

file Asbestos

1331 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202-737-6330



Organization Resources
Counselors, Inc.

Memorandum

February 27, 1987

H&S
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PA PDM
13 RMJ
158 LLR
V8G DEH
LDS SC
MAR 4 1987

To: ORC Asbestos Task Force; #111
From: Darrell K. Mattheis
Subject: OSHA Printout of General Correspondence Regarding its
Asbestos Standard

Attached, for your information, is a computer printout of inquiries submitted to OSHA and the Agency's responses regarding its Asbestos Standard. The correspondence covers the period between 1981 and the fall of 1986.

Darrell K. Mattheis

BD/1

PLAINTIFF'S
EXHIBIT
AL-955

Examples: NOISE ASBESTOS 1910.1200

line use *

(a), enter: 1910.1200*

= or respiratory, enter: RESPIRATOR*

: (always enclose a phrase in quotes)

No: "1910.1029(1)(2)"

"HEARING CONSERVATION AMENDMENT"

"JOHN MILES"

"XEROX CORPORATION"

to narrow, use AND GUARDING AND "RADIAL SAWS"
(note: only the phrase is enclosed in quotes)

to expand, use OR LABELLING OR "HAZARD COMMUNICATION"
(note: only the phrase is enclosed in quotes)

SE ENTER YOUR SEARCH

OR PHRASE? asbestos

HERE WERE 50 RECORDS FOUND FOR asbestos

DISPLAY OPTIONS:

- 1 - SHOW SOURCE, ABSTRACT, STANDARD NO., STATUS, AND DATE
- 2 - SHOW FULL RECORD INCLUDING LETTER
- 3 - SHOW LETTER ONLY
- 4 - NARROW SEARCH WITH ADDITIONAL SEARCH TERMS
- 5 - NEW SEARCH
- END - TO LEAVE DATA BASE

SELECTION? 2

To capture, prepare machine now

- * TO CANCEL DISPLAY - Use CTRL C (Press CTRL key and C key at same time)
- * TO INTERRUPT DISPLAY - Use NOScroll or CTRL S
- * TO RESUME DISPLAY - Use NOScroll or CTRL U

ENTER ITEM NOS. OR CARriage RETURN:

ITEM 1

STANDARD NUMBER 1910.124(e)(5)

INFORMATION DATE 810203

SOURCE DESCRIPT. Letter to Arco/Polymers, Inc.

COMPANY Arco/Polymers, Inc.

ABSTRACT 3M 9900 is acceptable for asbestos; No OSHA position on appropriate Test Atmosphere.

STATUS Current

29 CFR 1910.124(e)(5)

February 3, 1981

Ronald J. Reiser
Safety and Health Engineer
ARCO/Polymers, Inc.
Frankfort Road
Moraca, Pennsylvania 15061

Dear Mr. Reiser:

This is in response to your inquiry regarding OSHA's position on the use of the 3M disposable respirator, Model No. 9900, with asbestos, and on qualitative fit-testing of this respirator in a "test atmosphere."

OSHA has not taken a position per se on this respirator. The respirator has been approved by the National Institute for Occupational Safety and Health, and the Mine Safety and Health Administration (NIOSH/MSHA; approval LC 711-176) for protection against toxic dust with an air contamination level of not less than

.05 mg/M3, including chromium, lead, manganese, and asbestos. Because of this approval OSHA accepts the use of this respirator for compliance purposes when employees are exposed to asbestos fibers.

NIOSH has shown concern with disposable respirators as an effective respiratory device, especially when the contaminant is a carcinogen such as asbestos. You may wish to contact NIOSH for further information on this by using the following address and telephone number:

Appalachian Laboratory for Occupational Safety
and Health, NIOSH, Testing and Certification
944 Chestnut Ridge Road
Morgantown, West Virginia 26505
Telephone: 304-599-7931

2A

OSHA has not taken a position regarding acceptable qualitative fit-testing of the 9900 respirator in a "test atmosphere." However, OSHA has issued an instruction to its field offices (to which I presume you are referring) entitled "29 CFR 1910.134(e)(5) -- Respirator Fit-Testing," captioned OSHA Instruction CPL 2-2.29, dated October 27, 1980. This is a directive to our field personnel, and is not to be taken as a new standard.

This instruction has not introduced new fit-testing procedures as part of 29 CFR 1910.134(e)(5) for the employer to follow. The words "test atmosphere" are found in the present standard 1910.134(e)(5) which was issued in 1971; the term "test atmosphere" is also found in the American National Standards Institute's standard (ANSI) Z88.2-1969. The words, "test atmosphere," have now been changed to "test agent" in ANSI, Z88.2-1980. The use of the words "test agent" at this time is more appropriate for OSHA compliance purposes, and expands the kinds of fit-testing that can be performed to come into compliance with 1910.134(e)(5).

OSHA is taking a relatively open view in regard to the type of test atmosphere used for fit-testing respirators. Furthermore, recent OSHA standards which require qualitative and/or quantitative fit-testing (i.e., lead, acrylonitrile, cotton dust) do not indicate a specific procedure, recognizing the problem of requiring only one test procedure, the availability, and the present state of the art of fit-testing respirators. Moreover, an employer should follow the manufacturer's facepiece fitting instructions, when appropriate. The procedure used, however must effectively test the fit of the respirator.

You may if you like also obtain the following references for further information:

- 1) John A. Fritchard, A Guide to Industrial Respiratory Protection, NIOSH Publication No. (NIOSH) 76-189.
- 2) J. L. Carlin, et al., Manual of Respiratory Protection Against Airborne Radioactive Materials, NUREG-0041 (1976), Regulatory Commission's regulations.

You also may wish to consult the American National Standards Institute (ANSI) Practices for Respiratory Protection Z88.2-1969. The 1980 edition has just been made available for further guidance on proper use and fitting of respirators.

I hope this information is helpful to you. If we can serve you in the future, we shall be glad to do so.

Sincerely,

Bruce Hillerbrand
Acting Director
Federal Compliance and State Programs

***END OF DOCUMENT REACHED**

ITEM 2

STANDARD NUMBER	1910.1001
INFORMATION DATE	031213
SOURCE DESCRIPT.	Letter to Enrique Gonzalez Fernandez, Ph.D.
ABSTRACT	The OSHA ETS for asbestos (0.5 f/cc) was stated. Pending full review, the PEL reverts back to the original 2 f/cc.
STATUS	Current

29 CFR 1910.1001

December 13, 1982

Enrique Gonzalez Fernandez, Ph.D.
Jefe en el Trabajo
Centro de Investigacion

Y. Asistencia Técnica
C/Torre la Laguna, 73
Madrid - 27, Spain

Dear Dr. Gonzalez:

This is in response to your inquiry of October 31, 1988, regarding
OSHA's asbestos standards and instructions for sampling and analysis
of asbestos fibers.

3A

(LTS) for asbestos which lowered the permissible exposure limit from 2 fibers per cubic centimeter of air (f/cc) to 0.5 f/cc, or 500,000 particles per cubic meter of air. However, on November 23, 1983, implementation of the ETS was stayed by the U.S. Court of Appeals for the Fifth Circuit, pending full judicial review of the standard. Accordingly, during the period of the stay, enforcement action reverts back to the original standard 29 CFR 1910.1001, and the permissible exposure limit of 2 f/cc for an 8-hour, time weighted average. A copy of the ETS is enclosed for your information.

At the present time, OSHA has not changed its instructions for sampling and analysis of asbestos fibers from those found in Chapter X, paragraph C, of the OSHA Industrial Hygiene Field Operations Manual (IHFOM), CPL 2-2.20 (April 2, 1979). However, OSHA's IHFOM is currently being revised. In the future, you may wish to contact the Directorate of Technical Support, Mr. Edward J. Baier, Director, regarding any changes in procedures for the sampling and analysis of asbestos fibers.

In addition, the National Institute for Occupational Safety and Health (NIOSH), our sister agency in the Department of Health and Human Services, may be able to further advise you on additional instructions for asbestos sampling and analysis. For further information the address and telephone number are:

National Institute for Occupational Safety and Health
Robert A. Taft Laboratories
4676 Columbia Parkway
Cincinnati, Ohio 45226
Telephone: (513) 684-8221

I hope this information is useful to you. If we can provide any further assistance please contact us again.

Sincerely,

John B. Miles, Jr.
Director
Directorate of Field Operations
Enclosure

END OF DOCUMENT REACHED

ITEM 3

STANDARD NUMBER	1910.1001(d)(4)
INFORMATION DATE	830215
SOURCE DESCRIPT.	Letter to Vincent R. Dabbs
COMPANY	International Union of Operating Engineers
ABSTRACT	Two separate clothes lockers are required for employees exposed to asbestos above the PEL.
STATUS	Current

29 CFR 1910.1001

February 16, 1983

Mr. Vincent R. Dabbs
International Union of Operating Engineers
Local Union No. 148, AFL-CIO
148 Wilma Drive
P.O. Box 396
Maryville, Illinois 62062

Dear Mr. Dabbs:

This is in response to your inquiry of January 13, 1983, regarding OSHA standard 29 CFR 1910.1001(d)(4)(ii). You are seeking an interpretation as to when an employer must provide two separate clothes lockers or containers for each employee when exposed to asbestos fibers.

The provision of the OSHA asbestos standard immediately preceding the one you mention, 29 CFR 1910.1001(d)(4)(i), states that, at any fixed place of employment, employers must provide change rooms for their regular employees who are exposed to airborne concentrations of asbestos fibers in excess of the

exposure limits prescribed in paragraph (b) of the standard. These permissible limits are 2 fibers per cubic centimeter of air (fibers/cc) for an 8-hour, time-weighted average, and 10 fibers/cc ceiling value. These same exposure limits also apply to paragraph 29 CFR 1910.1001 (d)(4)(ii), regarding the clothes lockers. Thus, two separate clothes lockers are required for each employee exposed to asbestos above the permissible limits.

A copy of an OSHA program directive regarding minimum airborne fiber concentrations for initiating asbestos medical examinations is enclosed for your information.

I hope this information answers your question. If you have any further questions, please feel free to contact us again.

Sincerely,

4A

Bruce Hillenbrand
Acting Director, Federal Compliance
and State Programs

Enclosure

***END OF DOCUMENT REACHED**

ITEM 4

STANDARD NUMBER	1910.1001(f)(1)
INFORMATION DATE	830413
SOURCE DESCRIPT.	Letter to John F. Sommersett
COMPANY	Loss Control Inc.
ABSTRACT	Air sampling for asbestos must be repeated as often as is necessary to determine with reasonable accuracy the level of employee exposure. Sampling for employees who may exceed the permissible exposure limits must be repeated at least every 6 months.

STATUS

Current

29 CFR 1910.1001

April 13, 1983

John F. Sommersett
Loss Control Incorporated
1482 Jocasta Drive
Lexington, Kentucky 40502

Dear Mr. Sommersett:

This is in response to your inquiry of February 2, 1983, requesting an interpretation of OSHA standard 29 CFR 1910.1001(f)(1); employee exposure monitoring for asbestos fibers. Please accept my apology for the delay in our response.

The Occupational Safety and Health standard, 29 CFR 1910.1001(f)(1), does require exposure monitoring (air sampling) for all employees covered by the Occupational Safety and Health Act in any environment in which asbestos is released. Sampling must be repeated as often as is necessary to determine with reasonable accuracy the levels of exposure of employees. Sampling must be repeated at intervals no greater than 6 months for employees whose exposure may reasonably be foreseen to exceed the permissible exposure limits in 29 CFR 1910.1001(b)(2) (fibers/cc time-weighted average, and 10 fibers/cc ceiling limit).

Normally, conditions leading to such levels would be expected to be present in work environments where asbestos is handled, used, or cleaned up, or when a product is manufactured, etc. In the type of environment you describe, there could be possible exposures to janitorial or maintenance personnel if they are involved in activities such as installation, removal, cleanup and general maintenance involving asbestos containing materials. Incidental exposure in the areas you describe may reflect a different level from the above. Therefore, if there appears to be a question of the level, an air sample may be warranted.

The Act does not apply to the general public and employees of State and local governments. State and local government employees would be covered under an OSHA approved State plan under section 18(b) of the Act, or under other existing State law.

The State of Kentucky does have such an approved plan and operates its own program for workplace safety and health. Employees of the State or local government in Kentucky are therefore covered by the State. The State of Kentucky would also be able to provide you with further

information on job health and safety standards for all employees,
including those working in State-related schools. For further
information you may contact the State of Kentucky using the following
address and telephone number:

5

U.S. Highway 127 South
Frankfort, Kentucky 40601
Telephone: 502-564-3070

5A

In addition, the Environmental Protection Agency (EPA) regulates general public exposure to asbestos fibers, and asbestos removal in school buildings. For further information you may want to contact EPA as well. The address is:

U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

I hope this information answers your questions. If you have any further questions, please feel free to contact us again.

Sincerely,

Bruce Hillenbrand
Acting Director, Federal Compliance
and State Programs
END OF DOCUMENT REACHED

ITEM 5

STANDARD NUMBER 1910.1001(j)(2), (3), (4)
INFORMATION DATE 760213
SOURCE DESCRIPT. Letter to Mr. Land and Mr. Burt
COMPANY ARNOLD & PORTER
ABSTRACT If an employee refuses a medical examination a signed refusal statement must be maintained and accessible in accordance with the asbestos standard.

STATUS

Old

29 CFR 1910.1001(j)(2), (3), (4)

February 13, 1976

Mr. Stuart J. Land and
Mr. Jeffrey A. Burt
ARNOLD & PORTER
1229 Nineteenth Street, N.W.
Washington, D.C. 20036

Gentlemen:

Assistance Secretary Morton Corn has asked me to respond to your letter of December 2, 1975.

Where an employee refuses to undergo one of the medical examinations provided or made available in accordance with 29 CFR 1910.1001(j)(2), (3), or (4), implementation of the procedures you outline in your letter would constitute compliance with the medical examination requirement in the current asbestos standard. We would remind you, however, that the procedures you outline must be repeated each time a new medical examination is due and refused by the employee. Thus, for example, the procedures would have to be repeated each time an annual examination is refused.

In addition, maintenance (unreadable word) and access to the signed statements of refusal to take the medical examinations must be in accordance with 1910.1001(j)(6).

(Unreadable words) the details of compliance is appreciated.

Sincerely,

Bert Concklin
Deputy Assistant Secretary
END OF DOCUMENT REACHED

ITEM 6

STANDARD NUMBER 1910.1001(c)(2)(iii)
INFORMATION DATE 800229
SOURCE DESCRIPT. Letter to C. W. Holtermann
COMPANY Porter Hayden Company
ABSTRACT Under the asbestos standard if the average airborne concentration is known in advance to not exceed 100 times

the PEL's, type "C" respirators may be replaced with other
respirators.

5B

February 29, 1980

Mr. C. W. Holtermann
Porter Hayden Company
32 South Street
Baltimore, Maryland 21202

Dear Mr. Holtermann:

The interpretation of respiratory protection required by 29 CFR 1910.1001(c)(2)(iii) of the Asbestos standard is provided below. I apologize for our delay in responding.

Employees about to engage in the spraying of asbestos, in the removal or demolition of pipes, structures, or equipment covered or insulated with asbestos, or in the removal or demolition of asbestos insulation or coverings, shall be provided with and shall use a type "C" continuous flow or pressure-demand, supplied-air respirator. This requirement holds true unless the employer has established in advance that the average airborne concentrations of asbestos the employees will confront will not exceed 100 times either of the permissible exposure limits; i.e., 8-hour time-weighted average (TWA) and ceiling limits.

If you can conclusively establish the upper ceiling and 8-hour TWA concentrations of airborne asbestos that employees could confront during spraying, demolition or removal, then any of the respirators presented in 29 CFR 1910.1001(d)(2)(i), (ii) and (iii) that afford adequate protection at such upper concentrations of airborne asbestos may be used.

The establishment of the upper concentrations may require considerable effort if there are variations from operation to operation in any factors such as the following:

- (1) Binding material
- (2) Type of asbestos (e.g. length of fibers, composition)
- (3) Percentage of asbestos in the insulation
- (4) Removal techniques
- (5) Amount of insulation removed
- (6) Engineering and work practice controls instituted to reduce employee exposures
- (7) Complement of employees
- (8) How well employees are trained in asbestos control procedures.

Presumably, the workers pictured in the EPA manual were able to wear air-purifying respirators because the airborne concentration of asbestos was controlled to levels at which these respirators provide adequate protection. This could have been done by applying a fine spray of "amended water" to the asbestos-containing material before and during the asbestos removal operation. "Amended water" is water containing 1 ounce of a surface active detergent or wetting agent (50% polyethylene ester and 50% polyoxyethylene ether) per 5 gallons. I must stress the extreme importance of complying with 29 CFR 1910.1001(f)(2)(ii) if you decide to provide respirators described in 29 CFR 1910.1001(d)(2)(i) or (ii) rather than a type "C" continuous flow or pressure-demand, supplied-air respirator. 29 CFR 1910.1001(f)(2)(ii) requires you to determine the exposure of each of your employees to airborne asbestos on each occasion you remove asbestos containing insulation. You must determine both the ceiling concentration and the 8-hour, time-weighted average concentration of asbestos to which each of the employee is exposed.

I hope this answers your question. If we can serve you in the future, we shall be glad to do so.

Sincerely,

Grover C. Wrenn
Director
Federal Compliance and State Programs
END OF DOCUMENT REACHED

ITEM 7

STANDARD NUMBER 1910.1001(j)(4) and (5)
INFORMATION DATE 760816
SOURCE DESCRIPT. Memorandum for Gabriel Gilletti
ABSTRACT If employee refuses termination medical examination provi
in accordance to current asbestos standard, a written

...placement must be obtained, and a medical exam within preceding year can substitute for termination medical exam.

STATUS

Old

29 CFR 1910.1001(j)(4) and (5)

August 16, 1976

MEMORANDUM FOR: GABRIEL GILLOTTI
Regional Administrator

SUBJECT: 29 CFR 1910.1001(j)(4) and (5)

This memo is in reply to your memos of June 14 and 28, 1976, regarding interpretation of the medical examination requirements under the asbestos standard at 29 CFR 1910.1001(j)(4) and (5).

Your first inquiry concerned as employer's duty where an employee refuses to undergo a termination medical examination provided or made available in accordance with 29 CFR 1910.1001(j)(4). The employer would not be subject to citation under the OSHA Act where the employer obtains a statement from the employee evidencing his refusal. A record of the refusal must be maintained and made available in accordance with the requirements of 1910.1001(j)(6).

Your second inquiry concerned the effect of 1910.1001(j)(5) on the medical examination requirements of 1910.1001(j)(4). While it would be advisable to provide such examinations at the time of termination if such an exam had not been given shortly before the termination date, 1910.1001(j)(5) does not require termination medical examinations if adequate records show that the employee has been examined in accordance with 1910.1001(j) medical examination requirements within the preceding year.

END OF DOCUMENT REACHED

ITEM 8

STANDARD NUMBER	1910.1001(j), (2) (3) (4) (5)
INFORMATION DATE	770420
SOURCE DESCRIPT.	Letter to Mr. James J. Ortyl
COMPANY	NW Ohio Council of Construction Employers
ABSTRACT	Employer need not provide employee an annual medical examination if no occupational exposure to asbestos fibers between last required medical exam and termination of employment.

STATUS

Current

29 CFR 1910.1001(j), (2) (3) (4) (5)

April 20, 1977

Mr. James J. Ortyl
Safety Administrator
Northwestern Ohio Council
of Construction Employers
5515 Southwick Blvd.
Toledo, Ohio 43614

Dear Mr. Ortyl:

This is in response to your letter of May 11, 1976, to Mr. Glen Butler, Area Director, Occupational Safety and Health Administration (OSHA), Toledo, Ohio. Your letter was forwarded to this office since your request for interpretation of certain medical examination requirements contained in the Asbestos Standard, 29 CFR 1910.1001 has potential national significance.

An employer need not provide or make available to an employee the annual medical examination delineated in 29 CFR 1910.1001(j)(3) if the employee has not received an exposure to airborne asbestos fibers during the one year period succeeding the last medical examination received in accordance with any appropriate subparagraph of 29 CFR 1910.1001(j). If, however, at some point in time following this period of non-exposure to airborne asbestos fibers, the employee is again exposed, the employer must provide or make available to the employee another preplacement medical examination in accordance with 29 CFR 1910.1001(j)(2).

An employee's last required annual medical examination fulfills the termination of employment medical examination provision in 29 CFR 1910.1001(j)(4) if the employee receives no occupational exposure to asbestos fibers between that examination and his termination of employment. The termination of employment medical examination provision is not applicable if the employee is reemployed.

requisite if the first annual medical examination did not come due prior to termination of employment, but the employee had refused the replacement medical examination. In accordance with 29 CFR 1910.1001(j)(5), the termination of employment medical examination provision is not a requisite for an employee exposed to asbestos fibers if adequate records show that less than one year prior to termination of employment, a medical examination in accordance with any appropriate subparagraph in 29 CFR 1910.1001(j) has been received by the employee.

The matter of an employer refusing a person employment because of the person's refusal to undergo a pre-employment medical examination is outside of OSHA authority.

Please accept my apology for the delayed response. I hope you find our reply helpful.

Sincerely,
Richard P. Wilson, Deputy Director
Federal Compliance and State Programs
END OF DOCUMENT REACHED

ITEM 9

STANDARD NUMBER 1910.1001 and 1910.1001(j)
INFORMATION DATE 770304
SOURCE DESCRIPT. Letter to Mr. Roger D. Tankersley
COMPANY The Travelers Insurance Companies
ABSTRACT OSHA requires employee medical examinations if exposure to airborne asbestos exceeds 0.1 fibers/5 microns/cubic centimeter of air on an 8 hr. TWA, or a peak level of 0.5 fibers/5 microns/CC based on 15 min. sampling periods.
STATUS Current
29 CFR 1910.1001 and 1910.1001(j)

March 4, 1977

Mr. Roger D. Tankersley
The Travelers Insurance Companies
One Tower Square
Hartford, Connecticut 06115

Dear Mr. Tankersley:

This is in response to your letter dated September 27, 1976, in which you requested some interpretations relative to the Occupational Safety and Health Administration (OSHA) asbestos standard (29 CFR 1910.1001).

Although, by its express terms as well as the developing case law 29 CFR 1910.1001(j) would require medical examinations where employees are exposed to any concentration of airborne asbestos fibers, it is current OSHA policy to require medical examinations only when employee exposures to airborne asbestos exceed 0.1 fibers greater than 5 microns in length per cubic centimeter of air (f/cc greater than 5 microns) on an 8-hour time-weighted average (TWA) basis or exceed a peak level of 0.5 f/cc greater than 5 micron based on 15-minute sampling periods. Our policy in this regard derives support from a recent recommendation from the National Institute for Occupational Safety and Health (NIOSH) that the permissible exposure limits for airborne asbestos be fixed at these levels. This recommendation was made by NIOSH in its document entitled, Re-examination and Update of Information on the Health Effects of Occupational Exposure to Asbestos (December 1976).

The existence of employee exposure to airborne asbestos fibers in excess of 0.1 f/cc greater than 5 microns on an 8-hour TWA basis or in excess of 0.5 f/cc greater than 5 microns on a 15-minute TWA basis are verified by OSHA through measurement before a citation is issued for failure to provide or make available a medical examination required under paragraph 29 CFR 1910.1001(j).

A company using asbestos under conditions where employee exposures are exceeding the levels referred to above, that pursuantly discontinues the use of asbestos and begins using fiberglass, must verify by measurements that exposures above these limits are no longer occurring due to lingering causes such as asbestos settled about the plant, before it is permitted to pursue with the discontinuation of medical examinations. The medical examinations may then be discontinued after the next annual medical examinations that come due have been provided or made available.

Please accept my apologies for the delayed response. I hope you find the information provided helpful.

****END OF DOCUMENT REACHED****

ITEM 10

STANDARD NUMBER 1910.1001(c)(2)(iii)
INFORMATION DATE 790424
SOURCE DESCRIPT. Letter to Dr. Jack Berberich
COMPANY NIOSH
ABSTRACT Concentrations of airborne asbestos 100 times above the PEL require use of continuous flow or pressure demand supplied air respirators.
STATUS Current

29 CFR 1910.1001(c)(2)(iii)

April 24, 1979

Dr. Jack Berberich
Curriculum Development Branch
Division of Training and Manpower Development
NIOSH
4676 Columbia Parkway
Cincinnati, Ohio 45226

Dear Dr. Berberich:

The interpretation of respiratory protection required by 29 CFR 1910.1001(c)(2)(iii) of the Asbestos Standard is provided below, in response to your telephone request of April 6, 1979.

Employees about to engage in the spraying of asbestos, in the removal or demolition of pipes, structures, or equipment covered or insulated with asbestos, or in the removal or demolition of asbestos insulation or coverings, shall be provided with and shall use a type "C" continuous flow or pressure-demand, supplied-air respirator. This requirement holds true unless the employer has positively established in advance that the airborne concentrations of asbestos the employees will confront will not exceed 100 times either of the permissible exposure limits; i.e., 8-hour time-weighted average and ceiling limits.

If the employer has conclusively established the upper concentration of airborne asbestos that employees could confront during spraying, demolition or removal, then any of the respirators presented in 29 CFR 1910.1001(d)(2)(i), (ii) and (iii) that afford adequate protection at such upper concentration of airborne asbestos may be used.

If we can serve you in the future, we shall be glad to do so.

Sincerely,

Grover C. Wrenn
Director
Federal Compliance and State Programs
****END OF DOCUMENT REACHED****

ITEM 11

STANDARD NUMBER 1910.1001
INFORMATION DATE 830812
SOURCE DESCRIPT. Letter to Mr. Richard A. Uhlar
COMPANY International Chemical Workers Union
ABSTRACT Asbestos exposure, greater than 0.1 fiber/c.c. of air, requires medical examination. OSHA does not permit excessive X-ray examination.
STATUS Current

29 CFR 1910.1001

August 12, 1983

Mr. Richard A. Uhlar
Industrial Hygienist
International Chemical Workers Union
1655 West Market Street
Akron, Ohio 44313

Dear Mr. Uhlar:

This is in response to your letter of June 28, 1983, requesting a clarification of OSHA's policy on medical examinations for workers exposed to asbestos. Please accept my apology for the delay in

asbestos exposure which would trigger the standard's requirements for medical examinations. However, past litigation and challenges regarding the question of enforcing these requirements for any level of exposure to airborne asbestos fibers indicated the need to establish a minimum exposure level that would be at least accurately and analytically detectable. Thus, OSHA established this minimum concentration as 0.1 fiber per cubic centimeter of air.

OSHA does realize that even short exposures may be linked to an asbestos related disease. However, if an employee ceases to be exposed to asbestos fibers, the employer must still provide or make available to the employee a medical examination to cover the final year of his or her last exposure. The employee must also be provided a termination of employment medical examination within 30 calendar days before or after he or she stops working for the employer.

No medical examination is required of any employee if adequate records show that the employee has been examined in accordance with paragraphs 29 CFR 1910.1001(j)(1) through (4) within the past one-year period. It should be noted that in some situations, such as transient asbestos workers, exposing employees to numerous X-ray examinations may be more hazardous than failing to provide the medical surveillance required by the standard. For reasons of this nature, OSHA does not permit excessive asbestos medical examinations.

Because the asbestos standard is currently undergoing review, a copy of your letter will be forwarded to the Directorate of Health Standards Programs for appropriate consideration. If we can be of further assistance, please contact us again.

Sincerely,

Bruce Hillenbrand
Acting Director
Federal Compliance
and State Programs

END OF DOCUMENT REACHED

ITEM 12

STANDARD NUMBER	1910.1001(s)
INFORMATION DATE	840327
SOURCE DESCRIPT.	Letter to Southern Fiber Control
COMPANY	Southern Fiber Control Technologies, Inc.
ABSTRACT	Asbestos warning sign not meeting line spacing specifications is in compliance due to other compensating factors.
STATUS	Current

March 27, 1984

Mr. Stan Shaw
President
Southern Fiber Control
Technologies, Inc.
3828 Oakcliff Industrial
Court - Bldg. 5
Doraville, Georgia 30340

Dear Mr. Shaw:

This is in response to your letter of February 23, to Mr. Jerry Hayes in our Atlanta Regional Office regarding the 14" X 20" sign you have developed for alerting workers about the presence of an asbestos hazard.

We have compared your sign (reduction copy enclosed) against the required sign specifications at 29 CFR 1910.1001(s)(1)(ii) of the asbestos standard and found it to be in essential compliance. It does not meet the specification that the spacing between lines is at least equal to the height of the upper of any two lines, but we have concluded that this is more than compensated for by the fact that the sign (1) includes a skull and crossbones at the top, (2) uses the signal word, WARNING, which is stronger than CAUTION, and (3) uses larger than required letter sizes.

Thank you for contacting the Occupational Safety and Health Administration. If we may serve you again in the future, we shall be glad to do so.

Sincerely,

John B. Miles, Jr.
Director
Directorate of Field Operations

Enclosure
END OF DOCUMENT REACHED

ITEM 13

STANDARD NUMBER 1910.1001
INFORMATION DATE 831212
SOURCE DESCRIPT. Letter to Mr. William G. Cherry
ABSTRACT A layman review of the asbestos air standard and measurement techniques is provided.
STATUS Current

29 CFR 1910.1001

December 12, 1983

Mr. William G. Cherry
1909 S.W. Athens Way
Pendleton, Oregon 97801

Dear Mr. Cherry:

As requested in your letter of November 4, 1983, enclosed is a copy of the Emergency Temporary Standard (ETS) for Asbestos which was published in the Federal Register on November 4.

I hope that the following will clear up your uncertainty about the exposure limits required by the old standard versus those required by the ETS. Determination of airborne asbestos levels involves drawing air through a filter, at a controlled rate, for a specific period of time; counting the fibers collected on the filter, using a microscope; and dividing the number of fibers by the volume of air passed through the filter (with appropriate conversion factors) to calculate the concentration. Concentrations or exposure levels are customarily expressed as either fibers per cubic centimeter (f/cc) or fibers per cubic meter (f/m³). This method of collecting, counting, and calculating yields a value which is an average for the period of time taken to collect the sample. If the period of time is 8 hours, then the level calculated is the average level which existed during that 8-hour period. This is referred to as an 8-hour time-weighted average (8-hr TWA). The permissible exposure limit or PEL is the maximum level to which an employee may be exposed without the employer being required to provide special protective devices and/or take other actions. In some instances, or in the case of asbestos, PELs are defined as 8-hour TWAs. OSHA's asbestos standard (29 CFR 1910.1001) sets a PEL at 2.0 f/cc measured as an 8-hour TWA. The ETS (which has been stayed by the U.S. Court of Appeals for the Fifth Circuit) reduced this limit to 0.5 f/cc (or 500,000 f/m³) measured as an 8-hour TWA. While court-imposed stay is in effect, the employer must comply with the 2.0 f/cc PEL.

Sincerely,

R. Leonard Vance, Ph.D.
Director
Health Standards Programs

Enclosure
END OF DOCUMENT REACHED

11A

ITEM 14

STANDARD NUMBER General
INFORMATION DATE 840104
SOURCE DESCRIPT. Letter to Professor Warren A. Cook
ABSTRACT The ETS for asbestos is applied to fibrous talc and tremolite however, since the ETS has been stayed, the old limits for fibrous talc and tremolite are in effect.

STATUS Old

January 4, 1984

Professor Warren A. Cook
718 Emory Drive
Chapel Hill, North Carolina 27514

Dear Professor Cook:

In your letter of December 12, 1983, you informed us that you were preparing a monograph on workplace air contaminants and asked for clarification of the permissible exposure limits (PELs) for asbestos, talc and tremolite. I am afraid that our asbestos rulemaking activity is occurring at an inopportune moment for you.

As you know, we did issue an Emergency Temporary Standard (ETS) on November 4, which reduced the PEL from 2.0 fibers/cc to 0.5 fibers/cc measured as an 8-hour time-weighted average. Unfortunately the ETS has been stayed by the U.S. Court of Appeals for the Fifth Circuit pending judicial review of the merits. The Occupational Safety and Health Administration is planning to proceed with a proposal for a final standard and is aiming for publication of a final standard within the six months from publication of the ETS that are prescribed by the Occupational Safety and Health Act. At the present time, however, because the ETS is stayed, the old standard and the related limits for talc (fibrous) and tremolite are in effect.

The ETS for asbestos fibers is applied to talc (fibrous) and to tremolite as well. Also, the ceiling level was not altered by the ETS. We expect that during the forthcoming rulemaking proceedings on asbestos questions will be raised concerning the extent to which talc and tremolite should be covered by the Asbestos Standard.

I have enclosed a copy of the November 4 ETS for your use.

Sincerely,

Thorne G. Auchter
Assistant Secretary

Enclosure
END OF DOCUMENT REACHED

STANDARD NUMBER: 1910.1001

INFORMATION DATE: 840127

SOURCE DESCRIPT.: Letter to Mr. Phil Kelly

ABSTRACT: The OSHA asbestos standard covers working conditions for employees rather than property or buildings and federal regulations do not cover state and local government; therefore the ETS does not apply to property & buildings owned by various state and local subdivisions.

