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SJ 26 & SJ 27

February 18, 2005

Mr. chairman, and members of the Senate Judiciary Committee.
I'm Michele Reinhart. I'm testifying on behalf of myself and Northern Plains.

Please support SJ 26 and SJ 27.

Northern Plains has long stood up for people who suffer because of carelessness in natural resource development so it is appropriate that I come before you today to support all the Libby residents who have died or who are dying of asbestosis in Libby. I also have a personal connection to this issue.

Last Wednesday, by grandfather Mick Mills died of asbestosis. I am leaving later today to attend his funeral.

My grandpa lived in Libby for over fifty years.
He was the safety guy at the local lumber mill, as well as on the volunteer ambulance and search and rescue crew. He loved hiking, and nature photography.

His illness interfered with his ability to do the things he loved and for the last several years, he had to be on oxygen 24 hours a day, 7 days a week. There is a great deal of suffering involved with this awful condition and it was something that was avoidable if residents had been warned when the company learned of the dangers of vermiculite. .

As this resolution acknowledges, the onset of asbestosis can take years, and there is no cure.

Though it is too late for my grandpa, I ask you to support these resolutions to urge Congress to help the people of Libby still living. I think this is what my grandpa would have wanted.

Thank you.

Michele K. Reinhart

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Indictments give Libby asbestos victims hope

By Andrew Schneider
St. Louis Post-Dispatch

LIBBY - Les Skramstad said he often dreamed about a long row of wooden gallows on the pinkish-tan dirt of the abandoned vermiculite mine on Zonolite Mountain just outside this small town near the Canadian border.

"On those gallows I'd see swinging the bodies of all the company bosses who knew they were killing us, who knew they were killing our wives and children, who knew they were killing this town and other towns where their poisoned ore was handled. They knew it and they hid it," Skramstad said.

"I hope I live long enough to see them swing."

In November, Skramstad bought finished white pine boards to build his own coffin. Asbestosis from working with vermiculite at the mine that W.R. Grace and Co. operated for 30 years has hardened his lungs, making it nearly impossible for him to take an easy breath.

Last Monday, in what the government is calling "one of the most significant environmental criminal indictments in U.S. history," Grace and seven current and former employees were accused of multiple charges, including criminal conspiracy and knowing endangerment. They were accused of knowing that the ore from the Libby mine was deadly and concealing the danger from its workers, people living near the plants and the government. That ore ended up in plants across the United States - including two in St. Louis - and in attic and wall insulation in millions of homes and businesses.

Grace denied the charges and has said it looks forward to setting the record straight in court.

If those indicted are found guilty, Skramstad may live long enough to see some top officials from the worldwide chemical and building products conglomerate behind bars.

"It's not as good as hanging, but even prison is more than I ever thought I would see happen to those bastards," Skramstad said.

The criminal charges were a hard-won victory for Skramstad and miner's daughter Gayla Benefield, who for years battled to get anyone to do anything about the dead and dying in their town.

For years, everything happened with an excruciating slowness - until last year, when investigators and lawyers began a mad dash to beat the deadline to bring criminal charges.

X-rays will show the scars from the asbestos-caused disease on Skramstad and Benefield's lungs. Their wounds from fighting Grace, the federal and state government, and many people in their own town are less visible, but no less debilitating.

Benefield, 61, is a fiery, short-tempered, unrelenting crusader who refused to be stymied in getting people to understand that high levels of asbestos blanketed the beautiful town. But the opposition was tough.

The town's leaders, real estate agents, developers and business owners discredited Benefield and Skramsted's warnings as "crazy," and tried to silence them before tourists fled elsewhere. The medical community insisted the deaths and widespread breathing problems were not unusual and were caused by emphysema. The fact that many victims never smoked wasn't addressed.

State officials and the small Montana office of the U.S. Environmental Protection Agency ignored Benefield's plea for help. The state's Department of Environmental Quality said it was "unsubstantiated nonsense."

