Before the

United States Department of Labor

Occupational Safety and Health Administration

Submission of Comments

On

Docket H-033

Notice of Proposed Rulemaking

Occupational Exposure to Asbestos

On Behalf of

National Paint and Coatings Association, Inc.

Date Submitted:

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Submitted by:

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I. The Issue

On Thursday October 9, 1975, the Occupational Safety and Health Administration (hereinafter referred to as OSHA) published in the Federal Register (40 FR 47652) a notice of proposed rulemaking for Occupational Exposure to Asbestos. This will revise 29 CFR 1910-1001 the standard for occupational exposure to asbestos.

II. Statement of Interest

The National Paint and Coatings Association, Inc. (hereinafter referred to as NPCA and headquartered at 1500 Rhode Island Avenue, N. W. Washington, D. C.) is a voluntary, non-profit industry association originally

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organized in 1888 and comprising today approximately 1,000 members who are engaged in the manufacture and distribution of paint, varnish, lacquer, and allied products, or of the materials used in such manufacture. The membership of NPCA collectively produces about 90% of the total national volume of paint, varnish, lacquer and allied products.

NPCA's concern with the proposed revision of the asbestos standard is twofold:

1. The use of asbestos in the manufacturing of paint and coatings and including roof coatings and sealants, caulking and glazing compounds.
2. The proposed inclusion of a definition that, if adopted as part of the OSHA standard, will include certain talcs containing nonasbestiform tremolite used by paint and coatings manufacturers, namely talcs not considered to contain asbestos.

II. Essentiality of Asbestos-Containing Products

The use of true asbestos is limited to conventional paint and coatings products. It is a very important component in roof coatings and sealants, caulking, and glazing compounds. Indeed, asbestos has proven to be a material of unique properties, necessary for the proper application and weathering characteristics of roof coating products.

Roof Coatings are bitumen-based materials in a liquid or mastic form. Roof coatings yield dry films that are highly resistant to water. They are used to repair, protect, and waterproof felt, composition, metal

r ncrete roofs. Asbestos is an important component for about 95% of the roof coatings manufactured in the United States today.

Asbestos fibers give body to the coating which prevents sagging. Asbestos fibers bridge cracks, holes, and other defects in the substrate. Asbestos fibers mechanically strengthen the dry film and thus prevent or retard cracking caused by weathering. Asbestos imparts greater durability than most other types of fibers or fillers. Asbestos, being a mineral, will not deteriorate through mildew, rot or temperature changes. In addition, asbestos fibers, in combination with bituminous materials, promote long life due to the opacity of asbestos fibers to ultraviolet light.

Over the years, manufacturers of roof coatings have experimented with substitute materials for asbestos. Regardless of price or availability, there has not been any other raw material which yields comparable or suitable properties.

The use of asbestos or caulking and sealant materials centers around similar concerns. In many sealant products the incorporation of asbestos results in a product having properties not obtained from the use of substitute materials

The concern with asbestos in the roof coatings and sealants industry is solely with the manufacturing process. Once incorporated into the finished product, the possibility for exposure to the discrete asbestos fibers is essentially eliminated.

IV. Manufacturing Process for Paint and Coatings

Having established the need for the presence of asbestos in the work place by the foregoing, the NPCA wishes to apprise the OSHA of the

nature of the manufacturing process in the paint and coatings industry, in particular the production of roof coatings and sealants.

A typical paint and coatings formulation may involve the compounding of as few as three to more than twenty separate and distinct raw materials. Paint and coatings compounding is a batch process operation. The batches range from 10 to 5,000 gallons in size.

Raw materials are selected for paint and coatings formulations to secure desirable properties of performance. With the average raw materials list of a typical paint and coatings manufacturer generally consisting of hundreds of materials, a wide variation in paint and coatings products exist. This factor distinguishes the products of one manufacturer from those of his competitors.

In compounding a paint and coatings product, a worker adding raw materials to the batch may handle many different raw materials in a single work day. Since this job would be the most likely position for exposure to airborne asbestos in the paint and coatings industry, NPCA asserts that such possibility for exposure to asbestos would not exist on a continuous eight-hour day, forty-hour a week basis. Exposure occurs only during the brief period when the asbestos is being added to the batch.

Further, NPCA notes that, after the asbestos is combined into the batch, the possibility of exposure to the discrete asbestos fibers is essentially eliminated.

