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PLAINTIFF'S EXHIBIT

FSA-3

FLUID SEALING ASSOCIATION

Position Paper

On

Proposed Rules On Occupational Exposure To Asbestos

Published By

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

DEPARTMENT OF LABOR

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FEDERAL REGISTER,

Volume 40, Number 197, Thursday, October 9, 1975

by S.G. Dixit and R. Hoyle
January 23, 1976

1910.1001 Asbestos.

(a) Scope and application.

The first sentence in this section should be changed to read:

"This section applies to every place of employment where asbestos or a product containing asbestos is manufactured, processed, packaged, stored, applied, used or otherwise handled where dust generated is likely to exceed the permissible exposure to airborne concentration of asbestos fibers.

- (b) (4) Please see our comments under designation of regulated areas.
- (c) (1) and (2) We recommend that the 8-hour time-weighted average for concentration of asbestos dust be maintained at 2 fibers per cubic centimeter and the ceiling concentration be maintained at 10 fibers per cubic centimeter for the following reasons:
 - (1) The 2 fibers per cubic centimeter standard will not be in effect until July 1976. This standard should be given sufficient time to see if exposure at this level is detrimental to the health of those exposed to it.
 - (2) At present, we do not believe that the technology to reach 0.5 fiber per cubic centimeter exists today and sufficient time has to be allowed to reliably bring the asbestos dust level under the proposed regulation.
- (d) This section will create administrative problems particularly for smaller companies which are typical members of the Fluid Sealing Association. Creation of regulated areas by constantly monitoring asbestos dust level and keeping a roster of all people entering the regulated areas may be economically untenable for smaller companies.
- (e) (4) (i) Employees should be notified only if such employees have been exposed to dust level in excess of the standard.
- (f) The capital expenditures required to bring the plants into compliance will appreciably increase the cost of the product and greatly reduce competitiveness. It is conceivable that the smaller companies will not be able to raise the tremendous amount of capital required.
- (f) (ii) The provisions of this section are not necessary so long as the manufacturer operates within the permissible exposure limits as established by Occupational Safety and Health Administration.
- (f) (6) The provisions of this section are not necessary so long as the manufacturer operates within the permissible exposure limits as established by Occupational Safety and Health Administration.
- (f) (7) (i) and (f) (7) (ii) and (f) (F) (iii) We feel that the technology to comply with the proposed 0.5 fibers per cubic centimeter standard is not currently available and hence it will not be possible to develop a feasible compliance program.

- (g) (2) The concentration of asbestos specified for the selection of respirator should refer only to the ceiling concentration and not the time-weighted average.
- (g) (3) (iii) The provision under this section should be completely at the discretion of the employer and hence this section should be deleted from the proposed rules.
- (g) (3) (iv) The provisions of this section are not administratively possible for a smaller employer, which is typical of the members of Fluid Sealing Association.
- (h) (2) This section should be rewritten to read:

"It shall be the responsibility of the employer to provide clean and dry protective clothing to each effected employee."
- (i) (2) This section will create problems in enforcement and could create health problems, particularly in cold climates. This puts the employer in an untenable position.
- (j) (3) and (j) (4) The provisions of these sections should apply only to those employees who are working with asbestos in normal work situations.
- (m) (1) The provisions under this section are unnecessary so long as an employer operates within the exposure limits established for asbestos dust.
- (n) Complying with this section will impose an economic hardship for smaller companies.

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D R A F T

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

UNITED STATES DEPARTMENT OF LABOR

NOTICE OF PROPOSED RULE MAKING

OCCUPATIONAL EXPOSURE TO ASBESTOS

29 CFR Part 1910

Fed. Reg., Vol. 40, No. 197, Oct. 9, 1975

ASBESTOS INDUSTRY RESPONSE

9 February 1976

INTRODUCTION

On October 9, 1975 the Occupational Safety and Health Administration of the Department of Labor proposed a revision to its regulation, Occupational Exposure to Asbestos, 29 CFR Part 1910. On December 11, 1975 the Board of Directors of the Asbestos Information Association/North America (hereinafter AIA) voted to sponsor an asbestos industry response to the proposal and created a task force for that purpose, naming the undersigned as Chairman. The Task Force enlisted the support of the membership of AIA/NA and invited non-member companies and trade association to join in the endeavor. The result of that effort is this statement, made on behalf of the companies and trade associations listed as endorsing firms and organizations.

The statement was prepared in this manner:

1. Dr. Hans Weill, Professor of Medicine, Tulane University School of Medicine and medical consultant to AIA/NA, reviewed recent literature pertaining to asbestos and health, consulted with other qualified experts both in the United States and abroad, and prepared a paper, attached hereto and marked "Exhibit A," which summarizes the present state of knowledge concerning asbestos disease, giving particular attention to those papers cited in the OSHA proposed regulation.

2. Roy F. Weston, Inc., an independent consulting engineering firm of West Chester, Pennsylvania, conducted a survey of the United States asbestos industry to ascertain the technological and economic feasibility of the proposed regulation and its economic

impact. The Weston report is attached hereto and marked "Exhibit B."

