MAY 1965

U.S DEPARTMENT OF LABOR

Washington

PLAINTIFF'S EXHIBIT T-327

RECORDS AUTHENTICATION CERTIFICATE

I HEREBY ATTEST, That the annexed copy, or each of the specified number of copies, of each document listed below is a true copy of a document in the official custody of the Department of Labor.

1 copy each of:

Transcripts from March 14,15,16, and 17

Comments and hearing exhibits of:

W.J. Nicholson, American Petroleum Institute, D.A. Holaday, Brand Insulations Inc., L.J. Bibri, B.J. Phillips(Certain-teed), M.W. Borow, J.D. Moran(Flintkote), F.L. Pundsack(J-M), J.W. Rawlings, W.M. Hancock(Dow), W.K. Hesse(J-M), E.M. Fenner(J-M), E.J. Killian(Nat. Gypsum), Cement Asbestos Products Co., M.M. Key, G.E. Best(MCA)

SIGNATURE AND OFFICIAL TITLE	DIVISION AND BUREAU	DATE
Daniel J. Marsick Technical Information Specialist	Docket Office/Technical Data Center/Occup. Sfty & Hlth Adm/ U.S. Dept. of Labor	7 Sep 78

I HEREBY CERTIFY, That Daniel J. Marsick who signed the foregoing attestation, is now and was at the time of signing (title) Technical Information Specialist and has legal custody of the official records of the United States Department of Labor therein attested and that full faith and credit should be given to his act as such.

IN WITNESS WHEREOF, I

J. J. Lafranchise

duly designated by the Secretary of Labor as Authentication Officer of the Department of Labor, have hereunto subscribed my name and caused the seal of the Department of Labor to be affixed this 7th day of September 19 78.

J. J. Lafranchise

Authentication Officer
Department of Labor

UNITED STATES DEPARTMENT OF LABOR

WASHINGTON, D.C.

In the Matter of:	
STANDARD FOR EXPOSURE TO ASBESTOS DUST, PROPOSED RULE MAKING	PUBLIC HEARING

Conference Room B
Interdepartmental Auditorium
12th & Constitution Ave., N.W.
Washington, D.C.
Thursday, March 16, 1972

The above-entitled matter came on for further hearing, pursuant to recess, at 9:00 o'clock, a.m., Thursday, March 16, 1972.

BEFORE:

ARTHUR N. GOLDBERG, Hearing Examiner

APPEARANCES:

(As heretofore noted.)

B

(The document above referred to was marked as Exhibit No. 38 for identification.)

EXAMINER GOLDBERG: All right.

MR. FAY: And the second one is the Asbestos Fact Sheet concerning the uses of asbestos and asbestos products.

EXAMINER GOLDBERG: That will be Exhibit 39.

(The document above referred to was marked as Exhibit No. 39 for identification.)

EXAMINER GOLDBERG: Thank you.

Exhibits 38 and 39 are received.

(The documents previously identified as Exhibits Nos. 38 and 39 were received in evidence.)

EXAMINER GOLDBERG: Introduce yourself.

MR. SVETONIC: My name is Matthew M. Svetonic, and I am Executive Secretary of the Asbestos Information Association of North America and also manager of special projects in the Public Affairs Section for the Johns-Manville Corporation.

Mr. Fay has already described the association, and identified the companies which it represents. We are basically an information disseminating organization and the facts or opinions contained in my presentation are supported in the

medical literature or constitute the professional opinion of medical and technical experts available to the industry as consultants.

The asbestos industry has recognized for many years that there are occupational health hazards associated with the excessive inhalation of asbestos dust. Recognizing its obligation to protect its workers, the industry has over the years invested many millions of dollars in sophisticated and highly efficient equipment to reduce asbestos dust levels in the work places generally accepted safe limits. Some $100-million has been invested for this purpose in the past decade alone. I just might point out in reference to some of the testimony that was given this morning that almost exclusively this equipment was designed to prevent exposure at the source, dust collection equipment of the type that was described for us in the insulation trade but on a much, much larger scale -- again not protecting the worker, but protecting him from the dust before it ever gets to him.

The general position within the industry is that we would never like to see a man ever have to wear a respirator, for example. The source is the place to stop exposure.