STATUS: Old

January 27, 1984

Mr. Phil Kelly
69 River Ridge Road
Wellesley Hills, Massachusetts 02181

Dear Mr. Kelly:

This is in response to your recent letter concerning the Emergency Temporary Standard (ETS) issued by the Occupational Safety and Health Administration (OSHA) on November 4, 1983.

Copies of the ETS and of the OSHA's current Asbestos Standard (29 CFR 1910.1001) are enclosed. The ETS went into effect immediately upon publication, but was challenged by an industry trade association in the U.S. Court of Appeals for the Fifth Circuit where it was stayed on November 23, 1983, pending judicial review. Arguments were heard by the Court on January 12, 1984. The court has not yet issued its decision.

You asked whether or not the ETS would apply to property and buildings owned by various state or local subdivisions. First, OSHA's standards cover working conditions for employees, rather than property or buildings, except to the extent that rules involving the latter must be defined to protect the employees. Second, in those states in which Federal OSHA enforces the OSHA regulations (which include Massachusetts), state and local government employees are specifically excluded from coverage by Section 3(5) of the Occupational Safety and Health Act of 1970. OSHA regulations apply to state and local government employees only in those states which have taken over enforcement of OSHA regulations within their own boundaries under an agreement with OSHA called a state plan. If you are interested in regulations in Massachusetts, you should check with the state and local governments to find out what regulations, if any, they enforce.

I hope this information will be helpful to you.

Sincerely,

R. Leonard Vance, Ph.D.
Director
Health Standards Programs
END OF DOCUMENT REACHED

12A

STANDARD NUMBER 1910.1001
INFORMATION DATE 8/40/17
SOURCE DESCRIPT. Letter to R. Brown
ABSTRACT

Asbestos standard prescribes use of phase contrast microscopy to measure employee exposure, and the 2 f/cc limit assumes this measurement method. It is recognized phase contrast microscopy will not identify some fibers which can be observed using electron microscopy. Relationship between electron microscopy measurements and risk of disease has yet to be established.

TECH. REVIEW DATE 8/11/29
STATUS Current

29 CFR 1910.1001

September 17, 1984

Honorable Richard L. Brown
Controller
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Brown:

In your letter of May 31, you asked the Occupational Safety and Health Administration (OSHA) for guidance regarding the appropriate method for measuring airborne concentrations of asbestos fibers. Please accept our apology for the delay in this response which was caused by the ongoing activity of the asbestos rulemaking and technical complexity of the issue addressed in your letter.

As you may know, OSHA is in the midst of rulemaking proceedings on asbestos and measurement technology is one of the major issues to be covered. The outcome of this rulemaking may change OSHA's present policy.

The current OSHA standard for asbestos, 29 CFR 1910.1001, sets a permissible exposure limit of 2 fibers per cubic centimeter (f/cc) of air and prescribes the use of phase contrast microscopy to measure employee exposure. Phase contrast microscopy has been used to measure air concentrations near the 2 f/cc limit for many years. The National Institute for Occupational Safety and Health (NIOSH) has stated that the phase contrast method is reliable to measure concentrations at 0.1 f/cc.

Although the correlation between phase contrast asbestos measurements to disease risk has been made, OSHA has not made a similar correlation between electron microscopy measurements and disease risk. The numbers of fibers counted by electron microscopy are not equivalent to those counted by the phase contrast method. The relationship between electron microscopy measurements and the risk of disease has yet to be established.

At this time, OSHA believes that the phase contrast method is adequate for monitoring the office environment and the use of electron microscopy is not required. However, our view may change should be the rulemaking record of our current proposal to revise the asbestos standard so indicate.

With regard to your concerns about the potential exposure of employees who will be occupying the building while asbestos removal is being performed, it is suggested that the office space be monitored during the peak activity hours. If levels show unacceptable fiber counts, further control measures would be necessary. Such controls may include maintaining the areas being renovated under negative pressure to prevent fibers migration into the office work space, additional partitioning, and/or improved ventilation procedures during asbestos removal and clean up. Good industrial hygiene practice indicates that asbestos concentrations in office work spaces should be controlled to as near background levels as possible.

If we can be of further assistance in this matter, please do not hesitate to contact us.

Sincerely,

Patrick R. Tyson
Deputy Assistant Secretary

Assistant Secretary for Occupational
Safety and Health
Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Dear Mr. Tyson:

The purpose of this letter is to seek your opinion concerning the appropriate method of measuring airborne concentrations of asbestos fibers. The General Accounting Office building is currently undergoing renovation of its heating, ventilation, and air conditioning system (HVAC) that includes the removal of asbestos material which is part of the HVAC system. We are concerned for the health of employees who continue to occupy the building while the work is on-going.

Since the GAO building remains occupied during the renovation period, which is expected to take approximately 10 years to complete, we have initiated a measurement program for detecting airborne asbestos fibers that may be released into the employee occupied areas. Certain experts and consultants in the field of asbestos have advised us that the phase contrast method of measuring asbestos fibers, as prescribed in 29 CFR 51910.1001 (e), is insufficient to allow a determination of whether employees have been exposed to excessive levels of this hazardous material. Transmission electron microscopy (TEM), along with phase contrast microscopy, is the method the experts and consultants recommended for measuring asbestos fibers. Under both methods of measurement, GAO must use the services of private laboratories to do such analysis. The cost of using the TEM method is over ten times the cost of the phase contrast method. Although we are not opposed to spending the time and effort to insure the health and safety of our employees, we are not sure that the TEM readings are any more meaningful in identifying dangerous asbestos fibers in the employee work area. Specifically, we have found no means of accurately comparing TEM analysis results with the phase contrast standard. For instance, if we analyze our results using TEM, we differentiate asbestos fibers from other fibers of a similar size, as well as identify smaller sized asbestos fibers. Frequently, this results in higher readings than would be obtained using the phase contrast method now prescribed by OSHA regulations. Although we have more exacting results, we have no comparison factor with the phase contrast analysis results, on which the OSHA standards are based.

In view of the above, we request your guidance as to 1) whether phase contrast method is sufficient to enable this agency to determine if employees have been exposed to excess levels of asbestos, 2) any guidance you can provide regarding decision criteria on asbestos levels in an office environment, and 3) a possible conversion factor relating TEM results to phase contrast results. If such a conversion factor is available, is there sufficient benefit derived from the TEM to justify the cost for such analysis.

Any information you can provide will be most appreciated.

Sincerely,

Richard L. Brown
Controller
END OF DOCUMENT REACHED

ITEM 17

STANDARD NUMBER	1910.1001(i)(3); 1018(e)(5); 1025(d)(8); 1029(e)(3)
INFORMATION DATE	840831
SOURCE DESCRIPT.	Letter to David R. Smith
COMPANY	IT Corporation
ABSTRACT	Except for asbestos, employees must be notified of their level of exposure to a regulated substance regardless of whether the exposure exceeds the permissible exposure level.
STATUS	Current
29 CFR 1910.1001(i)(3)	
29 CFR 1910.1018(e)(5)	
29 CFR 1910.1025(d)(8)	
29 CFR 1910.1029(e)(3)	
29 CFR 1910.1043(d)(4)	
29 CFR 1910.1044(f)(5)	
29 CFR 1910.1045(e)(5)	

Corporate Director, Health, Safety
and Training
IT Corporation
23456 Hawthorne Boulevard, Box 2995
Torrance, California 90509

Dear Mr. Smith:

This is in response to your letter of July 18, concerning the requirement in certain Occupational Safety and Health Administration health standards to notify employees of their amount of exposure to the regulated substance.

All the provisions to which you refer, except the one covering asbestos, require that employees be notified of their exposure levels regardless of whether the exposures exceed the permissible exposure limit(s). This is true for provisions 29 CFR 1910.1018(e)(5), 1910.1025(d)(8), 1910.1029(e)(3), 1910.1043(d)(4), 1910.1044(f)(5), and 1910.1045(e)(5). Only the provision covering asbestos, 29 CFR 1910.1001(i)(3), requires that the permissible exposure limit(s) be exceeded before employers are obligated to notify their employees of their exposures. In reporting the exposures, any exposure reduction provided by respiratory protection devices is to be disregarded.

Thank you for your inquiry. If we can serve you again in the future, we shall be glad to do so.

Sincerely,

John R. Miles, Jr.
Director
Directorate of Field Operations
END OF DOCUMENT REACHED

ITEM 18

STANDARD NUMBER 1910.1001(c)(2)(iii) and (f)(2)(ii)
INFORMATION DATE 820604
SOURCE DESCRIPTION Letter to Mr. Walter Roy Guanstrom Letter to Walter Roy Guanstrom, IH, Standard Oil
ABSTRACT Letter to Walter Roy Guanstrom of Standard Oil. Guide line for receiving a de minimis classification for use of air supplied respirators during spraying, removal and demolition involving asbestos.
TECH. REVIEW DATE 29-NOV-1984
STATUS Incomplete

29 CFR 1910.1001(c)(2)(iii) and (f)(2)(ii)

June 4, 1982

Mr. Walter Roy Guanstrom
Manager, Industrial Hygiene,
Toxicology, and Safety Division
Mail Code 3802
Standard Oil Company (Indiana)
200 East Randolph Drive
Post Office Box 5910A
Chicago, Illinois 60680

Dear Mr. Guanstrom:

This is in response to your letter of March 11, 1982, requesting interpretations for provisions 29 CFR 1910.1001(c)(2)(iii) and (f)(2)(ii) of the asbestos standard. Please accept my apology for the delay in our response.

All failures to use supplied-air respirators during spraying, removal, and demolition operations involving asbestos are technical violations of 29 CFR 1910.1001(c)(2)(iii). OSHA, however, has adopted the policy of regarding an employer's failure to provide and require that employees use supplied-air respirators as a de minimis violation of 29 CFR 1910.1001(c)(iii) if the employer has conclusively established that, for his particular situation, the respiratory protection that he is providing his employees affords them adequate protection. This policy accords with Section 9 of the Occupational Safety and Health Act. For de minimis violations, no citations are issued, no penalties proposed, and no corrective action required.

In order to receive a de minimis classification for the violation,

asbestos that his employees might confront;

- (2) provide and assure that his employees use respirators that afford adequate protection against such utmost asbestos concentrations; and
- (3) follow the respirator selection logic presented in 29 CFR 1910.1001(d)(2)(i), (ii), and (iii) of the asbestos standard.

Considerable effort might be required to establish the utmost concentrations of asbestos that might occur if there were variations from operation to operation in any factors such as the following:

- (1) Binding material
- (2) Type of asbestos (e.g., length of fibers, composition)
- (3) Percentage of asbestos in the insulation
- (4) Removal techniques
- (5) Amount of insulation removed
- (6) Room size
- (7) Engineering and work practice controls instituted to reduce employee exposures
- (8) Complement of employees
- (9) How well employees are trained in asbestos control procedures.

29 CFR 1910.1001(f)(2)(ii) reads, in part:

...samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of employees. In no case shall the sampling be done at intervals greater than 6 months for employees whose exposure to asbestos may reasonably be foreseen to exceed the limits prescribed by paragraph (b) of this section.

Note that, in case respirators are being worn, "exposure" as used in the standard means exposure that would occur without the respirator.

OSHA interprets the maximum sampling interval of 6 months to apply to stable types of exposure situations such as might occur in certain steady, mechanized production operations of the sort where variations in work practices have little effect on exposure levels. In general, the more variable the exposures, the more frequently they must be measured.

Employee asbestos exposures resulting from demolition and removal work involving asbestos can be highly variable. The amount of the variability depends on how much change there is from operation to operation in factors such as those previously listed on page 2. Even in situations where exposures do not appear to be varying much from operation to operation, the potential for large variations often exists. For example, if wet removal methods are the usual practice, an inadvertent failure to wet down the material adequately can cause large increases in exposure over what had been normal.

Accordingly, OSHA interprets 29 CFR 1910.1001(f)(2)(ii) to require employers to determine the amount of exposure of each of their employees to airborne asbestos on each day they perform demolition or removal work involving asbestos. In your company's case, although both the ceiling concentration and the 8-hour, time-weighted average concentration to which each of your employees is exposed must be determined, it appears that the ceiling concentration exposures are the most critical determinations to be made. That is, if the ceiling concentration of asbestos fibers longer than 5 microns to which your employees are exposed is held at or below the ceiling limit for exposure (10 fibers per cubic centimeter) for the duration of a one-hour exposure, then the 8-hour, time-weighted average concentration of those fibers to which they are exposed is held below 2 fibers per cubic centimeter.

It is neither advisable nor necessary to engage in unscheduled asbestos removal work in order to comply with the sampling frequency requirements presented in 29 CFR 1910.1001(f)(2)(ii). Sampling is required only whenever your company decides on its own right to perform asbestos removal work. It does not matter if more than 6 months elapse between performances of the work.

OSHA feels that there is value in air sampling even though employees are wearing respirators. The information on the concentration levels of airborne asbestos that is obtained from the samples enables employers to monitor the continuing effectiveness of the engineering and/or work practice controls that they use, as well as to verify whether the respiratory protection they provided for the last operation was adequate. Also, such information enables employers to apprise their employees of the degree of potential hazard that was posed by the environment in which they wore their respirators, and the adequacy of the protection they were afforded. 17

We appreciated the opportunity to comment on your concerns. If we may be of future assistance, we shall be glad to provide it.

Sincerely,

Patrick R. Tyson
Director, Federal Compliance
and State Programs
END OF DOCUMENT REACHED

ITEM 19

STANDARD NUMBER 1910.1001(e) and (f) (2)
INFORMATION DATE 841127
SOURCE DESCRIPT. Letter to Stephen C. Yohay, McGuinness & Williams
ABSTRACT The asbestos standard. Measuring of airborne asbestos concentrations. Monitoring, CFR 1910.1001(f) (2) and (3).
STATUS Current

29 CFR 1910.1001(e)
29 CFR 1910.1001(f) (2) and (3)

November 27, 1984

Mr. Stephen C. Yohay
McGuinness & Williams
Suite 1200
1015 Fifteenth Street, N.W.
Washington, D.C. 20005

Dear Mr. Yohay:

This is in response to your letter of October 26 concerning the measuring of airborne asbestos concentrations to determine the need for personal protective equipment for employees.

In accordance with 29 CFR 1910.1001(e), all determinations of airborne concentrations of asbestos fibers shall be made by the membrane filter method at 400-450 x (magnification) (4 millimeter objective) with phase contrast illumination.

The National Institute for Occupational Safety and Health (NIOSH) method P&CAM 239 about which you inquired fulfills the above requirement, while GCA Fibrous Aerosol Monitor Model FAM-1, also a subject of your inquiry, does not meet the above requirement.

Moreover, the asbestos standard requires two types of monitoring, personal and environmental, which are described at 29 CFR 1910.1001(f) (2) and (3). Both personal and environmental monitoring can be readily conducted by method P&CAM 239, whereas only environmental monitoring can be readily done with GCA Fibrous Aerosol Monitor Model FAM-1. The GCA monitor could prove valuable for screening for airborne asbestos, but it may not be used as the primary means for making the airborne asbestos concentration determinations required by the OSHA asbestos standard.

Thank you for your inquiry. If we can assist you again in the future, we shall be glad to do so.

Sincerely,

John B. Miles, Jr.
Director
Directorate of Field Operations
(see next page for incoming letter)

October 26, 1984

David Smith, Director
Office of Health Compliance Assistance
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Avenue, N.W., Room N-3101
Washington, D.C. 20210

Dear Mr. Smith:

Following up on our telephone conversation of October 24, 1984, I am writing on behalf of a client to request an official opinion from your office on the propriety of using certain sampling devices and methods for particular monitoring purposes under the OSHA asbestos standard, 29 CFR 1910.1000.

18

My client desires to comply with the requirements of the asbestos standard to provide personal protective equipment for employees working outside a regulated area who may be exposed to background levels of asbestos. My client's inquiries are these:

1. For the purpose of monitoring to determine the need for personal protective equipment, does OSHA regard as an adequate monitoring device the GCA Fibrous Aerosol Monitor Model FAM-1? This device is described in OSHA's Industrial Hygiene Technical Manual, Chapter X, paragraph 1. If not, please explain the reason for the inadequacy.
2. For the above monitoring purposes, does OSHA regard as adequate the NIOSH analytical method, P&CAM 239? If this method is not regarded as adequate, please explain the reason for the inadequacy.

I trust these inquiries are clear. If not, or to discuss any other aspect of this request, please do not hesitate to contact me. Your assistance is greatly appreciated.

Very truly yours,

Stephen C. Yohay
END OF DOCUMENT REACHED

18A

ITEM 20

STANDARD NUMBER 1910.1200(f)(3)
INFORMATION DATE 841106
SOURCE DESCRIPT. Letter to W. C. Thurber
COMPANY Calidria Corp.
ABSTRACT Letter concerning asbestos health hazard labeling under
guidelines of 1210.1200(f)(3).
TECH. REVIEW DATE 06-JUN-1985
STATUS Current

29 CFR 1910.1200(f)(3)

November 6, 1984

Mr. W. C. Thurber
Vice President and General Manager
Calidria Corporation
Old Ridgebury Road
Danbury, Connecticut 06817

Dear Mr. Thurber:

29 CFR 1910.1200(f)(3) of the Occupational Safety and Health Administration's (OSHA) standard directs employers to comply with labeling guidelines appearing under specific substance standards. Therefore, your product's label is regulated under 29 CFR 1910.1001(g) of OSHA's asbestos standard.

The label that you enclosed with your letter appears to go beyond the minimal labeling specifications set forth in the asbestos standards and, therefore, is acceptable.

Please feel free to contact us if further assistance is needed.

Sincerely,

John B. Miles, Jr., Director
Directorate of Field Operations

hca:RGibbs/cma/11-2-84
Rm. N9101 ext. 38036 #577
cc: Miles/Smith/Gibbs

(see next page for incoming letter)

September 19, 1984

Mr. John Miles
Director of Field Coordination
U.S. Occupational Safety & Health
Administration

200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Mr. Miles.:

Calidria Corporation (formerly Union Carbide Corporation, Metals Division) has mined and milled chrysotile asbestos fiber in San Benito County of California since 1963. A warning label has been used on our product bags since 1968. The original label was modified slightly to conform to OSHA 1910.1001 when the regulation was promulgated.

We believe that the asbestos health hazard information that has emerged in the last few years as well as the need to move into compliance with the new OSHA Hazard Communication Regulations Part 1910.1200 (i.e. providing "appropriate hazard warnings" on the product label), make it imperative to move promptly to update our asbestos label. This is to let you know that we plan to begin using the attached label and request that you inform us within 30 days if you have any objections.

Very truly yours,

CALIDRIA CORPORATION

W. C. Thurber
Vice President & General Manager

(see next page for label)

A (this is a very large a on the label)
CHRYSTILE ASBESTOS
WARNING - CANCER HAZARD
BREATHING ASBESTOS DUST
CAN CAUSE LUNG DAMAGE AND CANCER.
THE RISK OF LUNG CANCER
IS GREATLY INCREASED IN SMOKERS.

Do not create or breathe dust.
Do not dry sweep or use air hose for cleaning.
Do not take protective equipment or clothing home.
Do follow recommended work practices.
Do wear approved respiratory protection and protective clothing as required by applicable regulations.
Do use vacuum or wet cleaning methods.
Do dispose of dust or contaminated protective equipment in dust-tight containers.

FOR ADDITIONAL SAFETY INFORMATION
SEE CURRENT CALIDRIA CORPORATION
MATERIAL SAFETY DATA SHEET.

FOR INDUSTRIAL USE ONLY
DO NOT REUSE PACKAGING MATERIAL

EMERGENCY TELEPHONE NUMBERS:
CHEMTREC 800-424-9300
H.E.L.P. 304-744-3487

ANY DISCARDED PRODUCT, CONTAINER,
OR SPILL RESIDUE MUST BE DISPOSED OF
IN ACCORDANCE WITH FEDERAL, STATE,
AND LOCAL REGULATIONS

CALIDRIA CORPORATION
OLD FIDGEBURY ROAD, DANBURY CT 06817
END OF DOCUMENT REACHED

ITEM 21

STANDARD NUMBER	1910.1200
INFORMATION DATE	850925
SOURCE DESCRIPT.	Letter to Mr. Nicholas J. Hluchyj, Esq.
COMPANY	Asbestos Information Association
ABSTRACT	Hazard Communication Standard defers its labeling requirements to the specific substance requirements for labels or warning forms that exist under other OSHA standards (e.g. asbestos).
TECH. REVIEW DATE	851101
STATUS	Current
SEP 25, 1985	

Nicholas J. Hluchyj, Esq.
Government Affairs Counsel
Asbestos Information Association
1745 Jefferson Davis Highway
Crystal Square 4, Suite 509
Arlington, Virginia 22202

Dear Mr. Hluchyj:

This is in response to your letter of September 6, 1985, and confirms your reading of OSHA's Hazard Communication Standard (HCS) as it relates to the labeling of asbestos materials.

As indicated in your letter, the HCS defers its labeling requirements to the specific substance requirements for labels or warning forms that exist under other OSHA standards.

Please feel free to contact us if further assistance is needed.

Sincerely,

John B. Miles, Jr.
Director
Directorate of Field Operations

HCA: RGibbs/cma/9-24-85
Rm. N3101 ext. 38036

20A

SEP 6, 1985

U. S. Department of Labor
Occupational Safety and Health Administration
Attn: John Miles
Room N3603
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: Interpretation of Hazard Communication Standard

Dear Mr. Miles:

I am writing you at the suggestion of Mr. Roy Gibbs of the OSHA staff to obtain written confirmation of an interpretation of the hazard communication standard (29 CFR 1910.1200) provided by Mr. Gibbs in response to my telephone inquiry on this date. In reply to my question of whether manufacturers and importers of asbestos and asbestos-containing products could continue to use the language of the hazard warning label required under the OSHA asbestos standard to satisfy the labeling requirement of the hazard communication standard, he answered in the affirmative, citing section (i) (3) of the hazard communication program, which reads:

If the hazardous chemical is regulated by OSHA in a substance-specific health standard, the chemical manufacturer, importer, distributor or employer shall ensure that the labels or other forms of warning used are in accordance with the requirements of that standard.

I thank you for your attention to this matter, and look forward to your expeditious reply.

Very truly yours,

Nicholas J. Hluchyj, Esq.
Government Affairs Counsel
Asbestos Information Association
1745 Jefferson Davis Highway,
Crystal Square 4, Suite 509
Arlington, Virginia 22202
(703) 979-1150
END OF DOCUMENT REACHED

ITEM 22

STANDARD NUMBER	1910.1200
INFORMATION DATE	850124
SOURCE DESCRIPT.	Letter to Honorable Steve Gunderson
COMPANY	U.S. House of Representatives
ABSTRACT	Effective dates for the HCS were designed to allow employers adequate opportunity to institute programs necessary to meet the standard's requirements while ensuring that employees suffered no undue delay in receiving protection from the rule. The two-year period provided for chemical producers to comply with the HCS provisions for labeling and MSDSs was intended to allow small chemical manufacturers to use chemical hazard information generated by employers in larger establishments. All employers

STATUS
JAN 24, 1985

Current

20B

Honorable Steve Gunderson
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Gunderson:

Thank you for your letter of December 13, 1984, urging that certain steps be taken by the Occupational Safety and Health Administration (OSHA) to prevent the occurrence in this country of a tragedy like the one which resulted from a leak of methyl isocyanate (MIC) at the Union Carbide plant in Bhopal, India. Your letter raises a number of interesting questions which I shall address in turn.

Your first recommendation is that OSHA expedite the implementation of the labeling and training requirements of its Hazard Communication Standard. If this proves impossible, you suggest that the Agency consider issuing an emergency rule limited to MIC. There are several reasons why instituting proceedings to expedite implementation of the Hazard Communication Standard would not achieve the end you desire. Let me begin by reviewing for you, first, the present implementation schedule and, then, the rationale for that schedule. The standard requires chemical manufacturers, distributors and importers to label containers of hazardous chemicals leaving their workplaces and to provide material safety data sheets with such shipments by November 25, 1985. Downstream industrial users of these chemicals are allowed an additional six months (until May 25, 1986) to come into compliance with these provisions of the standard. The standard further requires all covered employers to comply with its training requirements by May 25, 1986. Thus, all employers covered by the standard are to be in compliance with all provisions by May 25, 1986.

These effective dates were determined only after painstaking analysis of the feasibility of various compliance deadlines and after careful consideration of the more than two hundred written comments and hundreds of pages of recorded testimony received during the rulemaking process. The dates chosen were designed to allow employers adequate opportunity to institute programs necessary to meet the standard's requirements while ensuring that employees suffered no undue delay in receiving protection from the rule. In developing its standard, OSHA determined that there were an estimated 575,000 different chemical products (i.e., chemical substances and mixtures) in the nation's industrial workplaces and that the total number of chemical products in all establishments in U.S. manufacturing was approximately 27 million. The Agency determined that to comply with the labeling provisions of the standard, each employer would have to conduct an inventory of the chemical products in his or her workplace, evaluate those products for health hazards, review existing labels on containers of such products, and develop an appropriate material safety data sheet for each product if one did not exist in the workplace. This is an undertaking of enormous magnitude, and evidence in the record indicated that two years were needed for chemical producers to complete the task. The number of safety and health specialists knowledgeable about the health effects of toxic chemicals is finite, and such experts, for the most part, are already employed in the chemical industry where their expertise is needed for other essential tasks as well as this new one. The difficulty is even greater for small businesses. Since the Regulatory Flexibility Act of 1980 requires OSHA and other federal regulatory agencies to take into account the compliance problems of small businesses, OSHA had the option of setting a later initial effective date for small chemical producers or selecting a date by which it was feasible to expect that all producers could be in compliance. The two-year period provided for chemical producers to comply with the Hazard Communication Standard's provisions for labeling and material safety data sheets is intended to allow small chemical manufacturers to use chemical hazard information generated by employers in larger establishments.

The compliance dates in the standard were structured according to the logical sequence of activities. Thus, OSHA determined that the information--that is, the labels and material safety data sheets--sent downstream from chemical manufacturers and importers to industrial users had to be prepared first. Only then could the employers who use these chemicals be required to see that the information was maintained and adequately communicated to employees. Similarly, OSHA determined that it was not possible to require covered employers to develop and implement training programs before the hazard evaluation and labeling activities had been completed. For these reasons, a uniform effective date for sending information downstream was adopted for both large and small chemical manufacturers, with a delay of six months in the effective date for implementation of the remaining requirements of the standard--that is, application of the standard to industrial users and training of employees in all covered industries.

to help employers meet compliance requirements.

The Hazard Communication work group is responsible for coordinating all Agency activities on hazard communication, such as reviewing available options for compliance assistance and providing answers to employers' questions about performance-oriented provisions. In the past year, OSHA National Office and field personnel have participated in more than a hundred seminars conducted on the standard by trade associations and professional societies like the National Safety Council and the American Industrial Hygienists Association. Also in the past year, the Agency's Training Institute at Des Plaines, Illinois, has included courses in its curriculum to train OSHA compliance officers in enforcement of the standard and also to train public and private sector personnel as instructors in methods of compliance with the standard.

Advancing the implementation deadlines would require OSHA to conduct a new rulemaking procedure under section 6(b) of the Occupational Safety and Health Act of 1970 (the Act). The Agency would have to publish a proposal; allow an opportunity for public comment, including a public hearing if requested; and, after analyzing the comments received, issue a final regulation. This process, which allows the public to participate in agency rulemaking would take considerable time and almost certainly could not be concluded before the present initial effective date of the standard. The same constraints that led to a determination of the November 1985 and May 1986 effective dates would still apply. In our judgment, then, it would not be practicable to expedite the implementation dates of the Hazard Communication Standard.

Similarly, it would not be feasible to require implementation of the training provisions before the provisions for labeling and material safety data sheets were in place. As noted above, training and educational programs can be developed only after the information provided by labels and material safety data sheets becomes available. It is worth noting, however, that testimony presented at the public hearings on the hazard communication proposal indicated that the then-existing training programs of some large chemical manufacturers exceeded the requirements of the OSHA standard. Moreover, the existence of the Hazard Communication Standard has probably stimulated compliance by other employers even though its provisions are not yet in effect. It is not unreasonable to assume, then, that responsible employers have begun informing their employees about the hazards from chemicals in their work environment, without waiting for the May 1986 effective date.

You suggest that if expedited implementation of the Hazard Communication Standard is not possible, OSHA should consider issuing an emergency rule limited to MIO. It needs to be pointed out that methyl isocyanate is manufactured in the United States only at the Union Carbide plant in Institute, West Virginia, and that to the best of our knowledge, it is used or handled in any significant amount at only five other facilities in this country. In the past month, OSHA or (in the case of a plant in Michigan) State inspectors have investigated these plants. It was evident to the Federal inspectors that employees at these sites had been made aware of the hazards

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As a consequence, OSHA has had only minimal success in issuing emergency standards. In fact, Federal appellate courts have struck down five of six emergency standards which were challenged. The Agency's most recent experience with an emergency rule for asbestos has underscored the difficulty in meeting the criteria of the Act. Section 6(c) of the Act allows OSHA to issue an emergency temporary standard without public notice and comment only if two conditions are met. First, employees must be exposed, at work, to grave danger from toxic substances or new hazards. (There is of course no authority under the Act to address dangers to the public at large.) Second, the emergency standard must be necessary to protect employees from the danger. As the Supreme Court noted in its decision vacating OSHA's benzene standard (Industrial Union Department v. American Petroleum Institute, 448 U.S. 607 (1980)), the Secretary, in issuing an emergency temporary standard, shoulders the burden of showing that there exists a "danger" which is "grave," while in issuing a permanent rule he must show there is a potential "material

impairment" which poses a "significant risk." Additionally, the Secretary must show that an emergency temporary standard is "necessary" to address the grave danger, while in issuing a permanent rule he need only show that "additional regulation is 'reasonably necessary or appropriate' to deal with the significant risk. Further, the Supreme Court drew on the Fifth Circuit's decision vacating OSHA's emergency rule governing pesticides, emphasizing that in promulgating an emergency standard, [the Secretary] must find not only a danger of exposure or even some danger from exposure, but also a grave danger from exposure necessitating emergency action.

In OSHA's judgment, a case could not be established either for promulgation of an emergency hazard communication rule limited to MIC or for an emergency temporary standard for the substance itself. To try to do so in the face of almost certain failure seems an inadvisable allocation of agency resources.

Your second recommendation is that OSHA revise its schedule for programmed inspections in order to include more plants handling extremely toxic and hazardous chemicals. You note the relatively low injury incidence rates of the chemical industry and suggest that OSHA inspect plants in this industry more frequently than it does because of possible grave consequences to the communities surrounding these plants from even a single toxic release. We share your concern about the need for vigilance in this area. Indeed, while the relatively low lost workday injury incidence rate of chemical manufacturers excludes them from OSHA's safety targeting list, the potentially toxic nature of the work environment in these plants makes them a chief target for the Agency's programmed health inspections. In fact, in FY 1983, OSHA conducted 1451 inspections in SIC (Standard Industrial Classification) 28--the classification for chemical manufacturers--and 1157 of these were general schedule inspections. That means that each year, while OSHA inspects only about one in every fifty establishments in this country, it inspects about one in every five chemical manufacturers. That is a considerable OSHA presence.

Your third recommendation is that OSHA should work directly with the National Institute for Occupational Safety and Health (NIOSH) to update available information on hazardous chemicals and should take the lead with other federal agencies in securing wider distribution of such information. In past years OSHA and NIOSH collaborated on a series of "Occupational Health Guidelines" for approximately 400 chemicals, one of which is MLC. These Guidelines, which were published in three volumes by OSHA and NIOSH in 1981, include useful information for employers and employees on such subjects as permissible exposure limits, signs and symptoms of overexposure, environmental and medical monitoring procedures, and procedures for emergency treatment when overexposure occurs. OSHA's "Full Service Area Office" policy, instituted in 1983 to provide wider access to the Agency's technical assistance, assures that the OSHA-NIOSH Guidelines are readily available throughout the country.

Let me mention some other instances of cooperation between OSHA and NIOSH, and also between OSHA and other federal regulatory agencies such as EPA (Environmental Protection Agency), to improve information on toxic chemicals and to disseminate that information. (Cooperation among the federal regulatory agencies also is directed to coordination of regulatory activities.) Early in 1983 OSHA asked NIOSH to review the adequacy of a number of existing exposure limits for toxic chemicals, listed in the 2 tables at 29 CFR 1910.1000, on which information had been requested or action had once been proposed, but on which nothing had transpired in this decade. (You will recall this as the subject of a hearing on October 4, 1983, before your subcommittee.) OSHA is now considering NIOSH's response, which has only recently been received. The two agencies routinely share their expertise when NIOSH scientists testify at OSHA rulemakings and when OSHA staff serve on NIOSH peer-review groups to consider and comment on NIOSH research. OSHA meets regularly with NIOSH to discuss and exchange information on emerging occupational health hazards. Both agencies also participate in an interagency task force on asbestos hazards. As for EPA, OSHA has worked with that agency to develop information about toxic substances in the workplace. For example, in September 1983 the two agencies announced a joint request for information on 4,4-methylenedianiline, a chemical used to formulate other chemical products and plastics such as polyurethane foam. EPA has broad authority to gather information on this substance and to control its use under the Toxic Substances Control Act, while OSHA of course has the authority to deal with chemicals in the workplace. We also participate periodically in working-level meetings with other federal regulatory agencies to discuss subjects of mutual interest such as risk-management and biotechnology or, as noted, to coordinate regulatory activities on certain toxic substances such as formaldehyde and asbestos. EPA, FDA (Food and Drug Administration), and CPSC (Consumer Product Safety Commission) are among the agencies that have been represented at these meetings. We intend to continue working with these agencies as appropriate.

