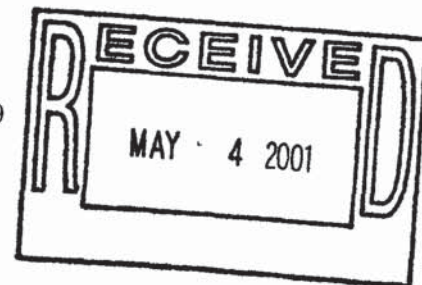




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May 3, 2001

Christopher J. Portier, Ph.D,
Acting Director, NIEHS Environmental
Toxicology Program
P. O. Box 12233
Bldg. 101, Room A330
Research Triangle Park, NC 27709

Dear Dr. Portier:

**Subject: Need to correct the NTP's characterization of the
RoC Subcommittee vote on listing of talc not
containing asbestiform fibers from 7-3 against
listing to 8-2 against listing; reply to your April 17
response**

Jim Tozzi has asked me to reply to your April 17 response to his March 1 letter to you on this subject, since I represented CRE at the December 14, 2000 RoC Subcommittee meeting. It is unfortunate that such a reply is necessary, but we are firmly committed to the quality, objectivity, utility, and integrity of information disseminated to the public by Federal agencies, and we consider instances such as this to be important to consideration of broader data quality issues which Congress has directed OMB and all Federal agencies to address.

This letter should also be considered as comments in response to the request for final public comments on the proposed listings for the Report on Carcinogens, Tenth Edition, in the March 5, 2001 *Federal Register* notice, 66 Fed. Reg. 1334-38.

In his March 1 letter, Mr. Tozzi did not, as your letter indicates, disagree that the vote on the specific motion not to list was 7 for and 3 against; rather, the point of his letter, clearly stated, was that since one of the three votes against the motion was a vote to defer (by Dr. Smith), and since a vote to defer is a vote against listing in the 10th RoC, it would be misleading to characterize the vote as 7-3 against listing rather than 8-2 against listing. A copy of the two relevant transcript pages (353-54), to which you also referred, is attached.

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Your April 17 letter stated that it was the NTP/HHS position that the vote was 7-3 on the motion. Of course this is correct; however, in focusing on the vote count on the motion rather than the vote count on whether to list the letter was not responsive to the point in Mr. Tozzi's letter.

Shortly after Mr. Tozzi's March 1 letter, on March 5, the agency proceeded to publish a *Federal Register* notice summarizing for the public the voting on talc and the other nominations for listing in the 10th RoC. It is also likely that those voting summaries will be presented to the NTP Executive Committee, the Director, and the Secretary. The *Federal Register* summary reflects the position in your April 17 letter and misrepresents the vote.

As indicated by the title of the voting summary, its purpose is to inform as to the "Recommendations . . . for Listing in . . . the Report on Carcinogens, Tenth Edition". In the case of talc not containing asbestiform fibers, the RoC Subcommittee vote on listing must be distinguished from the vote on the motion. The voting summary in the *Federal Register* notice indicates by its title that the vote on the listing nomination was 7-3 rather than 8-2, which is incorrect. Dr. Smith's vote to defer was a vote against listing in the 10th RoC.

The misleading nature of the vote count in the *Federal Register* notice is reinforced by the description in the notice of the three votes against the motion not to list, which is clearly factually inaccurate. The *Federal Register* summary indicates that all three negative votes were cast "either because the member felt that data meets criteria to list talc not containing asbestiform fibers as *reasonably anticipated to be a human carcinogen* or that the ovarian cancer studies should have been considered in the evaluation." This statement is untrue with regard to Dr. Smith's negative vote in favor of deferral. As shown by the transcript, Dr. Smith clearly took the position that the data were not adequate for listing, and that the ovarian cancer studies had "not been sufficiently addressed" (and therefore should not be considered) to support listing. (At 354.¹)

Your April 17 letter is also inaccurate in stating that the three Subcommittee members who voted against the motion "each provided a reason". Dr. Kelsey did not provide a reason. He stated only, "I would have supported listing as reasonable." (At 354, lns. 8-9.) Such a statement cannot be regarded as having "provided a reason".²

In view of the inaccuracy and misleading nature of the *Federal Register* summary of the RoC Subcommittee vote on talc not containing asbestiform fibers, and the tenor of your April 17 letter, we see two options: (1) Publish a *Federal Register* notice clarifying and correcting this particular voting summary; or (2) submit the dispute reflected in this exchange of correspondence to an impartial third party.

¹ Dr. Smith had expressed the same opinion and his desire to vote for deferral several times previously during the discussion.