Another aspect for consideration is that in many cases, especially for small departments or manufacturers, the work force is seasonal and

transient In other instances, workers are involved in compounding paint and coatings products on a temporary basis, for example, as substitutes for absent workers during the peak manufacturing period.

NPCA therefore, asserts that the nature of the use of asbestos in the paint and coatings industry, consisting of varied short and intermittent periods in which the possibility of exposure exists, is such that it cannot be lumped into the general mining and manufacturing of asbestos. Regulations issued by OSHA must be responsive to these uses and should not impose unnecessary and inappropriate restrictions.

Accordingly, the proposed Standard is not responsive to the manufacturing process of the paint and coatings industry and imposes unnecessarily restrictive engineering controls.

V. Inclusion of Inappropriate Materials Under the Standard

NPCA voices the concern that a number of materials not intended to be regulated as asbestos may indeed be under the proposed regulation.

The concern centers around the proposed Section 1910.1001(b) *Definitions*, which states in part:

> *(1) "Asbestos" includes chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite and every product containing any of these minerals.*
>
> *(2) "Asbestos Fibers" means a particulate form of asbestos. Longer than 5 micrometers, with a length-to-diameter ratio of at least 3 to 1 and with a maximum diameter of 5 micrometers.*

NPCA, on behalf of the paint industry, is concerned with the proposed definition of "asbestos" and "asbestos fibers," as applied to the users of tremolite talc in the paint industry.

Classification of the minerals tremolite, anthophyllite, and actinolite without qualification, as asbestos or asbestos-containing, would impose severe hardship on the paint industry because of the cost of complying with the asbestos standard regulations or of substitution with less effective and more costly universal ingredients.

NPCA asserts that the proposed definitions are inconsistent with those developed by the ASTM E-34 Committee on Naturally Occurring Inorganic Fibers, and by the Bureau of Mines.

Furthermore, the NPCA has reviewed the document submitted by the Asbestos Information Association (AIA) commenting on the proposed asbestos Standard. While time did not permit a thorough policy review of the entire document, NPCA would like to offer qualified support of the recommended AIA change to the *Definitions* of Section 1910.1001(b)(1) and (b)(2) which reads:

> *(1) "Asbestos" includes chrysotile, amosite and crocidolite, and members of the tremolite, anthophyllite and actinolite mineral group when they occur in fibrous habit (and every product containing any of these minerals.)*
>
> *(2) "Asbestos fiber" means a particulate form of asbestos longer than 5 micrometers, with a length-to-diameter ratio of at least 5 to 1, and with a maximum diameter of 5 micrometers.*

[Asbestos Industry Response Submitted On This Rulemaking Proposal, October 9, 1976, p. 2 - 1]

It should be noted here that NPCA has a serious problem with the inclusion of the parenthetical phrase *and every product containing any of these minerals* (emphasis supplied). This problem will be addressed later in these Comments.

Because of the severe hardships and in view of the input of expertise into the ASTM and the Bureau of Mines documents, the NPCA respectfully requests OSHA consideration of the ASTM and Bureau of Mines definitions of "Asbestos" and "Asbestos Fiber."

Failure to correct and perpetuate the definition as proposed would result in the coverage of a number of users of talc who are currently using materials not considered to contain asbestiform materials.

VI. Background Presence of Asbestos

In 1973 the Environmental Protection Agency (EPA) issued a National Standard covering permissible airborne levels for asbestos in the ambient air. [40 CFR §61.22] While not attempting to equate the EPA Standard with the proposed OSHA Standard, NPCA cites the EPA Standard for one very important point. By virtue of EPA's Standard for ambient air Asbestos and the very nature of that Standard, it is acknowledged that there exists a background level of asbestos in the ambient air.

OSHA, in Section 1910.1001(b)(1) of the proposed Standard for Asbestos, fails to acknowledge the existence of this ambient or background presence of asbestos, by applying the provisions of the regulation to a facility where a product is used which contains ...*any of* these *(asbestos) minerals.*" By inclusion of this definition, the regulation

fails to address either:

(1) The potential of the product to release asbestos, or

(2) The background presence of asbestos.

It is conceivable that a user of an asbestos-containing product, i.e. a paint product where the asbestos fiber is completely encapsulated in an organic binder that does not have the potential for release, would be subject to the proposed Standard solely on existing background levels.

