



PLAINTIFF'S
EXHIBIT
WH-988

NICOLET INDUSTRIES, INC.
Manufacturers of Quality-Controlled Asbestos Products

August 7, 1972

TO ALL NICOLET CUSTOMERS

Dear Customer:

On June 7, 1972 the Occupational Safety and Health Administration of the United States Department of Labor published regulations under the Williams-Steiger Occupational Safety and Health Act of 1970, covering the use of asbestos in industry. A copy of the OSHA standards is attached.

In our opinion, based in part upon comments made by the members of the Asbestos Information Association of North America, (our industry association), most, if not all, major United States asbestos manufacturers believe:

1. That the currently prescribed level of five fibers (5 microns or more in length) per cc of air can be achieved by better housekeeping, improved work practices, process modifications and engineering controls, (i.e., dust collection systems), in all segments of the asbestos manufacturing industry, with the probable exception of asbestos textile carding and spinning.
2. That the prospective level of two fibers (5 microns or more in length) per cc of air, which is indiscriminately made applicable to all types of asbestos, (scheduled to become effective in 1976) probably is unnecessary to protect the health of the asbestos work force.

We anticipate, therefore, that the major companies in the U. S. asbestos manufacturing industry, during the next four years, will sponsor research to determine which kinds of asbestos may be dangerous, what fiber configurations may be dangerous and what levels and duration of asbestos dust exposure can be experienced without adverse effects upon health. If the results of this research are as expected, the data gathered will be used hopefully to persuade the Department of Labor not to implement the two fiber standard because we think it is unnecessary, and, therefore, a waste of industry resources.

In the meantime, both you and we must take steps to comply with the five fiber standard and certain other provisions of the regulations. Nicolet cannot yet claim to be expert in the general field of industrial hygiene; but we have made dust counts, and we have successfully reduced dust levels in many of our own manufacturing areas.

CORPORATE MARKETING HEADQUARTERS
Wissahickon Avenue, Ambler, Pa. 19002 Phone: 215, 646-4000 Telex: 846-406

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We offer you our assistance within the limits of our resources in taking a first look at your situation. We will, at your request, at a reasonable cost to you, measure dust levels in certain areas of your factory and try to define which portions of your manufacturing process may pose problems. You may find that you already are under the five fiber level. If you are not, you may wish to use our engineering staff to advise you on how to achieve the five fiber level. You will understand that, for this service, we will have to charge an additional fee. It may still, however, be less costly for you to use Nicolet personnel than it would be to hire your own professionals on a full time basis.

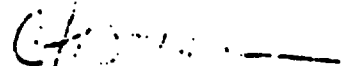
If a study of your dust problem should indicate that the capital cost of compliance is high, you may wish to consider having Nicolet perform some converting operations for you. It may be that we are already equipped effectively to handle your critical operations, (or we can equip ourselves at a nominal cost), so that it would be more economical for us to do your converting for you.

If you would like to discuss any of these matters in greater detail, please contact one of our Marketing Managers or the undersigned.

In summary, we are satisfied that most asbestos materials, (particularly those formulated with chrysotile), will continue to be valuable and safe when used by methods which comply with the OSHA standards.

Very truly yours,

NICOLET INDUSTRIES, INC.



C. FRED WORKMAN
VICE PRESIDENT-MARKETING

CFW/emc

**PART 10—ARTICLES CONDITIONALLY
REF. SUBMITTED TO A REDUCED
RATE, ETC.**

**Free Withdrawal of Supplies and
Equipment for Aircraft**

In accordance with section 231(d), Tariff Act of 1930, as amended (19 U.S.C. 1303(d)), the Department of Commerce has found and under date of April 25, 1972, has advised the Treasury Department that Poland shall be privileged to aircraft imported in the United States and engaged in foreign trade and transit, and to the equipment for in sections 231 and 237 of the Tariff Act of 1930, as amended (19 U.S.C. 1303, 1317). The same privileges are likewise hereby extended to aircraft imported in Poland and engaged in foreign trade effective as of the date of such notice.

