



PLAINTIFF'S EXHIBIT

ACC-4

To: Plant Managers and Industrial Hygiene Coordinators Date: November 8, 1983

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Location: Wayne

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Subject: Emergency Temporary Standard -
Occupational Exposure to Asbestos ✓

Reference:

OSHA's Emergency Temporary Standard (E.T.S.) for asbestos became effective on Nov. 4, 1984 and adds certain requirements to OSHA's existing standard. The standard is attached for your information.

The E.T.S. reduces the permissible exposure limit (P.E.L.) for asbestos from 2 fibers (longer than 5 micrometers) per cubic centimeter (2f/cc) as an 8-hour time weighted average (TWA) to 0.5f/cc TWA.

We may use any combination of engineering controls, work practices and personal protective equipment to meet the new limit of 0.5f/cc. Training programs are also required to be instituted within 30 days for all employees whose exposures are reasonably expected to exceed the PEL of 0.5f/cc, without regard to the use of respirators. All such employees must be informed of the following categories of information:

- a. instruction on respirator fitting and use,
- b. handling of asbestos,
- c. medical information,
- d. relationship between smoking and lung cancer, and
- e. a review of the asbestos standard.

Requirements for change rooms remain at the 2f/cc level while the E.T.S. requires that where concentrations may exceed 0.5f/cc, we must post signs indicating such locations. Respirator selection is shown on Table I of the attached.

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VII. Environmental Impact, Requirements of Executive Order 12291, and the Regulatory Flexibility Act

The National Environmental Policy Act (NEPA) of 1969 (U.S.C. §321 et seq.), as implemented by the guidelines (40 CFR Part 1500) of the Council on Environmental Quality (CEQ), requires that federal agencies assess their regulatory actions to determine if there is a potential for a significant impact on the quality of the human environment and, if necessary, to prepare an environmental impact statement.

In accordance with these requirements and DOL NEPA regulations (29 CFR Part 11 [Subpart B, 11.10 (a) (4)]) OSHA had determined that because of the emergency nature of this standard, no environmental impact statement will be prepared for the ETS. The courts have held that NEPA does not require advance preparation of an environmental impact statement for an OSHA ETS (*Dry Color Manufacturing Association v. U.S. Department of Labor* 486 F.2d 98, 107 (3rd Cir. 1973)). OSHA will assess, however, the environmental effects of the proposed permanent regulation of asbestos. The results of this study will be available for review and comment prior to the hearings on the proposed permanent standard and will be an appropriate issue for discussion at the public hearing.

In the interim, OSHA welcomes any comments on any environmental effects that might occur as a result of promulgation of a rule on asbestos.

Pursuant to the authority of Section 8(a)(1) of Executive Order 12291 OSHA has not prepared a Regulatory Impact Analysis of this ETS. Preparation of such an analysis was not practicable for OSHA to perform in time to issue this ETS to respond to the grave dangers faced by asbestos exposed workers. OSHA, however, is completing a Preliminary Regulatory Impact Analysis of the proposal to revise the permanent standard which will be made public at the time the proposal is published.

The Regulatory Flexibility Act requires an agency to prepare a Regulatory Flexibility Analysis only for those rules for which a notice of proposed rulemaking is published. OSHA's issuance of an ETS therefore is not covered by the Regulatory Flexibility Act because the OSHA Act provides that ETS's be issued without regard to notice, public comment and other requirements in the Administrative Procedure Act. The proposal to revise the permanent asbestos standard, however is subject to the requirements of the Regulatory Flexibility Act and OSHA will evaluate

the proposal to ascertain whether analysis under the Regulatory Flexibility Act is required.

VIII. Summary and Explanation of the ETS

The requirements of this emergency temporary standard are set out in a new paragraph, § 1910.1001(k). They are limited to additional provisions to the existing asbestos standard which OSHA considers essential and feasible to protect employees from the grave danger resulting from asbestos exposure until OSHA can promulgate more comprehensive revisions in accordance with section 6(b) of the Act. The major changes in the standard made by the ETS are: (1) The new permissible exposure level; (2) methods of compliance permitted to achieve the new level; and (3) a requirement for the establishment of training programs within 30 days. The following section discusses the major provisions of the ETS, the necessity for including these provisions in the ETS, and some additional provisions to trigger certain requirements at the reduced permissible level of 0.5 f/cc.

1. *Paragraph (k)(1) Scope.* As part of the ETS, OSHA is adding a paragraph on the scope of the standard. The paragraph is intended to make clear that the emergency standard applies to all workplaces where employees may be exposed to asbestos in all industries covered by the current asbestos standard i.e. general industry, construction and maritime.

2. *Paragraph (k)(2) Permissible level of exposure.* As part of the ETS, OSHA is adding paragraph (k)(2) which sets a new PEL, effective immediately, of 0.5 f/cc on an 8 hour time weighted average basis. This reduced level may be achieved by any feasible combination of engineering controls, work practices and respiratory protection in order to allow employers to institute effective measures to reduce employee exposures immediately.

