excluding cancers that are associated with asbestos  
13 exposure, including of the larynx, pharynx, ovaries, as well  
14 as pleural disease;

15           Excluding the exposure to asbestos-containing materials  
16 in the buildings;

17           Excluding exposure to asbestos in air, soil and water,  
18 including disposal of asbestos-containing waste.

19           With respect to the reporting requirements and the  
20 analysis that the bill calls for with EPA, Labor Department,  
21 and HHS it is critically important because we cannot prevent  
22 asbestos-related cancers if we don't have accurate data on  
23 where it is located, what condition it is in, how it is  
24 handled and disposed, and how many people are exposed to it.

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1           We also don't know who is importing asbestos, where it is  
2 being shipped, and where it ends up. H.R. 1603 will help to  
3 fill the significant information gap by requiring EPA and  
4 other agencies to assemble data to answer these questions.  
5 The bill embraces the fundamental principle of the public's  
6 right to know, and will provide the information necessary to  
7 develop protective risk management plans.

8           Asbestos is a potent carcinogen. More than 60 countries  
9 have banned asbestos because they recognize its grave risk to  
10 public health. It is long past the U.S. to do the same.  
11 Cancer takes a physical and emotional toll on a patient and  
12 their family. Cancer has economic consequences, more than \$80  
13 billion in direct medical care costs along. Add to that the  
14 lost time from school and work, productivity, travel, and all  
15 the other expenses that go along with having a serious  
16 illness. Preventing cancer makes economic sense.

17           On a personal note, at age 49 I developed cancer that had  
18 already spread to my lymph nodes. I lost more than a year of  
19 my life undergoing treatment. Cancer is scary. Like many  
20 cancer patients I wondered, how could this have been  
21 prevented? For so many cancers we don't know the answer, we  
22 don't know the cause. But for asbestos-related cancer, for  
23 mesothelioma that killed Alan Reinstein, it is lethal. And we  
24 know exactly how to prevent asbestos-related cancers:

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1 eliminating exposure to asbestos. And that doesn't mean  
2 continuing to import it and claims that it can be handled  
3 safely.

4 It is for this reason that APHA supports strong and  
5 comprehensive legislation that will ban asbestos, address the  
6 risks for the millions of metric tons of asbestos that is in  
7 buildings, homes, schools, and other structures, and assures  
8 the public's right to know. H.R. 1603 accomplishes these  
9 goals, and APHA wholeheartedly supports it.

10 Thank you.

11 [The prepared statement of Ms. Monforton follows:]

12

13 \*\*\*\*\* INSERT 5\*\*\*\*\*

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1           Mr. Tonko. Thank you, Dr. Monforton. And thank you to  
2 all of our panelists for your presentations.

3           That concludes our witnesses' opening statements for our  
4 second panel. We now move to member questions. And I will  
5 recognize myself for five minutes for questions.

6           Mr. Walls, I asked this of Administrator Dunn but I  
7 certainly want to get your thoughts. Over 60 other countries  
8 have managed to ban asbestos. I believe they are still able  
9 to treat their water and find safer alternatives for many  
10 other uses. Do you see any reason why the United States could  
11 not be able to transition away from asbestos-containing  
12 materials?

13           Mr. Walls. If your question, Mr. Tonko, is with respect  
14 to the chlor-alkali's industry's transition away from  
15 asbestos, we certainly know that there are alternatives to  
16 asbestos diaphragm cells. But there are no drop-in  
17 replacements for those uses.

18           We are talking about a transition time that is  
19 significant, that would cost hundreds of millions of dollars.

20           And it is true that in other countries they use other  
21 technologies. We even use some of those alternative  
22 technologies here in the United States, but it is not a simple  
23 matter of dropping in an alternative, switching the plant back  
24 on, and being able to produce.

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1 Under the bill as it has been presented, it imposes an  
2 immediate one-year ban -- an immediate ban one year after  
3 enactment on all uses of asbestos. That would essentially  
4 create a significant shortage of chlorine in the United States  
5 market. It would eliminate 36 percent of U.S. chlorine in the  
6 market. The industry cannot respond in any time frame like  
7 that.

