

**STATEMENT OF MR. JAMES RUDELL
ON BEHALF OF THE
NATIONAL STONE, SAND AND GRAVEL ASSOCIATION
BEFORE THE SUBCOMMITTEE ON
WORKFORCE PROTECTIONS
OF THE
HOUSE COMMITTEE ON EDUCATION AND THE WORKFORCE
APRIL 27, 2006**

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear before the Subcommittee today to testify on behalf of the National Stone, Sand & Gravel Association regarding the American Conference of Governmental Industrial Hygienists (ACGIH) and our concern about the process by which it establishes Threshold Limit Values, or TLVs, that become de facto regulations by incorporation into regulatory standards developed by the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA).

Based near the nation's capital, NSSGA is the world's largest mining association by product volume. Its member companies represent more than 90 percent of the crushed stone and 70 percent of the sand and gravel produced annually in the U.S. and approximately 117,000 working men and women in the aggregates industry. During 2005, a total of about 3.2 billion tons of crushed stone, sand and gravel, valued at \$17.4 billion, were produced and sold in the United States.

There are two important points I would like to leave with you today. One is that while the ACGIH has a rich history of providing high quality and useful information concerning the health effect of chemical substances, it is not a consensus standard organization. The process by which it develops guidance information, including the Threshold Limit Values of Chemical

Substances, does not involve the wider audience or operate in the “sunshine” like those processes of other recognized consensus standard setting organizations or the Federal government.

The second and just as important point is the wide acceptance and incorporation by the Federal agencies OSHA and MSHA of the ACGIH TLVs into their standards and regulations as if they were established by a consensus standard organization. In the case of the TLVs, whenever there is a new TLV adopted, it automatically becomes a new standard under OSHA and MSHA. As a result, the Federal standards are changed and bypass the regulatory process where input can be provided or it can be challenged if necessary.

At its inception in 1938, the National Conference of Governmental Industrial Hygienists, which changed its name in 1946 to the American Conference of Governmental Industrial Hygienists, was one of only a few places where workplace exposure to hazardous substances was considered important. Initially, and until 2000, only members of the government and academic institutions could become members of the organization. In 2000, limited membership was extended to allow members from other organizations additional opportunities to serve on appointed committees and the board of directors.

An important consideration is that many governmental members work for regulatory agencies such as MSHA and OSHA, the very same ones that write regulations that incorporate the ACGIH TLVs. Even though the ACGIH has in place a conflict of interest requirement that all members of the TLV Committee must sign and agree to, it may not be possible to differentiate between work of ACGIH and work for their employer.

During the war-time industrial buildup, the ACGIH recognized a need to identify, understand and control worker exposures to hazardous substances encountered in the workplace. The Threshold Limit Values for Chemical Substances, the TLV Committee, was established in 1941. The first exposure limits, known as maximum allowable concentrations, were established in 1950. These workplace exposure limits became known as the Threshold Limit Values (or TLVs) in 1951 and are still used today.

In most cases, the quality and volume of scientific information available did not compare with what we typically expect today. The process by which the ACGIH established these TLVs was through a committee of practicing professionals who met to consider any information available. The committee made recommendations to the ACGIH Board of Directors who approved the TLVs. The process included placing a given substance on the “Notice of Intended Changes” list for a period of two years to allow time to receive input and judiciously consider the information. In earlier times, information was actively sought from industry because they had the information available that could help to make a decision. That collaborative process, however, no longer seems to work effectively.

This model seemed to work quite well until the establishment of OSHA in 1970. OSHA was charged with the responsibility of regulating the workplace for protecting employee safety and health. When OSHA looked for a way to develop standards initially, they looked to consensus standards, such as the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTM) and the National Fire Protection Association (NFPA) in order to rapidly develop regulations for the protection of workers. At that time, there was no consensus organization setting exposure limits for workers. However, the ACGIH TLVs were in place and represented a considered list of hazardous substances where there was recognition of an exposure level that was believed to be safe for all workers. The 1971 TLVs were incorporated into the OSHA regulations as Permissible Exposure Limits (PELs) that must be met. In the case of the mining industry, the 1973 TLVs were incorporated for the same purpose. For the most part, these still are the requirements.