Even though Grace was quietly settling dozens of personal injury suits with miners and their families, they would get only scant notice in the local papers.

"Of course they're guilty," said Benefield. "If you visited the Libby's cemetery on Memorial Day, you would have seen the wooden crosses of 230 men and women they killed with that poison, including my mother and father."

Benefield has a color-coded list of 42 members of her family who were exposed to Grace's ore. Forty-two who have either died, are sick, have signs of disease or are at high risk of getting it.

"Next year and for years to come there'll be more crosses," she said.

Clean up effort begins

The EPA arrived in Libby on Nov. 20, 1999, three days after the Seattle Post-Intelligencer published the first of scores of articles on the town, on how Grace concealed the dangers to the people living and working there, and how the government knew what was happening and did nothing for decades. The agency's task was to determine the extent of the contamination and to start cleaning it up.

The EPA team of emergency coordinator Paul Peronard, toxicologist Chris Weis, physician Aubrey Miller and the region's senior civil enforcement lawyer, Matt Cohn, began testing the air and soil, interviewing people, and collecting and sorting thousands of Grace's memos, letters and reports.

The documents, they said, showed that Grace knew how dangerous the asbestos-tainted vermiculite ore was and how the corporation worked to conceal it. They documented a substantial risk to workers not only at Libby's mine and the town itself but also at hundreds of plants around the country that processed Grace's ore into consumer products.

They also showed that almost every official in the company knew how hazardous the material was, from then-company president J. Peter Grace to the health and safety, and marketing and legal departments.

For nearly five years, EPA and Justice Department civil lawyers in Denver have pursued Grace for a variety of environmental transgressions related to its operation of the mine. All were civil actions and limited to financial sanctions.

In winter 2001, two years into the cleanup, Peronard, Miller and Weis talked at a steakhouse on an elk-clogged road outside Libby. They had just left another meeting where townsfolk demanded to know why the government hadn't jailed Grace officials.

"Grace has been telling the same lie for over 40 years," Peronard said. "They still maintain that insulation and other products made from Libby vermiculite has little or no asbestos in it. The courts have ruled that people have died because Grace concealed the danger from their workers, from the town, and from their customers."

Peronard understood the town's frustration.

"What Grace did was criminal," he said. "There's got to be more that the government could do."

Peronard, Miller, Weiss and others who had watched people they'd gotten to know in Libby deteriorate and die said fines were not enough. They wanted government criminal investigators to take a look, but they were swamped with juggling the cleanup, conducting research and evaluating contamination at other Grace sites.

It was February 2004 before the Libby team, including Kelcey Land, an EPA employee who had cataloged tens of thousands of Grace documents, could begin working on a presentation of potential evidence of wrongdoing by Grace. They wanted to give criminal investigators the opportunity to decide whether this was a case worth pursuing.

By the end of the month, they were ready. Daniel Horgan, a senior EPA criminal investigator, his boss, Lori Hanson, and Linda Kato, the Criminal Investigations Division's top lawyer, gathered in a conference room in the EPA's Denver office.

For almost two days, Peronard, Miller, Weis, Cohn and others presented documents to their colleagues from the criminal side.

They showed old aerial photographs of the vermiculite mine with white plumes spewing from the processing mill and Grace documents showing that about 5,000 pounds of asbestos fibers fell on Libby every day the mill operated. They explained that one fiber sucked into the right place in a person's lung could eventually kill that person.

They passed around documents they said showed that Grace knew its product was hurting and killing Libby employees and their families. They explained why they believed that Grace had lied repeatedly in response to EPA questions. They handed out copies of letters from a Grace vice president to former EPA Administrator Christie Whitman that insisted there was no danger of cancer-causing contamination in attic insulation made with Libby vermiculite, which was in millions of homes.

Then they presented Grace reports showing that its tests on the insulation had proved the insulation was dangerous. They wanted to give the criminal investigators a solid understanding of how Grace operated.

They succeeded.

