



A/C Pipe
Producers Association

Internal Correspondence

TO Regulatory Affairs Committee

FROM *J. F. Welch*
J. F. Welch, Director, Public Affairs

DATE February 8, 1980

SUBJECT Asbestos Industry Position Paper on Recommended Work Practices

Action Required: *Review for information only*

PLAINTIFF'S EXHIBIT

CAP-480

On February 7, 1980, AACPP and AIA/NA formally transmitted to Assistant Secretary of Labor for Occupational Safety and Health, Eulah Bingham and to the OSHA Advisory Committee on Construction Safety and Health (Subgroup on Health Standards) a "Recommended Standard for Occupational Asbestos Exposure in Construction and Other Non-Fixed Work Operations." This is the culmination of a years' work on the "Recommended Work Practice Program".

Guy Gabrielson (Nicolet, Inc.) testified and answered questions on behalf of both associations. The Subcommittee's reaction to the proposal was mixed, split along union and pro-industry lines. Since the Subcommittee did not have an opportunity to review the proposal prior to the meeting, its questions were rather general. It was clear that union representatives are concerned about the "uncertainty" surrounding potential health effects from low level exposures to asbestos. While they acknowledge the need for practical regulatory schemes for the construction industry, they are openly reluctant to give up medical surveillance for workers exposed to carcinogens, especially asbestos.

John Martonik (OSHA Staff Liaison) first characterized the proposal as "radical" but later noted that the concept of work practices and reduced medical surveillance were embodied in all other health standards except asbestos. His main concern was with the proposed change in the triggering level (zero for all practical purposes) for initiating monitoring and medical surveillance for workers exposed to asbestos. In a very blunt way, he accused industry of wanting to raise the triggering level from 0 to the current permissible exposure limit of 2.0 fibers/cc.

There was additional discussion regarding "first instance citations" of contractors who use recommended work practices, but which when monitored by OSHA, may be in excess of the permissible exposure limit. It was Martonik's contention that in such first instance violations, the contractor should be cited. Guy Gabrielson countered that it would be inappropriate to cite the contractor when, in accordance with the proposed standard, he was acting in good faith by relying on objective data on the work practices. Gabrielson's position also was supported by Gene Canham, an independent safety consultant on the Subcommittee.

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The Resilient Floor Covering Institute submitted very brief comments which blandly endorsed the joint AIA/NA effort. It is possible that RFCI may be considering petitioning for an exemption of resilient flooring products.

Staff Analysis

It is difficult to predict what OSHA's response to the industry's proposal will be; support for the concept is very soft at this time. Disregarding the fact that the agency is moving on a new asbestos standard, it is unlikely that OSHA will take a formal position prior to discussing the proposal with labor representatives. While the proposal anticipates many of OSHA's and labor's concerns about workplace monitoring, certification, enforcement, etc. the pivotal issue appears to be the willingness/unwillingness to concede the "sacred cow" of medical surveillance.

AACPP Action Plan

(1) AIA/NA and AACPP will meet with OSHA Staff (Construction Safety and Health Standards) to discuss agency response to the proposal; follow-up with Bob Jennings and, if necessary, Dr. Bingham also will be considered.

(2) A copy of the industry proposal will be forwarded to Paul Kotin (JM) for transmittal to Irving Selikoff to determine his position on the proposal.

(3) AIA/NA will prepare a press release for selected distribution to the occupational safety and health press.

JFW/cjm

cc: A. Kahn, Esq.

copies to: Associate Members

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A&A/7
Chrono

As on the occasion of my last appearance before this Subgroup, I represent the AIA/NA and the Association of Asbestos Cement Pipe Producers. I promised then to present to you a memorandum and a draft standard for the protection of employees against the hazards of exposure to airborne asbestos both in the construction industry and in other non-fixed work places. It is my privilege today to deliver that memorandum and draft standard to you. ^{We believe} ~~Our hope~~ is that the concepts included therein ^{will} ~~may~~ serve as a model for other construction industry health standards.

The regulatory scheme which we propose is a simple one and the draft standard concise. It is ^uconched in the form of exceptions to the general standard regulating occupational asbestos exposures. Briefly stated, any contractor who reasonably relies upon objective data, including tests by an independent certified laboratory, which ~~data~~ show that an asbestos product, or an asbestos product used in a defined manner, will not under any normally anticipated circumstances create asbestos exposures in excess of currently mandated limits, shall be relieved of all or nearly all the burdens of the underlying general asbestos standard. And if that contractor relies upon a certified work practice to justify exemption from the provisions of the general standard, he must both instruct his employees in the use of the work

practice and take other reasonable steps to ensure that it is followed. Use of other asbestos products for which there is no objective data to justify exemption, shall be subject to all the burdens and obligations of the general asbestos standard. The role of the OSHA inspector, when exempt products or exempt products and methods are being used, is to satisfy himself that the products or methods indeed reasonably are exempt products or methods, that exempt methods, if applicable, are being followed and, at his discretion, periodically to use standard monitoring procedures to validate the classification of products or methods as exempt.

The merits of our proposal are that it avoids the inappropriate application of fixed work site rules to the construction industry, that it relieves OSHA of an impossible enforcement task, that it focuses industry and government efforts on the protection of employee health instead of wasting limited resources on the gathering and preservation of essentially useless data, that it permits the continued safe use of valuable construction materials and, on a continuing basis, that it encourages and promotes the development and introduction of safer construction materials and methods. We commend this work practice regulatory scheme to your favorable consideration, particularly if you think it likely that future advances in the health sciences may identify additional toxic substances in use in the construction industry.

CAPCO JEN 0002666

We stand prepared today, or at your later pleasure,
to answer any questions which you may have concerning our
written submission.