8 Mr. Tonko. What would be a reasonable time frame by  
9 which to respond?

10 Mr. Walls. I think it would depend on the particular  
11 facility in question, Mr. Tonko. When you are talking, you  
12 know, planning, the engineering, permitting, construction,  
13 testing, you know, before you start it, before you can start  
14 up a facility safely, et cetera, it would be a significant  
15 number of years.

16 Mr. Tonko. I want to ask Dr. Monforton and the other two  
17 witnesses if they have thoughts on alternatives?

18 Ms. Monforton. We do know that other countries have used  
19 alternatives. I actually have, I think, in my testimony  
20 information about one of 75 plants, only one of 75 plants in  
21 the European Union use chlorine in their -- or use asbestos  
22 diaphragms in their chlorine production. Japan has banned  
23 asbestos, France, in specifically in the chlor-alkali  
24 industry.

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1           So it is obviously something we can do.

2           And from the Public Health Association's position, and we  
3           certainly know how important clean drinking water is, and that  
4           chlorine is used in it, and we need chlorine as part of  
5           residual at the end of the process, but that that can be done  
6           without using asbestos diaphragms.

7           Mr. Tonko. And, Ms. Reinstein and Ms. Reindel, any  
8           thoughts on alternatives and perhaps how effectively and  
9           quickly others have moved --

10          Ms. Reinstein. Thank you, Chairman Tonko.

11          Mr. Tonko. -- to those alternatives?

12          Ms. Reinstein. I would like to respond to that on two  
13          points. The chlor-alkali industry has had 30 years since they  
14          got an exemption to embrace new technology and follow Europe  
15          to use membranes. And, obviously, mercury has been phased  
16          out.

17          Other countries can do it. I was recently on a call, and  
18          I don't want to name the actual chlor-alkali producer, they  
19          said they can make a transition in five years. Other  
20          countries have done it within three. Why not start? USGS  
21          states that the chlor-alkali industry is stockpiling asbestos  
22          now. Seven hundred and fifty metric tons in one year is  
23          outrageous.

24          Mr. Tonko. Ms. Reindel?

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1 Ms. Reindel. I don't have a comment on that.

2 Mr. Tonko. Are you recommending they should start now,  
3 Ms. Reinstein?

4 Ms. Reinstein. I think for the health of their workers,  
5 their industry, and the nation it would be unconscionable.  
6 And I have to say as I flew in last night I was shocked to  
7 read Mr. Walls' testimony, they actually they wrote they  
8 oppose H.R. 1603. So, we are sitting at a table having a  
9 conversation knowing that ACC goes flat out to say they oppose  
10 banning asbestos, or the bill as written.

11 Mr. Tonko. Yes?

12 Mr. Walls. Mr. Tonko, I think I need a chance to respond  
13 to that.

14 We have been very clear that ACC's opposition to H.R.  
15 1603 is exactly focused on the chlor-alkali's industry's --  
16 the impact on the chlor-alkali industry and the supply of  
17 chlorine in this nation. We certainly are not opposing a ban  
18 for all other uses of asbestos. And I just want to make that  
19 clear.

20 Mr. Tonko. Well, I heard the hundreds of millions that  
21 it would cost, and I also heard the billions it will cost for  
22 those who have been impacted by illness.

23 I have used all my time, so I will now yield to the  
24 leading Republican of the subcommittee, Mr. Shimkus, for five

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1 minutes.

2 Mr. Shimkus. Thank you, Mr. Chairman.

3 For Mr. Walls, and it is on the same topic of chlorine  
4 and the issues. My understanding is that the diaphragm  
5 production technology accounts for 50 percent of all chlorine  
6 production in the United States, and that 72 percent of that  
7 diaphragm production technology comes from asbestos  
8 diaphragms.

9 Is that correct, 36 percent of all chlorine production in  
10 the United States would need to be replaced if this bill  
11 becomes law?

