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MEDICAL DEPT.

January 20, 1977

To:

S. S. Conway, Jr.
R. L. Cutler/R. E. Nelson/G. H. Paullin
H. C. Buschman, Jr./J. J. Sheffield/D. K. Rennie
→ F. W. Knoch/C. H. Borcharding, K. J. Krotz
G. Nicholson/C. L. Curtis
BJ Iwarsson

PLAINTIFF'S
EXHIBIT

AB-112

Subject: Asbestos Information Association

Enclosed are three pieces of literature dated December 27,
1976, January 6, 1977 and January 10, 1977 from the Asbestos
Information Association for your information.

C. B. Mallory
C. B. Mallory,
Assistant Vice President,
Manufacturing

CBM/le
enclosures

SPNY 003411



ASBESTOS INFORMATION ASSOCIATION

1835 K Street, N.W., Washington, D.C. 20006 • (202) 223-4885

bcc: Executive Committee
Hans Weill, M.D.

27 December 1976

COPY

Mr. Howard Cohn, Editor
MEDICAL WORLD NEWS
1221 Avenue of the Americas
New York, N. Y. 10020

Dear Sir:

The article, "Threat of Asbestos Disease Widens," in the October 18 issue of MEDICAL WORLD NEWS contains several statements that are misleading, highly speculative and not in accord with factual data. In the latter instance, for example, on page 45 in regard to world production of asbestos the statement is made that, "... now it is over 400 million tons..." The current figure for world production of asbestos is five million short tons according to latest statistics (1975) by the U.S. Bureau of Mines.

More importantly, however, are a number of statements in the article and conclusions to which the reader is drawn relating to asbestos-health issues which do not represent majority scientific opinion. These are reviewed in the order they appear in the article.

The comment attributed to Dr. Anderson of Mt. Sinai School of Medicine that one day's exposure to asbestos fibers is enough to produce pleural fibrosis is highly speculative. We know of no adequate data in scientific literature on which to base such a statement.

It is stated that "Studies from Britain and South Africa have found traceable asbestos exposure in the backgrounds of 85% to 97% of mesothelioma cases studied." These high percentages are either misquoted or exaggerated. The largest mesothelioma study from the United Kingdom (Greenberg and Lloyd Davies) clearly showed that one third of their mesothelioma cases had no definite occupational, family or residential exposure to asbestos.

The comment attributed to Dr. Nicholson that to study a single sample of asbestos requires a day's use of an electron microscope is questioned for fact and relevancy. The standard government approved procedure (U.S. Public Health Service/National Institute for Occupational Safety and Health) for measuring airborne asbestos concentrations is the membrane

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filter method utilizing a light microscope not an electron microscope.

There is no presently known correlation of EM-sized fibers with biologic information. We know of no scientific evidence to support the unqualified statement "prolonged exposure to concentrations of over 100 n.g. per cubic meter is a significant risk."

The comment "most environmentalists agree that all U.S. city dwellers run a real risk of asbestos contamination" is in contradiction to world-wide scientific opinion. The International Agency for Research on Cancer in its report "Biologic Effects of Asbestos," Lyon, France, Conference, October 1972, clearly indicated that nonoccupational exposure to asbestos has not been shown to be associated with any health risk. We are unfamiliar with the work of Drs. Churg and Martha L. Warnock "suggesting that nearly all city dwellers have at least a slight theoretical risk of asbestos-related neoplastic disease."

Though the article states "But, little scientific evidence is available to show whether ingested fibers can penetrate the stomach or intestines, be picked up by the blood stream or lodge in other tissues to cause cancer," the comments concerning Reserve Mining Co. in Silver Bay, Minn. and health risks from ingestion of associated particles from Lake Superior water are misleading to the reader. If one is to accept the "particles" to be asbestos it is relevant to note asbestos ingestion either in the animal model or in humans has not been shown to be associated with an excess risk of gastrointestinal or other neoplasms.

Dr. Selikoff, Director of Mount Sinai School of Medicine's Environmental Sciences Laboratory in New York City -- from whose staff apparently the writer of the article singularly obtained his information -- is quoted as saying "Medical knowledge about the health hazards of asbestos began to be collected in the 1930s and 1940s. But we physicians didn't warn society to take it seriously..." With knowledge of adverse health effects that can result from excessive exposure to asbestos dust, industry over the past several years has spent millions of dollars to overcome the problems of dust emission. Efforts have been successful in most situations to reduce dust to lowest technically feasible levels. Where effective technology is still lacking, respirators are employed to safeguard the worker. Engineering studies continue at a highly accelerated pace to eliminate dust in the workplace. Conformance with regulatory standards is being met.

The article could have obtained the balance in presentation and discussion of facts related to the asbestos-health issues appropriate to the high quality of your publication if comment had been sought from a broader range of sources within the

medical, scientific and industrial communities. The writer could have and we believe should have pointed out that asbestos related disease being seen today is not the result of present-day exposures. Because of the latency period associated with asbestos related diseases (an average of 17 years for asbestosis, 20-40 years for mesothelioma), it was not until the late fifties that knowledge of the consequences of excessive exposures to asbestos dust began to be fully recognized and reported to bring about the extensive dust control programs now in existence throughout the asbestos industry. The startling data frequently reported in the information media are related to World War II plant exposures of extraordinary levels. Unfortunately, through lack of knowledge about health risks posed by inhalation of asbestos fiber in past years, an excess of disease may be seen for perhaps another ten years. There is, however, no evidence of an excess of disease in persons who have been employed in the industry during the last 10-15 years.

It is suggested that the title of the article, "Threat of Asbestos Disease Widens," while serving to attract attention does not state a fact.

Sincerely,


R. H. Mereness
Executive Director

RHM:v



ASBESTOS INFORMATION ASSOCIATION

1835 K Street, N.W., Washington, D.C. 20006 • (202) 223-4885

6 January 1977

Memorandum For: MEMBERS

Subject: Statement in Response to Inquiries with
Regard to NIOSH Report to OSHA on Health
Effects of Occupational Exposure to
Asbestos.

The attached statement, prepared following initial analysis and comment by the members of the Executive Committee, the Association's medical advisor and others, is forwarded for information and appropriate use. The statement is being used in response to queries addressed to the Association.

