

PLAINTIFF'S
EXHIBIT

JM-1707

PROPOSED AMENDMENT TO OSHA ASBESTOS STANDARDS

Wednesday, October 1, 1975

At 8:00 AM I was informed that Secretary of Labor Dunlop had, the previous night, signed a proposed amendment to the OSHA asbestos standard to reduce the eight-hour time-weighted average from 2 fibers to 0.5 fiber per cc. The proposed standard was apparently promulgated in an unusual manner and with unprecedented urgency since Mr. Daniel Boyd, Director of OSHA's Office of Standards, was unaware of the proposed changes until the morning after and he and his staff had played no part in the development of the proposal. Mr. Boyd indicated that the changes were drafted in the office of the Deputy Assistant Secretary of Labor, Marshall Miller. I also learned that the regulations were to be published in the Federal Register on October 9, 1975.

Because of a reported leak from the U.S. Government Printing Office, publisher of the Federal Register, Mr. Miller included the matter of the proposed asbestos standard on the agenda of a press conference called the afternoon of October 1 to discuss several other proposed standards being issued, particularly for lead and for toluene.

Thursday, October 2, 1975

In an attempt to recreate the events leading to the publication of the proposed standard, HS&E staff made a series of telephone calls to contacts within government and labor. A few calls, surprisingly, were made directly to J-M by government and labor officials.

Our first calls were to labor, particularly since the Asbestos Committee of the Industrial Union Division of the AFL/CIO had held a meeting on September 17, at which time one item on the agenda was the proposed class action suit of Manville employees against J-M. We had considered the possibility of a recommendation for lowering the standard coming from this meeting. We have verified, however, that the consensus of the committee was not to ask for a lower level but rather to insist on increased enforcement of existing regulations on those segments of the industry not yet in compliance of the 2 fibers per cc. level. This is in full accord with my understanding of the position of labor during my on-going meetings with representatives of the IUD, AFL/CIO. In addition, conversations with George Taylor, Chairman of the Occupational Safety and Health Committee of the IUD, confirmed that labor had exerted no pressure on government for a reduction in standards and was as surprised as industry by the announcement.

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Late Thursday night (about 11 PM Denver time) I received a call from Dr. Irving Selikoff which lasted well over an hour, at which time he emphatically stated that

- a. he was surprised by the standard;
- b. at no time in his discussions with OSHA had he volunteered a number as a substitute for 2 fibers per cc.; and
- c. he had reaffirmed to OSHA his statement, "I can't tell you what a safe level is."

In general Dr. Selikoff denied any responsibility for pressuring OSHA into a reduction in the standard, and he reiterated his oft-stated position that the asbestos worker would be better served by compliance from those segments of the industry not yet to 1 fibers per cc. rather than by an attack on those segments where the 2-fiber level had been, for the most part, achieved.

Because of Dr. Selikoff's agitation during our conversation I can only conclude that he was very much concerned over what apparently, and what I have since confirmed, was a betrayal on his part of his word and his assurances to me. He denied direct or self-initiated action in relation to the proposal for setting a new standard, a position not supported by a number of sources. He concluded his call by requesting an urgent meeting on the matter involving representatives from labor, Mount Sinai, OSHA, and J-M (specifically, not AIA) to discuss and resolve as many issues as possible in advance of J-M's response to the proposed regulations.

Friday, October 3, 1975

At 7:45 AM I received a phone call from Marshall Miller who wanted to discuss the standard. He stated that the 0.5 fiber proposal was OSHA's response to the circuit court's order last year requiring OSHA to review and evaluate the 2 fibers per cc. standard by September 30, 1975. When I questioned why 0.5 was selected, Mr. Miller stated it was arrived at on the basis of "a guess at a feasibility of achievement by industry." OSHA's basic approach was to reduce the exposure of asbestos workers to the maximum extent possible, and that the 2 fibers per cc. level could be improved. Furthermore OSHA felt the 2-fiber standard was really based on asbestosis rather than on carcinogenesis. He also stated that the recent data by Sir Richard Doll from Turner brothers and the Muriel Newhouse data from Cape Asbestos were factors in arriving at the 0.5 proposal. He was unaware that because of certain crucial data limitations these reports provided no support to changing the standard.

Mr. Miller apologized profusely for not having called me as per our agreement, but his reasons were not reassuring to me.

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The breakdown in communication was blamed on the confusion surrounding the number of proposed standards they were dealing with in addition to asbestos.

Mr. Miller emphasized that the wording in the preamble to the regulations was left quite loose. Further, in the event the proposal became regulation, there was extreme flexibility in terms of timing and phasing in of the regulations. In addition, OSHA was immediately undertaking a study of the economic impact of the proposal which Miller felt could affect the validity of the basis for 0.5 fiber per cc. This reversal of normal procedure contributes to the mystery of the setting of this standard since it is in contrast to the procedures mandated for the other standards proposed at the same time. Further compounding the mystery was Miller's plea for the strongest possible comments and rebuttal by industry.

Miller swore that never again would a standard be set and announced in such a way as to catch both industry and labor by surprise. He agreed to send me a memo--after clearance by his legal staff--relating that the purpose of 0.5 fiber per cc. is the generic commitment to reduce worker exposure, but that OSHA is "prepared to alter their position on the 0.5 standard even if it should result in accusations of waffling, caving in, or even being politically pressured." The conversation ended with, again, an apology for my not having been consulted and with concern and regret for the emotional response to the proposal.

Summary

1. It is clear that the 0.5 standard was arrived at in a clandestine way since routine in-house procedures (i.e., Office of Standards) were by-passed by the Department of Labor.
2. The AFL/CIO denies any pressure to reduce the 2 fibers per cc. level and was unaware of the proposal until its announcement.
3. Selikoff's call was very emotional and his statements are of doubtful veracity, which necessitates a reexamination of our relationship with him. He is clearly worried but this is of little solace in light of the mischief created by the proposed 0.5 standard.
4. Miller's call was in the tradition of "locking the barn door after the horse is stolen." His reasoning that the proposal attempts to remedy the deficiencies of the 2 fibers per cc. standard (geared to "asbestosis" not "carcinogenesis") is faulty.
5. In all of our contacts and discussions in relation to this

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rather on the basis of the 2.5 fiber standard was advanced on a scientific basis. In fact, there was a recognition that a good case could be made for adhering to 2 fibers per cc.

Recommendations

1. A task force should be immediately appointed with the charge of preparing OSHA's response to the proposed regulations. I recommend that the committee consist of D. Billier and R. Whitfield (environmental engineering), E. Fennel, G. Smith, and J. House (HS&E), two representatives from Asbestos Fiber Division, and a representative from Legal Department. In addition, R. Carter (HS&E) should serve as executive secretary.
2. I recommend that we delay in responding to the request for a meeting by Dr. Selikoff.
3. I recommend that we continue our ongoing liaison with government, academia, and labor, with special attention to proposing a possible joint response with labor to the proposed 2.5 fiber per cc. standard.

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