NATIONAL FEDERATION OF FEDERAL EMPLOYEES
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Local 2050

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An Open Letter to the Hon. Lee M. Thomas

The undersigned members of your staff are deeply concerned about the Agency's announcement on February 1. 1985 that we have changed course on regulating asbestos under the Toxic Substances Control Act (TSCA).

In 1973, before TSCA was enacted, EPA began its regulatory investigation of asbestos and by 1979 had published an Advanced Notice of Proposed Rulemaking announcing intent to remove asbestos from commerce under TSCA authority, where warranted. By early 1984, following updated analyses of risks associated with four asbestos products, two rules -- one to ban those products and one to gradually phase out asbestos production -- had been drafted. The rules contained an analysis of regulatory options --including use of other agencies' laws -- which showed that only section 6 of TSCA would adequately protect public health. Referral of asbestos risks to the Occupational Safety and Health Administration (OSHA) and the Consumer Product Safety Commission (CPSC) under section 9 of TSCA was expressly ruled out. All levels of EPA management concurred. The rules were sent to the Office of Management and Budget (OMB) for review in August 1984.

Then, under what can only be described as incredible circumstances, EPA announced that, contrary to all previous findings, section 9 of TSCA would be invoked. The implications of this invocation are serious -- if OSHA or CPSC publish even an Advanced Notice of Proposed Rulemaking, which could remain un-acted upon indefinitely, EPA is prohibited from taking further action under TSCA.

These implications stir painful memories and raise the question whether the "Ship called EPA", that Bill Ruckelshaus and Al Alm attempted to right, is once again in danger.

We want you to know that our disappointment in this matter is not with you nor with Agency management, except insofar as EPA resistance to intrusions of the Office of Management and Budget (OMB) into the open, public notice-and-comment rulemaking process has apparently been ineffective. We want you to know that we are your allies in efforts to restore that process to its rightful status. Your response to employees' concerns that the EPA unions brought to your attention last year demonstrates your integrity and your concern for our working conditions.

This recent retreat on regulating asbestos is -- at its core -- a working conditions issue for us. We take our work in public health and environmental protection -- and our oath to faithfully serve the public interest -- very seriously. The retreat on asbestos makes a joke of our work and represents a threat to the public interest.

Our work becomes a hollow gesture of placating public anxiety about risks when it is subverted. Scientific and legal analyses of the risks from asbestos were carefully done, including analyses of the authorities of OSHA and CPSC to control those risks. The public needs to know as we at EPA do, that both OSHA and CPSC have had authority all along to regulate portions of the risks that are the subject of the two TSCA rules recently deferred, and communications among the three agencies led to a determination by all the parties that EPA's draft rules would be complementary to any action the other two might take. Furthermore, OSHA has already made clear that the level of risk control that would be applied short of a ban would still be inadequate to protect public health to an acceptable degree.

Thus, a great deal of first rate professional work by the EPA staff and management team, including an explicit analysis of the implications of section 9 of TSCA, which showed inadequate authority under other Agencies' statutes, has been declared invalid by the retreat. It is an outrage.

It is outrageous, especially, because no explanation worthy of the name has been given. The assertion made on February 1, 1985, that section 9 had <u>just been discovered</u> to apply in this case, is an insult to our intelligence and to the public's.

Failure to give a clear explanation of how this risk control decision was made leaves us demoralized and questioning the value of public service work in risk control, and it calls into question the feasibility of continuing "fish bowl" decisionmaking on risk control.

If all future decisions on risk control are to be made by OMB in private consultations with special interests who are not identified in the public record, what is the meaning of our work? What is the public getting for the money spent at EPA? Are we to be simply a preliminary screening group, whose task is to present options to OMB and its unknown clients, and then to await their decisions and execute them?

We did not come to work for EPA to do that, and neither, we think, did you.

Your faithful staff