

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 72-1713

INDUSTRIAL UNION DEPARTMENT
AFL-CIO, et al.,

Petitioners,

and

ENVIRONMENTAL DEFENSE
FUND, INC., et al.,

Petitioner-
Intervenors

v.

JAMES D. HODGSON, SECRETARY
OF LABOR,

Respondent

ON PETITION FOR REVIEW OF THE SECRETARY
OF LABOR'S STANDARD FOR EXPOSURE TO
ASBESTOS DUST UNDER THE OCCUPATIONAL
SAFETY AND HEALTH ACT OF 1970

JOINT AFFIDAVIT
VOLUME
PP

Elliot Bredhoff, Esq.
George H. Cohen, Esq.
Darryl J. Anderson, Esq.
Bredhoff, Barr, Gottesman
Cohen & Peer
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036

Attorneys for Petitioners

Scott H. Lang, Esq.
John F. Dienelt, Esq.
1712 K Street, N.W.
Washington, D.C. 20036

Attorneys for Petitioner-
Intervenor

Alan B. Morrison, Esq.
Arthur L. Fox, II, Esq.
Suite 515
2000 P Street, N.W.
Washington, D.C.

Attorneys for Amicus Curiae
Urging Reversal

Harlington Wood, Jr., Esq.
Assistant Attorney General

Walter H. Fleischer, Esq.
Eric B. Chaikin, Esq.
Attorneys
Department of Justice
Washington, D.C. 20530

Attorneys for Respondent

Joseph W. Burris, Esq.
Attorney for Asbestos
Information Association of
North America
521 Fifth Avenue
New York, New York 10017

Attorney for Amicus Curiae
Urging Affirmance

ROSS V. BFS

TABLE OF CONTENTS

	Page
The Standard Under Review	2
Notice of Proposed Rule Making on a standard for exposure to asbestos dust (Exhibit 1)	7
Letter of November 4, 1971 from Geo. H.R. Taylor (Exec. Secretary, AFL-CIO) to Ass't. Secretary of Labor, Occupational Safety & Health, requesting U. S. Dept. of Labor promulgate emergency asbestos standards (Exhibit 2)	10
Letter of November 10, 1971 from Ass't Secretary of Labor for Occupational Safety & Health to Director of NIOSH, Dept. of HEW requesting recommendations on a five fiber per milliliter TLV for asbestos (Exhibit 3)	26
Letter of November 17, 1971, from Dr. Marcus Key, Director of National Institute of Occupational Safety & Health, replying to request by Ass't Secretary of Labor Geo. Guenther for recommenda- tions regarding emergency asbestos standard & permanent standard for occupational exposure to asbestos dust (Exhibit 4).	28
Emergency Standard for Exposure to Asbestos Dust, published December 7, 1971 (Exhibit 5)	35
Publication in 37 Federal Register 322 of rule applying emergency standard to Ship Repairing, Shipbuilding, etc. (Exhibit 6)	38
Notice in 37 Federal Register 3992 of February 25, 1972, that National Institute for Occupational Safety & Health filed with Secretary of Labor "Criteria for a Recommended Standard on Occupational Exposure to Asbestos." (Exhibit 7)	39
NIOSH "Criteria for a Recommended Standard on Occupational Exposure to Asbestos." (Exhibit 8)	40
Notice of Meeting of February 3, 1972, of Advisory Committee on Asbestos Standards (Exhibit 9)	167
Recommendations of Advisory Committee on Asbestos Dust, regarding proposed Standard (Exhibit 10)	168
Letter from Isaac Weaver, Member of Advisory Committee on Asbestos Dust expressing dissent to Committee recommendations (Exhibit 11).	183
Letter from Geo. C. Guenther to Mr. Weaver indicating determination be done to prejudice Committee recommendations (Exhibit 11A)	185
Excerpts from stenographic transcripts of meetings of Advisory Committee on Asbestos Dust (Exhibits 12, 13 & 16)	186
Written Comments Received by the Secretary pursuant to Notice of Proposed Rule Making (Exhibit 17)	223

Exhibit 17 continued:	Page
William J. Nicholson's February 9, 1972 letter & attached comments entitled "The Characterization of Asbestos Dust Levels in Insulation Work," with data appended. (Comment No. 3)	223
Kingsley Kay's Brief on the NIOSH Proposed Asbestos Standard (plus references, tables and supplemental material). (Comment No. 4)	243
Comments of the United States Department of the Interior, (Comment No. 5)	260
Statement of the Textile Workers Union. (Perkel letter of February 10, 1972) plus Appendix I attached (October 18, 1971 memo from Selikoff and Holaday). (Comment No. 7)	264
Letter & Comments of Duncan Holaday (February 10, 1972) "Procedural Standards As A Means of Controlling Exposures to Asbestos Dust," (Comment No. 8)	284
Comments of Brand Insulations Inc., by Thomas J. Greyl, National Safety Director (Comment No. 9)	298
Statement of Oil, Chemical and Atomic Workers (February 11, 1972) (Comment No. 10)	301
Letter & Comments of Dr. Selikoff, "Epidemiological Constraints in Development of A Standard for Asbestos Dust, (Comment No. 11)	305
Comments of Union Carbide Corporation by James W. Rawlings, (Comment No. 12)	314
Comments of Industrial Union Dept., AFL-CIO, in letter of February 10, 1972. (Comment No. 13)	320
Comments of Dow Chemical U.S.A. by Wayne M. Hancock, Director of Labor Relations & Safety, (Comment No. 14) . . .	326
Comments by the Industrial Hygiene Dept. of General Motors Corporation by V. J. Cartrop, Director of Industrial Relations (Comment No. 15)	327
Comments of the Ralph M. Parsons Co. by J.W. Maddox, Vice President-Manager of Construction, (Comment No. 16) . .	330
Statement of the Shipbuilding Council of America, (Exhibit 18) .	332
Statement of the Committee on Industrial Health, American Iron & Steel Institute (Exhibit 19)	337
List of Members of the Asbestos Information Association- North America (Exhibit 38)	343
List "The Uses of Asbestos & Asbestos Products," (Exhibit 39) . .	344

