Johns-Manville

Internal Correspondence

To: MEMO TO FILE

Date: Nov. 13, 1973

From. R. P. Carter

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Subject: RE: MEETING WITH JOHN O'NEILL - NOVEMBER 8, 1973
MEETING WITH JERRY SCANNELL AND JOHN O'NEILL - NOV. 9, 1973

Several weeks ago, upon learning that John Stender had decided not to appoint a Standards Advisory Committee in connection with the reopening of the asbestos standard, I called Jerry Scannell's office for the purpose of setting up a meeting with Jerry to determine why this decision had been made and what Johns-Manville and the asbestos industry could do to assist OSHA in promulgating a new standard. Jerry Scannell was out of town on business in Hawaii for a period of three weeks and therefore, the meeting could not be set up until November 9.

After a meeting was scheduled with Jerry Scannell for November 9, I was advised that John O'Neill would be delivering a presentation to the annual meeting of the A/C Pipe Producers Association in Washington on November 8. I attended that meeting and had the opportunity to informally speak with John O'Neill in addition to listening to his presentation.

During our informal conversation, John O'Neill indicated that one of the primary reasons for Stender's decision against the establishment of a Standards Advisory Committee was due to the fact that if such a committee was appointed, Dr. Irving J. Selikoff would have to be included as a member of the committee. I got the impression from O'Neill that Stender felt that Selikoff's presence on the committee would impair the functioning of the committee. O'Neill further indicated to me that the thrust of the revision would be the establishment of work practices. I indicated to John that it could conceivably take several years to prepare work practices for each segment of the asbestos industry. John agreed, but indicated that they would attempt to prepare work practices by processes which were common in each segment of the industry. During our informal discussion, John O'Neill mentioned that he had read the first two installments of Paul Brodeur's series of articles in the New Yorker Magazine. John was not happy

with these articles as it presented a very one-sided picture of the asbestos industry and was concerned with several unfavorable comments made about certain government employees. During his presentation, John O'Neill made specific reference to the unfair treatment of the asbestos industry in the news media and how only one side of the story was being told, which in his opinion, was quite unfair.

During his presentation before the A/C Pipe Producers Association, John O'Neill was quite candid in his remarks regarding the reopening. I did not get the impression that John O'Neill was speaking from any prepared notes but was rather making off-the-cuff remarks. The key points covered by John O'Neill in his presentation were as follows:

(1) The OSHA standard for exposure to asbestos dust was written only to prevent asbestosis and was not designed to prevent mesothelioma or cancer.

(2) The new evidence which OSHA now has is that fibers other than asbestos can cause mesothelioma.

(3) The British data upon which the current OSHA standard was based is weak and not scientific.

(4) OSHA wants to re-evaluate the TLV for asbestos.

(5) When preparing the current asbestos standard, OSHA did not take into consideration the talc mining problem. He indicated that tremolite is not fibrous and it has not been proven that tremolite causes any harm. OSHA therefore, must re-examine the types of asbestos covered. (During this past Summer, R. T. Vanderbilt and Company, a major talc producer, filed a petition with OSHA requesting a modification of the asbestos standard, basically deleting tremolite from the standard.)

(6) The method of sampling and measurement must be re-examined. In a phase contrast system, it is difficult to differentiate and distinguish fibers.

(7) The types of respirators permissible must be re-examined. As of April 1, 1974, many respirators will lose their current approval.

(8) OSHA wants to re-examine monitoring.

(9) Work practices must be developed, evaluated and made mandatory.

(10) Asbestos is essential in many uses and OSHA has no intent to ban its use. Rather, OSHA is desirous of establishing safe ways of using asbestos.

(11) John Stender has opted for the use of outside consultants in lieu of appointing a Standards Advisory Committee.

(12) OSHA wants the new standards to be very clear. One of the strong reasons for reopening the standard is due to a large number of inquiries OSHA has received during the past year and a half for clarifications and interpretations of the standard. It is their conclusion based on the volume of requests that the current standard is not clear.

(13) The current numerical standard will probably remain unchanged.