OSHA chose 0.5 f/cc as the permissible exposure level primarily because it believes that reducing employee exposures to 0.5 f/cc in all industries will greatly reduce the risk of developing asbestos induced cancers, primarily lung cancer, mesothelioma and gastrointestinal cancer. As set out in the discussion on "grave danger" and "benefits", the number of lives OSHA believes may be saved through an immediate reduction of exposure to 0.5 f/cc is substantial.

OSHA also believes that the 0.5 f/cc level is appropriate for several other reasons. First, because an emergency standard must be feasible, and

employers must be able to comply with the standard in a short period of time. OSHA has set a level which is likely to be achieved immediately, using equipment and control techniques that are currently available.

Second, OSHA believes, based on the data generated by OSHA's contractor, Research Triangle Institute, that some workplaces, especially in the manufacturing sector, may be close to achieving a 0.5 f/cc level through the more rigorous use of engineering controls, work practices and housekeeping methods which are now in place. OSHA encourages employers to continue their efforts to implement these methods in order to assure that, for the long term, the most comprehensive and effective program of protection from asbestos exposure will be provided.

Third, OSHA believes that reliability of the currently required asbestos measurement methods to measure asbestos exposures less than 0.5 f/cc should be open for discussion during a rulemaking hearing, rather than imposed through an ETS. OSHA has therefore not adopted the 0.1 f/cc level petitioned by the unions but instead is considering adding provisions to the asbestos standard that may improve the reliability of both sampling and analysis in the 8(b) rulemaking for the permanent standard and thus allow lower levels to be reliably measured.

3. *Paragraph (k)(3) Methods of compliance.* The ETS adds a new paragraph (k)(3), which permits employers to reduce the permissible exposure limit from the current 2 f/cc limit to the 0.5 f/cc limit by any feasible combination of engineering controls, work practices and respiratory protection. The current requirement in paragraphs (c)(1) and (c)(2) to first utilize engineering controls and work practices to reduce exposure levels to 2.0 f/cc remains unaffected by this ETS.

Flexibility in choosing compliance strategies for the period of an ETS has been incorporated in most other previously issued emergency standards. The policy reflects OSHA's determination to craft emergency standards that are truly responsive to emergency conditions and which afford immediately available protection to affected workers.

4. *Paragraph (k)(4) Employee information and training.* The ETS adds a paragraph to the asbestos standard requiring the employer to provide a training program within 30 days of publication of the emergency standard for all employees whose exposures are reasonably expected to exceed the PEL of 0.5 f/cc, without regard to the use of

respirators, and to assure that all such employees participate in the program and are informed of specified categories of information. OSHA considers this provision to be "necessary" within the meaning of section 6(c) of the Act, to reduce the grave danger faced by asbestos exposed employees. The absence of a training program requirement in the asbestos standard has been pointed out as one of the serious deficiencies of the current standard. OSHA believes that participation in an adequate training program is essential for the protection of employees because most protective provisions enlist the employee as an active participant. For example, many employees handling asbestos depend on effective work practices. Without training in applying these work practices, employee protection would be inadequate. Where the employee plays a more passive role in his protection such as where engineering controls are relied on, training is also essential, because the employee must know the sources of workplace asbestos contamination, and the health hazards of asbestos exposure. In order to assess his own exposure situation and to help recognize when engineering controls are not operating properly. Certainly where housekeeping plays an important role in control, instruction about housekeeping methods, for example, frequent vacuuming, is essential. Perhaps most importantly, where employee protection depends upon respirator use, OSHA's experience shows that training employees in the use, fitting and limitations of respirators is critical to the effectiveness of respirator protection. Accordingly this requirement applies where airborne concentrations are reasonably expected to exceed 0.5 f/cc, even if employees use respirators to reduce breathing zone concentrations and thereby comply with the ETS.

As set forth in paragraph (k)(4) the employer must inform the employee of the health effects of asbestos exposure; the relationship between asbestos and smoking in producing lung cancer; the operations exposing employees to asbestos fibers and necessary protective steps to minimize exposure; the purpose, proper use, fitting instructions and limitations of respirators, and the contents of all the provisions of the Asbestos Standard at 1910.1001.

5. Paragraph (k)(5) Respiratory protection during the ETS. The ETS adds a new paragraph (k)(5) which includes a table which ties respirator selection to the 0.5 f/cc PEL. Under the ETS, the concentration cut-offs for various kinds of respirators are

multiples of the reduced PEL of 0.5 f/cc, rather than multiples of the previous 2 f/cc permissible limit. For example, approved air purifying respirators may be used only where asbestos concentrations are not expected to exceed 5 f/cc (10 x the PEL). Before the ETS, because the PEL was 2 f/cc, such respirators could be used where asbestos concentrations would not have exceeded 20 f/cc (10 x the PEL of 2 f/cc).

Similarly, powered air purifying respirators may be used where asbestos concentrations do not exceed 100 times the PEL, which at the new level of 0.5 f/cc is 50 f/cc. Previously, employers could have used such respirators at concentrations up to 200 f/cc.

It is likely that the main impact of the reduced PEL on respirator choice will be in operations and industries where exposure levels are between 5 f/cc and 20 f/cc. Formerly, employees exposed in this range could use half-mask air purifying respirators; now they must be protected by a powered air purifying respirator or a full facepiece respirator, or they may use a supplied air respirator.

