

CHEMICALS
RESEARCH

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Interoffice Communication

To Distribution

From J. F. Gabbett

Date June 13, 1974

Subject Condensation of Legal Opinion Cited in Industrial Union Department, AFL/CIO Et. Al. V. James D. Hodgson, Secretary, Department of Labor

The U.S. Court of Appeals for the District of Columbia rejected a petition by the Industrial Union Department of the AFL/CIO and five Unions to review the asbestos standard issued by the Secretary of Labor. The Appeals Court remanded two issues raised by the petitioners to the Secretary for further review, but in all other respects affirmed the standard adopted by the Secretary. The two issues remanded for reconsideration were uniform application of the 1976 effective date for the two fiber standard, and the provision for three year retention of records on environmental monitoring. Regarding the effective date of 1976 for implementation of the limit of two five micron fibers per milliliter of air, the Court held that the Secretary's decision to set one date for all types of industries was not adequately explained. Clarification was requested.

The petitioners challenged the timetable established by the standards for the achievement of permissible levels of concentration and objected to portions of the standards concerning methods of compliance. In this case, however, the evidence indicated that reliable data was not available with respect to the precisely predictable health effects of various levels of exposure to asbestos dust. The Secretary was, therefore, obligated to establish some specific level as the maximum permissible exposure.

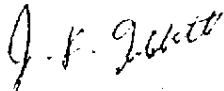
Because industry representatives convincingly testified that they simply could not reduce concentrations to the two fiber level in the foreseeable future, the Secretary decided to retain the five fiber standard for approximately four years (July 1, 1976) before requiring the reduction to two fibers, in order to give employers time to prepare for the low limit. (This is the precedent that some PVC users will cite).

The legal opinion stated that Congress did not appear to have intended to protect employees by putting their employers out of business either by requiring protective devices unavailable under existing technology or by making financial liability generally impossible. It would appear to be consistent with the purposes of the Act to envisage the economic ties of an employer who has lagged behind the rest of the industry in protecting the health and safety of employees and consequently financially unable to comply with new standards as quickly as other employers. For example, if a standard requires changes that only a few leading firms could quickly achieve, delay might be necessary to avoid increasing the concentration of that industry.

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The director of NIOSH recommended that the Secretary require compliance sooner than 1976 where possible, and that he prohibit degradation of work places with concentrations currently below the limits. In other words, modern plants should comply as soon as possible. Despite this recommendation the Secretary issued a single uniform effective date for all employers in all industries.



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