UNION CARBIDE CALIDRIA ASBESTOS

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To: T.F. Carmody 2/14/78

J.L. Myers

~~W.L. Thornber~~

R.F.X. Fusaro

A draft of the AIA/NA response to the Generic Standard is attached for your comments. This will be finalized and given to possibly altered considerably at an Executive Committee Meeting on February 22, 1978. I will be out of the office and try to contact you before then. If you have any serious problems please notify my office.

Regards,
Harry

From The Desk Of
HARRY RHODES

PLAINTIFF'S EXHIBIT
UC-3671

UCC 008762

DRAFT

AIA/NA RESPONSE TO OSHA GENERIC STANDARD PROPOSAL

The Occupational Safety and Health Administration proposal published in the Federal Register on Tuesday, October 4, 1977 covering "Identification, Classification and Regulation of Toxic Substances Posing a Potential Occupational Carcinogenic Risk" places the American Asbestos Industry in a somewhat ambiguous position. This industry has been engaged in a virtually continuous rulemaking procedure for almost six years. It began with a temporary emergency standard in 1971, a "permanent" standard in 1972, several years of attempting to draft a "work practices" standard in 1973 and 1974, and a proposal for a revised general standard on October 9, 1975. This proposal did not include the construction industry and a series of Construction Industry Advisory Committee hearings were held to attempt to devise an appropriate and workable standard for this industry. As this rulemaking has progressed all of the critical concepts, except categorization, that are now incorporated in the "Generic Standard" proposal have been introduced. These include: 1) A policy of "no safe level" for a carcinogen, 2) The treatment of all carcinogens the same even though potencies differ by a factor of up to a million, 3) The use of absolute zero risk as a working approach to regulation, 4) Mandatory substitution where even a governmental agency deems a suitable substitute is available.

Since there is no clear indication of the relative pace of the two rulemakings and since the resources of the Asbestos Industry are already involved in their specific rulemaking, the AIA/NA has elected to continue to put their main efforts on the ongoing asbestos proceedings. Our involvement at the present time with the October 4, 1977 Proposal will be limited to working through member companies with the several industry groups that are devoting extensive study to the preparation of responses and selective endorsement of these responses as appropriate supplemented by limited direct comments where our extensive experience provides unique insight into the problems addressed.

Before discussing the October 4, 1977 Proposal there is one issue that should be raised. Asbestos and a number of other substances are already subject to and/or have rulemakings in progress for the development of health standards. These standards have been or are being developed by the procedures in effect at the time of development. We question the propriety and possibly the lack of due process if such standards are later modified by simply "recycling" them through whatever generic procedure evolves from this rulemaking. A specific exemption from generic rulemaking for existing and in-progress standards is requested with the full understanding that this in no way precludes changing such standards by regular rulemaking procedures.

The American Industrial Health Council has been engaged in a major effort to prepare an alternative to the OSHA Generic Standard Proposal. The Asbestos Information Association/North America is not a member of the AIHC but has contributed through a number of its member companies who have been very active in this effort. While the AIHC has done an outstanding job on the question of categorization and on the five basic issues listed in the first paragraph, time limitations have precluded their preparation of detailed alternatives to the Model Standards in the October 4, 1977 OSHA Proposal in time for review. Accordingly the AIA/NA would like to endorse the AIHC recommendations in all areas except the format and details of the Model Standards and reserve judgment on the latter until their content is better defined.

Alternative Suggestions for next paragraph:

A.

Since the rulemaking format requires that points of issue be raised in written testimony, we believe it very important that the Model Standards proposed be subject to detailed comment. The Johns-Manville Corporation, a member of the AIA/NA, has studied the OSHA proposal and is including a detailed discussion in their response to the October 4, 1977 Proposals. The only Model Standard which relates directly to asbestos is that promulgated under 6(b), i.e., "Notice of Proposed or Final Rulemaking" for a Category I Toxic Substance. The AIA/NA would like to endorse the Johns-Manville comments on this Model Standard with the following additional points noted for the record:

1. This would speak briefly to whatever points of <u>significant</u> difference remain after discussion of the points raised in the HBR letter to Dick Carter of February 13, 1978.

<u>OR</u>

B.

Since the rulemaking format requires that points of issue be raised in written testimony, we believe it very important that the Model Standards proposed be subject to detailed comment. The only Model Standard which relates directly to asbestos is that promulgated under 6(b), i.e., "Notice of Proposed or Final Rulemaking" for a Category I Toxic Substance. Comparison of that Model with the OSHA October 9, 1975 proposal for an asbestos standard and with the AIA/NA response to the proposal dated April 9, 1976 show that a substantial number of the industry comments have been incorporated into the Model Standard but that serious problems remain. Accordingly, we wish to enter the above-noted AIA/NA response into the record for the October 4, 1977 Proposal with particular reference to the following issues and certain additional comments.

1. Important areas of disagreement would be noted by paragraph.
2. New areas such as registration, alarm system would be commented upon.

Finally, the special problems of the Construction Industry or, in a more general sense, occupations with principally non-fixed places of employment need to be considered. This industry is characterized by literally millions of temporary work-sites, workers who move in and out of the industry, and a great multicplicity of small companies of varying degrees of permanence. OSHA recognized these special problems in their October 9, 1975 Proposal for an Asbestos Standard with the stated intent to develop a separate standard for the Construction Industry. Subsequent hearings before the Construction Industry Advisory Committee and their final recommendations presented to OSHA on _____ demonstrated the wisdom of this distinction. The Advisory Committee, working with a proposal that in many respects was the same as the Model Standard 6(b) in Section 1990.160 of the Generic Proposal, largely rejected it as not feasible for the Construction Industry.

Since a standard will be required to protect the workers in this industry, the AIA/NA in consultation with Construction Industry representatives, has been working to develop a suitable approach. Considerable progress has been made and we would like to request a time period, not to exceed fifteen minutes, at the hearings for 29CFR1990 to discuss this approach. The discussion will mainly include the following topics:

1. Definition of scope and application.

2. The use of work practices as an alternative to monitoring to achieve compliance.

3. Alternative medical surveillance approaches.

In conclusion, we would like to raise a final issue that is broader than asbestos but is well illustrated by the cofactor interaction between asbestos and smoking. It is generally well accepted that the non-smoking asbestos worker runs little greater risk of lung cancer than any other non-smoker. Is it an appropriate use of resources to expend millions or billions of dollars to protect workers from an elective personal habit where the simple administrative rule that smokers could not work with asbestos would serve the same purpose? The same is true in the cofacto effect between radon daughters and smoking. This approach would certainly be consistent with and even complement the current massive anti-smoking campaign being undertaken by the Department of Health, Education and Welfare. It is not the intent here to single out smoking per se but to request consideration of the role of co-factors in the overall cancer risk picture and to include their control as part of an overall control strategy.