Effect of the NIOSH document, forwarded to members by memorandum dated December 21, is not known at this time and will probably not be known until after the change of Administration. Current news stories regarding problems with asbestos in ceiling materials and continuing inquiries into the asbestos-health issue both in the United States and abroad may hasten public hearing on the proposed revision to the OSHA standard for exposure to asbestos dust in the workplace.

A letter to Dr. Corn, Assistant Secretary of Labor (OSHA), with regard to the NIOSH document, is being prepared.

A handwritten signature in dark ink, appearing to read 'R. H. Mereness', written over the typed name.

R. H. Mereness
Executive Director

RHM:v
Enclosure

SPNY 003415



ASBESTOS INFORMATION ASSOCIATION

1835 K Street, N.W., Washington, D. C. 20006 • (202) 223-4885

6 January 1977

Statement Regarding NIOSH Document to OSHA Dated December 1976
"Re-examination and Up-date of Information on the Health Effects
of Occupational Exposure to Asbestos"

From preliminary review of the NIOSH document, "Re-examination and Update of Information on the Health Effects of Occupational Exposure to Asbestos," dated December 1976 and transmitted to the Department of Labor December 15, the following comments are made:

. Studies cited in the NIOSH document do not define the levels of airborne asbestos dust to which individuals were exposed. The levels of exposure were most probably much higher than those now being experienced in the workplace. There is no evidence to support the proposition that the present OSHA standard for occupational exposure to asbestos--viz 2 f/cc of air longer than 5 microns in an eight-hour time-weighted average with a ceiling limitation against any exposure in excess of 10 f/cc is not safe for exposed populations.

. Contrary to the NIOSH statement, state of the art and practical considerations rule out sampling and analytical

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functions at a 0.1 f/cc level --the standard level recommended by NIOSH to OSHA -- by phase contrast microscopy at 400 - 450x magnification.

Asbestos is a generic | term used for several fibrous minerals found in many areas of the earth's crust. Chrysotile, a serpentine mineral fiber, is the most common form of asbestos. Because of extraordinary fire and heat resistance, strength and stability and other unusual physical properties along with availability at relatively low cost, asbestos is used in a wide variety of domestic products and industrial applications, in many cases without practicable substitute. In most products wherein asbestos is a vital ingredient, the fibers are bonded |or locked in as with asbestos cement, plastics, millboard and hundreds of other products. The risk of exposure to respirable particles of asbestos from normal use of these products is negligible. Spraying of asbestos for insulating purposes, once a fairly common practice, is prohibited by federal regulation.

The absence of proper dust control procedures particularly in the World War II period and before when little was known as to the effect of excessive exposures of asbestos dust on worker's health led to the incidence of asbestos-related disease following now known latency periods. With the knowledge of risks to health from asbestos dust that the medical community began to recognize in the 1930s and 1940s, the asbestos industry -- mining, milling and product manufacture -- has spent millions

of dollars on medical research and engineering systems for dust control.

The asbestos industry continues its extensive efforts to eliminate worker exposure to asbestos dust through engineering controls and disciplined work practices. Concurrently, the tempo of investigation into the many questions surrounding the highly publicized asbestos-health relationship -- including research and analysis of evidence of asbestosis, lung and GI cancer and the rare disease mesothelioma -- has accelerated in world-wide effort to develop thorough scientific information on which to base sound, unemotional judgment on the issues of asbestos and health.

Conformance with the present OSHA regulatory standard, a challenging job, is being accomplished.

Comments on the proposed revision to the OSHA standard for occupational exposure to asbestos, from 2 f/cc to 0.5f/cc (29CFR Part 1910), submitted by this Association on behalf of the asbestos industry April 9, 1976 are available for review. The asbestos industry, after in-depth study of medical literature, technical feasibility and economic impact by independent consultants has recommended to OSHA adoption of a permanent standard of 2 f/cc of air time-weighted average, with a peak of 10 f/cc, using the membrane filter test method, phase contrast microscopy at 400-450 x magnification.

In its written comment to OSHA on behalf of the asbestos industry the Asbestos Information Association/ North America stated:

" Since there is no new evidence to indicate that the 2 f/cc TWA standard adopted in 1972 does not adequately protect the health of the working population, it would be grossly inequitable and a denial of due process to lower the standard at this time."

This statement continues to reflect the studied opinion of the asbestos industry.

R. H. Mereness, Executive Director, AIA/NA



ASBESTOS INFORMATION ASSOCIATION

1835 K Street, N.W., Washington, D.C. 20006 • (202) 223-4885

10 January 1977

Memorandum For: MEMBERS

Subject: Items of Interest

The following items are invited to your attention:

A. NIOSH Study on "Re-examination and Update of Information on the Health Effects of Occupational Exposure to Asbestos" -- The NIOSH document recommending OSHA reduce the asbestos standard for occupational exposure to 0.1 f/cc and Association statement prepared for use in responding to pertinent queries were forwarded to members by memoranda dated December 21 and January 6 respectively. The NIOSH study was transmitted to Dr. Corn, Assistant Secretary of Labor (OSHA), and Dr. Theodore Cooper, Assistant Secretary for Health, Department of Health, Education and Welfare by separate correspondence dated December 15 and signed by Dr. John F. Finklea, Director, NIOSH. Copies of Dr. Finklea's forwarding memoranda have been obtained and are forwarded for information.

Members will recall that the AIA/NA memo. of January 6 which forwarded the Association statement also made reference to a letter being set to Dr. Corn with regard to the NIOSH document. This letter dated January 5 over the signature of Mr. Gabrielson, Chairman of AIA/NA's Asbestos Regulation Task Force, was hand delivered on January 10. (See copy enclosed.)

B. Asbestos in 1976 -- Preliminary production and consumption data concerning asbestos during 1976 in the United States as prepared by the Bureau of Mines dated January 4 are enclosed.

