

An Address by

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for Occupational Safety and Health

before the

Asbestos Information Association

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Good morning and thank you for the opportunity to participate in your eighth industry government conference.

Please let me make a few general remarks before I get into asbestos. I think this kind of forum can be very useful, both for you in industry and for people in government like myself, Nancy Steorts and Don Clay. We try in this administration to be responsive to the views of industry, to listen to your concerns and to deal honestly and openly.

We've taken some shots for that kind of openness, frankly. The Ralph Naders of the world, those who believe that industry, in its "insensitive pursuit of profit," is out to kill or maim the workers of this country, would have regulatory agencies like OSHA treat the American business community as criminals. Well, this administration has given Ralph Nader and his type all the credence they deserve as we have gone about the task the American people set us on nearly three years ago. That task was not to blindly deregulate, but to implement regulatory reform, not to abdicate the responsibility to protect the American public, but to use it responsibly.

I think we've been successful in that. At OSHA, we are carrying out an ambitious regulatory agenda, producing new health and safety standards for such diverse issues as ethylene dibromide and ethylene oxide, grain handling facilities and oil and gas well drilling rigs, underground construction and cranes. But we've also gone back and taken a look at some standards issued during the previous administration, and we've found ways to maintain worker protection while reducing costs to industry. We've done that with hearing conservation, and we're in the process of doing it with hazard communication, lead and cotton dust. We have also eliminated paperwork requirements for a half-million businesses in low-hazard industries, and we removed a prohibition against the use of those latch-open gasoline nozzle devices that service station employees and self-service customers find so convenient. So I think it's fair to say we've introduced some long overdue common sense into the regulatory process.

The same is true for our other program areas. Policy changes in the area of enforcement are finally allowing OSHA to put its enforcement resources in those worksites where help is most needed. We won't make a scheduled wall-to-wall inspection in an establishment that has maintained a good safety record over the years. Instead, we'll go visit someone who hasn't done such a good job.

The courts have had a number of opportunities to address this issue. They have, in fact, struck down four emergency standards issued by OSHA in the past. In *Florida Peach Growers Association v. U.S. Department of Labor*, the Fifth Circuit Court of Appeals addressed the question with great clarity: "The Act," said the Court, "requires determination of danger from exposure to harmful substances, not just a danger of exposure; and not exposure to just a danger, but a grave danger; and not the necessity of just a temporary standard, but that an emergency standard is necessary."

That passage has provided a great deal of guidance to me in deciding to reject requests for emergency standards for other substances. In the case of ethylene dibromide, for example, there was little question that our existing PEL was inadequate to protect workers, but there was also no evidence that workers were exposed to levels anywhere near the PEL. And, after we began permanent rulemaking, we were able to gather information to confirm that workers are actually exposed to very low levels of EDB and that no emergency action was warranted. In addition, all the risk assessments done on EDB are based on animal data and exposures over a 40-year working lifetime. Epidemiological studies on EDB have been inconclusive as to its carcinogenicity in humans.

Asbestos is different. As I said earlier, asbestos has a track record - it is a devastating workplace killer. And even more frightening is the fact that exposure need not be spread over a working lifetime to be fatal. Relatively short-term exposures can result in cancer and death years down the road.

Does that mean that an asbestos emergency exists today? Well, we have to address the word emergency in legal, not emotional, terms. We think there are workers exposed to dangerous levels of asbestos and we want to increase their protection, but we have not yet determined how to best pursue that goal.

There are a number of issues we have to look at. Not least is methods of compliance with any new asbestos standard, be it the product of emergency rulemaking or regular rulemaking. In this administration we prefer performance to specification. What counts most is the result - protection of employees. It is less important how that result is achieved.

This doesn't mean we favor the use of personal protective equipment over engineering controls. In fact, we are now formally evaluating the relative merits of these methods of compliance.

Clearly, where we feel that employee protection can be achieved only through implementation of appropriate engineering controls, then we will require engineering controls as we have done in our revised cotton dust proposal. Where we feel that equal protection can be achieved by any one of several methods of compliance, or perhaps by some combination of methods, then we would prefer to allow the employer to choose the method that will prove most protective of his employees and most cost-effective to implement and maintain.

