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BY HAND

The Honorable
Secretary
Department
Room S201
200 Cons.
Washington

Erne G. Auchter
Assistant Secretary
Occupational
Safety and Health
Department of Labor
5
Constitution Ave., N.W.
Washington, D.C. 20210

Dear Secretary:

Erne Auchter:

(AIA/NA)
is considering
(ETS) for
standard
preparation
Assistant
June 20.
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Erne Auchter shortly
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construction worksites in order to implement meaningful reductions in asbestos exposures at non-fixed locations for the first time. In urging OSHA attention to an improved standard, we supplied a copy of AIA/NA's comprehensive "Recommended Standard for Occupational Exposure in Construction and Other Non-Fixed Operations," which had initially been submitted to the Agency in 1980, and which we updated and resubmitted in April 1983.

AIA/NA's initiatives were but the most recent of a long line of constructive activities by the Association going back to 1975 to assess and improve regulation of asbestos. During this eight year period, there have been repeated reviews of the medical, monitoring and technology data bases, not only in the United States, but in many countries around the world.

From the numerous reviews of asbestos over many years, AIA/NA can find no evidentiary basis for an emergency standard today. Although a thorough and comprehensive assessment of the entire asbestos standard, including the permissible exposure level, is clearly warranted and welcomed by AIA/NA, no recently discovered evidence would justify precipitous measures. In addition, continuing efforts by the asbestos industry since 1975 have resulted in progressively lower exposure levels in most worksites. The Supreme Court and various courts of appeal have held OSHA's authority to issue an ETS is "narrowly circumscribed" to circumstances where there is an "obvious need for quick response to new health and safety findings."*/ The asbestos data do not provide the basis for exercising such extraordinary authority.

More significant than the absence of a rationale for emergency action is the likelihood such an initiative would foreclose or seriously delay development of meaningful long-term controls. As AIA/NA noted in its April 15, 1983, letter to Assistant Secretary Auchter, a thorough assessment of the medical, monitoring and technology evidence to develop a meaningful control strategy is best accomplished through a rulemaking in which all interested parties participate

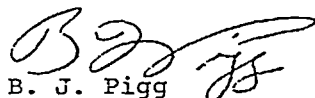
*/ Industrial Union Dept., AFL-CIO v. American Petroleum Institute, 448 U.S. 607, 651 (1980); Florida Peach Growers Assn. v. Dept. of Labor, 489 F.2d 120, 129-30 (5th Cir. 1974).

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fully. Among other things, such a rulemaking would make possible the necessary peer review of OSHA's asbestos risk assessment and the crucial assumptions upon which it relies. More significantly, only after a consideration of the many variables affecting asbestos regulation--including the varying means of addressing asbestos risks in different worksites ranging from primary manufacturing through secondary manufacturing and construction and other user environments to potential exposure to in-place asbestos--will it be possible to design a standard that most effectively eliminates any significant risks. AIA/NA is willing and anxious to work with OSHA and other interested parties to assess those varying situations. We fear that issuance of an ETS would channel efforts of all parties toward contentious disputes about the emergency standard rather than toward cooperative efforts to develop a reasonable permanent solution.

In sum, AIA/NA believes OSHA and all interested parties would be ill-served by issuance of an ETS. We urge the Agency to discard such an initiative and instead to concentrate its on-going efforts toward developing a reasonable, cost-effective permanent asbestos standard that will provide meaningful protection of worker health. AIA/NA therefore urges OSHA to convene tripartite government/labor/industry deliberations to seek cooperative development of such a permanent standard in an expedited manner. If you would like any further information, please contact me or our Special Counsel, Edward W. Warren of Kirkland & Ellis (202-857-5018).

Sincerely yours,


B. J. Pigg
Executive Director