NPCA has in the past questioned the inclusion of arbitrary action levels for materials regulated by OSHA. We further have observed that OSHA, in establishing these action levels, perpetuated a level that was arbitrarily set at one half the allowable level, or Time Weighted Average. It should be re-stated here that NPCA's challenge to the action level concept centers around the arbitrary determination of that level. Indeed, we now find that the triggering mechanism or action level for the proposed asbestos Standard is set at *zero* level.

Therefore, in light of EPA's recognition of the existence of a background level of asbestos, we urge that a minimum trigger or action level be established in order to acknowledge the background level. By doing so, OSHA would assure proper worker protection in facilities using asbestos without subjecting manufacturers not handling asbestos, or asbestos products capable of releasing asbestos, to unnecessary and burdensome requirements incurred through circumstances over which they have no control.

VII. Respirator Use

As a matter of policy, OSHA requires engineering and work practice controls as the prime means of reducing employe exposure to

possible health hazards. NPCA also is aware that the use of a respirator has been considered a secondary control method. When communicating information to its members, NPCA has stressed this point, but the nature of the paint manufacturing process warrants the following comments.

As mentioned, the manufacturing process for paints and coatings is not a static one and requires mobility by both process vessels and employes. Therefore, the requirements covering the use of respirators as cited in the Standard fails to address the nature and needs of the paint and coatings industry.

The use of a respirator to protect workers from asbestos in the paint and coatings industry would not involve the continued wearing of such protection. The respirator only would be necessary when the asbestos fiber is being mixed into the product.

While the intent of the use of engineering controls as the prime means of controlling worker exposure is well-defined, recent developments have indicated that a re-assessment of this philosophy may be in order. With the continued lowering of permissible exposure levels, the point is being approached where engineering controls alone may no longer be appropriate. If extreme engineering controls are instituted to meet these more stringent requirements, the manufacturing process is disrupted to an extent that renders the process inoperative. This does not take into account the economic feasibility of such extreme controls, a topic that cannot be dismissed lightly.

Admittedly, this is a supposition not supported by data. NPCA offers the comment to make one very serious assertion. We feel that the

state of the art for respirator protection needs to be upgraded so that both worker protection and worker acceptance are improved to the point where respirators are considered a first-line method for limiting exposures.

VIII. Training and Information

As the Occupational Safety and Health Administration is well aware, in response to the Occupational Safety and Health Act, the Secretary of Labor established an Advisory Committee on Hazardous Materials Labeling. This Committee completed its work and submitted a report covering such areas as "Employee Training, Materials Safety Data Sheets and Labeling." In addition, NIOSH has submitted a criteria document to OSHA entitled *Recommended Standard. . .An Identification System for Occupationally Hazardous Materials*. This document addresses issues within the scope of the Advisory Committee on Hazardous Materials Labeling.

A revision of the Proposed Standard on Asbestos would usurp the Advisory Committee function and process, presuming to include criteria on precautionary messages to employees exposed to the materials in question. This seriously undermines the concept of the Advisory Committee contemplated by the Occupational Safety and Health Act; fails to utilize resources currently repposing in that existing body of experts; and destroys the unity of the comprehensive informational approach for all potentially hazardous materials. Obviously, the attempt to install identification systems individually on a piecemeal basis, as each material is considered separately, can only result in a hodgepodge of meaningless precautions too complex and numerous for the human mind to assimilate during the course of a working day.

The NPCA is cognizant of OSHA's objective and agrees with the principle that well-informed employes will observe the best self-protection techniques. Notwithstanding, the permanent Standard adopted for a given material should incorporate uniformity of employe training and information, placards, and labels encompassing the multiplicity of hazardous materials to which that individual employe may be exposed. To do otherwise, dilutes the effectiveness of the warnings, imposing a proliferation of myriad, separate programs.

II. Interference With Labor Management Relations

The NPCA takes exception to that part of the proposal, entitled *Respiratory Protection*, Section 1910.1028(g)(3)(iv), and sub-titled *Respirator Program* insofar as it includes the language:

> ...*To the maximum extent possible, each employee shall be rotated to another job, or given the opportunity to transfer to a different position, whose duties he is able to perform, with the same employer, in the same geographical area and with the same seniority, status, and rate of pay he had just prior to such transfer.*

At the very least, imposition of this requirement should be the matter of a separate rulemaking. Discussion of substantive portions of the proposed Standard at this time should not be confused or burdened by consideration of this particular aspect, unrelated to the character of the hazard.

