



Labor, Safety, and Health Policy
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OSHA Docket Office
Docket ID-OSHA-H005C-2006-0870
RIN 1218-AB76
U.S. Department of Labor
Room N-2625
200 Constitution Avenue, NW
Washington, DC 20001

RE: Docket No. OSHA-H005C-2006-0870, Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors; Notice of Proposed Rule

Dear Docket Clerk:

On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), I am submitting these comments on the Occupational Safety and Health Administration's (OSHA or Agency) Notice of Proposed Rulemaking (NPRM) on the Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors (2019 Beryllium NPRM) that was published in the Federal Register on October 8, 2019.¹

NAHB is a Washington, D.C.-based trade association whose members are involved in home building, remodeling, multifamily construction, property management, subcontracting, design, housing finance, building product manufacturing and other aspects of residential and light commercial construction. NAHB is affiliated with more than 700 state and local home builders associations around the country. NAHB's builder members construct about 80 percent of the new housing units each year, making housing a large engine of economic growth nationally. NAHB's members make safety a priority by regularly taking steps to reduce or eliminate safety hazards on the job and comply with OSHA's regulations and standards.

As an interested stakeholder in this regulatory activity, NAHB believes that OSHA, by issuing an extremely broad and comprehensive beryllium standard for construction, will have a substantial adverse impact on regulated employers and small businesses in residential construction, including home builders and specialty trade contractors.

I. Introduction

The element beryllium is a grey metal that is stronger than steel and lighter than aluminum. Its physical properties make it an essential material in the aerospace, telecommunications, information technology, defense, medical, and nuclear industries. Beryllium is also a naturally occurring substance present in soils and sediments. It may also be present in small amounts in

¹ 84 Fed. Reg. 53902.

many commonly used building products such as soil, rock, stone, concrete, bricks, concrete block, cement, abrasive grinding/cutting wheels, ceiling tiles, powdered detergents, welding rods, solders, and paints. Additionally, beryllium may be found in abrasive blasting materials, such as coal slag, and in coal ash that is combined with other products for use in construction materials including Portland cement, grout, and road building applications. Coal ash also ends up in other building products including bricks, roofing tiles, roofing granules, decking, fireplace mantles, PVC pipe, and Structural Insulated Panels, to list just a few.

Workers in industries where beryllium is present may be exposed to beryllium by inhaling or contacting beryllium in the air or on surfaces. Individuals who may be exposed to beryllium are at risk for developing chronic beryllium disease (CBD) if they inhale airborne beryllium after becoming sensitized. Beryllium-exposed workers may also develop other adverse health effects such as acute beryllium disease, and lung cancer.

To protect workers from exposure to beryllium, on January 9, 2017 OSHA published its final rule on *Occupational Exposure to Beryllium and Beryllium Compounds*.² The new rule applied to general industry, as well as construction and shipyards. The 2017 final rule reduced the permissible exposure limit (PEL) for beryllium, established a new short term exposure limit (STEL), and added ancillary provisions including requiring employers to: use engineering and work practice controls (such as ventilation or enclosure) to limit worker exposure to beryllium; provide respirators when controls cannot adequately limit exposure; limit worker access to high-exposure areas; develop a written exposure control plan; train workers on beryllium hazards; and make available medical exams to monitor exposed workers and provides medical removal protection benefits to workers identified with a beryllium-related disease.

However, since the publication of the 2017 final rule, OSHA has sought to revise the beryllium standards in a number of separate rulemakings. On June 27, 2017, OSHA proposed to revoke the ancillary provisions for both the construction and shipyard standards because it believed existing standards (such as the respiratory, sanitation and others) contain adequate protection for the small number of construction and shipyard workers potentially exposed to beryllium.³ On September 30, 2019, OSHA issued a final beryllium rule for the construction and shipyard industries.⁴ Instead of revoking the ancillary provisions for the construction and shipyard industries as the agency proposed in June 2017, OSHA stated it had “determined that there is not complete overlap in protections between the standards’ ancillary provisions and other OSHA standards.” As part of this rulemaking, OSHA also delayed the compliance dates for all ancillary provisions of the construction and shipyard standards until September 2020, pending further rulemaking.

Finally, on October 8, 2019, OSHA issued a notice of proposed rulemaking, which these comments are addressing, designed to tailor the requirements of the standards to the exposures in the

² 82 Fed. Reg. 2470.

³ 82 Fed. Reg. 29182.

⁴ 84 Fed. Reg. 51377.

construction and shipyard industries.