3. The Standards and Technical Committee of the AIA/NA reviewed in detail the OSHA proposed regulation for the purpose of recommending to the Task Force Chairman specific changes in the regulations which appropriately might be suggested.

Summary of Findings

The Task Force has reviewed the reports of Dr. Weill and Roy F. Weston, Inc. and from those reports has drawn certain conclusions.

Medical Report

Although the volume of epidemiological data available for statistical analysis in 1976 is greater than that available in 1972, the conclusions which reasonably may be drawn from those data are not significantly different from conclusions which were, or could have been, drawn in 1972. Then, as now, qualified experts would conclude that:

1. Asbestos, when inhaled, causes fibrosis (asbestosis).
2. Asbestos, when inhaled, is associated with the development of malignant tumors of the bronchial system and lung and with mesothelioma, (in other words, asbestos is a carcinogen).

Few, in any students of the subject would disagree with the conclusion that there is a dose-response relationship between exposure to airborne asbestos and the development of asbestosis. There also is a substantial body of expert opinion

which supports the premise that there is a dose-response relationship between exposure to most, if not all, carcinogens and the development of cancer. There is no reason to believe, from the data available to us, that asbestos is an exception to this generality; although, at this time, no one definitively can say at what exposure level asbestos becomes a cancer hazard to man.

It should be emphasized that, so far as we know, no credible epidemiological studies have been published which would suggest an excess of malignant tumors among persons exposed to no more than 2 asbestos fibers per cc of air (TWA), using the prescribed membrane filter test method. This is a fact simply because there have yet been identified for study no populations the exposure experience of which, consistently has been as low as 2 fibers. Since all populations studied to date have been exposed to substantially higher concentrations of airborne asbestos, we can conclude only that an excess of all types of asbestos disease is associated with levels of exposure significantly higher than the level currently mandated to become effective on July 1, 1976.

Feasibility/Economics Report.

For convenience, the Weston study has divided the U.S. asbestos industry into three sectors or segments:

(a) "primary" - employers who receive, store, handle and process raw asbestos fiber,

(b) "secondary" - employers who receive, store, handle and process products or materials containing asbestos, and

(c) "consumers" - employers who use products or materials containing asbestos.

Our study of feasibility and economics has been severely handicapped by the short period of time within which it had to be completed. Data obtained to date are sufficient to draw supportable conclusions within the primary sector of the industry, but they are insufficient to draw supportable conclusions within the secondary or consumer sectors. And since the secondary and consumer sectors constitute an important part of the total market served by the primary sector, deficiencies in the secondary and consumer data make it impossible to draw adequate conclusions concerning the impact of the proposed regulation upon the markets for primary products.

With these serious limitations in mind, it is possible at this time to draw from the Weston report the following conclusions (qualified where indicated):

1. Of the dust counts obtained from the primary segment of the industry, less than 50% were at or below two fibers per cc (TWA) while more than 50% were above that level.
2. Using best available technology (hereinafter BAT), within three to five years, the primary sector can meet a 2 fibers per cc (TWA) standard, emergencies excepted.
3. The cost of installing BAT in the primary sector will be substantial, but we believe that it can be financed with tolerable impact upon the selling prices of the products of the primary producers.
4. Although an airborne concentration of 0.5 fiber per cc (TWA) can be achieved at some process steps; a uniform, across-the-board standard of 0.5 fiber per cc (TWA) is technically

feasible neither for the primary sector as a whole, nor for any industry category within the primary sector. (Since BAT has been widely adopted among representative primary sector manufacturers in the United States and abroad, it is a fact that a 0.5 fiber per cc (TWA) level cannot be achieved.)

5. The secondary and consumer sectors of the asbestos industry, are more important than the primary in that they involve a greater number of business enterprises, a greater number of employees, and a larger aggregate dollar volume of sales; and those sectors are characterized by a large number of small businesses with modest capital bases. (Conclusion tentative - data inadequate or incomplete.)

6. The secondary and consumer sectors of the industry are operating within a wide range of airborne fiber concentration levels, some well in excess of 2 fibers per cc (TWA). (Conclusion tentative - data inadequate or incomplete.)

7. Because of the job shop nature of many secondary and consumer sector businesses (a variety of products having a variety of configurations being fabricated at many different locations within the shop), a 2 fibers per cc (TWA) standard may not be technically feasible for all secondary and consumer category employers. (Conclusion tentative - data inadequate or incomplete.)

8. BAT has not yet been defined for the secondary and consumer sectors, and it may well be found to be more expensive than BAT for the primary sector. (Conclusion tentative - - data inadequate or incomplete.)

9. Because BAT in the secondary and consumer sectors may be markedly different in character from that in the primary sector, and, therefore, may be more costly; and because the cost of engineering controls typically does not ratably decrease with every reduction in the size or capacity of an installation; it is quite likely that BAT will not be economically feasible for many small and intermittent users of asbestos products within the secondary and consumer segments of the industry. (Conclusion tentative - data inadequate or incomplete.)