Statement "Changing Content of Insulation Materials" by Walter K. Hease, Manager of Research & Development, Industrial Relations, Johns-Mansville Corporation (Exhibit 40)	347
Statement by Mr. Edward Fenner, Director of Environmental Control, Johns-Manville Corporation (Exhibit 41)	355
Statement by Mr. Edward J. Killian on behalf of Gold Bond Building Products (Exhibit 42)	367
Statement by Dr. J. Corbett McDonald, Chairman of Dept. of Epidemiology, McGill University, Montreal, Canada, (Exhibit 43) .	372
Statement by Mr. James W. Rawlings, Vice President, Union Carbide Corporation (Exhibit 44)	396
Statement & Exhibits of Certain-Teed Products Corporation by Mr. Bruce J. Phillips (Exhibit 45)	402
Comments & Views of Cement Asbestos Products Company, (Exhibit 46)	420
<u>Asbestos Health Precautions in Industry</u> Dept. of Employment & Productivity, Her Majesty's Stationery Office, pp. 3-6, (Exhibit 47)	429
Technical Data Note 13 (Exhibit 48)	434
Technical Data Note 24 (Exhibit 49)	438
Article by D. W. Hills "Economics of Dust Control." (Exhibit 51) .	442
Comments by AFL-CIO on Proposals for a Standard to Protect Workers from Asbestos (3/17/72) (Exhibit 52)	456
Asbestos Information Association: Asbestos & Health - Questions & Answers (Exhibit 53)	481
Letter of Dr. Borow (October 12, 1967) (Exhibit 54)	482
Dr. Key letter of November 24, 1971 with attachemnts (Exhibit 57)	489
Graph entitled "Asbestos Cement Pipe Plants" (Exhibit 60)	494
Graph entitled " Asbestos Friction Plants-Personal Samples- Secular Trends-Means of Operation" (Exhibit 61)	495
Graph entitled "Asbestos Friction Plants -Means of Operation, (Exhibit 62)	496
Graph entitled "Asbestos Textile Plants" (Exhibit 63)	497
Graph entitled "Asbestos Insulation Plants - Means of Operation, (Exhibit 64)	498
Graph entitled "Secular Trends" (Exhibit 65)	499

	Page
Comments from the Flintkote Company (Exhibit 67)	500
Letter to G.F. Scannell, Director, Office of Safety & Health Standards, U.S. Dept. of Labor, March 15, 1972 (Exhibit 68) . .	502
Dr. Key's March 17, 1972 letter correcting his prior brief, (Exhibit 70)	505
Letter & Statement of Mr. A.D. Shinnerer, Employee Trustee, Asbestos Workers Western States Occupational Health Plan, (Exhibit 71)	507
Submission by Duncan Holiday of Manual of Practices for Ship- building, Shipbreaking & Shiprepair (Exhibit 72)	512
Letter of Transmittal & Statement (including exhibits of GAF Corporation (Exhibits 74a and 74b)	548
Transmittal & Statement by Dr. Norbet Roberts of the Indus- trial Medical Association (Exhibits 75a and 75b)	565
Duncan Holaday letter of March 23, 1972, with enclosure, (Exhibits 76a and 76b)	578
Johns-Manville Corporation letter dated March 24, 1972, (Exhibit 77)	593
William J. Nicholson letter dated March 24, 1972 with attached seven-page analysis (Exhibits 78 a and 78b)	602
Testimony of Kingsley Kay (March 16, 1972) (Exhibit 79)	624
Letter of Transmittal & Comments from the American Iron & Steel Institute (Exhibits 80a and 80b)	630
Letter transmitting Addendum to Testimony of Armstrong Cork Company, (Exhibit 81)	634
Statement of the Colombia Gas Systems Service Corporation, (Exhibit 82)	636
Statement by Dr. Sidney Wolfe, Health Research Group, D.C. at Dept. of Labor Hearings, March 14, 1972	638
Statement of Sheldon W. Samuels, Director, Occupational Health, Safety & Environmental Affairs, IUD, AFL-CIO at Dept. of Labor Hearings, March 17, 1972	640
Statement of National Insulation Manufacturers Association & National Insulation Contractors Association before Dept. of Labor Hearings, March 14, 1972	652
Statement of Joseph G. Hall, Vice President, GAF Corporation's Building & Industrial Products Group at Dept. of Labor hearings, March 16, 1972	662

	Page
Statement of E. A. Disalvo, Vice President, Panacore Corporation, at Dept. of Labor hearings, March 16, 1972	668
Statement of Ernest C. Bratt, General Manager-Asbestos, H.K. Porter Company Inc.	672
Statement of John R. Stetson, Vice President Manufacturing, Congoleum Industries, Inc.	676
Letter & Attachments from the Asbestos Information Association- North America	680
Letter & Attachments from the Johns-Manville Corporation	699
Statement of Alex Kuzmuk, Member of Board of Governors of the Asbestos Textile Institute	704
Excerpts from Transcript of Hearings before the U S. Dept. of Labor, March 14-17, 1972, in the matter of Standard for Exposure to Asbestos Dust, Proposed Rule Making	710