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Your final recommendation is that OSHA should request Union Carbide's participation in the Agency's Voluntary Protection Programs (VPP). These voluntary programs encourage and recognize excellence in companies' occupational safety and health programs by granting participating employers an exemption from OSHA's programmed inspections as well as assuring them priority consideration in requests for variances from OSHA standards. To be eligible for participation, employers must give evidence of a commitment to workplace safety and health that goes beyond meeting the requirements of OSHA standards; they must also demonstrate to OSHA's satisfaction that their efforts have been effective in minimizing workplace dangers. The Agency actively promotes participation in the program by providing information about VPP during the course of inspections and by distributing literature on the program from its area offices. Nonetheless, while OSHA encourages and welcomes applications from any company, including Union Carbide, it does not solicit participation by an individual employer. To do so would run counter to the purpose of the program, which is to stimulate voluntarism. By leaving the initiative to participate with the employer, OSHA is more likely to attract applicants who will in fact foster voluntary protection.

I appreciate your concern that every possible action be taken to lessen the possibility here of an incident like that which occurred in Bhopal. Recognizing the very serious consequences of workplace accidents involving MIC, OSHA has focused attention on this problem in a number of ways. The Agency has requested from Union Carbide the results of its investigation of the accident in Bhopal. We have now inspected every plant in this country which produces or uses MIC in a significant amount. OSHA area offices in those locations have been instructed to be especially sensitive to employee complaints or reports of accidents at any of these facilities. We have worked with the Environmental Protection Agency and the Federal Emergency Management Agency, as well as State and local officials during the inspections of these workplaces. At present, OSHA is considering whether to include specific information on MIC and its hazardous effects in the agency's consultation and training programs.

Thank you for your interest in occupational safety and health.

Sincerely,

Robert A. Rowland
Assistant Secretary

Dec. 13, 1984

Mr. Robert W. Rowland
Assistant Secretary
Occupational Safety and Health
U.S. Department of Labor
Frances Perkins Building
200 Constitution Ave., N.W.
Washington, D.C. 20210

Dear Mr. Secretary:

As the ranking minority member of the Health and Safety Subcommittee, I have noted with great concern the tragic events surrounding the leak of methyl isocyanate at the Union Carbide plant in Bhopal, India. Yesterday's hearings marked the start of our efforts to get clear answers and prompt actions to ensure an incident similar to Bhopal will not happen here. OSHA must be an active participant in this effort and your willingness to appear at our session was interpreted as an indication of your commitment to timely progress on this matter.

Sometimes government acts based on an evaluation of the problem and the need to respond. On other occasions, government actions result from public demand. With the aftermath of Bhopal, we may have a case of both. We must pick up the pieces of Bhopal and the lessons learned in that tragedy and reevaluate our preventive measures. Both the need and the public demand no less.

Obviously, much information must yet be gathered about the cause of the accident in Bhopal. However, we must not take the attitude that action by OSHA to reduce the possibility of an accident must await a complete answer to all the questions that have been raised.

In fact, we have enough experience and knowledge already to define at least an initial health and safety oriented response. I strongly urge you to take the following four specific steps:

-
- Expedite the implementation of the hazardous chemical labeling the training requirements. Our highest priority must be to ensure that workers know what hazardous chemicals are in their workplaces.

They must be educated and trained in how to avoid and respond to emergencies. The pending Hazard Communication standard is set to come into force on November 25, 1985.

If, after careful review, your legal experts indicate this cannot be further expedited, an emergency rule limited to HIC might be in order.

It would also be advisable to explore prompt implementation of the training provisions of the labeling standards at the earliest possible date. This might be done notwithstanding litigation on other issues surrounding the standard.

- Revise inspection timetables for plants handling extremely toxic and hazardous chemicals. It has been rightfully pointed out that the chemical industry and Union Carbide have very low rates of injury in comparison to other businesses. However, OSHA must recognize that workplace accidents involving toxic chemicals may potentially affect thousands of people outside of the plant. Inspection efforts should be altered to reflect that fact.

- OSHA should work directly with the National Institute for Occupational Safety and Health to update information sheets on hazardous chemicals. These guidelines can provide invaluable information on what to do in an emergency.

This information would also be useful to officials and the public in areas with facilities using dangerous chemicals. OSHA should take the lead in working with EPA and other appropriate federal agencies to ensure wider distribution of these valuable materials.

- OSHA should request Union Carbide participation in the Voluntary Protection Program. This program is specifically aimed at encouraging employers and employees to work together in improving workplace conditions. These cooperative efforts could provide additional assurances that accidents similar to Bhopal will not happen here.

We must redouble our efforts to develop a reasoned response to the threat posed by accidents with toxic chemicals. I look forward to working with you and all of OSHA on this critically important goal. Efforts to ensure the public is informed of OSHA's efforts to improve health and safety in this area must also be a priority. Their concerns and worry can effectively be reduced by accurate information about OSHA's response.

Best regards,

Steve Gunderson
Member of Congress

****END OF DOCUMENT REACHED****

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ITEM 23

STANDARD NUMBER 1910.1000
INFORMATION DATE 850802
SOURCE DESCRIPT. Letter to J. Bosnar, Manager
COMPANY N.Z. Forest Products Limited
STATUS Current

Aug 2, 1985
J. Bosnar, Manager
Environmental Technology
N.Z. Forest Products Limited
Private Bag, Auckland 1
New Zealand

Dear Mr. Bosnar:

Thank you for your letter of July 12, to former Assistant Secretary Robert Rowland, concerning the occupational exposure standard on man-made mineral fiber (MMMF). Your letter has been referred to this office for response.

Following are answers to your seven questions:

-
1. What is the current TLV for MMMF in your country?

The current Threshold Limit Value (TLV) as adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) for MMMF is 10 milligrams per cubic meter of air (10 mg/m³). However, TLVs are not enforced by legislation. The Occupational Safety and Health Administration (OSHA) does regulate MMMF as an irritant or nuisance dust. The OSHA permissible exposure limit (PEL) for mineral fibers is 15 mg/m³. 26

2. Are the current TLVs specified by legislation?

OSHA does not enforce TLVs for MMMF. However, OSHA does enforce the PEL for MMMF.

3. Are there any changes being considered to TLV?

4. What are the details of the proposed changes?

5. What are the main reasons for the proposed changes?

6. When will the new TLV be likely to be implemented?

In reply to each of the above, there are no proposed changes to the current TLV or to the OSHA PEL for MMMF.

7. Has the risk associated with the use of MMMF been quantified?

It has been suggested that the inhalation of very fine mineral fibers such as asbestos or glass fiber could increase the incidence of cancer because the particle size of these fibers are essentially respirable. However, the particle size of the majority of mineral fibers products such as glass fibers for industrial use and consumer goods such as appliance and building insulation materials, furnace filters, and reinforced glass fiber plastics are generally non-respirable. The health risk associated with prolonged exposure for these fibers are significantly lower than those for asbestos fibers.

The National Institute for Occupational Safety and Health (NIOSH) is the Federal agency which conducts research in occupational safety and health for OSHA. For additional information on the health risk associated with the use of MMMF, you may contact them at the following address:

Mr. Richard Lemons, Director
Division of Standards Development
and Technology Transfer
National Institute for Occupational Safety and Health
4676 Columbia Parkway
Cincinnati, Ohio 45226

Sincerely,

James J. Concannon
Acting Director
Directorate of Technical Support

July 12, 1985

Mr. Robert A. Rowland
Assistant Secretary of Labour
Occupational Safety & Health Administration
Washington, DC 20210
UNITED STATES OF AMERICA

Dear Sir,

RE: MAN MADE MINERALL FIBRE (MMMF)

Although our main manufacturing activities are related to forest products (pulp, paper, lumber and wood-based panels) we are also manufacturing mineral fibre (rock wool from basalt rock).

The situation with regard to the manufacture and use of MMMF in New Zealand has, until recently, been relatively quiet. However, the repeated publicity given to asbestos has generated a sentiment that MMMF and related products may also be implicated and present, on a long term basis, a hazard to health.

In spite of the fact that there appears to be no conclusive evidence, some groups and their medical advisers are exerting pressure on the New Zealand regulatory authorities (Department of Health) to admit that MMMF is not only a nuisance dust, but it also represents a significant occupational health risk.

Because of these concerns, the Department of Health and the

stringent and a dual threshold limit value (TLV) of:

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1. 5 mg/m³ total dust and
2. 1 fibre/ml of air respirable fibre concentration.

It is proposed that the above TLV are to apply simultaneously.

As manufacturers of MMMF we are concerned that these TLV values now proposed for MMMF are unduly stringent and in fact, are to be similar to those applicable to asbestos (except crocidolite), which would suggest and/or imply that the risk associated with the use of MMMF was also similar.

We believe that scientific evidence currently available does indicate that the risk (if any) associated with MMMF does not approach the hazards of asbestos.

This brings me to the main purpose of my letter which is to obtain up-to-date information on the occupational health related regulatory requirements in your country concerning the manufacture and use of MMMF.

More specifically, we would appreciate it if you could provide us information on the following:

- (1) What are the current TLV for MMMF in your country?
- (2) Are the current TLV specified by legislation?
- (3) Are there any changes being considered to TLV?
- (4) What are the details of the proposed changes?
- (5) What are the main reasons for the proposed change?
- (6) When will the new TLV be likely to be implemented?
- (7) Has the risk associated with the use of MMMF been quantified?

Any other comment relevant to the occupational health aspects of MMMF would be appreciated.

Thank you for your co-operation.

Yours sincerely,

J. Bosnar
Manager
ENVIRONMENTAL TECHNOLOGY
N.Z. Forest Products Limited
Private Bag,
Auckland 1, N.Z.

****END OF DOCUMENT REACHED****

ITEM 24

INFORMATION DATE 050923
SOURCE DESCRIPT. Letter to Mr. James H. Rion
COMPANY Elatt & Fales
STATUS Current

Sep 25, 1985

Mr. James H. Rion
Elatt & Fales
Attorneys at Law
Post Office Box 265
Earnwell, South Carolina 29812

Dear Mr. Rion:

This is an update to my letter of August 1, seeking clarification of certain points in your letter dated June 25. Together, your letters of June 25, and August 14, request communications between the Occupational Safety and Health Administration (OSHA) and the railroad industry, and documents related to warnings and/or citations issued to the "railroad industry" by OSHA, all related to asbestos.

While there may have been asbestos-related communications between OSHA and various railroads at various times in the past, OSHA does not maintain aggregate communication files indexed and accessed by substance, product or process. However, OSHA has published a number of pamphlets dealing with asbestos in the workplace which might have been transmitted to railroads. Copies of these pamphlets are enclosed.

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be accessed directly for the same reasons as given above but it may be possible for you to identify citations of interest by having a computer search or searches run on a file of records of inspections and citations which is maintained by OSHA's Office of Management Data Systems. This office could generate a report for you covering federal inspections of industries in certain Standard Industrial Classifications (SIC codes) in which OSHA's asbestos standard (29 CFR 1910.1001) was cited. SIC Code 3743 includes "establishments primarily engaged in building and rebuilding locomotives", and hence might be an appropriate code to search. You might wish to search other codes, also. Alternatively, searches can be made by railroad company names rather than SIC codes.

If you wish to have a computer search made, it is suggested that you contact:

Mr. John A. Katalinas
Director
Office of Management Data Systems
Occupational Safety and Health Administration
Room N4611
200 Constitution Avenue N.W.
Washington, D.C. 20210

Mr. Katalinas' office will provide you with instructions on how to request a search, the cost of searches, and explanatory information on search reports.

If citations of interest were found in a search of the computer files, you would then have to make separate requests to specific Area Offices for copies of the actual citations. The computer report would give you the necessary identifying information for each citation. OSHA Publication 3046 listing the Area Offices is enclosed.

I hope this information will be of help to you.

Sincerely,

Edward J. Baier
Acting Director
Health Standards Programs

Enclosure

August 14, 1985

Edward J. Baier, Acting Director
Health Standards Program
U.S. Department of Labor
Occupational Safety & Health Administration
Washington, DC 20210

Dear Mr. Baier:

Thank you for your letter of August 1, 1985, concerning my previous June 25, 1985 letter requesting OSHA documents relative to asbestos in railroads.

You note in your letter that OSHA jurisdiction is limited to railroad repair shops. We are in fact most interested in information concerning asbestos-related hazards in railroad repair shops.

In your letter you asked for clarification of the meaning of "documents concerning communications". This simply means any documents that embody any communications to or from railroads about use of asbestos in railroad shops or asbestos-related hazards in railroad shops.

You further asked how far back your search should go. Because clients we represent now manifest disease caused by asbestos exposure as far back as the early 1920's, I would simply ask that you provide documents for as far back as you can possibly go.

Finally, I would be most interested in any type of documents you have concerning all warnings or citations issued to railroads because of asbestos-related hazards in railroad shops.

Sincerely,

ITEM 25

STANDARD NUMBER 1910.1001
INFORMATION DATE 850422
SOURCE DESCRIPT. Letter to Jeffery McLaughlin
STATUS Current
April 22, 1985

29

Mr. Jeffery E. McLaughlin
28915 Olive Drive
Silverado, CA 92676

Dear Mr. McLaughlin:

This is in response to your letter of March 9, 1985 concerning the problem of asbestos insulation in the school which you attend.

You were partly correct in stating that the Environmental Protection Agency (EPA) banned the use of asbestos in buildings (in 1973); however, this rule only prohibited the further use of asbestos insulation in buildings. It did not specifically call for the removal of insulation which had been applied prior to 1973.

Asbestos insulation poses a health threat to exposed populations if the material begins to deteriorate and generate airborne asbestos fibers. Fibers which are inhaled have been linked to lung cancer and other respiratory diseases. If the insulation is intact and in good condition, it is unlikely that an immediate hazard exists. On the other hand, if it is flaking off or is being disturbed by custodial staff and others, there may be a problem.

The EPA has rules which require all private and public schools to inspect, sample, and analyze friable materials to determine if asbestos is present. If so, all school employees must be informed of the location of these materials and each custodial or maintenance employee must be provided with a copy of the EPA publication, "A Guide for Reducing Asbestos Exposure." In addition, the school's parent-teacher group must be notified of the presence of friable asbestos.

Teachers, as employees of the school, have the right to file complaints relating to job safety and health with Cal/OSHA. The Cal/OSHA office serving your area would be listed in the telephone book in the California state government section under the Department of Industrial Relations. For more information on EPA and their regulations, you may write to them at: EPA, Toxics Division, 215 Fremont Street, San Francisco, CA 94105.

Thank you for your interest in safety and health.

Sincerely,

Dean Ikeda
Regional Industrial Hygienist

****END OF DOCUMENT REACHED****

29A

ITEM 26

INFORMATION DATE 801212
SOURCE DESCRIPT. Memorandum to Regional Administrators
COMPANY OSHA
STATUS Current
Dec. 12, 1980

MEMORANDUM FOR REGIONAL ADMINISTRATORS

THRU: JOHN MILES
FROM: R. HAYS BELL
SUBJECT: Respirator Selection

We have received numerous inquiries concerning the use of various approved respirators on certain applications which are not specified in 30 CFR 11 or 29 CFR 1910. The use of the MSHA/OSHA approved respirators are acceptable for the following applications provided that the maximum use concentrations permitted in each class of respirator is not exceeded:

1. Asbestos: High efficiency particulate filter cartridges.
2. Paint spray containing chromium or lead: combination high-efficiency particulate filter and organic vapor cartridges or canisters.

END OF DOCUMENT REACHED

ITEM 27

STANDARD NUMBER 1910.1001
INFORMATION DATE 820604
SOURCE DESCRIPT. Letter to Walter Roy Guanstrom
COMPANY Standard Oil Company (Indiana)
STATUS Current
June 4, 1982

Mr. Walter Roy Guanstrom
Manager, Industrial Hygiene,
Toxicology, and Safety Division
Mail Code 3802
Standard Oil Company (Indiana)
200 East Randolph Drive
Post Office Box 5910A
Chicago, Illinois 60680

Dear Mr. Guanstrom:

This is in response to your letter of March 11, 1982, requesting interpretations for provisions 29 CFR 1910.1001(c)(2)(iii) and (f)(2)(iii) of the asbestos standard. Please accept my apology for the delay in our response.

All failures to use supplied-air respirators during spraying, removal, and demolition operations involving asbestos are technical violations of 29 CFR 1910.1001(c)(2)(iii). OSHA, however, has adopted the policy of regarding an employer's failure to provide and require that employees use supplied-air respirators as a de minimis violation of 29 CFR 1910.1001(c)(2)(iii) if the employer has conclusively established that, for his particular situation, the respiratory protection that he is providing his employees affords them adequate protection. This policy accords with Section 9 of the Occupational Safety and Health Act. For de minimis violations, no citations are issued, no penalties proposed, and no corrective action required.

In order to receive a de minimis classification for the violation the employer must:

- (1) have established incontrovertibly the utmost 8-hour time-weighted average and ceiling concentrations of airborne asbestos that his employees might confront;
- (2) provide and assure that his employees use respirators that afford adequate protection against such utmost asbestos concentrations; and
- (3) follow the respirator selection logic presented in 29 CFR 1910.1001(d)(2)(i), (ii), and (iii) of the asbestos standard.

Considerable effort might be required to establish the utmost concentrations of asbestos that might occur if there were variations from operation to operation in any factors such as the following:

- (1) Binding material
- (2) Type of asbestos (e.s., length of fibers, composition)
- (3) Percentage of asbestos in the insulation
- (4) Removal techniques
- (5) Amount of insulation removed
- (6) Room size
- (7) Engineering and work practice controls instituted to reduce employee exposures
- (8) Complement of employees
- (9) How well employees are trained in asbestos control procedures

29 CFR 1910.1001(f)(2)(ii) reads, in part:

...samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of employees. In no case shall the sampling be done at intervals greater than 6 months for employees whose exposure to asbestos may reasonably be foreseen to exceed the limits prescribed by paragraph (b) of this section.

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Note that, in case respirators are being worn, "exposure" as used in the standard means exposure that would occur without the respirator.

OSHA interprets the maximum sampling interval of 6 months to apply to stable types of exposure situations such as might occur in certain steady, mechanized production operations of the sort where variations in work practices have little effect on exposure levels. In general, the more variable the exposures, the more frequently they must be measured.

Employee asbestos exposures resulting from demolition and removal work involving asbestos can be highly variable. The amount of the variability depends on how much change there is from operation to operation in factors such as those previously listed on page 2. Even in situations where exposures do not appear to be varying much from operation to operation, the potential for large variations often exists. For example, if wet removal methods are the usual practice, an inadvertent failure to wet down the material adequately can cause large increases in exposure over what had been normal.

Accordingly, OSHA interprets 29 CFR 1910.1001(f)(2)(ii) to require employers to determine the amount of exposure of each of their employees to airborne asbestos on each day they perform demolition or removal work involving asbestos. In your company's case, although both the ceiling concentration and the 8-hour time-weighted average concentration to which each of your employees is exposed must be determined, it appears that the ceiling concentration exposures are the most critical determinations to be made. That is, if the ceiling concentration of asbestos fibers longer than 5 microns to which your employees are exposed is held at or below the ceiling limit for exposure (10 fibers per cubic centimeter) for the duration of a one-hour exposure, then the 8-hour, time-weighted average concentration of those fibers to which they are exposed is held below 2 fibers per cubic centimeter.

It is neither advisable nor necessary to engage in unscheduled asbestos removal work in order to comply with the sampling frequency requirements presented in 29 CFR 1910.1001(f)(2)(iii). Sampling is required only whenever your company decides on its own right to perform asbestos removal work. It does not matter if more than 6 months elapse between performances of the work.

OSHA feels that there is value in air sampling even though employees are wearing respirators. The information on the concentration levels of airborne asbestos that is obtained from the samples enables employers to monitor the continuing effectiveness of the engineering and/or work practice controls that they use, as well as to verify whether the respiratory protection they provided for the work operation was adequate. Also, such information enables employers to apprise their employees of the degree of potential hazard that was posed by the environment in which they wore their respirators, and the adequacy of the protection they were afforded.

We appreciated the opportunity to comment on your concerns. If we may be of future assistance, we shall be glad to provide it.

Sincerely,

Patrick R. Tyson
Director, Federal Compliance
and State Programs

END OF DOCUMENT REACHED

ITEM 28

STANDARD NUMBER 1910.1001
INFORMATION DATE 850719
SOURCE DESCRIPT. Letter to Mr. M. Racic
STATUS Current
Jul 19, 1985

Mr. Milan Racic
1707 North Prospect Avenue, 2E
Milwaukee, Wisconsin 53202

Dear Mr. Racic:

This is in response to your letter of June 27, regarding the Occupational Safety and Health Administration's (OSHA) enforcement policies concerning the medical examination provisions of the asbestos standard, 29 CFR 1910.1001(j), and OSHA Instruction CPL 2-2.21A. 32

As you stated in your letter, 29 CFR 1910.1001(j)(1) requires: "The employer shall provide or make available at his cost, medical examinations relative to exposure to asbestos required by this paragraph" (emphasis added).

When issuing a citation for noncompliance with 29 CFR 1910.1001(j)(2), (3), or (4), OSHA has the burden of proving that the employees were in fact exposed to airborne concentrations of asbestos fibers. The 0.1 fiber/cc "trigger level" that you refer to was established because it is the lowest detectable level of asbestos fibers using the analytical method prescribed by the standard. Any lower concentrations would yield non-detectable sample results, and we would be unable to prove exposure.

The section of OSHA Instruction CPL 2-2.21A that you refer to deals with past exposures. The provisions of the section discussing regular versus irregular asbestos exposure were developed as the result of court decisions which held that 29 CFR 1910.1001(j) does not apply to employees engaged in insulation removal or an infrequent basis.

Again, I must assert that I do not agree with your allegations that OSHA's policies presented in CPL 2-2.21A, and interpretations of the asbestos standard are illegal. For your information, the Office of Management and Budget of the Executive Office of the President (OMB) has had no connection with the development of interpretations of the asbestos standard for field enforcement. OMB does review and advise upon major new rule-making actions, as mandated by Executive Order.

In addition, I must reemphasize that OSHA is continuing to enforce all of the provisions of the asbestos standard within the boundaries prescribed by case law. To accomplish this, interpretations developed to guide the field staff must be consistent with established legal rulings, to ensure effective enforcement of the standard.

Thank you for your interest in safety and health.

Sincerely,

Patrick R. Tyson
Acting Assistant Secretary

June 27, 1985

Mr. Patrick R. Tyson
Deputy Assistant Secretary
of Labor - OSHA
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Mr. Tyson:

This is in reference to your letter to me dated June, 1985.

I do have a very short and precise initial answer to what you wrote in that letter: absurd. Furthermore, it reminds me of the "great" German leader of this century. He said something to this effect: if you repeat something often enough you begin to believe it. Perhaps, those repeating your political mandate are slowly becoming brainwashed into believing it.

In this particular case you wrote to me that "OSHA continues to enforce all provisions of the Asbestos Standard". How can it be? Let's make a simple and concise comparison.

The standard mandates this:

"The employer shall provide or make available at his cost, medical examinations relative to exposure to asbestos required by this paragraph."

As you know the trigger point was set at 0.1 fibers/cc many years ago.

Your Milwaukee Office interpreted your Field Instruction in this manner: "a. the work with asbestos must be performed on a regular basis; or b. if the work was performed on an irregular basis, employees were exposed to significant amounts of dust containing asbestos."

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I can only accept your statement, that OSHA enforces all provisions of the Asbestos Standard, if you can show me where your standard makes allowance for the exemption of the enforcement (cf the Medical provisions of the standard) when it comes to irregular exposures. Also, please point to the part of your Asbestos Standard requiring irregular exposures to asbestos to be at significant air levels. I could not find any reference to these two points in your standard.

Again, I must repeat that your agency's tinkering with this standard is illegal and politically motivated. I still think that your agency did compromise the interests of asbestos exposed workers; you failed to protect them and you unilaterally decided to enforce only those parts of the Asbestos Standard that are politically acceptable.

In this particular case your sole interest seems to be to create "the Proper business climate" by trying to please the employers. Also, in this particular case, I must say, that your agency failed to perform its congressionally mandated function to provide safe and healthful conditions for all American workers.

I ask that you revoke this policy and begin enforcing the entire Asbestos Standard as it appears in your Volume 1. General Industry Standards and Interpretations. Furthermore, I ask that you purge all other similar field directives from the OSHA files.

In conclusion, let me state that I do not think that this was the only instance where the O.M.E. exercised its political role in regards to what must be purely technical decisions. The O.M.E.'s role is undemocratic and might even be unconstitutional because, clearly, there is no provision for public input and accountability.

Your prompt response is requested.

Sincerely,

MILAN RACIC
1707 North Prospect Ave., 2E
Milwaukee, Wisconsin 53202

END OF DOCUMENT REACHED

ITEM 29

STANDARD NUMBER 1910.1001
INFORMATION DATE 850624
SOURCE DESCRIPT. Memorandum to Dennis Whitfield
COMPANY OSHA
STATUS Current
June 24, 1985

MEMORANDUM FOR: Dennis Whitfield
Chief of Staff

THROUGH: Robert A. Rowland
Assistant Secretary

FROM: Anthony E. Goldin
Director of Policy

SUBJECT: Cabinet Affairs Memorandum of 6/11/85 Regarding
Insurability of Asbestos Removal Contractor

I appreciate the opportunity to comment on the June 11, 1985, Cabinet Affairs memorandum dealing with the problems the ACMAI Corporation (asbestos removal firm) is having obtaining liability coverage at competitive rates. In all probability, other asbestos removal firms are having a similar problem.

For some time now, I have had my staff carefully monitoring developments in the insurance and product liability fields. I have always believed that there are potential inter-relationships between many of the policy issues pending in OSHA and other labor and economic issues. Activities in the areas of insurance and product liability affect the economic incentives and disincentives that operate in the safety and health field. For example, economic theory has long held that employees who perceive a task as risky will demand premium pay for that work. This, in turn, creates incentives for employers to invest in safety and health controls to reduce risks and, thereby, wage demands. The risk premiums insurance companies charge for perceived risks is but one of the ways in which the market adjusts costs to employers either up or down depending upon the nature of the perceived risks.

In the last several years, a number of significant events have taken place both in government and in the private sector which lead me to conclude that the problem of insurability of certain risks is a much larger, more generalized problem than that described in the documents relating to ACMAT's asbestos removal insurance coverage. For example, in the ACMAT case, the company may be able to set up its own insurance (captive) firm, or it may be able to secure coverage at very high rates (estimated in one article at 20% of the average asbestos removal contract.) Even if ACMAT can extricate itself from its present insurance problems, there are still a number of issues that need to be raised from the standpoint of public policy.

1. The insurability problem faced by ACMAT has also manifested itself in a number of other situations, including:
 - a. Product liability coverage for U.S. industry.
 - b. Environmental impairment and liability coverage.
 - c. Post closure liability coverage for toxic waste site operators.
 - d. Liability coverage for contractors working on toxic waste site cleanup under Superfund.
 - e. Occupational disease coverage under workers' compensation.
 - f. Liability coverage of U.S. fishing fleet operations.
2. Virtually all of these situations above have been referred to the federal government, the Congress or the courts for some resolution.
3. Most of these situations directly or indirectly affect public policy goals. For example, there is a finite amount of public resources available for asbestos removal, for the cleanup of hazardous waste sites, for the operation of authorized hazardous waste sites, and for the compensation of victims of occupational/environmental diseases. To the extent that the insurance industry refuses to write coverage, or writes coverage at excessive costs, public policy goals may be adversely affected since this could reduce the amount of work that can be done for a given price. If the capacity or willingness to write insurance coverage disappears, then the international competitiveness of U.S. industry can be adversely affected. Such a situation apparently exists in some segments of the private sector product liability market; for example, postclosure liability insurance for hazardous waste sites and environmental impairment and liability coverage for certain industrial operations.
4. The ability of the private sector state workers' compensation insurance mechanism to deal with the complex issues of long latency occupational disease coverage has been raised and is the subject of debate among the states, insurers, organized labor, public interest groups, Congress, and the Administration.

the Congress for the last several sessions in the form of the Kasten Bill (S-100). The recent failure of that Administration supported bill to be reported from the Commerce Committee, where it was deadlocked 8-8, apparently was one of the major reasons the insurance industry announced a major new change in the type of liability coverage it will offer U.S. firms. Under a new "policy form" developed by the Insurance Service Organization (ISO), companies will have to accept policies that either will pay only those claims actually filed in a given policy year (a "claims made" policy) or will pay three to four times the premium rate for "long term risk" coverage. This change reflects the insurance companies' collective view that the long latency risks associated with such compounds as Agent Orange, dioxin, and asbestos, are actually unpredictable and require this action. Some analysts believe that this new insurance policy serves notice on American industry that under the present state laws or court decisions on product liability or "toxic torts", their operations are not "insurable" within the traditional meaning of that term.

6. The insurance industry is also apparently retrenching on its willingness to write general environmental impairment and liability (EIL) coverage. Events such as the "Love Canal" and James River Herone incident caused the insurance industry to question the viability and rate structure of the "environmental damage" type policies they have been writing. The courts have interpreted many of these older EIL policies, which were written to protect firms from damage associated with sudden and accidental releases, such as a fire, explosion, or train derailment, to include coverage for slow seepage or leakage. Under this scenario, a firm which disposed of hazardous waste which has subsequently seeped into the water table causing damage to the environment (drinking water, fish, agriculture) can turn to its decades-old EIL insurance policy and transfer the costs to the insurer based on liberal court interpretations of the terms of the policy.
7. The issue of liability coverage for contractors working on hazardous waste site cleanup under the EPA Superfund has also been raised. For example, members of the New Jersey Contractors Association (NJCA) would apparently like to bid on some of the Superfund cleanup work, but have expressed concern about the insurability of their operations against potential claims from employers for exposure and subsequent illnesses. I am initiating a dialogue with the NJCA to determine how a pilot program of employer and employee training and technical assistance would affect their willingness to undertake this work and the willingness of insurers to write coverage at more reasonable rates.
8. The liability coverage of small U.S. commercial fishing vessels was recently the subject of a hearing before the Senate Committee on Commerce, Science and Transportation, Subcommittee on Merchant Marine. The thrust of the hearings, chaired by Senator Paul Trible (R-VA), was that liability insurance costs for the U.S. offshore fishing fleet had become prohibitively expensive and unless Congress did something about it, the U.S. commercial fishing fleet would be crippled.

Analysis

At first blush these issues, aside from the workers' compensation and employee safety and health in asbestos removal operations, may not appear to be related to the role of the Department of Labor (DOL). However, the product liability issue touches directly on DOL programs since there are provisions in the Kasten Bill that alter the present relationships between workers' compensation and recovery for product liability. In addition, the issue of "victim's compensation" and product liability reform have been joined, at least in the mind of some senators, such as Sen. Slade Gorton (R-WA). There is also some evidence that the shortcomings of some of the state workers' compensation systems in terms of benefit levels and coverage of occupational diseases is causing some parties to "jurisdiction shop" and to file tort claims against third parties rather than collect what they perceive are inadequate benefits from employers under their own state workers' compensation system.

The issue of liability coverage for contractors working on toxic waste site cleanup operations is indirectly tied to DOL responsibilities under Superfund. OSHA is responsible for employee safety and health at Superfund cleanup sites. The reluctance of insurers to write this kind of coverage may be, in part, related to the lack of guidelines for how this work can be carried out safely. Later this Summer, the Interagency Work Group on Hazardous wastes (OSHA, NIOSH, Coast Guard, EPA) is to provide an Occupational Safety and Health Guidance Manual for Hazardous Waste Activities.

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The fishing fleet insurance issue directly affects DOL since it involves the Jones Act, and the status of crew members who are not now covered by any workers' compensation program, since they are considered "participants in the venture" and paid by shares in the catch rather than wages or salary.

With respect to occupational disease coverage, toxic tort, victims' compensation, and other issues, the Department of Labor is involved not only through OSHA, but also through its workers' compensation role under FECA, the Black Lung Act, and the Longshore Act.

I also believe that regulatory agencies, such as EPA and OSHA, have an indirect, but nonetheless significant impact on the overall issue of insurability. For example, virtually every OSHA health and safety standard automatically creates a "standard of due diligence" by which industry behavior and perception of risk are evaluated. The adversarial nature of public rulemaking with respect to a toxic substance creates media and public awareness of the linkage between the substance and disease in man. The rules themselves, which often require employers to post warnings such as "cancer hazard" and provide training, medical and environmental monitoring, fuel liability, and workers' compensation claims. Viewed from one perspective, these regulations create the awareness and the "proof" in the form of exposure and medical evidence which can help to sustain a compensation case.

OSHA recordkeeping and reporting requirements, and disclosure requirements (which make records available to employees and their physicians and representatives) create additional pressure on the compensation and liability systems.

