Asbestos

Hearing

TESTIMONY OF

WILLIAM CULVER
DISTRICT SALES MANAGER
W.R. GRACE & CO.

AT THE ALASKA DIVISION OF LABOR STANDARDS
AND SAFETY'S HEARINGS ON PROPOSED REGULATIONS
REGARDING OCCUPATIONAL EXPOSURE TO ASBESTOS,
TREMOLITE, ANTHOPHYLLITE, AND ACTINOLITE

March 11, 1987

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My name is William Culver and I am here on behalf of W.R. Grace & Co. As District Sales Manager, I supervise marketing of Grace construction products in Alaska. Grace has serious concerns with issues raised by the Division of Labor Standards and Safety's proposed regulations, many of which are quite technical. My purpose today, however, is to summarize Grace's concerns. Our separate written comments will address the technical issues in detail.

Grace is concerned that, by deviating from the newly issued, stringent federal asbestos regulations, the Division will prevent use in Alaska of valuable products that, while containing trace quantities of naturally occurring asbestos contaminants, pose no significant hazard to worker health. First, proposed Section 05.045(h)(2)(C) would ban the spraying of any "materials containing asbestos" regardless of the amount. In contrast, the Occupational Safety and Health Administration's ("OSHA's") enforcement policy exempts mineral products containing trace asbestos. Second, proposed Section 05.045(b)(1)(4) establishes an action level of 0.01 fibers/cc.

ten times below the federal level. Grace urges that the Division revise its proposal to be consistent with OSHA's requirements. Unless so revised, significant burdens will be placed on Alaska's economy without any significant benefit to its workers.

I. GRACE'S INTEREST IN ALASKA'S ASBESTOS REGULATIONS

Grace mines vermiculite in Libby, Montana and Enoree, South Carolina for use in the manufacture of a number of construction, industrial, and horticultural products. When mined, vermiculite ore contains tremolite, a form of asbestos, but the ore first undergoes a process of beneficiation and then is "expanded," so that the levels of tremolite contamination are but parts per million (ppm) in all Grace vermiculite products. No Grace vermiculite-based product contains more than 50 ppm asbestiform tremolite fiber or 0.005% by weight.

Grace vermiculite-containing products are used for several purposes. Perhaps the largest and most important use is in Monokote, a product that has several unique properties making it particularly suitable for structural steel fireproofing. The great majority of structural fireproofing applied today in Alaska is Monokote and virtually every office building constructed here over the past twenty years has been protected with this material. Monokote currently is being

installed in Anchorage in construction of the Fifth Avenue Project and Performing Arts Center. No product presently on the market provides equal performance in modern steel frame buildings at a comparable cost.

Grace studies have found that asbestos exposures in the spray application of Monokote, which contains less than 10 ppm of asbestiform tremolite fiber (0.001% by weight), are consistently below the OSHA 0.2 fibers/cc permissible exposure limit ("PEL") and 0.1 fibers/cc action level. Monokote is applied as a wet, slurry-like plaster and sets to form a dense, hard and permanent coating. The trace amounts of asbestiform tremolite that may be present are tightly bound in place by hydrated gypsum.

Use of Monokote poses no potential for significant asbestos exposure and provides substantial safety and economic benefits to building construction. Nonetheless, the Division's proposal would prohibit its spray application because it would be "material containing asbestos." Given the Division's proposed action level, even if spraying were permitted, the draft regulations might condition application on monitoring, respirator use, establishment of a regulated area, protective clothing and worker training -- extensive measures that are unnecessary for worker protection.

II. THE DIVISION SHOULD ADOPT OSHA'S SPRAY BAN ENFORCEMENT POLICY

Responding to a request for clarification from Grace, Department of Labor Assistant Secretary Pendergrass established OSHA's enforcement policy as exempting from the spray ban products containing de minimis asbestos concentrations. As stated in his letter, OSHA will not enforce the spray ban in cases where the fiber concentration in a product "is less than 0.1% by weight, is a natural contaminant, and where objective data . . . indicate that . . . employee exposures will not exceed the [federal] action level." During revisions of California's asbestos standard, OSHA endorsed adoption of this policy by states, finding it fully consistent with the requirements that State plans be at least as effective as federal standards. We will provide the Division with copies of both OSHA policy statements with our written comments. Grace respectfully requests that the Division endorse OSHA's spray policy explicitly in its final standard, or that it issue a comparable interpretive guideline.

III. THE DIVISION SHOULD ADOPT THE FEDERAL PERMISSIBLE EXPOSURE LIMIT AND ACTION LEVEL

Grace also urges the Division to adopt a Permissible Exposure Limit ("PEL") of 0.2 fibers/cc and an action level of 0.1 fibers/cc, consistent with OSHA's regulation. Unlike OSHA,

which based its regulation on a massive rulemaking record, the Division has not provided a supporting rationale for its proposed 0.1 fibers/cc PEL and 0.01 fibers/cc action level. Since you will hear about the PEL and action level from other parties today, however, I will leave a detailed discussion for our written comments and only highlight Grace's concerns about the feasibility of the Division's proposal.

Grace fears that, as a result of variations from OSHA's regulation, employers will never be able to show that exposure is below 0.01 fibers/cc. After its extensive three-year rulemaking, OSHA determined that the reliable limits of detection for the usual workplace asbestos sampling and analysis methods are above the Division's proposed action level. In attempting to solve this problem by tinkering with the monitoring protocol, the Division has endorsed a practice -- increased air flow rate through the filter -- expressly rejected by OSHA as yielding unreliable results.

OSHA also concluded that a 0.1 fiber/cc PEL was not feasible using work practice and engineering controls. Thus, only widespread respirator use would ensure compliance with the Division's proposal. But, in OSHA's words, "respirators are the least reliable means of control because of difficulties inherent in their design and use," such as ensuring proper fit and worker discomfort. See OSHA's Preamble, 51 Fed. Reg. at 22,693.

Given these limits on monitoring and control feasibility, anytime asbestos is encountered on a job, the airborne concentration always will be read as being above the Division's proposed action level and workers would be forced to wear respirators. Indeed, nuisance dust could trigger the Division's proposed requirements because occupational airborne monitoring is not asbestos specific. In short, the Division's proposal would defeat the purpose of an action level, which is commonly set at one-half the PEL in order to "permit employers to concentrate their resources on those employees and workplace conditions with the potential for high asbestos exposures." See OSHA's Preamble, 51 Fed. Reg. at 22,707.

Whether the practical application of the Division's proposals would result in any benefits beyond those realized by the federal standards is at best uncertain. The only thing that is certain about the proposed regulations is that they will be tremendously burdensome. These burdens will impact the State's economy in two ways. First, there will be a direct fiscal impact to the State to the extent the regulations apply to State buildings and construction projects. Additionally, the expenses imposed by the proposed regulations can only hinder private development at a time when the State's economy is extremely fragile at best.

We do not believe that the Division has adequately considered the costs and burdens which the proposed regulations

will impose upon the State of Alaska and the private sector. Like OSHA, the Division should focus on situations where the potential for exposure is high, rather than impose burdensome control requirements where exposure is minimal. For this reason, the Division should adopt the federal PEL and action level.

