

## TURA SAB – listing a substance

I'm here to talk about my experience listing a substance, silica. I later joined the SAB, but was not a member at the time I did, in 1999. Silica is both a lung clogger and lung carcinogen, just like asbestos, so I thought it would be easy to list, but it wasn't. And I'm wondering if the process of getting things listed is harder than should be. Now, recently, Heather tells me something else was listed with relative ease, but I still think my experience listing silica was instructive.

Chuck Levenstein and I were looking for a way to limit occupational exposure to silica at a time when OSHA was not doing its job. And we found TURA. So in March of 1999 I, supported by the Environmental League of Massachusetts and the Massachusetts Public Health Association, petitioned to add silica to the list of substances regulated under TURA.

At the time, thirteen substances had been removed from the list, and none had been added. This imbalance has irked many environmentalists and public health advocates, which is one of the main reasons that the Environmental League pushed so hard for the addition of silica. The process for adding or removing a substance starts with a petition to the Scientific Advisory Board, a board made of representatives from government, business, academia and the community. The guidelines for the addition are that a substance 1) must present a hazard to the environment, workers or the public OR 2) be a carcinogen, mutagen or teratogen. Since silica meets both of these criteria, the Scientific Advisory Board quickly recommended to the Administrative Council that silica be added to the list.

Eight months later came the next hurdle, the Administrative Council, which is made up of heads of state agencies, Departments of Public Health, Labor, Environmental Quality, Office of Technology Assessment, who were all appointed by our then Republican governor, and were reluctant to do anything that might ruffle industry's feathers. During the public hearing, David

Ozonoff from BU School of Public Health, and Susan Shepherd from Mass. Public Health Association testified. A bricklayer named George Weymouth also gave a moving testimony. His father died of silicosis after decades of work in a cement plant in Chelsea, and he may have been saved had this law been in effect. Unfortunately, Mr. Weymouth tearfully advocated for a stronger OSHA and more respirators, which was not our goal, and it taught me to take tighter control of the scripts of any hearings that I'm orchestrating.

What I also could not control was the testimony of the industry representatives, who far outnumbered us and were much better dressed. They claimed that silica was OSHA's domain, silica was a workplace hazard and there already was an OSHA standard, so why does it need any other kind of regulation? Ozonoff then pointed out the radical notion that workers are part of the public.

I expected silica to be added quickly, since it met the 2 criteria when only one was necessary – it was both a hazard to workers and it was a carcinogen. I was wrong. After the public hearing, the administrative council required a study of the impact of the addition, meaning the cost to industry. This was irritating because none of the 13 removals from the list ever required an impact study. The study took about 6 months. The law was supported by both environmentalists and labor but it is perceived as an environmental law. The effort to regulate mainly an occupational hazard under the Toxics Use Reduction Act has been frustrating and instructive. It highlights how workers are harmed by the nonsensical division between occupational and environmental health. At every step of the way, the fact that silica is mainly hazardous for workers was used as a reason not to list it. Industry argues that silica is OSHA's purview, so it

shouldn't be regulated under TURA. The Administrative Council, which is a panel of governor appointed heads of state agencies that makes the final judgment about listing or delisting a substance, was reluctant to deal with anything that steps on industry's toes. Although the law specifically says a substance must be listed if it is anticipated to cause harm to the public, workers, or the environment, the Council behaved as if it was being asked to deal with an issue beyond its scope. Even the consulting firm, hired by the Toxics Use Reduction Institute, which is a nice environmental firm in Cambridge, didn't know that the law applied to workers, until I pointed it out. I thought that listing a carcinogen would be a cinch, but it turns out that because the carcinogen is mainly a danger to workers, it was a rocky road. When it was determined that only about 5 firms would be affected by this addition, silica was added to the TURA list of toxic and hazardous substances, but only for foundries and abrasive blasting operations, because there were ready alternatives that could be used. Glass manufacturing and pottery and porcelain firms remained unaffected. And remember, this law only applies to manufacturing; it doesn't cover construction. One could think that this is largely a symbolic victory, since so few firms are affected. Yet, there are concrete benefits. Mainly, that silica is now regulated under the Massachusetts TURA is helpful to other advocates, just as the fact that it was on California's Prop 65 list (carcinogens) helped us in Massachusetts. And it does help the workers in the few affected firms. But I want to bring up here is the imbalance in the incentives to list or de-list. Industry has a natural incentive to de-list their favorite toxic, but in order for something to be listed, it needs an advocate. In the case of silica, it was real work. On top of my real job. Now, Heather tells me that it might be easier to list something now, perhaps because the political tide has shifted a bit, but it hasn't shifted that much, and I think we need to be aware of this asymmetry.