For these reasons, I suggest that we do not consider the issues of regulation, compensation, and insurability separately. I believe they are inextricably intertwined, and I believe that any long term solution will require that they be studied with a view of how each affects the other. Up until now, each such issue, whether it is fishing fleet operators hit with a \$200,000 to \$300,000 bill per boat per season, or ACHAT, which is facing dramatic increases in asbestos removal liability premiums, has been dealt with in isolation. Each special interest brings pressure wherever it can -- at the bargaining table, in the courts, in the Congress (with the introduction of a special compensation bill), and so forth. The resolution of the long term problems of insurability, coverage and costs may be tied to the performance of the regulatory agencies, to the availability of lower cost mechanisms to deal with the problems, to the availability of information and to the resulting decisions made by the private sector. I am not now advocating but I wish to raise for your consideration whether there may even be a role for the federal government in structuring an insurance program for some of the "uninsurable long latency risks" similar to the program developed for the nuclear power industry. In any case, you might consider establishing a DOL task force to examine these matters.

May 21, 1985

The Honorable Thomas Gilson
Associate Director of Cabinet Affairs
The White House
Washington, DC 20500

Following up on Mr. Warder Quaal's telephone conversation, we are sending you a brief history of the national emergency which has taken place recently for asbestos removal in our nation. We attach a few newspaper articles which will brief you on the severity of this problem and the lack of insurability by asbestos removers in the United States.

The plight is a most serious one in this nation, with more than 31,000 schools, to say nothing of 1400 governmental buildings and hundreds of thousands of private sector structures, which contain asbestos and must have it removed.

ACMAT has been in the asbestos removal business for many years and last year, of its \$50,000,000 in revenues about one-half, or \$25,000,000 was related to asbestos removal. CIGNA Insurance Company precipitously cancelled all of ACMAT's insurance - liability, property damage, auto, and others - because they wanted no part of insuring anyone who removes asbestos.

ACMAT's insurance agents went to more than eighty insurance companies in America and found that none are interested in underwriting this risk.

As you can see from the articles attached, this is a serious national problem, which is now at a standstill unless government intervention resolves this problem. Forty million youngsters are being exposed to asbestos danger which results in cancer and asbestosis in later years.

As with nuclear plants some years ago, the government set up a pool of insurance to handle this situation, and we are very much interested in pursuing whatever measures are necessary to resolve this national emergency and major health hazard as quickly as possible.

Asbestos removal contractors must be insured to remove hazardous asbestos.

We will appreciate your reviewing some of these articles, which will give you a full flavor of the catastrophic effects of the asbestos problem.

Yours very truly,

HENRY W. NOZKO - PRESIDENT
ACMAT
141 Prestige Park Road - P.O. Box 8807
East Hartford, Conn 06108

This letter is jointly submitted by ACMAT Corporation and Mr. David T. Chase, President and Chief Executive Officer
Chase Enterprises
One Commercial Plaza
Hartford, Connecticut 06103

END OF DOCUMENT REACHED

ITEM 30

STANDARD NUMBER	1910.1200
INFORMATION DATE	050808
SOURCE DESCRIPT.	Letter to Hon Barney Frank
COMPANY	House of Representatives
ABSTRACT	OSHA will be looking at the possibility of making the Hazard Communication Standard applicable to hazardous waste sites
STATUS	Current
Aug 8, 1985	

The Honorable Barney Frank
Chairman
Subcommittee on Employment and Housing
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of May 24, asking for the comments of the Occupational Safety and Health Administration (OSHA) on the report by the Employment and Housing Subcommittee on OSHA's activities at hazardous waste sites. I apologize for the delay in this reply.

OSHA shares the Subcommittee's interest in seeking solutions to the problems of toxic wastes and the potential threat such wastes pose to the nation's health and to workers involved in cleanup activities. We recognize that OSHA has the lead responsibility among government agencies for the health and safety of these employees. We recognize too that "the essential nature of both cleanup and storage/disposal of chemical wastes is hazardous" (Report, page 10) and that employees at toxic waste sites face unique health and safety hazards in their work (Report, pages 3 and 10).

that some of the possibilities under consideration by the Agency have been discussed in the Subcommittee report. For example, in reviewing the scope of its Hazard Communication Standard, OSHA will be looking at the possibility of making the standard applicable to hazardous waste sites (Recommendation 12, Report, page 13). We will also be taking a closer look at the criteria documents of the National Institute for Occupational Safety and Health (NIOSH) to determine whether any of the information in these documents could assist OSHA's enforcement efforts at hazardous waste sites (Report, page 4).

We do not agree, however, that a new standard or set of standards such as the Subcommittee has recommended for cleanup activity at hazardous waste sites would afford workers at these sites greater protection than they now face (Report, pages 3, 4, 10, and 12). Nor do we believe that more frequent inspections at toxic waste sites over the past few years would have improved conditions for employees (Report, pages 4, 5, 6, 10, 11, and 12). In our judgment, the evidence does not support these conclusions.

Enforcement

Since Congress did not provide for a regular OSHA presence in workplaces, OSHA's inspections are spot-check in nature. Each year, Federal and State OSHA inspect only about 4 percent of the nation's approximately 4.6 million working establishments covered by OSHA. We do not have reliable data on the number of non-Superfund waste sites at which employees are exposed, and so cannot calculate the percentage of those sites which have received an OSHA inspection. Our records of Federal and State OSHA inspections at active Superfund sites, however, indicate that an OSHA inspection was conducted at roughly 4 percent of these sites in FY 1984.

In recent years the Agency has succeeded in focusing its inspection resources on high hazard workplaces. OSHA's current safety and health targeting systems are improvements over earlier systems. The present system of targeting safety inspections to high-hazard manufacturing industries was begun in the previous Administration and refined in this one. OSHA finds violations on about 80 percent of targeted safety inspections in the manufacturing sector, whereas it finds violations in only about half of all other inspections. That means the system is taking the Agency where the hazards are. Nearly 80 percent of OSHA's inspections are now targeted to high-hazard industries. This represents an increase of 65 percent in targeted inspections since 1980.

Most of OSHA's targeted inspections are in the manufacturing and construction industries. When the need has been demonstrated, however, the Agency has taken steps, through local or national emphasis programs, to target inspections on other industries or hazards. At present, OSHA's special emphasis programs target such hazards as asbestos, cotton dust, and swinging scaffolds, and such operations as oil and gas drilling, ship and boat building and repair, and trenching and excavation.

Until recently, it was the Agency's considered judgment that there was little evidence of a need for targeted inspections at hazardous waste sites. In testimony alluded to on page 11 of the Subcommittee report (Transcript, pages 18, and 19), the Assistant Secretary stated that OSHA was looking at the question of programming inspections at hazardous waste sites, but that other priorities had taken precedence since the Agency thus far had not had reason to believe there were major problems with respect to worker health and safety at Superfund sites.

The Committee report (page 11) seems to be critical that the local emphasis program currently underway in Idaho was "a Regional Office initiative rather than from headquarters." As was explained at the hearing, since the current targeting system does not give priority to most hazardous waste sites and since the Agency wanted to determine the seriousness of the problem at these sites, OSHA welcomed a proposal from its Region 8 office for a local emphasis program targeting hazardous waste sites in the state of Idaho. The program was approved by OSHA's National Office in September 1984.

The question of whether the Agency's inspection-targeting system should be altered to provide for routine scheduling of inspections at hazardous waste sites was on the agenda of the OSHA Managers Conference held in mid-April. A special workshop conducted at the conference recommended that an internal task force be established to review the targeting issue and that the results of the Idaho program, which are expected by October 1, 1985 (as Mr. Howland had announced at the March 27th hearing), should be used to determine resource needs.

OSHA has since convened an internal task force to review and consider revisions to its program for hazardous waste sites. Any targeting scheme that is developed by this work group will be for both Superfund and non-Superfund hazardous waste sites. OSHA apparently did not make this clear in its testimony (Report, page 11).

Standards

It is the Subcommittee's view that OSHA should issue a comprehensive standard or set of standards specifically designed for the problems at hazardous waste sites (Report, pages 4 and 12). We must re-state that there is little evidence at present of the need for such a standard or standards.

The special workshop convened at OSHA's recent annual Managers Planning Conference, looked into this and other questions related to Agency activities at hazardous waste sites. Members of the Workshop included OSHA's Director of Field Operations, three Regional Administrators and a number of other OSHA career managers. The head of OSHA's Health Response Team was particularly helpful in the consideration of possible improvements in current enforcement procedures. The consensus of this expert group was that existing construction and general industry standards, as well as the general duty clause, could provide an adequate basis for OSHA's efforts to protect employees at these sites.

At the same time, the conference workshop group recommended that OSHA's procedures for enforcing its standards requiring personal protective equipment should be reviewed. This subject will also be addressed by OSHA's internal task force on hazardous waste issues.

There is also need for research on, and development of, more efficient and comfortable protective equipment. The available equipment puts a great deal of physical stress on workers; heat exhaustion is not an uncommon occurrence. A draft Memorandum of Understanding has been processed to coordinate the research and development efforts of EPA, NIOSH, the Federal Emergency Management Agency, and the U.S. Coast Guard to improve the design, testing, and selection of chemical protective clothing. It is likely that OSHA will participate in this body as an observer.

I am enclosing additional staff comments on the Subcommittee's report which I hope will be helpful. We share the Subcommittee's concern for the protection of employees at hazardous waste sites, but -- while acknowledging the need to improve our efforts -- disagree with the conclusion that OSHA has failed in this regard. If there is further information that we may provide in relation to this matter, please have someone on your staff contact my Special Assistant for Congressional Relations, Rebecca R. Morris, at 523-6027.

Sincerely,

Patrick R. Tyson
Acting Assistance Secretary

Enclosure

Additional Comments on the Subcommittee Report Entitled: "OSHA's Failure to Protect the Health and Safety of Workers at Hazardous Waste Sites":

OSHA's Data on Hazardous Waste Site Inspections

Since the Subcommittee, in characterizing OSHA's enforcement record in the hazardous waste industry as "dismal," calls into question the numbers which make up that record, an explanation of OSHA's data on its inspections of hazardous waste sites is in order. The Subcommittee Report, on page 10, notes that:

Whether the figure for Superfund site inspections is 6 or 11 (whether the figure for non-Superfund inspections is 11 or 19 for FY 1984) and whether work was underway at the entire list of priority sites (812) or only at "fewer than 300 sites" as Mr. Rowland estimated, the dimensions of the OSHA inspection program are grossly inadequate.

The facts are as follows:

- o The figure of 300 Superfund sites at which work was actually going on was taken from the President's Budget for the Environmental Protection Agency for FY 1985, which shows that 204 removal actions and 116 remedial actions, or 320 total actions, took place at Superfund sites during FY 1984. Since EPA has told us that an undetermined, but not insignificant, number of removal actions occur at sites that are also undergoing remedial actions, the total number of Superfund sites at which actual cleanup work was taking place in FY 1984 was less than the sum of removal and remedial actions. EPA reviewed OSHA's statement to the Subcommittee and accepted our calculation of "fewer than 300 sites" as a reasonable estimate of the number of active Superfund sites in FY 1984.
- o In FY 1984, Federal and State OSHA conducted 38 inspections at hazardous waste sites, of which 11 were inspections at Superfund waste sites and 27 were inspections at non-Superfund waste sites.
- o OSHA's records of inspections at hazardous waste sites are not easily retrievable, and this may account for some of the apparent confusion in the Subcommittee's report.
 - Federal OSHA (which accounts for approximately 60 percent of the national effort) has computerized case files which allow OSHA to retrieve inspection information by Standard Industrial Classification (SIC) codes. Thus it is relatively simple for the Agency to determine how many inspections were conducted, let us say, in the chemical manufacturing industry (SIC code 28) for a given period of time.
 - Hazardous waste sites, however, do not fall in any single SIC code, and some abandoned dumps are not readily classified. A few are found in the manufacturing sector or in other industries with which the waste products in question are associated (and so may be subject to OSHA's targeting scheme for those sectors). Other sites are found in SIC code 495, "Sanitary Services."
 - To compound the problem, the Federally approved State OSHA programs (which account for approximately 40 percent of the national effort) are only now in the process of integrating their inspection data into the Federal OSHA computerized information system. All of the inspection data which OSHA at various times provided to the Subcommittee in preparation for the March 27 hearing (in response to specific requests from Subcommittee staff) were obtained by searching files manually and querying each of the 25 States and jurisdictions that operate full or partial programs under section 18 of the Occupational Safety and Health Act.
 - OSHA's National Office continued to receive information in this fashion until the morning of the March 27th hearing. Subsequently the Agency received further information from its field offices in preparation for another hearing on the same subject, on May 22, before the Subcommittee on Health and Safety of the House Committee on Education and Labor. We believe that our data on hazardous waste site inspections are now reasonably accurate and complete for the period October 1, 1983, through March 1985.

"Comprehensive" and "Partial" Inspections

The Subcommittee criticizes Federal OSHA for not having conducted more "comprehensive" inspections at non-Superfund hazardous waste sites in FY 1984:

Most Federal inspections at non-Superfund sites were "partial" and not "comprehensive"...even though they resulted from referral by EPA or health departments or, rarely, worker complaints. (Report, pages 5 and 10.)

This statement is not strictly accurate inasmuch as 10 of the 15 "partial" inspections of non-Superfund hazardous waste sites conducted by Federal OSHA in FY 1984 were conducted in response to complaints; (four were referrals, and one was a programmed inspection). As the Subcommittee may be aware, it is OSHA's policy generally to limit the scope of complaint investigations to the subject of the complaint. If circumstances warrant, however, the Area Director may expand the scope of the complaint investigation. It is OSHA's considered judgment that inspections at these hazardous waste sites were as intensive and as thorough as necessary and practicable. Conditions at hazardous waste sites are "unique," as the Subcommittee notes, and it is not always feasible for OSHA's compliance officers to conduct "wall-to-wall" inspections in the usual sense of the term (as it has been defined for internal Agency reporting purposes).

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The Report notes that records inspections constitute "partial" inspections and that "although available reports (emphasis added) of inspection of toxic waste sites do not include this type of inspection..." (2) Dr. Rutenber's statement put it: "Such a review is certainly less likely to lead to discovery of serious hazards than an on-site 'wall-to-wall' inspection with worker walkaround and serious monitoring measurements taken" (Report, page 5). I assure the Subcommittee that there are no reports available of records inspections at hazardous waste sites simply because no such inspections have been conducted. Records inspections are a way of allowing OSHA inspectors to limit the time they spend on routine, targeted safety inspections at manufacturing establishments (SIC codes 24-39) which have better-than-average safety records. While some hazardous waste sites may fall in the manufacturing sector, the vast majority do not. No records inspections were conducted at hazardous waste sites for the period which the Subcommittee studied (October 1, 1983, to March 1985).

The term "partial" (again as defined for internal Agency reporting purposes) has a special meaning with respect to records inspections, and perhaps this accounts for the Subcommittee's and Dr. Rutenber's confusion on this point. If a records inspection is conducted and it is determined that the establishment has a better-than-average safety record, if there is reason to believe that there may be problems that need investigating, the compliance officer nonetheless may conduct a walkaround inspection under conditions prescribed in OSHA instruction CPL 2.45. If a records inspection is extended in this way, the inspection is designated "partial" on the Agency's reporting form. Let me also make clear that an opportunity to participate in "worker walkaround" is offered to authorized employee representatives on all inspections at hazardous waste sites and that "serious monitoring measurements" are always core on such inspections if necessary -- that is, if there are potential overexposures to toxic substances.

Citations During Inspections at Hazardous Waste Sites

The Subcommittee Report criticizes Federal OSHA for having cited few "serious" violations and assessed "fewer penalties" (Report, page 4). On the 37 Federal inspections of hazardous waste sites conducted from October 1, 1983, to March 1985, OSHA issued a total of 91 citations for violations, of which more than half (48) were designated "serious", "willful", or "repeat" violations. Penalties were assessed totalling \$32,800. In our judgment, that is not an insignificant sum in light of OSHA's belief that a punitive approach to workplace safety and health is demonstrably less successful than a cooperative approach. We recognize our fundamental disagreement with the Subcommittee on this point (Report, page 11), but remain convinced that history will prove us correct.

Complaint Policy

OSHA's complaint policy received severe criticism in the Subcommittee Report (pages 6 and 11). The Subcommittee recommends that OSHA ensure that its field personnel adhere to "the policy of responding to and investigating informal complaints involving serious and identifiable health and safety hazards at toxic waste sites." At the hearing, a union shop steward testified that the Agency had failed to respond in two instances of serious complaints from workers (one involving asbestos exposure), because the complaints had not been presented in writing. OSHA was unable to find a record in its complaints logs of the particular concerns alluded to at the hearing, but wishes to assure the Subcommittee that it will continue to do its utmost to see that Agency field personnel are aware of and follow OSHA all compliance instructions, including those for responding to informal complaints. OSHA's policy of limiting onsite investigations of employee complaints primarily to formal (i.e., written, signed) complaints was initiated by the previous Administration following a General Accounting Office report recommending this course of action. The present Administration has refined this policy to try to exclude frivolous and non-serious complaints. Under OSHA's National Emphasis Program for Asbestos, inspections must be conducted in response to all complaints for which there is a likelihood of employee exposure to asbestos, even though the information is received by telephone. On-site investigations must also be conducted in response to informal complaints of imminent danger situations (CPL 2.45A, Chapters I and VII).

The Subcommittee report (page 6) also cites Dr. Rittenberg's testimony that the number of "inspections triggered by complaints" dropped drastically since 1981 in five waste management companies which she studied. It needs to be pointed out that the number of complaints received by OSHA has declined over the past several years and the number of complaint inspections at all work sites, not just toxic waste sites, has declined accordingly. The important point is that OSHA is making fewer complaint inspections because it is receiving fewer complaints, not because it chooses to inspect fewer of the complaints it receives. In the past five years the total number of formal complaints received by OSHA has dropped sharply -- from 12,369 in FY 1980, to 6,085 in FY 1984 -- a 50 percent decrease. The number of OSHA complaint inspections has declined correspondingly, from 16,044 in FY 1980, to 7,491 in FY 1984.

Information and Training:

The Subcommittee report (page 8) states:

In the 1980 MOU the agencies agreed to develop a comprehensive guidance manual. After four years of activity, however, the manual has not yet been completed. Only a simplified Worker Bulletin has been issued and distributed for the guidance of the workers who are at a constant risk of exposure to a vast number of toxic chemicals...

The December 1980 MOU outlines three interagency objectives. The second of these is "to identify and establish mechanisms for transmitting occupational health and safety information to workers and those responsible for their protection...." In January and February 1981, during the early meetings of the MOU work group, it became apparent that the effort to produce a technically sound comprehensive guidance manual for work at the vast array of hazardous waste sites only then beginning to be uncovered would be a long-term project. Since cleanup activity was already beginning at some of those sites, and since there was little practical information available on the problems involved, the work group concluded that the most important and immediate need was to apprise employees and their supervisors of the potential hazards they could expect to encounter and the best available means for addressing those hazards. Consequently, the "Worker Bulletin for Hazardous Waste Sites and Hazardous Substance Emergencies" was developed and was intentionally kept as simple as possible so that the affected workers and their supervisors would read it, understand its importance, and use it to their benefit. It was developed at a time when OSHA had no experience with hazardous waste cleanup, no compliance officers trained to assess hazards at toxic waste sites, and no field directive addressing the issues, and the question of EPA preemption of OSHA authority at these sites was still unresolved. In December 1982 a Bulletin was published which the four concerned agencies were able to accept as representative of their individual perspectives on hazardous waste issues. Ten thousand copies were distributed soon after publication, and thirty thousand additional copies have since

...on the other hand, the Bulletin has served employees well. Many of the documents which were subsequently published on the subject of hazardous waste by other agencies and organizations drew heavily on the ideas presented in that "Simplified Worker Bulletin." The workers and their supervisors and employers who have used the Bulletin have been provided with a basic and essential awareness of the hazards and risks associated with hazardous waste site cleanup and hazardous substance emergencies.

Work on the more comprehensive technical guidance manual was begun early in 1983. The importance of this document, along with the growing body of knowledge and experience in this field, has required great attention to technical details. Drafts have had to be sent to field personnel for comment; comments have had to be reviewed, discussed and incorporated into subsequent drafts. The technical manual is now in its final draft form. It must pass peer reviews and gain the approval of each of the four agencies. The document is expected to be released before the end of this fiscal year.

The Subcommittee report cites Ms. Seminario's testimony that "squabbling over jurisdiction"...and lack of leadership by OSHA" were responsible for the delays in issuance of the Bulletin and technical manual (Report page 8). What Ms. Seminario describes as "squabbling over jurisdiction" was a concern that a lack of careful attention might have rendered OSHA powerless in this realm, with EPA having to issue safety and health regulations which it would find difficult to enforce. The purpose of the attention given to the jurisdictional issue was to assure adequate protection to workers engaged in toxic waste cleanup.

END OF DOCUMENT REACHED

ITEM 31

STANDARD NUMBER	1910.1001
INFORMATION DATE	841130
SOURCE DESCRIPT.	Letter to Hon. Jim Moody
COMPANY	House of Representatives
ABSTRACT	OSHA currently has a national "Special Emphasis Program for Asbestos," in effect since October 1, 1983. It provides procedures for the programmed health inspection of worksites where asbestos is used, stored, or processed. All referrals to OSHA from the EPA regarding asbestos construction or demolition sites are evaluated by the OSHA Area Director, assigned the highest priority among programmed inspections, and schedules for inspection as soon as practicable, but no later than five working days after receipt.

STATUS
Nov 30, 1984

Current

Honorable Jim Moody
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Moody:

This is in response to your letter of October 24 regarding cooperative actions between the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) relating to asbestos removal at demolition sites.

As background information for you, a six-month experimental inspection program on this subject was established October 1, 1983, and was subsequently extended for another six months. (Copies of the OSHA directives initiating and extending the program are enclosed). The program required OSHA Regional Offices to establish lines of communication with regional EPA representatives to assure the prompt referral to OSHA of asbestos demolition/removal notices. EPA routinely receives such notices concerning construction or demolition projects where exposures to airborne levels of asbestos could occur.

OSHA Area Directors were to evaluate all notifications thoroughly, and schedule for inspection within five working days all timely notifications received relating to contractors not previously inspected by OSHA under this program. Inspections made of these construction or demolition sites investigate compliance with all applicable requirements of OSHA's standard for occupational exposure to asbestos, 29 CFR 1910.1001. Information on the level of worker exposure to asbestos is obtained for each workplace operation inspected.

This OSHA experimental program was not designed to force employers to remove asbestos from their workplaces. The OSHA asbestos standard does not require asbestos to be removed from worksites, but instead

1983. It provides procedures for the programmed health inspection of worksites within the general industry, maritime and construction industry sectors where asbestos is used, stored, or processed. Referrals from the Environmental Protection Agency begun under the experimental program are now handled under these procedures. 614

All referrals to OSHA from the EPA regarding asbestos construction or demolition sites are evaluated by the OSHA Area Director, assigned the highest priority among programmed inspections, and schedules for inspection as soon as practicable, but no later than five working days after receipt.

I hope this response answers your concerns. If we can be of further assistance please feel free to contact us again.

Sincerely,

John B. Miles, Jr., Director
Directorate of Field Operations

Enclosures

DFSHC: SANDS JJR 11/16/84
Control #32186

Oct 24, 1984

John B. Miles
Director
Field Operations
U. S. Department of Labor O S H A
200 Constitution Avenue, N. W.
Washington, DC 20210

Dear John:

I am writing to inquire about any recent policy changes regarding the serious problem of asbestos removal. In particular, I am interested in the progress made thus far concerning the agreement between the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA).

As I understand it, EPA refers certain private sector cases of non-removal and demolitions to OSHA for inspection. I would like to know more about the logistics concerning these referrals, i.e. how soon such're

referrals)'s'#ritical'4o'#ortinued'7orksite'Safetyn

Thank you in advance for consideration of this request. Please contact me if I can be of assistance in any way. I look forward to your response.

Sincerely,

Jim Moody
Member of Congress
House of Representatives
Washington, D.C. 20515

END OF DOCUMENT REACHED

ITEM 32

INFORMATION DATE 850204
SOURCE DESCRIPT. Letter to Mr. Milan Racic
COMPANY Allied Industrial Workers of America
ABSTRACT OSHA will explore a recommendation for a field instruction addressing the evaluation of X-rays and pulmonary function tests and relaying information to employees for early diagnosis of lung disease directly attributable to an occupational hazard.

STATUS Current
Feb 4, 1985

Mr. Milan Racic
Health and Safety Director
Allied Industrial Workers
of America
A.I.W. Building
3520 West Oklahoma Avenue
Minneapolis, Minnesota 55412

Dear Mr. Racic:

Your letter to Assistant Secretary Rowland dated December 12, 1984, recommending a field instruction addressing the evaluation of X-rays and pulmonary function tests and relaying information to employees was forwarded to the Directorate of Technical Support for response. We apologize for the delay in responding.

As you know, and as Dr. Selikoff states in his letter to you, B-readers are an asset because they have been trained to interpret X-rays but there are many proficient physicians in the field who are not certified B-readers and nevertheless well qualified to evaluate pneumoconiosis. It would be difficult to set guidelines which would allow employers and employees to select physicians with such expertise.

Furthermore, asking employees to live with a diagnosis of lung "change" on X-rays or an altered pulmonary function test which reflects a decrement due to aging or smoking, may be contrary to the interests of the employee who may be deprived of a full life and wholesome employment for the wrong reasons.

The questions you raise are complex but will be given our full attention and we will explore the possibility of meeting your concerns, namely, early diagnosis of lung disease directly attributable to an occupational hazard.

Thank you for your continuing interest in occupational safety and health.

Sincerely,

Edward J. Baier
Director
Directorate of Technical Support

OSHA/DTS/EYcdaiken/sib 2/1/85 Control No. 32556

Dec 12, 1984

Mr. Robert Rowland
Assistant Secretary of Labor - OSHA
200 Constitution Avenue, N.W.
Washington, DC 20210

Dear Mr. Rowland:

This is in addition to my letter to you dated December 7, 1984. That letter contained various enclosures which were to give you the origin of and the rationale for my request.

At this time I would like to further explain why I think that the OSHA Field Directive pertaining to the subject of Asbestos exposures is essential if OSHA is to protect employees and prevent injuries at the workplace.

Please allow me a slight digression for a bit of historical narrative. Sometime in the latter part of 1970's the International Chemical Workers Union struck the Johns Manville Company in Waukegan, Illinois. This large plant was for a long time producing various Asbestos products including water pipes, pipe insulation and roofing material. When the television cameras came to the plant they were greeted with angry picketers. One of those workers, whom I will never forget, was a very slim man. He took his hat off and showed his totally hairless head. He told the interviewer that he was upset with the company because they did not tell him before that he has scarred lungs. He was most generous while saying this because he did not seem to be bothered as much with the fact that he has a lung cancer as he was with the fact that he was not informed of those lung scarrings before. He wanted to know so that he could exercise his option of an early retirement. Instead he was undergoing radiation treatment, which accounted for a total loss of hair and was facing a quick and a certain death.

I was moved by this and will remember this person forever. Still now I think that he was most generous because he did not even threaten the company with a law suit or any other legal action. He only wanted to have time off while he was still relatively healthy and before his cancer developed, so that he could spend it with his family. That was, I hope you will agree, a very modest request.

However, that person as well as many others that came after, did not have to be informed then and do not have to be informed now by company doctors of their physical condition. The company did only what OSHA asked them to do: offer free medical examinations and make information available to the employers if they request. They did not have to inform their employees of early lung changes as well as the results of their pulmonary function test. Also, at present the employer's physician does not have to inform employees that B-readers are trained physicians capable of properly classifying X-rays of Asbestos or Silica exposed employees. 46

What I would like to ask is this: Issue a special Field Directive pertaining to exposure of employees to any pneumoconiosis producing dusts - including Asbestos, Silica and Cotton dust - and ask your field personnel to:

- (1) Inform affected employees and employers that they may want to seek a B-reader or a physician who has established equivalent or better expertise to evaluate their X-rays and explain why their skills might be necessary i.e., some X-rays pertaining to pneumoconiosis might be misread by physicians. As a result affected employees are either not diagnosed at all or not diagnosed on time. Also, please emphasize in this Field Directive the importance of pulmonary tests and their value as early warning signals.
- (2) Ask all employers and their physicians to inform the affected employees when first lung changes begin to show up or when their pulmonary function values begin to change. Also, request that employees be told what these changes mean, what their alternatives are (i.e., to be removed from the exposure etc.) and the basic science involving exposures to these materials. Also, request that employers advise affected employees of their right to obtain a copy of their medical file and the importance of seeing a physician of their choice, if further evaluation is warranted. In other words, employees should be informed immediately after any lung changes begin to take place.

These requests are not based on OSHA enforcement requirements but are, I think, in conformance with good medical practice. If this medical practice is being applied now in the patient/physician relationship it certainly ought to be applied in the employee/company physician relationship. OSHA, in my opinion, must serve as a catalyst and a motivator in this latter relationship.

I will be happy to meet or talk with you and assist you in outlining the language of this Field Directive.

I am quite certain that many people are falling through our present safety net. They are either without any compensation or without an adequate compensation. This should be unacceptable to you as much as it is unacceptable to me. Workers have a right to know. This information will provide the best incentive for others to prevent these types of exposures from continuing to take place in the future.

Since changing the Asbestos Standard would be rather cumbersome and time consuming and since OSHA is accustomed to issuing Field Directives, I think that this directive would go a long way in protecting thousands of workers from the development of unnecessary occupational diseases. It will help take some workers out of exposure/KH9Z.-.KHZJW-

55YIA==I
and that the issue of proper medical diagnosis must be addressed immediately.

Please give this request a very high priority and please let me know what your immediate course of action, regarding this important matter, is going to be.

Sincerely,

MILAN RACIC
Health and Safety Director
Allied Industrial Workers of
America
A.I.W. Building
3520 West Oklahoma Avenue
Milwaukee, Wisconsin 53215

****END OF DOCUMENT REACHED****

ITEM 33

STANDARD NUMBER	1910.20
INFORMATION DATE	851119
SOURCE DESCRIPT.	Letter to Mr. James M. Peirce
COMPANY	National Federation of Federal Employees
ABSTRACT	Under provisions of 29 CFR 1910.20, Executive Order 12196 mandates that all standards issued under Section 6 of the OSHA Act will be complied with by Federal agencies except where the Secretary of Labor approves alternate standards. OPM has issued a notice for the establishment of OPM/Gout-10 Employees Medical File System Records. (50 F.R. 15253, April 17, 1985.), which has become final. This provides for routine uses of records maintained in the employee medical system records. No alternate standard for 29 CFR 1910.20 has been approved for any Federal agency.

STATUS
Nov 19, 1985

Current

Mr. James M. Peirce
President
National Federation of
Federal Employees
Suite 200
2020 K Street, N.W.,
Washington, D.C. 20006

Dear Mr. Peirce:

This is in response to your letter of October 31 to Acting Assistant Secretary Patrick R. Tysor, concerning access to employee exposure and medical records.

In regard to your question as to whether or not Federal agencies, and specifically the Department of Interior, are bound to comply with the provisions of 29 CFR 1910.20, you correctly noted that Executive Order 12196 mandates that all standards issued under Section 6 of the Occupational Safety and Health Act will be complied with by Federal agencies except where the Secretary of Labor approves alternate standards. You should also be aware that the Office of Personnel Management (OPM) has issued a notice for the establishment of OPM/Gout-10 Employees Medical File System Records. (50 F.R. 15253, April 17, 1985.) We have been informed that this notice has become final. OPM/Gout-10 provides, among other things, for routine uses of records maintained in the employee medical system records. Among the routine uses provided for is disclosure to officials of labor organizations recognized under S.U.S.C. Chapter 71 in accordance with the Occupational Safety and Health Administration's records access rules. We are enclosing a copy of this notice for your information.

In regard to your question as to whether or not any alternate standard related to 29 CFR 1910.20 for the Department of Interior has been approved, the answer is not. No alternate standard for 29 CFR 1910.20 has been approved for any Federal agency.

You also asked whether or not the standards you are concerned with apply to the Department of Interior as an employer. It is mandated, as stated previously, that agencies must comply with all standards issued under Section 6 of the Act.

We hope this satisfactorily addresses your concerns.

Sincerely,

John B. Miles, Jr.
Director
Directorate of Field Operations

48

Enclosure

OFAP:M.ELLISKON:JJm 11/12/85 CCU 37489

October 31, 1985

Mr. Patrick R. Tyson
Acting Assistant Secretary for
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Dear Mr. Secretary:

The National Federation of Federal Employees requests the official position of the Occupational Safety and Health Administration regarding a matter within OSHA's jurisdiction. Is a Federal agency, specifically the U.S. Department of the Interior, bound to comply with the provisions of 29 C.F.R. 1910.20 concerning "Access to Employee Exposure and Medical Records?"

This question arose in collective bargaining with the Bureau of Indian Affairs. Management representatives claimed that privacy considerations and special rules regarding medical records of Federal employees would preclude the union from even receiving sanitized records regarding employee exposure to such substances as lead and asbestos.