C. OSHA Policy Papers to Transition Team -- OSHA has transmitted a number of policy papers to President-elect Carter's transition team on key issues facing the agency. The following have been selected as being of particular interest to members and are enclosed:

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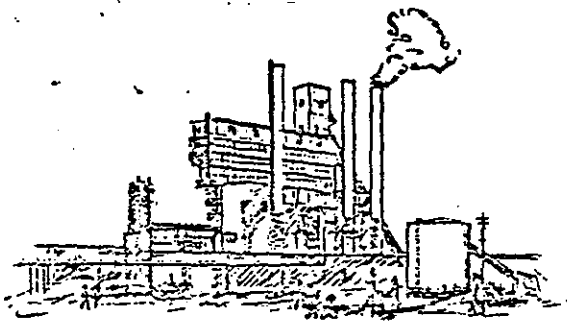
1. Inflationary Impact Statements
2. OSHA Criticisms
3. Amending the OSH Act of 1970
4. On-site Consultative Assistance
5. Regulatory Approaches to Health Standards
6. Cancer Policy
7. Rate Retention
8. The OSHA-NIOSH Relationship
9. Transferring MESA to DOL
10. Policy on Employee/Employer Training


R. H. Mereness
Executive Director

Enclosures

RHM:v

SPNY 003421



**NATIONAL INSTITUTE FOR
OCCUPATIONAL SAFETY AND HEALTH**

Mr. Mereness:

Enclosed are copies of the correspondence
related to the transmittal of the
revised document on asbestos to the
Department of Labor.

Suzanne Cole
Staff Assistant, DCDS

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SPNY 003422

MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
PUBLIC HEALTH SERVICE
CENTER FOR DISEASE CONTROL
NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

TO : Morton Corn, Ph.D.
Assistant Secretary of Labor
Occupational Safety and Health Administration
Department of Labor

DATE: DEC 15 1976

FROM : Director, National Institute for
Occupational Safety and Health

SUBJECT: Evaluation of Data on Health Effects of Asbestos Exposure and Revised
Recommended Numerical Environmental Limits

According to your request, NIOSH has evaluated available data concerning the health effects of exposure to asbestos. The general conclusion of this study is that all forms of asbestos, both commercial and non-commercial, are carcinogenic. All have the capacity to induce pleural and peritoneal mesotheliomas and/or lung cancer in man. In addition, all forms of asbestos have been found to cause asbestosis in man.

NIOSH has proposed new environmental limits which are based on this study. These recommend that no worker be exposed to an airborne concentration of asbestos in excess of 100,000 fibers over 5 μ m in length per cubic meter on an 8-hour time-weighted average basis. In addition, the proposed standard states that no worker should be exposed to peak concentrations in excess of 500,000 such fibers per cubic meter of air based on 15-minute sampling periods. Currently, it is not possible to establish a safe exposure level for a carcinogen. Therefore, recommended exposure values are based on the lowest concentration at which asbestos fibers can be monitored reliably using phase-contrast fiber counting procedures. After a thorough review and evaluation of all available sampling and analysis methods, NIOSH feels that phase-contrast microscopy is the only generally available and practical technique for routine monitoring, although electron microscopic methods are available on a limited scale for more precise research studies.

The recommended TWA standard of 100,000 fibers over 5 μ m in length per cubic meter of air is intended to (1) protect against the noncarcinogenic effects of asbestos and (2) materially reduce the risk of asbestos-induced cancer. Because it is not possible yet to specify a safe exposure level for the carcinogenic activity of asbestos, only a ban on its use can ensure complete protection against this mineral's carcinogenic effect.

Therefore, emphasis should be placed on prohibiting the occupational use of asbestos in other than completely closed operations and on substituting other products whenever possible. Asbestos should be replaced, where technically feasible, by substitutes with the lowest possible chronic toxicities.

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Morton Corn, Ph.D.

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The present indications are that concentrations of asbestos fibers of 100,000 per cubic meter will occur rarely except in the asbestos-processing industry. Asbestos-containing fireproofing and anechoic linings of air-ducts and plenums, although they are possible sources of asbestos fiber, probably are not major polluters of air within buildings.

This report addresses only the health effects of exposure to asbestos and the proposed environmental limit. NIOSH intends, however, to address formally, as soon as possible, the other provisions of the standard outlined in OSHA's Notice of Proposed Rulemaking dated October 9, 1975, and further comments will be brought to your attention.

John F. Finklea, M.D.

John F. Finklea, M.D.

MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
PUBLIC HEALTH SERVICE
CENTER FOR DISEASE CONTROL
NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

TO : The Assistant Secretary for Health
Through: ES/PHS
Director, CDC

DATE: DEC 15 1976

FROM : Director, National Institute for
Occupational Safety and Health

SUBJECT: Evaluation of Data on Health Effects of Asbestos Exposure and Revised
Recommended Numerical Environmental Limits

The National Institute for Occupational Safety and Health (NIOSH) recommends that occupational exposure to all types of asbestos be controlled so that no worker will be exposed to an airborne concentration of asbestos in excess of 100,000 fibers over 5 μ m in length per cubic meter on an 8-hour time-weighted average (TWA) basis. In addition, no worker will be exposed to peak concentrations in excess of 500,000 such fibers per cubic meter of air based on 15-minute sampling periods.

Previously, in a criteria document transmitted to the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, on January 21, 1972, NIOSH recommended that occupational exposure to asbestos be limited to 2,000,000 fibers over 5 μ m in length per cubic meter of air, determined as a time-weighted average exposure for an 8-hour workday, and to a peak concentration of 10,000,000 fibers over 5 μ m in length per cubic meter, determined by a minimum sampling time of 15 minutes. That recommended standard was designed primarily to prevent asbestosis. Recognizing that there was then insufficient information to establish a standard to prevent such other asbestos-related diseases as pulmonary, pleural, and peritoneal neoplasms, NIOSH had included in its calculations a safety factor intended to guard against neoplasms more adequately than unmodified environmental limits based solely on prevention of asbestosis. The current recommendation of a stricter standard was formed after review of both the most pertinent publications considered in the 1972 document and papers published during the four years since that document was transmitted to OSHA.