12 Mr. Walls. Yes.

13 Mr. Shimkus. What are the practical effects in the short  
14 term from this law?

15 Mr. Walls. Well, I think the most significant effects  
16 would be a ban on asbestos would eliminate 36 percent of the  
17 volume of chlorine in the U.S. market in the short term.  
18 Because chlorine is not traded because of its properties, et  
19 cetera, it is not -- we don't ship chlorine across the ocean,  
20 for example, there are no opportunities to meet the reduction  
21 in volume by imports. Production of chlorine derivatives  
22 would also be reduced, and the imports of those derivatives  
23 would be increased.

24 The U.S. is also a net exporter of caustic soda, sodium

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1 hydroxide, which is the co-product of chlorine. Every time  
2 you make a ton of chlorine you get 1.1 tons of sodium  
3 hydroxide. Eliminating caustic production will eliminate the  
4 trade surplus we currently have in that good and encourage  
5 more imports of it.

6 So, we have done a study. We believe that the direct  
7 economic impacts would be a total of direct, indirect, and  
8 payroll-induced effects of 155,000 jobs, \$9.7 billion in  
9 payroll, and \$63 billion in U.S. economic output.

10 Mr. Shimkus. The non-asbestos diaphragm technology that  
11 could be more widely deployed to replace it is comprised of  
12 four polymer fibers or commonly known as PFAS compound; is  
13 that correct?

14 Mr. Walls. Yes. That is one of the alternatives.

15 Mr. Shimkus. And we will be talking about PFAS next week  
16 I guess; right?

17 If non-asbestos diaphragm technology isn't used as a  
18 replacement, there is a mercury-cell based technology, and a  
19 membrane cell technology. Are these drop-in replacements?

20 Mr. Walls. No. Mercury cell technology is being phased  
21 out. Very little, if any, of U.S. production is produced with  
22 mercury cells.

23 There is no currently available drop-in technology for  
24 asbestos diaphragms.

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1           Mr. Shimkus. And I was talking to some colleagues on  
2 this, it is not like replacing, we are not talking, like,  
3 replacing a coffee filter? I mean, we are --

4           Mr. Walls. No. These, these are typically -- so, just  
5 to explain the process, from the time this imported asbestos  
6 arrives in a container. That container is sealed, the  
7 asbestos within it is packaged in roughly 40-pound plastic  
8 packages put on a pallet. The pallet is wrapped in very heavy  
9 duty plastic. The container is sealed and cannot be opened  
10 until it is at the facility and under conditions in which the  
11 expose -- potential exposures to asbestos can be controlled.

12           The asbestos is wet deposited with complete protective  
13 equipment for the workers in an environment where exposures to  
14 the air are minimized.

15           So, what happened is these, this asbestos is wet  
16 deposited onto a frame. And when it is dried, before it is  
17 put into the, to the cell itself, this is essentially non-  
18 friable asbestos. It is in a matrix and bound in that matrix.

19           Mr. Shimkus. Going back just to the 36 percent, do  
20 Canada and Mexico produce enough chlorine to replace the 36  
21 percent that could get lost if this became an immediate law  
22 and there would be an immediate ban?

23           Mr. Walls. No. Canada and Mexico's chlorine production  
24 is typically used for their domestic purposes. They don't

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1 have the excess supplies to be able to replace that in the  
2 U.S. market.

3 Mr. Shimkus. If not these countries, where else might we  
4 seek importation from?

5 Mr. Walls. Again, in elemental chlorine you would not  
6 see imports. You would see an increase in chlorine  
7 derivative, imports of chlorine derivatives. And those could  
8 come from any country. China has ramped up product -- China,  
9 among others, has ramped up production of those products.

10 Mr. Shimkus. Well, thank you. This is a tough committee  
11 to be on. We are trying to balance public health and public  
12 health. And we get it right every now and then. Sometimes we  
13 don't. And sometimes in litigation and lawsuits, like this  
14 issue, took the work and unraveled it again.

15 I would encourage those following this hearing to try to  
16 get this out of our commercial use. And the industries that  
17 are part of the ACC, which I am a pretty good fan of, as  
18 everyone knows, that they look for other opportunities that  
19 would make our lives a lot easier.