(14) OSHA would like considerable input from industry to assist them in drafting a new standard.

On November 9, Jack Solon and I met with Jerry Scannell at his office. When we arrived, John O'Neill was also present in Jerry Scannell's office. Jerry indicated that he was currently in the process of preparing a written proposal to John Stender which would consist of a procedure to draft and promulgate a revised asbestos standard. This proposal would be in lieu of the establishment of a Standards Advisory Committee, in view of the fact that Stender had rejected the establishment of such a committee. Jerry's recommendation to Stender will be for OSHA to prepare a draft of a new asbestos standard which would take at least three to four months. Then OSHA would use outside consultants, individuals picked from industry and labor, to be used by OSHA on an individual basis. For example, Scannell would propose contacting AIA to receive recommendations for individuals to be used as consultants. At individual meetings with these consultants, OSHA would discuss particular portions of the proposed revisions with experts in specific areas. After OSHA has met with these consultants they would then arrange to visit various plants in the asbestos industry to determine the practicality of the revised standard. Jerry Scannell indicated that he had

received a ruling from their attorneys to the effect that such a plant visit could not be the basis for an OSHA citation. Jerry was quite concerned that various companies might object to OSHA's presence in a plant due to a possible citation exposure. Jerry would like every effort to be made by OSHA to insure their credibility with industry that citations would not be issued as a result of these plant visits. As a matter of fact, he would attempt to work out an arrangement with OSHA enforcement people so that no plant inspections would be made in those establishments visited for a period of at least one year after their plant visit. Following the plant visits, OSHA might perhaps meet on a group basis with all of the consultants for the purpose of reviewing a final draft of the proposed regulations. During the entire process, the proposed regulations would be revised and altered informally as necessary. The final step would be the publication of a new proposed standard in the Federal Register, which probably would not take place before a period of one year from now. At the time the new proposed regulations are published, OSHA might announce a hearing date at that time if they feel there will be substantial comments or objections to the proposal. Jerry indicated it was conceivable that if no meaningful objections were made to the proposal, no hearing at all might be scheduled.

Towards the conclusion of our meeting, Jerry Scannell indicated that there were several things he would like from J-M:

(1) A letter on how we would like the asbestos standard modified. For example, what aspects of the standard are currently unclear or impractical.

(2) Provide OSHA with suggestions for improving monitoring and fiber counts, perhaps including a proposal for scrapping fiber counts.

(3) How can OSHA get Labor and Management together to discuss a new proposed standard without such a meeting being conducted on an adversary basis.

(4) After Ed Fenner establishes a Technical Committee within AIA, Ed Fenner should contact John O'Neill to discuss whatever assistance the Technical Committee can give him in drafting a new standard.

(5) Jerry Scannell may need assistance from J-M and other companies in the industry in selling his new proposal to John Stender. In view of the fact that J-M and other companies have sent letters to Stender advocating the establishment of a Standards Advisory Committee, it might be desirable at some point in time for us to advise Stender that we support Jerry Scannell's new proposal. In this regard, it is my intention to contact Jerry Scannell at the earliest possible time to advise him that J-M fully supports his new proposal to Stender and advise him that we would like to cooperate in any way possible to assist him in selling his proposal to Stender. I will suggest to Jerry that he give consideration to arranging a meeting for J-M with Stender, at which time he should be present, for us to convey our support of his proposal to Stender. The timing of such a meeting should be left to Scannell.

R. P. Carter

P.S. - After dictating this memo, I spoke with Jerry Scannell by telephone at which time he advised me that he had presented his proposal to Stender and Stender had accepted his suggestions. I then asked Jerry if we should either write or call Stender for a meeting to indicate our support of their new proposal. Jerry said the decision was up to us but we should either call for a meeting or present our views in a letter to Stender. It is my present plan to draft a letter to Stender withdrawing our request for the establishment of a 15-man Advisory Committee and supporting Scannell's proposal. I intend to read a draft of this letter to Scannell over the telephone and ask his suggestion as to whether or not the letter should be sent or a personal meeting arranged.