Accordingly, paragraph (d) of § 1010, customs regulations, is amended by the insertion of Poland in appropriate alphabetical order and the number of this Treasury decision in the opposite column headed "Treasury Decision" in the list of nations in that paragraph. (Sec. 301, 317, 321, 49 Stat. 622, as amended, 626, as amended, 73d; 19 U.S.C. 1303, 1317, 1324)

(SEAL) **Erwin P. Rains,**
Acting Commissioner of Customs.

Approved: May 23, 1972.

Ernest T. Rossiter,
Assistant Secretary of the
Treasury.

[FR Doc 72-2379 Filed 6-6-72; 9:59 am]

Title 29—LABOR

**Chapter XVII—Occupational Safety
and Health Administration, Department of Labor**

**PART 1910—OCCUPATIONAL SAFETY
AND HEALTH STANDARDS**

**Standard for Exposure to Asbestos
Dust**

On December 7, 1971, an emergency temporary standard concerning exposure to asbestos fibers was published in the Federal Register (36 FR 20071). In accordance with section 6(c)(3) of the Williams-Bray Occupational Safety and Health Act of 1970, a notice of proposed rulemaking regarding a permanent standard for exposure to asbestos fibers was published in the Federal Register on January 12, 1972 (37 FR 456). The notice invited interested persons to submit both orally and in writing, data, facts, and arguments concerning the proposal.

On or about January 24, 1972, the Advisory Committee on Asbestos Dust was established and requested to make written recommendations with regard to the proposed standard on asbestos. On or about February 1, 1972, the Department of Health, Education, and Welfare transmitted to the Secretary of Labor a criteria document containing recommendations

from an independent group of experts for an occupational exposure standard for asbestos dust. The Department of Health, Education, and Welfare, in consultation with the Occupational Safety and Health Administration, has received and is reviewing the recommendations and the data submitted for the standard and exposure limit on or about February 25, 1972. The Advisory Committee on Asbestos Dust has also received recommendations from a group of experts of Labor for occupational safety and health.

Pursuant to the notice of rule making, a hearing was held on March 14 through 17, 1972, for the purpose of receiving oral data, views, and arguments concerning the proposed standard. On or about March 21, 1972, a proceeding hearing examination certified to the Assistant Secretary of Labor for Occupational Safety and Health the record of the proceeding. This record includes preliminary written comments, a transcript of the oral proceeding held at the hearing, and numerous exhibits received during the course of the hearing or within the period allowed after the close of the hearing.

The proposed standard dealt with (1) permissible concentrations of asbestos fibers; (2) methods of compliance; (3) warning signs; (4) monitoring; (5) medical examinations; and (6) recordkeeping. Each of these major proposals elicited comments, arguments, objections, and counterproposals. They all have been examined and considered.

1. **Acceptable concentrations of asbestos dust.** The proposed standard would limit occupational exposure to 8-hour time-weighted average (TWA) airborne concentrations of asbestos dust not exceeding five fibers longer than five micrometers per milliliter. Concentrations above five fibers but not to exceed 10 fibers (ceiling concentrations) would be permitted up to 15 minutes in an hour, but for not more than 3 hours in any one 24-hour day.

NIOSH in effect has recommended that the five-fiber TWA and 10-fiber peak concentrations be permitted only for 2 years; thereafter, TWA concentrations should be not more than 2 fibers per cubic centimeter (cm.) of air, and peak concentrations should not exceed 10 fibers/cm., with no time restriction. Numerous objections and counterproposals have been made, with regard to both the limits of asbestos fiber concentrations and the time periods to comply with them. Some, for example, have recommended return to a 10-fiber standard at an earlier date; i.e., a level adopted under the Walsh-Healey Public Contracts Act in 1969. Others have recommended a two-fiber standard to become effective in 6 months, then a one-fiber standard for 2 years, and finally a zero-fiber standard after 3 years. These recommendations give a fair indication of the wide spread of the counterproposals.