The recent literature reviewed has shown that the British standard of 2,000,000 fibers per cubic meter, adopted in 1969 and implemented in May of 1970, has not halted the development of radiographic abnormalities of the chest in workers in asbestos-using establishments. Another study has reported that miners exposed to fibers from amosite asbestos in airborne concentrations of less than 2,000,000 fibers per cubic meter (average concentration 250,000 fibers per cubic meter) have twice the likelihood of the general population of dying from either malignant or nonmalignant respiratory disease. Other papers have demonstrated that the risk of developing cancer after mixed exposure of factory workers to chrysotile, amosite, and crocidolite asbestos is dose-related.

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Furthermore, one paper reported that an excess mortality from lung cancer was found in 65 men who had been exposed to an unmeasured concentration of amosite asbestos for less than one month thirty years previously. The mortality rate was determined on an age-specific basis.

The present indications are that concentrations of asbestos fibers of 100,000 per cubic meter will occur rarely except in the asbestos-processing industry. Asbestos-containing fireproofing and anechoic linings of air-ducts and plenums, although they are possible sources of asbestos fiber, probably are not major polluters of air within buildings.

Currently it is not possible to establish a safe exposure level for the carcinogenic activity of asbestos. Therefore, the exposure values now recommended by NIOSH are based on what NIOSH considers to be the lowest concentration at which asbestos fibers can be monitored reliably using phase-contrast fiber counting procedures. After a thorough review and evaluation of all available sampling and analysis methods, NIOSH believes that phase-contrast microscopy is the only generally available and practical technique for routine monitoring at the recommended environmental limit.

The recommended TWA standard of 100,000 fibers greater than 5 μ m in length per cubic meter of air is intended to (1) protect against the noncarcinogenic effects of asbestos and (2) materially reduce the risk of asbestos-induced cancer. Because it is not possible to specify a safe exposure level for a carcinogen, only a ban on the use of asbestos can ensure complete protection against this mineral's carcinogenic effect. Therefore, emphasis should be placed on prohibiting the occupational use of asbestos in other than completely closed operations and on substituting other products whenever possible. Asbestos should be replaced, where technically feasible, by substitutes with the lowest possible chronic toxicities.

John F. Finklea, M.D.
John F. Finklea, M.D.



ASBESTOS INFORMATION ASSOCIATION

1835 K Street, N.W., Washington, D.C. 20006 • (202) 223-4835

January 5, 1977

The Honorable Morton Corn
Assistant Secretary of Labor
U.S. Department of Labor
Occupational Safety & Health Administration
200 Constitution Ave., NW
Washington, DC 20210

COPY

Dear Dr. Corn:

From conversations and communications between us in the past you are fully cognizant, I know, of the time and money which the AIA and its members have spent and will spend in responding to the 9 October 1975 OSHA proposal for a regulation of occupational exposures to airborne asbestos, excluding construction exposures, and in preparing to respond to a projected regulation of the latter. You will not be surprised, then, to learn that the 15 December 1976 NIOSH recommendation to your office, that the standard for exposure to airborne asbestos be reduced to 0.1 fiber/ml. TWA (vs. the 0.5 fiber October 1975 OSHA proposal), with a 15 minute ceiling of 0.5 fiber/ml. (vs. the 5.0 fiber October 1975 OSHA proposal), was an unpleasant surprise to our membership. If OSHA were to accept the proposal, it would seem, then, that the entire standards setting process might have to start anew, and all the work which AIA and others already have done as participants in that process would be largely wasted effort. For that reason and because the proposal itself would have very serious implications for the asbestos industry, we believe that it is our right and duty to comment upon this most recent NIOSH document.

NIOSH cites a great many more case and epidemiological studies than it has in the past, including oral communications and unpublished papers, none of which have been available for analysis by the scientific community. It is significant that the authorities cited appear to cast no more light on the issue of the dose/response relationship than have previous citations. There is no data to indicate that the exposures studied were not at least as high as 5.0 fibers/ml. TWA or 10.0 fibers/ml. at their peaks. The NIOSH document concedes that there is no scientific basis for the establishment of the particular exposure standard which it espouses. The rationale offered by NIOSH for its recommendation is that an industrial

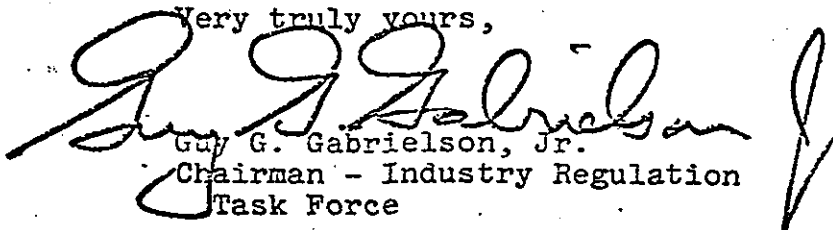
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The Honorable Morton Corn
January 5, 1977
Page 2

carcinogen for which no safe exposure level yet has been demonstrated should be controlled to the lowest measurable concentration, a concentration which, in this instance, many experts would say can be neither achieved nor measured. The document would appear, then, to be not a scientific statement predicated upon scientific data, but a policy proposal, to wit: that all industrial carcinogens should be controlled, regardless of economic or technological impact, to the lowest theoretically measurable level. or eliminated entirely, until it can be shown conclusively at what concentrations they can be used without any risk whatever. In the absence of information on the extent of any benefits which might be realized from the significant change proposed, or the feasibility or cost of making the change, the recommendation is of limited use to those who actually are charged with responsibility for policy decisions in the occupational health field.

Since the Occupational Safety and Health Administration is obliged to answer all the difficult questions, both medical and economic, which must be confronted before a change in the asbestos exposure standard can be made; we urge you to continue your past practice of consulting all the constituencies interested in this issue before taking action.

Very truly yours,


Guy G. Gabrielson, Jr.
Chairman - Industry Regulation
Task Force

GGG:ms

SPNY 003428



MINERAL INDUSTRY SURVEYS

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF MINES
WASHINGTON, D.C. 20241



Thomas S. Kleppe, Secretary

Thomas V. Falkie, Director

For information call Robert A. Clifton
Telephone: (202) 634-1206

Annual, Preliminary

ASBESTOS IN 1976

Production of asbestos in the United States during 1976 was 24% more than in 1975, according to the Bureau of Mines, U.S. Department of the Interior. The total production of all asbestos in 1976 was 123,000 short tons. The total value, \$25,805,000, was 81% higher than in 1975. The average value per ton decreased slightly from \$197 in 1975 to \$194 in 1976. Production was derived from four States with California first and Vermont second in rank.