The union referred the Agency to Section 1-201(c) of Executive Order 12196 which requires the head of each Federal agency to "comply with all standards issued under Section 6 of the Act, except where the Secretary approves compliance with alternative standards." We also referred the Agency to 29 C.F.R. 1960.8 which states "The head of each agency shall comply with the Occupational Safety and Health Administration standards applicable to the Agency." Finally, we referred to 29 C.F.R. 1910.20(e)(1)(i) which states, "Whenever an employee or designated representative requests access to a [medical] record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made." The Agency replied that it did not believe that the provisions of 29 C.F.R. 1910.20, nor the specific provisions in 29 C.F.R. 1910.1001(i)(2) (asbestos exposure records) and 1910.1025(n)(4)(iii) (lead exposure records) applied to the Department of the Interior.

Has the Secretary of Labor approved application of alternative standards to those cited above for the U.S. Department of the Interior? Do the above-cited standards apply to the Department as an employer? We would appreciate your prompt response to these questions as the parties are currently in negotiations and this information will aid in a speedy conclusion of bargaining. If you or your staff wish to discuss this matter, please contact Labor Relations Specialist Charles Bernhardt at 862-4455.

Sincerely,

James M. Peirce
President
NFFE

***END OF DOCUMENT REACHED**

ITEM 34

STANDARD NUMBER
INFORMATION DATE
SOURCE DEScript.
COMPANY
ABSTRACT

1910.1200(f)(3)

860529

Letter to Mr. Michael K. Seifried

ICS Associates

Asbestos containing substances and the HCL Standard. An asbestos containing substance in a form that which can be released, may cause an exposure or potential exposure to employees. HCS labeling and MSDS requirements would apply to those chemicals.

STATUS

Current

category hcs subject La originator Seifried control #37932a

MAY 29 1986

Mr. Michael K. Seifried

Consultant

ICS Associates

Post Office Box 361

Convent Station, New Jersey 07961

Dear Mr. Seifried:

We find it necessary to write a followup response to you regarding our letter of March 6. In your letter to us you asked whether the hazard warning label required under the Occupational Safety and Health Administration (OSHA) asbestos standard will satisfy the labeling requirements of the Hazard Communication Standard (HCS).

49

Regrettably, our answer that the warning label covered by the asbestos standard would not meet the requirements of the HCS labeling provision was in error. The HCS specifically states in 29 CFR 1910.1200(f)(3) that "if the hazardous chemical is regulated by OSHA in a substance-specific health standard, the chemical manufacturer, importer, distributor or employer shall ensure that the labels or other forms of warnings used are in accordance with the requirements of the standard." Therefore, the labeling requirements of the HCS are not applicable to pure asbestos products. If, however, the asbestos is combined with other hazardous chemicals which could be released and cause an exposure or potential exposure to employees, then the HCS labeling and material safety data sheet requirements would apply to those chemicals.

We apologize for our error and hope that it has not caused you any problems. If we can be of further assistance please feel free to contact our Office of Health Compliance Assistance at (202) 523-8036.

Sincerely,

John B. Miles, Jr., Director
Directorate of Field Operations

HCA:SSimon/ALM/N3104/5-27-86/523-8036

cc: Smith/Miles/Gibbs/Simon/Talmon/N3104 File

File# 37932a

February 5, 1985

Assistant Secretary for
Occupational Safety and Health
U.S. Department of Labor
Washington, D.C. 20210

Dear Sir:

This is a request for clarification of the rules covering hazard communications under CFR 29, Section 1910.1200.

My client is a manufacturer of industrial valves. These valves are sold to other industrial companies for use in their plants or in systems for resale.

These valves are fitted with gaskets and stem packing which in turn contain asbestos. The asbestos is contained within the structure of the valve, and there is no significant release of asbestos to the atmosphere during normal use. It is possible, however, that asbestos could be released if improper procedures were used during overhaul of the product (for example, by grinding or abrading a gasket).

Given the above circumstances, is it necessary to provide material safety data sheets to the user of these valves? Also, is special hazard labeling required?

Your answers to the above questions would be greatly appreciated.

Very truly yours,

Michael R. Seifried
Consultant

****END OF DOCUMENT REACHED****

ITEM 35

STANDARD NUMBER 1910.1200

INFORMATION DATE 860822

SOURCE DESCRIPT.

COMPANY

ABSTRACT

Letter to Mr. Dick Carlton
Carlton Industries, Inc.

An interpretation is provided of the labeling requirement set forth in OSHA Instruction CPL 2-2, 384 CH-1. Labeling systems such as the Hazardous Material Information System (HMIS) and the National Fire Protection Association (NFPA) are permitted for inplant labeling systems. Such labeling systems are allowed as long as the complete Hazard Communication Program is effective and the employees are aware of the complete hazard information, including target organs. Labels on shipping containers must include hazardous effects of exposure.

STATUS

Current

category hcs subject la originator carlton control# 10094

AUG 22 1986

Mr. Dick Carlton
Carlton Industries, Inc.
Post Office Box 280
La Grange, Texas 78945

Dear Mr. Carlton:

Secretary of Labor William E. Brock has asked me to respond to your letter dated July 1, regarding the labeling of products containing hazardous chemicals under the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard (HCS), 29 CFR 1910.1200.

Labels on containers are the first of the three major components of a Hazard Communication Program, included in the Standard to transmit hazard information. The labels required under the Standard are to be put on shipped containers, as well as on containers within the workplace. Their purpose is threefold: to serve as an immediate visual warning that the chemicals in the container are hazardous, to remind employees of what they have been taught about handling these chemicals, and to advise that more detailed information is available on the material safety data sheets.

On shipped containers, the label is to include an identity, appropriate hazard warnings, and the name and address of the chemical manufacturer, importer, or other responsible party. On inplant containers, the label is to include an identity and appropriate hazard warnings.

The focus of detailed hazard information in the Standard is the material safety data sheet, the second component. As you know, these are written documents that provide extensive information on the chemical identification of components, as well as other useful information such as the hazards of the chemicals, effects of exposure, and protective measures. Material safety data sheets are required for each hazardous chemical in the workplace.

The third major communication component of the Standard is training. This is regarded by many as the most important aspect, which ties together the various other components of the hazard communication program in a form that can most readily ensure that employees understand the information being provided to them. Training is required for all employees exposed to hazardous chemicals before their initial assignment to such work and whenever the hazard changes. The training is to include a discussion of labels and material safety data sheets, so that the employee will understand the material on these documents and how it can be used. Beyond that, the Standard also requires employees to be trained regarding the hazards (effects) of the chemicals they are exposed to, ways to detect the presence of these hazards, and measures employees can take to protect themselves. In addition, they are to be informed of the operations in their work areas where hazardous chemicals are present, and the location and availability of the written hazard communication program and material safety data sheets.

51

As you note to in your letter, labeling systems such as the Hazardous Materials Information System (HMIS) and National Fire Protection Association do not convey the complete hazard information. However, the preamble of the Standard does recognize the existence of numerous labeling systems, and the intent of the standard is to permit the use of these systems. Therefore, as long as the complete hazard communication program is effective--meaning that the program ensures that employees are aware of the complete hazard information, including target organ effects--the Agency will now permit employers to utilize any inplant labeling system.

Labels on shipped containers containing hazardous chemicals must continue to include the hazardous effects of exposure. This will ensure that non-covered employees, who generally do not receive training or have access to material safety data sheets, are provided with minimal information that will make them aware of the hazardous effects of the chemicals with which they work. This is consistent with the intent of the Standard as stated in the preamble: "... all containers leaving the workplace of chemical manufacturers, importers, or distributors will be labeled, regardless of their intended destination." 48 Federal Register, at 58286.

This change in policy was made on July 18, when OSHA issued new guidelines to its enforcement personnel clarifying the Agency's enforcement procedures relative to labeling (OSHA Instruction CPL 2-2.35A CH-1, copy enclosed). This document establishes a two-tiered labeling approach that meets the standard's intent that employees be made aware of the hazardous effects of the chemicals they work with, without regard to the current scope of the standard, while ensuring flexibility consistent with the standard's performance nature.

Thank you for your comments. Please feel free to contact us again, if we can be of further assistance.

Sincerely,

John A. Pendersgrass
Assistant Secretary

Enclosure

HCA:RGibbs/ALM/N3104/523-8036/7-16-86
cc: Smith/Miles/Simon/Gibbs/N3104 File/CCU/
Hawkins/White

Control Number: 10094 Due Date: 7-15-86

51A

July 1, 1986

Secretary William Brock
U.S. Department of Labor
Washington, D.C. 20210

Re: Labeling Provision of 29CFR 1910.1200

Dear Secretary Brock:

I have just read a memo from John B. Miles to the Regional Administrators of OSHA regarding the Hazardous Communication Standard.

Thank God the situation has been corrected before it has gone too far.

As Mr. Miles pointed out, the National Paint and Coatings Association's Hazardous Materials Information System (HMIS) is inadequate labeling for employers as well as employees. It is full of liability.

From the employer's standpoint, they cannot defend themselves in court because colors, numbers, symbols and pictograms say very little about the products being identified.

From the employee's standpoint, he wants to be completely informed in a plain and simple format, not numbers, colors, and pictograms.

Good labeling is easy - just state the hazards, both physical and health, in plain easy to read English. If your employees cannot read, then read the data to him or her.

Labeling such as HMIS and NFPA (National Fire Protection Association) just does not convey the message to a person using chemicals on a regular basis in the workplace.

HMIS and NFPA will cause thousands of lawsuits in the future for the employers if they are used as labeling for this standard. It is wise to clarify 29CFR 1910.1200 now before all industry is required to comply in the future since very few companies have complied to date.

employees and customers as the tobacco industry has with a plain and simple warning, they wouldn't have had the problems they have to date.

I have just completed ten safety trade shows throughout the U.S.. It is alarming to talk with safety managers with large companies who one year ago didn't know what a material safety data sheet was and today are sitting down with 1000 MSDS's to interpret the data onto a HMIS or NFPA label number and color code system.

This safety manager may unknowingly be harming the American worker. This is tragic. Industry is hiding behind the HMIS and NFPA label because they do not want the employee to know the chemical hazards. Industry must know that either you spell out the hazard on the label or later in court.

I am in Washington from time to time and would be happy to meet with you or a member of your staff to discuss this problem further.

Thanks again for caring.

Resards,

Dick Carlton
Carlton Inc

cc: John Fendergrass
John R. Miles, Jr.

****END OF DOCUMENT REACHED****

ITEM 36

STANDARD NUMBER	1910.1001
INFORMATION DATE	860718
SOURCE DESCRIPT.	Letter to Dennis M. Race
COMPANY	Akin, Gump, Strauss, Haver & Feld
ABSTRACT	A stay is granted for the purpose of reopening the record and instituting supplemental rulemaking limited to the issued of whether non-asbestiform tremolite, anthophyllite and actinolite should continue to be regulated in the same standards and to the same extent as asbestos, or should be treated in some other way. This stay applies only to the application of the revised standards to non-asbestiform tremolite, anthophyllite and actinolite. In all other respects, the revised standards will take effect as previously scheduled.

STATUS

Current

JUL 18 1986

Dennis M. Race
Akin, Gump, Strauss
Haver & Feld
1338 New Hampshire Ave., N.W.
Suite 400
Washington, D.C. 20036

Dear Mr. Race:

This in response to your July 14, 1986 letter on behalf of R. T. Vanderbilt Co. in which you request that OSHA reconsider your request for a stay of the provisions of the revised standards promulgated June 17, 1986 governing occupational exposure to asbestos, tremolite, anthophyllite and actinolite, to the extent the standards regulate occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite (51 Fed. Reg. 22612 et. seq.). The revised standards, which amend OSHA's 1972 asbestos standard, 29 CFR 1910.1001 (1985), are scheduled to take effect July 21, 1986.

For the reasons indicated below, I am granting a temporary stay of 9 months (until April 21, 1987) of the effective date of the revised standards insofar as they apply to occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite. This stay is granted for the purpose of reopening the record and instituting supplemental rulemaking limited to the issued of whether non-asbestiform tremolite, anthophyllite and actinolite should continue to be regulated in the same standards and to the same extent as asbestos, or should be treated in some other way. This stay applies only to the application of the revised standards to non-asbestiform tremolite, anthophyllite and actinolite. In all other respects, the revised standards will take effect as previously scheduled.

It should be noted that during the pendency of the stay, the provisions of the 1972 standard governing occupational exposure to asbestos (29 CFR 1910.1001 (1985)) will remain in effect with respect to regulation of non-asbestiform tremolite, anthophyllite and actinolite. (See 51 Fed. Reg. at 22732).

53

OSHA is granting this temporary stay in part to enable the Agency to review a July 17, 1986 letter from the Director of the National Institute for Occupational Safety and Health (NIOSH) and certain related NIOSH staff memoranda which have recently been brought to its attention, as well as submissions by the R.T. Vanderbilt Co. and various trade associations concerning the appropriateness of regulating non-asbestiform tremolite, anthophyllite and actinolite in the revised asbestos standards.

OSHA believes, as stated in our July 9, 1986 letter, that it provided adequate notice to the public that its recent asbestos rulemaking would address whether the Agency should amend the 1972 definition of asbestos, and the proper scope of the revised standards with respect to the three non-asbestiform minerals. However, OSHA acknowledges that letters and petitions from rulemaking participants and non-participants have been received since the revised standards' assertions, and information which the rulemaking record may not fully reflect, and which request an opportunity to submit further information on these questions. To assure that these submissions are fully considered by OSHA, to allow public comment on these additional submissions, and to invite additional comment and evidence on all issues relevant to regulation of non-asbestiform tremolite, anthophyllite and actinolite, OSHA will shortly by Federal Register notice reopen the rulemaking record on the limited issue of whether non-asbestiform tremolite, anthophyllite and actinolite should continue to be regulated as presenting the same health risk as asbestos, or should be treated in some other way.

Sincerely,

John A. Pendergrass
Assistant Secretary of Labor
END OF DOCUMENT REACHED

ITEM 37

INFORMATION DATE 860806
SOURCE DESCRIPT. Letter to The Honorable Quentin M. Burdick
COMPANY United States Senate
STATUS Current

AUG 6 1986

The Honorable Quentin M. Burdick
United States Senate
Washington, D. C. 20510

Dear Senator Burdick:

This is in response to your letter of July 7, concerning your constituents, Mr. Glen R. Winter and Ms. Lynn Lammer of Midwest Asbestos Consultants, Inc., in Fargo, North Dakota. These individuals expressed concern about the extreme difficulties asbestos abatement consultants are experiencing in obtaining professional liability insurance at an affordable price.

The Occupational Safety and Health Administration (OSHA) is a standards setting and enforcement agency that deals with matters of occupational safety and health. Although we can appreciate the concerns of your constituents, we are not in a position to address their difficulty with insurance as OSHA has no experience or jurisdiction in that area.

Correspondence about problems such as those of concern to your constituents should be addressed to the Department of Justice at the following address:

The Honorable Richard K. Willard
Assistant Attorney General
Civil Division
Department of Justice
Room 3143
10th and Constitution Avenue, N.W.
Washington, D. C. 20530

Thank you for your interest in this important matter.

Sincerely,

John A. Pendergrass
Assistant Secretary

OH:Wainless:ec:7/22/86
Room N-3671 x37111
Control: C-38546 Due Date 7/18/86

54

cc: CCU File, OH File, Pendergrass, Wainless, Williams, Strobel,
OLIR, Wm. J. Maroni, WPC File, Document#0129L

June 24, 1986

Senator Quentin N. Burdick
United States Senate
Washington, D.C. 20510

RE: SENATE BILLS S2300 & S2083.

Dear Senator Burdick:

We wish to applaud and encourage your efforts to strengthen and expand present legislation dealing with the hazards associated with exposure to asbestos fibers. Previous bills and regulations seemed deliberately designed to skirt the issue but S2300 and S2083 appear to face the issue squarely by demanding appropriate action.

An additional step worthy of your consideration is to also address the extreme difficulties asbestos abatement consultants are experiencing in obtaining professional liability insurance at an affordable price (at any price in many instances). It is a paradox that we have the training, expertise and experience necessary to assist in alleviating the asbestos hazard are penalized and effectively prevented from doing so by the lack of liability insurance. Somehow, we must convince or force the insurance industry to recognize the fact that consultants and contractors who are trying desperately to correct this hazardous situation should not be classified as equivalent risks to those manufacturers who caused the problem. There is no basis for comparison of the potential liabilities. Further, the overall potential for asbestos injury claims is being heightened by discouraging our abatement efforts; thus prolonging the exposure to a hazardous situation.

Again, we fully support your efforts. If you can also address the insurance dilemma, you will be performing an invaluable service to every building owner in America as well as the people who occupy those buildings.

Respectfully,

Midwest Asbestos Consultants, Inc.

Glen R. Winter
General Manager

Lynn Lammer
Manager

July 7, 1986

Mr. John A. Pendergrass
Assistant Secretary
Occupational Safety and
Health Administration
200 Constitution Avenue
Washington, D.C. 20210

Dear Mr. Pendergrass:

I have received the attached letter from a consulting firm specializing in asbestos removal.

I would appreciate your review and advice on the questions raised on insurance premiums.

With kind regards, I am

Sincerely,

Quentin N. Burdick

QNB:phc

Enclosure

END OF DOCUMENT REACHED

SOURCE DESCRIPTION: Letter to Mr. John A. Pendergrass
COMPANY: U.S. Department of Labor
STATUS: Current

5-1

July 16, 1986

Mr. John A. Pendergrass
Assistant Secretary of Labor
for the Occupational Safety
and Health Administration
U.S. Department of Labor
200 Constitution Avenue
Washington, D.C. 20210

Dear Mr. Pendergrass:

As you may be aware, ISEA and others have instituted legal proceedings against NIOSH and EPA concerning their publication of "A Guide to Respiratory Protection for the Asbestos Abatement Industry." At a meeting last Friday with Barry White in which we discussed the case, he suggested that we write to you to pursue the possibility of obtaining a statement from one or more appropriate OSHA officials for use in the case.

As pointed out in our complaint (copy enclosed), EPA and NIOSH have engaged in what amounts to a rulemaking through the publication of the Guide without complying with any of the procedural requirements afforded under the Administrative Procedure Act or Due Process of Law. These agencies have also violated their own rules and those of other agencies, including OSHA, in the blacklisting of several types of respirators which are currently certified and approved for use in asbestos environments.

We would be most interested in a statement supportive of our position that before an agency can release a publication such as the Guide, it should conduct public rulemaking proceedings. Would you be so kind to advise me whether OSHA would be in a position to provide such a statement?

I also request that you advise me as to whether EPA or NIOSH requested or received any input from OSHA in connection with the preparation or review of the Guide. Thank you in advance for your consideration.

Sincerely,

Frank E. Wilcher, Jr.
President

cc: Barry J. White

2nd Draft:at:7/24/86 rec:8/4/86

+++OKP Project Officer +++Office Director +++JLIntard

Mr. Frank E. Wilcher, Jr.
President
Industrial Safety Equipment Association
1901 N. Moore Street
Arlington, Virginia 22209

Dear Mr. Wilcher:

This is in response to your letter of July 16 regarding your proceedings against the National Institute for Occupational Safety and Health and the Environmental Protection Agency, concerning the publication of "A Guide to Respiratory Protection for the Asbestos Industry."

In view of the fact that you are now engaged in litigation against the Government, it would be inappropriate for the Occupational Safety and Health Administration to issue any comment on the matter.

I regret that we can be of no help to you.

Sincerely,

John A. Pendergrass
Assistant Secretary for
Occupational Safety and Health

OH:Weiner:ac:7/24/86
Room N3669 x7151

cc: OCU File, Weiner, Matorik, White, Strobel, Williams,
WFO#86-229, Document#00176

56

Mr. Frank E. Wilcher, Jr.
President
Industrial Safety and Equipment Association
1901 N. Moore Street
Arlington, Virginia 22209

Dear Mr. Wilcher:

This is in response to your letter of July 16 regarding your proceedings against the National Institute for Occupational Safety and Health and the Environmental Protection Agency concerning their publication of "A Guide to Respiratory Protection for the Asbestos Industry."

In view of the fact that you are now engaged in litigation against the Government, it would be inappropriate for the Occupational Safety and Health Administration to issue any comment on the matter.

I regret that we can be of no help to you.

Sincerely,

John A. Pencergrass
Assistant Secretary for
Occupational Safety and Health

END OF DOCUMENT REACHED

ITEM 39

STANDARD NUMBER 1926.58
INFORMATION DATE 860819
SOURCE DESCRPT. Memo to GILBERT J. SAULTER
COMPANY OSHA
STATUS Current

AUG 19 1986

MEMORANDUM FOR: GILBERT J. SAULTER
Regional Administrator

FROM: BARRY J. WHITE
Acting Director
Health Standards Programs

SUBJECT: Clarification of New Asbestos Standard
for Construction (29 CFR 1926.58)

This is in response to your memo of July 24 requesting clarification of the scope of the new standard for asbestos, tremolite, anthophyllite, and actinolite as it applies to the construction industry.

The new standard, 29 CFR 1926.58, applies to all construction related activities whether conducted at a construction site or performed by a maintenance crew of plant personnel in a general industry establishment. Construction related activities as defined in 1926.58(a) includes demolition, salvage, removal, encapsulation of materials containing asbestos, alteration, repair, and installation of products containing asbestos.

In general, it should be noted that any of the above activities related to a building, structure, or plant process equipment (such as pipe, process vessel and boiler insulation) fall under the scope of the asbestos standard for construction (1926.58). However, maintenance activities which involve the operation itself, such as repairing an asbestos impregnated conveyor belt or repairing duct work on a blower system that exhausts or conveys asbestos dust, would be considered under the scope of the general industry standard (1910.1001).

OH:Wainless:kcc:8/15/86
Room N-3671 x37111

cc: OH File, EWhite, Wainless, WFO File#86-245, Document#0148L

MEMORANDUM FOR: GILBERT J. SAULTER
Acting Director
Directorate of Health Standards Programs

57

ATTENTION: JOHN B. MILES, JR.
Director
Directorate of Field Operations

SUBJECT: Clarification of New Asbestos Standard
(29 CFR 1926.58) for Construction

This is to request clarification of the new asbestos standard (29 CFR 1926.58) as it applies to the construction industry.

Under paragraph 29 CFR 1926.58(a), the scope and application of the standard is discussed. It is stated that the standard applies to all construction work including demolition and salvage of structures where asbestos is present, and removal or encapsulation of materials containing asbestos.

I have received several requests for clarification of the scope of this standard. Construction in the 29 CFR 1926.58 asbestos standard is not defined by any SIC codes but is defined by the type of activity; i.e., removal, demolition, repair, etc. In a general industry establishment where removal or repair is taking place and these activities are being conducted by a maintenance crew (not contractors), does the 29 CFR 1926.58 standard apply where those activities described in its scope; i.e., removal, repair, demolition, are taking place?

Your assistance in clarifying this matter will be appreciated.

GILBERT J. SAULTER
Regional Administrator

END OF DOCUMENT REACHED

ITEM 40

SOURCE DESCRIPT. Letter to Robert G. Bartlett, P.E.
COMPANY National Stone Association
STATUS Current

Robert G. Bartlett, P.E.
President
National Stone Association
1415 Elliot Place, N.W.
Washington, D.C. 20007

Dear Mr. Bartlett:

This is in response to your July 11, 1986 letter in which you request that OSHA stay the provisions of the revised standards promulgated July 17, 1986 governing occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite to the extent the standards regulate occupational exposure to non-asbestiform tremolite and actinolite (51 Fed. Reg. 22612 et seq). The revised standards became effective July 21, 1986.

On July 18, 1986, OSHA granted a temporary partial stay of the revised standards, of 9 months of the effective date (until April 21, 1987), insofar as they apply to occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite. Enclosed is a copy of the letter sent to counsel for the R.T. Vanderbilt Co. which announces the stay and describes OSHA's intention to conduct shortly supplemental rulemaking on the limited issue of whether non-asbestiform tremolite, anthophyllite and actinolite should continue to be regulated as presenting the same health risk as asbestos or should be treated some other way.

In the supplemental rulemaking, you will have an opportunity to submit comments and evidence relating to the feasibility of the standard with respect to the three non-asbestiform minerals.

Separate Federal Register notices announcing the issuance of the stay and the supplemental rulemaking proceedings will be published shortly.

Sincerely,

John A. Pendergrass
Assistant Secretary for
Occupational Safety and Health

July 11, 1986

Honorable John A. Pendergrass
Assistant Secretary of Labor for
Occupational Safety and Health
U.S. Department of Labor
Washington, DC 20210

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Re: Request For A Stay;
Occupational Exposure to
Tremolite and Actinolite,
29 C.F.R. Parts 1910 and 1926,
51 Fed. Reg. 22612 et seq.
(June 20, 1986)

Dear Mr. Pendergrass:

The National Stone Association, representing approximately 400 companies and 64,000 employees, respectfully requests that OSHA stay the application of the above-cited standard for tremolite and actinolite, published on June 20, 1986, as it applies to crushed stone used for construction. Such expeditious administrative relief is needed due to the fact that the schedule is to become effective on July 21, 1986.

Crushed stone is a product that has broad application. It is used in homebuilding -- concrete foundations, block walls, insulating panels, sidewalks and portland cement concrete pavements, base courses, shoulder construction, bridge and culvert installation and other uses; erosion and sediment control; water storage facilities; environmental purposes such as fluid bed desulfurization in fossil fuel burning power plants and pond liming where water acidity is below proper levels; agricultural purposes where crushed limestone is applied to raise the pH level of the soil to enhance crop productivity; and even in such household products as kitchen cleanser and toothpaste. Clearly, any arbitrary and unnecessarily restrictive requirement that would interrupt the free flow of crushed stone products to the consumer market would have a widespread and adverse impact upon the public.

Furthermore, trace amounts of nonasbestiform tremolite and actinolite are ubiquitous in hard rock deposits, especially in the eastern United States. OSHA has not considered the feasibility of compliance by the construction industry users of stone. OSHA's rulemaking record does not contain evidence justifying the imposition of 0.2 fiber/cc standard for nonasbestiform tremolite and actinolite in this industry; and there is no reason to believe that employees in this industry face a significant risk to their health as a result of exposure to trace amounts of nonasbestiform tremolite and actinolite in crushed stone.

Crushed stone is the most predominantly used construction aggregate. Of the approximately one billion tons of crushed stone used annually in the United States, somewhat more than three-fourths is limestone, and the remaining amount (approximately 231 million tons in 1985) is hard rock, including granite and traprock. Generally, the usage of either hard rock or limestone is determined by the location of mineral deposits. Hard rock is the predominant construction aggregate in the states of Georgia, South Carolina, North Carolina, Virginia, Maryland, New York, Connecticut, Rhode Island, Massachusetts, Maine, New Hampshire, Vermont, Minnesota and Wisconsin. Hard rock is also widely used throughout the western states. With respect to some applications, limestone is not a suitable substitute for hard rock. For example, certain Federal Highway Administration specifications regarding skid resistant pavements can generally be met only by hard rock.

Trace amounts of tremolite and actinolite, in their nonasbestiform state, are ubiquitous in hard rock deposits. This fact will be of concern to vast numbers of construction firms whose projects involve work with construction aggregates. Such construction firms will be subject to the new OSHA exposure standards for tremolite and actinolite, and they will be able to comply only by conducting expensive, time-consuming monitoring (which presently may not be technologically feasible) or by obtaining appropriate certificates from construction aggregates producers. The only certificate that would resolve the problem of a construction firm concerned with the presence of these minerals in the air would be a certificate attesting to the total absence of these minerals in the products. Because of the nature of tremolite and actinolite, it is unlikely that any producer of hard rock will be able to certify that its product is free of these minerals. As a result, the new exposure standard has the unintended effect of impeding the use of crushed granite and crushed traprock as construction aggregates.

problems in the crushed stone industry. Although OSHA did consider the technological feasibility and economic impact of the standards in certain other industries, OSHA has never considered the technical and economic feasibility of compliance in the construction industry users of crushed stone. None of the products considered by OSHA are analogous to crushed stone containing trace amounts of nonasbestiform tremolite or actinolite. We are concerned that the only way to assure compliance with the standards may be to discontinue the use of crushed granite and traprock, which would have a severe adverse effect on the industry and the ultimate consuming public. For this reason alone, a stay and reconsideration of the standards is warranted.

There is no reason to believe that granting the stay would harm the public interest. OSHA concedes in the preamble to the final rules that the medical evidence as to tremolite and actinolite is at best inconclusive. In fact, OSHA's 1984 proposal stated that the Agency planned not to regulate nonasbestos tremolite and actinolite.

The National Stone Association did not file public comments on OSHA's 1984 proposal to revise its standard, principally because the Association agreed with OSHA's specific public intention to eliminate such nonasbestiform minerals from the standard. Given that OSHA did not announce that it intended to regulate nonasbestiform tremolite, anthophyllite and actinolite, the National Stone Association (and others adversely affected by the expansion of the regulation) should have the right to be heard by OSHA on this matter of major concern and impact to the industry.

Accordingly, the National Stone Association respectfully requests that OSHA grant relief expeditiously, in view of the impending July 21, 1986 effective date.

Please do not hesitate to contact me directly if you have any questions or we can be of assistance in your consideration of this request.

Thank you.

Very truly yours,

Robert G. Bartlett, P.E.
President
National Stone Association

RGB/kp

cc: John Martonik, OSHA

JUL 18 1986

Dennis M. Race
Akin, Gump, Strauss,
Haver & Feld
1333 New Hampshire Ave., N.W.
Suite 400
Washington, D.C. 20036

Dear Mr. Race:

This is in response to your July 14, 1986 letter on behalf of R. T. Vanderbilt Co. in which you request that OSHA reconsider your request for a stay of the provisions of the revised standards promulgated June 17, 1986 governing occupational exposure to asbestos, tremolite, anthophyllite and actinolite, to the extent the standards regulate occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite (51 Fed. Reg. 22612 et. seq.). The revised standards, which amend OSHA's 1972 asbestos standard, 29 CFR 1910.1001 (1985), are scheduled to take effect July 21, 1986.

For the reasons indicated below, I am granting a temporary stay of 9 months (until April 21, 1987) of the effective date of the revised standards insofar as they apply to occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite. This stay is granted for the purpose of reopening the record and instituting supplemental rulemaking limited to the issue of whether non-asbestiform tremolite, anthophyllite and actinolite should continue to be regulated in the same standards and to the same extent as asbestos, or should be treated in some other way. This stay applies only to the application of the revised standards to non-asbestiform tremolite, anthophyllite and actinolite. In all other respects, the revised standards will take effect as previously scheduled.

It should be noted that during the pendency of the stay, the provisions of the 1972 standard governing occupational exposure to asbestos (29 CFR 1910.1001 (1985)) will remain in effect with respect to regulation of non-asbestiform tremolite, anthophyllite and actinolite. (See 51 Fed. Reg. at 22732).

OSHA is granting this temporary stay in part to enable the Agency to review a July 17, 1986 letter from the Director of the National Institute for Occupational Safety and Health (NIOSH) and certain related NIOSH staff memoranda which have recently been brought to its attention, as well as submissions by the R.L. Vandertilt Co. and various trade associations concerning the appropriateness of regulating non-asbestiform tremolite, anthophyllite and actinolite in the revised asbestos standards.

OSHA believes, as stated in our July 9, 1986 letter, that it provided adequate notice to the public that its recent asbestos rulemaking would address whether the Agency should amend the 1972 definition of asbestos, and the proper scope of the revised standards with respect to the three non-asbestiform minerals. However, OSHA acknowledges that letters and petitions from rulemaking participants and non-participants have been received since the revised standard's June 17, 1986 issuance, which contain additional comments, assertions, and information which the rulemaking record may not fully reflect, and which request an opportunity to submit further information on these questions. To assure that these submissions are fully considered by OSHA, to allow public comment on these additional submissions, and to invite additional comment and evidence on all issues relevant to regulation of non-asbestiform tremolite, anthophyllite and actinolite, OSHA will shortly by Federal Register notice reopen the rulemaking record on the limited issue of whether non-asbestiform tremolite, anthophyllite and actinolite should continue to be regulated as presenting the same health risk as asbestos, or should be treated in some other way.

Sincerely,

John A. Pendergrass
Assistant Secretary of Labor

END OF DOCUMENT REACHED

ITEM 41

STANDARD NUMBER 1910.1001 and 1926.58
INFORMATION DATE 8/6/905
SOURCE DESCRIPT. Letter to Peter G. Nash, Esq.
COMPANY Osletree, Deakins, Nash, Smoak and Stewart
STATUS Current

SEP 5 1986

Peter G. Nash, Esq.
Osletree, Deakins, Nash,
Smoak and Stewart
Suite 230
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Nash:

This is in response to your July 17 petition on behalf of the Minnesota Mining and Manufacturing Company (3M), which requested the Occupational Safety and Health Administration (OSHA) to reconsider and stay the effective date of the respirator selection tables in OSHA's revised standards for asbestos, tremolite, anthophyllite and actinolite. The revised standards were issued on June 17, 1986 (51 Fed. Reg. 22612 et. seq.) and will be codified at 29 C.F.R. 1910.1001 and 1926.58 (1986). It amends OSHA's current asbestos standards issued on 1972 and codified at 29 C.F.R. 1910.1001 (1985).

