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MAY 1965

U.S DEPARTMENT OF LABOR

Washington

PLAINTIFF'S EXHIBIT Snell 14 66 12-13-78

RECORDS AUTHENTICATION CERTIFICATE

I HEREBY ATTEST, That the annexed copy, or each of the specified number of copies, of each document listed below is a true copy of a document in the official custody of the Department of Labor.

1 copy each of:

Transcripts from March 14,15,16, and 17

Comments and hearing exhibits of:

W.J. Nicholson, American Petroleum Institute, D.A. Holaday, Brand Insulations Inc., L.J. Bibri, B.J. Phillips(Certain-teed), M.W. Borow, J.D. Moran(Flintkote), F.L. Pundsack(J-M), J.W. Rawlings, W.M. Hancock(Dow), W.K. Hesse(J-M), E.M. Fenner(J-M), E.J. Killian(Nat. Gypsum), Cement Asbestos Products Co., M.M. Key, G.E. Best(MCA)

SIGNATURE AND OFFICIAL TITLE	DIVISION AND BUREAU	DATE
Daniel J. Marsick Technical Information Specialist	Docket Office/Technical Data Center/Occup. Sfty & Hlth Adm/ U.S. Dept. of Labor	7 Sep 78

I HEREBY CERTIFY, That Daniel J. Marsick who signed the foregoing attestation, is now and was at the time of signing (title) Technical Information Specialist and has legal custody of the official records of the United States Department of Labor therein attested and that full faith and credit should be given to his act as such.

IN WITNESS WHEREOF, I

J. J. Lafranchise

duly designated by the Secretary of Labor as Authentication Officer of the Department of Labor, have hereunto subscribed my name and caused the seal of the Department of Labor to be affixed this 7th day of September 19 78.

J. J. Lafranchise

Authentication Officer
Department of Labor

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CRMC-Motley1000-Subj-001540

UNITED STATES DEPARTMENT OF LABOR

WASHINGTON, D.C.

In the Matter of:	
STANDARD FOR EXPOSURE TO ASBESTOS DUST, PROPOSED RULE MAKING	PUBLIC HEARING

Conference Room B
Interdepartmental Auditorium
12th & Constitution Ave., N.W.
Washington, D.C.
Thursday, March 16, 1972

The above-entitled matter came on for further hearing, pursuant to recess, at 9:00 o'clock, a.m., Thursday, March 16, 1972.

BEFORE:

ARTHUR M. GOLDBERG, Hearing Examiner

APPEARNCES:

(As heretofore noted.)

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EXAMINER GOLDBERG: All right, sir. We will mark as Exhibit No. 37 Western States Asbestos Health Plan, and as marked Exhibit No. 37 is received.

(The document referred to was marked for identification as Exhibit No. 37 and received in evidence.)

EXAMINER GOLDBERG: Do we have any more second thoughts before we call the next witness?

Mr. Sheckler and Mr. Royer, are you appearing together?

MR. SHECKLER: Yes, Mr. Examiner.

I am Clifford L. Sheckler, Chairman of the Safety and Health Committee, National Insulation Manufacturers Association. I am appearing before you today, along with Mr Spence Royer, representing the National Insulation Manufacturers Association and the National Insulation Contractors Association.

The membership of both Associations wish to express opposition to the proposed standard for asbestos dust as published in the Federal Register, Wednesday, January 12, 1972. We wish to express our opposition to the recommendations of the Advisory Committee on asbestos dust, and the National Institute for Occupational Safety and Health criteria document.

The National Insulation Manufacturers Association represents the manufacturers of Thermal Insulation products in

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the United States. The National Insulation Contractors Association represents the major Thermal Mechanical Insulation Contractors engaged in both the construction and shipbuilding industries throughout the United States.

Our comments will be directed specifically to the application of asbestos containing insulation products and not to the manufacturing of such products.

The construction and shipbuilding work currently underway by our Thermal Mechanical Insulation Industry is being done under both government and private contracts. Federally funded contracts involve office buildings, hospitals, schools, libraries, missile facilities, defense projects, dams, airport facilities, rapid transit systems, low rent housing, military housing, air and water pollution prjects, shipbuilding and ship repairing for the U. S. Navy - Coast Guard - Merchant Marine and Army.