At the very least the brief time frame of the regulatory process must be expanded. The federal government spent over three years developing its current standard. Both public and private sector expertise was heavily involved throughout the federal process and, we believe, made significant contributions to the end result. By comparison, in Alaska the Division has allowed interested parties only a few scant weeks to participate in this proceeding. Under the Division's current schedule, there is no real opportunity for the State and the public to examine jointly the potential impacts of the proposed regulations. Thus, at a minimum, the time frame for the regulatory process should be expanded to include more significant opportunities for public sector involvement. This could be accomplished by adopting the federal standards on an interim basis in June, and allowing this regulatory process to continue.

CONCLUSION

Grace urges the Division to reconsider its proposal, which would deny Alaska the benefit of products possessing superior performance characteristics, and which would impose burdensome, costly requirements regardless of the potential for significant exposure.

Grace appreciates the opportunity to present this oral testimony and hopes that you will find our written comments helpful. We, of course, will be happy to provide further information.

LAW OFFICES OF

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** ADMITTED IN WASHINGTON & ALASKA
OTHERS NOT ADMITTED IN WASHINGTON

March 24, 1987

Senator Tim Kelly
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Senator Kelly:

This letter is to confirm the appointment of Mr. John Hamilton of W.R. Grace, Inc. with you or your aide Mr. Mark Johnson on Thursday, April 9, at 11:00 a.m.

We appreciate your taking time to meet with Mr. Hamilton so that he can relay his company's concerns regarding the proposed Alaska Department of Labor's Asbestos regulations. We understand that if you are unavailable, Mr. Mark Johnson has agreed to speak with Mr. Hamilton.

If you have questions or need to adjust the appointment, please contact me at 586-2210.

Sincerely,

Deborah E. Behr

Deborah E. Behr

cc: Mr. Hamilton
DEB/kms/0353n

GRACE

Construction Products Division

W.R. Grace & Co.
62 Whittemore Avenue
Cambridge, Mass. 02140

(617) 876-1400

April 7, 1987

BY HAND

Mr. Jim Sampson
Commissioner
Alaska Department of Labor
Juneau, Alaska 99802

Dear Commissioner Sampson:

W.R. Grace & Co. ("Grace") is concerned that the Division of Labor Standards and Safety may unintentionally prohibit or restrict use of products containing trace quantities of naturally occurring asbestos contaminants when it updates its occupational asbestos standard to be at least as effective as 29 C.F.R. § 1910.1001 and new § 1926. In this letter, Grace urges the Division to recognize that because these products pose minimal risk to worker health they need not be regulated to the extent required for materials to which asbestos is intentionally added.

As written, the Division's proposed regulations may be interpreted to apply to many activities that pose no unreasonable health risk because certain provisions do not define "asbestos-containing materials." First, proposed sections 05.045(h)(2)(C) and 04.0102(h)(1)(G) provide that

> [m]aterials containing asbestos, tremolite, anthophyllite, or actinolite shall not be applied by sprayed methods.

Second, the construction standard establishes several requirements for any asbestos "removal, demolition and renovation operations" unless they are "small-scale, short-duration." See proposed section 05.045(f)(6). Third, the housekeeping provisions (regulating clean-up methods and waste disposal) also appear to apply to activities involving all material containing any amount of asbestos. See proposed section 05.045(n).

Each of these provisions, given the absence of some lower limit cut-off, raises the specter of application of

the asbestos standard in almost any construction activity. By contrast, the standards exempt from labeling any products containing less than 0.1% asbestos or posing no potential for exposures during foreseeable use above 0.1 fibers/cc. See proposed section 05.045(m)(2)(F).

Responding to a request for clarification from Grace, Department of Labor Assistant Secretary Pendergrass established OSHA's enforcement policy (Attachment A) as exempting mineral products containing de minimis asbestos levels:

> In certain situations [], OSHA will not enforce the provisions of the standard which prohibit the spraying of asbestos-containing products. These situations will be limited to cases where the employer can show that the "fiber" concentration of the product is less than 0.1% by weight, is a natural contaminant, and where objective data . . . indicate that . . . employee exposures will not exceed the action level of 0.1 f/cc.
>
> * * *
>
> The intent of § 1926.58(j)(2) is to require a decontamination area and the other facilities listed above [clean rooms and showers] only where a regulated area is established.
>
> * * *
>
> OSHA [] did not intend its housekeeping and waste disposal provisions to be required for de minimis situations. As explained above, if materials contain only trace natural contaminants . . . and if employers can show, based upon objective data that employee exposure to such materials, during anticipated usage and handling, cannot exceed the action

level, then the housekeeping and waste disposal provisions will not be cited.

During revision of California's asbestos standard, OSHA's headquarters and field office for Region IX endorsed adoption of this policy by states, finding it fully consistent with the requirements that State regulations be at least as effective as federal standards (Attachments B & C). Grace therefore respectfully requests that the Division endorse these policies by adopting a lower limit cutoff in its asbestos standard, either explicitly in the regulation or in interpretive guidelines.

Grace also urges the Division not to needlessly burden the use of products containing trace asbestos by establishing an action level of 0.01 fibers/cc, ten times below the federal level. Practical limits on workplace airborne monitoring would prevent employers from showing that asbestos exposure is below this level. Rather than focusing on high exposure situations, the proposal would thus require controls whenever any amount of asbestos is encountered. The result would be a significant burden on Alaska's economy without significant benefit to its workers.

I. GRACE'S INTEREST IN ALASKA ASBESTOS REGULATIONS.

Grace mines vermiculite in Libby, Montana and Enoree, South Carolina for use in the manufacture of a number of construction, industrial and horticultural products. When mined, vermiculite ore contains tremolite, a form of asbestos, but the ore first undergoes a process of beneficiation and then is "expanded," so that the levels of tremolite contamination are but parts per million (ppm) in Grace vermiculite products. No Grace vermiculite-based product contains more than 50 ppm asbestiform tremolite fiber (0.005% by weight).

Grace vermiculite-containing products are used for several purposes. Perhaps the largest and most important use is in Monokote®, a product that has several unique properties making it particularly suitable for structural steel fireproofing. The great majority of structural steel

fireproofing applied today in Alaska is Monokote® and virtually every office building constructed here over the past twenty years has been protected with this material. No product presently on the market provides equal performance in modern steel frame buildings at comparable cost.

Grace studies have found that asbestos exposures in the spray application of this product, which contains less than 10 ppm of asbestiform tremolite fiber by weight (0.001%), are consistently below both the revised OSHA 0.2 fibers/cc permissible exposure limit ("PEL") and 0.1 fibers/cc action level. Monokote® is applied as a wet, slurry-like plaster and sets to form a dense, hard and permanent coating. The trace amounts of asbestiform tremolite that may be present are tightly bound in place by hydrated gypsum.

Use of Monokote® poses no potential for significant asbestos exposure and provides substantial safety and economic benefits to building construction. Nonetheless, the Division's proposal would prohibit its spray application because it would be "material containing asbestos." Given the Division's proposed action level, even if spraying were permitted, the draft regulations might condition application on monitoring, respirator use, establishment of a regulated area, protective clothing and worker training -- extensive measures that are unnecessary for worker protection.