Assistant U.S. Attorney Kris McLean from Montana told the Libby team to keep working.

Leading the effort were Horgan; Bert Marsden, another criminal investigator; Susan Zazzali, an environmental engineer from the EPA's Montana office and, because of complex financial questions, Internal Revenue Service Special Agent John Nielsen.

They came to the mountain

In May, the team ended up in the home of Gayla Benefield.

Over the past five years, lots of visitors have knocked on her door to discuss asbestos-tainted vermiculite and Grace. The western larch log house beside the Kootenai River has hosted newspaper and magazine reporters and photographers from nine countries, would-be authors, documentary filmmakers and television crews from every major network.

But four visitors the evening of May 10 were different. All were federal agents, and at least two carried guns.

Benefield and three neighbors had just come from a board meeting of the EPA-created Citizen's Advisory Group that is formed at all Superfund sites to give citizens a venue for commenting on the agency's actions.

Eight people clustered around the kitchen table: three EPA employees and an assistant U.S. attorney, and four Libby residents who had their own tragic relationships with asbestos and Grace.

Skramstad worked at the mine for just two years. His asbestosis has progressed to the point where the once agile cowboy has a hard time walking. His wife, Norita, also has the disease, as do two of his four children.

Mike Noble was a miner, and asbestos killed his mother and father. Now he has asbestosis.

LeRoy Thom was the last union president before Grace closed the mine. He also has asbestosis.

And Benefield, whose father worked at the mine, and her husband have early signs of the disease, and she fears for her children and grandchildren.

By the time Benefield had made her second pot of strong Montana coffee, they'd gotten down to business.

"They didn't say a lot. They said they couldn't," Benefield said. "But it was obvious they knew what they were looking for. They wanted to know about the schools. They were really interested in the ice rink at Plummer Elementary School and the running track at the high school."

Two years earlier, Peronard and his group learned that Grace had given waste rock containing asbestos from the mine to the schools. Soon after, they found letters proving that Grace knew asbestos was released when kids ran on the track. What terrified many sitting around the kitchen table that night, and many other parents in Libby, is that at least two generations of their children had rolled, tussled and played in the poisonous waste, especially at the elementary school.

"The feds had copies of the letters and they just sat there shaking their heads over what Grace had done," Benefield said.

The investigators had done their homework. Before arriving in Libby, they had spent a couple of days at the Kalispell law offices of McGarvey, Heberling, Sullivan and McGarvey. These lawyers represent hundreds of people suing Grace for deaths or illness from exposure to Libby vermiculite. The lawyers shared their Grace documents with the investigators. They told them their next interview should be Benefield.

The questioning continued late into the night.

"I kept watching that U.S. attorney guy taking notes and I started to believe that Grace might actually be held accountable," Benefield recalled.

The feds left that night after admitting that getting an indictment was a long shot. They said they faced a five-year statute of limitation. An indictment had to be issued by late November - five years from the date Peronard's group arrived in town.

An investigation like this normally would take two to three years. They had only months. They promised to try.

The secret was kept

Dressed in denim or khaki and boots, the feds at first attracted little attention as they scurried across Libby and surrounding Lincoln County. As the number of people they questioned grew, so did the notice their presence generated. But people were trying to keep it quiet.

"No one was mentioning they'd been questioned, or if they did it, they whispered," Benefield said. "We were all terrified that word would leak out and Washington would kill the investigation."

In Missoula, in the team's war room, flow charts and financial notes covered the walls, and a computer system designed by people at the Justice Department allowed them to search 3 million pages of Grace documents. Evidence, including depositions of Grace officials taken over years of civil suits, was piling up but so was the anxiety over being shut down.

Indictment reviews may be routine in most cases, but the angst was never more palpable than when the investigators were summoned to Washington in mid-October. There, Justice Department lawyers from the Environmental Crime Section evaluated the team's progress, debated what else was needed to proceed with the prosecution and offered help.