Apparent consumption totaled 725,000 tons, 20% above that of the previous year. This increase reflected settlement of the miners' strike in Quebec.

Canada continued to be the major supplier of asbestos consumed in the United States; imports increased from a total of 539,000 tons in 1975 to 652,000 tons in 1976. Based on imports for 9 months, the Republic of South Africa supplied 9,300 tons of crocidolite and 1,700 tons of amosite. These tonnages indicate a decrease of about 34% in crocidolite and 66% decrease in amosite uses over 1975.

The price of Quebec asbestos did not change during 1976 despite new contracts with the miners' unions and other economic forces. Canada's largest producer announced a 14% price hike effective January 1, 1977.

Prepared in the Division of Nonmetallic Minerals, January 4, 1977.

SPNY 003429

TRANSITION DOCUMENTS ON MAJOR ISSUES FACING THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Inflationary Impact Statements

"Statement of Issue

How should OSHA react if Executive Order 11821, which requires assessment of inflationary impact of government actions, expires as planned on December 31, 1976?

"Background

Executive Order #11821 requires that major proposals for legislation and regulations be accompanied by a certification that inflationary impact of the proposal has been evaluated. This has been the subject of frequent criticism, particularly by organized labor, including two letters from George Meany to the Secretary of Labor and at least one major suit urging repeal of the order. OSHA's position has been that studies of this nature are essential to establish fairness and comprehensiveness in the rulemaking process. Thus, critical elements for OSHA consideration include the state of industrial technology and the economic consequences of proposed actions, especially when considering the timing of compliance requirements. The data developed through this process can provide factual answers to many questions and

criticisms of OSHA regulations as examples of expensive and ineffective governmental regulation. Further, these studies provide evidence when inevitable court challenges arise from standard setting or enforcement actions.

"Status

OSHA has taken actions to internalize the requirements of the order by establishing agency procedures to make it an integral part of standards development, without delaying the rulemaking process. It is important to continue this sort of analysis whether the Executive Order expires or is extended.

The inflation impact analysis requirement, therefore serves a useful purpose even while making the rule-making process for OSHA somewhat more cumbersome. It has been helpful both in the development of productive standards and to fend off criticisms of arbitrary actions in the standards development process, particularly from industry groups. Should Executive Order 11821 expire, OSHA may find itself under considerable pressure not to perform the very sort of economic analysis that is becoming increasingly important in the rulemaking, regulating and judicial processes.

"Critical Dates

Early 1977 -- define and defend an appropriate economic analysis procedure should Executive Order 11821 expire."

OSHA CRITICISMS

The Occupational Safety and Health Act of 1970 impacts many economic sectors of our society. The scope of this law extends to more than 5 million workplaces and 60 million employees; it imposes substantial obligations upon the regulated employers and creates numerous rights for their employees. Inevitably, those interests affected by this legislation have strongly-held opinions as to the manner in which it is enforced. The following is a summary of the criticisms voiced regarding the OSH Act or its administration and the steps OSHA has taken, where possible, to respond to these concerns. The criticisms are arranged according to the interest group or sector offering the viewpoint.

Organized Labor

A. Criticism

Labor has criticized numerous aspects of OSHA's enforcement and administration. These include the pace at which OSHA issues health standards (too slow) and what it considers excessive emphasis upon economic factors in this process. Labor has also contended that OSHA handles employee complaints of workplace hazards too slowly and that too many violations are classified as non-serious. Labor has stated that OSHA's compliance force is insufficient to enforce the OSH Act. It has objected to OSHA's administration of the State plans provisions of the OSH Act, claiming that OSHA allows States to operate without adequate guarantee of proper worker protection. Underlying these concerns is Labor's belief that political considerations have intruded into the administration of this law; a memorandum discovered by the Senate Watergate Committee, in which the first OSHA Assistant Secretary indicated that he was prepared to use the program to the Administration's advantage in the 1972 election, has left a legacy of distrust.

B. OSHA's Response

OSHA has increased the resources devoted to standard-setting and has reorganized the National Office to place health standards-setting in a paramount role. Training for compliance officers has been increased and new guidelines have been issued to the field, emphasizing the importance of

treating employee complaints expeditiously. The Agency is in the process of changing the violation classification system to better reflect the percentage of violations involving serious hazards. OSHA has stepped-up its hiring of occupational health personnel to augment its compliance capability. Finally, it continues to carefully oversee the 24 State job safety and health programs, ensuring that they provide coverage at least as effective as the Federal model before being allowed to operate independently. Through the expected administrative improvements from these and other remedial steps, OSHA hopes to dispel the mistrust created by past allegations of political interference.

Business community

A. Criticisms

The small business sector has maintained that the demands of the OSH Act require time, resources and expertise which is not available to most small business employers. Many object to the requirement for first instance sanctions, contending that small business should be given the opportunity to correct violations before being penalized. Segments of these employers, such as light residential construction contractors, would also like to see OSHA differentiate between large and small business employers in standards requirements, so that employers with varying resource levels are not required to meet the same requirements. The most conservative wing of small business employers objects to the validity of the Act itself and challenges its constitutionality.

Larger firms have objected to the content of OSHA's standards especially those occupational health regulations affecting their specific industries (coke ovens, vinyl chloride, etc.) Many firms feel that OSHA is inadequately considering the cost of its regulations and not conducting proper cost/benefit analysis. This segment also has criticized the Agency for concentrating on what it considers minor transgressions of the OSH Act (height of fire extinguishers, for example).

B. OSHA Response

OSHA has encouraged the States to develop fine-free, on-site consultation to assist small business employers; the Agency has published interpretations of its standards and

has encouraged all OSHA field offices to assist employers away from the worksite. It has also developed close contact with small business groups such as the National Federation of Independent Business, in order to receive their advice on programmatic matters affecting small business employers. OSHA has undertaken costly and time-consuming economic and inflationary impact analyses in conjunction with major standards proposals; the Agency is also instructing its compliance officers to concentrate on those hazards presenting danger to employees rather than accumulate minor violations during the workplace visit.

