ITEM F

(G)

ORAL PRESENTATION BEFORE THE

CALIFORNIA STATE OCCUPATIONAL SAFETY

AND HEALTH STANDARDS BOARD

AUGUST 30, 1979

TITLE 8: GENERAL INDUSTRY SAFETY ORDERS
(Asbestos)

Held in San Diego, California

on

August 30, 1979

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My name is John Myers and I am employed by Union Carbide Corporation as Marketing Manager of its "Calidria" asbestos products. I have been involved with our asbestos business for 13 years. We produce about 30,000 tons per year of asbestos fiber from a mine and mill located in the King City area of California. We instituted air monitoring and medical surveillance programs with the startup of the plant in 1963 and have invested the necessary funds to remain in compliance with existing regulations.

We produce and market raw asbestos fibers for industrial use only. We do not manufacture any finished asbestos-containing products. Our interest in your proposal to change the "action level" for monitoring and medical examinations is because these changes can have a massive impact on the users of asbestos-containing products with little or no gain in worker protection.

The question of the appropriate "action level" to trigger monitoring and also medical examinations was discussed at the Standards Board hearing on April 26, 1979. At that time, there was general agreement among labor, industry and some state governmental representatives that an action level of 0.5 fibers/cc was reasonable, practical and enforceable. This level was based on considerations of worker protection, ability to measure, and an efficient allocation of professional resources. This level was adopted unanimously by the Board.

Soon after the Hearing and before the Board meeting to finally approve the new action level, Federal OSHA advised Mr. Vial by letter that the Board's action was - I am quoting - "unacceptable -- your asbestos exposure language will need to be identical to Federal OSHA" - close of quote. He quoted OSHA Program Directive #300-16 as the basis for his statement. California has a state plan approved "as effective as" the Federal regulation. There has been no change in the Federal Asbestos regulations which would require a change in the California regulations in accordance with section 18 of the Occupational Safety & Health Act. Following is a summary of an opinion from a Union Carbide attorney who specializes in OSHA matters. The complete text of his opinion is available to the Board. (Copy given to Hearing Recorder.)

He makes these points:

1. Program Directive #300-16 is an administrative interpretation only and has no regulatory or statutory authority.

2. California is under no statutory requirement to modify their regulations.

3. Failure to conform to such an Administrative interpretation does not provide the "substantial evidence" required under Section 18(g) of the OSH Act to sustain a withdrawal of certification.

4. The authority delegated to the Regional Administrator under paragraph 1953.4 (a)(2) relates to inconsistent interpretations of existing standards. It does not require standards which have been certified to be modified to conform identically.

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To summarize, California is not required to change their present regulations to conform to the Federal wording. The choice is up to the Standards Board.

There are two basic reasons why the Board should retain the present action level of 1 fiber/cc.

1. One is the very large burden on resources to attempt to comply with, and enforce, an action level of 0.1 fiber/cc.

2. The second is the inability to measure the airborne concentration at this very low level.

Under your current standard, it is fairly easy for a knowledgeable employer or state compliance officer to determine if monitoring is required. If monitoring is required at a suspected level of 0.1 fiber/cc, virtually every place of employment where asbestos is present in any form or product must be monitored.

Brake repair shops provide a specific example of the scope of the problem. Airborne fibers can be released when brake linings are changed and reworked. But it has been shown that airborne asbestos concentrations can be controlled by training workers and using proper work practices. There are over 20,000 brake repair shops in California, the majority of which are service stations. If the proposed action level is adopted, all of these shops would be required to monitor or they could be subject to a citation and/or fine for non-compliance.

A conservative estimate for a simple initial monitoring is $400. This times 20,000 shops is $8,000,000, added to the operating expense of the brake repair industry in California. It would take an average of 2 man-days for trained personnel to conduct each test. Using 200 working days in a year, it would take the full-time activity of 200 trained technicians to monitor the brake shops in a one-year period. The people and equipment are probably not available - and what would be learned from this massive program? That brake shop TWA's are generally above zero and below 1 f/cc - this is already well established.

I have discussed brake shops because they are a well-defined entity, already registered in the state of California. A more difficult problem exists in the construction industry because of many more work locations, most of them constantly changing. We have not attempted to determine the cost or number of technicians which would be required for initial monitoring at a 0.1 f/cc action level in the construction industry, but they would obviously be very large.

