

1 UNITED STATES OF AMERICA
2 DEPARTMENT OF LABOR
3 MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)

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5 Public Hearing on Asbestos Exposure Limit
6

7 October 18, 2005

8 Conference Room 1787

9 Building 25

10 Denver Federal Center

11 6th Street and Kipling Street

12 Denver, Colorado
13

14 The above-entitled matter convened for public
15 hearing, pursuant to notice, at 9:00 a.m., REBECCA J.
16 SMITH, Associate Director, Office of Standards,
17 Regulations and Variances, MSHA, presiding.

18 ALSO PRESENT:

19 CHRIS FINDLAY, Industrial Hygienist, Metal and
20 Non-metal Division, MSHA

21 CHERIE A. HUTCHISON, Regulatory Specialist

22 Office of Standards,

23 Regulations and Variances

24 MSHA

NEAL R. GROSS & CO., INC.
(202) 234-4433

P R O C E E D I N G S

1
2 MS. SMITH: Good morning. My name is Rebecca
3 Smith; I am the Acting Director of the Office of
4 Standards, Regulations and Variances for the Mine Safety
5 and Health Administration, MSHA. And on behalf of David
6 Dye, who is the Acting Assistant of Labor for Mine Safety
7 and Health, I'd like to welcome all of you to this public
8 hearing this morning on lowering the permissible exposure
9 limit for asbestos.

10 I'd also like to introduce. On my right is Ms.
11 Cherie Hutchison. Ms. Hutchison is the Chairman of the
12 MSHA committee developing this asbestos rule; she is from
13 the Office of Standards in Arlington, Virginia.

14 On my left is Chris Findlay. And Mr. Findlay
15 is from the Metal and Non-metal organization in MSHA; he's
16 an industrial hygienist, also on this committee for the
17 development of the PEL for asbestos. We've got other MSHA
18 folks and Department of Labor folks here in the audience
19 also with us today.

20 This is the first of two public hearings that
21 we're holding on our asbestos proposed rule; the other
22 hearing will be in Arlington, Virginia, this Thursday,
23 October 20. We announced these hearings in the notice of
24 proposed rule making published in the Federal Register on
25 July 29, 2005. The purpose of these hearings is to obtain

1 public comment on this proposed rule. We've brought a few
2 extra copies, and they're over on the table for your use
3 if you care to get a copy.

4 Before we hear testimony from the public on
5 this proposed rule to lower the permissible exposure limit
6 for asbestos, I'd like to give some background on this
7 issue, a brief overview of our historical enforcement
8 actions at the Libby, Montana, vermiculite mine and our
9 rule making activities concerning asbestos in general.

10 MSHA's predecessor agency, the Mining
11 Enforcement and Safety Administration, MESA, in the U. S.
12 Department of Interior monitored and enforced health and
13 safety standards at mining operations, including the W. R.
14 Grace vermiculite mine in Libby, Montana, from 1969 to
15 1977. At that time, the exposure limit for asbestos was
16 five fibers per cubic centimeter of air. Our sampling
17 data showed high asbestos exposures among minors at the
18 vermiculite mine in Libby, with the highest exposures
19 occurring in the mill.

20 To reduce exposures, the mine installed or
21 improved a number of engineering controls, such as exhaust
22 ventilation and automatic bagging machines. In 1974, the
23 mine closed its old dry mill and began using its newly
24 built wet mill to process and concentrate vermiculite, and
25 occupational exposures dropped remarkably. All 8-hour,

1 time-weighted average job exposure estimates decreased
2 annually from 1972 to 1976.

3 Then in 1978, we lowered our full-shift
4 asbestos exposure limit to two fibers per cubic
5 centimeter. All 8-hour, time-weighted average job
6 exposure estimates from 1977 to 1982 were less than one
7 fiber per cubic centimeter in most areas.

8 In 1980, we requested that the National
9 Institute for Occupational Safety and Health -- that's
10 NIOSH -- investigate health problems at the Libby mine and
11 other vermiculite operations around the country. NIOSH
12 conducted this investigation and published their results
13 in 1987.

14 The NIOSH study verified the high occupational
15 exposures at the Libby mine and documented an increased
16 risk of morbidity and mortality among vermiculite miners
17 and millers exposed to tremolite actinolite. In part
18 because of the NIOSH findings and in part because of
19 OSHA's 1986 final rule that lowered their asbestos
20 permissible exposure limit from two fibers per cubic
21 centimeter to 0.2 fibers per cubic centimeter, we included
22 asbestos in our air quality rule making.

23 Our 1989 air quality proposed rule covered
24 several health issues, including carcinogens such as
25 asbestos. The air quality proposed rule would have

1 lowered our permissible exposure limit for asbestos from
2 two fibers per cubic centimeter to 0.2 fibers per cubic
3 centimeter.

4 The W. R. Grace vermiculite mine in Libby,
5 Montana, ceased production in 1990 and closed permanently
6 in 1992. The record for MSHA's air quality proposed rule
7 closed in 1992. Although we split this massive rule
8 making into several smaller rules, some were not completed
9 and were withdrawn from the Department's regulatory
10 agenda.

11 Then in November 1999, a Seattle newspaper
12 published a series of articles about the unusually high
13 incident rate of asbestos-related illness and fatalities
14 among individuals who lived in Libby, Montana. These
15 articles raised public and congressional awareness, and
16 the Department of Labor's Office of Inspector General
17 began an evaluation of MSHA's role at the Libby mine.