Private funded contracts include office buildings, hotels, theatres, refineries, power generating plants, chemical plants, other types of industrial plants, housing, University buildings, hospitals, and others.

We, in the thermal mechanical insulation construction industry, excluding the manufacturing of insulation products, and considering only the installation of this material, directly involve approximately 40,000 job opportunities in the United States.

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This industry represents an approximate $700 million gross volume of business annually.

Our industry is comprised of over 1000 contractors. Most of these contractors are small businessmen spread throughout the United States. Mr. Royer, who is here with me today, is one of the small businessmen who will present you with his views.

Our opposition to the asbestos dust standards are based on the fact that they are neither reasonable, practical, feasible, or economically sound. Much of the information for establishing the proposed asbestos dust standards, the NIOSH criteria package, and the Advisory Committee's recommendations was gathered from experience in this Thermal Mechanical Insulation Industry.

Let us review the course of events concerning the threshold limit value for asbestos dust over the past few years. In 1970 the American Conference of Governmental Industrial Hygienists Threshold Limit Value for Asbestos Dust was published at 5 million particles per cubic foot of air as measured with the impinger method. We were able to work with this standard. At that time the majority of State Departments of Labor and Health maintained the same Asbestos Threshold Limit Value. In December, 1970, the Occupational Safety and Health Act became law. In 1971, the first set of safety and health standards became effective. The threshold limit value

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for asbestos dust then became 12 fibres per milliliter greater than 5 microns in length as measured by the membrane filter. This industry did not question the reduction of the threshold limit value from 5 million particles per cubic foot to 12 fibres per milliliter, and the complete change of the method for monitoring asbestos dust, instead, we immediately went to work by introducing new methods, equipment, and materials, to reduce dust levels to within the 12 fibre limit.

On December 7, 1971, Emergency Asbestos Dust Standards were published in the Federal Register again reducing the Threshold Limit Value for Asbestos Dust from 12 fibres per milliliter greater than 5 microns in length to 5 fibres per milliliter greater than 5 microns in length. On January 12, 1972, the proposed asbestos dust regulations, with a Threshold Limit Value of 5 fibres, was published in the Federal Register. [illegible] in conjunction with these proposed regulations, both NIOSH and the Asbestos Advisory Committee have made recommendations for further reduction of the Threshold Limit Value for asbestos dust to 2 fibres per milliliter greater than 5 microns in length. You now have a picture of the inconsistency and uncertainty involved in the establishment of an Asbestos Dust Standard.

From 1970 to date, a period of just over two years, the Threshold Limit Value for asbestos dust has been changed from 5 MPPCF to 12 fibres, then to 5 fibres, with a current

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recommendation for a 2 fibre level. With each of these Threshold Limit Value changes there have been many other related requirement changes that add to the total confusion, such as respiratory equipment, dust collection, vacuum cleaning equipment, and others. The change from 5 MPPCF to 12 fibres has been a costly one. Our industry has, with some difficulty, absorbed this cost. We frankly cannot meet the 5 fibre Emergency Asbestos Standard as currently effective, nor can we absorb the cost of the Emergency or Proposed Asbestos Standard and its related provisions. It is needless to say, therefore, that to achieve a 2 fibre standard as recommended by the NIOSH Criteria Package and the Asbestos Advisory Committee, is neither practical, feasible, or economically possible.

Let's carefully examine the reasoning for the erratic revisions of the Asbestos Threshold Limit Value since 1970. As I have already told you, much of the information which contributed to these revisions was gathered from our Thermal Insulation construction industry. At its best, this information is scanty, inconsistent, incomplete and inaccurate. First of all, I told you that at the change of Threshold Limit Value from 5 MPPCF to 5 fibres per milliliter there was also a change in the method for monitoring asbestos dust from the standard or midget impinger to the membrane filter. There is absolutely no method for correlation between the asbestos dust counts determined by monitoring with the impinger as compared to the

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membrane filter. It is, therefore, impossible to compare the exposure levels in terms of numbers of fibres per milliliter greater than 5 microns in length with numbers of particles of total dust when using the impinger method. It must be recognized that the impinger method included particulate matter other than asbestos fibre.