II. THE UBIQUITY OF TRACE ASBESTOS CONTAMINATION.

Naturally-occurring asbestos is ubiquitous and found in trace quantities in a wide variety of minerals. As mineralogists have long recognized, both serpentine rock, which usually contains some proportion of chrysotile (asbestiform serpentine), and amphibole minerals (e.g., asbestiform tremolite, crocidolite, or amosite) occur very widely in sedimentary, igneous and metamorphic rock formations throughout the world. Such occurrences are typically rich enough to be mined for asbestos production in only a few areas, but trace levels are found widely in many mineral formations.

As University of Maryland Professor of Geology Dr. Ann Wylie testified at the OSHA hearings on its new asbestos

standard: "Approximately thirty percent of the rocks found in the continental United States contain amphiboles [i.e. asbestos] as major constituents . . . [It] would be practically impossible to produce a commercial product from rock which occurs in a metamorphic terrain which did not contain tiny quantities of such fibers." 1/

Many products formed from minerals will thus contain asbestos, although normally only at trace levels. Given the ubiquity of asbestos fibers in naturally-occurring water at concentrations typically from 1 to 10 million fibers/liter and exceeding 200 million fibers/liter in certain locations, 2/ proper analysis might reveal the presence of asbestos in any product manufactured with water, which encompasses a vast array of goods.

Grace recognizes the desirability of regulating use of its products to assure safe working conditions. Nonetheless, Grace believes that the application of stringent regulations developed for products containing intentionally added asbestos are inadvisable for products that can be demonstrated to pose no potential for meaningful asbestos exposures.

III. THE CONSISTENT PATTERN OF NOT TRIGGERING REGULATORY REQUIREMENTS FOR DE MINIMIS EXPOSURES.

Recognizing that products containing trace contaminant concentrations do not pose a significant threat to human health, regulatory agencies in addition to federal OSHA have consistently excluded trace contaminant levels of asbestos from more general asbestos regulations. For example, the Environmental Protection Agency's ("EPA's") asbestos Clean Air Act National Emission Standard for Hazardous Air

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1/ Testimony in the 1984 Hearings on the OSHA Asbestos Standard, OSHA Ex. 230, at 3, 9.

2/ See National Academy of Sciences, Asbestiform Fibers (1984).

Pollutants ("NESHAPS"), including the spraying ban and waste disposal requirements, applies only to products containing more than 1% asbestos. 40 C.F.R. § 61.140 et seq.

Similar exclusions have also appeared in other EPA and Consumer Product Safety Commission ("CPSC") regulations:

1. EPA's Asbestos-in-Schools Rule. EPA requires all schools to look for friable materials, to determine if they are asbestos, and if so, to notify building occupants. The regulation does not, however, apply to material containing less than 1% asbestos by weight. 40 C.F.R. § 763.103(c) (1984).

2. EPA's Information Collection Rule. When EPA collected comprehensive data on asbestos in 1982 in preparation for its rulemakings to ban and phase out asbestos, it excluded from the required data information on mixtures which "contain asbestos as a contaminant or impurity." 40 C.F.R. § 763.63(b).

3. EPA's Proposed Ban on Asbestos. Although proposing to ban and phase out asbestos use, EPA was careful to emphasize that the proposal did not apply to asbestos such as that encountered "in connection with mining of another substance such as vermiculite" that was "an unintended contaminant or impurity." 51 Fed. Reg. 3738, 3754, proposed 40 C.F.R. § 763.143(g) at 3757 (Jan. 29, 1986).

4. CPSC. Although rejecting a 1% cutoff below which asbestos would be permissible in patching compounds, the CPSC emphasized it did not intend to ban patching compounds in which there were unavoidable trace amounts of asbestos. 42 Fed. Reg. 63,354, 63,357 (Dec. 15,

1977). Similarly, CPSC's enforcement policy for the labeling of household products containing asbestos applies only where the asbestos has been intentionally added. 51 Fed. Reg. 33,910, 33,912 (Sept. 24, 1986).

In sum, there has been a consistent regulatory policy not to include products such as vermiculite under regulations whose primary purpose was to control commercially exploited asbestos. Regulatory agencies have recognized that asbestos can be found as an impurity in many other materials and have thus exempted such materials so long as the asbestos was found only at minimal concentrations and/or did not cause significant airborne exposures.

IV. THE DIVISION SHOULD NOT ADOPT AN ACTION LEVEL OF 0.01 FIBERS PER CUBIC CENTIMETER.

Grace also recommends that the Division not adopt its proposed action level of 0.01 fibers/cc. Given practical limits on workplace asbestos monitoring, employers would never be able to show that exposure is below this level. Consequently, employers would be forced to institute expensive controls, even where actual exposure is de minimis.

As explained in OSHA's [illegible] the practical reliable limit of detection for its [illegible] method is 0.03 fibers/cc. 51 Fed. Reg. 22,612, 22,690 (June 20, 1986). The Agency recognized that, in theory, increased air sampling rates could lower this detection limit. OSHA concluded, however, that these higher flow rates could yield unreliable results due to interference from nuisance dust and overloading. The maximum air sampling rate permitted under the federal standard therefore is 2.5 liters per minute. See 29 C.F.R. § 1926.50 Appendix A.

The Division, on the other hand, has ignored these practical constraints. To lower the theoretical detection limit, the proposal allows air sampling at rates up to 16 liters per minute, but otherwise adopts the federal monitoring method. The practical result, as OSHA found, would be many unreadable asbestos samples.

Pursuant to proposed section 05.045(g)(6)(E), exposure is presumed to be above the action level if the filter is unreadable. The action level triggers numerous regulatory requirements, including establishment of a regulated area (05.045(f)(1)), monitoring (05.045(g)(3)), respirator usage (05.045(f)(4)), protective clothing (05.045(j)(1)) and worker training (05.045(m)(3)). Grace thus fears that because of monitoring limitations, anytime asbestos (or any non-asbestos countable dust) is encountered on a job, the airborne concentration always will be read as being above the proposed action level and employers would be forced to institute controls. 3/

The Division's proposal consequently would defeat the purpose of an action level, which is commonly set at one-half the PEL in order to "permit employers to concentrate their resources on those employees and workplace conditions with the potential for high asbestos exposures." See OSHA's Preamble, 51 Fed. Reg. at 22,707. Failing to provide cost-effective protection, the proposed regulations would instead impose burdensome requirements on jobs involving minimal or no asbestos exposure.

* * * *

Grace urges the Division (1) not to adopt an action level of 0.01 fibers/cc and (2) to adopt a lower limit cutoff of 0.1% asbestos by weight. Eliminating the action level would yield a more workable regulation, while a cutoff would recognize that there is no reasonable rationale for applying

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3/ Apart from the action level, compliance with the proposed 0.1 fibers/cc permissible exposure limit may be feasible only through wide-spread full-scale respirator use. But according to federal OSHA, "respirators are the least reliable means of control because of difficulties inherent in their design and use," such as ensuring proper fit and worker discomfort. See OSHA's Preamble, 51 Fed. Reg. at 22,693.

the full panoply of regulations to products containing trace asbestos. Both actions would be consistent with federal OSHA's requirements.

Grace would be glad to answer any questions you may have, or meet with your staff as appropriate.

Very truly yours,

John S. Hamilton, Jr.

