



December 9, 2015

Office of the Auditor General of Canada  
Commissioner of the Environment and Sustainable Development  
Attention: Petitions  
240 Sparks Street  
Ottawa, ON K1A 0G6

*Transmission by email: [petitions@oag-bvg.gc.ca](mailto:petitions@oag-bvg.gc.ca)*

Dear Commissioner,

**Re: Concerns about Canada's continued use and imports of asbestos**

The following petition is being submitted to the Office of the Auditor General of Canada in accordance with section 22 of the *Auditor General Act* by the Canadian Environmental Law Association and the Canadian Association of University Teachers.

The Canadian Environmental Law Association (CELA) ([www.cela.ca](http://www.cela.ca)) is a non-profit legal aid clinic based in Ontario. Since 1970, CELA has provided legal representation to individuals and groups with problems caused by environmental pollution and by working to change policies and laws to prevent such problems in the future. This includes a specific focus on protecting vulnerable populations such as children, the elderly, people of low income and workers, who are exposed to toxic substances.

The Canadian Association of University Teachers (CAUT) ([www.caut.ca](http://www.caut.ca)) was founded in 1951. CAUT is the national voice for academic staff. Today, representing 68,000 teachers, librarians, researchers, general staff and other academic professionals, CAUT is an outspoken defender of academic freedom and works actively in the public interest to improve the quality and accessibility of post-secondary education in Canada.

**A. Purpose of Petition**

This petition seeks a response from the Ministers of Health and Environment Canada, along with other federal departments that may contribute to the review of the *Canadian Environmental*

*Protection Act* (CEPA) and other legislations, to the questions posed in Section C below. The purpose of this petition is to examine whether harm to human life is effectively prevented under Canada's current regulations and "controlled use" approach.<sup>1</sup> The petition also seeks to clarify Canada's position on its continued use of asbestos in light of growing body of evidence demonstrating harm due to the exposure to asbestos.

## **B. Background**

The "controlled use" approach currently advocated by Canada with respect to asbestos products does not adequately prevent harm to human health resulting from exposure to asbestos for several reasons. First, the "controlled use" approach of asbestos does not coincide with the precautionary principle, which states that:

*Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation<sup>2</sup>*

Mesothelioma and other diseases resulting from asbestos exposure would constitute "irreversible damage" for hundreds of Canadians every year. Health Canada's recently changed description of chrysotile asbestos acknowledges the dangers of all forms of asbestos.<sup>3</sup> In the absence of certain evidence that a product is safe, an application of the precautionary principle would require an assumption that it is unsafe, and therefore prohibit its use.<sup>4</sup> This is particularly true with carcinogens like asbestos that have a long latency period.<sup>5</sup>

Second, while there have been significant regulatory measures to reduce asbestos exposure taken at the provincial level aimed at protecting workers in the workplace, there may be inconsistencies in the scope of these regulatory measures across each province and territory. For example, the limits to occupational exposure levels vary across different provincial and federal

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<sup>1</sup> Canadian Centre for Occupational Health and Safety, "Asbestos – Control Strategies for Workplaces" (2015) Online: <<http://www.ccohs.ca/oshanswers/chemicals/asbestos/control.html>>

<sup>2</sup> Preamble, *Canadian Environmental Protection Act, 1999*.

<sup>3</sup> Government of Canada, Health Risks of Asbestos, June 19, 2015, online: <[http://healthy Canadains.gc.ca/healthy-living-vie-saine/environment-environnement/air/contaminants/asbestos-amiante-eng.php](http://healthy Canadians.gc.ca/healthy-living-vie-saine/environment-environnement/air/contaminants/asbestos-amiante-eng.php)>.