20 And, Emily, you have a very brave mom. And thank you for  
21 your service, too.

22 Mr. Tonko. The gentleman yields back.

23 I believe Dr. Monforton wanted to respond to something  
24 she had heard?

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1 Ms. Monforton. Yes. So, Ranking Member Shimkus, I  
2 really appreciate you saying that we really want to get it  
3 out. And maybe we can figure out what the economic impact  
4 would be and what the timeline would be. But I think that  
5 really not having asbestos imported to our country is very,  
6 very important.

7 With respect to asbestos in the chlor-alkali industry  
8 being handled safely, I think we have to think about where the  
9 asbestos comes from. You know, coming from Brazil, coming  
10 from Russia, we should have no confidence that the workers  
11 that are mining, and milling, and processing, and shipping are  
12 being protected from asbestos. And U.S. companies have a  
13 responsibility that if they are going to be importing a potent  
14 carcinogen, you know, they can't just dismiss those exposures.

15 And then, in addition, you know, one can set up all kinds  
16 of policies and procedures to try to ensure that the asbestos,  
17 you know, doesn't -- the bags don't break, or when you are  
18 inserting it into the closed system. But there are so any  
19 opportunities for the exposures to occur. And on the  
20 hierarchy of controls, the very best way to protect health is  
21 to eliminate the exposure.

22 Mr. Tonko. Thank you so much.

23 We now recognize the gentleman from Missouri, Mr. Long,  
24 for five minutes, please.

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1 Mr. Long. Thank you, Mr. Chairman.

2 Ms. Monforton is it?

3 Ms. Monforton. Yes.

4 Mr. Long. You don't have to answer this if you don't  
5 want to, but you said that you had a cancer. Can you share  
6 what type that was? And like I said, if you don't want to,  
7 that is fine.

8 Ms. Monforton. No, I am happy to. I had Stage 4 breast  
9 cancer.

10 Mr. Long. Okay.

11 Ms. Monforton. And I have no risk factors in my family.  
12 Very healthy. I don't have any, you know, I am not  
13 overweight, I exercise. All the only things they can tell us  
14 to do to prevent cancer, but nothing about exposure.

15 And when we have exposure to carcinogens and we know what  
16 they do to people, you know, that is a new, that should be the  
17 low hanging fruit for us.

18 Mr. Long. Right, right. Cancer is near and dear to my  
19 heart. Our youngest daughter had lymphoma and she is fully  
20 recovered five years later here after all the chemo and  
21 everything. And I do a lot of work with St. Jude Children's  
22 Research Hospital.

23 Ms. Monforton. Excellent.

24 Mr. Long. So I am just always, you know, a little

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1 curious as to, you know, what types and what is causing what.

2 So, we had an earlier meeting today with Francis Collins  
3 of NIH. And that is like, you know, sitting down with the  
4 master.

5 Ms. Monforton. Brilliant, yes. Brilliant.

6 Mr. Long. So, yeah, yeah. So, but anyway, thank you.

7 Mr. Walls, Mr. Shimkus was asking you kind of a line of  
8 questions I was interested in. I mean, it used to be illegal  
9 to import LNG -- I mean to export LNG, liquified natural gas,  
10 out of this country. There was a law against it. We couldn't  
11 do it. This committee fixed that a couple years ago. We are  
12 able to export.

13 You say we don't import chlorine. Is it, is there not a  
14 demand for it? I mean, if there was, I mean, if we quit  
15 manufacturing it could we not import chlorine?

16 Mr. Walls. We could. But because of the properties  
17 inherent in chlorine and the method of transportation, the  
18 logical export countries of origin for chlorine would be  
19 Canada and Mexico. And they don't have the capacity to meet  
20 the excess, what would then be the diminished U.S. demand.

21 Mr. Long. I just got back from a trip with the  
22 Agricultural Committee to Brazil. And they didn't have the  
23 capacity to produce soybeans that China wanted. But guess  
24 what, they are ramping up. So I was just curious if, you

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1 know, there was a market from Canada and Mexico for chlorine -

2 -

3 Mr. Walls. Right.

4 Mr. Long. -- if they would not ramp up and be able to?

5 Mr. Walls. I think they would attempt to. But, again, I

6 think the properties of chlorine are such that you wouldn't

7 see elemental chlorine imported, you would see products made

8 from chlorine being the principal subject of increased trade.

