



Canadian government's proposed regulations and related amendments to prohibit asbestos and asbestos-containing products

Comments

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CRITICAL FACTORS RELEVANT TO CANADA'S ASBESTOS CRISIS

In order to draw up regulations to protect Canadians effectively from asbestos harm, it is important to identify the key factors that led to the asbestos crisis Canada currently faces.

1) For decades Canadian governments promoted the use of chrysotile asbestos

For decades, Canadian governments promoted the use of chrysotile asbestos and denied the scientific evidence that it is hazardous. Chrysotile asbestos represents 95% of all asbestos used over the past century. For more than two decades chrysotile asbestos has been the only kind of asbestos sold. Canada mined and sold only chrysotile asbestos for more than a century. The Canadian government helped create the industry lobby organisation (the Asbestos Institute, later re-named the Chrysotile Institute), sat on its board of directors and provided it with millions of dollars of funds to promote the use of chrysotile asbestos in Canada and overseas.

- Only in 2011 did Canada stop mining chrysotile asbestos.
- Only in 2012 did the Canadian government stop financing the Chrysotile Institute.

- Only in 2015 did the Canadian government remove misinformation about the hazardousness of chrysotile asbestos from the Health Canada website.
- Only in 2017 did the Canadian government support the listing of chrysotile asbestos as a hazardous substance under the United Nations (UN) Rotterdam Convention.
- Only in 2017 did the Canadian government change its regulation, written under the influence of the asbestos lobby, permitting federal workers to be exposed to dangerously high levels of asbestos.

As a consequence of the persistent denial by the Canadian government of the hazardousness of chrysotile asbestos, Canada is now decades behind other Western countries in protecting its population from asbestos harm. While other countries banned asbestos years ago and have for years had national programs and strategies to inform the public of the hazards of asbestos, to educate the population on how to protect themselves from asbestos harm and to create national funds for the compensation of victims, the Canadian government has taken none of these actions.

Courts in other countries have held governments liable for asbestos harm suffered by citizens, ruling that the government showed negligence by failing in its duty to protect its citizens from what was a known harmful carcinogen, asbestos.

The responsibility of the Canadian government is far greater. It was not just negligent in protecting Canadians from asbestos harm, but actively endangered Canadians by promoting the use of asbestos and hiding the clear scientific evidence of its hazardousness.

2) National health crisis

Because the Canadian government for so many years concealed and ignored the true facts about asbestos, many Canadians are ill informed and erroneously believe that asbestos was banned in Canada long ago and no longer poses a risk. Yet the reality is that asbestos is everywhere around Canadians – in their homes, their schools and their public buildings. It was widely placed in buildings in Canada up until the early 1980s. Now these asbestos-containing buildings are deteriorating, releasing asbestos fibres into the air. They represent a real threat to the health and safety of Canadians.

Because dealing with deteriorated asbestos safely is very costly, there is a danger that building contractors and others, either through ignorance or irresponsibility, may not follow proper safety measures. There is also an incentive, particularly when public institutions, such as schools, are short of funds, to seek to downplay the hazard.

There are no national standards on dealing with deteriorated asbestos or asbestos wastes. Constantly, examples come to light of failure to handle deteriorated asbestos properly, with resultant risk of harm to workers and the public.

Across Canada, asbestos continues to be the single largest cause of occupational deaths. As the government notes, it has been estimated that asbestos was responsible for approximately 1,900 lung cancer cases and 430 mesothelioma cases in Canada in 2011.

While the Canadian government points out that many of the issues in dealing with the asbestos crisis fall under provincial-territorial jurisdiction, it is nevertheless true that, when Canada faces a national health crisis, the federal government regularly assumes a leadership role to mobilize, fund and incentivize provincial-territorial governments to support national standards and a national action strategy to address the crisis.

The federal government's Regulatory Impact Analysis Statement and proposed regulations and amendments on asbestos fail to demonstrate such leadership and promise only tepid, inadequate measures.

***NOW IS THE TIME FOR THE CANADIAN GOVERNMENT TO SHOW LEADERSHIP
REGARDING THE NATIONAL ASBESTOS HEALTH CRISIS***

Recommendation 1: That the Canadian government offer a formal apology to asbestos victims in Canada and overseas for having exposed them to asbestos harm.

Recommendation 2: That the Canadian government set up a national fund to compensate victims of asbestos.