² This point also was made in Mr. Tozzi's March 1 letter. It noted: "Dr. Kelsey did not state any rationale."

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With regard to the second option, under OMB's current guidance on data quality and information dissemination which is contained in Circular A-130, the HHS Chief Information Officer has the responsibility, acting as an "ombudsman", to "consider alleged instances of agency failure to comply with this Circular, and then recommend or take appropriate corrective action." Sec. 9, a, 4.³ That Circular was issued in partial furtherance of OMB's rulemaking responsibilities under the information dissemination provisions of the Paperwork Reduction Act of 1995. Under "Basic Considerations and Assumptions", the Circular states that "[i]t is . . . essential that the government . . . maximize the usefulness of government information." Sec. 7, c. Certainly, the agency has not maximized the usefulness of the voting information disseminated to the public in the *Federal Register* notice. By copy of this letter, we are invoking the ombudsman responsibilities of the HHS CIO to "recommend or take appropriate corrective action" in the case of instances of alleged agency failure to comply with the Circular, if the NTP does not implement option (1) above.

We look forward to having the *Federal Register* notice on this matter corrected expeditiously, and certainly before the RoC Subcommittee recommendations are transmitted to the NTP Executive Committee.

Sincerely,



William G. Kelly /
CRE Western States Representative

Attachment

cc w. att.: Director, NTP
 HHS CIO
 NTP Executive Committee
 OMB/OIRA
 Dr. C. W. Jameson (via fax and FedX)
 Dr. Clay Frederick, RoC Subcomm. Chair

³ The agency CIO also has responsibility to report annually to OMB on "instances of alleged failure to comply with this Circular and their resolution." *Id.*

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1 that to not list this agent in the Report on
2 Carcinogens.
3 DR. FREDERICK: Do I hear a
4 second for that motion?
5 DR. PELLING: I'll second.
6 DR. FREDERICK: Dr. Pelling has
7 seconded it. Would that be okay? Dr. Bonney
8 has seconded. We've got a list of seconds.
9 Okay, Dr., let's list for the record, Dr.
10 Pelling has seconded. Discussion of the
11 motion?
12 DR. SMITH: Well, I suppose I,
13 then again, say that I think that further
14 consideration needs to be given to the studies
15 of ovarian cancer, the extent of contamination
16 that may have been present, and if after
17 further examination of the ovarian cancer
18 studies, it still appears to be an increased
19 risk, then decide whether or not it could be
20 plausibly linked to asbestos or not, and I
21 think that all needs to be done before I could
22 not want to defer.
23 DR. FREDERICK: Other
24 discussion? Yeah, Dr. Froines.
25 DR. FROINES: I just want to

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1 motion, but you might take a different
2 mechanism, because in, in putting forward that
3 motion, I could have forward with my own
4 judgment that the ovarian cancers didn't have a
5 positive correlation with talc, whether or not
6 it had asbestiform fibers or asbestos. That
7 was just my own professional judgment.
8 DR. FREDERICK: Okay, yes, Dr.
9 Pelling.
10 DR. PELLING: Yes, that's why I
11 would support this, this non-listing, because
12 when I look again at the case control and
13 cohort studies, particularly the one by Gertig
14 et al was 76,000 nurses, 40 percent reporting
15 ever use and 15 percent reporting daily use,
16 so that's over 7,000 women reporting daily use,
17 and there was no increased risk, and some of
18 the other studies, although there might have
19 been an increased risk, there were, one could
20 not discount confounding, and there were often
21 very small numbers of individuals in the study.
22 So the Nurses study, to me, is, comes out
23 quite strong.
24 DR. FREDERICK: Dr. Carpenter.
25 DR. CARPENTER: Maybe it should

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1 say, I think that, I think which is one thing
2 that's obvious to everyone, and that is that
3 the animal data that we've had to work with is
4 extremely thin, and I'm not necessarily calling
5 for another chronic animal bioassay, but I
6 think that there is some intellectual
7 questions, namely the species specificity of
8 the overload issue, and other related questions
9 about, that fall much more into a category of
10 mechanistic significance deserve attention as we
11 move forward on this.
12 DR. FREDERICK: Other
13 discussion. Yes, yes.
14 DR. BUCHER: Let me see if I
15 understand the motion. What we're saying is
16 that the ovarian studies of ovarian cancers
17 with talc, that we are not giving credibility
18 that that talc was pure talc without
19 asbestiform? Is that what we're saying? I
20 mean, is the alternative, is the alternative if
21 that talc was pure talc, then you will have a
22 different motion.
23 DR. FREDERICK: Dr. Medinsky.
24 DR. MEDINSKY: Well, actually I
25 think you might have, arrive at the same

