STATEMENT

by

LORIN E. KERR, M.D., M.S.P.H.

on a

PROPOSED STANDARD ON EXPOSURE

TO ASBESTOS IN COAL MINING

before a

PUBLIC HEARING

NATIONAL INSTITUTE FOR

OCCUPATIONAL

SAFETY AND HEALTH

June 5, 1974

I am Doctor Lorin E. Kerr, Director, Department of Occupational Health, United Mine Workers of America. On December 8, 1972 the UMWA responded to the Notice of Proposed Rule Making containing an asbestos dust standard published in the Federal Register on November 7, 1972. A copy of that letter is attached and I respectfully request that it be made a part of the record of this meeting. In our letter we commended "the Bureau (of Mines) for the acceptance in 71.202 of the new standard for asbestos recently promulgated by NIOSH." We continued to state, "Bureau conformity with the standard clearly indicates a salutory endeavor to comply with both the letter and intent

PLAINTIFF'S EXHIBIT

UC-4356

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of P.L. 91-173 as amended." Eighteen months later it is our considered judgment that the previously proposed standard of two fibers per cubic centimeter of air is too high. The statistics accumulated since December 1972 indicate that even two fibers is a menace. It is becoming apparent with each report that the threshold limit concept is hazardous. Such standards do not start with the premise that any exposure such as asbestos is a potential hazard. Thus the upper limit set for exposure does not assure the prevention of disease. Unfortunately, TLV determinations start from the top and go down rather than starting at the bottom and going up.

During the last few years black lung, byssinosis and asbestosis have become the most widely publicized occupational diseases in the United States. The experts have established that exposure to all kinds of asbestos dust may cause serious diseases such as asbestosis, bronchial malignancy, and cancer of the pleura, peritoneum and other parts of the body. The pleural and peritoneal malignancies are now recognized as a heretofore rare type of cancer identified as mesothelioma. The death rates attributed to asbestos exposure are shocking. The possible addition of another preventable man-made disease to the all too familiar black lung menace now engulfing the coal mining industry is alarming.

The UMWA can not comprehend how any coal mine operator could take exception to the two fiber standard and finally after months of foot dragging insist on a public hearing. It is regrettable that the operators

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have delayed the promulgation of the rules in their final form by requesting this hearing. Apparently, they are little concerned about the damage being inflicted on lungs already scarred because of their avariciousness.

Operator opposition to the two fiber standard completely rejects the NIOSH recommended standard for occupational exposure to asbestos. In that 1972 document NIOSH stated that " -- no worker shall be exposed to more than 2.0 asbestos fibers per cubic centimeter of air based on a count of fibers greater than 5 micrometers in length -- determined as a time-weighted average exposure for an 8-hour work day --." Coal operator resistance to this standard is mindful of OSHA refusal to reduce its five fiber standard despite months of hearings and the outraged demands of organized labor. Hopefully a recent court order will force OSHA to reverse its position and institute the NIOSH two fiber standard.

The International Labor Organization on March 20, 1974 announced the beginning of a world-wide distribution of a report of a meeting of ILO experts on asbestos held in December, 1973. These experts " --recommended that the presence of not more than two fibers per milliliter of air -- should be regarded as an interim target concentration for the prevention of health risks to workers." The ILO announcement also stated, "The experts recognize that this standard can be applied only to fibrosis-causing effects of the fibers, since no reliable standard has yet been developed for the cancer-causing effects." In other words the two fiber standard is a preventive measure only for asbestosis -- the preventive standard for cancer is still unknown.

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The United Mine Workers of America, on the basis of existing scientific knowledge, strongly objects to the two fiber standard and urges that the standard for asbestos must be no higher than zero fiber per cubic centimeter of air. On August 16, 1971 we requested NIOSH to investigate the use of asbestos cloth in one Ohio strip mine and a short time later added another mine in western Kentucky. While a satisfactory substitute has been in use since then we continue to be concerned about the possible exposure of other miners elsewhere above ground.

I can thus assure you, Mister Chairman, we are gravely concerned about the possible damage inflicted on miners by a totally unnecessary 18-month delay. We are equally concerned about the proposed standard which we now feel is too high and must be lowered as noted above to zero fiber per cc. In addition we strongly urge the immediate promulgation of the asbestos standard. Any further delay is a violation of the letter and intent of P.L. 91-173 as amended and I am certain would be so construed by Congress.

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December 8, 1972

Dr. Elbert P. Osborn
Director
U. S. Bureau of Mines
Department of the Interior
Washington, D. C.

Dear Doctor Osborn:

We have carefully reviewed the proposed rule making published in the Federal Register on November 7, 1972 which amended certain portions of the mandatory health standards developed in accordance with the provisions of P.L. 91-173 and P.L. 92-303. Our comments are as follows:

1. Paragraph 71.110-1 specifies that "one sample of respirable dust" shall be taken. We recommend that this be clarified to assure that the sample will be taken for one full working shift. In the absence of such a clarifying statement the proposed regulation can too easily be interpreted to mean a single sample collected during a period of time which is less than a full working shift.

2. As stated on a number of previous occasions, we are opposed to the use of criteria established by non-governmental agencies such as the American Conference of Governmental Industrial Hygienists as proposed in 71.200. We can appreciate the use of ACGIH Threshold Limit Values as guides but not as standards. In accordance with P.L. 91-173, as amended, the formulation of numerous health standards is the responsibility of the Department of Health, Education, and Welfare. We must insist that health criteria and standards necessary for the implementation and enforcement of the amended P.L. 91-173 be developed or approved by the U.S. Public Health Service. It is essential that the adequacy of

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the "Threshold Limit Values of Airborne Contaminants" applicable to coal mining be assessed immediately and appropriate changes be implemented. We further recommend that NIOSH proceed rapidly to establish its own official standards rather than relying on outside agencies such as ACGIH and ANSI. Only in this manner can coal miners and all other workers be reasonably assured that the concentration of noxious or poisonous gases, dusts, fumes, mists and vapors surrounding them at the work place will not impair their health nor hasten their ultimate demise.

3. We commend the Bureau for the acceptance in 71.202 of the new standard for asbestos recently promulgated by NIOSH. Bureau conformity with this standard clearly indicates a salutary endeavor to comply with both the letter and intent of P.L. 91-173 as amended.

4. We are reluctant to burden you further with our continuing disagreement with noise standards and procedures as stated in 71.302-71.305. Our position was clearly stated in President Boyle's letter to you dated July 20, 1971 with the attachments thereto. We acknowledge receipt of your reply to President Boyle dated July 27, 1971. However, we must again denounce the continued adherance of the Bureau of Mines and NIOSH to the 90 dBA level of noise, although it conforms with the Walsh-Healy Standard stipulated by P.L. 91-173. In accordance with your suggestion of July 27, 1971, we are again registering our disagreement with this standard by sending a copy of this letter to NIOSH and requesting an early assessment of its validity. It is essential that all unnecessary impairment of hearing occurring among miners exposed to noises above the 80 dBA level be eliminated at an early date.

We trust that we will be kept informed by your office and NIOSH concerning your respective efforts to resolve the problems noted herein.

Sincerely,

Lorin E. Kerr, M.D.

CC: President W. A. Boyle
Marcus M. Key, M.D.

bcc: Raymond T. Moore, M.D.
Donald P. Schlick

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