PLAINTIFF'S EXHIBIT

UC-3549

Asbestos Information Association/North America

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212-689-3378

February 12, 1973

Mr. Richard Wilkins
Chief
State of California
Department of Industrial Relations
Division of Industrial Safety
Post Office Box 603
San Francisco, California 94101

Dear Mr. Wilkins:

On behalf of the 19 member companies of the Asbestos Information Association/North America, I wish to express to you our appreciation for permitting us additional time in which to review and submit comments on the Proposed Amendment to Group 16, Article 110 of the State of California General Industry Safety Orders, creating A new Safety Order, Section 5208 on Asbestos.

In general, we support both the intent and contents of the proposed standards on asbestos as being both necessary and feasible. However, in light of your comments to me in your letter of January 29, especially with regard to your "as effective as" OSHA restriction and the question of the proper interpretation of certain sections of the OSHA standards, we would like to submit the following comments and suggestions.

Section 5208 (a): In order that the results of both state and employer monitoring of ceiling or peak concentrations be comparable for purposes of inspection and enforcement, we recommend that specific measuring parameters be established. OSHA has no such parameters in their standard, however, the NIOSH Criteria Package recommended that the ceiling or peak concentration limit should be measured "for a period of at least 15 minutes and preferably 30 minutes." We concur with this recommendation, except that we feel a 15 minute sample would be the more preferable.

Good idea. Not accepted.

At high fiber concentrations could give uncountable filters. Leave to AIA.

Section 5208 (b): We recommend that the wording "All hand-operated and power-operated tools etc." be changed to "All portable and fixed power-operated tools etc." It was not OSHA's intent to require the use of ventilation systems on such hand-operated non-power tools as files, sanders, small hand saws, etc., which are used almost exclusively in the insulation trades, and in areas, such as on ladders, girders,

Good idea. Not accepted.

Leave to AIA.

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etc., where the use of power-operated tools with ventilation systems is totally impractical. Work is presently underway to develop dust data on the use of these non-power-operated hand tools for the purpose of putting together a list of those tools which do not normally release dust in excess of the standards and those that do. A revision of the standard will then be proposed to OSHA exempting specific tools and operations from the standards and requiring personal protective equipment for those men using tools likely to release excessive dust.

Not accepted. Reasonable. Leave to OSHA

Section 5208 (c): For clarity purposes, we recommend inserting the word "insulating" between the words "asbestos" and "cement" in the second sentence of this subsection. As written, the standard could be interpreted to refer to asbestos-cement sheets and pipe, which was not the intent of OSHA in this requirement.

Accepted "and/or."

Also in this subsection, we recommend changing the word "and" in the phrase "enclosed and ventilated" in the second sentence to "or," as is the intent and wording of the OSHA standards. Since either enclosure or ventilation is capable of lowering exposures below the established limits, there is no need to require both, as does your proposed standard. A suitable compromise would be "and/or."

Not accepted.

Section 5208 (d): Since not all manufacturing and mining operations can reasonably be expected to come into immediate compliance with the exposure standards, we recommend that, as in the OSHA regulations, respiratory protection also be permitted "During the time period necessary to install the engineering controls and to institute the work practices required" in the standards.

Considerable changes made. Further clarification needed. See letter of 5/22/73.

Section 5208 (e) (2): As we read this particular requirement, fixed locations, such as plants and mines, would not be required to provide protective clothing for employees, no matter what levels they might be exposed to. This is certainly not the intent of OSHA in its regulations, which require protective clothing for all employees, no matter what their place of employment, exposed to levels in excess of the peak concentration. The OSHA standards, on the other hand, do not require protective clothing for employees exposed above the time weighted average limit. We are also confused by the use of the phrase "non-regular employees" in this subsection.

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Section 5208 (g) (1) (b): While the sign specifications contained in the proposed regulations are precisely those required in the OSHA standards, it should be pointed out that the OSHA specifications are a minimum size, and that the employer is free to produce a larger sign with larger letters if he considers it necessary from the point of view of easier employee readability. We believe the California regulations should contain the same flexibility.

Accepted

Section 5208 (h) (1): The use of the phrase "provide or make available" in the OSHA standards was intended to permit the employer, if he could not "provide" medical examinations at a company clinic, to make available" examinations at outside non-company facilities. Thus, your use of the word "and" instead of the OSHA word "or" does not reflect the intent of OSHA in this situation. We recommend, therefore, that the phrase be changed to "provide or make available."

Accepted.

Also in this subsection, we agree that specific criteria should be set identifying those employees who are required to have a yearly medical examination. The OSHA standards are quite confusing in this regard, however, we believe that the interpretation contained in the proposed regulations is too loose. We recommend, therefore, that the state adopt the recommendation contained in the NIOSH Criteria Package on Asbestos, which called for yearly exams on those employees exposed to greater than one fiber per cc as a time weighted average or to greater than five fibers as a peak concentration. We believe that this is more in keeping with the intent of OSHA than your proposed standard.

Not accepted. Very valid point. Probably better To leave it as is

Your use of the word "given" in the second sentence of this subsection carries with it a connotation that the employee is required to accept the medical examination "provided or made available" by his employer. If this is your intent, it should be pointed out that it is established OSHA policy that no employee has any obligation whatever to accept a medical examination provided by his employer. Asbestos insulation employees throughout the country, for example, have absolutely refused to honor any of the medical examination requirements contained in the OSHA standards. This would also be the case, I assume, with these workers in California. Thus, if it is your intent to require employees to accept medical examinations, a strong statement of their responsibilities in this regard should be included in the standards.

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We believe that the 30 day limit established for the completion of required preplacement and existing employee medical examinations is too tight. In large operations, it would take considerably longer to conduct these examinations. In addition, in some cases, employers will have to purchase additional medical equipment for their clinics or find qualified outside physicians to conduct the examinations. For these reasons, we would recommend a 90 day period instead of the proposed 30 days.

90 days accepted.

Section 5208 (h) (2): We believe that clarification of the entire second sentence of this subsection is in order. If "previous employment" is intended to refer to employment with other companies prior to an employee's joining his present company, then we would be depending upon an employee's recollection of previous exposure and the date when it began. This would appear to be totally impractical and untrustworthy as a method of developing exposure data and we would recommend against such an interpretation. On the other hand, if it is intended that "previous employment" should refer to past employment within his present company, we may still run into trouble with long-term employees who may or may not have been exposed at some time in the past or for whom detailed work records are not available. Perhaps a clarifying phrase such as "as far as can be determined" should be included in the sentence.

Accepted. Entire reference to prev. emp. deleted.

Once again, let me express our appreciation for the opportunity to submit these comments for your consideration. If you have any questions with regard to this submission, or would like further details on any other matter relative to the proposed regulations with which we can be of assistance, please do not hesitate to contact us. We would appreciate being added to your mailing list for information on activities affecting asbestos or the asbestos industry, and would also appreciate receiving a copy of the final standards on asbestos.

Very truly yours,

Matthew M. Swetonic

Matthew M. Swetonic
Executive Secretary

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