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1 be clarified that in that, in that cohort
2 study there was a positive relationship to the
3 serious form of ovarian cancer.
4 DR. FREDERICK: Yes, Dr. Smith.
5 DR. SMITH: Can I add the
6 relationship was of the magnitude that one
7 might have expected given the other studies and
8 actually had a lower confidence level, as I
9 recall it, that was at one.
10 DR. FREDERICK: Other
11 discussion? Well, let's take a vote on this.
12 All those in favor of the motion, please raise
13 your hand. I'm sorry, read, read the motion
14 again, please. Dr. Wolfe.
15 DR. WOLFE: Yeah, excuse me.
16 To not list talc not containing asbestiform
17 fibers in the Report on Carcinogens.
18 DR. FREDERICK: Okay, all those
19 in favor of the motion, please raise your
20 hand.
21 SPEAKER: Do you have seven?
22 DR. WOLFE: No, I haven't
23 finished yet. I'm still counting. Yes, I got
24 seven.
25 DR. FREDERICK: All those

88 (Pages 350 to 353)

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1 opposed.

2 SPEAKER: Three.

3 DR. FREDERICK: Sure, and we'll
4 work the reason. And for those opposed, would
5 you please state your reason for the record,
6 so we'll know where we're going. We can start
7 with you, Dr. Smith.

8 DR. SMITH: In my opinion, we
9 have not adequately examined the ovarian cancer
10 epidemiology studies. In looking for small
11 risks, you always find, or would expect and
12 should expect to find some studies not find
13 it, some find it. There are various questions
14 about it, including dose response, but it has
15 not been sufficiently addressed in my opinion
16 in the discussion or in the documentation, and
17 for that reason, I would have liked to have
18 seen it deferred.

19 DR. FREDERICK: Okay, Dr.
20 Moure.

21 DR. MOURE-ERASO: I believe
22 that the evidence for ovarian cancer, for me,
23 is adequate to classify it as reasonable
24 carcinogenic. I believe that even if we were
25 to, if it would be possible to find what is

1 communicate that for you.

2 DR. FREDERICK: Wait just a
3 second. If you could take your conversations
4 out of the room, please, for the audience. If
5 you could take your conversations out of the
6 room so we could finish our proceeding.
7 Please be quiet. Thank you. Dr. Portier.

8 DR. PORTIER: Yes, we will
9 communicate that for you. I also want to
10 thank the Board for a very stimulating
11 discussion this afternoon. As I pointed out
12 early on in the day and yesterday morning as
13 well, it's not just your vote that counts.
14 It's the discussion of the scientific issues
15 that you bring to the, bring to bear on this
16 for us, and I think we've gained a tremendous
17 amount of insight on this issue from your
18 discussions, and I thank you considerably.

19 DR. FREDERICK: Yes, and I'd
20 like to thank the public participants who took
21 the time to write and to speak and to come
22 here, because I thought that your input was
23 very valuable in enriching our discussion. It
24 was excellent. Thank you very much.

25 DR. WOLFE: You can leave your

1 the exact composition of the talc in this
2 study, that it is small contaminations that I
3 believe will be less than one percent on
4 asbestos cannot really have cause for ovarian
5 cancer. I don't think there is anything in
6 the record that will demonstrate that.

7 DR. FREDERICK: Dr. Kelsey.

8 DR. KELSEY: I would have
9 supported listing it as reasonable.

10 DR. FREDERICK: Okay. That
11 finishes our discussion on talc. I would have
12 liked to have done steroidal estrogens, but I'm
13 not sure I've got the energy, guys.

14 DR. FROINES: Is it at all
15 possible, I have one concern that falls out
16 of, falls from what I said, but falls, but
17 perhaps falls out. I think it would be useful
18 if the NTP leadership could communicate to the
19 representatives on their Board from OSHA and
20 MSHA that we think that a five milligram
21 standard is not an appropriate standard for
22 talc.

23 DR. FREDERICK: Good feedback
24 and good comments. Go ahead, Dr. Portier.

25 DR. PORTIER: Yes, we will

1 materials on the table if you'd like to.

2 DR. FREDERICK: I'm sorry, 8:30
3 tomorrow morning, guys, we'll start off with
4 steroidal estrogens.
5 (WHEREUPON, the Meeting was adjourned at 5:05
6 p.m., to be reconvened on December 15, 2000 at
7 8:30 a.m.)

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