Specifically, 3M has objected to the standards' provisions requiring respirators used for protection against asbestos to be equipped with high efficiency particulate (HEPA) filters, and disallowing the use of disposable respirators (1). In this regard, 3M requests that both disposable respirators and respirators with non-HEPA filters be allowed where employees are exposed to asbestos at levels up to ten times the permissible exposure limit (PEL). Your request focuses mainly on 3M's concern that use of its 8710 respirator, which is both disposable and non-HEPA, should be permitted.

powered, air-purifying respirators (PAPRs) for employees exposed to airborne asbestos, tremolite, anthophyllite, and actinolite up to concentrations of 100 times the permissible exposure limit (PEL). 3M has urged OSHA to limit use of these respirators to concentrations up to 25 times the PEL.

 (1) 3M expresses doubt about whether both the general industry standard and the construction standard prohibit the use of HEPA disposable respirators. As evidenced by the non-mandatory appendices to both standards, all disposable respirators are intended to be prohibited. See 51 Fed. Reg. 22754, 22768.

After thoroughly reviewing your request, we have decided that reconsideration of the standards is not warranted, and thus your request is denied. We believe our original decisions were correct and were supported by substantial evidence in the record as a whole. Nor has 3M's submission of new, non-record evidence persuaded us that the record should be reopened. Your request for a stay is also denied. Our reason for these decisions follow.

I. OSHA DOES NOT FIND IT APPROPRIATE TO RECONSIDER OR STAY THE RESPIRATOR SELECTION PROVISIONS FOR NEGATIVE PRESSURE RESPIRATORS.

The standards' respirator selection tables are intended to assure that workers exposed to a confirmed human carcinogen are provided with respirators that will provide optimal protection over the entire range of environmental conditions likely to be encountered. The OSH Act directs OSHA to "set the standard which most adequately assures, [emphasis added] to the extent feasible, that no employee will suffer material impairment of health or functional capacity" and sets as a criterion for standards "attainment of the highest degree [emphasis added] of health and safety protection for the employee." (Section 6(b)(5).)

As 3M acknowledges, the degree of protection provided by a negative pressure respirator is a function of both filter efficiency and face fit. For exposure above the PEL and up to 10 times the PEL, the standards require half-mask, air-purifying respirators equipped with HEPA filters (2) because HEPA filters provide greater and more reliable protection to workers than non-HEPA filters, assuming equivalent face fit of the respirator. Indeed, the superiority of HEPA filters is self-evident. By definition, HEPA filters must be capable of trapping and retaining at least 99.97 percent of particles 0.3 microns or larger (See 51 Fed. Reg. 22733, 22735 Table 1; 22756, 22758 Table 1). In contrast other filters can be certified by the National Institute of Occupational Safety and Health (NIOSH) as long as they are only 99% efficient. Thus, non-HEPA respirators allow in as much as 30 times as many particles as do high efficiency filters. See e.g. 30 C.F.R. 11.140-4.

 (2) OSHA acknowledges that positive pressure respirators (PAPRs and air supplied) are inherently more protective than negative pressure respirators (51 Fed. Reg. 22695; 22718-19), but OSHA has not required them in the standards as the first line of defense because they are not always feasible. Their costs may preclude their use in very low level, intermittent exposure situations, and, in some situations, air supplied respirators have the potential for dangerously restricting movement (from tangled air lines or bulky air tanks) and communication (51 Fed. Reg. 22719). To account for the occasional unreliability of negative pressure respirators, PAPRs must be provided upon request so long as they will provide adequate (51 Fed. Reg. 22696).

Additionally, the standards prohibit the use of disposable respirators, with or without HEPA filters, because disposable respirators, in general, permit greater face seal leakage under most conditions of use than half-mask respirators with elastomeric facepieces and replaceable filters, and thus they cannot be relied upon to provide optimal protection. 3M disputes both of these findings, but we believe there is substantial support in the record for both findings, including testimony from the National Institute for Occupational Safety and Health (NIOSH), respirator manufacturers, independent experts, industrial users who must wear respirators. This evidence is buttressed by the Agency's collective experience promulgating and enforcing health standards. 3M's criticism of OSHA's analysis of several key studies in the record, combined with its citation of evidence in the record not cited by OSHA and its introduction of new, non-record evidence (the Shiloh Brake study) does nothing to alter these findings.

A. The Agency's conclusion that HEPA filters provide greater protection against asbestos than non-HEPA filters is supported by the record.

There is no known threshold for asbestos-caused cancer. Each additional inhaled fiber increases the risk of disease. OSHA's revised standards require HEPA filters in negative pressure respirators because HEPA filters provide more reliable protection than non-HEPA filters. They have higher filter efficiency (by definition, an approved HEPA filter will provide 99.97% filtration efficiency against particles 0.3 microns in size.) (3) and thus permit fewer asbestos fibers to be inhaled by a respirator wearer. While some non-HEPA filters (including 3M's 8710) can provide a high degree of filter efficiency against asbestos, the evidence in the record clearly demonstrates that, when compared under the same conditions, respirators with HEPA filters, as a class, outperform non-HEPA filter respirators in filter efficiency.

(3) 3M appears to concede the "theoretical advantage of HEPA filters" (Petition, p.9, footnote 9), but attempts to minimize the advantage by pointing to face seal leakage that is caused by poor fitting and poor respirator maintenance. Face seal leakage is a different issue that is separately discussed, infra.

As OSHA stated in the preambles to the standards (51 Fed. Reg. 22695; 22718), the study performed for OSHA by the Los Alamos Scientific Laboratory (LASL) (Exs. 84-472; 93-5) demonstrates the superior performance of HEPA filters. OSHA had LASL perform this study because testing of filter media against asbestos had been inadequate. (4) The study compared filter efficiency of one HEPA and four non-HEPA filters under test conditions that were believed to be relevant to typical asbestos exposure and that would measure relative effectiveness under adverse conditions (Ex. 93-5, p.4). The only filter that performed well (less than 0.1% penetration) in all experimental conditions was the HEPA filter.

(4) 3M cites (Petition, pp.7-8) nine studies to demonstrate that non-HEPA filters are as efficient against asbestos as HEPA filters. Two of these exhibits are not "studies"; the 1973 Selikoff article (Ex. 91-14) reports the results of a previous study done by the E.I. DuPont de Nemours Company (DuPont), but no data is presented to permit analysis, and the Japuntich article (Ex. 91-14) is a review article for lay readers of filtration mechanisms. The remaining studies have numerous deficiencies. For example, in some (Howie, Ex. 91-14; Johnston, Ex. 91-14; McGill 1971, Ex. 91-14), the filter medium was challenged with asbestos concentrations hundreds of times higher than expected exposure. This condition is irrelevant to a determination of filter efficiency at low levels because penetration rate is a function of concentration. High concentrations will quickly load (and clog) the filter medium, creating high efficiency, but also creating greater breathing resistance that results in more face seal leakage. In others (Weeks and Burns, Ex. 84-352), efficiency was measured in mass penetration, not fiber count, which is not an adequate method for measuring filter efficiency for asbestos filters (See Japuntich, Ex. 91-14, p.150). In still others (Eardswick, Ex. 91-14; Gerson, Ex. 90-251), the testing was not done with asbestos. This is equivalent to an exposure of 0.02 f/cc, which, according to OSHA's risk calculations (51 FR 22644), has a cancer risk of approximately 67 per 100,000 exposed workers over 45 years. A HEPA filter, by contrast, will allow penetration of only 6000 fibers, equivalent to an exposure of 0.0006 f/cc or a 45 year risk of 2 per 100,000.

At best, these studies show that some non-HEPA filters, such as 3M's 8710, demonstrated as much as 99% filter efficiency against asbestos and other aerosols (e.g., Cherrie, Ex. 1014; McGill 1971, Ex. 91-14). Significantly however, even this degree of efficiency is not equivalent to the 99.97% efficiency required for HEPA filters. The difference between the very best non-HEPA filter, assuming 1% penetration, is not "imperceptible" or "minute" as 3M alleges (Petition, p.9) in terms of health risk. One percent penetration will allow 200,000 fibers to be inhaled in an 8-hour working day at a concentration of 2 f/cc (10 times the PEL and the upper limit for using half-mask, air-purifying respirators).

3M's criticism (Petition, pp.27-33) of OSHA's interpretation and use of this study is neither accurate nor valid. First, 3M states that the experimental conditions under which the respirators were compared (high humidity and high concentration of oil mist) were "unlikely to be found in any asbestos workplace" (Petition, p.27; see also Ex. 250E, p.9). This is clearly wrong because water is used in wetting asbestos materials during removal operations, and oil and other mists are not uncommon in manufacturing workplaces where asbestos could be encountered (See testimony of LASL engineer, Sidney Socerholm, Ph.D., Ex. 93-5, p.4).

Third, 3M criticized OSHA's reliance on the LASL study because "LASL did not recommend that non-HEPA filters be disallowed for protection against asbestos in all situations" (Petition, p.30). Again, there is no relevance to this claim; LASL's role was to measure and compare respirator filters, not make regulatory judgments. LASL made no recommendations concerning which respirators should be allowed or disallowed.

L3

Moreover, the studies cited by 3M also show some non-HEPA filters have performed very poorly, allowing as much as 20% penetration. 3M attempts to downplay these poor results by claiming that these inefficient respirators are no longer marketed (Petition, p. 32). That argument is unpersuasive. Regardless of their present status, the respirators that inderiably tested poorly could be put back on the market at any time. OSHA must address respirators by their class and not on a model by model basis. Since non-HEPA respirators tested poorly as a class, it is justifiable to preclude use of that class.

Similarly irrelevant is 3M's criticism (Petition, p.31) that LASL did not test in-use protection factors. This study was designed to compare filter media, not protection factors when the respirator is worn. This issue is discussed below with respect to fitting of disposable masks.

Fifth, 3M claims (Petition, p.31) that OSHA's judgment against non-HEPA filters as a class was biased by the poor performance of the American Optical R1050 respirator when in fact this performance was due to measurement errors discovered when the R1050 performed poorly in a subsequent (DuPont) study. The performance of the R1050 played a minor role in OSHA's decision, and there is no basis for 3M to infer otherwise. Also, there is no evidence that the R1050's performance in the LASL study was in any way related to the problem encountered in the DuPont study.

Finally, 3M claims (Petition, p.31) that the results of the study are misleading because only one HEPA filter was tested against four non-HEPA filters, and had additional HEPA's been tested, some could have performed poorly. There is little merit to this argument. Almost all HEPA filters are made from an identical glass fiber filter efficiency among HEPA filters. The same cannot be said of non-HEPA filters, which are made from a great variety of materials (Japuntich, pp. 1140-141). While there is no way of demonstrating how other HEPA filters would have tested in the LASL study, based on the data we have, we have seen poor performance among some non-HEPA filters, but not among HEPA's.

Additional evidence in the record supports the standards' requirements for HEPA filters. NIOSH, which tests respirators and certifies that approved models meet the criteria established for a particular class of respirator, testified that HEPA filters are necessary to provide adequate protection against asbestos (Ex. 124A, Attachment A). (5) Organization Resources Counselors, Inc., an industry association, recommends "HEPA filters only" for respiratory protection against asbestos (Ex. 123A, p.5). Two respirator manufacturers, Siebe North, Inc. (Ex. 90-237), maker of North and Norton (Ex. 117E) brands, and American Optical Corporation (Ex. 90-234) assert the superiority of HEPA filters. The Independent Safety Equipment Association, an association of respirator manufacturers which 3M quotes (Petition, p. 6) as opposing a requirement for HEPA filters, says (Ex. 90-182, p.2) that "with respect to the issue of high efficiency versus non-high efficiency filters for respirators used in conjunction with asbestos, ISEA does not currently have sufficient technical data to make a recommendation or distinction between the two"

(5) 3M disputes (Petition, pp.22-25) OSHA's conclusion that the NIOSH certification criteria dictate use of HEPA filters. 3M concedes that, under both the old and revised asbestos standards, its 8710 respirator is ineligible for certification under subsection (a) of NIOSH's filter certification requirements (30 C.F.R. 11.130(a)). However, 3M argues that NIOSH previously certified some non-HEPA filters specifically for protection against asbestos under the old PEL. 3M's reliance on this claim is misplaced, because it does not address the use of these respirators under the new PEL. In addition, even if disposable were previously certified, that action did not comport with the requirements of subsection (f) (30 C.F.R. 11.130(f)). Specifically, subsection (f) allows for the use of "respirators with replaceable filters, designed as respiratory protection against asbestos-containing dust and mist." Ibid. By its plain terms, a "disposable" respirator cannot be a "respirator with a replaceable filter."

In sum, the evidence in favor of HEPA filters over non-HEPA filters is substantial. Moreover, in the absence of conclusive evidence to the contrary, OSHA feels compelled to require the means which provide the greatest degree of protection, to the extent feasible, when dealing with a known human carcinogen like asbestos. As former OSHA Assistant Secretary Dr. Morton Corn stated, "Asbestos is a human carcinogen. We should use those protective measures that have proven most effective" (Tr. July 3, p.12; see also NIOSH letter to respirator manufacturers, Ex. 124A, Attachment A, and testimony of David Kirby from the University of Alabama, Ex. 93-6, p.15).

B. The Agency's conclusion that disposable respirators with or without HEPA filters permit greater faceseal leakage than elastomeric facepiece respirators is supported by the record.

In addition to filter efficiency, an important factor in protecting workers is the face fit of a respirator. As several experts testified, protection from a good respirator can be easily compromised by excessive face seal leakage due to poor face fit (see e.g., Pritchard, Ex.250B, p.5).

Deficiencies in employer respirator programs are common and they too can quickly compromise the protection provided by the respirator (Ex.250B). 3M alleges (Petition, p.18) that the record demonstrates "no significant difference" in workplace protection factors (6) provided in asbestos environments between disposable and elastomeric facepiece respirators. On the contrary, the evidence in the record strongly supports OSHA's finding that, when compared to elastomeric facepiece respirators, disposable respirators do not provide a reliable face fit during use.

OSHA stated its objections to the use of disposable respirators in the preamble to the construction standard (51 Fed. Res. 22718). We concluded that disposable respirators could not be used because they are, as a class, not equipped with HEPA filters, (7) and there is no acceptable method for verifying their fit. OSHA acknowledges that disposable respirators can be qualitatively fit tested in a test chamber using the saccharine aerosol protocol described in the appendices to the standards (51 Fed. Res. 22743; 22766) but, just as importantly, the record clearly shows that, as a class, disposable respirators do not provide a reliable face fit after initial fit testing. They can not be adequately fit checked each time the same or new respirator is donned (8) and they are more subject to abuse, misuse, and degradation of face fit during actual use than elastomeric facepiece respirators.

(6) The protection factor of a respirator is a ratio of concentration of the air contaminant outside the respirator and concentration inside the respirator. It takes into account filter efficiency as well as leakage through the face seal, cartridge holders, and exhalation valves. A protection factor can be determined during quantitative fit testing (fit factor) or during actual workplace use (workplace protection factor). According to respirator expert John Pritchard (Ex. 250B, p.11), respirator protection factors obtained by quantitative fit testing should be divided by a safety factor of at least 10 to account for degradation of face fit during use. In its respirator selection tables, OSHA requires respirators that will reliably meet desired protection factors not only when fit tested but during all conditions of use.

(7) While this objection does not relate to disposable respirators equipped with HEPA filters (a small number of disposable respirators, such as 3M's 9940, do have HEPA filters), the objections to disposable respirators on the basis of face fit applies.

(8) 3M claims (Petition, p.38) that disposable respirators can be fit checked, as shown in non-record 3M test data submitted as Appendix E to the Wilmes Affidavit. OSHA reviewed this study when it was submitted as an attachment to 3M's February 10, 1986 request for reconsideration and stay of the cotton dust standard. OSHA rejected its validity then (Reply to 3M, April 15, 1986, pp.8-9; Secretary of Labor's brief, pp.73-75; U.S. Court of Appeals for the District of Columbia Circuit), and will still adhere to our previous evaluation.

Typical performance of disposable respirators is exemplified in a laboratory study by Lowry et al. at LASL in 1977 (Ex. 219). This study, conducted on human test subjects, concluded that only two of the six models of disposable respirators tested provided a protection factor of five to all members of the test panel; that one model had decreased efficiency after storage in a humid environment; and that two models failed to maintain protection levels throughout a six-hour workshift. Opposition to disposable respirators in the rulemaking came from government, industry, and independent experts. NIOSH's official position is that it is not a "prudent occupational health risk" (Tr. June, p. 75) to use disposable respirators for asbestos exposure (notwithstanding their current certification). Opposition also came from the North Carolina Occupational Safety and Health Administration (Ex. 92-B), the University of Alabama (Tr. June 20, p. 196), and the U.S. Army (Ex. 90-45).

Workers unanimously opposed use of disposable respirators, contrary to 3M's assertion that workers find them more comfortable and are therefore more likely to use them. Workers stated that disposable respirators do not fit well (Tr. June 29, p. 80-81) and failed to provide a good face seal (Tr. June 29, p. 105). Dr. Mirer from the United Auto Workers stated that "a field fit check . . . can't be performed on the paper dust mask" (Ex. 172A, p. 13). See also Exs. 131, p. 17; 134, p. 2; 223, p. 4; 277; 330; Tr. July 3, pp. 160-161, 193).

Industrial hygiene experts were no less opposed to disposable respirators. William Ewings of the Georgia Institute of Technology testified that disposable respirators are "not adequate" and should not be permitted (Ex. 124A). Dr. Morton Corn, a former OSHA Assistant Secretary and currently Professor of Environmental Health Engineering at the School of Hygiene and Public Health at Johns Hopkins University, said, "We know that single-use [disposable] respirators, currently certified by NIOSH for asbestos, are associated with poor performance" (Tr. July 3, p. 11) and ". . . of all of the respirators I deal with, [disposables] seem to be the most improperly used in my experience" (Tr. July 3, p. 45).

While a number of industry parties advocated the use of disposable respirators (Exs. 84-457, 90-174, 92-44, 241A, 263, 328), industry views were divided on the issue (See e.g., Exs. 123A, Appendix E, p. 6; 123B; 2504, Appendix D; Tr. June 29, p. 236). Standard Oil Company of Indiana stated (Ex. 123A, App. D, p. 4) that the company's choice of elastomeric facepiece respirators was based primarily on the high assurance these give of a repeatable quality of fit, and the ease of performing the standard positive and negative pressure fit checks each time the device is put on by the employee. Single-use, disposable types were rejected because of the difficulty in performing a positive or negative pressure fit check, and due to the fact that most brands are "wearer formed" each time they are used and may thus offer less assurance of a consistent fit.

3M contends that two studies in the record support its view that disposable respirators provide equivalent protection to elastomeric facepiece respirators -- a 1974 study by Revoir (Ex. 203) concerning protection against cotton dust and a 1985 study by DuPont (Ex. 339).

The Revoir study should not be given great weight here. First, it did not compare disposable respirators with elastomeric facepiece respirators; it simply measured protection factors obtained from use of three disposable respirators. Second, it tested exposure to cotton dust particles not to asbestos fibers. Cotton dust particles have different collection characteristics than do asbestos fibers (See Japuntich, Ex. 91-14, pp. 142-143). Use of this data for an asbestos determination, therefore, would require extrapolation which could result in uncertainties. Extrapolation of cotton dust data to environmental asbestos conditions is unwarranted here given the availability of studies specific to asbestos.

The DuPont study compared protection factors obtained with seven respirators used in a controlled asbestos removal operation. The study compared three disposable respirators (3M's 8710 and 9910 and American Optical's (AO) R1050), a self-contained breathing apparatus (SCBA), and three elastomeric facepiece respirators, two of which had HEPA filters. DuPont reported that all respirators except the AOR1050 gave protection factors greater than 10 (at a 95% confidence level), with the negative pressure respirators performing better than the SCBA. The only statistically significant difference measured however was between the 3M 9910 and the AO R1050 (Ex. 339, p. 7).

OSHA discussed the DuPont study in the preamble to the standards and concluded that the study was "inconclusive" (51 Fed. Res. 22717) because it contained unexplained inconsistent findings and was performed in a carefully controlled environment not representative of typical respirator usage (51 Fed. Res. 22696). 3M's attempted explanation of the inconsistent findings (Petition, pp.14-16) is merely speculative. There simply is no good reason here to give undue weight to a study which arrived at the remarkable result that the respirators indisputably known to be highly protective (i.e. the SCEAs) scored lower than other respirators. A more probable explanation can be attributed to flaws in the study itself, such as the use of a nonstandard counting system for fibers, which gives greater variability in measurement results. In any event, the study at best only demonstrates what OSHA concedes -- that is, that 3M's disposable respirators often perform better than other members of their class, but that the class as a whole, as evidenced by the AO R1050's performance, cannot provide as reliable protection up to 10 times the PEL as elastomeric facepiece respirators with HEPA filters. (9)

3M submitted with its petition a study of respiratory protection among brake mechanics (Shiloh Brake study) to support its contention that disposable respirators provide adequate protection. This study is not part of the rulemaking record, and it was not considered by OSHA in making its regulatory decisions. Our inquiry in evaluating 3M's reconsideration petition is to determine whether OSHA's evaluation of the record was correct and whether our regulatory decisions were supported by record evidence. However, we have reviewed the Shiloh Brake study and have concluded that because it has serious limitations and methodological flaws, it adds little if any additional weight to 3M's claims.

(9) NIOSH tests and certifies respirators by class or type. OSHA's respiratory selection requirements, as a matter of administrative convenience, conform to the NIOSH classifications. OSHA must be assured, in setting regulatory requirements, that all respirators in a class meet performance specifications. John Fritchard testified that "It is a matter of conservatism, and of practicality, when a single number has to be assigned to an entire class of respirators, then it must be assigned on the basis of the worst performing facepiece in that class" (Ex. 250E, p.10).

The major limitation and critical flaw is the very limited number of test subjects used to estimate the performance of each model of respirator. The small number of subjects used in the study led to two major problems with the resulting workplace protection factor (WPF) data. First, the Shiloh sample sets for each respirator could not be representative samples because they could not contain a representative range of facial characteristics and behavioral factors. Second, the small sample size led to a large statistical uncertainty in the summary results used as the basis for 3M's conclusion. Because of this uncertainty, the Shiloh data are very "soft" and effectively worthless for trying to judge the performance of any individual respirator or for trying to judge similarities or differences between masks or classes of masks.

In addition, there are probable fundamental errors in almost all reported WPF data values due to use of an erroneous limit of detection for the asbestos analytical method. It appears that almost all of 3M's WPF values should be reduced by 63%. The data analysis in the Shiloh Brake study failed to correctly analyze the WPF variability for each worker and between workers. A considerably more sophisticated statistical analysis would be needed to draw accurate interpretations from the small amount of available data, if the WPF data values could be considered valid, representative, and accurate, which is not the case. Lastly, it appears that unwarranted selective removal of the smallest observed WPF observations occurred before the final WPF analysis and reporting of results.

II. OSHA DOES NOT FIND IT APPROPRIATE TO RECONSIDER THE RESPIRATOR SELECTION PROVISIONS FOR PAPRS.

3M has petitioned OSHA to reconsider its decision to permit the use of PAPRS to provide protection up to 20 f/cc or 100 times the PEL. 3M's view is that PAPRS can be safely used only up to 5 f/cc or 25 times the PEL (Petition, p.20; footnote 20; Wilmes affidavit, pp.6-7). This view is based primarily on a recommendation to OSHA by the American National Standards Institute's respirator committee concerning OSHA's review of the general respiratory protection standard, 29 CFR 1910.134. The committee's recommendation, according to the affidavit, is based on its review of several studies apparently not part of the asbestos rulemaking record.

This issue was not addressed in detail during the asbestos rulemaking. OSHA relied primarily on the NIOSH recommendation to assign PAFR's a protection factor of 100. 3M has raised an issue that is applicable to all standards for which respiratory protection is required, and we believe it is most appropriate to address it in the context of our review of 29 CFR 1910.134. We will then make revisions, as necessary, to standards that allow PAFR's in concentration up to 100 times the PEL. 67

III. A STAY IS UNWARRANTED

For the above reasons, OSHA does not believe reconsideration of any provisions of the respirator selection tables is warranted. 3M has requested that, in the absence of a decision to reconsider the disallowance of non-HEPA or disposable respirators, OSHA stay these provisions pending judicial review.

3M has failed to demonstrate the criteria necessary for a stay. First, as explained at length in this letter, the Agency believes that its determinations regarding respirator selection are supported by substantial evidence of the record, and will be upheld by the court of appeals on review. Hence, 3M is unlikely to succeed on the merits of its action. Second, 3M has failed to show irreparable harm. Rather, 3M has presented only bare allegations and unsupported speculations about some possible economic injury. Third, a stay of the Agency's decision to require use of the most efficient filters would disserve the public interest by contravening Congress' mandate that OSHA "assure so far as possible every working man and woman in the Nation safe and healthful working conditions." (29 U.S.C. 651(b)) (emphasis supplied).

Finally, but importantly, the very parties whom the asbestos standards are intended to protect -- the employees themselves -- believe they would be adversely affected by the stay you have requested. The unions representing these employees have intervened in your court action and have urged both the Agency and the court of appeals to deny your request. They have indicated their strong support for OSHA's decision to prohibit the use of disposable non-HEPA respirators in lieu of more protective respirators. The union's position indicates that it would be adversely affected by the granting of a stay. Based upon our evaluation of the relevant criteria we believe a stay would be inappropriate. Accordingly we are denying your requests for reconsideration of the standards respirators provisions and your request for a stay.

Sincerely,

Frank A. White
Deputy Assistant Secretary

****END OF DOCUMENT REACHED****

ITEM 42

STANDARD NUMBER	1910.1001
INFORMATION DATE	860718
SOURCE DESCRIPT.	Letter to Dennis M. Race
COMPANY	Akin, Gump, Strauss, Haver & Feld
STATUS	Current

JUL 18 1986

Dennis M. Race
Akin, Gump, Strauss,
Haver & Feld
1338 New Hampshire Ave., N.W.
Suite 400
Washington, D.C. 20036

Dear Mr. Race:

This is in response to your July 14, 1986 letter on behalf of R. T. Vanderbilt Co. in which you request that OSHA reconsider your request for a stay of the provisions of the revised standards promulgated June 17, 1986 governing occupational exposure to asbestos, tremolite, anthophyllite and actinolite, to the extent the standards regulate occupational exposure to for-asbestiform tremolite, anthophyllite and actinolite (51 Fed. Reg. 22612 et. seq.). The revised standards, which amend OSHA's 1972 asbestos standard, 29 CFR 1910.1001 (1985), are scheduled to take effect July 21, 1986.

months (until April 21, 1987) of the effective date of the revised standards insofar as they apply to occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite. This stay is granted for the purpose of reopening the record and instituting supplemental rulemaking limited to the issue of whether non-asbestiform tremolite, anthophyllite and actinolite should continue to be regulated in the same standards and to the same extent as asbestos, or should be treated in some other way. This stay applies only to the application of the revised standards to non-asbestiform tremolite, anthophyllite and actinolite. In all other respects, the revised standards will take effect as previously scheduled.

It should be noted that during the pendency of the stay, the provisions of the 1972 standard governing occupational exposure to asbestos (29 CFR 1910.1001 (1985)) will remain in effect with respect to regulation of non-asbestiform tremolite, anthophyllite and actinolite. (See 51 Fed. Reg. at 22732).

OSHA is granting this temporary stay in part to enable the Agency to review a July 17, 1986 letter from the Director of the National Institute for Occupational Safety and Health (NIOSH) and certain related NIOSH staff memoranda which have recently been brought to its attention, as well as submissions concerning the appropriateness of regulating non-asbestiform tremolite, anthophyllite and actinolite in the revised asbestos standards.

OSHA believes, as stated in our July 9, 1986 letter, that it provided adequate notice to the public that its recent asbestos rulemaking would address whether the Agency should amend the 1972 definition of asbestos, and the proper scope of the revised standards with respect to the three non-asbestos minerals. However, OSHA acknowledges that letters and petitions from rulemaking participants and non-participants have been received since the revised standards' June 17, 1986 issuance, which contain additional comments, assertions, and information on these questions. To assure that these submissions are fully considered by OSHA, to allow public comment on these additional submissions, and to invite additional comment and evidence on all issues relevant to regulation of non-asbestiform tremolite, anthophyllite and actinolite, OSHA will shortly by Federal Register notice reopen the rulemaking record on the limited issue of whether non-asbestiform tremolite, anthophyllite and actinolite should continue to be regulated as presenting the same health risk as asbestos, or should be treated in some other way.

Sincerely,

John A. Pendergrass
Assistant Secretary of Labor

July 14, 1986

John A. Pendergrass
Assistant Secretary of Labor
for Occupational Safety and Health
U.S. Department of Labor
Room S-2315
200 Constitution Avenue, N.W.
Washington, D.C. 20210

In re: STANDARDS FOR OCCUPATIONAL EXPOSURE TO
ASBESTOS IN GENERAL, MARITIME AND
CONSTRUCTION INDUSTRIES
(OSHA DOCKET NO. H-0330)

REQUEST FOR RECONSIDERATION BY THE
R.T. VANDERBILT COMPANY, INC. FOR
A STAY PENDING JUDICIAL REVIEW

Dear Mr. Pendergrass:

The undersigned is in receipt of your July 9, 1986 response to our administrative stay request on behalf of the R.T. Vanderbilt Company, Inc. ("Vanderbilt"). We are urging you to reconsider your denial of our stay request because it is apparent from your letter that you or your staff have made some incorrect factual assumptions and apparently have failed to take into account some relevant evidence. Our reply brief and supportive documentation recently filed in the Second Circuit Court of Appeals (which we have enclosed for your review and consideration), address most of the points we wish to call to your attention. However, because of the urgency of this request to reconsider, we have summarized below certain relevant information we felt compelled to call to your attention prior to the July 15

in upstate New York; where their employees regularly handle the talc in question. There are at least three separate facilities located in the jurisdiction of the Second Circuit which are plainly covered by OSHA for purposes of its Asbestos Standard and its application to tremolitic talc: (a) a sampling facility at Hoyt Street in Norwalk, Connecticut; (b) a Research and Development Laboratory and related facility at Winfield Street in Norwalk, Connecticut; and (c) a warehouse facility at its Bethel Chemical Plant in Bethel, Connecticut. A variety of Vanderbilt employees, including laborers, engineers, technicians, and administrative staff, regularly handle the talc long after it has been mined, milled and packaged for distribution hundreds of miles away at the Gouverneur Mine (which admittedly is covered by the requirement set forth in last year's Hazard Communication Standard which will be affected as well by the new Asbestos Standard.

2. Sufficiency of Evidence. With regard to relevant evidence you note that (1) Vanderbilt has not presented any additional new evidence and (2) the evidence which OSHA relies upon, while "not conclusive" is "generally positive" and "certainly suggestive". Although we address our fundamental concerns about these two statements in detail in our reply brief, we now request only that you review the three memoranda that the undersigned obtained on July 11, 1986 from NIOSH in response to a Freedom of Information Act Request. As demonstrated by the three attached memoranda (see Tab A), NIOSH officials disagree with OSHA's use of their study as justification for inclusion of these three nonasbestiform minerals. In a memorandum dated June 25, 1986, the Director of NIOSH's Division of Respiratory Disease Studies states that "this inclusion of non-asbestiform tremolite, anthophyllite, and actinolite appears to be without scientific justification" (p. 3). John Gamble, one of the co-authors of the original NIOSH study, notes in a memorandum dated November 22, 1985, that:

the [Vanderbilt] company may be correct in their contention that New York talc is not causally associated with increased risk of lung cancer. Since NIOSH authors published these original conclusions, NIOSH should correct them if they are incorrect. Before NIOSH makes any conclusions about health risk the mortality study should be updated and analyzed by latency and exposure and controlled for smoking and other exposures. (p. 3).

In addition, Dr. Gamble also notes that several of OSHA's criticisms of the study by Stille and Tahershaw, which shows no excess risk of respiratory cancers among New York State talc workers, apply with equal force to the original NIOSH study. Further, Dr. Gamble notes that OSHA's reliance upon the summary of the Kilovuo study contained in the original NIOSH report is inapposite as that study dealt with anthophyllite asbestos miners, whose exposures were quantitatively and qualitatively different from those of New York talc miners exposed to nonasbestiform anthophyllite in talc ores.

3. Continuous Regulation. We also dispute OSHA's assertion that the three minerals in question are merely affected by changed nomenclature and will only continue to be regulated just as before. For all intents and purposes, there has been no effective regulation of tremolite, anthophyllite and actinolite by OSHA since 1972 (and probably prior to that time frame). As you point out, from 1974 until 1977 there was no regulation of tremolite. Then, for approximately the next two years, OSHA was engaged in a few sporadic administrative actions involving Vanderbilt's products. From 1979 to present, to our knowledge, there has been no regulatory action by OSHA involving tremolite, anthophyllite or actinolite for Vanderbilt products -- or for anyone else's products containing said minerals nationwide. To insist that the three minerals have been regulated is plainly a distortion -- not only on the basis of our firsthand experience, but also as confirmed by the numerous supporting affidavits from related industries which we have attached under Tab B.

