

United Mine Workers of America

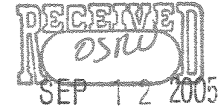


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September 8, 2005

Mine Safety and Health Administration
Office of Standards, Regulations and Variances
1100 Wilson Boulevard, Room 2350
Arlington, VA 22209-3939

Director,

The attached comments represent the views and concerns of the United Mine Workers of America regarding the Agency's Asbestos Exposure Limit, Proposed Rule. The Union will be happy to answer any questions that these comments raise with appropriate representatives of MSHA or to expand on any comment that requires additional clarification.

The Union will also have representatives attending at least one of the public hearings. Thank you in advance for immediate attention to this matter.

Sincerely,

Dennis B. O'Dell

Dennis B. O'Dell, Administrator
Department of Occupational Health and Safety

AB24-COMM-101

United Mine Workers of America
comments for the
Mine Safety and Health Administration
regarding the
Asbestos Exposure Limit; Proposed Rule

The United Mine Workers of America (UMWA or Union) is pleased to offer the following comments regarding the Mines Safety and Health Administration's, (MSHA or Agency) Asbestos Exposure Limit; Proposed Rule.

The Union is pleased that MSHA has finally issued a proposed rule relating to asbestos exposure in the mining industry. The reality of the circumstances here is that the Agency is attempting to satisfy the three outstanding recommendations made by the U.S. Department of Labor's, Office of the Inspector General (OIG). These recommendations were the result of an investigation into the conditions that existed and the human suffering that resulted from asbestos exposure to workers and the community in Libby, Montana. Those recommendations include:

- Lowering the existing permissible exposure limit (PEL) for asbestos to a more protective level;
- Use transmission electron microscopy (TEM) instead of phase contrast microscopy (PCM) in the initial analysis of fiber samples that may contain asbestos; and,
- Implement special safety requirements to address take-home contamination.

These recommendations came as the result of an investigation by the OIG, however, the problems created at the W.R. Grace and Company facility were studied by numerous federal, state and independent agencies. The alarming and tragic conditions that were allowed to exist affected employees, their families, members of the surrounding communities, suppliers and end users of a product known to contain hazardous fibers. This type of willful neglect on the part of any company does not occur in a vacuum, there must be varying levels of knowledge to the hazards existence and at least some complacency on the part of regulatory, healthcare and other organizations which permits continued exposure to the affected citizens.

Therefore the Union is not so willing to accept the OIG's determination that "We do not believe that more inspections or sampling would have prevented the current situation at Libby." Mere inspections and sampling do not prevent exposure in any event. If MSHA had had an adequate exposure limit and enforced that limit, it might have prevented the current situation at Libby. Thus, this rule is welcome. Absolution can only be given if the efforts by any entity so intricately involved in worker health and safety had done all within its power to correct problems and protect the worker. Given the widespread asbestos contamination at the mine and in the surrounding community, coupled with the high rate of asbestos related illnesses, no one can say enough effort was applied by anyone, to correct the problem. Unfortunately, this lack of resolve left an insidious legacy. Inaction or secrecy, and perhaps both in some cases, allowed people to become the next generation of victims even as experts knew the disease was killing the preceding ones. Absolution may come from some quarters, but not from the Union.

Considering the magnitude of the problem and the fact that the Agency action is conditioned, at least in part, on the conditions forced on workers by W.R. Grace and Company and their predecessors the Union is compelled to expand on this opening. The Union justifiably argues that hiding behind an assessment of the OIG that, given the circumstances, the Agency could do no more is disingenuous. Enforcement of a "protective" standard should not simply mean applying the regulation as it is written in a book and deciding that is enough, as was the case with asbestos. The available information and scientific studies validated the serious risks asbestos posed to workers. Based on this data, MSHA and others cannot reasonably expect anyone to believe they were doing what was prudent to protect workers to an acceptable degree. Enforcing the 8 hour, time weighted average (TWA) PEL of 2.0 fibers per cubic centimeter at a time when it was clear this level was hazardous is unacceptable. The Agency shirked its responsibility to miners when they did not propose a lower PEL immediately upon learning of the dangers asbestos posed. It is impossible to calculate the damage this blind eye approach has caused. While performing the "standard" inspections and taking the "routine" samples, another generation was being sentenced to suffer preventable work related illness and death. The adage, "better late than never" may always apply given sufficient time for the horror of the event to pale in one's memory, however, the cost in human suffering must always be remembered to avoid similar complacency in the future. The Union intends to see that those afflicted with this illness and those who watched them suffer did not do so in vain. This can not be permitted to occur again.