Over the years, acceptable safe limits for asbestos exposure has been lowered a number of times by various bodies, including NCGIH and others. The industry has worked hard to meet each of these lowered limits. Now, however, the industry

is being faced with the possibility of yet another decrease in the acceptable limits for asbestos exposure. In the past, each new standard was accepted by the industry because the developing medical evidence indicated that new lower limits might indeed be necessary. This is certainly not the case with the two-fiber standard proposed by the National Institute of Occupational Safety and Health. The medical brief prepared by NIOSH in support of the two-fiber limit, in our opinion, falls far short of establishing the necessity of su a standard.

The criteria document, in fact, states quite clearly on page D-10 that "the number of studies that have collected both environmental and medical data and with a significant number of exposed workers is not sufficient to establish a meaningful standard based upon firm scientific data."

If this is true, then the question must be asked: upon what data shall a standard be based? If we are going to base our standard upon what others have done, which is the basic approach that NIOSH had taken, then we are running around in circles, because if specific data is not available to us today, then it could not possibly have been available to others when they developed their standards in the past.

The simple truth is that no one, NIOSH included, knows for sure what a safe occupational standard should be.

There is general agreement among the professionals studying the problem that it should probably be lower than 12 fibers per cc, but how much lower is a question that has not been answered to everyone's satisfaction. The main reason for this is that the disease we are seeing today is the result of conditions that existed 20 or 30 or 40 years ago, at a time when today's highly sophisticated dust collection equipment was not readily available and when both the industry and the medical profession knew relatively little about the hazards of asbestos dust.

This point has been made repeatedly by the doctors testifying before this hearing.

We simply do not know for sure what the dust levels were in those days, but there is every indication that they were enormously higher than they are today. For this reason, as many doctors have pointed out, we must be very careful about looking at today's conditions and today's disease and trying to draw a parallel between the two. Such a parallel does not exist, and this can lead to some very erroneous conclusions.

Let me give you an example.

It has been reported by some researchers studying the insulation trades in this country that the dust conditions that exist today on insulation job sites and in ship-

led to a calculation that the very high death rate found among these men is directly attributable to levels of around three fibers per cc. The evidence is substantial that this calculation is inaccurate.

I am submitting with my testimony a paper which describes the decreasing asbestos content of insulations used in the trades over the past 30 to 40 years. You will recall that this basic question about the levels of exposure in the past among these people was brought up yesterday by Dr. Nicholson and under question by Mr. Sheckler. The basic document which substantiates the conclusion that the levels are considerably different, although we don't know what they were 40 years ago, but we do know they were much higher, is contained in this paper which I have here entitled, "Changing Concepts of Insulation Material."

I will not go into the details of what is contained in this paper, except to submit it.

For example, I submit this paper not to discredit any researcher's work. Obviously, I am not in a position to do that, but merely to point out as others have done, the enormous difficulty one encounters in trying to establish meaningful numerical standards.

In addition, as Dr. Holmes pointed out in his testimony, the evidence seems to indicate that more importance should be given to peak exposures in evaluating disease

potential than to time weighted averages.

For example, in the tearout of old insulations aboard ship, the British have counted levels as high as 3600 fibers per cc, with a mean ranging between 159 fibers per cc and 353 fibers per cc. Today, of course, men performing this work are protected by air supply respirators. Thirty years ago, when they received exposures that led to their present disease, they were not so protected.

The doctors are generally agreed that the lung's ability to cleanse itself of accumulated dust would be seriously reduced at such high levels, yet a time-weighted average for a 40-hour week might show a relatively low level.

In the spraying industry, counts as high as 1500 fibers per cc have been recorded. Yet, considering the time spent on preparation of the equipment and other non-spraying tasks, the time-weighted average for these workers might come out to be reasonably moderate.

Thus, in the opinion of most experts, time-weighted averages can be very misleading if the men are periodically exposed to fiber levels so high that the lung's cleansing mechanism fails considerably in its ability to rid the lung of accumulated fiber. If, as the experts have told us, the lungs can remove 99% of all inhaled particles, including asbestos fiber, then a reduction in the cleansing function of even a few percent will increase the amount of fiber retained

by that many magnitude.

In addition to these reasons, there are excellent technological and economic reasons for not promulgating too strict a time-weighted average, and instead placing more attention on eliminating the high peak exposures. The industry is in the process of trying to develop accurate data with regard to economic impact.