As reflected by these affidavits, the mining community is outraged by OSHA's current attempt to regulate as asbestos virtually all products containing minerals mined in the Northern and Eastern States. On the basis of the "Notice" filed in April 1984, no one could have anticipated that OSHA would drop the PEL for the three minerals in question (regardless of their nomenclature) to 0.2 fibers per cubic centimeter and also initiate a 0.1 action level. Under such levels, literally all mining is covered. Obviously, if these interested parties were aware of such potential ramifications, they would not have waited until now to voice their legitimate concerns.

4. Chemical Identity ("twins"). Finally, we urge that you consult directly with any responsible expert who has basic knowledge of the mineralogical sciences to review the scientific conclusions your staff provided to you. In particular we refer to the conclusions reached regarding the chemical equality of certain minerals. We submit that the conclusions are wrong; however, even assuming they have some merit, we ask that someone reconcile why on the basis of so-called chemical equality, OSHA has not expanded its Asbestos Standard to also include the chemical twins for the other asbestos minerals chrysotile (the forasbestiform mineral riebeckite), and amosite (the nonasbestiform mineral cummingtonite-grunerite).

We feel that on the basis of these contentions together with the additional information set forth in our reply brief and supporting documents, the immediate issuance of an administrative stay pending judicial review or an amicable resolution of the issues we have raised is warranted.

Respectfully submitted,

AKIN, GUMP, STRAUSS, HAUER & FELD

By: Dennis M. Race, P.C.

Attorney for R.T. Vanderbilt Co., Inc.

cc: Honorable William E. Brock, III
Andrea C. Casson, Esq.
Assistant Counsel for
Appellate Litigation

July 9, 1986

Dennis M. Race
Akin, Gump, Strauss,
Hauer & Feld
1339 New Hampshire Ave., N.W.
Suite 400
Washington, D.C. 20036

Dear Mr. Race:

This is in response to your June 20, 1986 request on behalf of R.T. Vanderbilt Co. for an administrative stay of OSHA's revised standard governing occupational exposure to asbestos, tremolite, anthophyllite and actinolite for construction and general industry. The revised standard was issued on June 17, 1986 and published in the Federal Register on June 20, 1986 (51 Fed. Reg. 22612 et. seq.) and will be codified at 29 C.F.R. 1910.1001 (1985). In your letter, you request that OSHA stay the provisions of the revised standard that regulate occupational exposure to forasbestiform tremolite, anthophyllite and actinolite, pending judicial review of the standard. You have also filed a motion in the United States Court of Appeals for the Second Circuit to stay these provisions of the standard pending judicial review. We have carefully reviewed your submissions and have determined, for the reasons set forth below, that a stay is not appropriate.

The revised standard, like its predecessor, regulates occupational exposure to a variety of naturally occurring mineral silicates. The previous version of the standard labeled all covered silicates under the generic term "asbestos." Thus, prior to the recent amendment "asbestos" was defined to include "chrysotile, amosite, crocidolite, tremolite, anthophyllite and actinolite." 29 C.F.R. 1910.1001(a)(1) (1985). In current mineralogical parlance, however, the term "asbestos" generally refers to forms of these mineral silicates that chrysotillize as fibers. Recognizing that some of the covered silicates, i.e., tremolite, anthophyllite, and actinolite, can also appear in other forms, such as sheets, in addition to fibers, OSHA proposed (49 Fed. Reg. 14116, April 10, 1984) and promulgated (51 Fed. Reg. 22679, 22733) an amendment reflecting these mineralogical differences by redefining the term "asbestos" to include only the asbestiform varieties of these substances. The standard continues to cover however, the forms of these minerals that are not asbestiform. While these forms were excluded from the definition of asbestos, the standard was redesignated as applying not only to asbestos, but also to tremolite, actinolite, and anthophyllite, including the nonasbestiform varieties of these minerals. 29 C.F.R. 1910.1001(b) (1986). Thus, while the terminology has been changed, the revised standard regulates exposure to precisely the same substances that have been regulated under the 1972 standard.

to the extent they too contain "fibers," defined consistently with the well-recognized expert practice to mean "a particulate form of [the mineral] 5 micrometers or longer with a length-to-diameter ratio [aspect ratio] of at least 3 to 1." 29 C.F.R. 1910.1001(b) (1906). These fibers commonly are created when the nonasbestiform mineral is removed from the ground and processed. It bears emphasis that while the asbestiform and nonasbestiform varieties can be distinguished mineralogically, they are identical chemically (Tr. 82; 40 Fed. Res. 47652).

Inhalation of asbestos fibers has been shown to be associated with a number of disabling and often fatal diseases. These diseases include asbestosis, a nonmalignant scarring of the lungs which results in a progressive loss of pulmonary function; lung cancer; mesothelioma, a malignancy of the lining of the chest cavity (pleural mesothelioma) or abdomen (peritoneal mesothelioma); and other cancers, including cancer of the colon, rectum, esophagus, stomach, larynx, pharynx, buccal (cheek) cavity, kidneys, and ovaries. 48 Fed. Res. 51105 (Nov. 4, 1983).

Your client, R.T. Vanderbilt Company, mines and distributes industrial talc, which, as you explain, is used as an ingredient in ceramics, tiles, paints and other products. Tremolite, a calcium magnesium silicate, is often a major component of industrial talc. 40 Fed. Res. 47652 (Oct. 9, 1975). Since Vanderbilt is engaged in mining, it is regulated under the Federal Mine Safety and Health Act and not under the Occupational Safety and Health Act. See 30 U.S.C. 801 et. al. seq. Accordingly, your challenge to OSHA's actions is not based on any alleged hardship that Vanderbilt will incur as a result of being required to comply with OSHA's regulations; rather you allege that the threat to Vanderbilt's customers complying with the revised standard, and the "stigma" of association with asbestos, will dissuade the firm's customers from buying its product and result in loss of sales and profits. In this regard, we emphasize again that the revised standard does not regulate any substances that were not previously regulated. Tremolite was regulated under the old standard, but was specifically labeled as "asbestos" regardless of its mineralogical form. 1/ The revised standard merely makes a change in terminology; it does not alter the list of substances covered. Thus, Vanderbilt's customers have already been under an obligation to comply with the requirements of 29 C.F.R. 1910.1001 (1985), including not only the earlier exposure level requirements, but the labeling, medical surveillance, housekeeping and recordkeeping requirements as well. In this respect, we note that the preamble to the revised standard expressly provides that the provisions of the 1972 standard shall remain in effect if the revised standard is stayed (51 Fed. Res. 22632), as does the standard's text. 29 C.F.R. 1910.1001(o)(1) and 1926.58(o)(1) (1986). Thus, a stay would not remove tremolite from coverage under the prior standard, and would not relieve Vanderbilt's customers from their obligations to comply with the prior version of the standard.

Moreover, as explained in the preamble to the revised standard, OSHA has examined the relevant scientific and medical evidence, and concluded that continued regulation of nonasbestiform tremolite, anthophyllite, actinolite is necessary to adequately protect worker health (51 Fed. Res. 22631, 22679). We adhere to that view, and believe it is well supported by the record.

Your stay request asserts that OSHA "did not provide notice that it was considering expansion of the asbestos standard to include non-asbestiform minerals" (p. 2). The contention is inaccurate. First, OSHA did not "expand" the standard to include new minerals. Rather, as explained above, OSHA simply amended the definitional section of the standard to reflect current mineralogical terminology. But the scope of coverage under both the unrevised and the revised standard is identical, and specifically, both regulate employee exposure to tremolite, anthophyllite and actinolite fibers (51 Fed. Res. 22631).

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1/ As you note in your memorandum to the Second Circuit (pp. 3-4), the Agency in 1974 interpreted the standard to cover only fibrous tremolite. The Agency's position was most fully explained in its Field Information Memorandum ("FIM") #74-92 issued on November 21, 1974 (Addendum A), in which the Agency stated that in order for a fiber found in the talc to be considered "asbestiform or fibrous," it must be "5 times or more longer than wide." The FIM further stated that the policy was "temporary and [might] change as a result of an ongoing (National Institute of Occupational Safety and Health (NIOSH) study on this subject (see 29 U.S.C. 671)." Ibid. Accordingly, after preliminary findings of NIOSH in 1977 showed that workers exposed to tremolitic talc died from lung cancer and other respiratory diseases at significantly higher rates than normal populations, OSHA reverted to the 3 to 1 length/width ratio.

In response to NIOSH's findings, the Assistant Secretary for Occupational Safety and Health on January 4, 1977 canceled FIM #74-92, expressly noting "that a tremolite fiber is an asbestos fiber under OSHA's asbestos standard." (Addendum E).

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We cannot agree with the assertion that Vanderbilt had no notice or opportunity to comment on OSHA's action. OSHA issued a notice of proposed rulemaking in April 1984 which gave notice that the Agency would consider whether the definition of "asbestos" should be amended so that it was mineralogically "correct", and that the Agency would consider whether the definition of "asbestos" should be amended so that it was mineralogically "correct", and that the Agency sought comments regarding the scope of the revised standard (49 Fed. Reg. 14121-14122). Presumably as a consequence of this notice, Vanderbilt and other commenters testified and submitted extensive evidence relating both to the correct mineralogical definition and to the question of whether regulation of tremolite and anthophyllite should be retained based on the existing health evidence. In reaching our final determination, we reviewed all testimonial and documentary evidence in the record concerning the health effects of exposure to tremolite and anthophyllite. We note that although you allege Vanderbilt had inadequate notice of OSHA's action, in your request for a stay, you have not presented any additional relevant evidence.

The Agency's determination to continue regulating these nonasbestiform fibrous minerals under this standard is supported by substantial evidence and in accord with OSHA's statutory mandate to establish standards for toxic substances that "most adequately assure []...that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life." 29 U.S.C. 655(b) (5). Where the Agency proposes to amend a longstanding rule and remove a toxic substance from regulation, it bears a burden of justification. As applied here, the Agency concluded, and continues to believe, that the best available evidence does not support reduction in the scope of this standard, because it provides no sufficient basis for finding that such a contraction will not result in a significant risk of material health impairment. 51 Fed. Reg. 22679.

Regarding the evidence of health effects, we note at the outset several factors that you do not dispute. First, it is undisputed that exposure to asbestos fibers causes diseases such as asbestosis, mesothelioma, and lung cancer. Indeed, "OSHA is aware of no instance in which exposure to a toxic substance has more clearly demonstrated detrimental effects on humans than has asbestos exposure." 51 Fed. Reg. 22615. The need for regulation to prevent these degenerative diseases is particularly pressing given the long latency periods between exposure and any actual onset of the disease. Moreover, you do not dispute, and the epidemiological evidence demonstrates, that at least for asbestiform tremolite, there is a clear association between exposure and disease patterns uniquely associated with asbestos, including pleural plaques, mesothelioma, asbestosis, and lung cancer. See 51 Fed. Reg. 22630-22631; 48 Fed. Reg. 51117-51120. Nor do you contest the evidence demonstrating a causal relationship between exposure to many types of talc and asbestos-related diseases. See *ibid.* Rather, Vanderbilt has posited that the specific talc at its facility has not been proven to cause an excess of these diseases (See 51 Fed. Reg. 22630-22631). It asserts that its talc contains only the nonasbestiform variety of tremolite, and that variety is safe. 2/

As noted in the preamble, the studies relating directly to the talc at Vanderbilt's facility are not conclusive with respect to the facility. They are, however, generally positive and certainly supportive of a health danger. The epidemiological studies by Brown et al found that Vanderbilt miners had statistically significant increases in deaths from cancer and other asbestos-related diseases. 51 Fed. Reg. at 22630. The study by Gamble found significantly elevated prevalence of pleural thickening and calcification (conditions particularly associated with asbestos exposure) among Vanderbilt miners with no previous work experience and increased prevalences of cough, phlegm production, dyspnea, and x-ray abnormalities, and decreased pulmonary function among all Vanderbilt miners. *Ibid.* As the Agency noted, these studies are not conclusive, because the Vanderbilt miners had generally worked at other talc mines in the area as well, and it is conceivable that the excess risks are attributable to the other mines' talc rather than Vanderbilt talc. *Id.* at 22631. The evidence is certainly suggestive, however.

significant excess risk, is inconclusive because it studied only a small group of workers and because it did not follow the workers for the lengthy follow-up period necessary to make an accurate determination of risk for asbestos-related diseases (51 Fed. Res. 22631). Moreover, that study did find a nonsignificant increase in mortality from asbestos-related diseases, although the authors opined that this result could reflect a "smoking effect." Id. at 22630.

Several other authors have also investigated mortality and morbidity associated with anthophyllite and tremolite exposures. Studies by Kleinfeld and Kiviluoto generally found an excess risk of lung cancer and other respiratory diseases associated with exposures to these minerals (48 Fed. Res. 51117-51120). In addition, an animal study has shown excess risk from a sample of nonasbestiform tremolite, although other samples did not (51 Fed. Res. 22679).

+++++
2/ We note, however, that the National Institute for Occupational Safety and Health found that Vanderbilt talc contains the asbestiform variety of tremolite. 51 Fed. Res. 22630.

The record evidence summarized above plainly justifies the Agency's policy decision to retain regulation of all fibrous tremolite, actinolite, and anthophyllite, regardless of its mineralogic definition. This choice is particularly appropriate given that the asbestiform variations of these minerals are chemically identical to the nonasbestiform variations, and in light of the fact that the Agency regulates the nonasbestiform minerals only to the extent they produce fibers. Here, the Agency is addressing deadly diseases known minerals themselves, then by their chemically identical asbestiform twins. Although there is no scientific certainty as to whether nonasbestiform tremolite causes these diseases, "the Agency is free to use conservative assumptions in error on the side of overprotection rather than underprotection." Industrial Union Dept. v. American Petroleum Institute, 448 U.S. 601, 656 (1980). Here, OSHA has, in the Supreme Court's admonition and regulated towards greater worker protection. We remain convinced that, based upon the best available evidence, our decision best fulfills OSHA's congressional mandate. 3/

Finally, you have not demonstrated that irreparable harm will result to Vanderbilt if the standard is not stayed. As noted earlier in this letter, Vanderbilt itself is not required to comply with the OSHA regulation. You claim, however, that Vanderbilt's sales and profits will fall because its customers will stop using Vanderbilt's talc because of their obligations to comply with OSHA's standard and because of the stigma of being associated with asbestos. As we have already noted, however, this claim is not persuasive because all fibrous tremolite is already covered under the 1972 standard. Therefore, a stay will neither eliminate the Agency's regulation of tremolite nor remove the "stigma" of association with the same standard that regulates asbestos. 4/ Indeed, the new standard is in some respects less conducive to such a stigma, because nonasbestiform tremolite is no longer defined as asbestos. Moreover, your claim of a potential drop in sales and profits is not within the Act's "zone of interests" as defined by the courts, and for that reason, too, should not be given decisive weight. See R.T. Vanderbilt Co. v. OSHA, 728 F.2d 815 (6th Cir. 1984); R.T. Vanderbilt Co. v. OSHA, 708 F.2d 1170 (11th Cir. 1983); Fire Equipment Manufacturers Ass'n v. Marshall, 679 F.2d 679 (7th Cir. 1982). A delay in the new standard with its lower exposure limit, might, on the other hand, cause some exposed employees their lives.

In sum, OSHA adheres to its view that continued regulation of fibrous tremolite, anthophyllite and actinolite under 29 C.F.R. 1910.1001 and 1926.58 is appropriate. Furthermore, we are not convinced that you will suffer irreparable harm as a result of this regulation.

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3/ Likewise, we adhere to our view that the proper aspect ratio for defining a fiber is the 3-to-1 length-to-diameter ratio. That ratio is the most commonly used throughout the world and was recommended by most experts appearing in the rulemaking proceedings (51 Fed. Res. 22680-81).

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4/ Furthermore, the materials submitted in support of your stay motion in the Second Circuit provide scant support for predicting dire consequences to Vanderbilt from the new standard. Those materials indicate the firm's share of the talc market has been stable since 1978, notwithstanding OSHA's designation of all forms of tremolite as asbestos under the applicable standard. (Affidavit of Allen Harvey, Attachment A, Graphs 1 and 11). Compare n. 1, supra regarding OSHA's enforcement policy with respect to tremolite.

Accordingly, your request for an administrative stay is denied.

Sincerely,

John A. Pencergrass
Assistant Secretary of Labor
for Occupational Safety and Health

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****END OF DOCUMENT REACHED****

ITEM 43

STANDARD NUMBER 1926.32(f), 1926.58
INFORMATION DATE 860905
SOURCE DESCRIPT. Memo to GILBERT E. SAULTER
COMPANY OSHA
STATUS --- Current

SEP 5 1986

MEMORANDUM FOR: GILBERT J. SAULTER
Regional Administrator

FROM: CHARLES E. ADKINS
Acting Director
Health Standards Programs

THROUGH: JOHN B. MILES, JR.
Director
Field Operations

SUBJECT: Asbestos Construction Standard
a) Competent Person
b) OSHA Reference Method

This is in response to your memo of July 25 requesting clarification as to the minimum qualifications a "competent person" must possess and for clarification as to what constitutes a method equivalent to the OSHA Reference Method (Appendix A) for asbestos sampling and analysis.

A "competent person" must have academic credentials and/or field experience in asbestos abatement. By virtue of his or her background, this individual will be capable of identifying existing asbestos hazards in the workplace and will be a person who had the authority to take prompt corrective measures to eliminate them, as specified in 1926.32(f). The "competent person" will be knowledgeable of the contents of the new asbestos standard (29 CFR 1926.58), the identification of asbestos and its removal procedures, and other practices for reducing the hazard. This individual must also have attended an EPA-approved training course or be State certified in those States with asbestos abatement certification and training programs. (States with certification and training programs are Alabama, Alaska, Arkansas, Illinois, Iowa, Kansas, Maryland, New Jersey, Oklahoma, Ohio, Rhode Island, Tennessee and Washington.)

In regard to your second question, methods equivalent to the OSHA Reference Method are the NIOSH 7400 method (Revision #2) and the OSHA ID 160 method developed by the OSHA Salt Lake City Laboratory. Any other method would have to be evaluated on a case-by-case basis by our laboratory.

OH:Wainless:kcc:8/27/86
Room N-3671 x37111

cc: OH File, Catkins, Wainless, WPC File#06-255, Document#0151L

July 25, 1986

MEMORANDUM FOR: BARRY J. WHITE
Acting Director
Directorate of Health Standards Programs

ATTENTION: JOHN MARTONIK

THROUGH: JOHN B. MILES, JR.
Director
Directorate of Field Operations

SUBJECT: Asbestos Construction Standard--Competent Person

1740, or asbestos standard for the construction industry. Paragraph 29 CFR 1926.56 (e)(6)(iii) requires the employer to designate a competent person to perform or supervise specific duties. The question has been raised as to what the minimum qualifications for a competent person are; i.e., a person who has completed formal training on asbestos removal/demolition; a person who has completed an EPA school, etc.

Paragraph 29 CFR 1926.56(c) states that PEL is 0.2 fibers per cc. as determined by the method prescribed in Appendix A or by an equivalent method. Several questions have been raised over what OSHA considers an equivalent analysis method to be.

Your assistance in resolving these issues will be appreciated.

GILBERT J. SAULTER
Regional Administrator

END OF DOCUMENT REACHED

ITEM 44

STANDARD NUMBER	1926.56
INFORMATION DATE	8/6/80
SOURCE DESCRIPT.	Letter to Helen B. McAllister, M.D.
COMPANY	Prince George's County Health Department
STATUS	Current

OCT 7 1986

Helen B. McAllister, M.D.
Prince George's County Health Department
Hospital Drive
Cheverly, Md. 20785

Dear Dr. McAllister:

This is in response to your letter of August 15 concerning the use of crushed aggregate materials which may contain asbestos.

As you pointed out, the use of aggregate materials in road construction can result in employee exposure to asbestos. Given the variability of asbestos concentration in these materials, your concern is too often, and on what basis, these materials must be sampled and analyzed in order to demonstrate that the concentration of asbestos in these aggregates is less than the 0.1 percent limit which exempts the employer from the requirements regarding labeling and material safety data sheets.

In general, it should be noted that it is difficult for the end-user to measure the amount of asbestos present in aggregate materials because the asbestos if present, is not homogeneously mixed with the aggregate. A safer approach for you is to require the rock quarry to provide you with an analysis of the asbestos content of the crushed rock aggregate. The quarry is in a better position to provide you with this information since it is aware of the type formation of the rock deposit mined.

Your second issue dealt with the appropriate air sampling protocol for monitoring worker exposure and the appropriate method of analysis. You expressed concern that many asbestos filters may be present in the area of a road construction site giving rise to false, higher than expected air sample results.

The air sampling protocol appropriate for monitoring worker exposure should be in conformance with Appendix A to 1926.56. The NIOSH 7400 method (revision #2), a copy of which is enclosed, provides a detailed step-by-step sampling and analysis procedure that conforms to the elements specified in Appendix A. Although you do not have access to a transmission electron microscope, it should be noted that a microscopist, trained in the techniques of fiber differentiation, can make the distinction between obvious interferences and asbestos, using phase contrast microscopy.

If you have additional questions concerning asbestos sampling and analysis please contact Mr. Dan Crane of the Occupational Safety and Health Administration's Salt Lake City Laboratory. His phone number is (801) 523-5287.

Sincerely,

Charles E. Adkins
Acting Director
Health Standards Programs

Room N3671 x37111

cc: OH File, C.Ackins, Wairless, WFO File#86-305, Document#0050e

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August 15, 1986

Mr. Barry White Acting Director
United States Department of Labor
Occupational Safety and Health Administration
Health Standards Programs
200 Constitution Avenue, N.W.
Room N-3718
Washington, D. C. 20210

Dear Mr. White:

The Prince George's County Health Department has completed a review of the Department of Labor, Occupational Safety and Health Administration Final Rules regarding Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite. Based on this review, as well as a telephone conversation on August 8, 1986 between Mr. Donald A. Nork, of the Division of Air Quality Control and Mr. Ira Wairless of your office, this Department requests clarification of the following:

1. The Final Rules do not address the use of aggregate materials which may contain trace amounts of asbestos. Given the variability of asbestos concentrations of these materials, how often, and on what basis, must the materials be sampled and analyzed in order to demonstrate that the concentration of asbestos in these aggregates is less than the 0.1% limit which requires use of material safety data sheets.
2. In cases where road construction workers use crushed aggregate which contains trace amounts of asbestos, what special air sampling protocols would be appropriate for monitoring worker exposure and demonstrating airborne asbestos concentrations less than the action level of .14/cc? Given the fact that many non-asbestos fibers may be present in the area of a road construction site, false, high air sample results may be common. Please note that this Department does not have access to a Transmission Electron Microscope.

A prompt response from your office is requested as it is important to take appropriate steps to protect individuals who may be working with these aggregate materials.

If you have any questions, please contact Mr. Nork at 794-6800 on extension 310 weekdays between 8:00 a.m. and 4:00 p.m.

Sincerely yours,

Helen B. McAllister, M.D.
Health Officer

HEM:cm

END OF DOCUMENT REACHED

ITEM 45

STANDARD NUMBER	1926.58(h)(2)(i); 1926.58(h)(2)(iii)
INFORMATION DATE	8/6/86
SOURCE DESCRIPT.	Letter to Mr. W. Scott Keyes
COMPANY	National Asbestos Training Institute
STATUS	Current

AUG 26 1986

Mr. W. Scott Keyes
National Asbestos Training Institute
P. O. Box 413
West Long Branch, New Jersey 07764

Dear Mr. Keyes:

This is in response to your letter of July 24, referencing a respirator provision 29 CFR 1926.58(h)(2)(iii) of the new standard for exposure to asbestos, tremolite, anthophyllite, and actinolite in the construction industry. Specifically, 29 CFR 1926.58(h)(2)(iii)

in lieu of any negative-pressure respirator specified in Table D-4 whenever?

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- (A) An employee chooses to use this type of respirator; and
- (B) This respirator will provide adequate protection to the employee."

You inquired as to whether the words "shall provide" imply that the respirator must be provided at no cost to the employee. In addition, you wanted to know whether, when a powered, air-purifying respirator is provided to the employee, the employer could request a deposit to ensure that the respirator is returned when the employee finds other employment.

The standard stipulates that respirators required for protection from exposure to asbestos filters shall be provided at no cost to the employee (1926.58(h)(2)(i)). Due to the unreliability and physiological distress associated with negative pressure respirators, OSHA has required employers to provide, powered, air-purifying (positive pressure) respirators, at no cost, to those employees who request one, so long as it will provide adequate protection at the level of protection required.

Powered, air-purifying respirators, operated in positive-pressure mode, provide greater protection to individuals (especially those who cannot obtain a good face fit on a negative pressure respirator) and will provide greater comfort when a respirator must be worn for long periods of time. OSHA believes employees will have a greater incentive to wear respirators if discomfort is minimized. As with any OSHA required safety equipment, a "deposit" cannot be requested by an employer to ensure that a PAPR is returned at the end of employment. This would reduce the incentive of an employee to request and use this type of respiratory protection.

I hope this information will be helpful to you.

Sincerely,

Barry J. White
Acting Director
Health Standards Programs

OH:Wainless:kcc:8/07/86
Room N-3671 x37111

cc: CCU File, OH File, White, Wainless, WPC File#86-240,
Document#0139L

July 24, 1986

Occupational Safety and
Health Administration
Room N 3718
200 Constitution Avenue, N.W.
Washington, D.C. 20210

ATTN: Barry White
Acting Director of Health Standards

Dear Mr. White:

Recently, a question was raised at our institute regarding an interpretation of a specific section of the New OSHA regulation, 29 CFR 1926.58. I spoke with Mr. Ira Wainless of the OSHA Standards Office, and he suggested that I write directly to you.

The specific section in question is on page 22758, (i) "Respiratory Protection", (2) "Respirator Selection", (iii) "The employer shall provide a powered, air-purifying respirator in lieu of any negative-pressure respirator specified in Table D-4 whenever:

- (A) An employee chooses to use this type of respirator; and
- (B) This respirator will provide adequate protection to the employee."

The question is this: If an employer provides (at no cost to the employee), the minimum required respirator protection (in this case a half-mask, air-purifying respirator with a HEPA filter) to an employee, and the employee permitted to require payment for the requested respirator?

Do the words "shall provide" imply that the respirator then must be "provided" to the employee "at no cost"? Another question asked was

The respirators cost in the area of \$450 to \$500 each. If I "provide at no cost to the employee" one unit, am I permitted to request a "deposit" to insure the respirators return? The deposit would be returned if and when the employee finds other employment.

An official interpretation on this issue would be greatly appreciated. Thank you very much for your help in this matter.

Very truly yours,
NATIONAL ASBESTOS
TRAINING INSTITUTE

W. Scot Keyes
Director

WSK/mw

***END OF DOCUMENT REACHED**

ITEM 46-

STANDARD NUMBER 1926.56(f)(J)
INFORMATION DATE 861030
SOURCE DESCRIPT. Letter to Mr. Thomas R. Kufferer
STATUS Current

OCT 30 1986

Mr. Thomas R. Kufferer
2231 Remington Drive
Haverhill, Illinois 60565

Dear Mr. Kufferer:

This is in response to your letter of October 2 concerning regulatory provisions contained in the new standard for exposure to asbestos, tremolite, anthophyllite and actinolite in the construction industry.

Your first area of concern was the provision that requires daily monitoring within a regulated area. You stated that conscientious employers will establish a regulated area for every asbestos removal job, regardless of duration, and that this would result in a multitude of samples that essentially would be meaningless because employees will be wearing respirators.

The intent of 1926.56(f)(J) is to require daily monitoring only where airborne levels exceed 0.2 fiber/cd. When it is necessary to establish a regulated area, as required by the standard, daily monitoring not only verifies the adequacy of the respiratory protective devices work, but serves as a check to ensure that engineering controls are functioning properly and the specified work practices are being carried out. It should be noted that where daily monitoring reveals that employee exposures (as indicated by statistically reliable measurements) are below the action level, the employer may discontinue monitoring for those employees whose exposures are represented by those samples. In addition, daily monitoring is not required in a regulated area where all employees are equipped with supplied air respirators operated in the positive pressure mode.

Your second issue dealt with the establishment of a negative pressure enclosure for asbestos removal, demolition and renovation operations. The intent of 1926.56(e) is to require a negative pressure enclosure only where a regulated area is required. Regulated areas are established only where asbestos concentrations exceed the permissible exposure limit.

The requirement for setting up a negative pressure enclosure closely parallels the Environmental Protection Agency's requirement for proper work area containment. Without such containment measures, asbestos containing materials would be dispersed outside the area and a significant exposure hazard could result for plant or building occupants. The use of negative pressure systems, together with high efficiency particulate (HEPA) filtration to move air from within the work area to outside the regulated area, will provide added protection. A harmful level of contaminants would not, as a rule, build up in a regulated area, as negative pressure is required during work activities.

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Perimeter of removal operations conducted at your company are not in excess of the action level. However, there is no mention of air concentrations found in the breathing zone of employees actually performing asbestos removal work. Depending on the nature and extent of exposure, the requirement for a negative pressure enclosure may not be applicable in your case.

Efforts are currently under way to correct the contradictory statements, such as those highlighted in your letter, which appear in the Federal Register notice will be published in the Federal Register in the near future.

I hope this information will be helpful to you.

Sincerely,

John A. Pendergrass
Assistant Secretary

OH:Wainless:10/16/86:aec:10/17/86
Room N3671 x37111
Control:0 38861 Due Date 10/24/86

cc: CCU File, OH File, C.Adkins, Pendergrass, F.White,
Wainless, Williams, Struthers, WFO File#86-324, Document#0059e

October 2, 1986

John A. Pendergrass
Assistant Secretary of Labor
For Occupational Safety and Health
200 Constitution Ave., N.W.
Washington, D.C. 20210

Dear Mr. Pendergrass:

I am writing to you today, as a fellow professional industrial hygienist, to express my concern for damage being done to our profession by the recently promulgated OSHA standard regulating asbestos in construction activities. I regard this standard to be so poorly conceived and executed as to be a major embarrassment to those of us in the profession who now have been handed the job of trying to implement it. Many of the provisions call for mere activity which will contribute nothing to worker protection. Others will, in some cases, actually create more serious hazards than the standard intends to correct. Some are actually contradicted within the regulation itself. All of these could have been prevented if OSHA had simply submitted the construction standard to peer review in the same manner as they did the far superior asbestos standard for general industry.

As an example of the provisions which add nothing to the worker's protection, I call your attention to the section which requires daily monitoring representative of each worker when a regulated area exists. Since conscientious employers will establish a regulated area for every asbestos removal job, whether it will last 5 minutes or 5 months, this will result in a multitude of samples. These samples will be essentially meaningless, however, since, by the standard, all these workers will be wearing respirators. It is unnecessary to do this much monitoring to simply verify the adequacy of our respiratory protection choices. Nevertheless, industrial hygienists now must insist that our employers and clients perform sampling which we know is not justified, which certainly does nothing to enhance the image of our profession as a profession. Instead we just parrot regulations, fan pumps, and file away reams of expensive, meaningless data.

An example of the possibly dangerous activities prescribed by the standard is its insistence on building enclosures around removal operations. My company has frequently performed area samples at the perimeter of removal operations of various sorts, and we have never found levels in excess of the new action level. In fact, we usually don't find anything above background levels. The new standard would appear to now require us, in most cases, to create what amounts to a confined space, with all its hazards, and require our people to work within it. This will result in greater heat stress, and the possibility of trapping dangerous concentrations of toxic or flammable gases in their work environment. We will thus increase the risk to the health and safety of these persons in order to eliminate a non-existent exposure hazard to what is generally unoccupied surroundings. It will also require a lot of work just to construct the enclosures, with all the well documented risks of general construction work.

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As an example of contradictory statements within the standard, notice that the paragraph on fit testing requires that, "The employers shall ensure that the respirator issued to the employee exhibits the least possible facepiece leakage..." The note that Appendix C, on fit testing procedures requires that the employee be allowed to choose the most comfortable respirator passing a fit test, not the one providing the best seal. Also note that Appendix C states that when performing fit tests by the irritant smoke protocol the respirator wearer should be instructed to keep his eyes closed during the test. Shortly afterwards it has us instruct him to read the 'rainbow passage.'

The above are only a very few examples of the major problems in this seriously flawed standard. I ask you to carefully review the onerous provisions of this standard, drawing on your own considerable practical experience, and direct reconsideration to develop a more flexible, performance oriented document. I ask this as one individual professional to another, not as a representative of any employer or association. The provisions of the construction standard, as written, show a serious lack of appreciation for the true scope of the work it is written to cover, and for the nature of the hazards it tries to control. It will result in a tremendous amount of activity, but little, if any, increase in worker protection. In fact, what it will serve to do more than anything else will be to divert this country's already strained industrial hygiene resources away from more productive activity where far greater contributions to worker health would be made.

I have spent a tremendous amount of my time over the last three to four years trying where ever I could to contribute something to the development of a meaningful and effective asbestos standard. Upon reading the construction industry asbestos standard, I feel the effort was totally wasted.