Today, the overall federal regulatory process is required to be more open—in the sunshine, so to speak—in order to allow for the input of all parties and consideration of data that is of high quality and scientifically valid in establishing a regulatory limit that everyone must meet. Hence, the recent Data Quality Act. Further, today’s regulatory process requires the consideration of all available technical and economic feasibility data when setting permissible exposure limits for American workers.

The ACGIH, however, is not a consensus organization because its internal decision-making process excludes many of the parties that may be affected by the decisions that are made. The ACGIH recognizes this as evidenced in the disclaimer published in every edition of the TLV Booklet that says:

‘...These recommendations or guidelines are intended for use in the practice of industrial hygiene, to be interpreted and applied only by a person trained in this discipline. They are not developed for use as legal standards and ACGIH does not advocate their use as such.’

The ACGIH TLV process does not consider either technical or economic feasibility during its deliberations. While they accept input from interested parties, ACGIH is not required to act on the outside input received.

Perhaps this is a two-part issue. The ACGIH clearly states that its TLVs are not to be used as regulatory limits, but the regulatory agencies incorporate them by reference and they become a standard affecting all employers without the full open, regulatory process required today.

There are two recent examples of decisions that affect the members of the NSSGA.

In one case, calcium carbonate, the ACGIH published a notice of intent to change the existing TLV for calcium carbonate. It proposed reducing the calcium carbonate TLV by 90 percent based on a single German study of 32 individuals suggesting that the current level should be lowered because there was some evidence of nasal irritation. Calcium carbonate, the simple main ingredient in TUMS, is an innocuous substance that is used as filler in paints, plastics, paper coatings, pharmaceuticals and various food grade substances. Even the white powder used to keep chewing gum from sticking to the wrapper is pure calcium carbonate. The NSSGA in cooperation with the Portland Cement Association and Industrial Minerals Association-North America retained a well-known toxicologist specializing in inhalation toxicology to review and comment on the relevance of the German study. This report was submitted to the ACGIH TLV Committee for their consideration in setting a new TLV for this

material. It is not known whether the report was influential, but when ACGIH published its 2006 TLV Booklet, the original Notice of Intended Change to reduce the TLV had been replaced with a new one announcing the intention to remove the existing TLV and its supporting documentation from the TLV booklet, suggesting that even the original TLV might be inappropriate. Of course, it will be at least another year, perhaps two, for the final decision to be made.

A second TLV for crystalline silica went through the TLV Committee and was significantly reduced for the second time since 2000. This reduction occurred while controversy continues about the quality of the scientific data supporting health effects and measurement methods of crystalline silica. Further, OSHA is in the midst of rulemaking on this particular substance where the issues of technical and economic feasibility must be considered.

The salient issue is that these TLVs have been incorporated by reference in the OSHA Hazard Communication Standard. The standard requires that every time there is a change in relevant information (for example, a reduction in the TLV or a change in carcinogen classification) every manufacturer of a listed substance must change the material safety data sheets (MSDS) they are required to produce under the Hazard Communication Standard to reflect this new information within three months. This also causes unwarranted concern and anxiety on the part of the general public who use these basic materials everyday and view the MSDS as a government-sanctioned public security warning system that gives them the needed sense of security that use of these products will not harm them or their families. Random setting and withdrawal of TLVs calls into question the standard setting process itself as well as the integrity of the underlying scientific standard setting body.

NSSGA understands that legislation to encourage development and promulgation of voluntary consensus standards by providing relief to standards development organizations is being developed. NSSGA support efforts to promote the use of voluntary consensus standards, which will encourage long-term growth and help maintain the competitiveness of U.S. enterprises around the world.

Mr. Chairman, that concludes my statement. Again, thank you for the opportunity to appear before the Subcommittee today. I am happy to respond to any questions.

###