

Board of Directors
International Affairs Committee

J. F. Welch
J. F. Welch, Vice President

September 16, 1983

U.S. Occupational Safety & Health Administration (OSHA) - Exposure Standard for Asbestos

- REF: (1) JFW correspondence, same title, June 17, 1983
(2) JFW correspondence, Request for Emergency Temporary Standard for Asbestos, June 28, 1983

ACTION REQUIRED: Review for information

Background

On August 29, 1983, Secretary of Labor Donovan and Assistant Secretary for Occupational Safety and Health Auchter met to review agency options for reducing the occupational exposure standard for asbestos. As previously reported, options under consideration are (1) an emergency temporary standard (ETS) of 0.5 f/cc. or 0.1 f/cc., 8 hour time-weighted average and (2) a proposed standard within the same exposure range. No decision was made, although it was agreed that the matter should be reconsidered in the immediate future.

On September 1, Kirkland & Ellis (special counsel to AIA/NA) prepared the enclosed letter strongly discouraging OSHA from issuing an ETS.

Donovan and Auchter met again on September 6 to reconsider the standard. Auchter apparently continues to press for an ETS, using the Mt. Sinai School of Medicine (Selikoff) risk assessment, union petitions and the recently-announced reduction of the U.K. chrysotile standard to 0.5 f/cc. TWA as justification. Political and personal considerations may also weigh in Auchter's desire to accelerate the asbestos rulemaking.

Current Status

On September 14, 1983, AIA/NA reported that Auchter probably would hold the ETS in abeyance for 30-60 days. In the interim, a special "informal hearing," possibly 1-2 days in length, will be convened by OSHA. Such a meeting would provide a forum for labor unions, scientists, industry and the public to express opinions about the adequacy or inadequacy of asbestos standards. Similar hearings were held in 1974 for the vinyl chloride and arsenic standards.

The "informal hearing" has distinct political advantages for OSHA: (1) it provides support for whichever option OSHA may wish to take, (2) it negates the AIA/NA contention that interested parties are deprived of full due process rights (see enclosure, para. 1) if an ETS is issued and (3) it forces industry to disclose at least some of its strategy in advance of the formal rulemaking.

Regardless of the outcome, Kirkland & Ellis has prepared a petition to stay the ETS if promulgated. Further, Auchter was advised clearly of industry's intentions to challenge the ETS.

If you have any questions, please do not hesitate to call.

JFW/ajb

Enclosure

cc: A. Kahn, Esq.

copies to: Board of Directors

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