II. NAHB incorporates the Construction Industry Safety Coalition (CISC) beryllium comments.

NAHB is a member of the Construction Industry Safety Coalition (CISC). The CISC is comprised of 26 trade associations representing tens of thousands of employers and hundreds of thousands of workers in all facets of construction—from home building, to commercial and road construction, to heavy industrial production, to specialty trade contractors and material suppliers. A core mission of the coalition is to promote healthy and safe jobsites in the construction industry. The coalition was formed so the construction industry could respond to a wide variety of OSHA proposed construction safety rules with one voice. NAHB, as well as the CISC, were active participants during OSHA’s 2017 rulemaking on beryllium. The CISC has also submitted extensive written comments on the 2019 Beryllium NPRM and intends on participating in the December 3, 2019 public hearing and submitting post-hearing comments.

In addition to its own comments, NAHB adopts and incorporates by reference the November 7, 2019 CISC comments on the proposed beryllium rule.

III. Issuing a comprehensive beryllium standard for construction will have a significant impact on home builders, particularly small business.

NAHB continues to have significant concerns that OSHA has underestimated the impacts on the home building industry, especially small businesses, that will occur as a result of the proposed changes to its beryllium standard. Because beryllium may be found naturally in small quantities in numerous materials and building products, there may be work activities during residential construction where exposures could occur. Therefore, OSHA's current proposal would broadly apply to numerous residential construction work activities.

As proposed, the wide-reaching scope and comprehensive nature of the beryllium rule will be burdensome for the residential construction industry because workers may interact with materials that contain trace amounts of naturally occurring beryllium. NAHB’s membership, and the home building industry at large, continues to be composed of many small businesses, with over 80 percent of NAHB members falling within the U.S. Small Business Administration’s (SBA) definition of a small business, who bear a larger burden of regulatory compliance than large businesses. Almost no small businesses in home building employ a full-time safety professional to assist in navigating the myriad of regulatory requirements, including safety and health standards such as the beryllium rule.

The proposed beryllium rule will be onerous because it will require small employers in residential construction to devote significant resources to determine if they are covered by the standard. Home builders and specialty trade contractors (i.e., masons, roofers, plumbers, etc.) will need to dedicate their limited resources to review all their construction activities, including materials used and tasks performed on such materials to determine what, if any, exposure to beryllium there is

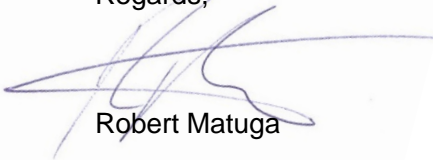
and depending upon those levels, what they need to do to reduce exposures. Employers will need to collect and review information about the potential of beryllium hazards present or likely to be present on the jobsite, which may include: reviewing Safety Data Sheets (SDS) provided by product and material manufacturers; reviewing equipment and machinery operating manuals; conducting exposure monitoring and industrial hygiene assessments; performing additional job hazard/safety analyses; and conducting additional inspections of all construction operations, equipment, jobsite areas. Performing these functions shifts resources away from addressing known serious safety and health hazards in residential construction, such falls, caught in or between, struck by, and electrocution, to assessing beryllium exposures. This is particularly troubling because we believe OSHA has not demonstrated a significant risk of material impairment of harm in construction from exposure to beryllium.

What is equally concerning is that OSHA has, once again, failed to consider the impacts of its 2019 Beryllium NPRM for the naturally occurring beryllium that is found in small quantities in numerous materials and building products. NAHB continues to believe that there is no evidence of CBD or other beryllium disease outcomes in the wide range of construction activities potentially affected by this rule. In fact, OSHA only provides scant evidence in the rulemaking record that abrasive blasting involves exposure to beryllium at levels that OSHA believes could result in a significant risk for the development of CBD or cancer.

To reduce the regulatory burden on the residential construction industry, NAHB urges OSHA to narrow the scope of any rule to cover only those limited construction operations that generate airborne exposures to beryllium at levels of concern, specifically abrasive blasting using mineral grit (i.e., coal slag). This is supported by OSHA's own 2017 Final Economic Analysis, which identified one affected application group in the construction sector that has affected employees: those conducting abrasive blasting.⁵ In the alternative, OSHA could abandon this rulemaking and consider adding additional beryllium-related requirements to the existing ventilation standard, which currently covers abrasive blasting operations in construction.⁶

Thank you for the opportunity to comment on OSHA's proposed rule for Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors. NAHB looks forward to working with OSHA to ensure the safety of residential construction workers. Please call me at (202) 266-8507 or rmatuga@nahb.org if you have any questions or require additional information.

Regards,



Robert Matuga

⁵ 84 Fed. Reg. 53922

⁶ § 29 CFR 1926.57