Recommendation 3: That the Canadian government, in consultation and partnership with the provinces and territories, First Nations, professional experts, civil society organisations and asbestos victims, create and fund a National Asbestos Panel mandated to draw up, publicize, implement, monitor and publish annual and special reports on a national strategy to protect Canadians from asbestos harm, including regular and special assessments of progress made, problems encountered and recommendations for greater effectiveness.

Recommendation 4: That the National Asbestos Panel be mandated to create national standards to ensure that deteriorated asbestos in the buildings and infrastructure is dealt with properly and safely and that asbestos and asbestos-containing products are safely disposed of. Only if these standards are met would federal government funds be provided to assist in such initiatives. Particular priority would be given to places where children are present, such as schools and kindergartens.

Recommendation 5: That the Canadian government set up a national registry of asbestos-containing buildings.

Recommendation 6: That the Canadian government set up a national registry of asbestos victims.

ASBESTOS MINING RESIDUES

The proposed regulations exempt asbestos mining residues. They also permit the use of mining residues for construction and landscaping, if permitted by a provincial government.

These exemptions endanger the health of Canadians. They are of real, immediate concern since projects are currently being pursued to re-use the hundreds of millions of tons of asbestos mining wastes at Thetford Mines and Asbestos in Quebec. These wastes contain up to 40% asbestos. These wastes are in close proximity to homes, schools and public buildings. Current Quebec regulations allow workers to be exposed to dangerously high levels of asbestos, ten times higher than permitted by the Canadian government.

All 18 Quebec Public Health Directors representing every region of Quebec have submitted a brief to the Canadian government as part of this consultation process, opposing the exemption of asbestos mining wastes. "If the mining wastes remain excluded from the regulations, as is the case in the current version for consultation, we believe that the objective of protecting the population and workers will be compromised," state the Public Health Directors. They note that the circulation of asbestos fibres for more than a century of asbestos mining in Quebec has created a public health catastrophe, which will endure for decades more.

Quebec's Public Health Directors recommend that the regulations envisage, where possible that the mining companies that created the wastes pay towards the rehabilitation of the sites and that the federal, provincial and territorial governments also contribute financially to their rehabilitation.

They also tell the Canadian government that if the asbestos mining wastes are handled for any reason, it must be with the strict condition that the level of fibres in the ambient air in the region is not increased above background levels and that workers handling the wastes are never exposed to concentrations higher than 0.1 fibres per millileter. This is 100 times stricter than the current Quebec standard.

Recommendation 7: That, as requested by Quebec's Public Health Directors, the Canadian government strictly regulate asbestos mining wastes and forbid their use for construction and landscaping,

FIRST NATIONS

In the past, the Canadian government placed loose asbestos vermiculite insulation in homes on First Nations reserves. This decision was made solely by the federal government. The First Nations families had no say in the matter and were not even informed. Raven Thundersky and her family lived in one of these houses on a reserve in Manitoba. She and four members of her family died from mesothelioma, For years before her death, Raven Thundersky implored the Canadian government to take action to address this tragedy. Her appeals were

rejected. The Canadian government refused to provide help or take any responsibility for the harm it had caused to First Nations families in placing loose asbestos insulation in their homes. This was a travesty of justice and yet one more example of what looks like racist disrespect of First Nations communities.

Recommendation 8: That, in consultation with First Nations organisations and First Nations communities, the Canadian government create and fund a panel to specifically investigate and recommend to the government what action is needed to ensure all loose asbestos insulation (vermiculite) placed in First nations houses and buildings has been safely removed and that proper compensation is provided to those who have been harmed and their families.

Recommendation 9: That the National Asbestos Panel be mandated and funded to carry out a similar initiative with regard to other housing under the jurisdiction of the Canadian government, such as housing on military bases.

IMPORT OF ASBESTOS AND ASBESTOS-CONTAINING PRODUCTS

The Canadian government is to be commended for its intention to ban the import of asbestos and asbestos-containing products. Experience in other countries that have banned the import of asbestos and asbestos-containing products demonstrates that it is essential to monitor imports to ensure that the ban is effective.

Recommendation 10: That the Canadian government examine the experience of relevant other countries so as to create and implement an effective testing and monitoring system to ensure that this ban is effectively implemented and to apply significant penalties to any foreign or Canadian companies that violate this ban.

STOCKPILES OF ASBESTOS AND ASBESTOS-CONTAINING PRODUCTS

The proposed regulations prohibit the use of any stockpiled asbestos or asbestos-containing materials and require that any such stockpiles be disposed of. No standards are, however, provided to ensure these hazardous materials are safely disposed of. Unsafe disposal of asbestos-containing materials is already a serious problem across Canada and will become more so, if the Canadian government fails to address it.