In order to adequately critique the Agency's asbestos rule the Union has decided to dissect the various components and comment on each of those it has determined to be significant.

Lowering the existing PEL for asbestos to a more protective level is an absolutely crucial step in protecting workers health. The Agency decision to reduce the eight hour TWA PEL from 2.0 f/cc to 0.1 f/cc will certainly offer workers in the future a greater degree of protection. While the Union understands that this will not eliminate the possibility of asbestos related illnesses, it is an acceptable first step in that endeavor. In light of the extensive rule-making under OSHA, there can be little dissent from this exposure limit.

The Union also agrees with the decision to lower the short term excursion limit from 10.0 f/cc over 15 minutes to 1.0 f/cc over 30 minutes. We suggest the Agency develop a means of inspecting mines and enforcing this Short Term Exposure Limit. However, the Union must point out the obvious limitation to this particular portion of the proposed rule. While the Union applauds the intent, but there would appear to be no incentive on the part of many employers to test for high levels of asbestos unless a Representative of the Secretary is present. Given the track record of the industry and end users of asbestos and asbestos product, self regulation is certainly not a practical approach. The Agency should not expect a single reported instance of short-term overexposure to be reported. Not because they will not occur, but because they will not be sampled.

The United Mine Workers of America are very disappointed in the Agency's response to the OIG's remaining recommendations as well as some of the other decisions regarding the proposed rule.

In March, 2002 the UMWA suggested, as did the OIG in his recommendations, the use of TEM for determining compliance and non-compliance with regulations. The Union believes that this method offers better resolution and greater confidence in identifying fibers and distinguishing them from other particles. The key to preventing occupational illness is identifying hazardous substance(s) in the workplace using the most effective technology available.

The cost of testing and the necessary skill level required by those who are interpreting the data should not be an issue in this case. Cost benefit analysis in determining the need for advanced technology to be incorporated into a rule without weighing the cost in human suffering that has occurred is unjust. The very fact that producers and users of asbestos knew that the processes they were employing to extract, refine and apply the product was literally killing people should not afford the industry any cost benefit analysis. They sought to hide the truth and sentenced thousands of workers to unimaginably miserable deaths and debilitating illness for the sake of profit. They deserve no consideration and none should be given. The cost is necessary to prevent future illness and the cost should be bore by this industry.

The Union recommends the Agency reconsider the use of TEM and incorporate it into the rule. If such resources are a problem, the Agency should use the electron microscope OSHA has.

The Union is disgusted with MSHA's determination that in the case of take-home contamination "non-regulatory measures could be adequately addressed this potential hazard". The question must be asked, what part of the W.R. Grace and Company, Libby, Montana tragedy did the Agency not understand. The entire community was contaminated and everyone living there was exposed to the hazard.

The Agency must understand that such materials are not discriminatory in their approach. They do not single out a special class of individuals, such as only the worker, to afflict. The control of such hazards cannot be entrusted to the benevolence of any segment of the industry. That test has already been administered and Grace is the recognizable face of failure.

The Agency has a responsibility to force employers to protect their workers and the community at-large from the potential hazards associated with asbestos. They must reexamine this aspect of the rule and place requirements on employers to ensure take-home contamination is eliminated. This obligation rightfully falls to the appropriate regulatory agency, in this case MSHA, because of the industry's inability to what is right.

Finally, the Union is confused by the Agency decision to exclude underground coal mines and therefore limit the application of the proposed rule. In the preamble for the proposed rule MSHA states, "Because asbcstos from any source poses a health hazard to miners if the inhale it, the proposed rule would cover all miners exposed to asbestos whether naturally occurring or contained in building materials, in other manufactured products at the mine, or in mine waste or tailings." The preamble also states that, "...asbestos is not banned in the United States." This comment serves no useful purpose in the proposed rule's preamble. Further that, "Asbestos may

be used for a number of purposes at the mine including...reinforcement of cement...and automotive clutch and break linings.” These are the types of materials and products coal miners will be exposed to on the surface and underground. To eliminate these workers from the protective requirements of the rule makes no sense.

The Union recommends the Agency rewrite the rule to include all miners, including those working in underground coal mining operations.