

States Code (as amended by subsection (a) of this section).

(2) The report shall include—

(A) a description of the exercise of the authority by the Secretary; and

(B) such recommendations for additional legislative or administrative action with respect to the authority as the Secretary considers appropriate in light of the exercise of the authority.

By Mrs. MURRAY (for herself, Mr. DAYTON, Ms. CANTWELL, Mr. BAUCUS, Mr. LEAHY, Mrs. BOXER, and Mr. JEFFORDS):

S. 1115. A bill to amend the Toxic Substances Control Act to reduce the health risks posed by asbestos-containing products; to the Committee on Environment and Public Works.

Mrs. MURRAY. Mr. President, today I rise to introduce legislation to do what should have been done decades ago: fully ban asbestos in the United States. I am introducing the Ban Asbestos in America Act of 2003 to prohibit this known carcinogen from being used to manufacture products in this country. The bill also bans imports of asbestos products from other countries where asbestos is still legal. I am pleased that Senators BAUCUS, BOXER, CANTWELL, DAYTON, JEFFORDS and LEAHY are original cosponsors of this important legislation.

The primary purpose of the Ban Asbestos in America Act of 2003 is to require the Environmental Protection Agency, EPA, to ban the substance within two years. Most people think that asbestos has already been banned. In fact, in 1989 EPA finalized regulations to phase out and ban the substance by 1997. But in 1991, the 5th Circuit Court of Appeals overturned EPA's ban, arguing that EPA did not "first evaluate and then reject the less burdensome alternatives" under the Toxic Substances Control Act. Unfortunately, the first Bush Administration did not appeal the decision to the Supreme Court. While new uses of asbestos were banned, existing ones were not.

As a result, it is still legal in 2003 to construct buildings in the United States with asbestos cement shingles and to treat them with asbestos roof coatings. It is still legal to construct new water systems using asbestos cement pipes imported from other countries. It is still legal for cars and trucks to be made and serviced with asbestos brake pads and clutch facings.

Asbestos is still not banned, and as a result, we're still using it. According to the U.S. Geological Survey, in 2001, businesses in this country consumed 26 million pounds of chrysotile asbestos to make roofing products, gaskets, friction materials and other products. Last month, my staff walked into a local home improvement store and bought off the shelf roofing sealants made with asbestos. In addition, we are still importing asbestos products from other countries, many of which have less stringent environmental and public health standards.

Everyone knows that asbestos is harmful. The term asbestos, like arsenic, lead, mercury or DDT, is synonymous with poison. Asbestos may well be the most regulated toxic substance that federal and state agencies have ever dealt with. At least eleven different Federal statutes address asbestos. The EPA, Occupational Safety and Health Administration, OSHA, Mine Safety and Health Administration and Consumer Product Safety Commission are only some of the Federal agencies tasked with implementing rules to protect workers and consumers from the dangers of this substance.

But the sheer volume of rules and regulations in place does not guarantee that public health and the environment are being adequately protected. We have significant evidence suggesting that because asbestos is still not banned, we're still not safe from its dangers. I'd like to highlight some of this evidence for my colleagues.

First, workers in this country are still being exposed to dangerous levels of asbestos. According to OSHA, "An estimated 1.3 million employees in construction and general industry face significant asbestos exposure on the job. Heaviest exposures occur in the construction industry, particularly during the removal of asbestos during renovation or demolition. Employees are also likely to be exposed during the manufacture of asbestos products, such as textiles, friction products, insulation, and other building materials, and during automotive brake and clutch repair work."

It is important to remember that there is no known safe threshold level of asbestos exposure. OSHA's permissible exposure limit of 0.1 fibers per cubic centimeter is based on technical measurement limitations. OSHA's limit assumes that workers exposed to this concentration have a lifetime exposure risk of 3 to 5 in 1,000 for cancer and 2 in 1,000 for asbestosis. This is a very high risk compared to the cancer risk levels that are considered acceptable for some environmental cleanups.

The extent to which workers are exposed to dangerous levels of asbestos is especially troublesome when one considers the frequency with which OSHA's standards are violated. On July 31, 2001, I chaired a Senate Health, Education, Labor and Pensions hearing on asbestos and workplace safety. At the hearing I learned from OSHA that since 1995, the agency had cited employers for violations of its asbestos standards 15,691 times. This is astounding given the known dangers of asbestos and the high risks of disease even when OSHA's exposure limit is being met.

As follow-up to the hearing, I asked OSHA to provide more information about asbestos-related violations. In an October 17, 2001 letter to me, Mr. John Henshaw, Assistant Secretary for Occupational Safety and Health, wrote that between fiscal year 1996 and fiscal year 2001, OSHA conducted a total of

190,971 inspections generating a total of 427,786 violations. Of these, 3,000 inspections and 15,691 violations involved asbestos. According to Mr. Henshaw, about 2 percent of inspections and 4 percent of violations were asbestos-related. In his letter to me, Mr. Henshaw wrote, "OSHA does not consider any level to be an acceptable noncompliance level. We strive for 100 percent compliance." Despite OSHA's best intentions, workers are still being exposed to dangerous levels of asbestos.

It is also important to consider that the vast majority of workplaces where asbestos exposure occurs, such as construction jobs and auto repair shops, are not regularly inspected by OSHA. The Administration conducts inspections only in response to complaints or as a result of referrals from law enforcement or the media. Many more violations of the standard occur in the real world than are actually recorded by regulators. Many employees likely do not contact OSHA about potential asbestos exposure on the job because they think asbestos has been banned long ago and is no longer a problem.

But asbestos in the workplace is clearly still a problem. Recent news investigations provide more evidence that workers are being exposed to dangerous levels of this mineral. According to an article in the Seattle Post-Intelligencer on November 16, 2000, "During the past three months, the P-I collected samples of dust from floors, work areas and tool bins in 31 brake-repair garages in Baltimore, Boston, Chicago, Denver, Richmond, Seattle, and Washington, D.C. Asbestos, almost exclusively chrysotile, which has been used for decades in brakes, was detected in 21 of the locations. The amount of asbestos in the dust ranged from 2.26 percent to 63.8 percent."

When dust with these concentrations of asbestos in them is disturbed, airborne concentrations of asbestos occur that are well above OSHA's permissible exposure limit of 0.1 fiber per cubic centimeter. Under current OSHA regulations, if airborne asbestos concentrations exceed this level, employers must conduct air monitoring, take measures to reduce asbestos emissions, post warning signs and record concentrations of airborne asbestos. Workers are supposed to wear respirators and protective clothing and are required to undergo long term medical monitoring.

Now I recognize that much of the exposure to asbestos in the workplace comes from asbestos products installed years, and in many cases, decades ago. By one estimate, about 30 million tons of asbestos was used in this country between 1900 and 1980. Asbestos in place, in our buildings, schools and homes, will be with us for decades to come.

But given the known dangers of this mineral, why are we still using it? Why are we still adding it to products on purpose when there are perfectly acceptable substitutes? In retrospect, it is tragic that asbestos was so widely used during the 20th century, for the