<sup>4</sup> European Environmental Agency. "Late lessons from early warnings: the precautionary principle 1896–2000, Environmental issue report No 22/2001, Chapter 5 - Asbestos: from 'magic' to malevolent mineral" (2002) Online: <[http://www.eea.europa.eu/publications/environmental\\_issue\\_report\\_2001\\_22](http://www.eea.europa.eu/publications/environmental_issue_report_2001_22)>

<sup>5</sup> *Ibid.*

regulations.<sup>6</sup> Quebec's exposure limit is 10 times greater than many other provinces.<sup>7</sup> Furthermore, the current *Asbestos Products Regulations* under *Canada Consumer Products Safety Act* aims to control rather than prohibit the use of asbestos in a range of products. This can lead to inappropriate handling and disposal of products that a person does not know contains asbestos, particularly since many Canadians are under the wrong impression that asbestos has been banned in Canada.<sup>8</sup> For example, a petitioner in a previous petition to the Auditor General erroneously referred to a ban of asbestos in Canada.<sup>9</sup> This misconception has also been seen among some workers in industries dealing with asbestos. Even in circumstances where people are aware of the presence of asbestos, the *Institut National de Santé Publique de Québec* found that exposure measurements often exceeded the limits, in both factories and construction sites, and that regulations were not always enforced, thus making the "controlled-use" of asbestos seemingly "impossible to achieve."<sup>10</sup>

Third, with a changing national and international landscape of asbestos regulations, Canada is now out of line with current practices. Over 55 countries have followed the recommendations of the World Health Organization (WHO) and the International Labour Organization (ILO), among other constituents, in implementing a global prohibition on asbestos. Canada had one of the highest rates of mesothelioma deaths out of the 143 countries studied.<sup>11</sup> Countries that suffer from high mesothelioma death rates and have an advanced healthcare system that is able to deal with the phasing out of asbestos are more likely to impose a ban<sup>12</sup>. Although Canada meets these criteria, it has repeatedly opposed the listing chrysotile asbestos on Annex III of the *Rotterdam Convention* in the first four conferences of the parties (COPs) and has recently abstained in the

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<sup>6</sup> "Asbestos – Fibers and Dusts, Known Carcinogen (IARC 1)" (2015), Carex Canada, Online: <<http://www.carexcanada.ca/en/asbestos/>>.

<sup>7</sup> "Asbestos" *Institut national de santé publique de Québec* (INSPQ), Online: <<https://www.inspq.qc.ca/en/asbestos>>.

<sup>8</sup> Tavia Grant, "No safe use: Canada's embrace of the 'miracle mineral' has seeded an epidemic of cancers" (2014) *Globe and Mail*, Online: <[www.theglobeandmail.com/report-on-business/no-safe-use-as-the-top-workplace-killer-asbestos-leaves-a-deadly-legacy/article19151351/](http://www.theglobeandmail.com/report-on-business/no-safe-use-as-the-top-workplace-killer-asbestos-leaves-a-deadly-legacy/article19151351/)>

<sup>9</sup> Frank Woodcock, "Concerns about Canada's export of chrysotile asbestos and the delayed release of a report about its potential health impacts" (10 June 2009), Petition to the Auditor General's Office, Petition No. 280, Question 2, Online: <[http://oag-bvg.gc.ca/internet/English/pet\\_280\\_e\\_32980.html](http://oag-bvg.gc.ca/internet/English/pet_280_e_32980.html)>

<sup>10</sup> *Ibid.*

<sup>11</sup> Jinwook Bahk *et al*, "Why some, but not all, countries have banned asbestos" (2013) 19:2 *International Journal of Occupational and Environmental Health*.

<sup>12</sup> *Ibid.*

2012 and 2015 COPs.<sup>13</sup> This approach may contribute to the long-term incidences of chronic illnesses resulting from asbestos exposure.

Canada stands out from other countries that have not prohibited asbestos.<sup>14</sup> This is of particular concern given the high mesothelioma death rates in Canada.<sup>15</sup> Canada's failure to take steps to ban asbestos is surprising given its high protective standards in healthcare, occupational health and safety, and human rights.<sup>16</sup> Based on these factors, the authors of the study, and probably many Canadians, believe that Canada should have banned asbestos long ago.<sup>17</sup> It is time for Canada to take action both at home and abroad to prevent further harm caused by asbestos.