No one has disputed that exposure to asbestos of high enough intensity and long enough duration is causally related to asbestosis and cancer. The dispute is as to the determination of a specific level below which exposure is safe. Various studies attempt to establish quantitative relations between specific levels of

exposure to asbestos and the occurrence of asbestosis and cancer. These studies have been conducted in various ways, and the results have been inconsistent. Some studies have shown a clear relationship between exposure to asbestos and the occurrence of asbestosis and cancer, while others have shown no such relationship. The results of these studies are based on a variety of factors, including the intensity and duration of exposure, the type of asbestos fibers, and the health status of the individuals exposed. The results of these studies are also based on the methods used to measure exposure and the methods used to diagnose asbestosis and cancer. The results of these studies are also based on the methods used to control exposure and the methods used to treat asbestosis and cancer. The results of these studies are also based on the methods used to prevent asbestosis and cancer.

It is fair to say that the controversy has centered in the area between a three-fiber TWA or concentration and five-fiber TWA concentration, with variations on the time needed for compliance. Many employees and at a five-fiber TWA. Most medical opinion is divided between a two-fiber standard and a five-fiber standard.

In view of the undisputed grave consequences from exposure to asbestos fibers, it is essential that the standard be regulated now on the basis of the best evidence available now, even though it may not be as good as scientifically desirable. An asbestos standard can be re-evaluated in the light of the results of ongoing studies, and future studies, but cannot wait for them. Lives of employees are at stake.

It is concluded that there should be one minimum standard of exposure to asbestos applicable to all workplaces exposed to any kind, or mixture of kinds, of asbestos. Reasons of practical administration preclude a variety of standards for different kinds of asbestos and of workplaces. Also, while the evidence tends to show that asbestosis, for instance, is more harmful than cancer, the evidence is not sufficient to establish separate standards for varieties of asbestos.

Because there must be one standard governing exposure to all varieties of asbestos, and in workplaces are already more hazardous than others, because some present employees with regular exposure to asbestos have already accumulated great doses of asbestos fibers, due to further levels of exposure in the past; because it is known that levels of exposure which may be safe with regard to asbestosis are not safe with regard to cancer; and because the statute requires the protection of every employee, even if one in a hundred have regular exposure to asbestos during a working life which may result in even exceed 40 years; and because of several other considerations which have been urged and are reflected in the text of the proceeding, the contract in the health of employees. As of July 1, 1972, TWA concentrations of asbestos fibers longer than 5 micrometers shall not be allowed to exceed two fibers/cm. with a ceiling value of 10 fibers/cm. for short TWA concentrations of five fibers and

2. **Methods of compliance.** It has been pointed out by many persons that protection against asbestos fibers is best obtained by controlling the generation of dusts first, and secondly by controlling the dispersion of released fibers into the ambient air of the workplace. Therefore, the standard requires feasible technological controls and appropriate work practices as the primary means of compliance. Rotation of employees as a way of meeting the TWA concentration requirement is allowed only in stated exceptional circumstances. Because, as a general rule, it would be difficult to implement, personal protective equipment, such as respirators, cannot be relied upon because, among other reasons, they tend to be uncomfortable and to be used only for short periods of time. Therefore, it is expected that respirators and shift rotation will be used during the period necessary to install engineering controls and to train employees in sound work practices, but, after technological compliance has been achieved, their use must be limited to special work situations and circumstances. Where both are practicable, shift rotation is required.

These two "factors" are not to be used in the formal training process; they should not be required to be fully understood or even named by "beginner" and "intermediate" students. They are for the advanced student.