"Political considerations never come into play in criminal cases," claimed David Uhlmann, section chief of the Justice Department's environmental crime section, but he refused to answer any questions about Grace.

Back in Billings, U.S. Attorney William Mercer, who was at one of the Washington meetings, told investigators to keep at it. They made trips from coast-to-coast and north to south, questioning former and current Grace officials, workers and others. Twelve- to 15-hour days became the norm.

On Oct. 29, the Justice Department notified Grace that it and several of its current and former officials were targets of a criminal indictment.

The investigators and prosecutors were making last minute fixes to the indictment, but the November deadline loomed.

The presidential election had some team members holding their breath. The Bush administration's pro-business stance was no secret, and going back to Ronald Reagan's days, Grace was often a White House favorite. Vice President Dick Cheney's former involvement with Halliburton and its $4 billion plus tab for asbestos claims were discussed over a lot of beer, but team members shrugged it off because there was nothing they could do about it.

Right after the election they made their last appearance before the federal grand jury that was considering the Grace indictments. It met the first Wednesday of every month, for two or three days.

The statute of limitations was about to expire. There was no sign of the indictment.

"The deadline had come and gone," Benefield said. "None of us knew what was happening, but we expected the worst."

But in Missoula, new information, leads the team felt were worth following, had popped up. How could the clock be stopped? The answer came from Uhlmann's team in Washington. Tolling, it was called. The infrequently used statute allows the deadline to be placed in limbo for a short while, if Grace agreed.

It did.

Why would a corporation agree to give prosecutors more time to develop charges against it? Grace didn't volunteer an answer, but most companies do it to have more time to try to get the indictment dropped, or work out a plea bargain, or just postpone what they know will be bad publicity.

The "why" didn't matter to Horgan, McLean and their colleagues. They had more time - more trips, more interviews and another run at the grand jury.

They knew they had another shot at the grand jury in January, and, at the most, one more shot in February. The jurors - two dozen people who travel to Missoula each month -were going to end their long ordeal on Feb. 2. They either voted to indict Grace and its officials on that date or the indictments would be dropped.

The team had gone as far and as deep as time permitted, but some of the investigators admitted that they thought the chances for bringing Grace to trial suddenly went out the window Jan. 7. That was when President Bush made the first of several speeches on the immediate need to halt "abusive asbestos suits," which were harming "some of this country's leading companies."

The team was again in Washington on Jan. 26 when the president raised the "asbestos problem" at his news conference. They knew Bush wasn't referring to criminal suits. But they said they weren't sure the political appointees in the EPA and Justice Department would understand the difference. On Feb. 2, in his State of the Union address, Bush again brought up the asbestos problem. However, earlier that day, the federal grand jury finally handed down the indictments.

At 2 p.m. on Monday, outside the courthouse in Missoula, Les Skramstad and Gayla Benefield beamed as they thumbed through copies of the thick indictment and watched as Mercer and the EPA's Hanson announced the charges against Grace and its executives.

Mercer stressed that they have only been charged and only a trial can prove their guilt. That trial could begin within three months.

In the days since the indictments were announced, Benefield survived a swirl of interviews by reporters from around the world. In the midst of it all, she was reminded of why she and Skramstad never gave up their fight.

Franklin "Mick" Mills, paramedic, nature photographer and the safety officer at Libby's old lumber mill, was exposed to trees covered with asbestos dust from the deadly ore. He died Wednesday of asbestosis.

"It's great that Grace will be made to answer for its actions," she said, "but Mick's death is a reminder of all the people who will be paying a horrible price for what that company did for years to come."

Schneider worked at the Seattle Post-Intelligencer before coming to the St. Louis Post-Dispatch. He is the co-author with David McCumber of "An Air That Kills," which chronicles the poisoning of Libby and the actions of W.R. Grace & Co. throughout the country.

Federal criminal investigators are forbidden to discuss much of their work. This story was pieced together by interviewing more than 20 of the dozens of people questioned by the Justice Department/Environmental Protection Agency team.

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