### C. Questions

A response to the questions below is requested from Health Canada and Environment Canada, as well as other relevant federal departments identified by the Auditor General.

#### 1. Review of current management tools:

- a) Environment Canada's description of Asbestos under the List of Toxic Substances under CEPA still refers to chrysotile as less dangerous than other types of asbestos.<sup>18</sup> The current listing of asbestos under the List of Toxic Substances under CEPA should address all forms of asbestos. Please outline the regulatory and non-regulatory measures undertaken under CEPA and other legislations in Canada for all types of asbestos.
- b) Was a review conducted on the effectiveness of current management measures to address the concerns associated with asbestos? If so, when was the review conducted and describe the results of the review and how the public was engaged in that process? If not, why not?

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<sup>13</sup> "Rotterdam Convention 2015: chrysotile asbestos will not be included in the list of dangerous products" (2015) Online: <<http://andeva.fr/?14-May-2015-Rotterdam-Convention>>.

<sup>14</sup> Jinwook Bahk *et al*, "Authors' Reply: Why countries ban asbestos: the roots of political will", (2013) 19:2 International Journal of Occupational and Environmental Health.

<sup>15</sup> A. Del Bianco and P. Demers, "Trends in compensation for deaths from occupational cancer in Canada: a descriptive study," (2013) 1(3), E1-E6, CMAJO, Online < <http://cmajopen.ca/content/1/3/E1.full>>

<sup>16</sup> See, Jinwook Bahk *et al*. *Supra* note 11.

<sup>17</sup> *Supra* note 14.

<sup>18</sup> "Asbestos" (2015), Environment Canada, Online: <<http://www.ec.gc.ca/toxiques-toxics/Default.asp?lang=En&n=98E80CC6-1&xml=A183A275-6D44-4979-8C4F-371E7BF29B9F>>

- c) If the Public Works and Government Services Canada (PWGSC) is investing money into asbestos abatement from federal buildings, why does the federal government continue to allow the use of asbestos in new construction projects, in the forms of pipes and other materials?<sup>19</sup>
- d) Saskatchewan was the first province in Canada to implement a law requiring all public buildings that contain asbestos to report it to a provincial registry.<sup>20</sup> Will the government of Canada develop a national registry of buildings containing asbestos? If so, when will the process be initiated? If not, why not?
- e) Recent changes to Health Canada's website removed references to chrysotile being less dangerous than other types of asbestos.<sup>21,22</sup> Is Canada considering a change to the current *Asbestos Products Regulations* to no longer distinguish between different types of asbestos?<sup>23</sup> If not, why not?
- f) Does the federal government pursue active initiatives and programs to educate the public about the dangers of asbestos? If so, please provide details of these initiatives. If not, why not?
- g) Has the government applied the precautionary principle in developing regulatory and non-regulatory measures on asbestos, particularly as it pertains to products? If so, please provide details on its process. If not, why not?

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<sup>19</sup> Tavia Grant, "Pipes with asbestos still used in new buildings" (2014), The Globe and Mail, Online: <<http://www.theglobeandmail.com/report-on-business/pipes-with-asbestos-still-used-in-new-buildings/article19357158/?page=all>>

<sup>20</sup> "Saskatchewan asbestos registry law comes into effect" (2013), OHS: Canada's Occupational Health & Safety Magazine, Online: <

<sup>21</sup> Health Canada. Health risks of asbestos. Online: <[http://healthy Canadaians.gc.ca/healthy-living-vie-saine/environnement-environnement/air/contaminants/asbestos-amiante-eng.php](http://healthy Canadians.gc.ca/healthy-living-vie-saine/environnement-environnement/air/contaminants/asbestos-amiante-eng.php)>

<sup>22</sup> Tavia Grant, "Ottawa reverses on health risks of asbestos in 'landmark shift'" (2015), The Globe and Mail, Online: <<http://www.theglobeandmail.com/news/national/ottawa-reverses-stance-on-health-risks-of-asbestos-in-landmark-shift/article25224035/>>.

