

**NRDC comments on
the “Short List” Candidates for the Asbestos Panel of the
EPA Science Advisory Board (SAB)**

Att: Ms. Vivian Turner, Designated Federal Officer
Submitted by email: turner.vivian@epa.gov

Invitation to comment: www.epa.gov/sab/panels/asbestos_expert_panel.htm

Biosketches of panel shortlist:
www.epa.gov/sab/pdf/asbestos_panel_shortlist_biosketches.pdf

SUMMARY

The following comments are being submitted on behalf of the Natural Resources Defense Council (NRDC). NRDC uses law, science, and the support of more than 1.2 million members and online activists nationwide to protect the planet's wildlife and wild places and to ensure a safe and healthy environment for all living things. NRDC has no direct or indirect financial or fiduciary interest in the manufacture or sale of asbestos or any other chemical.

The EPA Science Advisory Board (SAB) Staff Office announced in 71 FR 48926, August 22, 2006, that it was forming the Asbestos Panel. The Agency recently updated its asbestos health effects assessment, which incorporates recent data regarding how mineral type and particle dimension of asbestos fibers influence the risks for lung cancer and mesothelioma. The Asbestos Panel will provide technical advice on the proposed methodology to estimate potential cancer risk from inhalation exposure to asbestos. The recommendations of this SAB are likely to impact federal clean-up standards, and may have further impacts on occupational and public health protections in the U.S. and internationally. NRDC respectfully reminds SAB staff of its professional and legal duty to select board members who adequately represent the protection of public health and the environment, consistent with the mission of EPA. The Agency cannot accomplish this vital mission if its regulatory priorities and health concerns are dictated by people who have a financial stake in encouraging EPA to do as little as possible to regulate their products.

On the whole, industry-employed scientists and scientists working for industry-supported research institutions tend to downplay the effects of toxic chemicals, and committees must be composed in a manner that ensures that this perspective does not unduly influence panel decisions. Here, many, if not most, of the industry nominees developed their asbestos publication record in the last five years, becoming “instant experts” in the service of their corporate clients. These nominees are unfit to provide EPA with robust independent scientific advice.

NRDC COMMENTS ON DISCLOSURE AND CONFLICTS

The scientific credibility of the EPA is damaged by committees with real or perceived bias

The mission of the SAB is to provide credible and independent scientific analysis and advice to government. The Board cannot accomplish this vital mission if its objectives and deliberations reflect strong bias. Committees whose members have conflicts of interest or a strong bias toward the perspective of regulated industries undermine the credibility of the EPA. SAB should make strong efforts to protect its objectivity, integrity, independence, and competence as its most valuable asset. The scientific credibility of the SAB and the EPA is damaged by committees with real or perceived bias.

By law, EPA committees must be composed in order to ensure that industry bias is publicly disclosed, minimized, and eliminated if possible.

The Federal Advisory Committee Act (FACA) imposes requirements on agencies when they establish or utilize any advisory committee, defined as a group of individuals, including at least one non-federal employee, which provides collective advice or recommendations to the agency. 5 U.S.C. App. II, § 3(2). When an agency seeks to obtain such advice or recommendations, it must ensure the advisory committee is "in the public interest," *id.* App. II, § 9(2), is "fairly balanced in terms of points of view represented and the function to be performed," *id.* § 5(b)(2), and does not contain members with inappropriate special interests. *Id.* § 5(b)(3).

Committee membership should exclude financially conflicted members as much as possible, so that committees are largely composed of scientists who are able to provide a fair and complete review of all relevant data or issues.

If industry representatives have specific knowledge or expertise of value to the deliberations of a committee, then invitations to address the committee during public meetings are appropriate. However, individuals with financial conflicts should not be serving as members of the SAB.

NRDC STRONGLY DISAGREES WITH THE FOLLOWING INDUSTRY NOMINEES

Elizabeth Anderson, and Jay Turim

E. Anderson, and J. Turim are all employees of the corporate consulting firm, Exponent, Inc. The website for Exponent describes itself as, "a leading engineering & scientific consulting firm dedicated to helping our clients solve their technical problems".¹ The problems include, according to the website, regulatory issues that "may have a critical impact on a client's future business, and may turn on how a product can be sold or serviced."² A business whose model includes selling its ability to influence regulatory

¹ <http://www.exponent.com/> Accessed May 30, 2007

² <http://www.exponent.com/about/> Accessed May 30, 2007

agency activities could not be expected to provide independent expert advice to the agency. A consulting firm like Exponent is paid to influence policy, and putting their experts on the SAB would be like putting defense experts on a jury, when their opinion has already been purchased.

