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

Internal Correspondence

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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September 1, 1983

BY HAND

The Honorable Raymond J. Donovan  
Secretary of Labor  
Department of Labor  
Room S2018  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

Mr. Thorne G. Auchter  
Assistant Secretary  
for Occupational  
Safety and Health  
Department of Labor  
Room S2315  
200 Constitution Ave., N.W.  
Washington, D.C. 20210

Dear Secretary Donovan and Assistant Secretary Auchter:

The Asbestos Information Association/North America (AIA/NA) is concerned by recent press reports that OSHA is considering issuance of an Emergency Temporary Standard (ETS) for asbestos. OSHA has had an outstanding permanent standard proposal since 1975; the Agency has been actively preparing to reactivate the proposal since last spring; and Assistant Secretary Auchter told a House Subcommittee on June 28, 1983, that no asbestos ETS would be issued because a full airing of the asbestos evidence should occur before any new regulations are issued. Accordingly, depriving interested parties through an ETS of the full due process rights of a permanent rulemaking cannot be legally or substantively justified. Moreover, issuance of an ETS would serve the interests of neither industry, labor nor the Agency and would significantly reduce the likelihood that OSHA will develop a permanent asbestos standard that is reasonable, cost-effective and meaningful to the protection of worker health.

AIA/NA met with Assistant Secretary Auchter shortly following his arrival at OSHA in the spring of 1981. As our April 1, 1981, letter indicated, AIA/NA has for several years been urging OSHA to initiate a rulemaking to develop an improved asbestos standard, which, inter alia, would prescribe work practices for use of asbestos-containing products at

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construction worksites in order to implement meaningful reductions in asbestos exposures at non-fixed locations for the first time. In urging OSHA attention to an improved standard, we supplied a copy of AIA/NA's comprehensive "Recommended Standard for Occupational Exposure in Construction and Other Non-Fixed Operations," which had initially been submitted to the Agency in 1980, and which we updated and resubmitted in April 1983.

AIA/NA's initiatives were but the most recent of a long line of constructive activities by the Association going back to 1975 to assess and improve regulation of asbestos. During this eight year period, there have been repeated reviews of the medical, monitoring and technology data bases, not only in the United States, but in many countries around the world.

From the numerous reviews of asbestos over many years, AIA/NA can find no evidentiary basis for an emergency standard today. Although a thorough and comprehensive assessment of the entire asbestos standard, including the permissible exposure level, is clearly warranted and welcomed by AIA/NA, no recently discovered evidence would justify precipitous measures. In addition, continuing efforts by the asbestos industry since 1975 have resulted in progressively lower exposure levels in most worksites. The Supreme Court and various courts of appeal have held OSHA's authority to issue an ETS is "narrowly circumscribed" to circumstances where there is an "obvious need for quick response to new health and safety findings."\*/ The asbestos data do not provide the basis for exercising such extraordinary authority.

More significant than the absence of a rationale for emergency action is the likelihood such an initiative would foreclose or seriously delay development of meaningful long-term controls. As AIA/NA noted in its April 15, 1983, letter to Assistant Secretary Auchter, a thorough assessment of the medical, monitoring and technology evidence to develop a meaningful control strategy is best accomplished through a rulemaking in which all interested parties participate

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\*/ Industrial Union Dept., AFL-CIO v. American Petroleum Institute, 448 U.S. 607, 651 (1980); Florida Peach Growers Assn. v. Dept. of Labor, 489 F.2d 120, 129-30 (5th Cir. 1974).

Secretary Donovan and Assistant Secretary Auchter  
September 1, 1983  
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fully. Among other things, such a rulemaking would make possible the necessary peer review of OSHA's asbestos risk assessment and the crucial assumptions upon which it relies. More significantly, only after a consideration of the many variables affecting asbestos regulation--including the varying means of addressing asbestos risks in different worksites ranging from primary manufacturing through secondary manufacturing and construction and other user environments to potential exposure to in-place asbestos--will it be possible to design a standard that most effectively eliminates any significant risks. AIA/NA is willing and anxious to work with OSHA and other interested parties to assess those varying situations. We fear that issuance of an ETS would channel efforts of all parties toward contentious disputes about the emergency standard rather than toward cooperative efforts to develop a reasonable permanent solution.

In sum, AIA/NA believes OSHA and all interested parties would be ill-served by issuance of an ETS. We urge the Agency to discard such an initiative and instead to concentrate its on-going efforts toward developing a reasonable, cost-effective permanent asbestos standard that will provide meaningful protection of worker health. AIA/NA therefore urges OSHA to convene tripartite government/labor/industry deliberations to seek cooperative development of such a permanent standard in an expedited manner. If you would like any further information, please contact me or our Special Counsel, Edward W. Warren of Kirkland & Ellis (202-857-5018).

Sincerely yours,

  
B. J. Pigg  
Executive Director