PLAINTIFF'S EXHIBIT

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February 12, 1981

Mr. B.J. Pigg
Asbestos Information Association/
North America
1745 Jefferson Davis Highway
Crystal Square 4, Suite 509
Arlington, Virginia 22202

Dear Bob:

Attached is a report on an interesting development in California, i.e. rejection of the Cal-OSHA revised standard on cleanup of asbestos by the Office of Administrative Law. You may recall that the AIA/NA provided substantial testimony and much of what was suggested was incorporated into the revised standard. The end result was a substantive modification of the original proposal to a rule which was stringent but, if enforced in a reasonable manner, appeared to be livable for industry.

No action by the AIA/NA beyond keeping informed of Cal-OSHA actions is suggested at this time. I have, however, asked our company representative in California to provide whatever information is available on the background and implications of this OAL action.

It is also noteworthy for AIA/NA members with operations in California that portions of Federal OSHA and other federal regulations would not appear to stand up to the tests applied by OAL. If OAL persists in the use of these tests it could have a substantial impact on the future of state enforcement of federal regulations.

Very truly yours,

Harry

Harrison B. Rhodes
Technology Manager

HBR:vs
Attachment

cc: J. Reis
T.A. Dougherty

A0859C

bcc: R.F.X. Fusaro
J.L. Myers
G.F. Rouse
F.J. Shortsleeve/R.W. Rebholz

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SACRAMENTO REPORT
CALIFORNIA MANUFACTURERS ASSOCIATION
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New Review Agency Rejects Cal-OSHA Proposals

Three separate Cal-OSHA standards proposals have been rejected recently by the Office of Administrative Law for failure to meet the requirements of AB 1111, McCarthy, D-San Francisco. This bill was enacted in 1979, but was not effective until July 1, 1981.

A proposal to expand existing standards for cleanup of asbestos spills is the latest proposal to be rejected. It was adopted late last year, despite criticism and questions raised at the public hearing.

Rejection: Several Grounds

The asbestos proposal was rejected on two separate grounds established by AB 1111. The first was the failure by Cal-OSHA to explain in their "final general statement" the reasons for rejecting the arguments in opposition, as required by stature. The second was a failure to meet the requirement of "clarity," one of the basic criteria provided for in AB 1111.

Other grounds for rejection arose out of other statutory requirements, in Labor Code Sections 142.3 and 144.6. One is a requirement for a showing that the proposal is not "unduly burdensome on interstate commerce" and the other is for a showing that the proposal is feasible. Both of these stemmed from bills carried a few years ago by Sen. Newton Russell, R-Glendale. The bills had been drafted and sponsored by this Association's Safety and Health Committee.

Forklifts: "Vertical Sideways?"

Another proposal rejected dealt with operation of forklifts when workers are standing on the lifting platform. It had required the mast to be "vertical in a sideways direction as well as forward and rearward." It failed to meet the requirement of clarity but was also rejected because the final general statement did not set forth the facts relied upon in proposing the change.

The third proposal rejected dealt with repair work on metal forming or cutting machines such as punch presses, to be in accordance with "established engineering practice." It also was rejected for failure to include in the final general statement the facts which had been relied on in proposing the change.

Significance: Employer Opportunity

The significance of these developments is substantial, and for industry, encouraging. It provides a new opportunity and incentive for employers to participate in the standards process. It offers some assurance that employers should not always expect the worst in California, as has been the case frequently.

Cal-OSHA: "Painful Shock"

For state officials, the meaning is somewhat different. The situation is now reversed as bureaucrats, for the first time, are being required to know, understand and comply with laws aimed at them. This comes as a somewhat painful shock. It may require time for adjustment.

The Cal-OSHA Advisory Committee last week featured some discussion of the subject, with rather pessimistic views being expressed by state officials such as Don Vial, Art Carter, and Richard Wade. Vial deplored the process as being "legalistic," and Richard Wade questioned whether all "performance-type" standards would be rejected. Art Carter asked if the Standards Board would be able to function, or be reduced to a mere copy of the Feds.

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