To: Marvin Nichols
From: Adele Abrams, Esq., CMSP

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Date: 6/27/2002

Re: ASSE Comments on Asbestos
CC:

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Comments:

See attached.
June 26, 2002

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

VIA E-MAIL: coxinidents@msha.gov


Dear Mr. Nichols:

The American Society of Safety Engineers (ASSE) offers the following comments concerning the Mine Safety and Health Administration’s (MSHA) Advance Notice of Proposed Rulemaking concerning occupational exposure to asbestos published in the March 29, 2002 Federal Register.

Founded in 1911, the non-profit ASSE is the oldest and largest organization representing safety professionals and is committed to protecting people, property and the environment. Among the ASSE’s thirteen practice specialties is a section devoted to mine safety and health. The Society shares MSHA’s desire to protect the health and safety of all miners and recognizes the need to control hazardous exposures to asbestos-containing products and materials. ASSE requests that these comments be included in the formal rulemaking record.

PELS

While the Society supports lowering the Permissible Exposure Limit (PEL) to 0.1 f/cc as proposed in the rule, it is critical that only real asbestos be regulated under the new
standard. Approximately ten years ago, OSHA revised its asbestos standard and determined that non-asbestiform minerals should be excluded from its scope. To ensure consistency and uniformity, MSHA must also exclude non-asbestiform minerals in this rule. In addition, MSHA must employ appropriate definitions, and sampling/analytical methods so that other minerals (e.g., non-asbestiform actinolite, tremolite and anthophyllite) are not subject to unwarranted regulation or are inadvertently included in the sampling conducted for enforcement purposes.

Therefore, ASSE recommends 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 its “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. The method currently utilized by OSHA -- Phase Contrast Microscopy (PCM) -- is insufficiently sensitive to distinguish between different minerals. However, as witnesses explained at the June 20, 2002, MSHA hearing in Charlottesville, Virginia, with appropriate discriminate counting rules, the PCM method can 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. This is consistent with the recommendation of the Department of Labor’s Inspector General, following its analysis of the Libby, MT, asbestos investigation.

**Take Home Contamination**

In the same interest of encouraging consistency and uniformity, 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. To that end, ASSE recommends that MSHA act consistently with the “take home contamination” prevention measures codified by OSHA at 29 CFR 1926.1101.

**Inclusion of Safety Professionals**

Also of concern to ASSE is that safety professionals are excluded from some portions of the OSHA asbestos rule, although, following the Society’s objections, safety professionals were eventually included in the COSHO QUIPS sheet. As has been demonstrated to OSHA as well as the Navy and the Environmental Protection Agency over the same asbestos issue, safety professionals are fully qualified to perform the analytical functions described in this comment. ASSE respectfully asks that safety professionals’ capabilities not be overlooked in the drafting of a rule if competency issues will be addressed.
Technical and Economic Feasibility

ASSE consistently supports sound science and analysis of the technical and economic feasibility of all MSHA rules. The Society urges that the agency review critically the technical feasibility of any future asbestos standard in accordance with the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act and fully 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 concerning the classification of minerals based on flawed scientific conclusions create a potential discontinuity between OSHA and MSHA in the regulation of the same substances and, more importantly, fail to provide health and safety benefits for miners.

Thank you for your consideration of the Society's perspective.

Sincerely,

M.E. Greer, CSP
Society President 2001-2002

cc: Adele Abrams, Esq., CMSP
ASSE Federal Affairs Representative