If OSHA were to issue an emergency temporary standard, it would allow compliance by any combination of engineering controls, work practices and respirators. That kind of flexibility would make compliance clearly feasible, as required by the OSH Act. Of course, employers would still be required to reduce exposure levels to the 2 fiber limit by use of engineering controls, as stipulated in the existing standard.

By law, an ETS is effective only for six months and serves as a proposal for a permanent rule. In rulemaking subsequent to an ETS, should OSHA issue one, we would address a number of issues, including: reducing the PEL; revising the definitions of asbestos and asbestos fibers; reassessing the methods of compliance; revising the provisions on respirator selection; and strengthening the training requirements. Other issues that would be addressed in further rulemaking would include: requirements for and frequency of medical examinations; special needs for the construction industry; the use of certified work practices; and others contained in OSHA's 1975 proposal. *

Of course, whatever we do here in Washington will have no bearing on the health of asbestos workers without corresponding action in each workplace. We recognize and appreciate industry's progress in voluntarily reducing asbestos exposure levels, and we rely on further such efforts. Nevertheless, we think it is time to increase our own presence in worksites where asbestos poses an acute health threat to workers.

For that reason, I am preparing to sign two (2) directives to my field operations. One is a special emphasis inspection program; the other is an inspection program in response to EPA referrals in the construction/demolition industry.

The special emphasis program will be national in scope. It will target for inspection those establishments under SIC codes where violations of the asbestos standard have been found to occur most often in the past. Each area director will schedule 10 of these special emphasis inspections during the 12 months the program will run. Each inspection will be a comprehensive health inspection.

The referral program will be more open-ended in that area directors will act on information provided by EPA about construction or demolition projects where overexposures to airborne levels of asbestos are likely to occur. While these reports from EPA do not imply violations of OSHA standards, we feel they may provide us with an effective targeting tool that we can use to promptly investigate potential asbestos hazards.

The potential hazards are great, as you all know. In fact, asbestos may still represent the most serious occupational health hazard in this country - even with lower exposure levels, even with more and better information in the workplace. Establishing a new, more effective standard for workplace exposure to asbestos, and maintaining a vigorous enforcement effort can, we believe, save thousands of lives throughout the rest of this century. Better awareness of the risks associated with asbestos can achieve even greater results.

For example, most people aren't aware of the multiplicative effect of exposure to asbestos and cigarette smoking. Let me run down the findings of an OSHA/NIOSH task force: Smoking alone increases the lung cancer death rate 11 times; exposure to asbestos alone increases that rate 5 times; together, those factors increase the lung cancer death rate 55 times. If you smoke and are exposed to asbestos on the job, you are 55 times more likely to die of lung cancer than someone who doesn't smoke and isn't exposed to asbestos. People need to know that.

The full story on asbestos is complex. Too often it is told emotionally or sensationally. But this kind of treatment only reflects real concern about a problem that is all too real to all too many people.

We have an obligation to respond to those concerns and to address this problem. We appreciate your support for our efforts to create more protective workplace regulations, and we respect your concerns that we might act too quickly, before all the information is in and without hearing from all concerned members of the public. You should ask these questions as we are asking them ourselves. We do feel we have enough information to support rulemaking on asbestos - be it regular or emergency rulemaking. We are determined to act quickly, not in secret or with disregard for the concerns of the public, but in the best interests of the people whose lives it is our job to protect. Each day makes the case for action more compelling, and because of that, we can't rule out any course of action.

Last week a congressman accused me of failing to err on the side of workers in refusing to issue an ETS for ethylene dibromide. That congressman doesn't understand that to knowingly err at all isn't an option for a responsible government agency.

Asbestos is a different case. Its health effects are certain. That workers are potentially exposed at dangerous levels is certain. That it is the responsibility of this agency to protect those workers in the most appropriate manner possible, under the law, is also certain.