Changing the initial monitoring action level to 0.1 would increase operating costs and require a massive mis-use of limited technical resources. And would worker protection be improved? We think little, if any at all.

The second reason not to change to a 0.1 action level regards the technical problems involved with measuring this concentration. With your permission I would like to have Dr. Rhodes discuss this aspect.

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John Myers - Union Carbide Corporation. We can continue to use brake shops as an example of the potential impact of the proposed change in action level for medical surveillance. A filling station is likely to have 2 or 3 mechanics

who handle brake repairs along with other general work. Larger specialty shops may have a dozen or more people who repair brakes with some frequency, and other workers could be in the general vicinity of the work. Let's assume there are only two mechanics in each of the 20,000 registered brake shops, or a total of 40,000 persons requiring pre-employment and annual medical examinations under the proposed regulations.

Dr. Clark Cooper, who supervises the joint union-employer medical surveillance program for the Western States Conference of the Asbestos Workers Union, has provided an estimate of $60-75 per man for a minimum physical examination to satisfy OSHA requirements. This is on a large-scale contract basis conducted by well qualified personnel. Examinations of an individual or small groups, as would probably be the case for brake repair shops, would increase the costs to at least $100 each. These costs do not include time spent away from the job to obtain the examination. At a very conservative $50 each, for only 2 employees per shop, the medical examinations could cost $2,000,000 annually. Using the higher unit cost and more workers per shop would increase the total cost by millions of dollars.

The construction industry is faced with the additional complications of a much larger and very transient workforce and many more workplaces, most of which change several times per year. Although this is clearly a potential cost burden, the fundamental question is not the cost, but what is really accomplished in terms of worker protection. Dr. Cooper will speak to this issue.

We believe that the present California level of one fiber/cc is reasonable and meets the California objective of a standard which is enforceable and makes a positive contribution to worker health.

We have been asked why a standard which has been administered by Federal OSHA in 26 states for seven years would now be a problem if adopted in California. The answer is very simple: although the Standard has been in effect for seven years there has been essentially no Federal enforcement in the asbestos product user areas that would be most seriously impacted by the 0.1 action level. Since California's industrial health activities are much more comprehensive, the compliance and enforcement problems described earlier would soon become clearly evident.

The statement on Federal enforcement is based on a summary of Federal asbestos inspections from October 1976 to January of 1979. In this 30 month period (that's 2-1/2 years), there were 17 inspections of the estimated 125,000 brake shops in the states where primary enforcement is by Federal OSHA. Seventeen of 125,000 - and 16 of these were the result of complaints. This means that one inspection may have been conducted to determine if the shop exceeded 0.1 fibers/cc - in 2-1/2 years.

Over 60% of the asbestos used in the U.S. is in some type of construction product and the U.S. Dept. of Commerce has estimated there are 430,000 construction workplaces and 3-1/2 million workers (this is based on a 1972 census). There were only 173 asbestos-related OSHA inspections of this type work location in the same 2-1/2 year period. It is clear that only a minute fraction of workplaces which may emit over 0.1 f/cc has been inspected. I want to emphasize that this information is not a criticism of Federal activities or the allocation of resources which Congress has made available to them. They have many statutory priorities and other committments. We simply want to document the fact that, regardless of the reason, there has been essentially no enforcement of the 0.1 action level for monitoring and medical surveillance.

Since this provision has not been enforced on a national basis there is absolutely no evidence that it is reasonable or workable. Why should California "follow the leader" and adopt a provision that in all probability will not be complied with or enforced.

In addition to practical and enforceable asbestos standards, the state of California has supplemented their activities with the Carcinogenic Substances Control Act, a registration provision, more restrictive repeat monitoring, a Carcinogens Control Unit, an active consultation program, and an experimental, voluntary labor-industry joint education program. We believe that the California overall program is easily "as effective as" and probably "more effective than" the Federal activities.

In conclusion let me state emphatically that Union Carbide is not opposed to monitoring and medical surveillance. We strongly support the need for both of these activities where significant exposures occur - or where they have occurred in the past. We have strongly supported California's limited asbestos education program and would support a more active program. We believe training and education are vitally important for improved worker protection and a safe working environment. We urge you to retain your present standards and not adopt changes that would make parts of them impractical to comply with and enforce.

Remember that it is your decision - you have no legal or statutory obligation to adopt the Federal OSHA language in your regulations.

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