Physical examinations on a part of the work force installing Thermal insulation materials have been conducted. The disease involvement determined by these physical examinations has been related to the present day asbestos fibre exposure as monitored by the milapore filter method. These factors cannot be compared or related. Also, based on supposition and assumption, it was concluded that the exposure levels of man working in construction and shipbuilding before, during, and subsequent to World War II were at the same levels of exposure as is a worker engaged in similar activities today. This hypothesis is not true. The types of materials have changed, the percentage of asbestos contained in thermal insulation products has been reduced, the method of installation has changed, and fabrication equipment has changed. Each of these changes since the early 1940's has contributed in the reduction of dust levels. It is, therefore, illogical to compare disease occurrences which resulted from exposure from 20-30 years ago with dust levels monitored on construction sites within the last several years. It is also illogical to

compare our American industry with that of foreign countries.

As I said, we have withstood the change from 5 millio particles per cubic foot of air to 12 fibres based on insufficient information gathered from small segments of the industry. Although there was no further input of pertinent information, again, based on supposition and assumption, the level was then reduced from 12 fibres to 5 fibres. Now, still based on supposition and assumption, with no further information available, both NIOSH and the Asbestos Advisory Committee are recommending a reduction to 2 fibres. While these reductions in the Threshold Limit Value have been readily forthcoming, the proposed regulations, NIOSH Criteria Package, and the Asbestos Advisory Committee recommendations are completely void of any references to prohibiting or restricting workers who are habitual cigarette smokers from working with products containing asbestos fibre. The same studies, upon which much of the emphasis has been placed concerning the reduction of the Threshold Limit Value, also demonstrate drastic effects of cigarette smoking when associated with the pulmonary disease, Asbestosis.

As I told you, we have not achieved the level of 5 fibres. We are making a decided effort to do this. We have problems unique to the construction industry in attempting to comply with the proposed asbestos standards. I am not at this time going to review all of the minute problems involved in the application of these standards; instead, I am going to speak

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to the economics of achieving this proposed standard of 5 fibres per milliliter 5 microns and greater in length, as published in the Federal Register January 12, 1972. We feel, with the economic impact that this regulation will have on the Federal Office of Budget Management, other Federal agencies, including the Armed Services, and on private enterprise, it is worthy of very careful consideration by the Federal Department of Labor.

We brought together a number of the foremost contractors in the Thermal Mechanical Insulation Industry, and together we evaluated the cost of complying with the proposed asbestos regulation. This was accomplished by breaking down the regulation into each of its requirements and computing them individually. The requirements were computed individually, included monitoring, based on purchasing the monitoring equipment and having the samples analyzed at a private laboratory; respirators of the disposable type; physical examinations; dust collection and vacuum cleaning equipment; warning signs; protective clothing; and work placement. As a base we used a 100-man contracting unit with 25% of the unit working with asbestos-containing products. We computed off-job time and lost time productivity at an average construction worker's rate. The total cost for implementing a program to comply with the proposed Asbestos Dust Regulations as published in the January 12, 1972 Federal Register for a 100-man construct-

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ion unit, 25% of which worked with asbestos-containing materials, is $795,375.00 direct expenses per year - - $27,740.00 administrative expenses per year and $16,700.00 of capital expenses; therefore, a total for the 100-man unit, with 25% engaged in work with asbestos-containing products, amounts to $339,815.00 increased construction expense for the purpose of complying with the proposed Asbestos Dust Regulation. This represents an increased labor cost of 168% that must be passed on to the customer in order for a contractor to survive. The customer, in many instances, is the Federal Government and the Office of Budget Management. Considering the inadequacy of medical and scientific research information concerning safe exposure levels of asbestos dust, and also considering the supposition and assumption on which the proposed Threshold Limit Value is based, it is difficult to imagine a justification for the economic stress this regulation will place upon the construction industry, Federal Government, and private enterprise.

We respectfully urge the Secretary of Labor to:

1. Reinstate the Threshold Limit Value for Asbestos Dust at 12 fibres per milliliter 5 microns or greater in length, for an interim period.

2. To initiate a comprehensive epidemiological study of the entire asbestos industry as it exists in the United States; and to determine not only the effects of asbestos but

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also asbestos associated with other airborne contaminants and cigarette smoking.