6. Paragraph (k)(6). Warning signs during the ETS. The ETS requires that legible signs warning of the health hazards of asbestos be displayed at locations where airborne concentrations of asbestos fibers exceed the reduced exposure limit of 0.5 f/cc. No specific legend is required; signs for newly posted during the ETS. OSHA wishes to make as practicable as possible the rapid posting of signs, especially in workplaces where there has been previous non-compliance and in areas where asbestos concentrations were formerly below the 2.0 f/cc PEL.

XI. Public Participation

Interested persons are invited to submit written data, views and arguments with respect to the revisions to the asbestos standard made by the ETS. These comments must be postmarked on or before January 3, 1984 and sent to the Docket Officer, Docket No. H-033C, Occupational Safety & Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-6212, Washington, D.C. 20210.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely written submissions will be made a part of the record of the proceeding.

List of Subjects in 29 CFR Part 1910

Occupational safety and health. Asbestos. Health. Emergency temporary standard. Cancer.

Authority and Signature

This document was prepared under the direction of Thome G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Pursuant to Sections 6(b), 6(c), 8(c) and 8(g) of the Act, 29 CFR 1910.1001 is amended by adding a new paragraph (k) as set forth below.

(Secs. 6(b), 6(c), 8(c) and 8(g). Pub. L. 97-396, 84 Stat. 1593, 1596, 1599, 1600; 29 U.S.C. 655, 657; Sec. 107, Pub. L. 97-54, 83 Stat. 96 (40 U.S.C. 333); 29 CFR Part 1911; Secretary of Labor's Order No. 9-83 (48 FR 35736))

Signed at Washington, D.C. this 2nd day of November 1983.

Thome G. Auchter,
Assistant Secretary of Labor.

PART 1910—[AMENDED]

Section 1910.1001 of Part 1910 of Title 29 of the Code of Federal Regulations is hereby amended by adding a new paragraph (k) reading as follows:

§ 1910.1001 Asbestos.

(k) *Emergency temporary standard effective November 4, 1983.*—(1) *Scope.* This emergency temporary standard is issued pursuant to section 6(c) of the Act and applies to all workplaces where employees may be exposed to asbestos in all industries covered by the Act, including, general industry, construction and maritime. Except to the extent modified by this emergency temporary standard all provisions of § 1910.1001 remain in effect.

(2) *Permissible levels of exposure.* The 8-hour time-weighted average airborne concentration of asbestos fibers to which any employee may be exposed shall not exceed one-half (0.5) fiber, longer than 5 micrometers, per cubic centimeter of air, as determined by the method prescribed in paragraph (e) of this section.

(3) *Methods of compliance with the emergency temporary standard.* Notwithstanding any other requirements of this section, compliance with the reduced exposure limit of 0.5 f/cc shall be achieved by any feasible combination of engineering controls, work practices, and personal protective equipment and devices.

(4) *Employee information and training.*—(i) As soon as possible, but not later than thirty (30) days from the effective date of this emergency temporary standard, the employer shall institute a training program for all employees exposed to airborne concentrations of asbestos in excess of

0.5 f/cc, without regard to the use of respirators and shall assure their participation in the program during the effective period of this emergency temporary standard.

(ii) The employer shall assure that each such employee is informed of the following:

(A) The health effects associated with asbestos exposure;

(B) The relationship between asbestos and smoking in producing lung cancer;

(C) The nature of operations which could result in exposure to asbestos and necessary protective steps to minimize exposure including, as applicable, engineering controls, work practices, respirators, housekeeping and protective clothing;

(D) The purpose, proper use, fitting instructions and limitations of respirators permitted by the standard; and

(E) A review of all the provisions contained in 1910.1001.

(5) *Respiratory protection during the ETS.* Notwithstanding any other requirement of this section, where respirators are used to achieve the permissible exposure limit of 0.5 f/cc they shall be selected according to Table 1.

(6) *Warning signs during the ETS.* In addition to the requirements of

paragraph (g)(1) of this section, legible signs warning of the health hazards of asbestos shall be provided and

displayed at each location where airborne concentrations of asbestos fibers may exceed 0.5 f/cc.

TABLE 1

Respiratory Protection
For Airborne Concentrations of Asbestos

Airborne Concentration of Asbestos (TWA)	Required Respirator ¹
Not in excess of 5 f/cc (10 X PEL)	Reusable or single use air purifying respirator
Not in excess of 50 f/cc (100 X PEL)	Full facepiece air purifying respirator, or a powered air purifying respirator
Greater than 50 f/cc	A type "C" continuous flow or pressure demand, supplied air respirator.

¹ Respirators specified for high concentrations may be used at lower concentrations of asbestos.

(Secs. 6(b), 6(c), 8(c) and 8(g), Pub. L. 91-596, 84 Stat. 1593, 1596, 1599, 1600; 29 U.S.C. 653, 657; Sec. 107, Pub. L. 91-54, 83 Stat. 96 (40

U.S.C. 333); 29 CFR Part 1911, Secretary of Labor's Order No. 9-83 (48 FR 35736))

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