ATTACHMENT A

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

AUG 14 1986

Mr. Robert J. Bettacchi
Vice President
Construction Products Division
W. R. Grace & Company
62 Whittemore Avenue
Cambridge, Massachusetts 02140

Dear Mr. Bettacchi:

This in response to your letter of June 23 seeking interpretation of certain regulatory provisions contained in the standards for occupational exposure to asbestos, tremolite, anthophyllite and actinolite issued June 20 (51 FR 22612). Specifically, your concern is that certain provisions of the new standards may apply to many activities that pose no asbestos risk to worker health and that were not intended by the Occupational Safety Health Administration (OSHA) to be covered by the new standards.

Your letter raised interpretive issues about three provisions. The first provision states that: "Materials containing asbestos, tremolite, anthophyllite, or actinolite shall not be applied by spray methods" ($1910.1001(f)(1)(vii) and 1926.58(g)(2)(iii)). As you pointed out, other government agencies which have restricted the application of asbestos materials by prohibiting spraying have included a percentage-by-weight exclusion. Your concern is that, since the OSHA provisions do not contain an exclusion, the OSHA regulation will inappropriately apply to a wide variety of sprayed products that contain trace amounts of naturally occurring levels of asbestos which you term "de-minimis."

OSHA recognizes that some mineral products that are sprayed may contain such small amounts of asbestos as to be considered "de-minimis" for purposes of administering these standards. In certain situations, therefore, OSHA will not enforce the provisions of the standards which prohibit the spraying of asbestos-containing products. These situations will be limited to cases where the employer can show that the "fiber" concentration of the product is less that 0.1% by weight, is a natural contaminant, and where objective data (as described in 51 FR 22712) indicate that, under foreseeable handling and usage, employee exposures will not exceed the action level of 0.1 f/cc. For purposes of administering the standards, OSHA compliance officers will be instructed that, in such situations, they should not issue a citation because of the de-minimis nature of employee exposure.

Your second area of concern was whether §1926.58(j)(2), which imposes requirements for decontamination areas, clean rooms and showers, applies to all asbestos removal, demolition and removal operations, or only those where airborne concentrations of asbestos, tremolite, anthophyllite, actinolite or a combination of those minerals exceed or can reasonably be expected to exceed the PEL prescribed in §1926.58(c). The intent of §1926.58(j)(2) is to require a decontamination area and the other facilities listed above only where a regulated area is established. Regulated areas are established only where concentrations exceed the PEL.

The third issue cited in your letter deals with similar provisions in the general industry and construction standards (§1910.1001(k) and §1926.58(l), respectively). As you stated in your letter, these are housekeeping provisions which regulate clean-up methods and waste disposal and are of particular concern to you if they apply to activities involving all materials containing any amount of asbestos, however small.

The Agency believes that proper housekeeping and disposal practices are essential parts of any effective asbestos control program. OSHA, however, did not intend its housekeeping and waste disposal provisions to be required for de-minimis situations. As explained above, if materials contain only trace natural contaminants of asbestos (defined as products with less than 0.1% asbestos by dry weight), and if employers can show, based upon objective data that employee exposure to such materials, during anticipated usage and handling, cannot exceed the action level, then the housekeeping and waste disposal provisions will not be cited.

Also, in an earlier letter to OSHA, dated November 14, 1985, concerning the draft revised standards, you expressed concern that the scope of the revised standards would include non-asbestiform tremolite, anthophyllite and actinolite. The revised standards have included these non-asbestiform minerals in their scope. You should note, however, that the revised standard only regulates fibrous forms of these minerals (defined as having a length-to-width ratio greater than 3 to 1). Further, on July 18, 1986, OSHA granted a temporary nine-month stay of the effective date of the revised standards (until April 21, 1987) insofar as they apply to occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite. The purpose of the stay is to allow OSHA to review newly submitted information and to institute supplemental rulemaking on whether these minerals should continue to be regulated as presenting the same health risk as asbestos.

Enclosed is a copy of OSHA's July 18 letter to counsel for the R. T. Vanderbilt Company which describes the stay in greater detail. I hope this information will be helpful to you.

Sincerely,

John A. Pendergrass
Assistant Secretary

ATTACHMENT B

JAN 12 1987

MEMORANDUM FOR: RUSSELL B. SWANSON
Regional Administrator - IX

THROUGH: JOHN B. MILES, JR., Director
Directorate of Field Operations

FROM: BRUCE HILLENBRAND, Director
Federal-State Operations

SUBJECT: California's Asbestos Standard

We have been contacted by an attorney representing the W.R. Grace Company who is concerned about a problem with the pending revision to the California asbestos standard.

On August 14, 1986, in response to a question from Grace, OSHA issued the attached policy interpretation with regard to the spray application of materials that have only trace amount of asbestos. The new asbestos standard prohibits spraying of materials that contain asbestos without setting any minimum amounts. In our letter we indicated that our compliance policy would be that the spraying prohibition does not apply to products where the fiber concentration is less than 0.1% by weight.

We understand that W.R. Grace has discussed this issue with Cal/OSHA officials who indicated their philosophical willingness to honor this interpretation but felt that if they did Federal OSHA would find their standard "not at least as effective". While we believe that this issue would best be handled through an Administrative Interpretation, we would not object to adoption of this provision by CAl/OSHA.

Please discuss this issue with the State and make them aware of OSHA's position. We understand that Mary Lou Smith, of the Standards Board, has had discussions with Grace representatives on this issue. If we may be of assistance, please contact Barbara Bryant.

Attachments

ATTACHMENT C

U.S. Department of Labor

Occupational Safety and Health Administration
450 Golden Gate Avenue
San Francisco, California 94102

Reply to the Attention of:

January 23, 1987

Mr. Ronald Rinaldi, Director
Department of Industrial Relations
P. O. Box 603
San Francisco, CA 94102

Dear Ron:

Enclosed are copies of correspondence from our National Office concerning an interpretation of the revised asbestos standards for general industry and construction. Federal OSHA is interpreting the provisions which prohibit the spraying of materials containing asbestos as not applying to products having a fiber concentration of less than 0.1% by weight.

The W. R. Grace Company requested and received this clarification and have since had discussions with Mary Lou Smith concerning the adoption of this provision by Cal/OSHA in its asbestos standard. In accordance with Bruce Hillenbrand's request, we hereby advise you that we would have no objection to such an action.

If there are questions or concerns regarding this matter, please do not hesitate to contact our Office of Technical Support.

