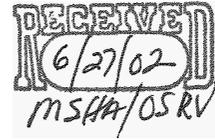


Mr. Marvin Nichols  
Director, Office of Standards, Regulations & Variances  
**Mine Safety & Health Administration**  
U.S. Department of Labor  
1100 Wilson Blvd., 21<sup>st</sup> Floor  
Arlington, VA 22209-3939



**BY FACSIMILE: 202-693-9471 BY E-MAIL: [comments@msha.gov](mailto:comments@msha.gov)**

Dear Mr. Nichols:

These comments are submitted on behalf of the Oldcastle Materials Group and concern the Mine Safety & Health Administration's ("MSHA) Advance Notice of Proposed Rulemaking ("ANPRM") related to occupational exposure to asbestos as published in the March 29, 2002 Federal Register. Oldcastle Materials Group is a federation of companies engaging in the production of construction building materials and construction services nationwide. Oldcastle Materials Group is currently the 4<sup>th</sup> largest producer of aggregates (crushed stone and sand & gravel) in the U.S. and is the largest producer of hot mix asphalt in the U.S. Oldcastle Materials Group companies employ over 15,000 workers in 29 states. We request that these comments be included in the formal rulemaking record. In addition, Oldcastle Materials Group fully endorses the comments submitted and oral testimony presented by the National Stone, Sand & Gravel Association ("NSSGA) concerning this rulemaking during the comment period.

Oldcastle Materials Group shares MSHA's desire to protect the health and safety of all miners. We recognize the need to control hazardous exposures to asbestos-containing products and materials. However, we can only support lowering the Permissible Exposure Limit ("PEL") to 0.1 f/cc, **if bona fide asbestos is regulated in the new standard.** It is critical that MSHA employ the appropriate definitions and sampling/analytical methods so that other minerals (e.g., non-asbestiform varieties of the asbestos minerals) are not subject to unwarranted regulation, or inadvertently included in the analysis conducted for enforcement purposes.

It is important that MSHA adopt a discriminate fiber counting method that more accurately corresponds to asbestiform minerals. The current federal fiber definition (particles that are at least five microns long and have a minimum aspect ratio of 3 to 1) will count as "fibers" cleavage fragments that are common particles in mining dust. Because the environment at mines is so different from the environment that OSHA regulates, MSHA cannot simply adopt the current OSHA standard, with its "federal fiber" definition. Phase Contrast Microscopy is insufficiently sensitive to distinguish between different minerals. On the other hand, with appropriate discriminate counting rules, it could serve as an effective tool for screening samples for asbestiform fiber content. To properly classify the asbestiform fibers on a sample, it is necessary to use electron microscopy analysis. Similarly, any regulation of "take home contamination" must focus on the true asbestos and asbestos containing products, as defined in the OSHA and EPA asbestos standards, rather than applying such requirements to all and any level of mineral exposures at mines, pits and quarries.

In addition, MSHA must critically review the technical and economic feasibility of any future asbestos standard in accordance with the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act. Moreover, MSHA must comply with the new U.S. Department of Labor guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information that forms the basis for regulatory decisions (See DOL Draft Information Quality Guidelines, published May 1, 2002). Inappropriate or arbitrary decisions as to the classification of minerals, based on flawed scientific conclusions, could well undermine the ability of many small mines to remain in business, while at the same time failing to provide any health benefits for miners. Thank you for your consideration of our perspective.

Regards,

Mark G. Carrk  
Director, Group Safety  
Oldcastle Materials Group

AB24-Comm-16