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March 22, 2016

The Honorable David Michaels, Ph.D., M.P.H.
Assistant Secretary of Labor for Occupational Safety and Health
Department of Labor
Occupational Safety and Health Administration
200 Constitution Avenue, NW
Washington, D.C. 20210

Re: Docket No. OSHA-H005C-2006-0870 [Occupational Exposure to Beryllium and Beryllium Compounds]

Public Citizen, a consumer advocacy organization with more than 400,000 members and supporters nationwide, submits this testimony on the Occupational Safety and Health Administration's (OSHA's) proposed beryllium rule issued August 7, 2015.¹ My name is Emily Gardner, a lawyer and the worker health and safety advocate with Public Citizen's Congress Watch.

We thank OSHA for finally taking action to protect workers from beryllium exposure by issuing this proposed rule last year. While the proposed rule is a step in the right direction, there is still much more work to be done. Today, we urge OSHA to apply the permissible exposure limit (PEL) and the short-term exposure limit (STEL), in addition to all ancillary provisions in the proposed rule, to the thousands of construction and shipyard workers exposed to levels of airborne beryllium that can lead to lung cancer and chronic beryllium disease (CBD).

During the May 2014 meeting of the Advisory Committee on Construction Safety and Health (ACCSH), OSHA proposed four possible options for construction employers regarding its pending proposed beryllium rule.² The ACCSH members voted for Option 3,³ which would have applied *all* provisions of the eventual proposed rule to construction workers. However, for its proposed rule, OSHA chose Option 4, which does not extend *any* of the proposed changes to the beryllium rule to construction and shipyard workers.

¹ 80 FR 47565. Docket No. OSHA-H005C-2006-0870. Proposed Rule; request for comments. Occupational Exposure to Beryllium and Beryllium Compounds. August 7, 2015. <https://s3.amazonaws.com/public-inspection.federalregister.gov/2015-17596.pdf>. Accessed February 11, 2016. [Hereafter referred to as "OSHA Proposed Rule"]

² Occupational Safety and Health Administration. OSHA Request for an ACCSH Committee Recommendation – Options for the Construction Industry in the Proposed Rulemaking for Beryllium.

³ Occupational Safety and Health Administration. Advisory Committee on Construction Safety and Health. Minutes of May 7-8, 2014, Meeting. <https://www.osha.gov/doc/accsh/meetingminutes/may2014.html>. Accessed February 11, 2016.

The decision to exclude these workers contradicts the reasoning of all of OSHA's own officials in their presentation to the December 6, 2013 meeting of the committee. At the meeting, OSHA officials observed that most exposures in the construction industry occur during abrasive blasting operations and estimated that 23,000 workers (40 percent of all beryllium-exposed workers) are performing open-air blasting.⁴ OSHA officials provided data that 70 percent of inspected abrasive blasting worksites had detectable airborne beryllium concentrations, with a mean level of 3.7 $\mu\text{g}/\text{m}^3$ and a median of 0.6 $\mu\text{g}/\text{m}^3$. Thirty-five percent of abrasive blasting worksites were above the current PEL of 2.0 $\mu\text{g}/\text{m}^3$.

Some in the coal slag industry claim that airborne beryllium exposures are not a major concern to abrasive blasting workers because beryllium is largely present only at trace levels (<0.1 percent by weight) in coal slag.⁵ What they fail to mention is that the abrasive blasting process can concentrate beryllium in the air, in the form of dust, to levels that pose a risk to workers. OSHA noted this in its presentation to the ACCSH by stating, "Even though beryllium is just a minor contaminant in these slags, because the blasting is so dusty, it can get to levels that are above the current PEL."

Despite its own alarming data, OSHA elected not to extend the protections of the proposed beryllium rule to construction and shipyard workers, basing its decision on the fact that existing construction (29 CFR 1926.57) and maritime (29 CFR 1915.34(c)) standards already require the use of respirators by abrasive blasting workers under certain conditions.⁶ However, abrasive blasters in general industry are also currently protected by a respirator requirement when any airborne toxic chemical concentrations exceed the exposure limits in 29 CFR 1910.1000.⁷ Yet OSHA still included these workers within the scope of its proposed rule.⁸

Furthermore, OSHA's justification for excluding construction and shipyard workers fails to explain why the proposed rule's other, non-respirator-related provisions (the PEL and the remaining ancillary provisions) were similarly not applied to these workers. Excluding them

⁴ Occupational Safety and Health Administration Advisory Committee on Construction Safety and Health. Transcript of December 6, 2013, Meeting, at 86-94

https://www.osha.gov/doc/acssh/transcripts/20131206_acssh_transcripts.pdf. Accessed February 11, 2016.

⁵ HARSCO presentation to the White House's Office of Information and Regulatory Affairs. September 30, 2014. <http://www.reginfo.gov/public/do/eoDownloadDocument?pubId=&eodoc=true&documentID=649>. The company went so far as to imply that OSHA's position was that the form of beryllium [beryllium silicate] the company utilized did not lead to CBD. See Slide 9, which stated that "Even OSHA's [actually the interagency Small Business Advocacy Review Panel's] analysis states: 'It has been suggested that CBD is the result of occupational exposure to beryllium oxide and other water-insoluble berylliums rather than exposure to water-soluble beryllium or beryllium ores,'" while omitting the very next sentence in the cited document responding to this suggestion: "However, there are inadequate data, at this time, on employees selectively exposed to specific beryllium compounds to eliminate a potential CBD concern for any particular form of this metal" (Small Business Administration. Report of the Small Business Advocacy Review Panel on the OSHA Draft Proposed Standard for Occupational Exposure to Beryllium. January 15, 2008. Page 4.

https://www.sba.gov/sites/default/files/files/Report_review_panel_exposure_to_beryllium_01_15_2008.pdf). OSHA agreed with this conclusion in its proposed rule: "Based on a review of scientific studies, OSHA has preliminarily determined that the toxicological effects of beryllium exposure on the human body are similar regardless of the form of beryllium" (OSHA Proposed Rule, at 707). All links accessed February 11, 2016.

⁶ OSHA Proposed Rule, at 709.

⁷ 29 CFR 1910.94(a)(5)(ii)(c).

⁸ OSHA Proposed Rule, at 411.

from the proposed rule would condemn more than 23,000 workers to continued exposure to levels of beryllium that will inevitably result in CBD and lung cancer in many.

Public Citizen commends OSHA for its efforts to update badly outdated exposure limits to beryllium. However, leaving aside the inadequate PEL and STEL, which my colleague Sammy Almashat has addressed, the updated standard cannot leave construction and shipyard workers vulnerable to the devastating effects of beryllium. Public Citizen urges OSHA to revise the proposed rule to cover these workers. Thank you for your consideration of our testimony.