Sincerely,

Russell B. Swanson
Regional Administrator

Enclosures

March 26, 1987

STATUS UP-DATE FOR STATES ADOPTING/ENFORCING JUNE 20, 1986 OSHA ASBESTOS REGULATIONS

STATE	ADOPTION DATE	DESCRIPTION	GENERALLY/SPECIFICALLY PROCEEDS BY/ADOPTS OSHA ENFORCEMENT GUIDELINES
Alaska	Public hearings held March 1987	PEL, 0.1 f/cc; action level, 0.01 f/cc; spray ban; labeling above 0.1%. Respirators, regulated areas, protective clothing, and monitoring triggered at action level. Contains short-term exposure levels.	No
Arizona	Adopted January 18, 1987	Identical to OSHA	"Specifically" yes
California	Because Cal-OSHA may be dissolved, all adoption proceedings are on hold.	Identical to OSHA	No
Hawaii	Public hearings expected within the next month	May propose 0.1 f/cc PEL.	"Generally" yes
Indiana	Adopted regulations effective January 16, 1987	Identical to OSHA*	"Generally" yes
Iowa	Adopted July 1986	Identical to OSHA	"Generally" yes
Kentucky	Adopted December 4, 1986; effective February 10, 1987	Largely identical to OSHA; contains minor amendments, primarily to the respirator and monitoring provisions.	"Generally" yes
Maryland	Expects adoption by end of April 1987	Expects proposal to be identical to OSHA.	"Generally" yes

* In process of obtaining confirmation

STATE	ADOPTION DATE	DESCRIPTION	GENERALLY/SPECIFICALLY PROCEEDS BY/ADOPTS OSHA ENFORCEMENT GUIDELINES
Michigan	Expects adoption within six months to one year	Expects proposal to be identical to OSHA. Will incorporate licensing and certification.	"Generally" yes
Minnesota	Adopted November 15, 1986	Identical to OSHA	"Generally" yes
Nevada	Adopted July 1986	Identical to OSHA	"Generally" yes
New Mexico	Adopted February 13, 1987	Identical to OSHA*	"Generally" yes
North Carolina	Adopted July 1986; effective September 1, 1986	Identical to OSHA	No
Oregon	Adopted January 15, 1987	Identical to OSHA*	"Generally" yes
Puerto Rico	Adopted October 1986	Identical to OSHA	"Generally" yes
South Carolina	Adopted September 1986	Identical to OSHA	"Generally" yes
Tennessee	Adopted October 1986	Identical to OSHA	"Generally" yes
Utah	Adopted December 1986	Identical to OSHA	"Specifically" yes
Vermont	Public hearing March 1987. Needs approval from Legislative Committee by 4/20/87.	Proposal identical to OSHA	"Specifically" yes
Virginia	Adopted October 1986; effective December 8, 1986	Identical to OSHA	"Generally" yes
Washington	Public hearing March 24, 1987	Proposal largely identical to OSHA; does contain short-term exposure levels.	No
Wyoming	Adopted November 14, 1986	Identical to OSHA*	"Generally" yes

* In process of obtaining confirmation

March 18, 1987

Senate Labor and Commerce Committee
P.O. Box V
Juneau, Alaska 99811

Attention: Senator Tim Kelley, Chairman

Subject: Department of Labor Proposed Asbestos Regulations

Dear Senator Kelley:

Based upon what was presented to the Department of Labor during Public Hearings in Anchorage on March 11 and what was presented to your Committee on March 16, we hereby make the following recommendations in addition to those presented in our March 11, 1987 Position Document:

1. The Department should immediately proceed with the adoption and implementation of the Federal regulations (without change thereto). Reasonable time should be allowed from the time these regulations are proposed until they are enforced, in order to give architects, engineers, and contractors sufficient time to prepare for them.

2. The Department should proceed with the development, public hearing process, and adoption of regulations that will eventually replace the Federal Regulations noted in item 1.

The purpose of recommendation 1 is to intact a more conservative regulation as quickly as possible, in order to provide a safer working environment than is required by current regulations. If DOL proceeds solely with its own regulations, it appears it will perhaps be nine months before they become effective, due to the Department's need to evaluate a great amount of public comment and hopefully rewrite the regulations and hold another round of Public hearings.

Recommendation 2 is a result of Public testimony. While in general we still firmly believe the State should not be more restrictive than required, we believe some changes will be very beneficial to workers. The changes that appear reasonable also appear to have very little cost impact. Through further

dialogue with DOL, we believe a reasonable regulation for working with asbestos in Alaska can be obtained.

Respectfully submitted on behalf of fifteen Roofing Contractors in the State of Alaska

Thomas Lee Smith, AIA, CSI, RCI

2303 W. 47th Avenue
Anchorage, Alaska 99517

248 7165

cc Governor's Office, Ray Price
Senate President, Senator Faiks
Speaker of the House, Representative Grussendorf
House Labor and Commerce Committee, Representative Donley
Department of Labor, Commissioner Jim Sampson
Alaska Chapter of the Associated General Contractors of America, Bill Reeves
Alaska Labors Training Trust Fund, Les Lauinger

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Centers for Disease Control
Atlanta GA 30333

November 10, 1986

Comm.	
Deputy	
Sp. Asst.	
Info. Off.	
Adm. Asst.	
Int. Aud.	
Med. Dir.	✓
To:	
cc:	
cc:	
cc:	

Dr. Annette Thorn
Alaska Department of Labor
P. O. Box 1149
Juneau, Alaska 99802

Dear Dr. Thorn:

Since our telephone discussion a couple of weeks ago concerning asbestos monitoring and the development of an asbestos standard for Alaska, I received a call from the New York City Asbestos Control Program. They are trying to finalize the draft of their regulations to control asbestos emissions during building renovation and demolition. I have enclosed copies of their July draft and their October notice on training and certification of construction workers and supervisors. They have your name and address and will send you their latest information.

We had discussed the use of phase contrast microscopy (NIOSH Method 7400, enclosed). The following table shows the volume of air collected and the air concentration that can be quantitatively measured in fibers per cubic centimeter of air sampled.

Sample Flow Rate (Liters/minute)	Volume and Air Concentration 2 hour sample	4 hour sample	Sampling Time To Measure 0.01 f/cc
4	480L(0.08 f/cc)	960 (0.04)	16h
10	1200(0.03)	2400 (0.02)	6.5h

This information is obtained by the formula:

$$\text{Air Volume Sampled (L)} = \frac{100\ f/mm^2 \times 385\ mm^2/filter}{C \times 1000\ cc/L}$$

where C = 0.01 f/cc or the number to be calculated.

One hundred f/mm^2 is the fiber density on the filter for optimal counting, i.e., the method results should be within 25% of the true value 95% of the time. NIOSH considers this to be the best method available since the precision is less than 15% RSD when 80-100 fibers are counted on the filter.

At a fiber density of 13 f/mm^2 on the sampled filter, only 10 fibers would be counted and the variability would be about 41% relative standard deviation. This means that such a count would come within only about 82% of the true value 95% of the time.

As we discussed if the air volume can be collected, the quality control features of Method 7400 are followed, and airborne particles do not prevent the counting of fibers, then the method will be a precise analytical tool for air monitoring.

Should you need further information you may contact myself or my colleague and co-author of Method 7400 Dr. Paul Baron of NIOSH at (513) 841-4277 in Cincinnati.

Sincerely,

David G. Taylor

David G. Taylor, Ph.D., C.I.H.
Chief, Safety & Health Operations
Branch, Office of Biosafety

Enclosure

March 17, 1987

The Honorable Tim Kelly
Chairman, Labor and Commerce Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Mr. Chairman and Committee Members,

I was unable to testify at your oversight hearing on the proposed Department of Labor Asbestos Regulations. Please allow me this opportunity to testify in a written format.

My Father died of emphysema caused by asbestos. Oftentimes we hear only about the cancer deaths associated with asbestos. That is because it is easier to draw a direct and irrefutable link between asbestos and a particular form of cancer it causes , than to show such a relationship between asbestos and emphysema. Statistically, the relationship between asbestos and emphysema is well established.