9 Mr. Long. You are getting above my pay grade now.

10 Mr. Walls. We wouldn't, in other words, we wouldn't be

11 making those products here in the United States. They would

12 be manufactured elsewhere and imported into the U.S.

13 Mr. Long. H.R. 16 -- Mr. Walls, sticking with you there

14 -- H.R. 1603 requires anyone who in the three years prior to

15 enactment and one year after it manufactured, imported,

16 processed or distributed even an incidental amount of asbestos

17 to report this to the EPA. How do you quantify an incidental

18 amount of asbestos? And how likely is it that all entities

19 subjected to the requirements can maintain records to show the

20 amount of asbestos used or produced so they can accurately

21 report it? Again, they have to go back three years.

22 Mr. Walls. Well, Mr. Long, I would assume that EPA would

23 set that, would set a standard. I think we heard testimony

24 from Ms. Dunn before on what the current EPA limit is.

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1           My concern would be the reach-back for three years. I  
2           don't believe that companies or establishments across the  
3           country are keeping those records. I think it was noted  
4           earlier that even potting soil would be subject to the  
5           reporting requirements of this bill. I am not sure that every  
6           garden shop in America has been keeping records on trace  
7           amounts of asbestos for the last three years and would be  
8           prepared to report it to EPA.

9           Mr. Long. Okay. As far as the bill requires the reports  
10          be released to the public, are there any concerns about  
11          confidential business information or personal things being  
12          disclosed through that process?

13          Mr. Walls. Yes, perhaps. And it is an uncertainty  
14          raised by the drafting of the bill. The bill amends TSCA,  
15          which does contain strong confidential business information  
16          protections. And it is not clear whether those provisions  
17          would be overridden by this bill.

18          There is a simple legal principle that legislation later  
19          in time trumps the earlier in time statute, so we would have  
20          to have a better understanding of what the intention and  
21          impact would be.

22          Mr. Long. Okay. And I just want to thank all of you  
23          individually for being here today and testifying, and Emily.  
24          And it is, you know, things like this are just hard to deal

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1 with. And any time someone loses their life to whatever it is  
2 that was preventable is, you know, not, not acceptable.

3 I yield back.

4 Ms. Blunt Rochester. [Presiding.] I would like to  
5 recognize myself for five minutes. And I want to focus on  
6 Section 3 of the bill because I think it is so important.

7 We heard from EPA on the first panel that they are  
8 focusing their attention on ongoing uses of asbestos, and  
9 excluding so-called legacy asbestos from their consideration.

10 We should ban ongoing uses of asbestos but we must also do  
11 more to address the toxic legacy of asbestos still installed  
12 in buildings across the country.

13 And I am going to start my questioning with Ms. Reindel.

14 How are the members, how are your members impacted by so-  
15 called legacy asbestos, the asbestos that was already  
16 installed?

17 Ms. Reindel. Thank you for the question.

18 We have a variety of members, not just our members and  
19 also other workers who work alongside of our members, ranges  
20 from, I mean it is really, I mean workers who are working near  
21 asbestos. The insulators' union did a report recently out of  
22 Chicago. They have an early screening, lung cancer screening  
23 protection program. And they reported that about 50 percent  
24 of workers who started work in 1980s or later are showing up

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1 with asbestos-related pleural disease.

2           These members are, you know, they are the ones putting up  
3 insulation, working near existing insulation. So even though  
4 the products used now might not have asbestos in them, they  
5 are working near asbestos that is deteriorating, that is  
6 getting wet, that is falling apart, that is crumbling, it is  
7 falling on plant floors. You are seeing this in schools. You  
8 are seeing this in demolition of buildings.

9           There have been reports from some of our teachers' unions  
10 that in schools, you know, buffing and polishing asbestos-  
11 containing floors disrupts asbestos. Any kind of maintenance  
12 work, kids playing basketball in a gymnasium rattles it.

13           So, when you have, when you have asbestos that is 50  
14 years old it is going to start falling apart. The stuff  
15 doesn't last forever and it exposes a lot of workers.