Agriculture

A. Criticisms

Agriculture employee groups, particularly migrant labor unions, have charged that OSHA is indifferent to protecting farmworkers. Farm employers have contended that OSHA is unfamiliar with the needs and working conditions on the Nation's farms; they have objected to the specific standards OSHA has issued for the farming sector (six of them), claiming that OSHA has failed to consult with knowledgeable agricultural observers before issuing regulations.

B. OSHA response

Last summer OSHA issued a proposed standard for field sanitation requirements, which became a controversial issue on the farms. OSHA has increased its contact with farm employer organizations, Congressional agriculture committees and other sources of farm expertise. The Agency has also hired a special advisor for agricultural affairs, who has had broad experience in farm matters.

Safety and Health Professionals

A. Criticisms

In general this sector supports the regulatory concept embodied in the OSH Act but has criticized OSHA for excessive concentration on enforcement at the expense of a "total" approach to safety and health. Such an approach would involve training, education, labor-management committees, and systems studies of workplace processes. The American Society of Safety Engineers has also criticized OSHA for employing what it considers an insufficient number of qualified safety personnel throughout its organization.

B. OSHA Response

OSHA has increased the amount and quality of the training given to both new and experienced compliance officers. It has also focused its hiring actions upon those with the capability and aptitude to master the professional requirements in the field of occupational safety and health. The range of consultative and educational programs described above are another response to these concerns.

Congress

A. Criticism

One sector of Congressional critics has mirrored Labor's complaints about slow standards-development, political intrusions into OSHA, excessive concentration on economic impact, and inadequate enforcement. At the other end of the legislative spectrum, conservative law makers have maintained that the OSH Act is unconstitutional and that the law should be repealed. Between those viewpoints is the opinion of many legislators that the OSH Act should be amended to assist small business employers through on-site consultation without sanctions or exemptions by size of employers.

The General Accounting Office has criticized many facets of OSHA's administration of the OSH Act; these include lack of health standards, inadequate criteria for State plan operation, excessive time in issuing citations, and other aspects of administration and enforcement.

B. OSHA Response

OSHA has made numerous programmatic changes described above and has carried out an aggressive informational effort with Congress designed to dispel misconception about OSHA. Every GAO investigation has been answered and administrative failures noted by GAO have been addressed by OSHA management. Many of these have been corrected (such as excessive delay in issuing citations) while others require longer term improvements which are being made (issuance of health standards at a faster rate).

The Media

A. Criticisms

The mass media have focused upon the more sensational OSHA criticisms made by others such as charges of political interference or ridicule of specific OSHA standards for personal reasons by political candidates. The media is generally supportive of the OSH Act and has publicized those criticisms directed at enhancing OSHA's efforts. The specialized media (ultra-conservative press, trade publications, union newsletters) reflect the views of their sponsors and have criticized OSHA along the lines described above.

B. OSHA Response

The Agency has worked with the media, correcting misstatements and offering maximum assistance in understanding the program.

AMENDING THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

I. Statement of Issue

What should the Administration position be with respect to amending the OSH Act? During each of OSHA's 5 years, numerous attempts were made to amend or repeal the OSH Act. Invariably such discussion will arise during the 95th Congress. Additionally, it may be opportune, after 5 years of experience to examine possible self-initiated amendments to improve the effectiveness of the Act.

II. Background

More than 400 amendments to the OSH Act have been introduced in the last 5 years; virtually every one would alter the enforcement or standards-setting authority in the law; others would repeal the legislation. The most prevalent type of bills have been those which would allow OSHA to provide on-site consultation authority without citation or penalty. With the exception of an on-site consultation bill which passed the House in November 1975, none of the amending proposals has been reported out of the Senate or House Labor Subcommittees to which they are referred. In the closing days of the recently adjourned 94th Congress, Senator Robert Taft (R. Ohio) attempted to attach a counterpart of the House-passed on-site consultation measure to an unrelated piece of legislation; this effort failed.

III. Status of Work on the Issue

With the failure of the Senate to pass an on-site consultation amendment, there are still no amendments to the OSH Act. Some members feel that the Senate Labor Subcommittee has intentionally blocked any consideration of on-site consultation legislation. As a result, two amendments to the FY 77 DOL-HEW Appropriations bill, which have the effect

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of amending the OSH Act during this fiscal year, are now in effect. They are described in the issue paper entitled "Appropriation Amendments Affecting OSHA". Up until now, the Agency has been reluctant to discuss "opening" the Act to amendment, however, recent internal discussions suggest that this must be an appropriate time to seriously examine the issue from an offensive position.

IV. Critical Dates

Based upon past performance in Congress, OSH Act amendments will be proposed from the opening days of the session and sporadically throughout the duration of the Congress.

Any legislative strategy aimed at positive amendments to the OSH Act must deal with the realization that opening the law to amendment could produce a deluge of amendments from OSHA's detractors in Congress. Such a strategy will require extensive study, consultation and base-touching and would require a go, no-go decision well in advance of expected legislative action. There is, however, no "magic" date.

ON-SITE CONSULTATIVE ASSISTANCE

I. Statement of Issue

What should the administration's position be with respect to providing on-site consultative assistance to employers?

II. Background

Virtually since its inception OSHA has been urged by employers to provide assistance in understanding and complying with the OSH Act without threat of citation or penalty. Proponents of this service have maintained that OSHA's safety and health standards are sufficiently technical as to require expertise not readily available to most employers. DOL has interpreted the OSH Act to preclude Federal OSHA inspectors from providing on-site consultation without sanctions. OSHA has allowed State job safety and health programs, which it monitors and assists (24 currently), to provide this service without sanctions; in addition, 13 States without safety and health programs are offering consultation reimbursed by Federal funds. In the remaining 19 States or jurisdictions employers must avail themselves of private consultants or discuss problems with OSHA away from the worksite. Many bills have been introduced in Congress during the last 5 years to provide on-site consultation without sanctions. A bill sponsored by Congressman Dominick V. Daniels (D-N.J.) passed the House in November 1975, H.R. 115-15, but a counterpart measure failed to receive Senate approval. The Ford Administration had supported both bills. The business community, for the most part, has supported consultation amendments while organized labor has opposed them, claiming that consultation by Federal OSHA would dilute enforcement.