4. Memorandum. This paper, if prepared, would note national personnel contacts and the administrative arrangements. It may also show other national contacts with the given city and recording of important information, frequency of meetings, and conditions in which information should be required. The assigned standing order, the objectives and consequences, is written periodic monitoring as intervals no longer than a month, thus allowing considerable time and discussion, and provides the use of the memorandum file method, which is an acceptable method for determination of national status.

5. **Medical examinations.** The proposed standard would only require an appropriate medical examination on a particular basis. The generality of the proposal has attracted many objections and also many helpful comments. The recommendations of JOGHI and of the Advisory Committee on Asbesta Dust were much more specific with respect to better frequency and type of medical examinations to be required. The comments vary as to the class of employees to be examined and as to the frequency of the examinations.

One question which has been raised goes to whether the employer or the employee should be allowed to choose the examining physician. The standard gives the option to the employer. Since some employers already have a medical examination program in operation, and, also, have medical departments with some expertise in the diagnosis of asbestos-related diseases, it seems more reasonable to permit them to utilize the present programs and expertise, than to permit an employee to choose a private general practitioner.

On the other hand, there is no limitation on all employers to receive information contained pursuant to Act, to the detriment of employees. Therefore, the administration of incident records is required and closely watched, and in cases of an appropriate action will be considered.

Accordingly, after consideration of whole record of the proceedings, pursuant to sections 6 (b) and (c) (3)(e) of the Williams-Steiger Occupational Safety and Health Act of 1970 (Stat. 1902, 1970, 1980; 29 U.S.C. 657), 29 CFR 1910.4, and to Secretary Labor's Order No. 12-71 (35 F.R. 275 Part 1910 of Title 29 of the Code of Federal Regulations is amended as set forth below.

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the employee's occupational history and history of exposure to asbestos fibers in the workplace.

(b) *Employer's records.* The employer shall maintain records of the employee's occupational history and history of exposure to asbestos fibers in the workplace, which shall include the employee's name, address, and date of birth.

(c) *Employer's records.* The employer shall maintain records of the employee's occupational history and history of exposure to asbestos fibers in the workplace, which shall include the employee's name, address, and date of birth.

(d) *Medical examinations.* (1) *General.* The employer shall provide or make available to each of his employees at his cost, medical examinations relative to exposure to asbestos, required by this part.

(2) *Preplacement.* The employer shall provide or make available to each of his employees within 30 calendar days following his first employment in an occupation exposed to airborne concentrations of asbestos fibers, a comprehensive medical examination, which shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second (FEV₁).

(3) *Annual examinations.* On or before January 31, 1973, and at least annually thereafter, every employee shall provide, or make available, comprehensive medical examinations to each of his employees engaged in occupations exposed to airborne concentrations of asbestos fibers. Such annual examination shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second (FEV₁).

(4) *Termination of employment.* The employer shall provide, or make available, within 30 calendar days before or after the termination of employment of any employee engaged in an occupation exposed to airborne concentrations of asbestos fibers, a comprehensive medical examination which shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second (FEV₁).

(5) *Recent examinations.* No medical examination is required of any employee, if adequate records show that the employee has been examined in accordance with this paragraph within the past 1-year period.

(6) *Medical records.* (1) *Maintenance.* The employer of employees examined pursuant to this paragraph shall cause to be maintained accurate and accurate records of all such medical examinations.

These records shall be maintained by the employer for at least 30 years.

(2) *Access.* The contents of the records of the medical examinations shall be made available to the employee, or his representative, upon request. The employer shall also make available to the employee, or his representative, upon request, the results of the medical examinations and the results of the pulmonary function tests. The employer shall also make available to the employee, or his representative, upon request, the results of the chest roentgenograms. The employer shall also make available to the employee, or his representative, upon request, the results of the medical examinations and the results of the pulmonary function tests. The employer shall also make available to the employee, or his representative, upon request, the results of the chest roentgenograms.

2. A new § 1910.19 is added to Subpart B of Part 1910, reading as follows:

§ 1910.19 Asbestos dust.