Recommendation 11: That the Canadian government set national standards for the safe disposal of asbestos and asbestos-containing materials.

PROPOSED EXCLUSIONS FOR MUSEUM DISPLAYS, LABORATORY RESEARCH AND A CHLOR-ALKALI FACILITY

The proposed regulations require that those seeking an exclusion for museum displays, laboratory research, and a chlor-alkali facility in Quebec provide documentation and records. It is critical that transparency be required for any exemptions.

Recommendation 12: That the Canadian government require that all documentation and reports relating to such exemptions be publicly available and that all records be kept for a period of at least 25 years to enable long-term research and monitoring.

EXEMPTION FOR ASBESTOS THAT IS INCIDENTALY PRESENT

The proposed regulations exclude “a product or mixture in which asbestos is incidentally present.” No definition of “incidentally present” is provided.

There is clear documentation of people having been harmed by products such as talcum powder, in which asbestos was “incidentally present”.

Recommendation 13: That the government provide a clear definition of “incidentally present” that will protect Canadians from harm.

EXEMPTION FOR PEST CONTROL PRODUCTS

There are currently no pesticides containing asbestos registered in Canada. However, the proposed regulations exempt future pest control products, saying that Health Canada registers pesticides “after a stringent, science-based evaluation.”

With respect, scientists and scientific organisations have criticized Health Canada's pesticide registration process for lack of transparency and excessive reliance on industry documents that are non-public and tainted by conflict of interest. In fact, Health Canada is currently being challenged in court by Friends of the Earth and other environmental organisations, regarding the failure of Health Canada's Pest Management Regulatory Agency to take stringent, science-based decisions.

The exemption permitting the use asbestos in pesticides is unjustifiable.

Recommendation 14: That there be no exemption for pest control products.

WHISTLE-BLOWER PROTECTION

Whistle-blowers who have reported failures on the part of the federal government to protect Canadians from asbestos harm have encountered hostility and retaliation. Don Garrett, a building contractor who was working at a federal institution in British Columbia, and Denis Lapointe, an electrician who was working at a federal building in Ottawa, both exposed failures by federal government authorities to follow required safety standards regarding asbestos. Both were retaliated against. Both experienced a failure of federal legislation to provide them with whistle-blower protection. The Canadian government's proposed revised whistle-blower protection law continues to fail to provide effective protection.

Recommendation 15: That a specific system be put in place to investigate complaints of failure to follow safe asbestos standards at federal institutions and to provide whistle-blower protection.

EXPORT OF ASBESTOS AND ASBESTOS-CONTAINING PRODUCTS

The government states that its proposed amendments to the Export of Substances on the Export Control List Regulations (ESECLR) would restrict the export of all forms of asbestos. The government also states that with the proposed amendments, Canada would be going beyond its commitment under the Rotterdam Convention by controlling the import and export of all forms of asbestos (including chrysotile) and products containing asbestos.

With respect, this statement is misleading; this self-praise is unwarranted.

The government is referring to the fact that chrysotile asbestos (the only kind of asbestos traded in the world today) is not on the Rotterdam Convention's list of hazardous substances. The reason for its absence is that, when the recommendation to put chrysotile asbestos on the list was made in 2006, and at subsequent UN meetings, the Canadian government refused to support the listing of chrysotile asbestos as a hazardous substance. Only in 2017 did Canada, for the first time, support the listing of chrysotile asbestos. The International Chrysotile Association, based in Quebec, continues to this day to successfully lobby to prevent the listing of chrysotile asbestos under the Rotterdam Convention. This means that countries are not obligated to obtain prior informed consent when exporting chrysotile asbestos.

Under the proposed amendments, the Canadian government will treat chrysotile asbestos as if it were on the Rotterdam Convention's list and would obtain prior informed consent from any importing country. Canada should, however, go beyond this and ban the export of any asbestos or any asbestos-containing product.

Recommendation 16: That the Canadian government clearly prohibit the export of any asbestos or any asbestos-containing product.

Transparency

Transparency is critical to democracy and to the public interest. Submissions made to the Canadian government by organisations and businesses should not be treated as secret or confidential, since these submissions are not on private, personal matters but are seeking to influence government policy. Other jurisdictions make submissions public by posting them on the government's website. Environment and Climate Change Canada has refused a request that it do so.

Recommendation 17: That the Canadian government post on its website submissions regarding its proposed asbestos regulations and amendments so that the submissions are publicly available.