It took twelve years for my Father to die. Please remember that cancer is not the only health risk.

In the years since his death I have seen the asbestos safety standards gradually increased. Each time there is an outcry from industry. The boardroom types have a great deal to say about the risks they never take and often indulge in fits of doomsaying hysteria: the new standards will put them out of business, the new standards won't work, the new standards cost too much. Each time the industries continue to flourish and we save lives.

Some government studies put the "value" of a human life at one million dollars. That's a lot of seventeen dollar respirators.

When you mull it all over in your minds, you will realize that too often such regulations go unenforced. The Department of Labor doesn't have the manpower to ride herd on every remodelling job in the state. Perhaps the important point is that you tried to protect worker's health and to set a decent standard. That is the proper role of government, and in that regard I urge you to value the expertise of the Department of Labor. These professionals are hired to examine such regulations. They have done so. They have found no less than 22 different aspects of the federal regulations which are insufficient to protect human health. Listen to them. Their interest in this is not self-serving.

Sincerely yours,

Anna von Reitz

Anna von Reitz
#202, 361 Distin Avenue
Juneau, AK 99801

KENAI PENINSULA BOROUGH
BOX 850 • SOLDOTNA, ALASKA 99669
PHONE 262-4441

STAN THOMPSON
MAYOR

We urge you to write the Department of Labor and demand adoption of only the current Federal Asbestos Standard. In addition, we ask you to notify your Legislator and Governor of our request. Attached is written testimony of the State regulations by the Kenai Peninsula Borough Committee given in Juneau. Written comments to the State of Alaska Department of Labor must arrive by April 17, 1987. Send them to:

Jim Sampson, Commissioner
Department of Labor Standards and Safety
P.O. Box 1149
Juneau, Alaska 99802

KENAI PENINSULA BOROUGH

BOX 850 • SOLDOTNA, ALASKA 99669
PHONE 262-4441

STAN THOMPSON
MAYOR

March 26, 1987

Jim Sampson
Commissioner of Labor
Department of Labor Standards and Safety
P. O. Box 1149
Juneau, AK 99802

Dear Mr. Sampson:

The Alaska Department of Labor has proposed new regulations that would govern work in areas where asbestos is or could be present. The proposed State regulations are twenty times more stringent than the current Federal regulations. The Federal regulations were adopted and placed into effect on July 21, 1986 (only about 8 months ago), and at the time of their adoption were considered and determined by Federal OSHA to be the lowest levels of permissible exposure to asbestos fibers that were technologically and economically feasible. We, at the Kenai Peninsula Borough concur with the Federal OSHA.

This letter comes from the Asbestos Committee of the Kenai Peninsula Borough which has examined the issues on asbestos and has been instrumental in formulating a plan to deal with asbestos in the Kenai Peninsula Borough schools and other public facilities. The Committee reviews asbestos regulations and develops and implements asbestos containment/abatement plans. Our goal is to attain the maximum level of safety and health for every public employee and student who utilizes our facilities. We are a self-insured municipality to a large extent which gives us great financial incentive to look to the safety of the students and employees due to potential liability exposure. This incentive is not our primary motive in implementing a program, but is stated to assure you that any concerns with the cost of implementation of the proposed State regulations are considered against potential liability costs. We have weighed the safety and health factors carefully.

Our review leads us to conclude that there is no significant improved safety for workers (and in our case, students) that would result from imposition of these standards, but

compliance would be extremely costly and inhibit a proper management and abatement program. We also conclude that compliance would be difficult, if not impossible, due to the lack of an adequate testing ability.

Regulations should not be adopted unless there is a benefit shown to be derived from them. Regulations of the type proposed should be based upon:

a. A showing of increased protection achieved by the standards.

b. A showing that this benefit is commensurate with the cost of compliance and implementation.

c. Consideration of the practical aspects of implementation.

d. Analysis of whether the proposal would inhibit alleviation of exposure to asbestos rather than enhance protection.

e. Determinations based upon evidence that the new standards are measurable in any practical manner that relates to actual operations or risk.

The proposed State regulations do not meet any of these tests. There is no evidence of any significant lowering of risk to workers to be achieved by the State standards. There is no reliable method of testing in a work environment to meet the standards, and the regulations require protective steps unless you can prove the asbestos is not present. The compliance costs are out of proportion to any perceived benefit and would inhibit asbestos removal creating a greater long term potential harm. To test for the levels proposed by the State would require static laboratory testing in facilities out of state which bear no relation to the time the work is performed and which are very costly.

There are numerous technical deficiencies in the State standards. The State standards have been proposed within eight months of the adoption of the new Federal regulations. The Federal regulations, after 55,000 pages of testimony over several years by the leading experts in the nation, established a permissible exposure level of 0.2 fibers per cubic centimeter. This level was determined to be the lowest technologically and economically feasible level achievable. The State has not demonstrated any new technological advances in detection and measurement in

that eight months, nor has there been any new evidence establishing greater risks from exposure than was available in setting the Federal standards or that increased standards would significantly lower risk.

In short, we see no basis for the proposed State standards, and instead, the Federal standards should be adopted. The Federal regulations allow for a program which will achieve the maximum safety in the shortest time while the State proposal inhibits that goal.

Attached you will find a more technical and detailed analysis of the regulations and particular problems with them. We thank you for your attention to this matter, and should you have any questions, please do not hesitate to contact me or any member of our committee. These comments are submitted for inclusion as written testimony on the proposed regulations.

KENAI PENINSULA BOROUGH

By: _____
G. S. Best, Chairman
Asbestos Committee

COMMITTEE MEMBERS:

Edward G. Hakert, Director of Public Works (KPB)
Donald L. McCloud, Director of Maintenance (KPB)
C.G. (Clancy) Johnson, Director of Emergency Management (KPB)
Thomas E. Overman, Assoc. Superintendent, Plan. & Operations
(KPB School District)

cc: Edith Brand
Regulations Specialist

KENAI PENINSULA BOROUGH

BOX 850 • SOLDOTNA, ALASKA 99669
PHONE 262-4441

STAN THOMPSON
MAYOR

My name is Tim Bundy. I am employed by the Kenai Peninsula Borough Maintenance Department. I have instructed a few hundred students for State of Alaska Asbestos certification. I also served on the instruction staff in 1984 for Georgia Institute of Technology in "Supervision of Asbestos Abatement Projects" and have attended National Institute Occupational Safety Health course 582 in "Sampling and Evaluating Airborne Asbestos Dust." I have provided and overseen Asbestos air monitoring and safety for over 150 projects in the State of Alaska to include Anchorage International Airport and Bartlett High School. I currently work as the Industrial Hygienist and Asbestos Coordinator in developing a Borough Asbestos Management Program, Asbestos Survey and Monitoring of facilities, training of maintenance staff and actual performance of asbestos abatement activities.