<sup>23</sup> *Asbestos Products Regulations*, SOR/2007-260.

## 2. Import:

- a) Does Canada have a notification/screening process for asbestos imported for use or in products containing asbestos? If so, please provide details. If not, why not?
- b) The state of Connecticut has prohibited “the introduction or delivery for introduction into commerce of any toy or other article for sale in this state marketed for the use of children under the age of sixteen containing asbestos.”<sup>24</sup> Children are at a higher risk of developing mesothelioma; exposure to even small amounts of asbestos in crayons and toys (i.e., fingerprint powder in crime scene kits), which can easily become airborne, will further increase that risk.<sup>25</sup> What is the government’s position on prohibiting asbestos from all consumer products, including children’s toys? How would such a prohibition be implemented? For instance, could the current *Asbestos Products Regulation* be amended to achieve a prohibition of all asbestos in products?

## 3. Review of Recent Studies:

- a) A recent comprehensive report by the Scientific Committee on Toxicity, Ecotoxicity, and the Environment, found that “substitutes [of asbestos] are less harmful than commercial chrysotile, which in turn is less harmful than the asbestos amphiboles.”<sup>26</sup> Would the federal government reconsider its position on asbestos substitutes that it took in response to Petition No 226, wherein it stated: “many fibres used to replace “asbestos” may be as hazardous or even more hazardous than chrysotile”?<sup>27</sup>
- b) In June 1, 2006, the ILO resolved that “the Asbestos Convention, 1986 (No. 162), should not be used to provide a justification for, or endorsement of, the continued use of asbestos.”<sup>28</sup> Since then, the government of Canada has responded to all three petitions to

<sup>24</sup> *An Act Amending An Act Concerning Child Product Safety*, 2008, State of Connecticut, Public Act No 08-122, s 1(a)(9)

<sup>25</sup> *Ibid.*

<sup>26</sup> Scientific Committee on Toxicity, Ecotoxicity, and the Environment, Risk to human health from chrysotile asbestos and organic substitutes, (2002) 35th CSTE plenary meeting, Online: < [http://ec.europa.eu/health/archive/ph\\_risk/committees/sct/documents/out169\\_en.pdf](http://ec.europa.eu/health/archive/ph_risk/committees/sct/documents/out169_en.pdf)>

<sup>27</sup> David Berliner, “Canada’s use and export of chrysotile asbestos” (18 December 2007), Petition to the Auditor General’s Office, Online: < [http://oag-bvg.gc.ca/internet/English/pet\\_226\\_e\\_30172.html](http://oag-bvg.gc.ca/internet/English/pet_226_e_30172.html)>

<sup>28</sup> Resolution concerning asbestos [2006] adopted at the 95<sup>th</sup> session of the International Labour Conference. [http://www.ilo.org/safework/info/standards-and-instruments/WCMS\\_108556/lang--en/index.htm](http://www.ilo.org/safework/info/standards-and-instruments/WCMS_108556/lang--en/index.htm)

the Auditor General in relation to asbestos by using the Asbestos Convention, 1986 to justify its previous asbestos exports<sup>29,30,31</sup>. In considering the new resolution, will the government of Canada consider prohibiting the mining, use, import and sale of asbestos nationwide?

Responses from the relevant government departments on the above matters also would be appreciated. If you require additional information, please do not hesitate to contact Fe de Leon at the Canadian Environmental Law Association at 416-960-2284 ext. 223.

Thank you for your consideration.

Yours truly,

**Canadian Environmental Law  
Association**



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<sup>29</sup> *Supra* note 9.

<sup>30</sup> *Supra* note 26.

<sup>31</sup> David R Boyd, "Canada's policies on chrysotile asbestos exports" (30 October 2006), Petition to the Auditor General's Office, Online: <[http://oag-bvg.gc.ca/internet/English/pet\\_179\\_e\\_28915.html](http://oag-bvg.gc.ca/internet/English/pet_179_e_28915.html)>