III. Status of Work on the Issue

There is a great deal of interest in this issue. OSHA has prepared a number of issue papers on this topic and is near completion of 2 contracted studies designed to evaluate and describe the nature and effectiveness of existing consultation activities. There are varying interpretations of what "consultation" is. In addition, a recent reorganization of OSHA posits an expanded role for the offices dealing with consultative services.

IV. Critical Dates

On-site consultation amendments will certainly be introduced in the 95th Congress, probably early in the session. Even though the main supporter in the Senate, Senator Robert Taft (R. Ohio), was defeated, support remains high. Passage of the bill by the House last year would ordinarily make its reenactment a certainty, except that its sponsor, Daniels, has retired; he was extremely influential in any legislative efforts involving OSHA. The policy issue here is whether to support or oppose consultation amendments and which alternative methods of consultation, if any, are to be developed.

REGULATORY APPROACHES TO HEALTH STANDARDS

I. Statement of Issue

How can OSHA more rapidly develop health standards for the thousands of chemicals in the workplace?

II. Background

OSHA has frequently been criticized for the slow rate at which it has promulgated new health standards. Critics have argued that OSHA, in its current approach, will never be able to provide comprehensive coverage for workers exposed to thousands of toxic substances found in the workplace. The rulemaking procedures are necessarily lengthy in order to conform to the administrative procedures set forth in the Act and in order to develop an adequate record of rulemaking on which to promulgate each standard. The substantial resource requirements for each rulemaking also limit the number of rulemakings for individual substances that can be ongoing at any given time.

In the longer term, critics argue that substance-by-substance regulations will pose unwieldy compliance problems for industry and for OSHA enforcement staff. In modern industry, hundreds of different chemicals may be found in the environment of any particular workplace. Under current standards, each substance regulated by OSHA in the workplace would have to be dealt with individually, discouraging efforts at a more comprehensive approach to control of the workplace environment. In addition NIOSH is developing criteria documents on a substance-by-substance basis, and the number of criteria documents issued to date far exceeds the number of corresponding OSHA standards. This growing gap between the activities of the two agencies is a source of criticism by the public and the Congress.

III. Status of Work

Precedent for promulgation of standards for groups of chemicals has been set in the issuance of the carcinogens standards in 1974 and in the Standards Completion Project now underway. Consistency in the language of the standards and in the requirements of standards for chemicals posing similar hazards, and the administrative feasibility of the group rulemakings offer some promise of a solution. However, we are actively seeking from concerned parties suggestions for new approaches which will more adequately address both the difficulties in setting new standards, especially where existing or new exposure limits are being evaluated, and the problems of compliance discussed above.

IV. Critical Dates

Major investments by private industry are being undertaken to comply with new OSHA standards. If a change in approach is to be made, that change should be made as soon as possible to avoid unwarranted investments and to forestall loss of agency credibility from both labor and industry over the slow rate of standards development and the unwieldy nature of the regulations.

CANCER POLICY

I. Statement of Issue

Should OSHA establish a general cancer policy through a rulemaking procedure which would shorten and simplify the process through which individual standards could be issued?

II. Background

Occupational cancer is a matter of growing public concern as a result of widely publicized episodes such as vinyl

chloride and kepone. The Toxic Substances Control Act, the NCI Clearinghouse of Environmental Carcinogens, and NIOSH will all contribute to the identification of carcinogens at a more rapid rate. OSHA, already criticized for moving slowly on health standards, must develop a more responsive regulatory approach, especially for carcinogens or expect to be the focus of additional attacks.

In 5 years, OSHA has promulgated only four health standards, each concerning carcinogens; namely, Asbestos (1972), the 14 carcinogens standard (1973), Vinyl Chloride (October, 1974), and Coke Oven Emissions (October, 1976). An examination of these standards indicates a set of policy issues common to each. Some of these policy issues include the assumption that an animal carcinogen poses a cancer risk to man, that there is no "safe" level of exposure for a carcinogen, that the standard should be set at the lowest level feasible, and that employees should be apprised of the hazards of exposure to a carcinogen.

After extensive public rulemaking proceedings, OSHA, in each of these instances, resolved these policy matters in a similar manner even under differing administrations.

Given the fact that there exists a consistent policy approach in previous OSHA carcinogen standards, it appears possible to establish a regulatory strategy based on these policy considerations that would limit the issues to be raised in individual standards proceedings, thereby shortening and simplifying the process and increasing the number of standards issued.

Opposition may be expected from industry and, to some extent, the scientific community on the basis that each substance should be treated on a case-by-case basis.

III. Status of Work and Critical Dates

A draft policy statement and regulatory strategy for carcinogens is under development and is expected to be completed by the end of calendar year 1976. After appropriate review, the policy would be published as a rulemaking proposal in early 1977.

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RATE RETENTION

I. Statement of Issue

What should OSHA's position be on guaranteeing workers against wage losses that flow from mandatory removal from a job in order to protect their health?

II. Background

The proposed coke oven emissions standard required that employers give all employees exposed to such emissions regular medical examinations and remove any employees whose health might be impaired by continued exposure. Organized labor fought strongly against any mandatory removal provision without complete rate retention protection. This protection would provide, first, for impartial medical arbitration of any mandatory removal action and, second, for a guarantee of worker's full wages, seniority and advancement rights, regardless of whether or where they might work after such removal. Although the unions claim that enforcement of such protection would be simple, occurring through the grievance process, OSHA would still face a number of difficulties, were this issued as a standard, because of its obligations to enforce it through citations and penalties.

The issue created a great deal of controversy and substantial pressure from the unions involved. A number of legal, administrative and factual problems eventually made it clear that OSHA could not adopt such a course of action as

part of the coke oven standard, especially since such a concept would most likely be quickly extended to other OSHA standards. Yet, OSHA was sympathetic to the dilemma the unions raise: in the absence of such economic protection, workers, fearing loss of their jobs, would be unlikely to take the very medical exams that they needed to protect themselves. OSHA therefore decided to issue the final coke oven standard without any mandatory removal requirement and to consider further rate retention but as a separate issue.