Mr. Fay referred to this in his presentation.

We are working hard on this problem with OSHA, Bureau of Standards, and with Arthur D. Little. While it will be some weeks before final figures will be available, early estimates indicate that the cost to the industry of meeting a two-fiber standard, in those sections of the industry where such a standard is feasible, would be in the vicinity of $200 million.

In recommending a standard of two fibers per cc, the erroneous assumption has been made that today's technology is capable of lowering the levels in each and every asbestos operation to two fibers. Past experience would indicate that in a sizable number of operations it will be impossible to reduce the levels to two fibers, no matter how much money is spent.

In these cases, the operations obviously would have to be shut down and the men thrown out of work. We have only a very rough idea at this time how large a segment of the

manufacturing industry would be affected in this manner, but an estimate of perhaps 15 to 20% seems reasonable.

Applied to the sales of a billion dollars, this would obviously work out in the range of $150 to $200 million.

In addition, there will no doubt be cases where the technology is available to reduce levels to two fibers, but where the cost involved would make a particular product line either no longer profitable or no longer competitive on the open market against non-asbestos containing products of the same type.

In these cases, the plant or manufacturing operation would also be shut down. This particular type of situation would also exist at a five-fiber level hopefully in not as many cases.

Trying to put a handle on the potential number of lost jobs is extremely difficult. Many small manufacturing operations will undoubtedly go under, but it is nearly impossible to determine the total number of men we are talking about. Perhaps 15 to 30 thousand is about as close as we can come at this time. This would not be just in manufacturing but would be a consideration of the insulation trades and other groups as well.

The figures I have just mentioned may not seem large when compared to what the steel or automobile industries would have to pay in similar circumstances, but the asbestos industry

in this country is much smaller, and $200 million in equipment, another $200 million or more in eliminating product lines due to an inability to meet the two-fiber standard, and 20 or 25 thousand lost jobs is an enormous chunk of this industry. For this reason, it is vital that OSHA give considerable thought before promulgating a standard that even the experts agree is not based on solid scientific evidence.

Of additional enormous potential financial impact on the industry is the labeling requirement as contained in the final recommendations of the OSHA Advisory Committee. It would require the placing of a warning label on each and every product containing more than 5% asbestos by weight. This label which contains the words: "Do not breath dust -- may cause asbestosis and cancer."

Such a label would surely spell the demise of a number of major product lines of the industry, including vinyl-asbestos floor tile, asbestos-pipe, and any other product that is sold directly to the consumer market. In addition, there is no doubt that our competitors will attempt to take advantage of the situation by encouraging the public to avoid asbestos-containing products because of the potential health hazards implied in the warning label, even though to the contrary no such hazard exists.

I would question whether such a label is, in fact, necessary or called for in the majority of asbestos-containing

products. Everyone in the industry and in the medical and scientific profession who has dealt with the asbestos health problem over the years is familiar with the concept of locked-in and non-locked-in products. A locked-in product is one in which the asbestos is bound into the product with cement, asphalt, plastic or some other binder which prevents the escape of free fiber in use.

Examples of locked in products would be asbestos cement products and floor tile. Non-locked-in products would be those in which the fiber is loosely bound and which release fiber during handling or application. Most asbestos-containing insulations would fall into this category, as would fire-proofing sprays and insulating cements.

I should mention that while there is no labeling requirement under any Federal statute for insulation products at the present time, I believe the majority of the companies in the industry voluntarily have a warning label on most formulations which they consider potentially hazardous in use. We took action to a lot of bag asbestos cement products and fiber shipments. This was a voluntary action on the part of many of the companies in the industry.

The fact of the matter is that the percent of content of fiber in a product has absolutely nothing to do with its ability to create a health problem. An insulation containing 7% asbestos fiber requires very careful handling,

while an asbestos cement sheet with 15% asbestos requires essentially none.

For this reason, it is only logical that the Advisory Committee recommended labeling system be discarded in favor of a system which only requires labeling on those products which readily release asbestos fiber in a hazardous quantity during handling or application.

With regard to the monitoring requirements of the proposed regulations, I would only like to point out that there are probably no more than three dozen trained industrial hygienists in the entire country available to industry to sample and analyze asbestos dust concentrations. OSHA should appreciate this problem because of its own difficulties in finding qualified industrial hygienists. Men can be trained to do this job, but it is going to take much more time than is permitted under the law.