Sincerely,

Thomas E. Kupferer, CIH

END OF DOCUMENT REACHED

ITEM 47

STANDARD NUMBER 1910.1001(r)(1)(vii), 1926.58(s)(2)(iii)
INFORMATION DATE 8/4/86
SOURCE DESCRIPT. Letter to Mr. Robert J. Bettacchi
COMPANY Construction Products Division
STATUS Current

AUG 14 1986

Mr. Robert J. Bettacchi
Vice President
Construction Products Division
W. R. Grace & Company
62 Whittemore Avenue
Cambridge, Massachusetts 02140

Dear Mr. Bettacchi:

This is in response to your letter of June 23 seeking interpretation of certain regulatory provisions contained in the standards for occupational exposure to asbestos, tremolite, anthophyllite and actinolite issued June 20 (51 FR 22612). Specifically, your concern is that certain provisions of the new standards may apply to many activities that pose no asbestos risk to worker health and that were not intended by the Occupational Safety Health Administration (OSHA) to be covered by the new standards.

Your letter raised interpretive issues about three provisions. The first provision states that: "Materials containing asbestos, tremolite, anthophyllite, or actinolite shall not be applied by spray methods" (1910.1001(r)(1)(vii) and 1926.58(s)(2)(iii)). As you pointed out, other government agencies which have restricted the application of asbestos materials by prohibiting spraying that, since the OSHA provisions do not contain an exclusion, the OSHA regulation will inappropriately apply to a wide variety of sprayed products that contain trace amounts of naturally occurring levels of asbestos which you term "de-minimis."

OSHA recognizes that some mineral products that are sprayed may contain such small amounts of asbestos as to be considered "de-minimis" for purposes of administering these standards. In certain situations, therefore, OSHA will not enforce the provisions of the standards which prohibit the spraying of asbestos-containing products. These situations will be limited to cases where the employer can show that the "fiber" concentration of the product is less than 0.1% by weight, is a natural contaminant, and where objective data (as described in 51 FR 22712) indicate that, under foreseeable handling and usage, employee exposures will not exceed the action level of 0.1 f/cc. For purposes of administering the standard, OSHA compliance officers will be instructed that, in such situations, they should not issue a citation because of the de-minimis nature of employee exposure.

Your second area of concern was whether 1926.58(j)(2), which imposes requirements for decontamination areas, clean rooms and showers, applies to all asbestos removal, demolition and removal operations, or only those where airborne concentrations of asbestos, tremolite, anthophyllite, actinolite or a combination of those minerals exceed or can reasonably be expected to exceed the PEL prescribed in 1926.58(c). The intent of 1926.58(j)(2) is to require a decontamination area and the other facilities listed above only where a regulated area is established. Regulated areas are established only where concentrations exceed the PEL.

The third issue cited in your letter deals with similar provisions in the general industry and construction standards (1910.1001(k) and 1926.58(l), respectively). As you stated in your letter, these are housekeeping provisions which regulate clean-up methods and waste disposal and are of particular concern to you if they apply to activities involving all materials containing any amount of asbestos, however small.

The Agency believes that proper Housekeeping and disposal practices are essential parts of any effective asbestos control program. OSHA, however, did not intend its Housekeeping and waste disposal provisions to be required for de-minimis situations. As explained above, if materials contain only trace natural contaminants of asbestos (defined as products with less than 0.1% asbestos by dry weight), and if employers can show, based upon objective data that employee exposure to such materials, during anticipated usage and handling, cannot exceed the action level, then the Housekeeping and waste disposal provisions will not be cited.

Also, in an earlier letter to OSHA, dated November 14, 1985, concerning the draft revised standards, you expressed concern that the scope of the revised standards would include non-asbestiform tremolite, anthophyllite and actinolite. The revised standards have included these non-asbestiform minerals in their scope. You should note, however, that the revised standard only regulated fibrous forms of these minerals (defined as having a length-to-width ratio greater than 3 to 1). Further, on July 18, 1986, OSHA granted a temporary nine-month stay of the effective date of the revised standards (until April 21, 1987) insofar as they apply to occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite. The purpose of the stay is to allow OSHA to review newly submitted information and to institute supplemental rulemaking on whether these minerals should continue to be regulated as presenting the same health risk as asbestos.

Enclosed is a copy of OSHA's July 18 letter to counsel for the R. T. Vanderbilt Company which describes the stay in greater detail. I hope this information will be helpful to you.

Sincerely,

John A. Pendergrass
Assistant Secretary

DH:Wainless:Rec:7/29/86:rev:ac:8/1/86 8/13/86:Rec
Room N-3671 x3711

cc: CCU File, OH File, White, Martonik, Wainless, WPC
File#86-208, Document#0120L

BY HAND

Mr. John F. Martonik
Deputy Director
Health Standards Program
Occupational Safety and
Health Administration
Room N-3718
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Mr. Martonik:

As you suggested in your conversation with our counsel David Evans earlier this week, we have sent the attached letter to Assistant Secretary Pendergrass seeking an interpretation of the Applicability of the spraying prohibitions in the new asbestos standards to materials containing trace quantities of asbestos. You will note that our further review of the new standards has revealed a few related issues that arise because of the standard's failure to define asbestos-containing materials.

We hope the Agency is able to provide guidance that will avoid the inevitable interpretation and enforcement difficulties posed by any attempt to apply its provisions to all materials containing any trace asbestos. If Grace can further supply additional information to aid in this effort, please let me or David know.

Sincerely,

Robert J. Bettacchi

Enclosure

cc w/ enc.: David C. Evans, Esq.
Reed, Smith, Shaw & McClay

JUL 18 1986

Dennis M. Race
Akin, Gump, Strauss,
Haver & Feld
1333 New Hampshire Ave., N.W.
Suite 400
Washington, D.C. 20036

Dear Mr. Race:

This is in response to your July 14, 1986 letter on behalf of R. T. Vanderbilt Co. in which you request that OSHA reconsider your request for a stay of the provisions of the revised standards promulgated June 17, 1986 governing occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite (51 Fed. Res. 2262 et. seq.). The revised standards, which amend OSHA's 1972 asbestos standard, 29 CFR 1910.1001 (1985), are scheduled to take effect July 21, 1986.

For the reasons indicated below, I am granting a temporary stay of 9 months (until April 21, 1987) of the effective date of the revised standards insofar as they apply to occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite. This stay is granted for the purpose of reopening the record and instituting supplemental rulemaking limited to the issue of whether non-asbestiform tremolite, anthophyllite and actinolite should continue to be regulated in the same standards and to the same extent as asbestos, or should be treated in some other way. This stay applies only to the application of the revised standards to non-asbestiform tremolite, anthophyllite and actinolite. In all other respects, the revised standards will take effect as previously scheduled.

It should be noted that during the pendency of the stay, the provisions of the 1972 standard governing occupational exposure to asbestos (29 CFR 1910.1001 (1985)) will remain in effect with respect to regulation of non-asbestiform tremolite, anthophyllite and actinolite. (See 51 Fed. Res. at 22732).

OSHA is granting this temporary stay in part to enable the Agency to review a July 17, 1986 letter from the Director of the National Institute for Occupational Safety and Health (NIOSH) and certain related NIOSH staff memoranda which have recently been brought to its attention, as well as submissions by the R. T. Vanderbilt Co. and various trade associations concerning the appropriateness of regulating non-asbestiform tremolite, anthophyllite and actinolite in the revised asbestos standards.

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OSHA believes, as stated in our July 9, 1986 letter, that it provided adequate notice to the public that its recent asbestos rulemaking would address whether the Agency should amend the 1972 definition of asbestos, and the proper scope of the revised standards with respect to the three non-asbestiform minerals. However, OSHA acknowledges that letters and petitions from rulemaking participants and non-participants have been received since the revised standards' June 17, 1986 issuance, which contain additional comment, assertions, and information which the rulemaking record may not fully reflect, and which request an opportunity to submit further information on these questions. To assure that these submissions are fully considered by OSHA, to allow public comment on these additional submissions, and to invite additional comment and evidence on all issues relevant to regulation of non-asbestiform tremolite, anthophyllite and actinolite, OSHA will shortly by Federal Register notice reopen the rulemaking record on the limited issue of whether non-asbestiform tremolite, anthophyllite and actinolite should continue to be regulated as presenting the same health risk as asbestos, or should be treated in some other way.

Sincerely,

John A. Pencergrass
Assistant Secretary of Labor

14 November 1985

BY HAND

Mr. Patrick R. Tyson
Acting Assistant Secretary
Occupational Safety and
Health Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Francis Perkins Bldg., Rm. S 2015
Washington, D.C. 20210

Dear Mr. Tyson:

The Construction Products Division of W.R. Grace & Co. has reviewed the draft asbestos construction standard presented recently to the OSHA Construction Advisory Committee (CACUSH). Our review reveals that the draft would require labeling of a vast array of materials that contain de minimis trace concentrations of asbestos and would thus significantly dilute the effectiveness of OSHA's asbestos labeling program. If the draft is not amended to set appropriate limits on the labeling requirements, so many products will have to be labeled that those products with significant asbestos concentrations will not be clearly identified and workers will not know which products in fact require special handling.

The overly-comprehensive scope of the draft standard is particularly troublesome because OSHA provided no notice in its asbestos proposal of any intention to sweep products containing de minimis levels of asbestos into the standard's labeling requirements. OSHA's proposal, 49 Fed. Reg. 14116, 14127 (April 10, 1984), contained no suggestion that OSHA would require product labels other than as currently provided when foreseeable use would lead to exposures above the permissible exposure level, 29 C.F.R. 1910.1001(g)(2) -- a situation that would rarely, if ever, occur in use of products containing trace levels of asbestos. Indeed, the April 10, 1984, notice affirmatively stated that "the current standard requiring labels for products containing asbestos and their container will continue to apply." 49 Fed. Reg. 14116, 1427. Accordingly, it is quite likely that most parties who would be affected by the draft standard's labeling requirements are not even aware that the new asbestos standard could affect them.

Grace's interest in these labeling requirements stems from its mining of, and manufacture of products from, vermiculite ore that contains trace levels of asbestiform tremolite. Asbestiform tremolite is thus found in some Grace products at de minimis levels. Grace studies have found that asbestos exposures in the use of these products is well below the draft's 0.2 fibers/cc permissible exposure level (PEL) and 0.1 fibers/cc action level. For example, recent measurements resulting from use of Monokote, a structural steel fireproofing containing Grace vermiculite, demonstrated exposures below 0.005 and 0.007 fibers/cc. Accordingly, the purpose of this letter is to set forth explicitly the problems created by the draft construction standard and to propose appropriate revisions to that draft to assure that the OSHA labeling requirements are meaningful and consistent with protection of worker health.

ARRAY OF PRODUCTS INTO THE LABELING REQUIREMENTS.

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OSHA's draft asbestos construction standard, as released to CACOSH, establishes no limits on the products that require labeling with the notation: "CAUTION, CONTAINS ASBESTOS FIBERS, CANCER AND LUNG DISEASE HAZARD." The draft, (k)(2) at p. 22, states: "Labels shall be affixed on all asbestos products and to all containers containing asbestos products, including waste containers." The term "asbestos products," however, is not defined, thus apparently requiring labeling no matter how low the product's concentration of asbestos. This problem is exacerbated because the draft does not more specifically define "Asbestos," as OSHA had indicated in its proposal it would more specifically define the term, 49 Fed. Reg. at 14122, to include only 'asbestiform' tremolite, arthropyllite and actinolite. As a result, the draft would apparently require labeling of all products containing asbestos -- whether or not asbestiform -- at any level.

The draft labeling provisions fail to recognize the ubiquity of naturally-occurring asbestos. Trace quantities of asbestos are found in a wide variety of minerals. As mineralogists have long recognized, both serpentine rock, which usually contains some proportion of chrysotile (asbestiform serpentine) and amphibole minerals (e.g., asbestiform tremolite, crocidolite, or amosite) occur very widely in sedimentary, igneous and metamorphic rock formations throughout the world. Such occurrences are typically rich enough to be mined for asbestos production in only a few areas, but levels are found widely in many mineral formation. 1/ As University of Maryland Professor of Geology Dr. Ann Wylie testified at the OSHA hearings (Ex. 230, at pp. 3, 9): "Approximately thirty percent of the rocks found in the continental United States contain amphiboles as major constituents ... [I]t would be practically impossible to produce a commercial product from rock which occurs in a metamorphic terrain which did not contain tiny quantities of such fibers." 2/

Any product formed from such minerals will thus contain asbestos, although normally only at trace levels. Indeed, given the ubiquity of asbestos fibers in naturally-occurring water, any product manufactured with water (a vast array of products) will, if properly analyzed, reveal the presence of asbestos. Although none of these products pose the potential to cause exposures anywhere near the OSHA action level of 0.1 fibers/cc, the draft standard would apparently require asbestos labeling.

Were OSHA not to revise the draft standard, a great potential exists for vast asbestos over-labeling. It is quite likely that almost any product on a construction site would have to be labeled. Were such a result to occur, the labels would lose all utility in informing workers of products that in fact require special handling to prevent exposures above the OSHA asbestos PEL.

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1/ See, Zussman, J., "The Mineralogy of Asbestos," Vol. 1, Ch. 2 of Asbestos: Properties, Applications and Hazard, L. Michaels and S.S. Chissick (Eds.) at 56-57 (1979).

2/ See also, National Bureau of Standards Publication 506, Proceedings of the Workshop on Asbestos: Definition and Measurement, Methods (Gaithersburg MD, July 18-20, 1977), M. Ross, "The 'Asbestos' Minerals: Definitions, Description, Modes of Formation, Physical and Chemical Properties, and Health Risk to the Mining Community," at 51, noting that if "asbestos" includes the non-fibrous forms of amphiboles:

Many iron formations and copper deposits would be "asbestos" bearing, including deposits in the largest open-pit mine in the world at Bingham, Utah. "Asbestos" regulations would thus pertain to many of our country's mining operations, including much of the construction industry, and its quarrying operations for concrete aggregate, dimension stone, road metal, railroad ballast, riprap and the like. The "asbestos" regulations would also pertain to the ceramic, paint, and cement industries, and to many other areas of endeavor where silicate minerals are used.

II. OSHA SHOULD REVISE ITS DEFINITION OF ASBESTOS, ADOPT AN APPROPRIATE DEFINITION OF ASBESTOS PRODUCT, AND ESTABLISH REASONABLE LABELING REQUIREMENTS.

asbestos, include an appropriate definition of asbestos product, and adopt a reasonable labeling trigger to assure that only products that pose any potential for meaningful asbestos exposures are included.

As OSHA initially proposed, it should adopt a definition of asbestos consistent with mineralogy and other Federal statutes. The terms chrysotile, crocidolite and amosite, by definition, mean the asbestiform forms of these minerals; the minerals tremolite, anthophyllite and actinolite should be preceded by the term "asbestiform" as these minerals occur in both asbestiform and non-asbestiform forms. As OSHA has previously recognized, 49 Fed. Reg. at 14122, this is the definition of asbestos currently employed by MSHA, the CPSC, the Departments of Education and Transportation, and EPA. 3/

Second, a definition of "asbestos product" should be included in the standard. Asbestos-containing products are currently defined by EPA in regulations under both the Clean Air Act and the Toxic Substances Control Act to include only products with more than 1% asbestos by weight. 40 C.F.R. 61.22; 763.103(c); 763(b). CPSC has achieved a similar result by regulating only products with "intentionally added" asbestos. See 42 Fed. Reg. 63354, 63357 (Dec. 15, 1977). Each of these regulatory definitions recognizes that it is essential that some reasonable lower limit be placed on product asbestos concentrations so that regulatory coverage is not overly-expensive. 4/

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3/ 30 C.F.R. 57.5-1(f); 16 C.F.R. 1304.3(b); 34 C.F.R. 2330.4(b); 49 C.F.R. 173.1090(a); and 40 C.F.R. 763.63(a), 763.103(b).

4/ The OSHA Hazards Communications Rule similarly puts a limit on product labeling by requiring hazard labeling for product mixture only if they contain hazardous constituents at more than 1% by weight (0.1% if the hazardous constituent is known to be a carcinogen). 29 C.F.R. 1910.1200(d)(5)(ii).

Third, labeling should not be required if foreseeable airborne releases are less than the action level. Otherwise, given the ubiquitous nature of asbestos, the proposed standard may require every manufacturer of every construction product to label its products. The draft proposal is internally inconsistent by requiring labeling of all products which contain any amount of asbestos, while only requiring warning signs under (h)(1) (at p. 21) when airborne concentrations of asbestos fiber may be in excess of the permissible exposure limit.

In summary, we suggest the following modifications to the draft standard: (a) the word asbestiform should be used in the definition of asbestos; (b) the term "asbestos product" should be defined by setting a dry weight volume lower limit; and (c) the standard should require product labels only where foreseeable airborne releases are equal to or greater than the action level. With these revisions, the standard would properly focus workplace concern on those products with any potential for causing significant worker exposures. Such revisions would also eliminate the impossible enforcement difficulties in the current draft by providing guidance as to which product are in fact of concern.

Grace urges OSHA to consider these issues carefully before issuing a final standard. We appreciate this opportunity to comment on the draft standard and would be glad to provide further information to OSHA and to meet with you or your staff as appropriate.

Sincerely,

Robert J. Bettacchi

cc: Dr. Edward J. Baier
John Marlonik

Robert F. Bedell
Scott Jacobs
Office of Management and Budget

David C. Evans, Esq.
Reed, Smith, Shaw & McClay

Edward W. Warren, P.C., Esq.
Kirkland & Ellis

END OF DOCUMENT REACHED

ITEM 48

STANDARD NUMBER 1926.58(h)(4), 1926.58(e)(6)(iii)
SOURCE DESCRIPT. Letter to Mr. Jamie T. Hewes
COMPANY Mechanical Asbestos Removal, Inc.
STATUS Current

Mr. Jamie T. Hewes
Health and Safety Director
Mechanical Asbestos Removal, Inc.
P. O. Box 1043
Hunt Valley, Maryland 21030

Dear Mr. Hewes:

This is in response to your letter of August 14 and 25, requesting clarification of certain regulatory provisions contained in the new standard for exposure to asbestos, tremolite, anthophyllite and actinolite in the construction industry.

Your first question concerned the fit testing provisions found in 1926.58(h)(4). It should be noted that fit tests are required for all negative pressure respirators, both half-mask and full-face types. Half-mask respirators can be fit tested using either quantitative or qualitative fit testing procedures. Only quantitative fit testing is permitted for full-face masks. Fit testing for half and full-face positive pressure, powered air-purifying respirators is not required.

Your second question concerned OSHA's sampling and analytical procedures contained in Appendix A. The intent of the standard is to require the use of analytical laboratories that analyze asbestos samples using the OSHA Reference Method or an equivalent method (i.e., NIOSH 7400 method, revision #2; OSHA ID 160 method developed by OSHA Salt Lake City Laboratory). Sampling for asbestos can be conducted by any person/organization following the OSHA Reference Method or equivalent method.

Finally, your August 25 letter requested clarification as to whether a state certified asbestos training course could satisfy the requirement for an EPA equivalent course. The "competent person" as referred to in 1926.58(e)(6)(iii) must have attended an EPA-approved training course or be State certified in those States with asbestos abatement certification and training programs are Alabama, Alaska, Arkansas, Illinois, Iowa, Kansas, Maryland, New Jersey, Oklahoma, Ohio, Rhode Island, Tennessee and Washington).

I hope this information will be helpful to you.

Sincerely,

Charles E. Adkins
Acting Director
Health Standard Programs

August 25, 1986

Mr. Ira Wairless
U.S. Department of Labor/OSHA
Director of Health Standards Program
Room N-3718
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Mr. Wairless:

In regards to our phone conversation of August 25, 1986, it is my understanding that a more definitive interpretation of 1926.58, Sec. (e)(6)(iii) is presently being effected by your office and that a state certified asbestos training course will adequately satisfy the requirement for an E.P.A. equivalent course.

Respectfully,

Jamie T. Hewes
Health & Safety Director

JTH/sa

cc: Richard Clarke
Richard Ehrlich

U.S. Department of Labor/OSHA
 Directorate of Health Standards Program
 Room N-3718
 200 Constitution Avenue N.W.
 Washington, D.C. 20210

Dear Mr. Wainless:

In confirmation of our phone conversation dated 08-13-86 it is my understanding that the following interpretations of 1926.58 are true and correct.

1. Sec. (h) (ii)

- A. Fit tests are only required for half face negative pressure respirators. Either qualitative or quantitative methods may be used.
- B. Fit testing for full face negative pressure respirators is not required; however, if desired, only quantitative methods will be accepted.
- C. Fit testing for half and full face positive pressure, powered, powered air purifying respirators is not required.

2. Appendix A. to 1926.58 (O.R.M.), (1st paragraph)

- A. The present verbiage is not meant to imply that all sampling for asbestos fibers/fibers be conducted by an analytical laboratory; merely that those laboratories analyzing such samples use the O.R.M.

My thanks again for your invaluable assistance. 1926.58 will, I'm sure, be great a boon to the abatement industry.

Respectfully,

James T. Hewes
 Health and Safety Director

df

cc: Richard A. Clark
 Richard Ehrlich

END OF DOCUMENT REACHED

ITEM 49

STANDARD NUMBER	1926.58(e)(6), 1926.58(j)(2), 1926.58(e)
INFORMATION DATE	8/10/86
SOURCE DESCRIPT.	Letter to Mr. Daniel E. Hoffman
COMPANY	National Steel Corporation
STATUS	Current

OCT 10 1986

Mr. Daniel E. Hoffman
 Granite City Division
 National Steel Corporation
 20th & State Streets
 Granite City, Illinois 62040

Dear Mr. Hoffman:

This is in response to your letter of August 28 to Ira Wainless seeking interpretation of certain regulatory provisions contained in the new standard for exposure to asbestos, tremolite arthrophyllite and actinolite in the construction industry.

Your first area of concern was whether 1926.58(e)(6), which imposes requirements for negative pressure enclosures and the designation of a "competent person," and 1926.58(j)(2), which requires the establishment of a decontamination area, apply to all asbestos removal, demolition, and renovation operations, or only those where airborne concentrations of asbestos exceed or can reasonably be expected to exceed, the PEL of 0.2 f/cc. The intent of 1926.58(e) is to require a negative pressure enclosure and "competent person" only where a regulated area is established. Similarly, 1926.58(j)(2) requires the establishment of a decontamination area when a regulated area is required. Regulated areas are established only where concentrations exceed the PEL.

Your second issue dealt with the type of operations that could qualify for exemption from the requirements of paragraph (e)(6). It should be noted that any operation can qualify for exemption provided airborne levels of asbestos are kept at or below 0.2 f/cc. This can best be accomplished by means of engineering controls used in conjunction with appropriate work practices since these two methods, when used either singly or in combination can be employed effectively to reduce asbestos exposures to below 0.2 f/cc. The exemption from paragraph (e)(6), therefore, does not depend on the length of time it takes to complete a job or the magnitude of the job.

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Your interest in occupational health is appreciated.

Sincerely,

Charles E. Adkins
Acting Director
Health Standards Programs

OH:Wainless:ac:9/30/86:kec
Room N3671 x7111

cc: OH File, Wainless, Adkins, WPC, File#86-298, Document#0060a

Mr. Ira Waryneless
Industrial Hygienist
U. S. Dept. of Labor/OSHA
Health Standards Branch
Room N-3178
200 Constitution Avenue N.W.
Washington, D.C. 20210

88A

Dear Mr. Waryneless:

Thank you for your prompt response to questions I recently posed to you by telephone regarding the new OSHA Asbestos Standards published June 20, 1986 in the Federal Register.

I am writing in request of written confirmation of OSHA's position concerning several of the issues we discussed by telephone. Specifically, if a company such as ours is engaged in a project involving the removal of asbestos insulation from duct work or piping, etc. at one of our facilities, would we be required to meet the requirements of 29 CFR, Section 1926.58(e)(6) regardless of the employee asbestos exposure levels? My understanding from your verbal response is that Section 1926.58(e)(6), "Regulated areas", only applies to situations in which the P.E.L. of 0.2 f/cc is exceeded. That is, if the use of wet methods or other methods are utilized and are successful in maintaining exposures at or below 0.2 f/cc, then negative pressure enclosures, hygiene facilities (decontamination rooms) and the use of "competent persons" (as defined in the standard) are not required. We feel this is an important point and is in need of clarification.

Also, please provide clarification as to what type of operations would qualify for the exception provisions contained in Section 1926.58(e)(6)(IV). My recollection is that you indicated that for jobs which are relatively short duration, i.e., eight hours or less, the exception would apply.

Please respond at your earliest possible convenience.

Very truly yours,

Daniel E. Hoffman
Manager, Environmental Health

DEH/01.44:sc

END OF DOCUMENT REACHED

ITEM 50

STANDARD NUMBER 1910.1001(j)(4)(ii), (j)(2) and (j)(3)
INFORMATION DATE 861016
SOURCE DESCRIPT. Letter to Mr. Peter T. Barnes
COMPANY Barmin, Inc.
STATUS Current

Mr. Peter T. Barnes
Barmin, Inc.
P.O. Box 260
Waterdown, Ontario L0R 2H0
Canada

DEAR MR. PENDERGRASS:

This is in response to your letter of August 11, concerning those portions of the recently promulgated Occupational Safety and Health Administration (OSHA) standards on asbestos that pertain to nonasbestiform tremolite, anthophyllite and actinolite.

Please be advised that a temporary, nine-month stay of the effective date of the asbestos standards has been granted insofar as the standards apply to non-asbestiform tremolite, anthophyllite and actinolite in order to reopen our record for further discussion of whether these substances should be included as part of the new asbestos standards. Enclosed for your attention is a copy of my July 18 letter to the law firm of Akin, Gump, Strauss, Hater and Feld, which represents R. T. Vanderbilt Company, informing it of our decision to reopen the record.

In the supplemental rulemaking, you will have an opportunity to submit comments and evidence relating to the feasibility of the standard in the United States with respect to the three non-asbestiform minerals. Separate Federal Register notices announcing the issuance of the stay and the supplemental rulemaking proceedings will be published shortly.

In addition to the above, you raised a second issue concerning the labeling provision of 1910.1001(j)(4)(ii) which states that the provisions of paragraphs (j)(2) and (j)(3) do not apply where "asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals is present in a product in concentrations less than 0.1%." The 0.1% figure means 0.1 percent measured as a dry weight.

Your interest in occupational health and this rulemaking is appreciated.

Sincerely,

John A. Pendergrass
Assistant Secretary

Enclosure

OH:Wainless:9/17/86
Room N3671 x37111
Control:C 38729 Due Date 9/12/86

cc: OCU File, OH File, C.Adkins, Wainless, Williams,
Strothers, WFO File#86-295, Document#8845e

August 11, 1986

Mr. John A. Pendergrass
Assistant Secretary of Labor
OSHA National Office
Occupational Safety & Health Administration
200 Constitution Avenue N.W.
Washington, D.C. 20210

Dear Mr. Pendergrass:

We write to you as a concerned supplier to many U.S. customers. We are concerned by the new regulation of the non asbestiform varieties of tremolite, anthophyllite, and actinolite.

The new regulation treats these varieties as asbestos which they are clearly not. The regulation has been tightened from 2 fibers/cc down to .2 fibers/cc. You have perhaps, unknowingly, included many minerals operations which will fall under regulations where there is more than .1 actinolite, tremolite, anthophyllite in the mineral. We speak from detailed information on a number of deposits in the northeastern U.S.A. of dolomite, calcite, and other industrial minerals supplying the construction, fillers, and industrial markets.

This new regulation came as a total surprise. We, and our customers in the U.S., feel that we have been blind sided by it. Prior to a regulation of this kind being put in place, are there open forums available to explore how to regulate industry whereby all interested parties could be informed and asked for representations?

1. Was industry informed of this new regulation?

In 1972, when OSHA's regulation No. 29CFR 1910.1001 on Asbestos came out, it listed tremolite, anthophyllite and actinolite with asbestos. At that time, there was no indication of any intention to regulate the non-asbestiform varieties.

On April 10th, 1964, an amendment was proposed to the OSHA Asbestos Standards and important changes in the definition adding the adjective "asbestiform" in front of the nouns tremolite, actinolite, actinolite in the current definition. OSHA did not regulate the non asbestiform varieties and in fact gave the impression that it was not going to do so by the change in the definition.

From the 1972 regulations to the proposed one of 1984, we had no indication that non asbestiform varieties were going to be regulated. Therefore, we feel, and I speak for ourselves and our customers, that we have been deprived of an opportunity to say our piece.

In Canada, we are regulated by the Ontario Ministry of Labour who have made it a practice in the past to follow fairly closely the types of legislations, especially on minerals, that come from Washington. We make it a practice to comment on United States rulings because they have direct influence on our rulings. 90

2. Is there conclusive evidence that the non-asbestiform varieties of tremolite, anthophyllite, and actinolite are indeed a health hazard?

The legislation will include the whole of the United States industrial minerals and mining sectors, and we are not sure that is what was intended. We have not seen any evidence that prismatic tremolite, anthophyllite, and actinolite are a health hazard. As a supplier we would be most interested in any evidence which would make us aware of any such health hazard.

3. If the minerals mentioned in #2 above are of concern, do they warrant the severity of regulation--i.e. a maximum of .2 fiber/cc--which is almost the same as asbestos maximum exposure limit?

The non-asbestiform tremolite, anthophyllite, and actinolite are common minerals found in most mining districts in Ontario, Quebec, and the eastern U.S. seaboard.

We cannot understand how the requirement was established whereby these non-asbestiform minerals fall under the asbestos regulation. We can understand that asbestos must be controlled, but these are non-asbestiform minerals.

In discussion with experts in our Ministry of Northern Development & Mines (formerly, Ministry of Natural Resources), it was felt that OSHA's regulation would cause undue hardship on the whole mining and industrial mineral user industries. We are a part of it and reasonably knowledgeable but many are not, particularly the customers--i.e. practically every manufacturing operation that exists.

4. If you are trying to control the non-asbestiform minerals which have asbestiform varieties, why would Cumingtonite-gunnite, Riebeckite and Serpentine have been omitted from your regulation? Shouldn't you, in fact, have a mineral policy covering each mineral separately or at least grouped together as logically as possible? In any case, all the non-asbestiform minerals would logically be covered together. This would seem to be a more logical, scientific way of covering the subject legislation. Has any work been done in conjunction with mineralogists of the Bureau of Mines, United States Department of the Interior?

5. Does OSHA really intend to enforce this regulation commencing July 21, 1986 as outlined? Are any delays possible so all concerned may at least understand the ruling which is still somewhat confusing? The timing on this regulation and its enforcement is totally unexpected.

6. We do not appreciate the fact that you separated the asbestos and non-asbestiform minerals as they should have been, according to the U.S. Bureau of Mines definitions.

7. Was OSHA aware that this legislation covers almost any mining of minerals in the eastern U.S. whether it be hard rock mining for metallics or industrial minerals. Practically every industry using mined products in the eastern U.S. is affected.

Apparently, these three minerals are found in talc, limestone, marble, granite, and trap rock mined in the eastern North American sector. Even though the amount found in these deposits may be negligible, they are covered by the asbestos exposure limitation of .2 fibers/cc and action must be taken by suppliers and users at the .1 fibers/cc or .1% of the subject minerals in the product used depending on how you read the definition.

We feel careful examination of the implications of the legislation with the American Mining Congress is in order.

The regulations will cause severe limitations and increase costs for handling, transportation, and storage of aggregates, crushed stones, granites, marbles, gravels, ceramics, paint, plastics, rubber, paper, etc. Just in the eastern half of the U.S., we would expect that this regulation will seriously effect billions of dollars in trade.

Value of minerals production in Eastern Canada & U.S.:

	Metals Mining	Industrial Minerals
Ontario	\$2.7 billion	\$.8 billion
Quebec	1.1 billion	.7 billion
Maritimes	1.0 billion	.2 billion
United States	2.9 billion	5.3 billion

* We estimate the new legislation will have a serious impact on this one third of the total U.S. production.

8. We are concerned about the definitions in the legislation. "Asbestos" is defined to include "tremolite asbestos" as noted under definitions. Tremolite, anthophyllite, and actinolite are treated as separate minerals; thus, wherever the word "asbestos" is used, include tremolite asbestos. Wherever the word "tremolite" (actinolite, anthophyllite also) is used consider tremolite--which may or may not be asbestos; thus, any tremolite fiber (e.g. greater than 5 micrometers and with a 3:1 or greater aspect ratio) is included in the words, "asbestos" and "tremolite".

All of the concentration levels include "asbestos, tremolite, anthophyllite, actinolite or a combination of these minerals". These regulations refer to any kind of tremolite.

There are some apparent ambiguities which might be important to clarify. Generally, the various regulations for various activities specify "tremolite, etc. fibers" (e.g. Table 1). Thus, fibers of 5 micrometers with a 3:1 or greater aspect ratio would be considered. However, under paragraph 4 (page 22736) for labeling, the specification refers to "....asbestos, tremolite, anthophyllite, actinolite or a combination of these minerals is present in a product in concentrations less than 0.1%".

Our question is this...0.1% by weight or 0.1% by particle count? We feel clarification is, again, necessary.

Your early response to our concerns and clarification of the intent and scope of this regulation would be greatly appreciated.

Yours sincerely,

BARMIN INC.

Peter T. Barnes
President

PTE/et

cc: Mr. Brock

Secretary of Labour

END OF DOCUMENT REACHED

BTCLAY DETTONG