Exponent scientists (including former Exponent scientist Dennis Paustenbach, who is now at ChemRisk, and is discussed further in these comments) published articles challenging the widely accepted view that brake mechanics' asbestos exposures cause asbestos diseases. These publications were funded by lawyers representing General Motors, Ford, and DaimlerChrysler; between 2001 and April 2006, bills for at least \$23 million (paid to Exponent and other companies) were sent to these three companies for technical support in asbestos litigation. The bills included numerous line items for writing articles published in scientific journals, presenting this work at scientific conferences, and writing critiques of independent authors expressing opposing points of view in the literature. The Exponent bills to the auto makers in 2003 also included bills for preparing materials to challenge the 1986 EPA "Gold Book" guidance document that warned brake mechanics of the hazards of asbestos. Corporate lawyers, who did not disclose their clients' identities, filed a petition under the Data Quality Act in 2003 urging that EPA withdraw the guidance document. This was followed by OMB involvement, several years of delays, a GAO investigation, media exposes, and finally EPA's publication of an updated version on April 2, 2007 (*Current Best Practices for Preventing Asbestos Exposure among Brake and Clutch Repair Workers*).

This example of science-for-sale renders the selection of Exponent employees to the EPA expert panel unwarranted and unacceptable. The inclusion of any employee of Exponent will place the reputation of this SAB and the credibility of its work product at great risk.

Richard Lee

In the biography provided to the public by EPA, Lee discloses that he serves as an expert witness in litigation, "primarily on behalf of [industry] defendants in asbestos...litigation, including WR Grace." He failed to disclose, however, that he is currently supported by the National Stone, Sand & Gravel Association (NSSGA), where he spoke only last week at a meeting hosted by NIOSH (*Asbestos and Other Mineral Fibers: A Roadmap for Scientific Research*, Washington, DC, May 4, 2007).

Lee's work for this client has been strongly criticized by EPA Region 9 as unreliable, unscientific, and not protective of public health. A November, 2005 report, Evaluation of EPA's Analytical Data from the El Dorado Hills Asbestos Evaluation Project, prepared by the RJ Lee Group, Inc on behalf of NSSGA was strongly criticized by EPA Region 9. The regional office noted that the report "draws conclusions that are contradicted by the El Dorado Hills data and by generally accepted scientific principles for measuring asbestos exposure."³ Among numerous criticisms of the industry report, Region 9 stated that,

³ 4/20/06 Response to the November 2005 National Stone, Sand & Gravel Association Report Prepared by the R.J. Lee Group, Inc <http://www.epa.gov/region09/toxic/noa/eldorado/index.html>

- “EPA Region 9 has carefully reviewed the R. J. Lee Report and believes that it makes largely unsupported and incorrect conclusions about the EPA Region 9 El Dorado Hills Naturally Occurring Asbestos Exposure Assessment.”
- “The R. J. Lee Report Criticizes EPA Region 9 for Using Established Scientific and Public Health Protocols.”
- “The R. J. Lee Report Applies a Geologic Definition rather than a Public Health Definition to Characterize Microscopic Structures.”
- “The R. J. Lee Report’s “Virtual” Review of EPA Region 9’s Air Samples is Inconsistent with Established Laboratory Practices.”
- “Many of the assertions of the R. J. Lee Report are consistent with positions that the R.J. Lee Group took as an expert witness for W.R. Grace in the Libby, Montana litigation. In this litigation, the written opinions of the District and Appeals courts, while not specifically addressing the opinions of the R.J. Lee Group, rule in favor of EPA and expressly hold that EPA’s experts and science are credible.”
- “The R.J. Lee Report’s conclusion regarding extinction angles [of a fiber] is contradicted by the National Institute of Standards and Technology (NIST) and the major analytical methods used for analysis of asbestos in soil and bulk samples.”

The extent to which RJ Lee and his consulting firm are willing to discredit themselves, manipulate data, and subvert agency actions to serve their corporate masters could be considered scientific misconduct and unethical. Under no circumstances should EPA solicit advice from anyone associated with this consulting firm.

Wayne Berman, Graham Gibbs, Ernest McConnell

NIOSH hosted a public meeting on May 4, 2007, in Washington, DC to discuss and obtain comments on the draft document, *Asbestos and Other Mineral Fibers: A Roadmap for Scientific Research*.⁴ At that meeting, it is our understanding that a coordinated set of presentations were made by RJ Lee (see above), Berman, Gibbs, and McConnell on behalf of the NSSGA. The NSSGA describes itself as the world’s largest mining association by product volume. Its member companies employ 117,000 people who produce 92 percent of the crushed stone and 75 percent of the sand and gravel (construction aggregates) used annually in the United States. Sales of natural aggregates generate nearly \$38 billion annually for the U.S. economy. During 2005, a total of about 3.2 billion tons of crushed stone, sand and gravel, valued at \$17.4 billion, were produced and sold in the U.S. According to the NSSGA, aggregates are used in nearly all residential, commercial and industrial building construction and in most public works projects, such as roads, highways, bridges, railroad beds, dams, airports, water and sewage treatment plants, and tunnels. They also go into the manufacture of asphalt, concrete, glass, paper, paint, pharmaceuticals, cosmetics, chewing gum, household cleansers and many consumer goods.

