

October 30, 2020

Administrator Andrew Wheeler
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Steven M. Knott, M.S.
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Re: TSCA Science Advisory Committee on Chemicals: Docket EPA-HQ-OPPT-2020-0135

Dear Administrator Wheeler and Mr. Knott:

The undersigned organizations request that EPA ensure that professionals with a diversity of perspectives are appointed or reappointed to the Toxic Substances Control Act (TSCA) Science Advisory Committee on Chemicals (SACC).

It is expected that the “SACC will have significant influence on EPA’s Risk Evaluations under TSCA, including its ongoing Risk Evaluation for Asbestos.”¹ The U.S. Chamber and others wrote EPA in June 2020 to voice a strong objection to the one-sided inclusion of paid experts for asbestos plaintiffs’ law firms on the SACC and SACC Ad Hoc Peer Reviewers for the March 2020 Draft Risk Evaluation for Asbestos.² We expressed “disappoint[ment] that EPA chose to include a number of highly compensated experts for plaintiffs in asbestos personal injury cases” while “exclud[ing] any testifying experts with differing opinions from both the SACC and Ad Hoc Peer Reviewers.”³

The current list of SACC nominees includes multiple individuals who have consulted with or testified for plaintiffs in litigation.

¹ Clifford V. Pascarella II, *EPA Science Panel Will Impact Asbestos Regulations*, Vol. X, No. 280 Nat’l L. Rev., Oct. 6, 2020, <https://www.natlawreview.com/article/epa-science-panel-will-impact-asbestos-regulations>; see generally Claire C. Weglarz et al., *The EPA’s March to Ban Asbestos: 2020 Draft Risk Evaluation*, Vol. 87, No. 3. Def. Counsel J. (Oct. 20, 2020), <https://www.iadclaw.org/defensecounseljournal/the-epas-march-to-ban-asbestos-2020-draft-risk-evaluation/>.

² See Letter from U.S. Chamber of Commerce, U.S. Chamber Institute for Legal Reform, National Federation of Independent Business Small Business Legal Center, American Property Casualty Insurance Association, Coalition for Litigation Justice, Inc., American Tort Reform Association, Aerospace Industries Association, Product Liability Advisory Council, Inc., Washington Legal Foundation, and International Association of Defense Counsel to Administrator Andrew Wheeler, Diana Wong., PhD., Stanley Barone, PhD, and Todd Peterson, PhD, Commenting on Draft Risk Evaluation for Asbestos: Docket EPA-HQ-OPPT-2020-0135, June 2, 2020, http://www.atra.org/wp-content/uploads/2020/06/200601_CoalitionComments_2020AsbestosRiskAssessment_EPA.pdf.

³ *Id.*

For example, Paul Rosenfeld has served as an expert for plaintiffs in many air, soil, or water pollution cases. *See, e.g., Gregory Bell v. 3M Co.*, 2018 WL 2047022 (D. Colo. Jan. 26, 2018) (court filed expert resume).

Another candidate, Laura Plunkett, was retained as an expert for plaintiffs in federal multidistrict litigation (MDL) concerning talcum powder. *See In re Johnson & Johnson Talcum Power Prods. Marketing, Sales Practices, and Prods. Liab. Litig.*, MDL No. 16-2738 (FLW) (LHG) (D. N.J. Nov. 16, 2018) (Rule 26 Expert Report of Laura M. Plunkett, Ph.D., DABT); *see also Johnson & Johnson Talcum Powder Cases, (Echeverria v. Johnson & Johnson)*, 7 Cal. App. 5th 292 (2d Dist. 2019).

Dr. Plunkett also worked as a plaintiffs' expert in an MDL involving claims of liver damage from use of a popular over-the-counter pain reliever, *see In re Tylenol (Acetaminophen) Marketing, Sales Practices, and Prods. Liab. Litig.*, 2016 WL 4039329 (E.D. Pa. July 28, 2016), *order entered*, 2016 WL 4073084 (E.D. Pa. July 28, 2016), and in litigation over an anti-depressant, *see Kiker v. Smithkline Beecham Corp.*, 2016 WL 8189286 (S.D. Ohio Dec. 15, 2016), among other litigations. *See In re Mirena IUS Levonorgestrel-Related Prods. Liab. Litig. (No. II)*, 2018 WL 7568614 (S.D.N.Y. Mar. 2, 2018) (court filed expert resume).

As the composition of the SACC is determined, we urge EPA to take appropriate steps to ensure that paid plaintiffs' experts' potential conflicts of interest are fully understood, including their involvement in litigation that may be impacted by ongoing or future TSCA risk assessments. Following a June meeting, the SACC recommended EPA evaluate potential sources of asbestos exposure, including drinking water and talc, within the ongoing risk assessment or in a future risk assessment.⁴ These potential exposure sources are the subject of novel litigation, and inclusion of plaintiffs' experts who could benefit financially from expansion of the litigation would, in our opinion, present significant objectivity concerns.

If advocates for plaintiff interests in litigation are included out of the many nominees available to EPA for SACC selection, then experts who testify in litigation on behalf of defendants must also be included in the SACC to achieve a balanced committee of experts.

Our view is consistent with EPA's stated objectives of selecting scientific experts for possible membership on the SACC that will achieve an "overall balance of different scientific perspectives on the Committee" and avoid the "appearance of loss of impartiality, lack of independence." 83 Fed. Reg. No. 178 (Sept. 13, 2018), at 46487, <https://www.govinfo.gov/content/pkg/FR-2018-09-13/pdf/2018-19952.pdf>. EPA affirmed "the appearance of a loss of impartiality" is a key selection criteria when is requested SACC nominations. 85 Fed. Reg. No. 159 (Aug. 17, 2020), at 50022.

⁴ TSCA Science Advisory Comm. on Chems., Meeting Minutes and Final Report, No. 2020-6, at 19 (Peer Review of EPA Draft Risk Evaluation of Asbestos via Phone and Webcast held June 8-11, 2020), <https://beta.regulations.gov/document/EPA-HQ-OPPT-2019-0501-0113>.

Sincerely,

U.S. Chamber of Commerce

U.S. Chamber Institute for Legal Reform

National Federation of Independent Business
Small Business Legal Center

American Property Casualty Insurance Association

National Association of Mutual Insurance Companies

Coalition for Litigation Justice, Inc.

American Tort Reform Association

Product Liability Advisory Council, Inc.

Washington Legal Foundation

International Association of Defense Counsel