I might also point out that the dust monitoring system as required in the regulations will cost the manufacturing industry alone between $3 and $5 million per year, not an exhorbitant sum when viewed by itself, but one that adds to an already heavy financial burden on the industry.

As my final point, I would like to discuss for a minute the medical aspects of the Advisory Committee recommendations. The recommendations state that the medical surveillance program shall be carried out by physicians

selected by the employee, and that the medical records will be available only to HEW and DOL physicians and "medical consultants and physicians designated and authorized by the employee."

You will note this employer is by omission prohibited from seeing an employee's medical record, even though the employer is responsible under the law for the medical condition of his employees.

Under Section (c)(7) of the Advisory Committee recommendations, an employer is required to make sure that no employee "should be assigned to tasks requiring use of respirators if his most recent medical examination indicates" and then the section goes on to the certain medical criterion.

How can an employer obey the section of the regulations if he is prohibited from seeing an employee's medical records by another section of the regulation? This is completely illogical and is obviously reflective of the haste with which the advisory committee was required to perform its duty.

In addition, how could an employer conduct a preventive medicine program in his plant if he cannot perform examinations, note changes in medical conditions, and counsel employees? These programs are in existence in essentially all manufacturing companies in the asbestos industry. And I might point out that not only are employees counseled on

possible occupational health problems, but on the general overall health condition as well.

We have heard the arguments from certain unions, not necessarily here, but from others, that it should be solely up to the employee to decide whether or not he is willing to work under the existing conditions, whatever they may be. This simply does not make good sense, because it is still the responsibility of the employer to safeguard the health of his employees. Where the responsibility lies is where the implementation of the medical surveillance program should be centered, and no place else.

It should also be pointed out that a system of the type proposed in the recommendations would effectively prevent future epidemiological studies of the asbestos industry, except on a very limited or local scale. The medical records vital to such studies would be distributed among thousands of doctors all across the country, and retrieval would be virtually impossible.

In conclusion, I would like to summarize very briefly the various points I have attempted to bring out in my presentation.

One. The medical evidence for establishing a meaningful time-weighted average is unavailable at this time.

Two. Most experts agree that the brief, massive doses of asbestos fiber are probably more important in the

causation of the disease than continuing, long-term, low or moderate exposure. This is not to preclude that low exposure over an enormous period of time are not to be considered at all, but that the one is more important than the other.

Three. If OSHA promulgates a time-weighted average lower than five, the economic impact on the industry will be enormous. In addition, many asbestos-containing products will probably disappear from the marketplace and thousands of jobs will be eliminated.

Four. A labeling requirement of the type recommended by the OSHA Advisory Committee will result in the unnecessary loss of hundreds of millions of dollars in sales each year. Entire segments of the industry will be destroyed, with resultant large-scale unemployment.

Five. The dust monitoring program recommended by OSHA is impractical at this time because of the lack of trained personnel.

Six. The medical surveillance recommendation of the Advisory Committee is illogical and unworkable.

There are, of course, other sections of the proposed regulations that will create difficulties in addition to those that I have discussed and these will be mentioned by separate testifiers. However, I believe that the points that I have covered are the most important, at least to the manufacturing side of the industry.

OSHA has a tremendous responsibility in the establishing of occupational health standards on asbestos. Not only must the workers be protected, but the continued availability of asbestos-containing products to our society must be assured. To promulgate unnecessarily strict or impractical standards that would destroy entire segments of the asbestos industry would be a serious mistake.

EXAMINER GOLDBERG: Do you wish to introduce your document?

MR. SWETONIC: I have two of them.

EXAMINER GOLDBERG: Document entitled, "Change in Time Period of Insulation Materials," will be marked Exhibit 40 and is received in evidence.

(The document above referred to was marked Exhibit No. 40 for identification and received in evidence.)

EXAMINER GOLDBERG: May these gentlemen be excused? Thank you, gentlemen.

MR. MARCH: Gentlemen, my name is John H. March. I am Director of Planning for Raybestos-Manhattan, Inc.

Prior to my remarks which will be directed toward the economic impact of the proposed regulations, I should like to have Mr. Isaac E. Weaver speak on the technical feasibility of meeting the proposed standard and comment on certain other aspects of the proposed regulations.