

Virginia Vermiculite to appeal MSHA asbestos citations

Virginia Vermiculite (VV) is appealing against citations issued by the Mine Safety and Health Administration (MSHA) following the federal body's investigation into an employee complaint. VV contests the results of MSHA's testwork and the manner in which the investigation has been conducted.

In response to the complaint, MSHA carried out an inspection at the Louisa, VA mine in August taking air and bulk samples for analysis. As a result of MSHA finding what it identified as asbestos particles in bulk samples, it issued citations concerning failure to notify workers of the asbestos risk, failure to take action to prevent worker exposure and provide adequate protective equipment, warning signs or barricades in areas where asbestos is present.

Following receipt of the citations in October, Ned Gumble, general manager of VV brought independent consultant John Addison, formerly with the Institute of Occupational Medicine in Edinburgh, UK to the site, to work through its implications.

Addison said he evaluated the reports from MSHA and found they showed higher particle count results than any MSHA report in the previous 20 years. MSHA's report contradicted testwork by Addison, a respected professional in the field, from which he

had concluded there was no significant risk. Addison says his tests have detected no asbestos in the product or stockpiles.

In reviewing MSHA's testwork, Addison was critical of the changes in the test methodology used by MSHA. He believes the fiber concentrations reported by MSHA were not asbestos but other elongate particles. His own testwork has detected no asbestos in the product or stockpiles.

"I was appalled at the way MSHA conducted the case," said Addison. "The advances in sampling they claimed were merely a doubling of the flow rate."

Addison said that MSHA asked the OSHA Salt Lake Technical Center to count all particles longer than five microns with an aspect ratio of 3:1, rather than follow the established OSHA asbestos standard, which counts only asbestos particles.

Davitt McAteer, assistant labor secretary of MSHA, commented: "We have a situation in which the company's tests and MSHA's tests have returned non-detect for years, yet there is asbestos material there. What is going on? We are looking at the testing process and will continue to look at the testing process."

Virginia Vermiculite requested the air monitoring cassettes from MSHA to verify the test results. The company retested

those that had returned the highest results. Following conversations with the laboratory, the company learned that MSHA had already conducted TEM (transmission electron microscopy) tests — which can differentiate between fibrous particles — on the air samples. In each case, the results of the TEM tests were non-detect for asbestos.

Gumble says that MSHA had the tests performed in early September, prior to when it delivered the report of its findings to the company. "MSHA either chose to ignore the TEM results or they were lost in the bureaucracy," concluded a puzzled Gumble. At the time of the October visit, Gumble believes MSHA had information that exonerated the company.

Gumble said the company is currently reviewing its options. "Our first priority is to have the citation lifted," he said. Gumble did not rule out the possibility of taking legal action against MSHA.

Dan Crane, team leader at the OSHA Salt Lake Technical Center where all the tests were performed, was unable to comment on the specifics of the case. He said the OSHA standard for asbestos fibers allowed the exclusion of non-asbestos fibers where you can tell the difference. He said that a request to perform a total fiber count may be to get away from the subjective nature of excluding fibers.

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