3. To provide adequate lead time prior to the effective date of reduction of any Threshold Limit Value in order that the construction industry, operating on fixed contracts, can cope economically with the increased costs that such a reduction will create.

4. To provide definitive information concerning the specific requirements of the regulations.

5. Provide our trade associations with representation on future Study and Advisory Committees.

We, representing the construction industry, have been moving forward to provide safety and health information and implement safer working conditions. We intend to continue and accelerate this program. It is our desire to provide every possible protection for our people.

Thank you for the opportunity of appearing at this public hearing today.

I might add that the two trade associations I am representing here today made two requests for representation on the Advisory Committee, both of which were rejected. We, representing the construction industry, agree with Dr. Cooper's statement that there is a serious problem there. We have been moving forward to provide and enact voluntary safety and health procedural standards and implement safer working con-

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ditions. We have produced manuals. We have produced recently a Letter of Compliance and recommended procedures for compliance with the Emergency Standards. We have held meetings of all thermal mechanical association contractors throughout the country for two consecutive years solely on this point. We intend to continue and to accelerate this program.

It is our desire, as it is your desire, to provide every possible protection for our people; but let us not do it at the expense of the job opportunities of small businessmen and the economic impact on this industry.

Again, I wish to thank you very much for the opportunity of appearing here before you today.

EXAMINER GOLDBERG: Mr. Royer?

MR. ROYER: Mr. Goldberg and members of the Advisory Committee on Asbestos Standards, my name is J. Spencer Royer, and I am here to represent the National Insulation Contractors Association and approximately 1,000 small insulation contractors and fabricators around the country. I am President of the Young Sales Corporation with headquarters in St. Louis, Missouri. My company engages in the fabrication and application of thermal insulation and other materials which contain asbestos fiber. This includes hot and cold piping, equipment and duct work in commercial and industrial buildings, power plants, chemical plants, oil refineries, ships and a wide range of projects funded by the Federal Government. I'm

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no neophyte in this business, having been in it for 27 years. I am close to my employees. I know most of them by their first names. I am definitely interested in their health and welfare.

The statement has been made here that all risk in handling asbestos-containing material should be removed and the tolerance of air-laid fibers reduced to zero. The Advisory Committee has recommended a maximum of 2 fibers per milliliter of air. I am not sure I know exactly what that means as a contractor, but from the description I doubt seriously that it can be reached.

In fact, I say to you that to accomplish these goals on a construction job is impossible, and if this becomes the law either we will be out of business as contractors, or some other substitute materials must be found by the manufacturers to take the place of the asbestos.

Let me present a picture to you gentlemen which I'm sure you haven't considered.

Insulation contracting in the United States is approximately a $700,000,000 per year business: however, the average contractor is a small businessman with annual sales of approximately $700,000. Net profit after taxes averages 2% of the sales, or $14,000 per contractor per year.

Using figures developed by a number of other contractors from various parts of the country and myself, we computed that the additional cost resulting from the proposed asbestos

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dust standards will amount to $134,000 per average-sized contractor per year, or more than 10 times his net earnings.

It is obvious to me that unless the proposed Standard is modified in a major way or the cost is passed on to the customer which, in many cases is a Federally funded project, it will be impossible for the small insulation contractor to survive.

You must be made aware, also, that every contractor has a backlog of uncompleted work at a fixed price with specific material and specifications. It will be impossible, in most instances, to pass this added cost on to the customer, since these contracts were consummated prior to publication of the proposed regulation.

I had intended to go into the breakdown of the different items, but just briefly we broke down, item by item your proposed regulation:

1. Monitoring
2. Physical examinations
3. Worker placement
4. Respirators
5. Dust collectors,
6. Vacuum cleaning
7. Warning signs
8. Protective clothing

By using these, item by item, we computed what it

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would cost the average contractor. As best we can find out, he employes somewhere between sixteen and twenty men. So you can see that each contractor has a small contingent of the overall business.

One item in particular is the monitoring. We based our projected cost on approximately one sampling unit for each three men employed. We estimated laboratory expense on the basis of two samples per day per employee. In addition, we included administration expense to perform the monitoring, take samples to the laboratory and handle the respirator program.

