PLAINTIFF'S EXHIBIT WRG-1095

J. W. Worte

Asbestos

USE OF ENGINEERING CONTROLS URGED TO ACHIEVE LOWEST EXPOSURE POSSIBLE

Wherever their use is feasible, engineering controls should be used to achieve the lowest possible level of exposure to asbestos, William J. Nicholson of the Mount Sinai School of Medicine testified June 19 at rulemaking hearings on the Occupational Safety and Health Administration's proposed revisions to its asbestos standard.

"If engineering controls are feasible at less than 0.2 [fibers per cubic centimeter of air], or even at 0.1, then they should be used," Nicholson said. Respirators are far less positive control devices than are engineering controls, he noted, adding, however, that installation of engineering controls is not always feasible.

OSHA's proposed standard would reduce the asbestos exposure limit to 0.5 or 0.2 f/cc, depending on whether the lower level is found to be feasible. The proposal also would allow employers to achieve compliance through a combination of engineering controls, personal protection, and work practices (Current Report, April 12, p. 1195).

Testifying on OSHA's quantitative risk assessment, which he assisted in developing, Nicholson asserted that a single permissible exposure limit (PEL) for asbestos fibers is appropriate for regulatory purposes. He stated that the agency's analysis of all studies providing any information on dose-response failed to show that any unique risk can be attributed to a particular fiber type. Further, studies of the same industrial process varied considerably, he said.

Nicholson also noted that several studies exhibited risks much above the average, and he said it would be expected that unit exposure risks in other circumstances would exceed that estimated by OSHA. "The OSHA estimate is the most likely risk to be expected, the upper limit of expected risk is at least six times higher," he testified.

"The risks associated with the existing standard are grossly excessive," according to Nicholson. While the most probable risks calculated in the OSHA document for 0.2 fibers and 0.5 fibers are already "unacceptably high," these risks may actually be underestimating some work situations by several fold, he said. "Considering the magnitude and uncertainty of the OSHA risk estimates, prudence would indicate that a standard should be adopted that will reduce workers' exposure to asbestos to the lowest concentration achievable with feasible technology," he stated.

10,000 Deaths Annually

Citing a recent study of disease and mortality in occupations with a high potential for asbestos exposure that was conducted by Mount Sinai School of Medicine, Nicholson stated that "we estimate that 8,800 asbestos-related cancer deaths are occurring this year," adding that this figure would rise to about 10,000 deaths annually by the year 2000.

Noting that one million tons of friable asbestos are still present in ships, factories, office buildings, and schools, he asserted that the repair and maintenance of that material will be the dominant source of untoward exposures in years to come. "The need exists for a much lower time-weighted average exposure level, 0.1 f/ml [fibers per milliliter] if possible, and a corresponding reduction in the ceiling concentration," he concluded.

A final standard for asbestos is still expected in June 1985, OSHA Director of Health Standards R. Leonard Vance stated. Attempting to clarify some of the issues raised by OSHA pertaining to the asbestos standard, Vance explained that OSHA had proposed alternative levels of 0.5 f/cc or 0.2 f/cc because of the great variety of industrial operations where asbestos exposure occurs and the possible feasibility variations among operations. In addition, the lack of up-to-date data concerning current compliance capability and costs when the proposal was issued and the question of how reliable measurements are using phase contrast microscopy at low levels of exposure prompted OSHA to propose the alternative levels, he said.

The proposal of alternative time-weighted averages does not signal the agency's intention to prescribe multiple limits, Vance cautioned. "Relying primarily on health considerations, we intend to establish a uniform limit, capable of being reliably measured, for all exposed employees which would then be imposed according to the capabilities of each industry," he said.

Vance further maintained that OSHA's proposal to permit employers to use a "flexible compliance strategy" to reduce the PEL would not alter the requirement that feasible engineering and work practice controls be instituted to reduce exposures to 2 f/cc. OSHA will require the appropriate compliance method for asbestos based on the evidence in this record, he stressed. "Respiratory protection programs will be allowed as an alternative if the record shows that mandated programs will be effective," he said.

In response to questioning by a representative of the Building and Construction Trades Department, AFL-CIO, Vance stated that if evidence supports the promulgation of a separate asbestos standard for construction, then a separate standard will be issued.

On-Site Consultation

REVISED RULES EXPANDING PROGRAM, PROVIDING EXEMPTIONS ISSUED BY OSHA

Revised regulations which will broaden the scope of the Occupational Safety and Health Administration's on-site consultation program, and provide conditional exemptions to employers using consultation services, were issued by the agency June 19.

OSHA proposed the revisions last October as a way of shifting the focus of on-site consultation programs from merely the identification of specific hazards to a more general concern for the effectiveness of a workplace's overall safety and health program (Current Report, Oct. 13, 1983, p. 435).

Under the new rules, a workplace will be exempted for one year from general schedule OSHA inspections if the employer agrees to a comprehensive consultation visit, corrects all hazards noted in the visit, and puts "certain core elements" of an effective safety and health program in place, the agency stated. The employer also must request a further consultation visit if major changes in working conditions or work processes occur which could introduce new hazards.

OSHA's proposal to provide exemptions under the consultation program had drawn criticism from the AFL-CIO,

alleged constitutional deficiencies in the warrant or in the OSHA inspection plan could be remedied. Since failure to address Mosher Steel's claims would cause irreparable harm by allowing a potentially improper warrant to be executed, the court held that it does have equitable jurisdiction.