⁴ <http://www.cdc.gov/niosh/topics/asbestos/mt050407.html>

It is clear that the NSSGA industry trade association has significant financial interest in whether or not naturally-occurring asbestos contamination of its products is subjected to EPA regulation. Given that Berman, Gibbs, and McConnell appear to have a current and ongoing financial relationship with the NSSGA, and that they represent the position of NSSGA, they should not be considered independent expert reviewers, and therefore should not be invited to serve on this SAB.

Bruce Case

An April 16, 2004 memo from EPA employee Cate Jenkins, Ph.D. sent to the EPA Inspector General documents evidence of “substantial misrepresentations” to EPA by Case, who was serving as a consultant for an EPA peer panel on asbestos risks relating to the World Trade Center disaster.⁵ In her memo, Jenkins charges that “Case chose to utilize only those studies which supported the financial interests of the asbestos industry”. In addition to scientific biases favoring industry positions, Jenkins charges that Case failed to disclose on the EPA Conflict of Interest questionnaire that he has been a paid expert witness for numerous corporate defendants in asbestos cases, including US Gypsum, Garlock, Mobil Corporation, and Georgia-Pacific.

Solicitation of advice from Bruce Case has not, and will not, serve the interests of the EPA or the public.

Graham Gibbs

Gibbs has been the perennial representative of the asbestos industry for many years. Appearing as an “observer”, he was asked to leave the final sessions of the IPCS expert panel meetings on chrysotile asbestos in 1996. He also edited a report sent to the ILO for publication as an official ILO report, causing a scandal with independent reviewers refusing to be associated with it and ILO’s rejection of the report.⁶

Dennis Paustenbach

Dennis Paustenbach is the President and founder of ChemRisk, Inc, a consulting firm, and former employee at Exponent (see above). Paustenbach is a self-described defense expert for corporations. However, he does not also have a lengthy history with asbestos health risks, having just published his first asbestos-related article less than five years ago, in 2003⁷, followed rapidly by six more. The “instant expert” status of Paustenbach and should eliminate him from the top-tier of qualified candidates for this SAB, in favor of the more qualified and established public health candidates.

The website for ChemRisk describes itself as, “a leading engineering & scientific consulting firm dedicated to helping our clients solve their technical problems”.⁸ The

⁵ Memo. Bruce Case, MD, EPA consultant for asbestos: COI misrepresentations and slander against other scientists. April 16, 2004. www.mesothel.com/pdf/BruceCase-conflicts%20of%20interest-041604.pdf

⁶ B. Castleman, “Controversies at International Scientific Organizations over Asbestos Industry Influence,” *Internat. J. Health Serv.* 31: 193-202, 2001

⁷ *Appl Occup Environ Hyg.* 2003 Oct;18(10):786-804.

⁸ <http://www.exponent.com/> Accessed May 30, 2007

website advertises a current project to examine the “degree of exposure to airborne asbestos associated with working with products that have previously contained chrysotile asbestos”⁹ The study concludes that, “work with chrysotile-containing mastics, coatings and adhesives did not pose an occupational health hazard under foreseeable uses.”

NRDC SUPPORTS THE FOLLOWING PUBLIC HEALTH NOMINEES

Drs. Arthur Frank¹⁰ and Henry Anderson¹¹ published their first asbestos-related articles over thirty years ago in 1976, and have published numerous articles since, advancing the scientific body of knowledge of the hazards of asbestos. Drs. Richard Lemen, John Dement, and Leslie Stayner are among the most knowledgeable and published epidemiologists on asbestos in the world, and they have served on international panels of the International Agency for Research on Cancer (Lemen, 1976) and the International Program on Chemical Safety (Dement and Stayner, 1996). Dr. Yasunosuke Suzuki similarly has publications over many years, as one of the top experts on asbestos pathology who worked many years with the legendary Dr. Irving Selikoff. Dr. Christopher Portier is a career scientist with the National Institutes of Environmental Health Sciences, and is recognized as one of the foremost experts in risk assessment, particularly of environmental contaminants.

While the biographies provided by EPA of the above nominees speak to their considerable credentials as experts who are highly qualified to serve on this SAB,. The above public health experts have lengthy publication histories pertaining to asbestos spanning at least several decades. Some of them have served as plaintiffs experts in litigation because of their pre-established and continuing scientific expertise. However, all of them are either current or retired academics or federal employees. None are employed at companies or consulting firms.

In contrast, many of the industry litigation experts on the SAB short-list are affiliated with consulting companies whose business model includes selling its ability to influence regulatory agency activities. Such nominees could not be expected to provide independent expert advice to the agency, when their opinion has already been purchased.

Respectfully,

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⁹ <http://www.chemrisk.com/highlights.htm> Accessed May 30, 2007

¹⁰ Nature. 1976 Dec 2;264(5585):444-6.

¹¹ Ann N Y Acad Sci. 1976;271:311-23.