This may sound ridiculous, but because of the mobilit and the geography involved in the construction job - - it isn't like a plant where you can monitor locations day after day without any problems and establish what the limits are there. You have to follow this man around, because he is movir all over the project.

In addition, we included administration expense to perform the monitoring.

By the way, at the moment we know of only two private labs in the United States that are equipped and competent to perform the analysis of the samples.

The time that will be lost on the job, both in executing the tests and in trying to carry out the stipulations of the regulation as proposed is staggering. We estimate our labor cost for materials will be increased 168%.

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The main issue, so far as the contractor is concerned, is how he will be able to pay these additional costs and still remain in business. In my opinion, many of them won't be able to absorb it.

We urge you to reconsider the proposed Asbestos Dust Standard as published in the Federal Register on January 12, 1972.

We, as contractors, are just as interested as you in seeing that our employees work under safe conditions, but we request that further investigation and evaluation be made to initiate more practical standards that will provide protection to our people but that will not put us out of business.

Thank you.

(Discussion off the record.)

EXAMINER GOLDBERG: Mr. Zumwalt?

Mr. ZUMWALT: Mr. Examiner, my name is Charles Zumwalt, and I am the Secretary-Treasurer of the Industrial Safety Equipment Association. This is the trade association of the principle manufacturers of all forms of personal protective equipment except shoes. Included among our members are the manufacturers of protective devices on whose behalf I speak to you today. We have previously submitted our comments in writing pertaining to the proposal containing the Federal Register of January 12. Presumably they will be entered into the record, and I have given copies to the stenotype recorder for her use.

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This sub-paragraph (6) [illegible] against the type set positive pressure respirators as protection for concentration exceeding 500 times the limit. We do dispute limitation to only continuous flow-types. There are many industrial applications where the distance from sources of respirable air exceed the present limitation of 250 feet of hose and the protract 300 feet of hose. This is particularly true in work alterations in confined spaces such as holds of ships and the like. Such situations often preclude the use of compressors and require tank systems as the source of respirable air.

Unless demand-type airline respirators are utilized in such tank systems, workers run the risk of exhausting tank contents prematurely and without adequate safeguards due to the waste of aeronate continuous flow-type system. Inasmuch as positive pressure is maintained in the facepiece at all times, use of equipment acts to serve the exhaustible supply.

We suggest appropriate rewording.

As a final word, we stress the need for the asbestos standards to recognize self-contained breathing apparatus, both open and closed circuit types, as an allowable form of protective system in all concentrations.

In closing, we applaud the drafters of the recommendations contained in the Advisory Committee's Report. Such suggestions as we have made are born of the desire to see the fulfillment of their primary objectives.

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With your permission I shall refrain from repeating these comments now. More importantly, however, I should like to address our members' comments to the more formal presentations which form the report of the Advisory Committee and significantly enlarge upon the January 12 concept. The report by our respiratory manufacturers does not warrant our comment as experts upon any facets of the Committee's reports except their recommendations contained in 1910.93, Paragraph NC, Respiratory Protective Devices. We would like to underscore the preamble paragraph approved (30CFR-11) shall be selected.

The statements shown in sub-parts (5), (6), and (7) are sound in our opinion, and we do not fault their test.

Sub-parts (1) and (3), which treat [illegible] in concentrations of five times the limit in two and ten times the limit (3) are, in our considered opinion, arbitrary.

We submit this document states identical performance criteria for both valveless and valve disposal-type dust respiratory devices. Why, then, the express limitations of five times the limit and ten times the limit for two types required to meet identical performance? This is specific opinion in our judgment, and not facts.

We recommend and state that until different criteria are to be made for valveless versus valve devices, the selection must be on a pass or no-go basis, with a concentration limit decided upon.

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We often think the future success of any Advisory Committee dealing with respiratory devices in general or specific reference could well benefit from the input of the considerable expertise of the manufacturers.

HEARING OFFICER SOLOMON: Thank you, Mr. Zumwalt.

For this afternoon it would appear there will be only three witnesses. Accordingly, if there are those here scheduled to appear tomorrow or Friday who would want to go on after the three witnesses, then I will consider you this afternoon.

We will stand in recess until two o'clock.

(Whereupon, at 12:45 the hearing was recessed, to reconvene at 2:00 p.m., this same day.)

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