18 The Office of Inspector published its findings
19 and recommendations in March of 2001. In that report,
20 they recommended that MSHA do three things: Number One,
21 that we lower the existing permissible exposure limit for
22 asbestos to a more protective level; Two, that we use
23 transmission electron microscopy instead of phased
24 contrast microscopy in the initial analysis of fiber
25 samples that may contain asbestos, and; Third, that we

1 implement special requirements to address take-home
2 contamination.

3 Exposure to asbestos has been associated with
4 lung cancer, mesothelioma and other cancers, as well as
5 asbestosis and other non-malignant respiratory disorders.

6 Although there were no asbestos mines operating
7 in the United States at this time, asbestos occurs
8 naturally and is found in places where other commodities
9 are mined. Lowering our permissible exposure limit for
10 asbestos would help to assure that fewer miners who work
11 in an environment where asbestos is present will suffer
12 material impairment of health or functional capacity over
13 their working lifetimes.

14 This proposed rule would reduce the full-shift
15 permissible exposure limit and the excursion limit for
16 air-borne asbestos fibers and make several non-substantive
17 changes to add clarity to the standard. We are not
18 proposing to change the definition of asbestos or the
19 analytic methods that are in our current standard; neither
20 are we proposing additional requirements to prevent take-
21 home contamination.

22 In response to the Office of Inspector General
23 recommendations, we published an advanced notice of
24 proposed rule making in the Federal Register on March 29,
25 2002 in which we requested information regarding the

1 Office of Inspector General recommendations. We also held
2 seven public meetings around the country to provide the
3 public an additional opportunity to comment.

4 Following a review of those comments and
5 testimony taken at the public meetings and relying on
6 OSHA's 1986 asbestos risk assessment, we determined that
7 it is appropriate to propose reducing the PEL for asbestos
8 and to clarify criteria for asbestos sample analysis.

9 In response to the Office of Inspector General
10 recommendations and to public comments and to enhance the
11 health and safety of miners, we are proposing to lower the
12 existing 8-hour time-weighted average asbestos PEL of 2
13 fibers per cubic centimeter to 0.1 fiber per cubic
14 centimeter and to lower the short-term limit from ten
15 fibers per cubic centimeter over a minimum sampling time
16 of 15 minutes to an excursion limit PEL of one fiber per
17 cubic centimeter over a minimum sampling time of 30
18 minutes.

19 To clarify the criteria for the analytic method
20 in our existing standards, we are proposing to incorporate
21 a reference to Appendix A of MSHA's asbestos standard --
22 I'm sorry -- OSHA's asbestos standard. Appendix A
23 specifies basic elements of a phased contrast microscopy
24 method for analyzing air-borne asbestos samples; it
25 includes the same analytic elements specified in our

1 existing standards and allows us to use other methods that
2 meet the statistical equivalency criteria in OSHA's
3 asbestos standard.

4 After considering approaches to prevent take-
5 home contamination, we determined that non-regulatory
6 measures could adequately address this potential hazard.
7 Although we are only proposing to lower the permissible
8 exposure limit for asbestos, we also discuss analytic
9 methods and take-home contamination in the preamble of our
10 proposed asbestos rule, and those issues are an acceptable
11 subject for this public hearing today.

12 The issues surrounding asbestos exposure are
13 important to us, and we will use the information provided
14 to us at these public hearings and in written comments to
15 help us decide how to best proceed.

16 The procedures for each of these public
17 hearings is the same. Those of you who have notified us
18 in advance of your intent to speak or have signed up today
19 will make your presentations first. After all scheduled
20 speakers have finished, others are free to speak. We will
21 conclude this public hearing when the last speaker has
22 finished.

23 We will conduct this hearing in an informal
24 manner, and formal rules of evidence will not apply. The
25 MSHA panel may ask questions to clarify statements for the

1 record, but there will be no cross-examination of the
2 speaker.

3 If you wish to present any written materials or
4 statements today, please clearly identify your material
5 and give it to me before the conclusion of this hearing.
6 I will identify the material for the record by the title
7 as you have submitted it.

8 You may also submit comments following this
9 hearing, but please submit them by November 21, which is
10 the close of the comment period. You may submit comments
11 to us by electronic mail, fax or regular mail at the
12 addresses listed in the proposed rule document.

13 A transcript of this hearing is being made
14 today and will be on our web site within several days of
15 this hearing today. If you want a personal copy of the
16 transcript, you can make your arrangements directly with
17 the court reporter.

18 Thank you for your patience and attention to
19 these introductory remarks. May I ask now if we have any
20 speakers?

21 (No response.)

22 MS. SMITH: We currently have no speakers
23 signed up this morning. What I would like to do is -- at
24 this point, we will go off the record, and we will wait
25 until about 10:00 or 10:30. We'll go back on the record

1 to see if we have any speakers at that time, and, if so,
2 we will re-open the record for that information. Thank
3 you.

4 (Whereupon, a short recess was taken.)

5 MS. SMITH: We're back on the record.

6 At this point in time, we have no one signed up
7 to speak at this hearing. So I'd like to ask again.

8 Is there anyone in the audience who would like
9 to speak?

10 (No response.)

11 MS. SMITH: If not, given that, we're going to
12 close this hearing. Thank you very much.

13 (Whereupon, at 10:16 a.m., the public hearing
14 was concluded.)