We've looked at all the information a hundred times over. We know what the problem is, and we know we have to move. We will move, and we will move with confidence that the public is fully aware of every factor that contributed to our decisions. And we will act with assurance that we will save lives that would have been lost had we done nothing. Thank you.

KLEIN SAYS ASBESTOS COMPANIES SHOULD INVEST IN SUBSTITUTES, NOT FIGHTING BAN PROPOSAL

Explaining the federal government's clear intention to finally ban a major portion of asbestos uses in this country, Ed Klein, who will direct development of upcoming asbestos banning regulations, urged the makers and users of the deadly fiber to face reality and invest in substitutes for the product.

Addressing the annual meeting of the Asbestos Information Association of North America Sept. 20, Klein warned the group that "the asbestos industry is at a crossroads," and that the time has come to realize that EPA is serious about banning and restricting asbestos use and should not waste its time fighting the government. "You can fill your warehouses and donate money to fight the government, or you can use that money to find asbestos substitutes," he said.

Klein insisted that the Environmental Protection Agency "has no desire to impose any undue burden on industry," but in the case of asbestos, the risk is clear and the government must act. Though, Klein did say that "this [rule-making] is not going to be some kind of kangaroo court."

Auchter: Asbestos Is A 'Documented Killer'

Nevertheless, it is becoming apparent that the Reagan administration is now committed to regulating asbestos. And, this morning, the industry heard more bad news from another quarter -- Occupational Safety and Health Administration head Thorne Auchter. In his address, Auchter confirmed that the risk is obvious; he described asbestos as a "documented killer."

First stage of the EPA regulation will eliminate almost 50% of asbestos uses by banning certain major product categories -- flooring and backing materials, roofing felt and cement pipe. Part two would place a production cap on asbestos and EPA will let market forces determine which asbestos uses are "essential." As the price of asbestos goes up, people will have to ask if the product is worth the additional price, Klein said. If it is not essential, people will not be willing to pay the price so the marketplace will control which products will continue.

Klein In The Lion's Den

Naturally, Klein was facing a hostile crowd, and he became the target of industry frustration as company representatives tried to find weaknesses in the EPA case. Klein explained the EPA banning and production cap proposals will be based on a "life cycle risk" of exposure, but asbestos officials ridiculed this concept asking, "where in the life cycle do you nail asbestos pipe ... or brake linings?" they asked.

Klein was warned that to regulate asbestos cement pipe would require additional regulations to protect against an increase in lead pipes for water distribution and in foundries making lead products to replace asbestos. On the brake lining issue, one company man predicted that due to the EPA rule, there will be a significant increase in auto wrecks if the agency eliminates asbestos brake linings. Another accused EPA of 1984-style big government. He said the "Russians control their marketplace and that's what you're doing in the U.S."

Other comments emphasized the difference in risks between asbestos and its substitutes, which industry officials indicated are as dangerous or more dangerous than asbestos. One problem that Klein admitted has not been "fully analyzed" is the problem of cheap imports. One official suggested that EPA consider import restrictions on asbestos because importing nations will be able to supply cheaper asbestos.

EPA-TSCA

Current and Projected Rulemakings

Agency determines that the chemical substance will not present an unreasonable risk. This rule would exempt certain polymers from PMN requirements. This revision is being made at the request of the President's Task Force on Regulatory Relief.

Timetable:

Action	Date	FR Cite
Notice	11/03/81	46 FR 54688
NPRM	08/04/82	47 FR 83924
Final Action	12/00/83	

Small Entity: No

Additional Information: SAR No. 1881.

Docket No. OPTS-50033.

FTS:8-382-3849.

Agency Contact: Joseph A. DeSantis, Environmental Protection Agency, (TS-794), Washington, DC 20460, 202 382-3849

RIN: 2070-AA37

43. FOLLOW-UP RULES ON EXISTING CHEMICALS

Legal Authority: 15 USC 2604 / TSCA 5; 15 USC 2607 / TSCA 8

CFR Citation: 40 CFR 704; 40 CFR 721

Abstract: EPA has instituted a program to follow the commercial development of existing chemicals of concern. EPA will issue rules on existing chemicals of concern as they are identified to require follow-up reporting under TSCA, Section 5 or 8, by the manufacturers and processors of the chemicals. Individual rules will be proposed at different times throughout the period of October 1983 to October 1984.