III. Status

OSHA has since decided to form an ad hoc advisory committee to address this issue not just in the context of coke oven emissions but as a basic part of what OSHA will require in all standards regarding employers' medical surveillance programs. The issue is particularly prickly, however, because of its impact on collective bargaining relationships. Numerous delicate questions regarding seniority, working conditions, skill ladders, etc., will be introduced but OSHA is still committed to a thorough and open examination of exactly what rate retention would involve.

IV. Critical Dates

Fall 1977 — When the advisory committee completes its work, OSHA will have to decide whether to require rate retention or not.

THE OSHA-NIOSH RELATIONSHIP

I. Statement of Issue

Should the OSHA and NIOSH relationship be changed and, if so, how?

II. Background

The research capacity relating to occupational safety and health is not located in OSHA. Instead, under the OSH Act of 1970, there was a separate National Institute for Occupational Safety and Health created in a different Department. Worse, NIOSH is several levels down in the HEW bureaucracy, with different objectives, a different set of bosses, insufficient resources and geographic separation. It is no surprise that, despite the good intentions of the current agency heads, the efforts at coordination still are not yielding proper results.

There are a number of basic questions to be answered. Where will OSHA get the scientific expertise and background that it needs to operate? NIOSH just does not have enough resources. It is not very responsive to our needs. In effect, it has a separate agenda. In spite of this, does it make any sense for OSHA, on its own, to get deeper into applied research to satisfy its own needs?

Transfer of NIOSH to OSHA has been discussed for a number of years. Until recently, OSHA had been opposed to such considerations on the general grounds that it was against opening the Act to any amendment. Now, with several potential amendments being considered, it might be useful to start thinking of such a transfer.

III. Status

Regular monthly meetings now occur between the agency heads and are supplemented with numerous staff and informal contacts. Still, there is no real system for establishing priorities for research, criteria documents and standards. Both agencies also need to coordinate the collection of data describing health and safety hazards and related matters. Finally, there is a need to forge a stronger joint effort,

through contract and grant programs, to develop the recruiting/training of industrial hygienists and to certify/evaluate safety and health protective equipment.

IV. Critical Dates

There are no pressing decision dates but the question should be considered in conjunction with any proposed legislative changes.

TRANSFERRING MESA TO DOL

I. Statement of Issue

What should the Administration's position be regarding the proposal to transfer the Mine Enforcement and Safety Administration (MESA) to the Department of Labor?

II. Background

Bills to transfer MESA from Department of the Interior to DOL were introduced in both Houses of the 94th Congress. The House passed a MESA transfer bill, which also contained several amendments to the Federal Metal and Nonmetallic Mine Safety Act, by 309-86; the Senate bill mandating transfer and strengthening mine safety laws was reported out of Committee but did not receive floor consideration before Congress adjourned. Both bills also contained provisions delineating jurisdictional areas between OSHA and MESA, a point of contention with the mining industry, unions and the agencies. The Ford Administration and the mining industry opposed MESA transfer, maintaining that the Interior Department had the requisite experience and expertise to administer mine safety laws; segments of organized labor, especially the United Mine Workers and the United Steelworkers, pressed for transfer to DOL, claiming that Interior's responsibilities for energy resources development conflicted with its safety duties.

III. Status of Work on the Issue

If the basic issue is to support transfer to DOL, a number of corollary organizational issues will require decisions; a series of issue papers on MESA transfer have been prepared by DOL during discussions with OMB and Interior this year.

IV. Critical Dates

Although the sponsor of the MESA transfer bill in the House, Congressman Dominic Daniels (D. N.J.), has retired, it is likely that similar legislation will be introduced in both the House and Senate immediately after Congress resumes. The issues to be resolved include the Administration's position on the transfer issue; the administrative location of MESA within DOL if transfer is approved and the position to be taken regarding the provisions which add OSHA-like features to the current mine safety laws (e.g. employee walkaround rights, general duty clause, etc.).

POLICY ON EMPLOYEE/EMPLOYER TRAINING

I. Statement of Issue

What should be the OSHA policy in the area of training in occupational safety and health for employees and employers?

II. Background

Although OSHA has emphasized workplace inspection in its attempts to reduce occupational hazards, there are available other effective means which support and complement the enforcement activity. One of these is on-site consultation which is discussed in a separate paper. Another means is employee/employer training. OSHA has had and now has programs in this kind of training and it is now preparing to adopt a policy which will guide future efforts in employee/employer training.

The OSHA obligation and authority for employee/employer training is contained in Section 21(c)(1) of the Act. In this connection, the Agency has produced and made available training pamphlets and courses (including audio and visual training aids) in a variety of subjects ranging from the identification and avoidance of specific workplace hazards on the one hand to employee/employer rights and responsibilities under the Act on the other. The Agency has also provided for the delivery of training services to employee/employer groups through programs with the National Safety Council, junior and community colleges, labor study centers, schools of industrial hygiene and others. The practical difficulty of reaching some 70 million workers and 5 million businesses make it impossible to do more than to establish pilot programs in order to demonstrate their viability. Training materials and services provided were intended to support and supplement programs by labor unions, trade associations and employers. The availability of OSHA funds for employee/employer training and the willingness of the Department to award sole-source contracts in many instances led to some controversial contract decisions, which further points up the need for a consistent policy in this connection.

III. Status of Work on the Issue

OSHA has announced, informally, its intention to publish a consistent policy for support of programs in employee/employer training. It intends to target a portion of its budget for this purpose and to stress the heretofore neglected area of health protection with a view toward eventual parity with protection from injury. The policy is also in-

tended to encourage the twenty-four or so "plan states," which maintain their own occupational safety and health programs, to strengthen and expand their employee/employer training under the "at-least-as-effective-doctrine." Except in exceptional cases, all contracting will be through formal competitive means, which is the preferred contract practice from both a price and sole-source controversy point of view.

IV. Critical Dates

There are no externally imposed critical dates for the issuance of the policy on employee/employer training except that training requirements in the workplace, and the need to accommodate the concerns of unions and others for consideration of their special needs, argue for early issuance. Upon adoption, a shakedown and review period will ensue. Assessment of new programs should begin with the new policy in order to increase the effectiveness of this educational effort.