Section 1910.22a shall apply to the exposure of every employee to asbestos dust in every employment and place of employment covered by § 1910.12, § 1910.13, § 1910.14, § 1910.15, or § 1910.16, in lieu of any different standard on exposure to asbestos dust which would otherwise be applicable by virtue of any of these sections.

Effective date. Paragraph (b)(2) of § 1910.22a shall become effective July 1, 1976. All other provisions of § 1910.22a, 1910.23, and 1910.19 shall become effective July 1, 1973. The current emergency temporary standard remains in effect until July 1, 1973.

(29 C.F.R. 1910.1001, 1910.1002, 29 U.S.C. sec. 667; 79 C.F.R. 1910.1001, Secretary of Labor's Order No. 12-71, 38 F.R. 5751)

Signed at Washington, D.C., this 26 day of June 1972.

G. C. O'NEILL,
Assistant Secretary of Labor.
[F.R. Doc. 72-3714 Filed 6-4-72; 8:48 am]

TITLE 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 9—Atomic Energy Commission

PART 9-1—GENERAL

Subpart 9-1.1—Procurement Regulations

MISCELLANEOUS AMENDMENTS

The changes made in AECPR Subpart 9-1.1, Procurement Regulations, have been made in order to establish the AECPR Temporary Regulations, which are a part of the AEC Procurement Regulations and the Federal Procurement Regulations System. The AECPR Temporary Regulations implement and supplement the FPR Temporary Regulations. They also contain policies and procedures initiated by the AEC which are to be effective for a period of 6 months or less. The AEC Procurement

Regulations are hereby amended to read as follows:

1. Section 9-1.101 of the AECPR is amended to read as follows:

9-1.101 Subject of subpart.

This subpart contains the Atomic Energy Commission's (AEC) Temporary Regulations and the AECPR Temporary Regulations. It also contains the AECPR Temporary Regulations and the AECPR Temporary Regulations.

2. Section 9-1.102 of the AECPR is amended to read as follows:

9-1.102 Subject of the AECPR Procurement Regulations and the AECPR Temporary Regulations.

9-1.102-1 AEC Procurement Regulations.

(a) The AEC Procurement Regulations (AECPR) are hereby established.

(b) These regulations implement and supplement the Federal Procurement Regulations System. They also contain policies and procedures initiated by the AEC which are expected to be effective for a period of 6 months or less.

(c) The effective date of the AECPR shall be the date indicated in the respective regulations, unless otherwise provided in the AECPR Temporary Regulations.

(d) The effective date of the AECPR shall be the date indicated in the respective regulations, unless otherwise provided in the AECPR Temporary Regulations.

9-1.102-2 AECPR Temporary Regulations.

(a) The AECPR Temporary Regulations are hereby established.

(b) These regulations implement and supplement the Federal Procurement Regulations Temporary Regulations. They also contain policies and procedures initiated by the AEC which are expected to be effective for a period of 6 months or less.

(c) The effective date of the AECPR Temporary Regulations shall be the date indicated in the respective regulations, unless otherwise provided in the AECPR Temporary Regulations.

(d) The effective date of the AECPR Temporary Regulations shall be the date indicated in the respective regulations, unless otherwise provided in the AECPR Temporary Regulations.

(e) The AECPR Temporary Regulations are a part of the AEC Procurement Regulations and the Federal Procurement Regulations System. All references to the AEC Procurement Regulations or AECPR in § 9-1.103 through § 9-1.105 of this subpart shall be deemed to include the AECPR temporary regulations.

3. Section 9-1.103 Authority, is revised to read as follows:

9-1.103 Authority.

The AEC Procurement Regulations are prescribed by the General Manager, Assistant General Manager for Administration, or the Director, Division of Contracting of the AEC pursuant to the authority of the Atomic Energy Act of 1946, and the Federal Property and Administrative Services Act of 1949.