Timetable:

Action	Date	FR Cite
NPRM	10/00/84	

Small Entity: Undetermined

Additional Information: SAR No. 1923.

FTS: 8-382-3436.

Agency Contact: Frank Kover, Environmental Protection Agency, (TS-778), Washington, DC 20460, 202 382-3436

RIN: 2070-AA58

44. FOLLOW-UP RULES ON NEW CHEMICALS

Legal Authority: 15 USC 2604 / TSCA 5; 15 USC 2607 / TSCA 8

CFR Citation: 40 CFR 704; 40 CFR 721

Abstract: EPA has instituted a program to follow the commercial development of selected new chemicals that have completed premanufacturers notice review. EPA will issue rules on new chemicals of concern as they are identified to require follow-up reporting under TSCA Section 5 or 8, by the manufacturers and processors of the chemicals. Individual rules will be proposed at different times throughout the period of October 1983 to October 1984.

Timetable:

Action	Date	FR Cite
NPRM	10/00/84	

Small Entity: Undetermined

Additional Information: SAR No. 1976.

FTS: 8-382-3849.

Agency Contact: Joseph A. DeSantis, Environmental Protection Agency, (TS-794), Washington, D.C. 20460, 202 382-3849

RIN: 2070-AA59

45. RULES RESTRICTING THE COMMERCIAL AND INDUSTRIAL USE OF ASBESTOS FIBERS

Priority: Major

Legal Authority: 15 USC 2605 / TSCA 6

CFR Citation: 40 CFR 763

Abstract: The Agency is evaluating the need for further information or control regulation of the commercial and industrial use of asbestos. A variety of alternatives are being considered, including: (1) requiring the labeling of asbestos and asbestos-containing products, and (2) prohibiting or otherwise restricting certain uses of asbestos that present unreasonable risks. EPA will coordinate its asbestos activities with those of the Federal Asbestos Task Force.

Timetable:

Action	Date	FR Cite
ANPRM	10/17/79	44 FR 80056
NPRM	04/00/84	

Small Entity: Undetermined

Additional Information: SAR No. 1627.

FTS:8-382-3938.

Agency Contact: Edward Klein, Environmental Protection Agency, (TS-794), Washington, DC 20460, 202 382-3938

RIN: 2070-AA29

46. INCIDENTAL USES OF PCBS

Legal Authority: 15 USC 2605 / TSCA 6

CFR Citation: 40 CFR 761

Abstract: In response to a decision by the D.C. Circuit, EPA will be evaluating initiatives for addressing the incidental uses of PCBs. This rule covers waste stream products, and air and water releases with measurable quantities of PCBs.

Timetable:

Action	Date	FR Cite
NPRM	12/00/83	

Small Entity: Undetermined

Additional Information: SAR No. 1913.

FTS:8-382-3933.

Agency Contact: David Dull, Environmental Protection Agency, (TS-794), Washington, DC 20460, 202 382-3938

RIN: 2070-AA40

47. REGULATORY INVESTIGATION OF METHYLENE BIS-(2-CHLOROANILINE) (MBOCA)

Legal Authority: 15 USC 2605 / TSCA 6

CFR Citation: 40 CFR 764

Abstract: Methylene bis-(2-chloroaniline) (MBOCA) will be the subject of an Agency investigation to determine whether regulation under TSCA is warranted to control its use. MBOCA is an animal carcinogen and the investigation will assess the risk to humans from exposure in the manufacture of polyurethanes.

Timetable:

Action	Date	FR Cite
ANPRM	05/23/83	48 FR 22954
NPRM	00/00/00	

Small Entity: Undetermined

Additional Information: SAR No. 1937.

FTS: 8-382-3945.

Agency Contact: Suzanne Rudzinski, Environmental Protection Agency, (TS-794), Washington, DC 20460, 202 382-3945

RIN: 2070-AA52

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their clear intention to*

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