10. Because a uniform 0.5 fiber per cc (TWA) standard is not technically feasible for the primary sector and because, in many process steps, employers in the secondary and consumer sectors will have to use the same technology as the primary producers, or may even have to apply more difficult technologies; it is reasonable to assume that a uniform 0.5 fiber per cc (TWA) standard is not technically feasible for the secondary and consumer sectors. (Conclusion tentative - data inadequate or incomplete.)

11. The adoption of a 0.5 fiber per cc (TWA) standard and its application to the secondary and consumer segments of the industry probably would force many of these employers out of business, or at least would force them to abandon the use of products containing asbestos, with severe economic impact upon their suppliers, the primary producers. (Conclusion tentative - data inadequate and incomplete.)

12. The enforcement, without suitable exceptions, of the July 1, 1976 2 fibers per cc (TWA) standard within the secondary and consumer segments of the industry might force many of these employers out of business, or at least might force them to abandon the use of products containing asbestos, with serious economic impact upon some of their

suppliers, the primary producers. (Conclusion tentative - data inadequate or incomplete.)

13. Because the capital cost of engineering controls is high; the enforcement, without suitable exceptions, of the July 1, 1976 2 fibers per cc (TWA) standard within the secondary and consumer sectors of the industry probably would result in a transfer of many of the functions now being performed by smaller factors within those sectors, to larger factors within the sector or to primary producers, the result being an undesirable trend toward concentration within the asbestos industry. (Conclusion tentative - data inadequate or incomplete.)

14. Since two-thirds or more of the asbestos fiber tonnage consumed in the U.S. asbestos manufacturing industry is destined for the building construction market, a reasonable and appropriate projection of the economic impact upon asbestos manufacturers of the Occupational Safety and Health Administration's regulation of the asbestos hazard cannot be made until after the proposed construction industry regulation has been published and its impact measured.

Discussion

The record shows that the proceedings which led to the adoption in 1972 of the current asbestos regulation were replete with references to the cancer hazards of asbestos. The introduction to the regulation itself makes clear the fact that the selection of

the 2 fiber per cc (TWA) exposure standard was governed primarily by a concern for the cancer hazard, and particularly by a concern for the risk of mesothelioma. It cannot today truthfully be said that the carcinogenic character of asbestos is a recent discovery, occurring after the present regulation was adopted. And it is most important to note that, since 1972 when the current 2 fibers per cc (TWA) permanent standard was promulgated, there has been no new evidence presented, concerning either asbestosis or cancer, from which it may be concluded that that mandated exposure level is not safe. There is, in fact, no medical justification for a reduction in the July 1, 1976 exposure standard.

With verification still required in the secondary and consumer segments of the industry, it now is possible to conclude:

1. That it is not technically feasible for any segment of the asbestos industry to meet a 0.5 fiber per cc (TWA) exposure level.

2. That the primary producers can, at substantial cost, within three to five years meet the 2 fibers per cc (TWA) standard.

3. That large portions of the secondary and consumer segments of the industry cannot economically (and perhaps cannot technologically) meet the 2 fibers per cc (TWA) standard without the option of using personal protection as their primary mode of compliance, particularly when they must shoulder the pass-through costs of BAT in the primary sector.

4. That the enforcement, without exceptions, within the secondary and consumer segments of the industry, of the July 1, 1976 2 fibers per cc (TWA) standard, and, a fortiori, a change in that standard to any lower level, will lead to undesirable concentration within the industry.

5. That, because the projected construction industry regulation inevitably will have a profound economic impact upon segments of the asbestos manufacturing industry, we cannot intelligently comment upon the economic impact of the proposed manufacturing regulation separate and apart from the economic impact of the projected construction regulation.

We believe, in short, that the most serious problems raised by the regulation proposed on October 9, 1975 lie in its potential impact upon the secondary and consumer segments of the industry and in the consequential effect of that impact upon the primary segment. Patterns of trade may be seriously disrupted, jobs may be lost, small businesses may be destroyed, investment values may be damaged, inferior or expensive materials may be substituted for those now in use, prices for many products may be inflated, hazards to the public now controlled by asbestos may be increased, and all for the purpose of achieving an exposure standard which would yield marginal, or perhaps no, health benefits.

Recommendations

For the reasons above stated, we therefore recommend:

1. That action on the regulation proposed October 9, 1975 be deferred until the asbestos industry can complete its economic/feasibility survey of the secondary and consumer segments of the industry and until that regulation can be considered together with the projected construction industry regulation; or, if that be not possible,

2. That action on the regulation proposed October 9, 1975 be deferred until it can be considered together with the projected construction industry regulation; or, if that be not possible,

3. That the currently mandated July 1, 1976 standard and ceiling airborne fiber concentration levels (2 fibers TWA and 10 fibers) be incorporated into the proposed new regulation, with other detailed changes as indicated in the supplement attached hereto and made a part hereof, many of which are designed to relieve the small and intermittent user of asbestos and asbestos products of the burdens of the regulation.

Respectfully submitted,

Guy George Gabrielson, Jr.
Chairman, Asbestos Industry Task Force

Attachments:
Supplement
Exhibit A
Exhibit B