16           Ms. Blunt Rochester. And, you know, under Section 3, EPA  
17 would have 18 months to prepare and submit a congressional  
18 support addressing the presence of asbestos in residential,  
19 commercial, industrial, public, and school buildings, along  
20 with an assessment of the human health risks from that  
21 asbestos. How would this report help your members?

22           Ms. Reindel. Yeah, this report is necessary. There has  
23 been no profile of where asbestos is and its conditions since  
24 the 1980s. We don't know -- we know, we know what asbestos

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1 does to people, and we know how people are being exposed  
2 roughly. But we don't know where it is in order to do  
3 anything about it.

4 We need a complete assessment in order to actually  
5 address the problem, in order to assess the risks and  
6 development recommendations as to what we can actually do  
7 about that. And those recommendations can include a variety  
8 of things, but that is something that report would have to,  
9 would have to come out with.

10 Ms. Blunt Rochester. And, Ms. Reinstein, first I send my  
11 heart to you. I also lost my husband, and I know coming to  
12 Congress has given me my joy and my purpose back, so I thank  
13 you for what you are doing for the American people. And maybe  
14 you could spend a moment talking about just the impact on  
15 families and on your husband.

16 Ms. Reinstein. I am sorry for your loss, too.

17 When I speak for myself I really speak for the hundreds  
18 of thousands of others. For those of us who have buried,  
19 cared for, buried a loved one it is a measurable pain. We  
20 look at calendars, we look at empty chairs, we look at father-  
21 daughter dances, and those have changed forever.

22 And I feel that 15 years of my work in Congress we have  
23 made significant progress. You should be so proud, this is  
24 the first legislative ban asbestos hearing I have ever

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1 attended in the House. And I think it fuels our fight, like  
2 your member from Missouri said, but most importantly I  
3 guarantee you there are people around the world watching this  
4 hearing today and applauding you as House members for moving  
5 this forward.

6 Ms. Blunt Rochester. Thank you.

7 Ms. Reinstein. So, there is no rewind button, but we can  
8 go forward together. And I hope it is a bipartisan movement  
9 forward. We need that desperately.

10 Ms. Blunt Rochester. Thank you so much for sharing that.

11 Thank you so much.

12 And I am going to close with a question to Dr. Monforton  
13 about just the public health aspect of this and the impact?

14 Ms. Monforton. So, the key principle of public health is  
15 protecting people's health. And having information about what  
16 those exposures are and knowing how to prevent them is what  
17 our work is about in really savings lives.

18 Ms. Blunt Rochester. Thank you so much. And now I would  
19 like to thank all of our witnesses for joining us at today's  
20 historic hearing.

21 I remind members that pursuant to committee rules they  
22 have ten business days to submit additional questions for the  
23 record to be answered by our witnesses. I ask each witness to  
24 respond promptly to any such questions that you may receive.

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1           And at this time the subcommittee -- and at this time I  
2 request unanimous consent to enter the following documents  
3 into the record. These are the following documents:

4           A statement of support from Representative Bonamici, one  
5 of the lead sponsors of H.R. 1603;

6           A letter of support from the International Association of  
7 Firefighters;

8           A New York Times article published this morning titled  
9 "EPA Leaders Disregard Agency's Experts in Issuing Asbestos  
10 Rule Memos Show;" A New York Times article published in  
11 August 2018, titled "EPA Staff Objected to Agency's New Rules  
12 on Asbestos Use Internal Emails Show;" A letter from the  
13 National Association of Home Builders;

14           A letter from the Chlorine Institute;

15           A letter from the American Alliance for Innovation;

16           A letter from the National Rural Water Association;

17           A letter from the National Demolition Association;

18           A letter from the American Waterworks Association.

19           Without objection, so ordered.

20           [The information follows:]

21

22           \*\*\*\*\* COMMITTEE INSERT 6\*\*\*\*\*

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1           Ms. Blunt Rochester. And now, okay, and let's see, and  
2 at this time the subcommittee is adjourned.

3           [Whereupon, at 12:37 p.m., the subcommittee was  
4 adjourned.]

**NEAL R. GROSS**

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