Because the views of the NPCA are solicited, a brief statement is appropriate. In so doing, the NPCA reserves the right to amplify or alter such comment at the time the matter might become the subject of

a separate rulemaking proposal.

Job reassignment, capacity to perform a job, job retention, geographic assignment, seniority, status, and rate of pay are not matters properly addressed in any Occupational Safety and Health Standard. Indeed, OSHA exceeds its statutory power to regulate by asserting control over such matters. The regulatory powers of the Secretary of Labor are explicit and limited in assuring:

> ...*that no employee will suffer material impairment of health or functional capacity....*
>
> [P.L. 91-596, §6(b)(5) and 29 U.S.C. §655(b)(5)]

Accordingly, the power to regulate, in this instance, is terminated at the point OSHA requires that the individual, endangered employe is removed from the hazard. The employe's subsequent conditions of employment enter the field of labor-management relations and are appropriately resolved between the employer and the employe through collective bargaining, individual negot... n, or numerous other mechanisms.

Indeed, what is popularly referred to as the *Labor Management Relations Act* has governed such matters since 1947. [61 STAT. 136 and 29 U.S.C. §141, *et seq.*] The Congressional declaration of purpose and policy for this Act even alludes to the ...*public health, safety, or interest.* [29 U.S.C. §141(b)] Accordingly, it is not surprising to the NPCA that the OSHA states in the Preamble to the proposed Standard that ...*actual labor management experience as to the operation of this provision has yet to be reviewed by OSHA.* [40 FR 47658] The NPCA would challenge OSHA's power to undertake such a "review" or to reach any

conclusions to be used as a basis for rulemaking.

X. Summary

Salient points in the foregoing are summarized as an aid to the reviewer; the following should not be taken separately as the total MPCA position nor should it be regarded as a comprehensive overview without qualification by statements hereinbefore.

With the aforementioned reservations, the MPCA submits the following summarized conclusions:

(1) Asbestos is an essential component of many coatings, sealants, caulks, and glazing compounds for which compatible substitutes are not known;

(2) Manufacturing processes in which asbestos might be found require worker and vessel mobility not feasible through engineering controls and worker exposure is minimal;

(3) The proposed Standard is inappropriately broad, including in the definition of asbestos materials which do not belong in that category;

(4) Presence of asbestos at any level is needlessly restrictive and ignores background presence in surrounding atmosphere;

(5) Manufacturing process in paint and coatings plants and short, intermittent periods of potential worker exposure to asbestos warrants a second look at the adequacy of respirator protection;

(6) Imposition of employe information, training, labeling, and placarding requirements in every separate standard for each potentially hazardous material is irresponsible rulemaking, unwieldy to obtain compliance, and ignores other OSHA efforts to develop the overall systems approach, and

(7) Inclusion of detailed conditions of job reassignment encroach into the field of labor-management relations, exceed OSHA's statutory power to regulate, and pose a conflict with other, established Federal authority.

NPCA, through the efforts of its various Committees and Task Forces, is concerned vitally with the protection of the workers employed in the paint and coatings industry. We also are concerned that Standards issued by the Occupational Safety and Health Administration be based on sound technical data.

Respectfully submitted,

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June 8, 1976

cc: A. W. Andrews
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EPA Asbestos Regulations

Messrs. D. E. Cayard
D. B. Hosmer
H. M. Keating
J. E. Lipe
F. L. Turner

[redacted]

It is important that all Manville sites comply fully with these regulations. Two copies of the asbestos regulations are attached. Will each of you please see that every facility within your operating company is made aware of these regulations and of the importance of complying with them. Note that, among other things, advance written notice to the EPA is required in the event of demolition or renovation work involving asbestos materials covered by the regulations.

Please contact the undersigned if any clarification of the regulations is desired.

P. F. Cunningham

Phocion E. Park

jf

Enclosures

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Monsanto

Dept. of Medicine & Environmental Health

October 6, 1978

FIBERS

TO G. J. Levinskas

I received a phone call yesterday from Dick Mahoney asking for information regarding the carcinogenic potential of fibers. He was asking about asbestos, of course, in addition to the general subject of fibers. Apparently this discussion has been going on within DMEH and I don't believe a major project should be ongoing in Monsanto without us having some kind of a group discussion on the subject.

George Roush, Jr., M.D.

GR/ln

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