The primary reason OSHA nas for adopting the action level is that OSHA believes, based on experience, that it is appropriate to begin some protective actions prior to exceeding the permissible exposure limit to help drive exposure levels downward and to optimize the possibilities that the PEL can be met. Another purpose of the action level is to provide an appropriate cut-off point for many of the required compliance activities under the standard. The action level concept thus provides an objective test for OSHA and employees to permit the discontinuances of certain activities such as medical surveillance, training and periodic monitoring when exposures are low. Furthermore, setting an action level at 0.1 f/cc alleviates concerns that on unmeasured days during periodic monitoring of employee exposure, an employer would have an increased degree of confidence that employees are not inadvertently overexposed.

The Federal OSHA action level was based on the record evidence that a reliable measurement can be made at 0.1 f/cc. As NIOSH points out in their testimony to the U.S. Department of Labor on Occupational Exposure to Asbestos by the Director of NIOSH, Richard Lemen, the lowest level of exposure which can be accurately measured using currently available analytical techniques is 100,000 fibers greater than 5 micron in length per cubic meter, as determined in a sample collected over a 100 minute period at a flow rate of 4 liter per minute using NIOSH analytical method 7400.

OSHA mandates sampling to be between 0.5 lpm to 2.5 lpm because nuisance particles of dust collected at higher flow rates interfere with analyzing samples. The lower flow rates results in more readable samples. Furthermore, 37 mm cassettes can be used with written justification for similar reasons. In addition, Dr. Taylor stated to OSHA that NIOSH intended higher flow rates permitted by 7400 method to be used for taking clearance samples and <u>not</u> for the routine monitoring

of airborne asbestos levels in work places. (Federal Register, Vol. 51, No. 119 Pg. 22690).

The State of Alaska proposed action level of 0.01 f/cc has no scientific basis with traditional usage of action levels. As presented to OSHA, the 0.01 f/cc level cannot be reliably measured in 8 hour time weighted average (TWA) for working environments. The test method does not measure just asbestos fibers, but all fibers having the same characteristics. Other test methods such as electron microscopy are not reasonable due to:

1. Flow rates that take longer than 8 hours for a TWA.

2. Static test that take 7 - 10 days for results.

3. Expense of $300 to $350 per sample which require side by side comparison sampling with up to 10 samples costing around $3,500 for each building every six months.

4. Measuring fibers smaller than 5 microns due to magnification that cannot be compared at low levels to NIOSH 7400 accurately.

5. Measure fibers that may not be biologically active as larger fibers due to surface area, therefore, have less risk associated with no scientific correlation of these size fibers to asbestosis or cancer.

6. The OSHA reference method is mandatory where electron microscopy is not for compliance.

7. The statistics for electron microscopy have only recently been developed and are in need of much improvement to reduce variance.

The State has also proposed certain steps beyond traditional action level response which in effect result in a disguised permissible exposure limit (PEL). These steps are regulated areas, respirators, demarcation of area, engineering controls before respirator usage, isolation, weekly monitoring at levels for 8 hour TWA that are not achievable, use of statistical protocols that do not exist at present, and non-discriminate training for employees in the asbestos certification program.

The State defines short term operation as one hour. The State has clearly not performed any maintenance function adequate if they can change valves, change filters, clean areas, shut down HVAC systems to work on boilers in one hour. Such operations as simple roof leak repair could take more than one hour. Maintenance depends on many factors, but development of one hour time limits by the State indicate very little understanding of actual work performed. The State needs to take each operation by its own merit and realize not all operations are operated out of glove bags and simple routine thorough cleaning takes time. By the State Standard, major abatement procedures would be used resulting

in large cost no one can afford. As a result, routine owner-maintenance operations to control asbestos exposure would have to cease. A review of procedure established in Appendix G of the OSHA 1910.58 Standard should be adopted without capricious time restrictions.

The State of Alaska fails to comprehend the implications of their actions, legally, technologically and economically. The State insists their intent is for workers but not all workers. OSHA is guided by judicial reviews of the Agency standards for all American workers with occupational exposure. The D.C. circuit explained that the purpose of OSHA's industrial wide feasibility determination is to create "a general presumption of feasibility for an industry... (is) that industry can meet the PEL without relying on respirators." (Fed. Reg. Vol, 51, No. 119, pg. 22652). OSHA determined that a 0.1 f/cc may not be achievable in most operations without routine respirator use. OSHA traditionally defined PEL's and employee exposures as the airborne concentration of a contaminant measured without regard to use of respirators. The preference for traditional hierarchy of controls: the use of engineering and work practice controls as the first line of defense followed by respiratory protection. The State of Alaska does not express this intent with its controls imposed at an action level of 0.01 f/cc. Furthermore, OSHA revised the standard to apply to all occupational exposures to asbestos. OSHA has not defined the term "occupational exposure" in regulatory text. However, because of increased public awareness of the hazard of asbestos and its ubiquitousness, inquires have been made to OSHA concerning the applicability of the standards to exposures in buildings which may not result from manufacturing, processing or installing asbestos products. Significant areas of concern expressed were exposures to office employees in buildings where asbestos products have been installed and to employees who work in the vicinity of asbestos abatement and renovation activities.

OSHA determined in both of the situations the exposures are occupational and are covered by this standard. The employee's presence in the work place places him at increased risk from asbestos exposure regardless of whether the employee is actually working with asbestos. (Fed. Reg., Vol. 51. No. 119, Pg. 22677).

The action level as proposed would assume asbestos contaminate is there at levels that are not measurable. Furthermore, usage of any test other than what is specified by the OSHA Reference Manual will not give any correlation to workers nationwide. The Kenai Peninsula Borough requests adoption of an action level of 0.1 f/cc as defined by the Federal Standard.

The permissible Exposure Level (PEL) at 0.1 f/cc is not technologically and economically feasible. OSHA's primary consideration for setting a PEL is whether the limit chosen is technically and economically feasible for the affected industries. The Agency determined that the 0.2 f/cc limit is the lowest limit that generally can be achieved by feasible engineering and work practice controls. In addition, the 0.2 f/cc PEL is economically feasible for the industry as a whole.

OSHA projected that if 0.1 f/cc level where chosen, in a large number of operations most workers would have to wear respirators to be in compliance. Although OSHA expects a modest level of technological development for most asbestos control and an improvement in the application of the effectiveness of currently available best controls will occur, OSHA did not find, on this record, evidence of a possible technological breakthrough which would render the 0.1 f/cc level technologically feasible in most operations.

Furthermore, it was constantly pointed out there are inherent limitations of reliance on respirators to meet the PEL, particularly for full shift use. OSHA believed that when, as here, the marginal reduction in exposure level would be quite small, i.e., 0.2 f/cc vs 0.1 f/cc, employee protection will be more reliable if employer resources and efforts are concentrated on perfecting the more reliable engineering and work practice controls to control down to the PEL rather than deflecting such efforts by requiring widespread respirator use. The Kenai Peninsula Borough request adoption of 0.2 f/cc level as the PEL with such control as established by the Federal Standard only. It is apparent the state has adequately failed to understand these important concepts. At present, the State Regulations proposed are completely unmanageable and unrealistic in cost and benefit.