Since the inspection warrant and the OSHA inspection plan are so intertwined that review of both in the same proceeding is "judicially economical and wise," the court rejected the secretary's argument that only matters raised in the contempt petition should be subject to the steel firm's claim for declaratory relief. According to the court, the secretary should not be allowed to avoid judicial scrutiny of the inspection plan by "the device of a narrowly drafted contempt petition."

The full text of this opinion, which was written by U.S. District Judge J. Foy Guin Jr., will appear in a future Decisions issue.

Asbestos

CONCERNS ABOUT PROPOSED CEILING LIMIT, ANALYTIC CAPABILITIES EXPRESSED TO OSHA

Concerns about a ceiling limit in the Occupational Safety and Health Administration's proposed revised standard for workplace asbestos exposure, and about industry's technical capability to meet analytic requirements of the standard, were expressed in comments by companies to OSHA.

The Monsanto Company, St. Louis, Mo., supported the agency's proposal of a performance-oriented standard, particularly the provision which would allow employer-selected compliance techniques to reduce worker exposure from two fibers per cubic centimeter of air to 0.5 or 0.2 f/cc (Current Report, April 12, p. 1195). The company suggested that OSHA eliminate the use of a ceiling limit as being inappropriate for materials with chronic exposure concerns and no significant acute effects. The maximum short term or ceiling exposure will be limited by the time-weighted average permissible exposure limit (PEL), according to Monsanto.

In addition, the company urged OSHA to eliminate the use of an action level, stating that "requirement of major activities at 0.2 f/cc with PEL of 0.5 f/cc in practice lowers the effective PEL for the standard." OSHA should allow employers to use compliance methods other than engineering controls for intermittent, non-routine operations where these operations are of short duration, Monsanto said.

Further, OSHA should not automatically require supplied air respirators for employees engaged in spraying, demolition, or removal operations, according to Monsanto. Respirator selection should be based on professional assessment of exposure levels, by past experience with similar operations, or by current monitoring data, the company asserted. Medical surveillance should be required for workers exposed to asbestos above the PEL, but the frequency of X-rays should be decreased, Monsanto said.

Raymark Corporation, Trumbull, Conn., recommended that the use of crocidolite and amosite asbestos be prohibited in manufacturing. The company further urged OSHA to reduce the PEL for chrysotile asbestos textile spinning and weaving to 0.1 f/cc and to reduce the PEL for chrysotile asbestos in manufacturing to one f/cc, lowering it to 0.5 f/cc within four years of the publication of the standard. Raymark suggested that employers be allowed to use any feasible combination of engineering controls, work practices, and personal protective equipment to achieve the permissible exposure limits.

Frequency of X-Rays

The 3M Company stated that, while it supports adoption of a 0.5 f/cc air exposure limit, it recommends that OSHA mandate initiation of medical exams and employee training for employees with a minimum exposure of 40 days per year at this level. The company recommended the mandatory use of respirators for any exposures greater than 0.5 f/cc regardless of exposure duration.

The frequency of asbestos examinations should have some relation to worker age and length of exposure similar to the provisions outlined in the California OSHA regulations, according to 3M. Annual X-rays should only be required for employees with over 10 years of exposure and/or who are 35 years old or older, the company suggested.

Regulated areas should not be required, 3M stated. Regulation of employee exposures to asbestos should be accomplished through the establishment of an appropriate exposure limit and "any feasible combination of engineering controls, work practices, and personal protective equipment," the company said.

Atlantic Richfield Company endorsed the flexibility of OSHA's proposal, supporting its permitting any feasible combination of engineering controls, work practices, and personal protective equipment to reduce exposures from two f/cc to the new PEL. As long as work practices and personal protective equipment can be used to achieve compliance with exposure limits of 0.5 f/cc or 0.2 f/cc, the company has no opposition to the lowering of the time-weighted averages. Atlantic Richfield said it was concerned, however, with industry's technical ability to assess the effectiveness of compliance with ceiling limits at such low levels. "A 15-minute ceiling sample at those levels would come close to the detectible limit of phase contrast microscopy," the company maintained.

The action level of 0.2 f/cc TWA is reasonable for medical surveillance and monitoring with the proposed standards of 0.2 or 0.5 f/cc, Atlantic Richfield told the agency. The company further supported the proposed reduction in the frequency of mandatory annual chest X-rays among younger employees.

Texaco, Inc., commended OSHA "for recognizing that compliance can be obtained using any feasible combination of engineering controls, work practices, and personal protective equipment." The company recommended the adoption of a 0.5 f/cc PEL and a three f/cc ceiling limit for asbestos. Texaco further concurred with the adoption of a 0.2 f/cc action level which would trigger implementation of monitoring, personal protection, and medical surveillance requirements.

Specification of Respirators

While the Aluminum Company of America (Alcoa), Pittsburgh, Pa., supported a PEL of 0.5 f/cc, it was opposed to the lower limit of 0.2 f/cc on the grounds that it would not afford greater protection than would the higher PEL. Alcoa also noted its concern "about the analytical limitations and inaccuracies which will result when we exceed reasonable analytical sensitivity for counting asbestos fibers."

Further, the company objected to proposed changes which would specify the types of respirators to be used for removal operations, along with the more stringent requirements for pulmonary function testing. "The proposed regulations do not take into account the different work practices used in removal procedures that are designed to significantly reduce the potential level of airborne exposures," according to Alcoa.

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