The Maximum Permissible Exposure limit (MPEL) of 0.5 f/cc demonstrates a complete lack of understanding for a ceiling limit. The exposed worker over 6.4 f/cc for 15 minutes would place that employee over the 0.2 f/cc limit. Similarly a 3.2 f/cc level for 15 minutes would put an employee over a TWA of 0.1 f/cc. In essence, a 0.5 f/cc in 30 minutes would mean any action over 0.03 f/cc is above the allowed action level but less than the PEL as proposed by the State. Clearly, the State does not understand the concept of a ceiling limit and should drop a MPEL because of this redundancy. Furthermore, OSHA points out there is no evidence that asbestos exposure in the short term produces a dose response relationship. In another word, the MPEL has no basis in light of current reduction by the Federal Standards.

Isolated areas are not feasible in outdoor settings such as roofs and industrial settings requiring any work at heights. The State does not recognize reduction of fiber concentration by dispersing of levels that are not visible. Extreme cost will occur beyond benefit where simple demarcation of site would provide the same protection to employees outside of regulated area.

Monitoring of employees would require more than a full 8 hour TWA for State action level. As pointed out by the OSHA reference method and discussion. The State proposed changes to the method would adversely affect the accuracy and clearly the changes have no scientific basis or statistical validity.

Objective data requiring 95% confidence of fiber release is unreasonable. The confidence levels are based on static picture of exposure levels that does not take in day to day variability. Furthermore, sampling error is very high at the action level proposed by the State of Alaska. The cost of the sampling programs far out weighs

the benefit they could provide. Should the State change the method of monitoring from ORM in Federal Standard Appendix A, greater variability and statistical error would be introduced, making compliance impossible.

If any air sample is unreadable it should be collected again. Assumptions of levels above the action level are ridiculous, capricious, and require expensive control measures beyond reasonable expectations. Good industrial hygiene practice would require more samples to be taken for accurate conclusion.

Regulated areas at the proposed action level that cannot accurately be measured for employee exposure is unreasonable. As proposed, the standard has no scientific basis for such burdensome and costly implementation. Regulated areas should be adopted at the Federal PEL only.

Respiratory protection at 0.01 f/cc has no scientific basis. Respirator developed with high efficiency filters are for superior in technology than the State credits. Use of supplied air system require high transport cost and more people to operate making these cost ineffective for most maintenance operations. The levels to trigger different respirators are not practical particularly in rural or bush operations. Fit testing need only be above 0.2 f/cc according to Federal Standards. Anything at a lower level is cost ineffective since negative filter respirators are are tested at 0.05 mg/m3 or approximately 2 f/cc at 0.2 f/cc, the level would be 0.006 mg/m3, a considerable lower level.

Test of compressed air are burdensome. Few operation last one week and generally are only a few days. Furthermore, no field kits are available to test condensed hydrocarbons. In addition, high temperature alarms are never placed in line with the type "C" system. These alarms are only on compressors and may have no bearing on CO levels in line. This entire section as proposed hides a respiratory standard which inappropriately is addressed. ANSI Z.88 should be reviewed where relevant discussions are addressed on respiratory protection.

Emergency procedures for spill do not specify if the State needs notifications prior to cleanup. Notification delays cleanup.

Person exposed above the action level are required to train in asbestos abatement. There is no exclusion for maintenance as outlined in the training regulations 8 AAC 61.600-790.

Significant changes in the medical section have been made. No rationale other than for x-rays have been given. The medical confidentiality go beyond employer-employee relations to create liability to the employer. It does not allow adequate examination for the employer to take steps to protect the employee, but allows a physician without proper training to make those judgements.

Other areas of concern include the requirements of bulk samples in the construction standard. EPA will have a regulation coming out this year in reference to Congressional Public Law 99-519 Asbestos Hazard Emergency Response Act. This law is in conflict with the State

Standard. In addition, this State proposal infringes upon environmental issues not germane to the worker creating overly burdensome and costly public programs without accepting responsibility of its consequences.

In summary, we believe several points should be stated.

1. These regulations fail to achive the goal of providing a fair standard that can be met by the employer.

2. The standards are not supported by research indicating any level of increased safety much less one commensurate with the cost and difficulty of compliance.

3. These regulations can require expensive compliance even when no asbestos hazard is present because an employer is unable to "prove" the absence of asbestos due to lack of reliable test methods to meet the proposed standard.

4. Regulations which cannot be realistically met tend to be ignored and are thus counterproductive; or worse they lead to attempts to conceal the presence of asbestos rather than dealing with it.

It is in the best interest of all Alaskans, private and public sectors, to promote a safe working environment. We suggest in the future, the State implement Federal Standard as required to be adopted. Once the standards are adopted, appoint a task force of safety representatives from affected employee representative, industry, and government sectors and review the practicality and feasibility of those existing regulations from a technological, social and economic view. If the standards then are lacking, set up public hearings with proposed changes with adequate notice to ensure participation. Do not deviate from the Federal Standard unless a significant reduction in risk is assured as based on scientific data.

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ASCC

ALASKA STATE CHAMBER OF COMMERCE
310 Second Street
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March 11, 1987

The Honorable Tim Kelly
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Re: Asbestos Regulations

Dear Senator Kelly:

On behalf of the Alaska State Chamber of Commerce, I would like to thank you for holding hearings involving the proposed asbestos regulations of the Department of Labor. These regulations need a thorough review for feasibility before they go into effect. While our members are as concerned as the Department of Labor about safety and health of their employees, the program put into effect must be practical, and economical. Those considerations have not been taken into account by the Department of Labor, which has asserted that this program will cost nothing, through the zero fiscal note it has issued.

The situation is this. The federal regulations dropped from 2 fibers per cubic centimeter to .2 fibers per cubic centimeter effective January 1, 1987. This is a ten fold drop nationwide, including Alaska. The proposed state regulations propose a 20 fold drop from the new federal regulations to .01 fibers per cubic centimeter. In short, the combined federal and state approach would cause a 200 fold drop in exposure levels within what will amount to a six month period (assuming that the state regulations go into effect by July 1st).

Some of our members have taken readings in various state and federal buildings and find them to be above the proposed state limits. This, of course, could result in retro-fitting schools, municipal buildings and other state buildings. Many of our member employers will have to do the same. In short, it is not credible to claim that this 200 fold drop in the permissible limit is going to cost nothing.

The public simply cannot weigh the value or lack thereof of the proposed state regulations unless it is able to put them into a meaningful cost context. If, in fact, this was going to cost nothing, there would be absolutely no reason to be concerned with the new regulations. On the other hand, if we go forward with these regulations and find later that they cost as much as we suspect, it will hurt both the public and private sectors.

We urge that an independent consultant be hired by the state to determine whether or not the proposed state regulations will indeed cost nothing, as has been asserted by the Department of Labor. If there is a cost associated with this 200 fold drop in the exposure levels, the consultant could describe what that is.

In the meantime, the consultant should conduct workshops around the state, with employers, municipal governments, and state school boards to determine whether or not there will be a cost impact upon them and what it is. This information should be incorporated in the independent consultant's report to the Department of Labor and to the legislature. Then, and only then, can we put the proposed new regulations into the proper context for public hearings. We would urge that there be a new set of public hearings after the cost information is made available.

In summary, the Alaska Chamber of Commerce fully supports an orderly process to reduce exposure levels. The federal standards, which dropped the regulations 10 fold, could be put into effect while an orderly review of the proposed additional 20 fold drop in state regulations is reviewed. We think such an approach makes common sense and is fair to all Alaskans.

Cordially,

George Krusz

George Krusz,
President

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